

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

MDL DOCKET NO. 1:10 md 2197

IN RE: DePUY ORTHOPAEDICS, INC |
ASR HIP IMPLANT PRODUCTS |

This Document Relates To: |

ALL CASES |

- - - - -
1ST FORMAL STATUS MEETING
- - - - -

TRANSCRIPT OF PROCEEDINGS

The above-styled case came on for hearing before the Honorable David A. Katz, Presiding at the U.S District Court, 701 Clematis Street, Courtroom 1, 4th Floor, West Palm Beach, Florida, on the 8th day of February, 2011, commencing at 1:00 o'clock p.m.

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Proceedings reported by mechanical stenography, transcript produced by computer.

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1 Thereupon, the following proceedings were held:

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Tuesday, February 8th, 2011

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THE COURT: Thank you, ladies and gentlemen. As you all know, this is the first formal meeting in this MDL, the DePuy Hip Recall, and I welcome you and hope you will find it informative. A if you introductory remarks would seem appropriate at this juncture before getting into the short agenda which we have. It is my hope, as The Judge in this case, as it is in all cases, my hope that this MDL will, as the other which I have been involved in for the past five years, will be as expeditiously handled as anticipated in a spirit of mutual cooperation. That mutuality of cooperation obviously will not be done in the relinquishment of any of clients' rights. I would anticipate that counsel will, within that spirit of cooperation, vigorously represent the claims and rights of their respective clients.

As you undoubtedly know by now, we have placed on record an order permitting original filings in the Northern District of Ohio, which is where I sit and which has been designated as the home district for the MDL. This will thus permit the parties to take advantage of the expediency offered by filing electronically, and thus avoiding the typical three month delay which occurs with the transfer

1 and other normal MDL tagalong noticing procedures.

2 With that said, I'd like now to recognize either
3 Steve Skikos or Ellen Relkin for some brief opening
4 remarks.

5 MS. RELKIN: Good afternoon, Judge. We had very
6 productive meetings this morning, first just with counsel,
7 both Plaintiff's and defense counsel together, co-leads,
8 and then the executive committee meeting with Your Honor
9 and defense counsel, and I think we're well on our way
10 towards productive moving of this litigation. Obviously,
11 we have a lot clients and serious injuries and we want to
12 move this very quickly and take discovery.

13 There's already been Rule 26 conferences getting
14 scheduled. We have a committee amongst the PSC and
15 executive committee. We have discussed Broadspire issues
16 which have a lot of process issues of importance, and
17 that's going to get discussed and worked out in more
18 detail, federal state cooperation issues and science
19 preservation issues, a lot of technical issues. Also, we
20 have a committee of people who have been working with
21 experts who are meeting with defendants.

22 So I think a lot of the critical issues, we have
23 committees and we're welcoming more input from other
24 plaintiff's counsel here and we're well on our way with
25 working with the defendant to have an orderly litigation.

1 THE COURT: Thank you, Ellen. Mr. Tucker?

2 MR. TUCKER: Your Honor, I would echo everything
3 that Ellen said, and in terms of we're ready to roll-up our
4 sleeves and get to work. We know that there's A lot to be
5 done and we're going to get to it. In terms of where we
6 stand I said on the agenda, do you want me to turn to the
7 agenda, Judge, quickly?

8 THE COURT: I think that would be appropriate.

9 MR. TUCKER: So there have been five CTO's that
10 have been issued, Your Honor, and so those cases as they
11 are filed are being tagged and brought to the MDL. And now
12 with the direct filing that The Court has put on, we're
13 beginning to see some direct filings in the MDL, so we
14 expect that that process will continue to bring cases into
15 the MDL.

16 In terms of state court coordination, those cases
17 that don't make their way to the MDL are being coordinated
18 in the two jurisdictions where there are cases being filed.
19 In California, there's going to be state court coordination
20 in California, there's a hearing on March 1st, and then
21 there will be state court coordination in New Jersey. So
22 we believe that importantly the coordination between the
23 MDLs and state courts will occur as we move forward.

24 THE COURT: Anything to add on that agenda item?

25 MR. SKIKOS: No, Your Honor. We believe that

1 we're a unified plaintiffs bar that are going to prosecute
2 these cases very strongly. California has already met. We
3 have a hearing on March 1st with a potential coordination
4 judge. And all of us in California who have met have --
5 want to cooperate and work together in the prosecution of
6 these cases.

7 THE COURT: What about New Jersey?

8 MS. RELKIN: New Jersey has far fewer Plaintiffs
9 as of now, there's not that many cases in suit. There has
10 been a petition that Defendants filed for consolidation,
11 and The Court has not yet ruled on the AOC in Trenton, but
12 there will be one of three judges whom it will go, either
13 in North Jersey, Middle Jersey or South Jersey, and time
14 will tell. There are some overlapping people, there are
15 some individuals who have filed some cases who I'm not sure
16 if they're involved in the MDL at this point, but well
17 endeavor to coordinate.

18 THE COURT: As I've discussed more than once, it
19 is my hope and intent that we will experience and enjoy as
20 significant and profitable coordination between and among
21 the bar, and particularly the Plaintiffs bar but also
22 Defense, as there has been in other MDLs in which I've been
23 involved. And we would hope that, and I'm sure this will
24 happen, that once the coordinating judges in both New
25 Jersey and California have been designated and given time

1 to get their respective feet on the ground, we will have
2 conversations leading toward that same type of coordinating
3 activity, which we've experienced in other MDLs and which I
4 think are beneficial, not just to the litigants, but to The
5 Court as well, and I'm looking forward to that coming to
6 fruition within the next 60 to 90 days.

7 By coming to fruition, I'm talking about of course
8 the judges in state court in both New Jersey and California
9 being designated and our opportunity to discuss
10 coordinating our efforts to the best that we can without
11 failing to recognize the independency of the state courts
12 from the federal courts, which has been historical and
13 continuing.

14 Anything else on coordination efforts at this
15 juncture from either the Plaintiffs or the Defendant?

16 MS. RELKIN: No, Your Honor, not from the
17 Plaintiffs.

18 MR. TUCKER: No, Your Honor.

19 THE COURT: Broadspire.

20 MS. SHARKO: Broadspire, DePuy is committed to
21 seeing that patients who need medical care as a result of
22 the recall get that care and treatment. This is being done
23 through a third party outfit called Broadspire, which will
24 address the reasonable and customary expenses for testing,
25 evaluation, revision surgery if necessary, and

1 out-of-pocket expenses.

2 If the parties do not want their clients to deal
3 directly with Broadspire, Broadspire will deal with the
4 lawyers. The lawyers just have to send a letter of
5 representation to Broadspire and indicate the name and
6 identifying information for that patient or plaintiff,
7 because lot of people have common names, and then they can
8 deal directly with Broadspire. People who receive these
9 medical benefits do not sign releases giving up any of
10 their rights.

11 Thank you.

12 THE COURT: It's my understanding that the only
13 releases would be that release which is necessary to obtain
14 the medical information to identify the hip joint that was
15 utilized; am I correct?

16 MS. SHARKO: Correct. Anybody who gets an
17 orthopedic implant should have a sticker on their operative
18 chart which identifies the maker of the implant so we can
19 be sure it's an ASR, and so people participating in the
20 Broadspire Program are asked to sign medical record
21 releases, not for their whole medical history going back in
22 time, but for the records related to implant and explant
23 surgeries.

24 THE COURT: Mr. Skikos?

25 MR. SKIKOS: We have met and conferred with the

1 defendants a couple of times over the last couple of weeks
2 on the Broadspire issue. We on the executive committee
3 recognize that our primary obligation is to our clients,
4 who are also patients, and if there's a benefit to be
5 provided to them, that is something that we encourage.

6 We understand that their litigation rights are
7 fully preserved, our clients'. We understand that they're
8 not asking for a settlement release. And we have, in
9 furtherance of the cooperation, put together a subgroup who
10 will deal with The Defendants from our perspective on
11 process issues. We want to make it clear that we, the
12 lawyers who represent the clients, who provide the client's
13 name to The Defendants are willing to and want to talk to
14 Broadspire for the benefit of our clients.

15 THE COURT: Anything else on this issue, ladies
16 and gentlemen?

17 MS. SHARKO: No, Your Honor.

18 THE COURT: Thank you. Let's talk about the
19 explant preservation protocol that the parties are working
20 on creating.

21 MR. TUCKER: Your Honor, as I've said to many of
22 the lawyers here that have contacted us about the explants
23 that may have been removed at the time of revision surgery,
24 DePuy has not been taking possession of explants since the
25 recall and they have been either preserved by the lawyers

1 here on behalf of their clients, or the hospitals have kept
2 them.

3 Important to I think all of us in the litigation
4 here in the MDL, and actually everywhere, is to have an
5 agreed upon preservation protocol that is followed by not
6 just DePuy and not just The Plaintiffs. We don't want to
7 have conflicting protocols, because at the end of the day
8 we don't want someone to attribute a finding on an explant
9 to the protocol that was used in the examination. So we
10 are committed to working out a protocol that both sides
11 will adhere to.

12 I understand that The Plaintiffs Executive
13 Committee has appointed Mr. Kennedy to discuss this issue
14 with us. We actually have had some discussions. We will
15 work through these issues and I think we will be able to
16 present to The Court a preservation protocol that both
17 sides agree upon.

18 THE COURT: Thank you.

19 MR. KENNEDY: Yes, Your Honor. I heard
20 Mr. Tucker's comments, and maybe more specifically I think
21 we've reached an agreement with respect to contact versus
22 non-contract profilometry. We've reached an agreement with
23 respect to decoupling of the different components of the
24 explant. We still have further discussions with respect to
25 Citex (ph) and some of the synovial fluid. And then we

1 need to be a little bit creative between the two of us as
2 to how we impress upon the hospitals that they play an
3 important role in the preservation of important evidence,
4 but we'll work through the issues.

5 THE COURT: And I would request that you come
6 forward to the court reporter so that afterwards so that
7 she can have the correct spelling for the record of those
8 technical terms.

9 MR. KENNEDY: I have a hard time saying it, but I
10 have it written down.

11 THE COURT: Thank you. As I said this morning,
12 and I will repeat, it is extremely important to this
13 litigation that the explant preservation protocol be a
14 single agreed protocol which can be incorporated into a
15 court order, and therefore relied upon not just by counsel
16 for the parties, but by the parties, by physicians, and
17 very importantly as was noted, by the hospitals, and so it
18 will be transmitted to all hospitals which have received a
19 relatively similar letter on preservation efforts from
20 DePuy.

21 I encourage you to accelerate, if you will, your
22 efforts to reach a mutually agreed upon protocol so that we
23 can, as quickly as possible, achieve what I've just
24 articulated. I think it is extremely important, and both
25 the PEC and Defense Counsel have indicated that it's of

1 equal importance to both sides and therefore to both
2 clients, those who are Plaintiffs and those who are
3 Defendants.

4 I believe that concluded the brief agenda which we
5 had. I want you to understand --

6 MR. SEEGER: Your Honor, I think the only other
7 item to report to The Court is we did meet this morning
8 with Defendants to talk a little bit about getting
9 discovery going. We're going to get a letter out, set up a
10 Rule 26F conference, and work through some issues. The
11 Defendants have expressed a desire to begin production
12 right away. We're going to obviously do everything we can
13 to accommodate it.

14 Also, on the Plaintiffs' side, we met with your
15 newly appointed PSC and we're ready for assignment to get
16 people working and going with discovery.

17 THE COURT: Thank you. I would hope, I was about
18 to say only a part of it, Chris. Thank you. It's very
19 important that this has accelerated rapidly in
20 organizational framework and getting appropriate committees
21 of PSC appointed, designated and started, and that should
22 please everybody here and throughout The Plaintiffs' bar
23 involved in these cases.

24 MR. SEEGER: Excuse me, Your Honor. I should have
25 actually said this just so you know, I believe all the PSC

1 members that you appointed are in attendance in the
2 courtroom.

3 THE COURT: Thank you. Then I welcome them and
4 when we adjourn the formal part, I would like each of
5 you -- I'll come down and I'd like to just shake your hands
6 and get to put a name again with the face, most of which
7 faces I've only seen once on January 20th when it was kind
8 of a blur when 90 people get up and preach to you,
9 wonderful preachers.

10 But in any event, we have agreed that until
11 further notice, we will attempt to meet on a monthly basis.
12 The meetings will be somewhat of this nature, but as we go
13 on I would imagine they will be broadened as to both scope
14 and time. But probably more importantly is the ability to
15 create a forum like this where so many outstanding counsel
16 can interact with one another and get more accomplished
17 than I can with orders. You know from the breadth of
18 experience that each of you brings to this case, that is
19 very important, that mutuality of cooperation, in
20 particular among and between The Plaintiffs' bar and
21 between The Plaintiffs, in particular the Steering
22 Committee and the Executive Committee and Defense Counsel,
23 and I believe we're well on the way to doing that.

24 Our next meeting has been scheduled for the 9th of
25 March, hopefully in this courtroom. We will have our usual

1 10:00 a.m. Executive Committee Meeting with The Court and
2 Defense Counsel, followed by open court proceedings at 1:00
3 p.m.

4 Have I correctly stated that from The Plaintiffs'
5 viewpoint?

6 MS. RELKIN: Yes, Your Honor.

7 MR. TUCKER: Yes, Your Honor.

8 THE COURT: Thank you. At that time we will then
9 set the following meeting and so forth, and this will go
10 out in the form of an order which will come out of this
11 meeting as well. As I said, I would like the opportunity
12 to shake your hands and interact with you, no matter how
13 briefly or extensively you wish to do that. And I thank
14 you very much for being here. As I said this is the short
15 and least important of what of those things occurring today
16 and what has occurred before and what will hopefully occur
17 afterwards, because you have this courtroom until you
18 decide to relinquish it, within reason, is more important
19 and I thank you. That concludes this hearing.

20 If you wish to be listed as present as well, then
21 please leave the court reporter your card and she will list
22 you in attendance. Thank you.

23 (Proceedings concluded at 10:45 a.m.)

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\S\Andrea D. West

March 5th, 2010

Andrea D. West, RPR

Date