

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

IN RE: DEPUY ORTHOPAEDICS, ( 3:11-MD-2244-K  
INC. PINNACLE HIP IMPLANT ( (MDL Docket No.  
PRODUCTS LIABILITY LITIGATION ( (SEPTMBER 10, 2013

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This Document Relates to all Cases  
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TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE ED KINKEADE  
UNITED STATES DISTRICT JUDGE

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transcript produced by computer.

P R O C E E D I N G S

THE SECURITY OFFICER: All rise and come to order.

The United States District Court in and for the Northern District of Texas at Dallas is now in session, the Honorable United States District Judge Ed Kinkeade is presiding.

Let us pray.

God bless these United States and this Honorable Court.

Please be seated.

THE COURT: Okay. We've got a status conference today on the DePuy MDL -- excuse me -- litigation, cause number 3:11-MD-2244-K.

Let me just give the lawyers an opportunity to speak on behalf of the -- both sides.

First, Mr. Beisner, you're here on behalf of the defense and is there anything you need to say with regard to where we are?

I've ruled on the deposition and the other discovery issues and the only thing I think we were -- that was left in talking about was on the belwethers and that sort of thing, so why don't you give me a little report.

MR. BEISNER. Sure, Your Honor. I think that the parties have been moving along well in the discovery process. Mr. Boyd may have some things to add on that. But we've been very busy in the -- the deposition process, I think consistent with the -- with the schedule that the court had in mind.

1 As Your Honor noted, we have been talking about the  
2 belwether trial process, and I think we have some  
3 conversations to complete in that regard, hopefully to provide  
4 your court -- the court with a joint proposal in that regard.

5 Your Honor, I did want to note that with respect to a  
6 filing that we made with the court on Friday with respect to  
7 one aspect of the belwether selection process, I did -- did  
8 want to note, Your Honor, that our position -- we have waived  
9 the lexicon restriction on these -- these cases, consistent  
10 with the report that the special master gave to the court  
11 earlier. And I just wanted to make sure that we were clear on  
12 that on -- on the record.

13 We have some concerns about whether the factual text in  
14 which that waiver was given may have changed with the proposal  
15 now for multiplaintiff trials, so we may come back to Your  
16 Honor for some relief on that waiver, depending on how all of  
17 this unfolds, but did just want to confirm to the court that  
18 that --

19 THE COURT: Okay.

20 MR. BEISNER: -- that is -- that is the defendant's  
21 position.

22 THE COURT: Okay. Well, we'll look at that when we  
23 get there.

24 Anything else from anybody else on the defense side,  
25 Mr. Beisner?

1 That's it?

2 MR. BEISNER: I don't believe so.

3 THE COURT: Okay.

4 MR. BEISNER: Unless someone else has something to  
5 add, Your Honor.

6 THE COURT: Okay. Thank you.

7 Mr. Boyd, Mr. Lanier, either of y'all -- both of y'all?

8 MR. BOYD: Your Honor, Mr. Lanier is going to give  
9 you the report.

10 THE COURT: All right. That will be fine. Thank  
11 you.

12 Thank you.

13 MR. LANIER: Thank Mr. Boyd for that.  
14 Your Honor, 4,922 cases are currently before you.

15 THE COURT: Is there a cap?

16 Is there a cap?

17 Can I?

18 (Laughter.)

19 MR. LANIER: Yes, Your Honor. We've capped it at a  
20 million.

21 THE COURT: Okay. Thank you.

22 MR. LANIER: The only cap that exists, Your Honor,  
23 is one that -- by virtue of the fact that August 31st, just a  
24 few days ago, this product is no longer allowed to be  
25 installed by doctors, and so there is some type of a cap out

1 there, but what that cap will be nobody knows.

2 I would say from the plaintiff's perspective, make it  
3 clear on the record, the plaintiffs have also agreed to waive  
4 lexicon with any of the cases that we've got before you. And  
5 we will continue to do so.

6 We also commit to following your strong admonition that  
7 the parties try to find a mutually agreeable solution to the  
8 bellwether process, and we will be speaking extensively and  
9 working with special master James Stanton, who I would be  
10 remiss and the other side would be remiss if we did not note  
11 that we have probably radically messed up his life, requiring  
12 him to traipse all over the globe to be our hall monitor while  
13 we do discovery. But he has done a commendable job, and I  
14 think both sides wanted that on the record, I just got the joy  
15 of getting to say it.

16 THE COURT: Okay.

17 MR. LANIER: So thank you for that, Your Honor.

18 THE COURT: And I want to say for the lawyers that  
19 are on the phone, in the bellwether process, we're still  
20 searching for a process where the lawyers both in the state  
21 and -- and those that have state cases and federal cases will  
22 feel good about this process and -- and what we've done. And  
23 that's the -- otherwise, it's not a bellwether, it's just a  
24 trial. And -- and so I'm still searching for that kind of  
25 process. And I -- I think y'all are working at it and I'm

1 going to assume it will be in good faith.

2 I look forward to seeing y'all again. You're a little  
3 bit older than the last time I saw you, and wiser. And I'm --  
4 I'm enjoying working on this.

5 Look forward to seeing y'all again. And we're making  
6 progress. We've done -- I know you've done really yeoman's  
7 duty on this discovery, and I want to thank everybody, because  
8 I know that's a -- it's been all over the globe and I -- I  
9 appreciate you, you know, I guess spending money with all the  
10 airlines. They need that. And just, you know, keep working  
11 hard. Know that we're making progress on this.

12 I will do my best to be patient with y'all. Y'all be  
13 patient with me. And I just -- I just want the lawyers that  
14 are out there that aren't part of this process to feel  
15 comfortable about if you're on the plaintiff's side contact --  
16 I'm assuming you would be, contact those lawyers if you have  
17 some complaint about something that's occurring and you don't  
18 feel like it's been fair to your cases -- to your clients.  
19 They're not cases. To your clients. Let me know. Let them  
20 know and they will let me know, and I'll be more than happy to  
21 address that.

22 And the same is true if there's something in the process,  
23 Mr. Beisner, you've not hesitated to tell me something you  
24 didn't like, please keep that up. That's -- I will continue  
25 to try to make sure that both of you feel like you're getting

1 your best shot to put the case on that you want to put on  
2 throughout this process.

3 So thank y'all very much.

4 Let me see at the side of the bench for just a second, a  
5 representative from -- from each side, just for a second.

6 But otherwise, that's it.

7 Thank y'all very much.

8 THE SECURITY OFFICER: All rise.

9 (End of proceedings.)

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C E R T I F I C A T I O N

I, PAMELA J. WILSON, CSR, certify that the foregoing is a transcript from the record of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

This the 10th day of September, 2013.

s/Pamela J. Wilson  
PAMELA J. WILSON, RMR, CRR  
Official Court Reporter  
The Northern District of Texas  
Dallas Division