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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: DePUY ORTHOPAEDICS, INC. CASE NO. 1:10-md-2197
ASR HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

THURSDAY, NOVEMBER 10, 2016
CLEVELAND, OHIO

TRANSCRIPT OF OPEN COURT CONFERENCE PROCEEDINGS
BEFORE THE HONORABLE JEFFREY J. HELMICK
UNITED STATES DISTRICT JUDGE

Official Court Reporter: Sarah E. Nageotte, RDR, CRR, CRC
United States District Court
801 West Superior Avenue
Court Reporters 7-189
Cleveland, Ohio 44113
(216) 357-7186

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

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APPEARANCES :

On behalf of Plaintiffs:

Michelle L. Kranz, *Esquire*
Steven J. Skikos, *Esquire*
Ellen Relkin, *Esquire*
Kenneth M. Seeger, *Esquire*
R. Eric Kennedy, *Esquire*

On behalf of Defendants:

Susan M. Sharko, *Esquire*
Robert C. Tucker, *Esquire*
Kristen L. Mayer, *Esquire*

Also present
(Interested Parties):

Jeffrey L. Haberman, *Esquire*
Cheryl Cannon

1 THURSDAY, NOVEMBER 10, 2016

2 - - -

3 (Proceedings commenced at 1:10 p.m.)

4 (Open Court Conference)

5 - - -

6 THE COURT: If I might, initially, I'll just
7 call the case formally for the record. I think most of us
8 know what this case is about and why we're here.

9 But this is Case 1:10-md-2197, and this, of course,
10 involves a multidistrict litigation case involving the DePuy
11 Orthopaedics ASR hip implant product, and that's what brings
12 us here today.

13 First, a little bit by way of introduction. Some of
14 you know me, some of you do not. My name, again, as you
15 heard during the opening of court, is Jeff Helmick. I'm a
16 United States District Court Judge for the Northern District
17 of Ohio. I'm actually assigned to the Western Division,
18 not -- this is the Eastern Division.

19 But we're holding the hearing here. The Western
20 Division courthouse in Toledo is small, and -- and we don't
21 have a lot of courtroom space, and the one decent-sized
22 courtroom that we have there is in use on a multi-week
23 criminal case, and that's why I came over from Toledo to
24 here to hold this hearing here.

13:11:43 25 Normally, proceedings would be there in the Western

1 Division in Toledo, but because the courtroom was available
2 here, I deemed it appropriate that we all meet here, and
3 notice was sent accordingly.

4 We are, of course, in the Northern District of Ohio.
13:11:55 5 This is all part of the same federal district throughout the
6 northern portion of Ohio.

7 I am not, of course, the original judge in this case.
8 The original judge assigned to this case when it was created
9 as an MDL by the Judicial Panel on Multidistrict Litigation
13:12:12 10 was the Honorable David Katz.

11 Judge Katz, if I might digress for a moment, was a
12 mentor to me when I was a lawyer in private practice, and
13 then, a colleague and friend, and continued to mentor me
14 when I became a judge in 2012 and joined the federal bench.

13:12:31 15 As many of you know, he presided over this case with
16 distinction for many years throughout the case.
17 Unfortunately, his health took a turn for the worse,
18 particularly in the early part of this year, early part of
19 2016, and what we had hoped had been -- would be matters
13:12:53 20 that were chronic in nature and manageable turned out to be
21 much more serious, and, unfortunately, by July of this year,
22 his health took a turn for the worse and he succumbed in
23 July of this year.

24 I'm humbled to have been selected as the judge to take
13:13:10 25 his place. It was his wish that I succeed him on this MDL

1 if he ever retired or something happened to him. He made
2 his wishes known to the Judicial Panel on Multidistrict
3 Litigation some time ago, as well as to the Chief Judge of
4 the Sixth Circuit and the Chief Judge of this Court, Solomon
13:13:29 5 Oliver, and in due course, I was appointed to take over this
6 case, and I'm honored to do so.

7 In the short time I've been on the case, the transfer
8 was officially about the beginning of December of this
9 year -- or September of this year, I had occasion, in trying
13:13:47 10 to get up to speed on this case, to meet with leadership
11 counsel in the case, both by telephone conference on a
12 couple of occasions, as well as a meeting in Toledo at the
13 courthouse with the leadership counsel as well.

14 I can see why Judge Katz was engaged as deeply as he
13:14:06 15 was with this case. There are important issues in this
16 case. There are parties in this case, on both sides, of
17 which the issues that are here are of great importance, both
18 the defendants and the plaintiffs in this case. And I
19 continue to educate myself about the case as we move
13:14:22 20 forward.

21 But I must say, in his later years, Judge Katz may
22 have become a bit bored with his normal civil docket, he
23 shared with me, in his cases. He was 82 years old. But I
24 will tell you that he was very engaged with this case, and
13:14:45 25 part of that engagement was the high quality of lawyering

1 that was evident and apparent to him on both sides of the
2 case that made possible for a case that once consisted of
3 maybe 10,000 cases on the MDL docket to be managed
4 successfully, in a way to significantly reduce numbers, to
13:15:06 5 afford relief to those plaintiffs who were deserving of
6 relief at the appropriate time and in the appropriate way.

7 And, again, I am humbled and honored to be here today
8 before all of you as the successor judge to this MDL, and I
9 vow I will continue to work hard and give the case the
13:15:25 10 attention it needs, as Judge Katz did, as the case is moving
11 forward here today.

12 There is one matter, when the transfer actually came
13 about, the formal transfer was going to come about in the
14 case, as is routine, there was a conflicts check for me in
13:15:41 15 terms of my background and my family finances.

16 And my wife was fortunate enough to be beneficiary of
17 a trust from her late uncle who died no more than maybe ten
18 years ago, and in addition, she lost her father in the fall
19 of last year as well. And in both a securities account she
13:16:06 20 inherited from her father, as well as a -- a trust account
21 that was set up by her uncle, part of the holdings, a small
22 percentage, was stock in Johnson & Johnson, which is a
23 defendant in this case.

24 And you may all wonder, if you don't know, what
13:16:21 25 exactly that means, and judges are prohibited, as a general

1 matter, from handling any case in which they have a
2 financial interest, and that includes holding stock. That
3 extends to family members as well. So for me, even though
4 it's not in my name, I don't hold it, it's extended to my
13:16:38 5 wife as well.

6 When that was discovered, which was in December [sic],
7 the time of the case transfer, I consulted with ethics
8 counsel from the Sixth Circuit Court of Appeals, as well as
9 conducting my own research internally. If a judge, upon
13:16:54 10 learning about the conflict, divests completely and
11 promptly, there is no conflict. The conflict's resolved,
12 because you simply don't own the securities or stock, or a
13 family member doesn't, as the case moves forward.

14 So within two days, I think, of learning of it, the
13:17:11 15 stock was sold on the -- on the account that was transferred
16 to her father, those shares in Johnson & Johnson, and the
17 following week, in the trust her uncle had set up for her
18 that he was kind enough to do, Key Bank, which manages the
19 trust, sold those shares there as well.

13:17:27 20 So within a few days of discovery and in the month of
21 transfer of the case, and before I made any substantive
22 rulings in the case, it was discovered and I made the
23 divestiture, rather, my wife did, of that stock at that
24 time. And I wanted to put that on the record. I thought
13:17:45 25 you all should know.

1 And, in addition, we've given instructions that
2 neither agency, that is, neither Key Bank, nor the
3 securities account, are to buy any other stock of that kind
4 in the future. I don't think they would, but that's just a
13:18:01 5 precaution that I put on as well. So I wanted to note that
6 for the record at this time.

7 I want to make some other general comments with regard
8 to matters that are pending in the case, but I think it's
9 probably appropriate, first, if I turn to counsel in the
13:18:15 10 case and ask them for an update or survey with regard to
11 where the case stands from their view and numbers.

12 And, Ms. Sharko, would it be appropriate to start with
13 you on behalf of defendant in this case?

14 MS. SHARKO: Yes.

13:18:30 15 Thank you, Judge.

16 And thank you for the tremendous effort you've
17 undertaken to get up to speed on the many issues in this
18 complex case. The parties appreciate that very much.

19 THE COURT: Thank you, Ms. Sharko.

13:18:40 20 MS. SHARKO: We have approximately 1,500 cases
21 in the MDL.

22 The focus over the last two years or so has been on
23 dealing with the people who were revised. The round one and
24 round two of the U.S. Settlement Program have been an
13:18:58 25 overwhelming success, with over 99 percent enrollment in the

1 program. And we're now turning to the cases which didn't
2 qualify for the program in figuring out where they go.

3 We have coordinated litigation in three state court
4 venues. There are no opt outs from the program in New
13:19:18 5 Jersey. There are minimal number in Illinois. And there
6 are a larger number in California. There are only 70 opt
7 outs to date from rounds one and round two in the MDL, and
8 that's what we've been doing over the past few months.

9 THE COURT: Very good.

13:19:34 10 Thank you, Counsel.

11 Mr. Skikos, anything you wish to add or anything you
12 wish me to know or for the general good here at this open
13 court session on behalf of plaintiff leadership?

14 MR. SKIKOS: Yes, Your Honor.

13:19:48 15 There -- there are two fundamental principles that we
16 based our work in this MDL.

17 And the first is from the very first hearing, we knew
18 this case was going to be litigated with extensive discovery
19 and experts and trials, but we agreed that the medical
13:20:16 20 progression of the individual plaintiff would take
21 precedence over the litigation status.

22 So we knew that individual patients were continuing to
23 progress. Whether they had not had a revision yet, whether
24 they had a revision but had not medically cleared, whether
13:20:46 25 they were a bilateral case and one side had been removed and

1 the other side hadn't, the plaintiffs in this litigation
2 needed to have the opportunity to medically clear before
3 they were asked to make an informed decision about where
4 they were going to go.

13:21:00 5 There are two -- so that was the first principle was
6 that -- and to the credit of all of the parties in this
7 litigation, including the thousand plaintiff law firms, the
8 defendants, and the coordinating and cooperating courts,
9 everybody bought on to that, which is relatively rare in a
13:21:21 10 mass tort context where people are looking for procedural
11 advantages on one side or the other.

12 So we didn't do that. And in large part, that's
13 thanks to Judge Katz who wouldn't allow either side to try
14 and outmaneuver each other.

13:21:37 15 The second fundamental principle was that we were
16 going to treat each other and the various cooperating courts
17 with trust. And so, to Judge Katz' credit, this MDL and the
18 various state courts have an unprecedented area -- amount of
19 cooperation, so there wasn't a lot of duplication of
13:22:05 20 efforts. And in the end, we were able to put together a
21 consensual settlement program that achieved, like Ms. Sharko
22 said, over 99 percent resolution.

23 But there's also a second category of cases, which is
24 the people who are unrevised and who continue to be
13:22:22 25 medically followed, who may have had one revision of a

1 bilateral and one not, and a group of people who are
2 medically unrevisable. As to each group, there is a
3 specific plan that has been in place for many, many years.

4 If you're medically unrevisable, then you fill out
13:22:47 5 your plaintiff fact sheet, you -- you can open up discovery,
6 and you can move forward with your case. If you are -- and
7 I would say 95 percent, maybe 98 percent of the cases fall
8 in this category.

9 If you're continuing to be medically watched by your
13:23:06 10 doctor and you need time, then we had a Case Management
11 Order that allowed for these plaintiffs to proceed in that
12 manner, and most of the plaintiffs have chosen that path.

13 And I think one of the things we're trying to work on
14 is the remaining cases in which we still have to finish that
13:23:31 15 analysis.

16 But I wanted the Court to know, mostly because I think
17 Judge Katz would have wanted me to say this, we did all of
18 this by consent. There were no cram down orders in any of
19 the settlements. There was no outmaneuvering to get these
13:23:52 20 settlements done.

21 And with respect to those cases that are revised post
22 January 31st, 2015, we have done a very good job with the
23 defense evaluating the data, and it was because of the data
24 in round one and two that those programs were successful.

13:24:12 25 And thanks to Eric Kennedy and his team, and the

1 defense team, and the coordination with California,
2 specifically, Mike Kelly and a bunch of other folks, that
3 data was with -- was accurate within one percent.

4 So thank you.

13:24:26 5 THE COURT: Thank you, Mr. Skikos.

6 Any -- anything you wish to add or comment at all, Ms.
7 Sharko --

8 MS. SHARKO: No.

9 Thank you.

13:24:33 10 THE COURT: -- in light of presentation?

11 Very good.

12 Other matters while we're here. I'll certainly hear
13 from leadership as well, but I do want to comment on a
14 couple of things. As I've been getting acquainted with the
13:24:44 15 case and the nature of the docket and motions that are
16 pending, and there are a couple of things I think it's
17 appropriate that I comment on at this time.

18 There are several, or maybe more than several, pending
19 motions for counsel to withdraw, to stop being lawyers for
13:25:01 20 their clients, in essence, and I will deal with those
21 individually as -- as appropriate in each case.

22 But I do want to comment that, as a general matter,
23 that I, as I said, take this litigation very seriously, so
24 if a lawyer assumes the responsibility of representing a
13:25:19 25 claimant in this case, I expect their best efforts on -- on

1 behalf of their client.

2 It may well be, and there are certainly circumstances
3 in which it is appropriate or necessary for a lawyer to
4 withdraw as counsel, but I do want to make it clear that
13:25:37 5 that's going to be a pretty high bar to clear with me before
6 anyone is allowed to withdraw as counsel in this case.

7 They're going to have to convince me, that lawyer or
8 lawyers are going to have to convince me that it is not
9 possible or appropriate within the bounds of the law and
13:25:53 10 ethics for them to continue on behalf of the client before I
11 will consent to withdrawal of counsel.

12 And I won't say more as to the particulars of how
13 those will be handled, because I'll wait and see what's
14 coming in the future, as well as what's pending now, but I
13:26:11 15 want to make it very clear to everyone that I consider that
16 relationship, that assumption of responsibility by lawyers,
17 really, to be sacred, to be important, and at the core of
18 what they do.

19 And -- and regardless of the merits of the particular
13:26:28 20 case of the plaintiff, which I don't know or won't know
21 unless the case is before me in detail later, I think it's
22 essential that there be continuity of representation and
23 that there be effective representation. And if it's not
24 possible for that relationship to continue, and that's
13:26:46 25 appropriate ethically and under the law, I understand, but

1 it's going to take more, as a general matter, than a simple
2 motion from counsel to withdraw in the case in order to
3 convince me that it's appropriate to leave that plaintiff
4 unrepresented without counsel in a litigation.

13:27:03 5 The other thing is there are motions for remand that
6 are pending, and there will perhaps be more at a later date,
7 for me to remand the case back to the district or the judge,
8 the courthouse from which the case originally came and was
9 here.

13:27:19 10 I will deal with the merits of those remand requests
11 in due course, but there's no point in having this MDL,
12 there is no point in consolidating this litigation unless
13 certain things are done in the case before remand is even
14 considered by me.

13:27:34 15 And it's essential, pursuant to Judge Katz' orders
16 before, and I want to ratify here as well for the record in
17 open court that it is essential that discovery and
18 disclosure be completed and accomplished pursuant to prior
19 orders of this Court before any decision is made about the
13:27:55 20 appropriateness of remand.

21 There's no benefit to consolidating these cases and
22 managing them as we are if I'm sending cases back,
23 potentially back to the original judge who is assigned or
24 assumes the case, only to have that judge do what they would
13:28:12 25 have to do in every civil case from the start. It sets the

1 case back. It postpones resolution of the case one way or
2 another. And that's even assuming I reach a point where I
3 deem it's appropriate to remand a case back to the original
4 transferor judge in that particular case.

13:28:30 5 So I just want to state those general principles on
6 the record to make those clear.

7 Anything that you wish to comment on with regard to
8 what I just said, Mr. Skikos?

9 Yes. Please, Ellen, if you would.

13:28:44 10 MS. RELKIN: Yes. Yes.

11 Just on that issue, just to further clarify, any
12 counsel who -- who do have cases that they've sought remand,
13 discovery is open here, they need to reach out to DePuy
14 counsel and advise they want to pursue discovery, offer
13:29:03 15 their clients up for depositions, start getting the doctors'
16 dates available for deposition.

17 So -- so just so it's clear that that's what they need
18 to do.

19 THE COURT: Thank you for fleshing out some of
13:29:13 20 the details with regard to that order, Counsel.

21 It's appropriate that those things be done. Cases
22 can't be evaluated in this Court as part of the MDL, nor
23 would they ever be considered appropriate for sending back
24 to the transferor judge, back to a remand for trial, unless
13:29:30 25 all those things have been done ahead of time.

1 Again, otherwise, there is no point in managing this
2 volume of cases collectively as we are for a multidistrict
3 litigation case such as this.

4 Thank you for that, Counsel. I appreciate that.

13:29:46 5 Are there other matters that the leadership counsel
6 would care to bring to my attention at this time?

7 Mr. Skikos?

8 Ms. Sharko?

9 MS. SHARKO: No, sir.

13:29:55 10 THE COURT: Thank you, Counsel.

11 Anyone else wish to be heard on either side with
12 regard to counsel?

13 All right. There's also a number of people in the
14 gallery. There's several of you back in the gallery. I'm
13:30:06 15 not sure exactly what your connection or roles are to the
16 particular case. I don't know if leadership counsel has had
17 the opportunity to speak with anybody that's back in the
18 gallery.

19 Is there anyone here that wishes to be heard during
13:30:18 20 this open court session with regard to this MDL?

21 (Audience member indicating)

22 THE COURT: Yes, ma'am, there in the second
23 row.

24 Can you stand?

13:30:26 25 CHERYL CANNON: Yes, sir.

1 THE COURT: Okay. Hi.

2 Could you -- could you tell me your name, please.

3 CHERYL CANNON: My name is Cheryl Cannon.

4 THE COURT: Okay. Cheryl, where are you from?

13:30:41 5 CHERYL CANNON: Claiborne County.

6 (Pause in Proceedings)

7 THE COURT: Would you be able to step forward?

8 Can you?

9 I'd rather that she come up, if possible.

13:30:50 10 Thank you, Sharon.

11 CHERYL CANNON: It just feels so good to
12 finally be heard.

13 THE COURT: Is that your husband or a friend?

14 CHERYL CANNON: Well, he's been taking care of
15 me for 14 years.

16 THE COURT: Okay. That's fine. That's fine.

17 Let me just ask, if I might, at the outset, are you
18 currently represented by counsel?

19 CHERYL CANNON: No.

13:31:06 20 THE COURT: All right. Have you had a lawyer
21 in the past?

22 CHERYL CANNON: I've had two, yes, and I --

23 THE COURT: Okay. Please stop.

24 Okay. And I'll tell you why.

13:31:13 25 Are you looking for another lawyer?

1 CHERYL CANNON: No.

2 THE COURT: All right. Is it your intent as
3 you go forward to represent yourself?

4 CHERYL CANNON: Yes.

13:31:21 5 THE COURT: All right. I don't want to get
6 into great detail with regard to this now, but you're here,
7 you're obviously concerned, and I'm glad that you came to
8 the open court session.

9 Are you -- are you, by any chance, the woman that came
13:31:33 10 to the Toledo courthouse?

11 CHERYL CANNON: Yes.

12 THE COURT: Okay. So let me apologize for
13 that. There was a session set in the summer, and I was told
14 that there was somebody that -- that appeared or came, and I
13:31:44 15 think -- you know, I think Judge Katz had hoped to hold that
16 session, and then became overwhelmed because of his health
17 and just wasn't able to do so.

18 So on behalf of the Court, I apologize --

19 CHERYL CANNON: All right.

13:31:56 20 THE COURT: -- for the fact that you came
21 forward and didn't get to be heard at that time.

22 Here's my concern. You have a right under the law to
23 represent yourself, to be your own lawyer, to be pro se, as
24 the law describes it, the legal term describes it.

13:32:12 25 However, based on what I know about the law, and my

1 experience in private practice for more than 20 years before
2 I became a judge, I am weary or concerned for you as you're
3 moving forward.

4 The legal system can be difficult and complex to
13:32:28 5 navigate, as you no doubt know, and this case I would not
6 put down toward the easy end of cases in terms of how cases
7 go. There's quite a history here. There are medical issues
8 here that -- that are obviously of importance to you and to
9 the defendants in the case that address that as well.

13:32:47 10 So I'm -- I can't tell you you can't represent
11 yourself, and I'm not going to, but I am concerned that you
12 don't have representation and that it might be appropriate
13 for you to do so.

14 The other concern I have is that we're in open court
15 and there's a court reporter, as you can see, present in
16 front of me and we're on the record, and I am concerned that
17 if you're without experienced counsel, that you might say
18 something -- well, I will tell you what you say here can be
19 used against you later. This isn't a criminal proceeding,
13:33:18 20 obviously, but what you say could be misinterpreted or used
21 against you later.

22 What I'm going to urge you to do at this point, if you
23 would do this for me, ma'am, I'm going to ask that you speak
24 with somebody from leadership counsel on the plaintiffs'
13:33:32 25 side, if you would, about -- generally about the problems

1 that you've had with prior representation, with your two
2 prior lawyers. I don't know what those are. It's probably
3 not appropriate for me to know, to be honest with you.
4 Certainly, at this point, it's not appropriate.

13:33:48 5 If you would talk to them and seek their advice, if
6 you would, with regard to how you might proceed, including
7 whether or not there might be other lawyers who might be
8 available to handle your case.

9 Would you do that for me today?

13:34:04 10 CHERYL CANNON: (Indicated positively).

11 THE COURT: Yes?

12 CHERYL CANNON: (Indicated positively).

13 THE COURT: You're nodding. I just want to
14 make sure.

13:34:10 15 I know -- I know that you'd like to be heard, but I'm
16 trying -- I want to try and protect you and your case, and
17 since I don't know what you're going to say, and we're in
18 open court and on the record, I would feel a lot more
19 comfortable at this session if you would talk to leadership
13:34:26 20 counsel on the plaintiffs' side in this case about the
21 status of your case.

22 Would you do that for me?

23 CHERYL CANNON: Yes, sir. I understand.

24 THE COURT: All right. You can do that, I
13:34:35 25 think counsel can make time for you today as soon as we're

1 done with the session.

2 CHERYL CANNON: Yes.

3 THE COURT: Does that make sense to you --

4 CHERYL CANNON: Yes.

13:34:39 5 THE COURT: -- what I just suggested?

6 Are you okay with that?

7 CHERYL CANNON: Yes.

8 THE COURT: Okay. I would greatly appreciate
9 that if you do that. I'm -- I'm trying to protect you.

13:34:47 10 CHERYL CANNON: I appreciate that.

11 THE COURT: And I hope that's apparent.

12 CHERYL CANNON: I understand.

13 THE COURT: But that's what I'm trying to do
14 here today.

13:34:53 15 CHERYL CANNON: I understand.

16 THE COURT: All right. Ma'am, thank you very
17 much.

18 And please stick around so that you can talk to
19 counsel after this session.

13:34:56 20 CHERYL CANNON: Thank you.

21 THE COURT: Okay. Thank you.

22 Sir, you raised your hand in the back, in the back row
23 as well.

24 Would you come forward, please.

13:35:04 25 MR. HABERMAN: Sure.

1 THE COURT: Don't take this the wrong way,
2 sir, but you certainly look like a lawyer. That's not
3 necessarily -- that's not a bad thing in my book.

4 But would you step forward please to the podium.

13:35:15 5 MR. HABERMAN: Yes, sir.

6 THE COURT: And would you introduce yourself
7 to me and for the record, please.

8 MR. HABERMAN: Sure.

9 Good afternoon, Your Honor.

13:35:20 10 I'm Jeffrey Haberman from the Schlesinger Law Offices
11 in Fort Lauderdale, Florida.

12 THE COURT: Okay.

13 MR. HABERMAN: Your Honor, my firm represents
14 a number of people who reside in Spain. They are subject to
15 the defendants' motion to dismiss for forum non conveniens.

16 THE COURT: Let me just interrupt you,
17 Counsel.

18 I am familiar, generally familiar with what you're
19 talking about, and the motion that was pending before Judge
13:35:41 20 Katz that's now pending before me.

21 Go ahead.

22 MR. HABERMAN: Right.

23 And so, I'd like to -- I spoke with Ms. Sharko just
24 briefly before the -- today's session, and if I may renew
13:35:53 25 our request for oral argument on the matter.

1 I must tell you that Judge Katz denied our request,
2 our first request back in March of this year. He did allow
3 us to submit a surreply, which has been filed, along with
4 our request, for a number of months now.

13:36:12 5 THE COURT: Okay.

6 MR. HABERMAN: The issues are briefed, but I
7 think oral argument would assist the Court in addressing
8 that motion.

9 THE COURT: And can you -- could you -- are
13:36:20 10 you comfortable trying to be more specific about why oral
11 argument might assist me in making that decision?

12 I have not made that decision, by the way, but -- but
13 if you could, tell me with greater specificity.

14 MR. HABERMAN: I think -- sure.

13:36:35 15 I think there's a nuance here. I think our cases are
16 factually -- our case is factually distinguishable from some
17 of the precedence that Judge Katz had laid out with forum
18 non conveniens in the DePuy cases and in other MDLs that he
19 had set prior, and I would like to fully address that with
13:36:53 20 the Court.

21 THE COURT: Are there factual matters which
22 aren't currently in the briefing or legal arguments that
23 aren't in the briefing?

24 MR. HABERMAN: I think the briefing is
13:37:03 25 complete, Your Honor.

1 THE COURT: Okay. Okay. Here's my -- well,
2 let me ask, first -- just stay put, stay exactly where you
3 are -- let me just ask on the defense side, Ms. Sharko,
4 you've personally, perhaps you've heard this request before,
13:37:15 5 I don't know if it was on the record officially or not when
6 that request was made and apparently denied by Judge Katz,
7 what is the defense position with regard to the
8 appropriateness or necessity of oral argument in this case?

9 You can stay put, Counsel.

13:37:29 10 MS. SHARKO: The issues are thoroughly briefed
11 by both parties. We think the law is clear. And we don't
12 see the need for oral argument. But we defer to the Court.

13 THE COURT: And I guess this is the best I can
14 do here today is to tell you that my impression is that
13:37:47 15 adequate opportunity was afforded to thoroughly brief the
16 issue.

17 However, as I dig more deeply into it, Counsel, I
18 assure you that if I find that I am confused or in any way
19 that it may be of benefit to me in helping decide this
13:38:02 20 important issue to you and your clients, I will not hesitate
21 to reach out.

22 I have asked for oral argument in prior cases when
23 counsel have not offered or asked to give oral argument, and
24 I have granted it in some cases and I have denied it in
13:38:18 25 other cases.

1 But, in part, because of the resources involved,
2 including counsel's time, if the issue looks thoroughly
3 briefed, and I feel that it's well briefed and I have a good
4 handle on the issue, as a general matter, I do not grant
13:38:33 5 oral argument. But I assure you, as I look at the issue
6 more carefully in the briefing, if it looks like it's
7 appropriate, I will not hesitate to reach out.

8 We could also accommodate counsel, by the way, if
9 necessary, with videoconferencing, for example.

13:38:48 10 I'm sorry. Where did you say you were?

11 MR. HABERMAN: Fort Lauderdale.

12 THE COURT: Fort Lauderdale?

13 MR. HABERMAN: Right.

14 THE COURT: So at the federal courthouse in
13:38:56 15 Fort Lauderdale, we can probably set up live
16 videoconferencing with the Northern District of Ohio should
17 it become appropriate, but I will definitely keep that in
18 mind.

19 So I will not rule on your request right at this
13:39:06 20 moment. I'll take it under advisement, subject to my
21 reviewing the briefing more carefully.

22 MR. HABERMAN: I appreciate that, Your Honor.

23 THE COURT: I appreciate you coming -- you
24 came all the way up here for this, huh?

13:39:16 25 MR. HABERMAN: Yes.

1 THE COURT: I appreciate your dedication to
2 your client.

3 MR. HABERMAN: Thank you, Judge.

4 THE COURT: Thank you very much.

13:39:19 5 Is there anyone else that wishes to be heard here in
6 the open court session in the back?

7 Okay. I'm not seeing or hearing anything from anyone
8 at this time in that regard.

9 All right. Are there other matters that we ought to
13:39:35 10 cover here today on behalf of the parties?

11 Ms. Sharko, on behalf of DePuy?

12 MS. SHARKO: No, Your Honor.

13 THE COURT: Anything --

14 MR. SKIKOS: The orders.

13:39:44 15 THE COURT: I'm sorry?

16 MR. SKIKOS: The orders.

17 THE COURT: Absolutely. At the appropriate
18 time, we can go through that as well.

19 Do we want Ms. Sharko to tackle that or do we want
13:39:52 20 plaintiffs' side?

21 Ms. Sharko, I -- there were, just in terms of some --
22 I wouldn't call them housekeeping, they're more important
23 than that, but there were some proposed orders that the
24 parties have worked out and drafted for my review and
13:40:07 25 approval, and would you want to outline briefly what those

1 are and what those address. If you could do that, I think
2 that would be helpful.

3 Thank you.

4 MS. SHARKO: The first order is addressed to
13:40:19 5 noncompliance bilateral --

6 THE COURT: Would you mind -- I'm sorry,
7 Susan.

8 Either bend up the microphone, or take the podium,
9 whichever you prefer.

13:40:30 10 MS. SHARKO: Yes.

11 These are orders which were worked out between the
12 parties and we all consent to the form, subject, and entry
13 of the orders.

14 The first order relates to those plaintiffs who are
13:40:41 15 bilateral and have not complied with Case Management Order
16 Number 24.

17 And do you want more detail than that?

18 THE COURT: Just if you can give us, yeah, a
19 paragraph's worth, that will be helpful. Just something
13:40:58 20 brief --

21 MS. SHARKO: Okay.

22 THE COURT: -- as to the nature of what was
23 required and in terms of why they are noncompliant.

24 MS. SHARKO: Yes.

13:41:05 25 Case Management Order 24 deals with people who are not

1 revised and gives them the option of proceeding with the
2 litigation and responding to discovery and preparing their
3 case for trial, or dismissing their case without prejudice
4 and having the ability to restore their case to the docket
13:41:22 5 pursuant to the terms and conditions of Case Management
6 Order 24 after they are revised.

7 THE COURT: And revised, just so we're clear,
8 for the record, means that they have had the ASR implant
9 removed and had another implant implanted or placed in?

13:41:39 10 MS. SHARKO: Yes.

11 Some, but not all, people have the ASR hip revised
12 with the -- where the hip meets to have it revised at some
13 point.

14 THE COURT: Right.

13:41:50 15 MS. SHARKO: So this first order deals with
16 people who are bilateral. They have one side unrevised,
17 meaning they have two hips and one hip is not revised, and
18 they have failed to comply with their obligations under Case
19 Management Order 24 despite multiple requests.

13:42:06 20 And so, we ask that an order to show cause be entered.

21 THE COURT: And it's my intent, based on what
22 I understand the import of that order being on behalf of the
23 parties, it's my intent, Ms. Sharko, as you know, to endorse
24 that and sign that order and have that filed in due course.

13:42:23 25 MS. SHARKO: Thank you.

1 The second order is the same thing, seeks the same
2 relief, and the 78 plaintiffs on this order are people who
3 have only one hip.

4 THE COURT: Thank you.

13:42:37 5 MS. SHARKO: The third order deals with the
6 discovery obligations of people who have not been revised.

7 If you decide, pursuant to Case Management Order 24,
8 that you want to proceed with litigation, so you filled out
9 your election form, Case Management Order 24 requires that
13:42:56 10 you do a plaintiff fact sheet, you produce a lot of
11 documents, medical records, authorizations, and you answer
12 interrogatories.

13 The plaintiffs listed on this order have failed to
14 comply with the requirements of that order, and so, we ask
13:43:15 15 for an order to show cause as to them. And, again, all
16 those people have had many months of notice of
17 noncompliance.

18 The next order requires people who have not complied
19 with the registration order, which goes back a couple years,
13:43:37 20 to comply with that order, and that's an order to show
21 cause.

22 And, then, I believe the last order was entered as
23 Case Management Order 27.

24 THE COURT: Thank you.

13:43:50 25 MS. SHARKO: Thank you.

1 THE COURT: Mr. Skikos, anything to add?

2 MR. SKIKOS: No, Your Honor.

3 Thank you.

4 THE COURT: With regard to submission, they
13:43:57 5 are very well, and I just want to indicate, from my meetings
6 with leadership counsel, I am aware of -- of exactly what
7 issues are being addressed by those proposed orders.

8 Frankly, managing a case like this, I don't like doing
9 it, but if there's no teeth in the Court's orders from
13:44:15 10 before and there's still noncompliance, if people aren't
11 doing what they were asked to do by Judge Katz, or now by
12 me, we simply can't proceed forward with their cases or with
13 the litigation generally.

14 I'm only asking them to do what the Court has
13:44:31 15 previously ordered and they've been given an opportunity to
16 do. Now it's time, like it or not, to flex some judicial
17 muscle and say that it's necessary that people comply with
18 those orders or else, or be subject to a sanction, including
19 dismissal of their cases.

13:44:48 20 So I completely understand the need, and I support the
21 need as it has been outlined by the parties as we're moving
22 forward.

23 Other matters for the general good?

24 Ms. Sharko, on behalf of DePuy?

13:45:00 25 MS. SHARKO: No, Your Honor.

1 Thank you.

2 THE COURT: Mr. Skikos, on behalf of the
3 leadership of the plaintiffs in this particular case?

4 MR. SKIKOS: No, Your Honor.

13:45:10 5 THE COURT: Anyone at that table wish to be
6 heard?

7 MS. RELKIN: No, Your Honor.

8 MR. SEEGER: No.

9 THE COURT: Very well.

13:45:16 10 We will schedule another one of these sessions.
11 Obviously, I'll continue to work with leadership counsel and
12 address motions as they come before me in the future.

13 We will schedule another one of these sessions in a
14 few months, I assume in Toledo, I hope in Toledo, in the
13:45:28 15 coming months, that is my home court, and we will send out
16 notice of the next open court session at that time.

17 If there's nothing further then from the parties, I
18 thank you all for being here. I thank you for your
19 attention and your hard work.

13:45:40 20 Ma'am, I see you're still here. I'm glad. You can
21 talk to plaintiffs' leadership counsel here momentarily.

22 Yes.

23 CHERYL CANNON: Can I ask you a question?

24 THE COURT: Yes. Sure.

13:45:49 25 CHERYL CANNON: She was talking, I could

1 hardly hear, but what if you couldn't have revision surgery?

2 And this new stuff she's talking, I don't know

3 anything about.

4 THE COURT: Fair enough.

13:45:59 5 And I think plaintiffs' leadership counsel can explain
6 that to you and point you in the right direction moving
7 forward, because they -- I assure you, they know exactly
8 what she's talking about.

9 Okay. As we moved forward from here, they should be
13:46:14 10 able to explain that to you as well.

11 Okay?

12 CHERYL CANNON: Okay.

13 THE COURT: All right. Thank you, ma'am.

14 Yes. Mr. Skikos.

13:46:19 15 MR. SKIKOS: One more point, Your Honor.

16 THE COURT: Yes, sir.

17 MR. SKIKOS: If anybody has any questions, for
18 the record, on any of the orders, please contact Michelle
19 Kranz in Toledo.

13:46:27 20 If you need her phone number, you can e-mail me and
21 I'll give it to you.

22 THE COURT: Folks, I think that's called
23 passing the buck. I'm not quite sure.

24 MR. SKIKOS: On the record.

13:46:37 25 THE COURT: All right. Thank you all very

1 much.

2 We're adjourned.

3 - - -

4 (Proceedings concluded at 1:46 p.m.)

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C E R T I F I C A T E

10 I certify that the foregoing is a correct transcript
11 of the record of proceedings in the above-entitled matter
12 prepared from my stenotype notes.

13 /s/ Sarah E. Nageotte 11/12/2016
14 SARAH E. NAGEOTTE, RDR, CRR, CRC DATE

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