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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: DEPUY ORTHAEPIDICS INC, (CIVIL ACTION NUMBER
PINNACLE HIP IMPLAINT PRODUCTS (
LIABILITY LITIGATION ((3: 11-MD-2244-K
(
(APRIL 25, 2012

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE ED KINKEADE
UNITED STATES DISTRICT JUDGE,

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P R O C E E D I N G S

THE COURT SECURITY OFFICER: All rise.

Hear, Ye. Hear, Ye. Hear Ye.

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

God bless the United States and this Honorable Court.

THE COURT: Okay. This is a status conference. I hope everybody on the phone can hear me. You don't have to respond.

Regarding the Orthopaedics Medical Hip Implants product liability litigation case. It's the MDL Docket Number 3:MD-11-2244-K.

And I want to get a report, first, from my lead counselors that are here today with Mr. Beisner and Mr. Powell on the defense.

And y'all are ready, is that right, to give me a report?

MR. BEISNER: Yes, Your Honor.

THE COURT: And the plaintiff, Mr. Boyd and Mr. Lanier and all the other plaintiffs that I've appointed representatives, y'all are here and ready to give me a report.

Is that correct?

MR. BOYD: We are, Your Honor.

THE COURT: Okay. Who's going to do it first?

1 Are you going to do it first, Mr. Boyd?

2 MR. BOYD: I'll be happy to, judge.

3 THE COURT: Okay. Great.

4 If you'll come to the podium so everybody can hear you.

5 And I'll try to keep my voice up, too.

6 Okay.

7 MR. BOYD: For the record, Larry Boyd, lead counsel
8 for the plaintiffs on the MDL-2244, judge.

9 I can report to those that are present and to the court
10 some of the agreements that we've reached on certain orders
11 and other orders that are still being worked on.

12 THE COURT: Okay.

13 MR. BOYD: We have agreed to a confidentiality
14 order recently. That will be filed shortly, with the court's
15 permission, after today's hearing.

16 We have also reached an agreement on an electronic
17 discovery order, an ESI order, that will also be filed.

18 There are a number of issues they we're still working
19 on. One is a common benefit working order, which we have got
20 some protocols and things on that that we may address also
21 some of those issues with the court.

22 We're working on a privilege order, which is not yet
23 final but will be, hopefully, soon.

24 There is an explant order that is under consideration
25 that will also be addressed, hopefully, by the next status

1 conference with the court.

2 THE COURT: Okay.

3 MR. BOYD: Pleading forms, there are really no
4 people that are pushing too hard for a short work form. The
5 PEC is not pushing hard for a short form complaint.

6 And we've agreed the defendants can use common answers
7 so we can get answers on the cases that are being filed.

8 With that, judge, you've given us some instructions to
9 work on in the future, which we're now aware of. But I think
10 that's the current status of the case, judge.

11 I don't know that I mentioned at last count in talking
12 to your clerk, which was very helpful, somewhere between 1240
13 to 1245 cases on file.

14 Your Honor, anything else you'd like me to address?

15 THE COURT: Well it's my understanding you have yet
16 to come to an agreement on the case management order, but I'm
17 going to give you 30 more days to do that.

18 MR. BOYD: Correct.

19 THE COURT: And you understand, both sides
20 understand that I'm going to expect y'all in 30 days to come
21 to some resolution of that or I'll have to issue an order. I
22 really expect that to be resolved.

23 Do you understand that?

24 MR. BOYD: We do understand that, judge.

25 THE COURT: And, Mr. Biesner, do you understand

1 that?

2 MR. BEISNER: Yes, Your Honor.

3 THE COURT: Okay. And with regard to discovery, I
4 understand that there is still some work being done with
5 regard to fact sheets, and you can correct me, but to
6 summarize where we are: Defendants really want an extensive,
7 in lieu of interrogatories, kind of document. And I think it
8 was originally like 30 some odd pages and now it's down to
9 20.

10 MR. HARBURG: 20, Your Honor.

11 THE COURT: 20 pages.

12 And I appreciate you getting that down but we're going
13 to try to get that down more.

14 And I think the plaintiffs would like it to be maybe be
15 a paragraph?

16 (Laughter.)

17 THE COURT: So a little bit more than that maybe,
18 Mr. Boyd?

19 MR. BOYD: Maybe two.

20 THE COURT: Maybe two paragraphs.

21 MR. BOYD: But we will work with them as the court
22 has asked us to do.

23 THE COURT: All right.

24 MR. BOYD: And see if we can get it down to a
25 reasonable thing that we can agree upon.

1 THE COURT: Okay.

2 MR. BOYD: We'll work hard.

3 THE COURT: In that same time frame; otherwise, I'm
4 going to have to resolve whatever differences there are
5 there. And that will help. And I will tell you for purposes
6 of the record instead so the plaintiffs will know, I'm sure
7 the plaintiffs want extensive discovery and it at some point
8 if we're not going to have a good enough fact sheets then
9 there's going to have to be depositions, which are obviously
10 very expensive to have depositions at this point one by one
11 by one. And so I'm of the belief that both sides should have
12 extensive discovery.

13 So I think what's fair is both sides are going to have
14 to open up. And any time the other side is holding back that
15 my memory will be long and remember that, wait a minute, you
16 didn't want to provide information on your side. And I think
17 that's the way to be fair.

18 Okay. So you've got the same amount of time during that
19 30 days to work on that.

20 Now, tell me about where we are with regard to
21 privilege.

22 MR. BOYD: That's being worked on since the last
23 status conference that we've got. And I've met with some of
24 the people that are integrally involved with it today. We
25 are having some issues on that with regard to the privilege

1 log. But I think we're making progress. They're looking at
2 the Vioxx case and trying to use those as standards for where
3 they're headed. And I think we can continue to work on that
4 and, hopefully, get that resolve in the same time plan.

5 THE COURT: Right. Judge Fowlin, you know, who
6 knows more about this than anybody, and I don't want to go
7 through what he went through and the court's second-guessing
8 him. So I really want to try to get as much agreement about
9 that as we possibly can.

10 Even with him doing it individually it went back and it
11 was extremely expensive. And so I think it's critical that
12 both sides come to some agreement with regard to that.

13 So let me know where we are with regard to that.

14 Okay. Anything else?

15 MR. BOYD: There's still the issue that comes out
16 of your order with regard to the scope of the MDL. The
17 defendants have recently provided us with a list of cases as
18 they're trying to determine how many that are involved in the
19 MDL are metal-on-metal versus those that are not.

20 We may enlist some of our plaintiff brethren that are
21 working on the case to help contact many of the plaintiff's
22 lawyers that filed these cases and to get further
23 identification of how many numbers that we've got that are
24 metal-on-metal and those that are not, judge. So that's
25 another issue that we're working with.

1 THE COURT: Okay. And I get that word "brethren"
2 being a Baptist preacher's kid. Everybody was sister this or
3 brother that. So, you know, I'm okay if we call each other
4 that in the case even. I think you probably will use other
5 names later on, but, hopefully, you will keep those to
6 yourself.

7 (Laughter.)

8 MR. BOYD: Well, having been raised in a Baptist
9 church it was kind of a nongender term.

10 THE COURT: I get it.

11 MR. BOYD: We were all brethren.

12 THE COURT: I get it. Exactly. Exactly.

13 MR. BOYD: It won't happen again though in this
14 court.

15 THE COURT: No, I'm kidding.

16 Okay. Anything else?

17 MR. BOYD: Nothing. Bye, judge. Thank you for
18 your time.

19 THE COURT: Okay. Thank you.

20 Now, is there anybody that wants to address -- oh,
21 before I do, Mr. Beisner, what would you like to say?

22 MR. BEISNER: No, Your Honor, I think that
23 brother-boy has done quite a good job.

24 THE COURT: There you go.

25 (Laughter.)

1 MR. BEISNER: He's done quite a good job of
2 summarizing where we are. I think with -- with the deadlines
3 Your Honor has set we will move even faster to get -- get
4 these things accomplished, but I think everybody has been
5 working well trying to reach agreement on as much as
6 possible. And if we have any disputes we will present them
7 to you promptly.

8 THE COURT: Okay.

9 MR. BEISNER: Thank you, Your Honor.

10 THE COURT: Now I want to give the rest of y'all
11 that aren't on committees that are here and whoever wants to
12 address it.

13 And let me say, I don't think that I have all the
14 answers since this is the first MDL I've handled. And I'm
15 willing to listen, but I will keep moving the case along. So
16 if you have something that you would like for me to address I
17 will look at that.

18 With regard to this issue of plastic-on-metal versus
19 metal-on-metal, I just don't have enough information yet.
20 And in asking the lawyers for both sides, I don't think they
21 know yet. So I've not made any decision and won't for some
22 period of time until we just get more information. I just --
23 I don't know. And I will listen to what you have to say with
24 regard to that, but I don't think anybody knows yet. And so
25 I've not made a decision to keep it as part of this or

1 separate it out in some different way but keep it in the case
2 or separate it out altogether. I have not made that
3 decision, nor will I until we get a little further down the
4 road and have more information.

5 Now, with that said, anything anybody wants to say to me
6 I'm more than happy to listen.

7 MR. RICHARD: Your Honor, Don Richard from New
8 Orleans.

9 In the light of your last comment I just want to make
10 sure that we will be given an opportunity to address this
11 issue of separate tracks --

12 THE COURT: Yes, sir.

13 MR. RICHARD: -- of the scope before you will
14 actually make that decision. I don't want to make an
15 argument today because it's going to be premature.

16 THE COURT: This is premature.

17 MR. RICHARD: All right.

18 THE COURT: I agree with you.

19 MR. RICHARD: Okay. Well, I'm going to sit down.
20 I'm not dumb.

21 THE COURT: And I notice in your resume you sent,
22 one of your references was the president of the New Orleans
23 Theological Baptist Seminary.

24 MR. RICHARD: Yes, Your Honor.

25 THE COURT: My father was president of the student

1 body at New Orleans Seminary and learned to preach down there
2 on the water and so it really held him in good stead with the
3 longshoremen not being the best of listeners while they're
4 doing that, and then coming to -- Texans were not nearly as
5 tough as the Louisianans on it.

6 MR. RICHARD: They're still doing it on the water,
7 Your Honor, at Front and Bourbon Street.

8 THE COURT: Is that right.

9 Well, he was more than -- and loved it and enjoyed it.
10 And I'd probably be from Louisiana and talk like you if my
11 brother had not had asthma. So that's how you I wound up in
12 Texas.

13 (Laughter.)

14 THE COURT: Well, good. Thank you very much.
15 Appreciate that.

16 Anybody else have any thoughts that you want me to think
17 about?

18 I appreciate all of you that are here today back there.
19 If you've got any particular thoughts I'm ready to listen to
20 those. You can address it in motions, too. And I'll be more
21 than happy to talk to you.

22 We will have these meetings. How often do y'all think
23 we're going to have this that y'all are comfortable with?
24 Every month or two?

25 MR. BOYD: Well, what we discussed previously was,

1 judge, was every six to eight weeks.

2 THE COURT: I think that's about right.

3 MR. BEISNER: We're in agreement with that, Your
4 Honor.

5 THE COURT: Okay. So, well, I appreciate everybody
6 that's on the phone. And if there's something that you still
7 think I need to address certainly send it to the court and
8 I'll look at that, and any suggestions or thoughts that you
9 have.

10 Thank y'all very much.

11 Anything else?

12 All right. Look forward to seeing y'all later and
13 appreciate y'all being here today. And look forward to
14 seeing you again.

15 Thank y'all.

16 THE SECURITY OFFICER: All rise.

17 (End of proceeding.)

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

I, RANDY M. WILSON, CSR, certify that at the time of electronic filing 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 3rd day of May, 2012.

/s/RANDY M. WILSON

RANDY M. WILSON, CSR
Official Court Reporter
The Northern District of Texas
Dallas Division