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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: DEPUY ASR HIP) Docket No. 10MD2197
ANTITRUST LITIGATION,)
v.) March 27, 2013
)

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

APPEARANCES:

Ellen Relkin
Steve Skikos
Michelle Kranz
Eric Kennedy
David Landever
Kenneth Seger
Benjamin Gordon
Robert Tucker
Susan Sharko

1 THE COURT: Good afternoon, ladies and gentlemen.
2 This is the open court session on the DePuy MDL case 2197.
3 We have proceeded this meeting in open court with an
4 extended executive committee meeting, and the agenda flows
5 from that meeting. Many of the intricacies at that meeting
6 had to do with issues regarding discovery, et cetera, and
7 may or may not be rehashed here.

8 So I'll ask counsel to proceed with the reporting
9 as it emanates from that executive committee to the extent
10 necessary for this open court session. Let us first start
11 with state court reports. Ms. Sharko?

12 MS. SHARKO: Yes, thank you, Judge. Moving from
13 east to west, the state and federal litigation continues to
14 be well coordinated with the exception of one issue in
15 Kentucky regarding depositions. We got some new
16 information from Ms. Relkin today, and I'm hopeful that the
17 lawyers will be able to work out the Kentucky issue.
18 There's a hearing tomorrow on that in New Jersey. The
19 Judge is soon going to announce the bellwether cases, and
20 then we will move forward with discovery headed towards
21 fall trial dates in Maryland. We have a trial date in June
22 before Judge Mittelstaedt. In Illinois they are in their
23 third or fourth week of trial. And the trial dates that
24 flow thereafter my understanding is will be adjusted by The
25 Court and counsel. And then in California the Kransky case

1 is concluded and will move to post trial motions and then
2 appeal.

3 There is agreement on a bellwether process that
4 will result in trials in the fall in California, bellwether
5 trials.

6 That's the state court report.

7 THE COURT: Any supplementation from plaintiffs
8 counsel?

9 MS. RELKIN: That basically covers it.

10 THE COURT: It should be noted that at this
11 juncture, while the docket will reflect between 7,500 and
12 7,800 cases have been filed in this MDL, that represents
13 approximately 10,500 individual plaintiffs. I am presuming
14 that discovery is moving along a pace.

15 We discussed at our previous meeting this morning
16 several issues involving discovery, in particular
17 deposition issues which impact the first bellwether case,
18 which is the Dorney-Madgitz, am I pronouncing that
19 correctly?

20 MS. SHARKO: Madgitz.

21 THE COURT: M-A-D-G-I-T-Z case, which will also
22 be known, for the record, as just her married name which is
23 Madgitz. That case is scheduled for voir dire to begin
24 May 13th, a Monday. That voir dire will be conducted by
25 Magistrate Judge Vernelis Armstrong.

1 Prescreening letter of jurors will go out later
2 this week or early next week. Questions -- questionnaire
3 to jurors will go out as follows, to be completed by
4 May 1st with the questionnaire -- available questionnaire
5 and its answers available on this to the attorneys?

6 MAGISTRATE ARMSTRONG: Judge, do you have a
7 revised schedule that I gave you?

8 THE COURT: I'm reading from -- I'm sorry. I put
9 that on top. My apology, Judge. I'm sorry.

10 May 6th jurors will come into the courthouse --
11 disregard for the record and otherwise what I previously
12 said about voir dire. As a result of the meeting over the
13 noon hour between trial counsel and Magistrate Judge
14 Armstrong, these are the scheduled dates for these events.
15 Prescreening letter of the jurors this week, May 6th jurors
16 will come into the courthouse to complete questionnaires.
17 May 8th completed questionnaires will be available for the
18 lawyers on the disc. On May 10th at 11:00 a.m. there will
19 be a review of the completed questionnaires by attorneys by
20 video conference, thus to determine who to excuse among the
21 jurors for cause.

22 My understanding is it's anticipated that the
23 pool for voir dire will be approximately 40. Counsel will,
24 prior to voir dire, at that May 13th or -- I'm sorry,
25 May 10th conference, determine the number of jurors. We

1 judges have talked about and proposed, subject to your
2 approval, selecting 12 jurors to sit, of whom four will be
3 alternates. Discuss that among yourselves and raise that
4 at the appropriate time with Judge Armstrong.

5 Any additional comments? First Judge Armstrong?

6 MAGISTRATE ARMSTRONG: No, Judge.

7 THE COURT: None? Plaintiff's counsel? Defense
8 counsel? There being none, we'll move on.

9 Status of discovery, I think you've already
10 covered that with respect to the issue of the Kentucky case
11 which would appear to be in position to be resolved, and if
12 not resolved I'll hear further about it and perhaps we'll
13 have to all weigh in on that issue. Other issues with
14 regard to the first bellwether trial which counsel wishes
15 to place on the record in this open court session?

16 Mr. Kennedy?

17 MR. KENNEDY: No, Your Honor.

18 THE COURT: Any issues?

19 MR. KENNEDY: No, Your Honor.

20 THE COURT: Ms. Sharko?

21 MS. SHARKO: No, Your Honor.

22 THE COURT: Thank you. In discussing the matter
23 of the second bellwether trial, the McCracken case, M-C
24 capital C-R-AC-K-E-N, It was agreed between The Court and
25 counsel that because it is anticipated that the first

1 bellwether will go into at least the first week in June, at
2 least, that having a July trial date would be relatively
3 oppressive, and that date for trial has been moved
4 forward -- backward depending upon your look at the
5 calendar -- to September 9th. Dates for various things
6 such as discovery end date and other issues which have
7 already been agreed upon with respect to the first
8 bellwether case will be discussed between and among counsel
9 and submitted to The Court for The Court's approval. And
10 that will include such things as expert disclosure dates,
11 depositions, voir dire and the issues leading up to voir
12 dire as we've just discussed them with respect to the
13 Madgitz trial.

14 That second trial has been scheduled to take
15 place in Cleveland, Ohio in the United States District
16 Courthouse. We will have to change the date over there. I
17 am relatively certain that that courtroom will still be
18 available. Anything from plaintiff's counsel with respect
19 to that second case?

20 MR. SEGER: No, Your Honor. Thank you very much.

21 THE COURT: Ms. Sharko or Mr. Tucker?

22 MS. SHARKO: No, Your Honor.

23 THE COURT: Other issues which either plaintiffs
24 or defendants wish to raise at this juncture or place on
25 the record for this open court session?

1 MR, SKIKOS: Your Honor, on the plaintiff's side
2 at the last hearing we raised an issue of potentially
3 bringing selected motions to remand. I want to place on
4 the record that Michelle Kranz is running that project.
5 She is receiving cases. The plaintiff community in this
6 litigation is cooperating well, not only in the MDL but in
7 The State court, and the information that we have requested
8 to be analyzed, the prospect of remands is on its way to
9 Michelle and under consideration.

10 MS. RELKIN: Just one other item, something we
11 addressed in chambers, just to confirm, the (unidentified
12 witness) deposition that's going to take place in
13 Manchester will be a day and a half, one day and four
14 hours.

15 THE COURT: That's correct.

16 MS. RELKIN: And the (unidentified witness)
17 deposition, also in Manchester, will continue. And the
18 goal was to have that done because it's important to
19 plaintiffs that we get it done before the Madgitz trial.

20 MS. SHARKO: Well, I have to speak to that.
21 First of all, I would ask that we not have witness names on
22 the record because what we see is that lawyers, no one in
23 this room, issue press releases with the witness's names
24 on it which is unfair to the witnesses, and I would ask
25 that we not use witness names.

1 I agree that Your Honor ruled that as to the
2 first witness was a clinical research type manager, we will
3 produce her as directed for one day and four hours. And I
4 already sent an e-mail on that to see if we can use the
5 date that I previously supplied Ms. Relkin.

6 As far as any other with witness Ms. Relkin asked
7 that be produced for a third day of deposition. I agreed
8 that I would see that that will be done. Ms. Relkin asked
9 me if that deposition could take place before the trial
10 commences. I don't know if that's possible. I understand
11 that that's the plaintiff's wish and I will look into it,
12 but I have no idea what the witnesses or anybody else's
13 schedule is for that but I will look into it.

14 (A side bar conference was had off the
15 record.)

16 THE COURT: Anything further from defense
17 counsel?

18 MS. SHARKO: No, Judge. Thank you very much.

19 THE COURT: Any questions from those in
20 attendance I've not called on to this point? Off the
21 record.

22 (A brief discussion was had off the record.)

23 THE COURT: All right. Thank you very much for
24 your attendance, for your attention and for your
25 cooperation. We'll move forward.

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MS. RELKIN: We need a new date.

THE COURT: Oh, for the next -- talk among yourselves. Thank you again.

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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:/Angela D. Nixon

Angela D. Nixon, RMR, CRR

Date