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

IN RE: DEPUY ORTHOPAEDICS, INC.: CIVIL ACTION
ASR HIP IMPLANT PRODUCTS : 10 MD 2197

PHILADELPHIA, PENNSYLVANIA
TUESDAY, JUNE 5, 2012

BEFORE: THE HONORABLE DAVID A. KATZ, SJ.

STATUS HEARING

SUZANNE R. WHITE, CM
FEDERAL CERTIFIED REALTIME REPORTER
FIRST FLOOR U. S. COURTHOUSE
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PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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1 THE COURT: WELL, I THINK THIS IS CLOSE
2 ENOUGH LADIES AND GENTLEMEN. LET US BEGIN THE OPEN
3 COURT PORTION OF OUR SESSION IN THE ASR MDL MATTER.

4 SUZANNE, OUR COURT REPORTER, HAS PASSED
5 AROUND THE SIGN-UP SHEET. I WOULD LIKE EVERYBODY TO
6 SIGN THAT FOR HER BENEFIT.

7 SECONDLY, ANY OF YOU WHO MAKE
8 PRESENTATIONS, ASK QUESTIONS, STATEMENTS, ET CETERA,
9 PLEASE IDENTIFY YOURSELF FOR THE RECORD AS YOU BEGIN
10 YOUR DISSERTATION OR QUESTION.

11 AS HAS BEEN OUR CUSTOM, WE SPENT THE
12 FIRST COUPLE OF HOURS OF THE MORNING WITH THE EXECUTIVE
13 COMMITTEE IN DISCUSSING MATTERS BOTH ON AND OFF THE
14 AGENDA, A VERY PRODUCTIVE MEETING AND WE HAVE NOW TO
15 REPORT ON SOME OF THE ITEMS WHICH WERE DISCUSSED AND
16 WHICH WILL BE DISCUSSED HERE THIS MORNING. THE FIRST IS
17 WITH RESPECT TO DISCOVERY. MR. TUCKER.

18 MR. TUCKER: YOUR HONOR, BOB TUCKER FOR
19 THE DEFENDANTS. DISCOVERY IS PROCEEDING APACE, YOUR
20 HONOR. WE HAVE NOW PRODUCED UPWARDS OF 35 MILLION PLUS
21 PAGES OF DOCUMENTS IN OUR DOCUMENT PRODUCTION. BOTH
22 SIDES HAVE TEAMS THAT ARE WORKING ON DOCUMENT ISSUES, OF
23 COURSE, IN A PRODUCTION LIKE THAT, THERE ARE ALWAYS
24 ISSUES THAT NEED TO BE WORKED THROUGH, AND I'M PLEASED
25 TO REPORT THAT THE PLAINTIFFS' REPRESENTATIVES AND THE

1 DEFENSE REPRESENTATIVES ARE WORKING OUT THOSE ISSUES AS
2 THEY ARISE AND SO WE HAVE AN INFORMAL PROCESS IN PLACE
3 TO ADDRESS THESE DOCUMENT ISSUES.

4 DEPOSITIONS ARE BEING SCHEDULED BY THE
5 PLAINTIFFS' LEADERSHIP AND BY THE DEFENSE. WE HAVE, I
6 BELIEVE 34 DAYS OF DEPOSITIONS THAT HAVE BEEN TAKEN AND
7 PROBABLY HALF THAT MANY ALREADY SCHEDULED AND SOME
8 ADDITIONAL DEPOSITIONS BEYOND THAT. SO I REALLY THINK
9 THAT IN TERMS OF MOVING THE CASE FORWARD IN TERMS OF
10 DISCOVERY WE HAVE ACCOMPLISHED A GREAT DEAL IN WHAT IS A
11 FAIRLY SHORT PERIOD OF TIME FOR A LITIGATION LIKE THIS.
12 YOU WILL BE PLEASED TO KNOW THAT THERE HAS BEEN GOOD
13 COORDINATION IN THE DISCOVERY PROCESS BETWEEN THE
14 FEDERAL COURT PROCEEDING AND THE VARIOUS STATE COURT
15 PROCEEDINGS IN CALIFORNIA, ILLINOIS, MARYLAND AND SOME
16 OF THE OTHER STATES. SO I THINK THINGS ARE MOVING ASPACE
17 IN TERMS OF DISCOVERY.

18 THE COURT: THANK YOU.

19 MS. RELKIN: GOOD MORNING, YOUR HONOR,
20 ELLEN RELKIN FROM WEITZ & LUXENBERG. I SECOND WHAT MR.
21 TUCKER SAID. THINGS ARE MOVING WELL. WE HAVE A LOT OF
22 DOCUMENTS WE ARE BUSY REVIEWING; A LOT OF DEPOSITIONS
23 THAT HAVE TAKEN PLACE AND GETTING SCHEDULED AND WE ARE
24 WORKING HARD TOGETHER TO WORK THINGS OUT. WE HAVE
25 ISSUES HERE AND THERE BUT GENERALLY WE HAVE BEEN WORKING

1 THEM OUT.

2 THE COURT: ANYTHING ELSE WITH RESPECT TO
3 DISCOVERY? ANY QUESTIONS FROM THOSE IN ATTENDANCE? ALL
4 RIGHT.

5 THE NEXT ITEM WHICH WE DISCUSSED WAS A
6 REPORT ON STATE COURT CASES.

7 MS. SHARKO: SUSAN SHARKO. REALLY
8 NOTHING FURTHER TO ADD BEYOND WHAT MR. TUCKER SAID. THE
9 COORDINATION IS GOING WELL AND THE STATE COURT TRIAL
10 DATES HAVE BEEN SET.

11 MS. RELKIN: THAT IS ESSENTIALLY CORRECT.
12 FOR EXAMPLE, THE NEXT THREE DAYS WE HAVE A DEPOSITION OF
13 A WITNESS. IT HAS MDL LAWYERS, STATE COURT LAWYERS FROM
14 SEVERAL JURISDICTIONS AND WE HAVE, I THINK, IRONED OUT
15 ANY COMPLICATIONS. IT IS WORKING OUT.

16 THE COURT: I SHOULD NOTE AS I THINK WE
17 REPORTED LAST TIME, THAT SOME OF THE STATE COURTS HAVE
18 CERTAIN STATUTES, REGULATIONS, ET CETERA.

19 (PAUSE.)

20 THE COURT: LADIES AND GENTLEMEN JUST
21 ENTERING, WE HAVE NOT GONE VERY FAR. WE STARTED A
22 COUPLE OF MINUTES EARLY. I APOLOGIZE. THAT IS MY
23 FAULT, NOBODY ELSE'S.

24 WITH REGARD TO THE STATE COURT CASES AND
25 THE COORDINATION, THINGS AS FAR AS WE NOW KNOW ARE

1 PROGRESSING VERY WELL. COORDINATION IS GOING VERY WELL.
2 I GET INVOLVED ONLY WHEN IT ISN'T, AND I HAVE NOT BEEN
3 INVOLVED BUT I TALK FROM TIME-TO-TIME WITH STATE COURT
4 JUDGES INCLUDING THOSE JUDGES IN THE STATES HAVING MORE
5 THAN MINIMAL NUMBERS OF CASES. PARTICULARLY JUDGE
6 KRAMER IN CALIFORNIA AND JUDGE MARTINOTTI IN NEW JERSEY
7 AND OTHER JUDGES IN MARYLAND, ILLINOIS, MINNESOTA,
8 NEVADA AND I BELIEVE EITHER MISSOURI OR KANSAS, AND
9 EVERYTHING SEEMS TO BE GOING QUITE WELL. SOME OF THEM
10 ARE FACED WITH STATUTES, LIKE IN NEVADA, WHICH REQUIRE
11 TRIAL DATES TO BE SET EARLY IF THERE ARE CERTAIN
12 CONDITIONS WHICH HAVE BEEN MET BY THE PLAINTIFFS OR IN
13 SOME CASES BY DEFENDANTS, NOT IN THESE CASES. SO IN
14 NEVADA A CASE WAS BEEN SET FOR TRIAL IN THE ASR HIP CASE
15 IN DECEMBER. IN MARYLAND, A CASE HAS BEEN SET FOR TRIAL
16 IN JANUARY. AND IN ILLINOIS, A CASE HAS BEEN SET FOR
17 TRIAL IN FEBRUARY. ANY QUESTIONS OR ADDITIONS?

18 WE NEXT DISCUSSED THE SELECTION AND
19 PROCESSING THE TRIAL AND TRIAL DATES FOR BELLWETHER
20 CASES. AND I WILL LET COUNSEL DISCUSS THAT.

21 MS. SHARKO: THE PARTIES MET AND
22 CONFERRED EXTENSIVELY ON A PROCESS FOR SELECTING
23 BELLWETHERS AND THEN SCHEDULING THEM, AND WE WILL SUBMIT
24 AN AGREED UPON ORDER TO THE COURT. THE BOTTOM LINE, I
25 THINK, IS THAT THE FIRST TRIAL WOULD BE IN MAY AND THE

1 SECOND TRIAL WOULD BE IN JULY AND THERE WILL BE A CASE
2 AND A BACKUP SELECTED FOR EACH DATE.

3 MS. RELKIN: THAT IS ACCURATE.

4 THE COURT: IT'S MY UNDERSTANDING, AND
5 YOU SHOULD UNDERSTAND THIS, LADIES AND GENTLEMEN, IS
6 THAT THERE WILL BE SUBMITTED IN THE NEXT TWO WEEKS A
7 PROPOSED ORDER FOR THE COURT TO REVIEW, FUSS WITH, AND
8 ENTER WITH REGARD TO THE METHODOLOGY AND TIMING OF THE
9 SELECTION PROCESS FOR THE PRIMARY AND SECONDARY CASES IN
10 EACH OF THOSE INSTANCES, THAT IS, FOR TRIAL IN MAY AND
11 FOR TRIAL IN JULY. AND IN THAT PROCESS WE WILL, OF
12 COURSE, BE TIME FOR ADVISING THE COURT OF THE CASES
13 SELECTED BY EACH SIDE, THEIR NUMEROSITY AND THE
14 SCHEDULING OF DISCOVERY OF THOSE CASES WHICH ARE ON THAT
15 LIST AND SUBSEQUENTLY DISCOVERY DEADLINES FOR THOSE FOUR
16 CASES SELECTED FOR TRIAL, BOTH PRIMARY AND SECONDARY AS
17 TO EACH OF THOSE TWO MONTHS. AND I WILL EXPECT THAT
18 SUBMISSION IN THE NEXT TWO WEEKS. IS THAT DOABLE?

19 MS. SHARKO: YES, YOUR HONOR.

20 THE COURT: AFTER THAT PROCESS HAS BEEN
21 COMPLETED WE WILL ADDRESS THE ISSUE OF THE LOCATION OF
22 EACH OF THOSE TRIALS. THAT HAS NOT AS YET BEEN
23 DETERMINED. SOME OF THAT WILL HAVE TO BE DRIVEN BY
24 AVAILABILITY OF COURTROOM SPACE WHEREVER WE DECIDE TO
25 TRY THE CASE AND THAT PROCESS OF SELECTION WILL BE BEGUN

1 RATHER QUICKLY AND REPORTED BY COURT ORDER AS SOON AS WE
2 HAVE DETERMINED, NOW THAT WE HAVE THE DATES, AS SOON AS
3 WE DETERMINE, WHERE AND WHICH COURTHOUSE HAS THE
4 AVAILABILITY AT THE TIMES WE NEED BUT THAT IS ALMOST A
5 YEAR AWAY AND WE WILL LET YOU KNOW WITHIN A FEW MONTHS.
6 FOR ME A PRIMARY CONCERN IS CONVENIENCE OF ALL. NOT SO
7 MUCH ME BUT MY STAFF WHO WILL BE NECESSARY TO ANY SUCH
8 TRIAL, FOR THE BENEFIT OF COUNSEL AND FOR MYSELF, AND
9 CONVENIENT, TO THE EXTENT POSSIBLE, FOR THE PARTIES,
10 COUNSEL, WITNESSES, ET CETERA. I WOULD ANTICIPATE THAT
11 AT LEAST ONE OF THE CASES, IF NOT THE FIRST CASE, WILL
12 BE TRIED IN THE NORTHERN DISTRICT OF OHIO AND THE PLACE
13 WILL DEPEND UPON AVAILABILITY OF COURTROOM SPACE AS I
14 SAID BEFORE, AND WE WILL GO FROM THERE.

15 ADDITIONAL OFFERINGS FOR THE GOOD AND
16 WELFARE OF ALL OF THESE PEOPLE WHO WERE GOOD ENOUGH TO
17 ATTEND TODAY AND I DON'T WANT LEAD COUNSEL TO BE SHY.

18 MS. SHARKO: IT WAS AGREED THAT THE NEXT
19 CONFERENCE WOULD BE ON JULY 25, THE OPEN COURT SESSION
20 AT 11:30 AT THE COURTHOUSE IN CLEVELAND.

21 THE COURT: YES.

22 THE OPEN COURT SESSION ON JULY 25 WILL BE
23 IN COURTROOM 16A IN THE CLEVELAND COURTHOUSE AND THAT
24 COURTROOM IS THE ONE I GENERALLY USE WHEN I'M OVER
25 THERE, IN ANY EVENT.

1 ANYTHING FROM ANY OF THE MEMBERS OF THE
2 STEERING COMMITTEE?

3 MR. SKIKOS: YOUR HONOR, FOR THE RECORD,
4 I TRIED TO GET SAN FRANCISCO BUT WAS OVERRULED. FOR THE
5 BENEFIT OF OUR GREAT TEAM AND WE DO HAVE A GREAT TEAM
6 AND GREAT COOPERATION BETWEEN THE STATE AND FEDERAL
7 LAWYERS ON THE PLAINTIFFS' SIDE. SO THANK YOU.

8 MS. RELKIN: JUDGE, ONE LITTLE THING OF
9 CLARIFICATION. WHEN YOU ARE REFERRING TO WHERE IN OHIO
10 JUST SO THE FOLKS KNOW, THAT MOST PEOPLE KNOW IT'S
11 EITHER TOLEDO OR CLEVELAND FOR THE TRIAL, RIGHT? THOSE
12 ARE THE TWO CHOICES?

13 THE COURT: WELL, THAT IS TRUE BUT THERE
14 ARE OTHER COURTROOMS AVAILABLE IN BOTH AKRON AND
15 YOUNGSTOWN. I WOULD NOT BELIEVE THAT WE WOULD BE FORCED
16 OVER TO THOSE TWO CITIES BECAUSE OF THE AVAILABILITY IN
17 CLEVELAND.

18 MY FIRST CHOICE, OBVIOUSLY, WOULD BE
19 TOLEDO SINCE WE HAVE THREE COURTROOMS, ONLY ONE OF WHICH
20 I WOULD BELIEVE WOULD BE APPROPRIATE FOR THIS CASE. I
21 HAVE TO DETERMINE THE AVAILABILITY OF THAT. THAT
22 AVAILABILITY WOULD DEPEND UPON MANY THINGS BUT IN
23 PARTICULAR THE CRIMINAL DOCKET. IF, FOR INSTANCE, THERE
24 IS A LARGE CRIMINAL CASE, MULTI-DEFENDANT CRIMINAL CASE
25 WHICH IS TO BE TRIED DURING THE MONTH OF MAY OR THE

1 MONTH OF JULY, ET CETERA, THEN IF THAT CASE CAN'T BE
2 MOVED -- NOW, IF IT'S MY CASE, IT WILL BE MOVED, BUT IF
3 THAT CASE CAN'T BE MOVED, THAT WILL PRESENT A PROBLEM
4 FOR THE USE IN TOLEDO COURTHOUSE BUT YOU ARE RIGHT, IT'S
5 THE SELECTION BETWEEN TOLEDO AND CLEVELAND.

6 MS. RELKIN: THANK YOU.

7 THE COURT: ANYTHING ELSE FROM THOSE
8 SEATED AT COUNSEL TABLES?

9 MR. TUCKER: NO, YOUR HONOR.

10 THE COURT: ANY QUESTIONS, ISSUES, TO BE
11 RAISED, PLEASE BY THOSE IN ATTENDANCE IN THE
12 GRANDSTANDS?

13 I WANT TO THANK ALL OF YOU FOR BEING HERE
14 TODAY. YOU SHOULD UNDERSTAND THAT WE CONFERRED FOR TWO
15 HOURS BEFORE COMING INTO THE COURTROOM AND A LOT OF THAT
16 WHICH IS DISCUSSED IMPACTS THAT UPON WHICH REPORTS ARE
17 GIVEN BUT UNTIL THOSE MATTERS ARE PLACED ON RECORD BY A
18 COURT ORDER, I DON'T THINK IT'S APPROPRIATE TO DISCUSS
19 THEM IN OPEN COURT. WE ARE IN THE PROCESS OF DEVELOPING
20 A COUPLE OF COURT ORDERS WHICH WILL BE FILED WITHIN THE
21 NEXT TWO WEEKS, 30 DAYS FOR ONE OF THEM AT THE OUTSIDE,
22 BUT IT IS IMPORTANT FOR ME TO LET YOU KNOW HOW MUCH I
23 APPRECIATE THE COOPERATION THAT HAS BEEN DEMONSTRATED
24 BETWEEN AND AMONG COUNSEL, PLAINTIFFS' COUNSEL, DEFENSE
25 COUNSEL, IN THIS VERY DIFFICULT MDL PROCESS, WITH THE

1 MORE THAN I THINK, MORE THAN 30 DEPOSITIONS WHICH HAVE
2 TAKEN PLACE TO DATE, I THINK I HAVE HAD ONE TELEPHONE
3 CALL. I MAY BE WRONG, I MIGHT HAVE HAD TWO, AND THAT
4 REPRESENTS, TO ME, PRIMARY EVIDENCE OF THE NATURE OF
5 COOPERATION THAT HAS BEEN DEMONSTRATED BY ALL COUNSEL.
6 THOSE DEPOSITIONS, AS YOU KNOW, ARE INTENSE, SEVEN-HOUR
7 DAYS FOR THE MOST PART AND I APPRECIATE THE FACT THAT
8 THE COOPERATION HAS MEANT THAT I HAVE HAD A MINIMUM
9 INVOLVEMENT FOR MY INVOLVEMENT WOULD BUT SLOW DOWN THE
10 PROCESS. MAYBE IF THE RULING IS TO THE LIKING OF THE
11 PARTIES IT WOULD SPEED IT UP BUT I DOUBT IT.

12 IN A PROGRAM YESTERDAY, NOT FAR FROM
13 HERE, MANY OF THE SPEAKERS SPOKE TO THE NECESSITY FOR
14 COOPERATION BETWEEN AND AMONG COUNSEL. IN THIS CASE
15 FROM THE OUTSET, IT HAS BEEN EVIDENT AND I WANT TO THANK
16 AND COMMEND EVERYONE INVOLVED FOR THAT. IT DOES NOT
17 MEAN IT WILL ALWAYS BE THUS, I THINK SO. NOW, THERE MAY
18 BE TIMES WHEN COUNSEL WILL DISAGREE, I CERTAINLY WOULD
19 EXPECT THAT, AND RESPECT THAT, AND WE HAD SOME
20 DISAGREEMENTS ALREADY THIS MORNING; HOWEVER, THEY HAVE
21 BEEN RESOLVED PEACEABLY, NO SWORDS OR GUNS DRAWN AT ALL
22 AND THAT IS THE WAY WE, AS JUDGES, EXPECT LAWYERS TO
23 PERFORM. OKAY.

24 IF ANY OF YOU HAVE ANY QUESTIONS OR
25 COMMENTS WHO ARE NOW IN THE COURTROOM, THIS IS THE TIME

1 FOR YOU TO SPEAK AND I, FOR ONE, WOULD WELCOME IT.

2 (PAUSE.)

3 THE COURT: I HAVE NEVER SEEN LAWYERS
4 RETICENT TO SPEAK BEFORE. MUST HAVE BEEN A TOUGH
5 EVENING LAST EVENING. ALL RIGHT. AGAIN, I WILL REMIND
6 YOU THAT THE NEXT OPEN COURT SESSION WILL BE AT 11:30 AM
7 IN COURTROOM 16A OF THE CLEVELAND COURTHOUSE ON JULY 25,
8 NEXT.

9 THANK YOU ALL VERY MUCH FOR BEING HERE.
10 I'M AVAILABLE FOR QUESTIONS YOU DID NOT WANT TO
11 ARTICULATE OUT LOUD AND I WILL BE HERE UNTIL WE ARE ALL
12 GONE. THANK YOU. TRAVEL SAFELY.

13 (HEARING CONCLUDED AT 11:45 AM.)

14 I CERTIFY THAT THE FOREGOING IS A CORRECT
15 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
16 ABOVE-ENTITLED MATTER.

17
18
19 DATE SUZANNE R. WHITE
20 OFFICIAL COURT REPORTER
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