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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: DePUY ORTHOPAEDICS, - Case No. 1:10-md-2197
INC., ASR HIP IMPLANT -
PRODUCTS - Toledo, Ohio
- October 3, 2012
- Conference
-

TRANSCRIPT OF CONFERENCE
BEFORE THE HONORABLE DAVID A. KATZ
UNITED STATES DISTRICT JUDGE.

For the Plaintiffs: Steven J. Skikos
Ellen Relkin
David W. Zoll
Michelle L. Kranz
Pamela A. Borgess
R. Eric Kennedy
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David C. Landever

For the Defendants: Robert C. Tucker
Susan M. Sharko
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Also Present: Michael Solon
Audra Davie

Court Reporter: Tracy L. Spore, RMR, CRR
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Proceedings recorded by mechanical stenography,
transcript produced by notereading.

1 (Commenced at 11:15 a.m.)

2 THE COURT: Good morning, all. This is the
00:00:04 3 open court segment of the DePuy ASR MDL 2197. We have a
00:00:18 4 relatively short agenda. And I'll ask Mr. Tucker or
00:00:29 5 whoever's going to report on discovery update and
00:00:32 6 related issues to do so at this time.

00:00:36 7 MR. TUCKER: Your Honor, Bob Tucker. As the
00:00:41 8 Court knows, we have a number of discovery issues that
00:00:44 9 the parties are meeting and have been meeting and
00:00:48 10 conferring on. One issue has been brought to the Court
00:00:53 11 by way of a motion for protective order, a motion to
00:00:57 12 quash. Briefing dates have been set on that, and so
00:01:03 13 that issue will be resolved or withdrawn sometime in the
00:01:08 14 next week to ten days.

00:01:12 15 There are some other pending discovery
00:01:15 16 issues involving the bellwether cases that we are
00:01:20 17 meeting and conferring on, particularly with respect to
00:01:25 18 a subpoena to one of the bellwether surgeons, Dr.
00:01:29 19 Kinsfather, and we've talked through those issues, as
00:01:33 20 well as the notices for deposition have been sent. So I
00:01:39 21 think the bottom line on the discovery update is that
00:01:43 22 while we have some issues, with the Court's guidance,
00:01:48 23 counsel will work through those issues, and we'll
00:01:51 24 proceed, hopefully without bringing further motions to
00:01:54 25 the Court. But if so, we'll let the Court know.

00:01:59 1 THE COURT: Ms. Sharko.

00:02:01 2 MS. SHARKO: On discovery we've now produced
00:02:04 3 52 million pages of discovery and counting. We have had
00:02:12 4 57 days of company witness and third party depositions;
00:02:17 5 that summarizes 19,000 pages of transcript. We have
00:02:23 6 another 34 days of depositions set of company witnesses,
00:02:27 7 not including the sales reps and the like, between now
00:02:31 8 and the beginning of January. And there are a couple
00:02:34 9 more depositions which we are scheduling.

00:02:39 10 MS. RELKIN: Essentially accurate. With
00:02:42 11 regard to Mr. Tucker's comments about the issues we
00:02:46 12 raised in chambers on the Kinsfather subpoena and the
00:02:51 13 sales rep discovery, we are trying to work it out. I
00:02:57 14 just want to note that as discussed, if those cases
00:03:01 15 ultimately do get selected as a bellwether case, then
00:03:04 16 any resolution now is without prejudice with a showing
00:03:08 17 for why we might get additional documents and additional
00:03:12 18 depositions of those witnesses.

00:03:13 19 THE COURT: Absolutely.

00:03:16 20 MS. RELKIN: We're proceeding well with
00:03:17 21 regard to the bellwether cases. We have numerous firms
00:03:20 22 involved. We have dates set for the plaintiffs that are
00:03:23 23 taking place in the next week or two -- implanters,
00:03:26 24 explanters -- and those are proceeding.

00:03:30 25 THE COURT: Anything further?

00:03:33 1 MR. SKIKOS: No.

00:03:35 2 THE COURT: Related to discovery. I am
00:03:56 3 being purposefully very careful because it is not my
00:04:00 4 practice to comment on press accounts of matters pending
00:04:12 5 before me, or before any court for that matter. But
00:04:19 6 there apparently are a few -- and they are, I am
00:04:24 7 advised, very few -- on the plaintiff's side of the bar
00:04:30 8 in this case which feel it appropriate to release to the
00:04:38 9 press the names and positions of those people whose
00:04:50 10 depositions are to be taken in the near future. I
00:05:00 11 believe that is significantly inappropriate for a
00:05:06 12 multiplicity of reasons from the perspective of the
00:05:11 13 defendant and from the perspective of the plaintiff. It
00:05:19 14 can put them in a position which is nerve wracking at
00:05:24 15 best, disconcerting at least. It also is inappropriate
00:05:36 16 from my perspective in the management of these cases. I
00:05:43 17 would urge those responsible to immediately desist in
00:05:57 18 making those reports available to the press concerning
00:06:01 19 depositions to be taken in the near future or any
00:06:05 20 depositions to be taken.

00:06:13 21 Secondly, there is a publication called
00:06:17 22 Legal Bay. It has been pointed out to me, and I have
00:06:27 23 read and reread at least two, I believe it is,
00:06:33 24 publications by Legal Bay. But the one I'm referring in
00:06:38 25 particular to at this juncture is dated January 5, 2012.

00:06:48 1 It is my understanding that Legal Bay is a lawsuit
00:06:54 2 settlement funding company, which is stated at the top
00:07:00 3 of the first page of the release of June 5. In that
00:07:10 4 press release they're reporting about unsubstantiated
00:07:26 5 values of cases in this MDL. It appears that that is
00:07:42 6 being done to urge or at least seek plaintiffs to borrow
00:07:56 7 funds from them, from Legal Bay. I have no idea where
00:08:05 8 the figures utilized by Legal Bay in that article
00:08:10 9 emanated from, but such stories do nothing to advance
00:08:22 10 the resolution of this MDL matter. It adversely impacts
00:08:33 11 this Judge's ability to assist you attorneys in managing
00:08:45 12 this litigation toward a desired outcome. In fact, not
00:08:58 13 only could this be seen as mock values in the minds of
00:09:08 14 some plaintiffs and prospective plaintiffs
00:09:12 15 disproportionate to what might prove -- I do not know
00:09:18 16 what will be proven -- true values; but it also, it
00:09:26 17 seems to me, could be viewed as driving a wedge not only
00:09:32 18 between the plaintiffs and the defendants in this case,
00:09:40 19 but between plaintiffs and their own attorneys from whom
00:09:46 20 they should be seeking advice as to how to run the case,
00:09:53 21 prospective values, et cetera.

00:10:04 22 It has bothered me because my research
00:10:11 23 reveals that Legal Bay is not a law firm, and what they
00:10:27 24 are doing could be viewed as the unauthorized practice
00:10:30 25 of law. There could be at some time in the near future

00:10:49 1 requests or motions to determine the appropriateness of
00:10:58 2 these kinds of press releases issued by Legal Bay which
00:11:05 3 could be viewed as that unauthorized practice of law.
00:11:11 4 We leave that for another day.

00:11:16 5 Report on state court cases.

00:11:18 6 MS. SHARKO: The state court litigation is
00:11:21 7 moving ahead, as is the MDL. And the coordination
00:11:27 8 efforts are pretty good going around the country. In
00:11:30 9 Maryland we have a trial date in January. There are
00:11:34 10 several discovery motions pending in Maryland brought by
00:11:39 11 Mr. Mollio and then by us against Mr. Mollio that are
00:11:44 12 awaiting resolution. In Florida we have a discovery
00:11:48 13 motion pending. In Illinois we have the first trial in
00:11:52 14 February. And we're proceeding through expert discovery
00:11:56 15 there, as we are in Maryland, actually. In California
00:11:59 16 there is a preference case set for January. And there
00:12:04 17 are trial dates throughout 2013 in January with a
00:12:09 18 framework for a bellwether selection process. In New
00:12:14 19 Jersey we have bellwether trial dates to follow the MDL
00:12:18 20 trial dates. We have a bellwether order entered, and
00:12:21 21 we're in the process of selecting bellwether cases. And
00:12:24 22 then there are cases set for trial after February
00:12:27 23 throughout next year in various state court
00:12:29 24 jurisdictions.

00:12:33 25 THE COURT: Anything from plaintiff's side?

00:12:38 1 MS. RELKIN: That's accurate.

00:12:43 2 THE COURT: In some state cases, I have
00:12:48 3 learned in the last three days, pending in other states
00:13:02 4 from the ones mentioned by Ms. Sharko, in particular I
00:13:08 5 believe South Carolina, Florida, maybe others, there are
00:13:16 6 oral arguments on pending motions in a couple of those
00:13:22 7 cases; one toward the end of October and one the first
00:13:30 8 of November on motion for partial summary judgment,
00:13:36 9 judges tell me. So those are the things that are
00:13:40 10 happening in those cases. My sense is that there are a
00:13:47 11 half dozen cases that have been filed, I'm going to say
00:13:51 12 more recently than the ones we've been familiar at past
00:13:56 13 conferences among us, and the judges are just getting
00:14:01 14 into them. And you will undoubtedly learn more from
00:14:05 15 your colleagues on both sides of the bar, plaintiff and
00:14:11 16 defendants, as these things unfold.

00:14:25 17 Anything else that we should place on the
00:14:27 18 record at this juncture?

00:14:31 19 MS. SHARKO: No, Your Honor. Thank you.

00:14:34 20 MR. SKIKOS: Your Honor, we have two
00:14:36 21 visitors that I'd like to introduce to the Court from
00:14:40 22 Turner Branch's firm. I saw them at the last hearing,
00:14:44 23 but I never really figured out who they are. Anyway,
00:14:48 24 they're here from New Mexico to say hello.

00:14:53 25 THE COURT: Off the record.

00:15:34 1 (Discussion had off the record.)

00:15:34 2 THE COURT: Anything further from anybody in
00:15:35 3 the courtroom?

00:15:49 4 The next meeting of the leadership executive
00:15:55 5 committee and defense counsel first and then open court
00:16:00 6 will be at West Palm Beach Courthouse in Florida on
00:16:11 7 December 11, 2012. I am presuming, unless you tell me
00:16:22 8 differently, that you would like to start at 9:00 in
00:16:27 9 chambers with open court at 11:00, and then if necessary
00:16:40 10 more in chambers conference time following the open
00:16:45 11 court portion of that conference. Am I correct?

00:16:52 12 MS. SHARKO: That's fine, Judge. Thank you.

00:16:55 13 MS. RELKIN: Yes, Your Honor.

00:16:57 14 THE COURT: Thank you. All right. I want
00:17:02 15 to tell you how much I personally have appreciated the
00:17:09 16 participation and discussions that we have had today and
00:17:20 17 have had in the past and I know will continue. This is
00:17:28 18 not the easiest matter on the MDL schedule of cases, but
00:17:43 19 it is growing by leaps and bounds and is currently a
00:17:48 20 little over 7,000 cases. We get anywhere between one
00:18:04 21 and 25 to 30 on a daily basis. That makes your work so
00:18:19 22 very important because of the numerosity of cases and
00:18:24 23 the people impacted. So I thank you for your efforts.
00:18:31 24 I look forward to seeing you on December 11th. And in
00:18:42 25 the meantime, we're going to have at least a couple of

00:18:53 1 important holidays, not the least of which for Mr.
00:18:59 2 Skikos is October 31, Halloween, and Thanksgiving, and
00:19:07 3 Veteran's Day. Enjoy everything. Good health,
00:19:12 4 happiness for you and your families. Thank you.

5 (Concluded at 11:34 a.m.)

6 - - -

7 **C E R T I F I C A T E**

8
9 I certify that the foregoing is a correct transcript
10 from the record of proceedings in the above-entitled
11 matter.

12
13 /s/ Tracy L. Spore_____

_____10/4/12_____

14 Tracy L. Spore, RMR, CRR

Date

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