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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: DePUY ORTHOPAEDICS, INC.,
ASR HIP IMPLANT PRODUCTS CASE NO: 1:10 AND 2197

OPEN COURT CONFERENCE

TRANSCRIPT OF PROCEEDINGS

The above-styled case came on for hearing before
the Honorable David A. Katz, Presiding at the United States
District Courthouse, 701 Clematis Street West Palm Beach,
FL 33401, on the 1st day of May, 2012, commencing at 12:30
o'clock p.m.

Court Reporter: Andrea D. West, RPR, FPR
 Boss Certified Realtime Reporting
 515 East Las Olas Blvd, Suite 100
 Fort Lauderdale, FL 33301

Proceedings reported by mechanical stenography, transcript
produced by computer.

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APPEARANCES :

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1 ALSO PRESENT:

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26 Rule 1.310(g) Florida Rules
27 of Civil Procedure requires
28 transcript copies to be obtained
29 from the court reporter, unless
30 the Court rules otherwise

1 Thereupon, the following proceedings were held:

2 -----

3 Monday October 15th, 2009

4 THE COURT: Good afternoon ladies and
5 gentlemen. This is the formal on the
6 record portion of the MDL meeting
7 scheduled for today, May 1st. Let's
8 start over. I was not aware that others
9 were in attendance.

10 Good morning. This is the
11 on-the-record formal part of the MDL
12 conference meeting in the DePuy Hip
13 Case. I'm Judge David A. Katz, who has
14 the good fortune of having been
15 designated as the person in charge,
16 sitting in the black robe, handling this
17 case from a judge's perspective. We
18 have had our meeting between and among
19 leadership and are now ready for an open
20 court meeting.

21 Let us begin with Item 1 on
22 the agenda.

23 MR. TUCKER: Your Honor, may I speak
24 from here?

25 THE COURT: As long as you speak into

1 the mic.

2 MR. TUCKER: Bob Tucker for the MDL.

3 Your Honor, the MDL report is fairly
4 brief. We continue to see filings, both
5 short form complaint filings and then
6 cases that may be transferred, filed in
7 district courts around the country, and
8 then transferred under a CTO to the
9 Northern District.

10 I'm going to conflate a couple
11 of issues here just to get through this.
12 In terms of the MDL discovery, we have
13 now had I believe as of yesterday twelve
14 productions of documents in the MDL.
15 The discovery is proceeding apace. In
16 terms of the PFS process, we have
17 received the great majority of the PFSs
18 on time. We do have some Plaintiffs
19 firms who are delinquent with their
20 PFSs, but we are working with those
21 firms to make sure -- and working with
22 the Plaintiffs' leadership to make sure
23 that those firms are aware that the PFSs
24 are due.

25 The time periods in the CMO

1 setting up the PFS and DFS procedure
2 sets out certain timing for responses to
3 the PFSs by The Defense with the DFS.
4 Those DFS pleadings are now being pushed
5 out and are making their way to the
6 Plaintiffs firms.

7 There are, of course, when you
8 have certain several thousand of these
9 at stake, there are sometimes some rough
10 edges on a couple of the PFSs and DFSS
11 and we're work those through. I think
12 we got a pretty good relationship with
13 counsel as we work through that process.

14 I really don't think that
15 there are too many issues that we need
16 to address here in open court with
17 respect to the MDL cases. Again, I
18 think the process and the MDL procedures
19 you've put in place are working.

20 THE COURT: Yeah. It should be noted
21 that in the MDL there are roughly 4200
22 cases which have been filed, and roughly
23 half that many in state court cases
24 around the country, and production is
25 going on apace.

1 Did you want to add anything,
2 Susan?

3 MS. SHARKO: Just conflating the first
4 three, state courts are moving along
5 well. Discovery is being, for the most
6 part, coordinated. The coordinated
7 proceedings in California, New Jersey
8 and Illinois moving along. On
9 deposition discovery of company
10 witnesses, we have had twenty-two days
11 of company witness depositions. We have
12 thirty-two more days confirmed. And
13 just to give Your Honor an idea of what
14 we're looking at in May, for example, we
15 have next week off, but then the week of
16 May 14 we have four days back-to-back of
17 company witnesses set for Ft. Wayne the
18 week of May 21. We have five days of
19 company witnesses back-to-back in
20 Manchester England. The week of May 28
21 we have three days back-to-back in San
22 Francisco. The week of June 5 -- I'm
23 sorry June 4 we have three days
24 back-to-back in New Jersey. The week of
25 June 11 five days -- four days -- five

1 days back-to-back in Manchester. The
2 week of June 18 three days back-to-back
3 in Ft. Wayne, followed by the week of
4 June 25 where we have four days
5 back-to-back of three different
6 witnesses in Ft. Wayne.

7 So we're moving along, there's
8 more to do, but we are working well
9 together.

10 THE COURT: Thank you, Susan.

11 MS. RELKIN: That's pretty accurate.
12 There have been a lot of documents that
13 have come in and I think we've got an
14 additional 5 million, which I understand
15 is near the tail end, that just came in
16 yesterday. We obviously on the -- the
17 MDL group has a small army of lawyers
18 going through the documents and coding
19 them and the depositions are picking up
20 pace and we have a lot of them going on.

21 One issue we discussed in
22 chambers, which I think is still
23 pending, is the location of the Indiana
24 depositions. Plaintiffs are of the
25 belief that Ft. Wayne is very

1 inconvenient, given the lack of direct
2 air a flights. That's before Your Honor
3 to decide whether there's more
4 appropriate locations, such as
5 Indianapolis.

6 With regard to other discovery
7 issues, we're negotiating a protocol for
8 the use of native documents in
9 deposition because they don't have Bates
10 number, it's pretty technical, but
11 that's getting worked out. And we're
12 also meeting and conferring on
13 authenticity issues with regard to the
14 documents, which can have an impact on
15 the depositions. So there's pending
16 issues, but we're working on them. It's
17 proceeding fine.

18 With regard to the state
19 cases, that's accurate, you know, we're
20 coordinating, there's good coordination
21 between California, Illinois and New the
22 Jersey litigants in the MDL.

23 THE COURT: Thank you. Did you want to
24 talk about the production documents?

25 MR. TUCKER: Your Honor, just to say

1 that we have had twelve productions.
2 Ms. Relkin just mentioned that five
3 million pages were produced yesterday.
4 That I think brings the total number of
5 pages to around thirty-seven million
6 pages of documents have been produced,
7 and we are getting towards the end of
8 document production. Of course there's
9 always documents that will be produced
10 going forward as we catch up. This will
11 be an ongoing process, we're not done,
12 but we're thirty-seven million pages
13 into it.

14 THE COURT: Do you deliver those
15 pages -- which way, horizontal or
16 vertical?

17 MR. TUCKER: Well, we deliver them
18 electronically.

19 THE COURT: I know.

20 MR. TUCKER: But if you were to print
21 them out and stack them up, they would
22 ring the Empire State Building with
23 seven towers of documents equal in
24 height to the Empire State Building.
25 That's how many documents are being

1 produced. Now the documents requests
2 were for all documents and so we have
3 complied with their document demands.
4 THE COURT: Thank you. Anything else or
5 any questions as result of MDL activity,
6 etcetera? Anything further to report on
7 state cases? I think probably advising
8 the status of those cases that have been
9 set for trial in various courts across
10 the country would be advisable.

11 MS. SHARKO: We have state court trial
12 dates set in Nevada, Maryland, Chicago,
13 Washington State, starting in December
14 of this year and continuing on a rolling
15 basis. And there are preference
16 motions, there's one preference motion
17 filed in California and it is I believe
18 fully briefed, and the second preference
19 motion is filed and it hasn't been
20 completely briefed yet.

21 THE COURT: Thank you.

22 MS. RELKIN: I was before Judge
23 Martinotti last week and in New Jersey
24 he's tentatively set a date for sometime
25 April to May to come shortly after the

1 bellwether trial that will be before
2 Your Honor that's in New Jersey.

3 THE COURT: All right. Thank you. I
4 presume we have already discussed Item
5 3; am I correct?

6 MS. SHARKO: Yes.

7 THE COURT: Do you have anything to add
8 with respect to Item 3?

9 MS. RELKIN: No, Your Honor.

10 THE COURT: Thank you. Next items?

11 MR. TUCKER: Your Honor, you will recall
12 that The Court entered some time ago a
13 stipulated preservation order that the
14 are parties had agreed to. With respect
15 to the explants that were the product of
16 revision surgeries, we've stipulated,
17 the Plaintiffs and the Defense agreed to
18 both the order that The Court entered,
19 as well as the protocol for the handling
20 of the explants by respective retrieval
21 centers, whether they were Plaintiffs or
22 Defendants.

23 A part of that preservation
24 order provided for both the explant
25 itself and if tissue was taken from the

1 area surrounding the explant, to be
2 preserved in accordance with The Court's
3 order and the protocol that was put in
4 place.

5 The preservation protocol
6 called for certain photographic and
7 inspection to be done of the explant and
8 talked about the tissue being preserved
9 informally, but it didn't speak to what
10 could be done with that tissue, whether
11 by the retrieval centers for the
12 Plaintiffs or the retrieval center for
13 The Defendants.

14 We have been in discussion
15 with the Plaintiffs' leadership and I
16 think we both agree that with respect to
17 the tissue, we are going to permit and
18 will present to The Court a slight
19 amendment to the preservation order
20 permitting the retrieval centers to
21 process, in accordance with standard
22 pathologic laboratory procedures, the
23 tissue so that it can be placed into
24 paraffin blocks and cut and recuts can
25 be made from the block of the tissue

1 slides prepared in accordance with
2 standard laboratory procedures, that
3 sufficient tissue will remain for one or
4 the other side to look at, both in terms
5 of being able to take additional recuts
6 from the paraffin blocks, as well as the
7 slides which are prepared being
8 available for the other side to take a
9 look at.

10 That really is the issue that
11 we wanted to address with The Court with
12 respect to the preservation order, and
13 so I believe that we're all in agreement
14 on that.

15 MR. KENNEDY: Yes, we all want to gain
16 the information and at the same time
17 preserving the tissues so that we can
18 share the information and continue
19 testing, and its nondestructive to us
20 all.

21 MR. TUCKER: Yes, this would be
22 nondestructive testing.

23 MR. KENNEDY: Thank goodness it's being
24 stored informally?

25 MR. TUCKER: The other issue with

1 in fact have taken an explant from their
2 client and had it inspected pursuant to
3 the protocol, that those reports be
4 provided to us at some point as we move
5 forward in time. We to date have not
6 gotten that from them. We have given
7 them our reports. We just haven't
8 gotten them back.

9 MR. KENNEDY: We are agreeable, as our
10 testing is completed and the paperwork,
11 we will exchange as previously agreed
12 upon.

13 THE COURT: All right. And as soon as
14 the draft of the amendment to the CMO is
15 available, I'll anticipate that you will
16 email it to us so that we can look at
17 it, make any changes we believe are
18 appropriate, and file the same?

19 MR. TUCKER: Yes, Your Honor.

20 THE COURT: Thank you. Item 5. Do you
21 want me to handle that one, Mr. Tucker,
22 or do you want to handle it?

23 MR. TUCKER: I'll always defer to The
24 Court.

25 THE COURT: No, go ahead.

1 MR. TUCKER: Your Honor, I think it's
2 safe to say that the parties are in
3 agreement that we would like to have a
4 bellwether trial or a series of
5 bellwether trials. Both Plaintiffs and
6 the Defense are in agreement on that.
7 We are in the process of discussing with
8 one another the process for picking
9 bellwether cases and the protocol for
10 the handling of and setting of trials
11 for the bellwether cases. And we are
12 bringing our independent views, but our
13 willingness for consensus to this
14 process, and so we'll try to work it
15 out.

16 Is that fair?

17 MR. SKIKOS: We want to bring justice to
18 all who come before Your Honor. Yes,
19 with that caveat, that's fair.

20 THE COURT: Counsel and The Court had a
21 long discussion about this and at the
22 end of that discussion it is exactly as
23 has been articulated, and that is that
24 the Parties Counsel themselves will make
25 every attempt to reach an agreement on

1 the methodology for selection and where
2 and when those cases will be tried,
3 consonate with The Court's schedule.

4 We anticipate that that will
5 be done within the next thirty days.
6 June 5 has been designated at this
7 juncture as the next MDL meeting and it
8 will take place in Philadelphia,
9 Pennsylvania in the Federal Courthouse.
10 Many of us, both on The Plaintiffs
11 Steering Committee and Defense, will be
12 in Philadelphia the previous day for a
13 conference, and it was felt that that
14 would be an appropriate time to have
15 that meeting. It will be scheduled very
16 much like this day has been scheduled,
17 except that we'll start earlier in the
18 morning, and I would presume we will
19 start somewhere around 9:30 and have
20 open court at somewhere around 11:30.

21 In any event, should there be
22 any change in that date and/or time, we
23 will put that on the website as soon as
24 reasonably possible. I do not now
25 envision that that will occur, but it

1 could. Does anyone wish to add anything
2 to that?

3 MS. RELKIN: No, Your Honor.

4 THE COURT: I believe that is all that
5 we had to discuss on the agenda in open
6 court. I will say that I concur with
7 counsel for both Plaintiffs and Defense
8 on the cooperation which has thus far
9 been exhibited in this MDL. I agree
10 that it is moving more effectively and
11 efficiently than my experience has
12 indicated -- as indicated by past MDLs
13 has shown and I would hope that that
14 will continue.

15 I am now open for any
16 questions or comments from any of those
17 in attendance? All right. Thank you
18 very much for being here. Hopefully I
19 will see some of your faces in
20 Philadelphia. We're adjourned.

21
22 (Proceedings concluded at 12:55
23 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

\S\Andrea D. West

May 1st, 2012

Andrea D. West, RPR, FPR

Date

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