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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
- November 19, 2013
- Settlement Conference
-

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

For the Plaintiffs: Steven J. Skikos
Ellen Relkin
Michelle L. Kranz
Michael Kelly
R. Eric Kennedy
Chris Seeger
Edward Blizzard
Peter Flowers

For the Defendants: Robert C. Tucker
Susan M. Sharko
Kristen L. Mayer
John C. O'Shaughnessy
Zoha Barkeshli

Also Present: Judge Brian Martinotti
Judge Deborah Mary Dooling
Judge Richard Kramer
Judge Crystal Dixon Mittelstaedt

Court Reporter: Tracy L. Spore, RMR, CRR
1716 Spielbusch Avenue
Toledo, Ohio 43604
(419) 213-5520

Proceedings recorded by mechanical stenography,
transcript produced by notereading.

1 (Commenced at 4:29 p.m.)

2 THE COURT: Thank you. Ladies and
00:00:02 3 gentlemen, as you undoubtedly are aware, this is a
00:00:10 4 hearing in the ASR hip case. We've relaxed the rules to
00:00:23 5 permit laptops, et cetera, but I remind everyone the
00:00:31 6 taking of pictures in the courtroom is not permitted. I
00:00:38 7 remind all speakers to please speak into the mike, keep
00:00:45 8 your voices up, and please announce your name as you
00:00:53 9 begin to speak.

00:01:03 10 I welcome all who are here in this quite
00:01:09 11 large but not the largest MDL case involving the DePuy
00:01:17 12 ASR hip implant. I want to welcome and introduce the
00:01:28 13 State Court Judges who are attending, hopefully by video
00:01:38 14 or by phone: Judge Deborah Mary Dooling of the Illinois
00:01:48 15 Circuit Court of Cook County, in and around Chicago;
00:01:53 16 Judge Richard A. Kramer of the San Francisco Superior
00:01:58 17 Court; Judge Brian R. Martinotti of the New Jersey
00:02:05 18 Superior Court, Bergen County; and Judge Crystal Dixon
00:02:11 19 Mittelstaedt of the Maryland Circuit Court for Prince
00:02:17 20 George's County.

00:02:22 21 Without the cooperation of these Judges whom
00:02:29 22 I've just welcomed, achieving the result which will be
00:02:35 23 outlined at this hearing would not have been possible.
00:02:42 24 I again thank Judges Kramer and Martinotti for inviting
00:02:47 25 me to sit with them in their respective courtrooms for

00:02:53 1 hearings. That was extremely important in getting
00:02:58 2 things started in this matter because it was in New
00:03:04 3 Jersey and California, where the most state court cases
00:03:10 4 were pending. Obviously Judges Dooling and Mittelstaedt
00:03:16 5 were important in Illinois and Maryland respectively,
00:03:21 6 and their cooperation is greatly appreciated as well.
00:03:25 7 And there were several other State Court Judges with
00:03:30 8 whom I was privileged to speak over the many months this
00:03:35 9 case has been pending and whose cooperation was
00:03:38 10 extremely important. The various state judges
00:03:45 11 controlled their own dockets, but at the same time they
00:03:52 12 worked cooperatively with me as the representative of
00:03:57 13 this Federal Court where this MDL was designated.

00:04:04 14 Nor would it have been possible without the
00:04:07 15 outstanding leadership on both sides of this case. We
00:04:15 16 Judges are quite fortunate in having before us in these
00:04:21 17 multi-district cases law firms and lawyers among the
00:04:27 18 very best in the country. For approximately three years
00:04:34 19 these lawyers have labored diligently and conquered many
00:04:41 20 obstacles to reach this point in this very complex and
00:04:48 21 wide-reaching series of cases. On behalf of myself, and
00:04:53 22 taking the liberty at this time of speaking for other
00:04:57 23 judges on this point, I thank them for their labors and
00:05:10 24 for their cooperation between and among themselves and
00:05:13 25 with all of us.

00:05:14 1 Plaintiff's leadership has been a privilege
00:05:17 2 for this Judge to work with and among the best lawyers I
00:05:21 3 have ever interacted with over these more than 56 years.
00:05:31 4 That leadership was chosen not just for their legal
00:05:34 5 ability and experience in MDL matters, but additionally,
00:05:42 6 and from my perspective equally as important, they were
00:05:46 7 chosen due to their ability to perceive issues clearly
00:05:51 8 and work cooperatively with both plaintiffs' attorneys
00:05:55 9 around the country and with the defense team, and in
00:06:01 10 that cooperative manner to resolve significant issues
00:06:06 11 and reach this point.

00:06:09 12 And the leadership on the defense side,
00:06:12 13 including John O'Shaughnessy from the company,
00:06:18 14 fortunately possessed all of those same outstanding and
00:06:23 15 important qualities. Thus, it was predicted by at least
00:06:29 16 me to these leaders at a very early stage in this case
00:06:37 17 that we would reach a result similar to that which will
00:06:43 18 be outlined during this hearing.

00:06:48 19 But this is not my hearing. It is your
00:06:52 20 hearing, which happens to be before me and my fellow
00:06:58 21 State Court Judges. Therefore, I would like now to
00:07:11 22 introduce Ellen Relkin and ask her to introduce her
00:07:17 23 leadership and take whatever other measures she wishes
00:07:21 24 to take at this juncture.

00:07:25 25 MS. RELKIN: Good afternoon. Well,

00:07:35 1 sometimes we thought we wouldn't be here. I'm so very
00:07:39 2 pleased to be here. It's been a long three years, and
00:07:41 3 especially long for our clients who have been waiting
00:07:44 4 eagerly for this day.

00:07:46 5 When Judge Katz appointed Steven Skikos and
00:07:50 6 myself to leadership, as well as our executive committee
00:07:53 7 of Eric Kennedy, Mark Robinson, Chris Seeger, and Ben
00:07:58 8 Gordon, we got together to decide we would make this
00:08:01 9 litigation a success by reaching consent with the state
00:08:04 10 courts and to take the talent that worked in the state
00:08:07 11 courts together with the talent in this multi-district
00:08:10 12 litigation for one singular purpose -- to produce the
00:08:13 13 best result possible for our clients.

00:08:17 14 So recognizing that there were parallel
00:08:19 15 litigations to this August MDL, the state court
00:08:23 16 consolidated litigations in California, New Jersey,
00:08:27 17 Illinois, and the consolidation in Maryland and other
00:08:32 18 states, we made a decisive effort early on to work
00:08:36 19 together, instead of at cross purposes, which sadly can
00:08:39 20 happen in some mass tort litigations. These efforts to
00:08:42 21 coordinate were encouraged by the sage advice of Judge
00:08:45 22 Katz who recognized from the get go the importance of
00:08:48 23 efficiency, coordination, cordiality and cooperation.

00:08:53 24 Early on we reached agreement with the state
00:08:55 25 court litigations to share the database hosting the

00:08:58 1 millions of pages of discovery documents to avoid waste
00:09:01 2 in technology costs. We worked in conjunction with the
00:09:04 3 state courts to allow the finest lawyers to take the
00:09:06 4 lead depositions and assigned strategic teams to various
00:09:10 5 topics, such as design engineers, marketing, medicine,
00:09:13 6 et cetera. The depositions and trials were conducted by
00:09:16 7 a who's who in mass tort, many of the most respected
00:09:19 8 trial lawyers in the country who banded together
00:09:22 9 cooperatively to produce a remarkable work product
00:09:26 10 involving depositions of scores of witnesses around the
00:09:28 11 country and across the Atlantic. Lawyers from the MDL,
00:09:33 12 litigations in New Jersey, California, and Illinois
00:09:35 13 worked seamlessly as a team.

00:09:40 14 I knew that we were making progress when
00:09:44 15 early on we worked out a fair and equitable arrangement
00:09:47 16 with the state court litigation in Chicago. And hats
00:09:49 17 off to Pete Flowers and his team, including Denman
00:09:52 18 Heard, both who are here today, in support of this
00:09:56 19 settlement. We worked out a beneficial and cooperative
00:10:01 20 working relationship.

00:10:04 21 As you heard from Judge Katz, participating
00:10:06 22 by video conference is the Judge, Mary Dooling, who
00:10:09 23 entered a rigorous trial schedule and presided over one
00:10:13 24 of the ASR trials, and we thank her assistance in these
00:10:19 25 endeavors.

00:10:20 1 As part of the coordination, Steve Skikos,
00:10:23 2 who is from California, embraced his brethren to reach a
00:10:27 3 similar stellar team of advocates. Mike Kelly of the
00:10:31 4 Walkup firm here today, at counsel table here, is lead
00:10:36 5 counsel in California, and along with his talented
00:10:38 6 partners Khaldoun Baghdadi and Matt Davis -- Matt Davis
00:10:43 7 is here today -- worked tirelessly with other leaders on
00:10:47 8 the California litigation including Ken Seeger and Brian
00:10:50 9 Devine, who is here today -- Brian Devine is here today,
00:10:54 10 and also Peter Polos, who sits on the MDL PSC, who is
00:11:01 11 also here today. These leaders in California, along
00:11:04 12 with other important leaders of both the MDL in
00:11:07 13 California, Mark Robinson, who's on our Executive
00:11:10 14 Committee, and Larry Gornick, Chairman of the PSC of the
00:11:15 15 MDL, also both of them are California lawyers who played
00:11:18 16 an active role in the parallel cooperative litigation.

00:11:25 17 The California litigation was shepherded by
00:11:27 18 Judge Richard Kramer who capably managed it and is
00:11:31 19 participating telephonically today.

00:11:33 20 Similarly, from the Great Garden State of
00:11:36 21 New Jersey is Judge Brian Martinotti, who is
00:11:40 22 participating by video conference. Judge Martinotti
00:11:43 23 efficiently managed the large coordinated litigation and
00:11:47 24 had cases teed up for trial this fall, and issued a
00:11:51 25 precedential decision on joint trials.

00:11:52 1 Special coordination was achieved by Judge
00:11:54 2 Katz reaching out to these State Court Judges, attending
00:11:57 3 the joint hearings in Hackensack, New Jersey and in San
00:12:00 4 Francisco, and that all led to this productive working
00:12:04 5 relationship.

00:12:07 6 Attending today from New Jersey includes
00:12:11 7 co-lead counsel Dan Lapinski who also was counsel of
00:12:15 8 record for Deborah McDonald, the case that came very
00:12:19 9 close to getting tried as the first New Jersey
00:12:21 10 bellwether trial. Dan worked with a team from the MDL
00:12:25 11 and the New Jersey litigation to get that case trial
00:12:27 12 ready. And I should say that for all of the bellwether
00:12:30 13 trial team, it was a joint effort, a joint endeavor
00:12:33 14 where the MDL lawyers, the state court lawyers worked
00:12:36 15 together, shared work product, shared experts, shared
00:12:40 16 costs, with the MDL providing much of the financial
00:12:44 17 support for the trials that did take place and the
00:12:47 18 trials that were very close to getting ready for trial,
00:12:49 19 which we think played an important role in why we're
00:12:52 20 here today.

00:12:53 21 Finally, while New Jersey lead counsel David
00:12:56 22 Buchanan from Seeger Weiss cannot be here today, his
00:13:00 23 partner, Chris Seeger, who is also on the Executive
00:13:03 24 Committee of the MDL, is here and will speak in a few
00:13:06 25 moments.

00:13:07 1 Finally I'm pleased to introduce Judge
00:13:09 2 Crystal Mittelstaedt, who managed the smaller informally
00:13:12 3 coordinated cases in Prince George's County, Maryland.

00:13:14 4 Attorney Brian Franciskato, who is here
00:13:16 5 today along with his partner, Altom Maglio, was one of
00:13:20 6 the attorneys at the forefront of the Maryland cases and
00:13:22 7 then they joined in with the MDL, appreciating the very
00:13:25 8 sound work product of the MDL.

00:13:27 9 In terms of introductions, I must introduce
00:13:32 10 our fearless liaison counsel, Michelle Kranz, sitting at
00:13:37 11 conference table, who probably has spoken to more people
00:13:40 12 than anybody else in this room. She has tirelessly
00:13:43 13 answered so many questions from hundreds of lawyers who
00:13:47 14 represent ASR patients. Not only did Michelle serve as
00:13:51 15 a liaison role to counsel and to the Court, but Michelle
00:13:55 16 played a key role in trial preparation for the two cases
00:13:58 17 that were set to go to trial here in Ohio.

00:14:02 18 In addition to the joint state effort in
00:14:04 19 preparing these cases for trial, and of course the
00:14:07 20 discovery, there was a joint effort of all these state
00:14:11 21 court leaders in the long and complex -- really colossal
00:14:16 22 task of negotiating the settlement that we will hear
00:14:20 23 about shortly.

00:14:22 24 In addition to the names that I've already
00:14:24 25 introduced, we'd like to introduce Perry Weitz, who is

00:14:28 1 sitting here; Adriana Desmond, who's here today; David
00:14:37 2 Landever, Larry Gornick, Peter Polos, and Edward
00:14:40 3 Blizzard, all who are here today, and played very
00:14:44 4 important roles in different aspects of the negotiation.

00:14:48 5 Obviously there were other important lawyers
00:14:50 6 involved in the negotiation. I've already mentioned by
00:14:54 7 virtue of their roles on the Executive Committee and so
00:14:57 8 forth and their state leadership roles. I also want to
00:15:01 9 introduce the other members of the Plaintiff's Steering
00:15:03 10 Committee who are here today: Wendy Fleishman, Larry
00:15:07 11 Gornick, Seth Katz, Lenny Davis, Navan Ward, Peter
00:15:11 12 Polos, Hezekia Sistrunk, and Esther Berezofsky. I hope
00:15:17 13 I did not forget anybody.

00:15:19 14 There are many other lawyers on the
00:15:21 15 Court-appointed committees who played important roles,
00:15:23 16 others who did not have court appointments but who also
00:15:27 17 played important roles, and we appreciate their work,
00:15:29 18 some who are here today. We thank them, and we thank
00:15:32 19 the clients who volunteered to be bellwether plaintiffs
00:15:36 20 helping us to get here where we are today. Thank you.

00:15:40 21 THE COURT: Thank you, Ellen.

00:15:41 22 Ms. Sharko. I think I'm right.

00:15:51 23 MS. SHARKO: As is customary in these MDL
00:16:00 24 case management conferences, Your Honor asks for a
00:16:03 25 status report. This is the defense status report: We

00:16:06 1 have produced approximately 77 million pages of
00:16:11 2 documents. We have produced approximately 60 company
00:16:18 3 and third-party witnesses for depositions which were
00:16:23 4 conducted over 100 days. The depositions span almost
00:16:30 5 40,000 pages of transcript and were taken over
00:16:33 6 approximately 1,000 hours.

00:16:38 7 We have prepared a number of cases for
00:16:40 8 trials, two of them were tried to verdict. And among
00:16:45 9 the other things done in trial preparation, we had over
00:16:49 10 50 days of expert witness depositions.

00:16:53 11 And that is the discovery report from the
00:16:55 12 defense.

00:16:56 13 THE COURT: Thank you.

00:16:57 14 I should announce that as of an hour ago,
00:17:02 15 there were 8,598 cases filed in this MDL. That is in
00:17:14 16 addition, obviously, to the cases filed and pending in
00:17:20 17 state courts around the country, but in particular in
00:17:24 18 the four state courts represented by the Judges today.

00:17:34 19 I believe next to address us is Mike Kelly.

00:17:40 20 MR. KELLY: Thank you, Your Honor. The MDL
00:17:44 21 leadership has asked that I report on the discovery
00:17:47 22 conducted today by plaintiffs. And let me first thank
00:17:52 23 the leadership for letting me speak and for the Court's
00:17:55 24 management of the MDL process. As this Court knows, I
00:17:59 25 had the benefit of working in California as liaison

00:18:03 1 counsel under the supervision of Judge Kramer, who is a
00:18:07 2 hugely experienced and well-respected judge in the area
00:18:11 3 of complex litigation and mass torts in California. He,
00:18:17 4 throughout the process, was fair, highly organized, and
00:18:22 5 forward thinking in the way that he shaped what we did.
00:18:25 6 I have had the benefit of working with very talented
00:18:29 7 lawyers, many of whom are in this room, for the past
00:18:31 8 three years; from New York and New Jersey, from Missouri
00:18:36 9 and Florida, from Pennsylvania and Ohio, and certainly
00:18:38 10 my home state from California. I note that Mr. Polos
00:18:42 11 has been mentioned three times. I had a wager with Mr.
00:18:46 12 Polos that he would not be mentioned more than three
00:18:49 13 times. He's now been mentioned five times. And
00:18:52 14 whatever his name, was we will not mention him again,
00:18:55 15 Your Honor.

00:18:55 16 Over these three years, I, whose practice is
00:18:59 17 predominantly not in the area of mass torts but in the
00:19:03 18 area of individual representation of clients, have come
00:19:06 19 to know and respect these lawyers who I think oftentimes
00:19:10 20 in the popular press may be misrepresented in terms of
00:19:14 21 what their goals and aims are. I am proud to stand with
00:19:17 22 them as people who have sacrificed and invested time and
00:19:21 23 their own money to represent these 12,000 or so people
00:19:25 24 who have filed cases.

00:19:26 25 As Ms. Sharko has pointed out, depositions

00:19:30 1 have been taken of in excess of 50 company employees,
00:19:34 2 former employees, consultants, and representatives with
00:19:37 3 the aim of trying to find out why this device did not
00:19:41 4 perform correctly, the manner in which it failed and/or
00:19:45 5 caused injury, the manner in which it could be expected
00:19:49 6 that a new device could be designed in the future to
00:19:52 7 avoid these issues. We have retained and consulted with
00:19:56 8 experts in the areas of engineering, of tribology, of
00:19:59 9 patient safety, of immunology, of toxicology, of FDA, of
00:20:07 10 orthopedic surgery, of device design. We have prepared
00:20:13 11 cases for trial in New Jersey, in Illinois, in Florida,
00:20:18 12 in California, with the assistance of the lawyers at the
00:20:23 13 Panish, Shea & Boyle firm and the Gomez firm in San
00:20:28 14 Diego. I had the privilege with Brian Panish and Peter
00:20:32 15 Kaufman as well as John Gomez to try the first of these
00:20:35 16 cases in Los Angeles Superior Court. The group together
00:20:40 17 worked on that trial, as did the lawyers in Illinois,
00:20:43 18 who with Denman Heard and Pete Flowers and a cast of
00:20:48 19 many other lawyers who devoted and invested time and
00:20:51 20 effort tried the second case. The Seeger Weiss team had
00:20:54 21 a case ready to be tried in New Jersey, as did the Weitz
00:21:00 22 & Luxenberg team; cases prepared in Florida and cases
00:21:02 23 prepared by Mr. Flowers again set in December.

00:21:06 24 All of which, all of that effort, I think,
00:21:09 25 taught us this: That these are highly technical, highly

00:21:13 1 complicated, very expensive cases to try. That with
00:21:18 2 more than 8,000 plaintiffs who have undergone what we
00:21:22 3 claim to be premature revisions, many of whose age
00:21:27 4 demographic is somewhere in the 65 to 75 range, it would
00:21:31 5 not be practical to try 6,000 to 7,000 cases at any
00:21:35 6 point, for certainly the Courts could not handle that,
00:21:39 7 and many of those clients would not survive both the
00:21:41 8 wait or the ordeal of trial.

00:21:44 9 I think it was with those factors in mind
00:21:46 10 that the leadership in the MDL together with the
00:21:48 11 leadership in the cooperating jurisdictions set about
00:21:52 12 the hard work of trying to negotiate a resolution that
00:21:55 13 everyone felt would be appropriate for a large number of
00:21:59 14 clients. I believe what is to be outlined today is
00:22:02 15 appropriate for consideration by the clients in each of
00:22:06 16 the cooperating jurisdictions, each individual in
00:22:09 17 consultation with each individual's counsel to make an
00:22:12 18 informed and appropriate decision in their case.

00:22:15 19 I appreciate this Court's forbearance if and
00:22:20 20 when our activities in California seemed not to be right
00:22:23 21 on the mark or right in lockstep with this Court. I can
00:22:26 22 tell you that from my communications with all of the
00:22:28 23 lawyers involved in this litigation in each of the
00:22:31 24 cooperating jurisdictions and each of the state courts
00:22:34 25 where lawyers individually were prosecuting their cases,

00:22:37 1 the aim of every plaintiff's lawyer I talked to over the
00:22:40 2 last three years was the same, and that was to get a
00:22:43 3 fair and just and final resolution for each one of their
00:22:47 4 clients.

00:22:48 5 Thank you, Your Honor.

00:22:48 6 THE COURT: Thank you very much, Mr. Kelly.

00:22:55 7 Let me insert something at this juncture
00:22:59 8 which we've talked about. Early on in this case, and
00:23:06 9 certainly overshadowing, overhanging, if you will, the
00:23:12 10 efforts at resolving this case by global settlement, I
00:23:19 11 entered a confidentiality and non-disclosure order.
00:23:23 12 Why? As you've already heard, this has been a case
00:23:33 13 which has been extremely hard fought. Clients
00:23:40 14 representing their respective -- I mean lawyers
00:23:44 15 representing their respective clients, although
00:23:47 16 sometimes clients representing their lawyers. A lot of
00:23:53 17 discovery, as you've heard, trials, et cetera.

00:24:00 18 The best chance, in my opinion, for
00:24:04 19 resolution to benefit the parties, both the multiple
00:24:09 20 plaintiffs and the defendants, was to conduct private
00:24:17 21 negotiations; first among plaintiffs' leading lawyers,
00:24:31 22 and then with the defendant's team. I wanted lawyers
00:24:43 23 involved who could comply with this order of
00:24:49 24 confidentiality, and I wanted lawyers involved about
00:24:56 25 whom I spoke earlier and who ended up doing the work.

00:25:05 1 There's been a lot of speculation in the media, press
00:25:12 2 releases, et cetera. This is a private global
00:25:19 3 settlement arrangement. It was possible because of the
00:25:28 4 cooperation we've talked about, and, if you will, the
00:25:36 5 tremendous effort and ability of counsel on both sides
00:25:42 6 of the litigation table. I cannot say that enough.
00:25:49 7 You've heard me say it before. You've heard me say that
00:25:55 8 when I spoke at various times and various locations at
00:26:02 9 conferences. It's a truism.

00:26:10 10 Pete Flowers, I believe, is next to address
00:26:14 11 us.

00:26:18 12 MR. FLOWERS: Thank you, Your Honor. Good
00:26:21 13 afternoon. I've been asked today to speak about the
00:26:23 14 Settlement Oversight Committee, Your Honor. As an
00:26:25 15 initial statement, you had issued an order yesterday
00:26:28 16 concerning that in a sealed order. I would ask your
00:26:32 17 permission to unseal that order so I can speak about it.

00:26:37 18 THE COURT: That request is granted. The
00:26:39 19 motion will be deemed unsealed as of this point.

00:26:42 20 MR. FLOWERS: Thank you, Your Honor.

00:26:44 21 I, like Mr. Kelly, am typically not involved
00:26:47 22 in a lot of mass torts. I'm more of an individual
00:26:50 23 lawyer. And this has been a great experience for me and
00:26:53 24 an experience that I think everyone should undertake.
00:26:56 25 You're really dealing with the best lawyers on both

00:27:00 1 sides of the fence. This litigation, in my personal
00:27:04 2 opinion, it should be a model of future litigations,
00:27:06 3 because what we had here is we had a Federal Court
00:27:09 4 jurisdiction; we had four state jurisdictions that
00:27:12 5 really at the outset came together and made a conscious
00:27:16 6 decision to work together, to work together to promote
00:27:19 7 the efficient and just resolution of this case.

00:27:24 8 Working with Mr. Skikos and Ms. Relkin has
00:27:27 9 been a joy. I spent a lot of time with Mr. Kelly;
00:27:29 10 that's been somewhat of a joy.

00:27:33 11 THE COURT: Truisms.

00:27:35 12 MR. FLOWERS: I've met all these folks back
00:27:37 13 here and worked with each of them. They're all
00:27:39 14 excellent lawyers, and it's been very exciting. I got
00:27:42 15 to know Mr. Tucker and Ms. Sharko, Mr. O'Shaughnessy;
00:27:46 16 all good people and advocate hard for their positions.
00:27:49 17 I think at the end of the day this is a just resolution
00:27:52 18 to a difficult situation.

00:27:54 19 In terms of the Settlement Oversight
00:27:57 20 Committee, with your help, Your Honor, when the
00:28:02 21 discussion of resolution began, we on the plaintiff's
00:28:05 22 bar once again banded together to really say to
00:28:09 23 ourselves, let's sit down and try and figure out a
00:28:13 24 resolution to this. And I have to say that Mr. Skikos
00:28:17 25 and Ms. Relkin were kind of in charge of making sure our

00:28:21 1 group banded together and did a good job of it. We all
00:28:24 2 sat down. We've been through hours, days, weeks, months
00:28:27 3 of discussion. We've reached what we all believe is a
00:28:30 4 very positive resolution to a difficult situation. And
00:28:35 5 from our client's perspective, it is a very good
00:28:39 6 resolution to a difficult situation.

00:28:43 7 As part of that, Your Honor, you entered an
00:28:46 8 order creating what's called the Settlement Oversight
00:28:49 9 Committee and named essentially mostly people that have
00:28:54 10 been involved, actually all people that have been
00:28:57 11 involved in this litigation for a long time; that is,
00:29:01 12 Steve Skikos, Ellen Relkin, Mike Kelly, Eric Kennedy,
00:29:07 13 myself, Mr. Polos, who gets to be mentioned again, Brian
00:29:12 14 Divine, Mark Robinson, Ben Gordon, Larry Gornick, Chris
00:29:17 15 Seeger, Ed Blizzard, Jane Conroy, and Michelle Kranz.
00:29:21 16 These are all people I've been working with essentially
00:29:23 17 for three years. We're tasked with the responsibility,
00:29:27 18 according to your order and our own internal
00:29:30 19 conversations, of making sure this resolution goes
00:29:33 20 efficiently and justly, which we've all committed to do.
00:29:37 21 We all realize that this is not a week, a month,
00:29:39 22 six-month job. This is going to be a big job, and we're
00:29:42 23 all committed to doing it.

00:29:44 24 I have to say I hadn't met you before, Your
00:29:47 25 Honor. I appreciate the opportunity to work with you,

00:29:49 1 enjoyed it. I also hadn't met Judge Kramer, and
00:29:52 2 haven't, or Martinotti or Mittelstaedt, but I understand
00:29:56 3 from all the lawyers here they've done a wonderful job.
00:29:59 4 I know Judge Dooling quite well, and I appreciate her
00:30:02 5 dealing with all my intricacies over the last couple of
00:30:05 6 years.

00:30:06 7 So thank you, Your Honor. I look forward to
00:30:07 8 helping make sure this resolution is complete.

00:30:09 9 THE COURT: Thank you very much.

00:30:12 10 Ms. Sharko.

00:30:16 11 MS. SHARKO: May it please the Court, here
00:30:24 12 with me today are my co-counsel, John O'Shaughnessy, Bob
00:30:31 13 Tucker, Zoha Barkeshli, and Kristin Mayer.

00:30:35 14 Your Honors, on behalf of the men and women
00:30:39 15 of DePuy Orthopedics, our legal team, and with thanks to
00:30:44 16 Mr. Skikos and Ms. Relkin and their leadership team, we
00:30:50 17 are pleased to advise Your Honors that the parties have
00:30:54 18 reached agreement on a private settlement program for
00:30:59 19 patients who are U.S. citizens and residents who had the
00:31:05 20 ASR hip implanted in the United States and had surgery
00:31:11 21 to replace the ASR hip before August 31, 2013.

00:31:19 22 Now, this has been a very long and winding
00:31:23 23 road. It was a very hard fought negotiation over many
00:31:28 24 months. We argued and debated over pretty much every
00:31:33 25 word and every concept. We were still negotiating and

00:31:37 1 drafting the agreement until we walked in the courthouse
00:31:41 2 this morning and it was signed. The settlement is
00:31:46 3 valued at approximately \$2.475 billion, assuming that
00:31:55 4 approximately 8,000 patients participate.

00:32:01 5 We all believe and we hope that Your Honors
00:32:07 6 likewise will believe that this is a program which is
00:32:10 7 good for patients, which helps bring finality to all the
00:32:14 8 litigation, and which takes us in a new direction.
00:32:20 9 Detailed information about the U.S. settlement program
00:32:25 10 will be posted at the claims processor website, which
00:32:29 11 should be in operation at the conclusion of this
00:32:32 12 hearing. That is different from some rogue websites
00:32:38 13 which appear to have already been started by lawyers not
00:32:41 14 involved in the negotiations. The U.S. settlement
00:32:47 15 program official website will be updated regularly, so
00:32:51 16 check back often.

00:32:52 17 But here are some of the details of the
00:32:54 18 program:

00:32:56 19 Eligibility. In order to participate in the
00:33:00 20 U.S. program, a patient must be a U.S. citizen or
00:33:04 21 resident, have been implanted with the ASR XL acetabular
00:33:11 22 hip system or the ASR hip resurfacing system in a
00:33:16 23 surgery which took place in the United States or at a
00:33:20 24 U.S. military hospital. You must have had the ASR
00:33:27 25 removed for reasons related to the recall on or before

00:33:31 1 August 31, 2013 after being in place for more than 180
00:33:40 2 days. If you do not already have a lawyer, you do not
00:33:43 3 need to go out and hire one, nor do you need a pending
00:33:46 4 lawsuit to participate in this program, which will
00:33:51 5 resolve the claims of unrepresented people on a
00:33:54 6 comparable basis. Claim forms and registration packets
00:33:58 7 will be available in the coming days through your
00:34:02 8 lawyers or on the website of the administrator.

00:34:07 9 The U.S. program is structured in two parts,
00:34:10 10 just very briefly.

00:34:12 11 Part A. Under Part A of the program,
00:34:15 12 patients who are qualified to participate will receive
00:34:21 13 one base award of \$250,000 subject to potential
00:34:28 14 reductions.

00:34:32 15 Under Part B of the program, supplemental
00:34:34 16 awards will be made to patients who can demonstrate that
00:34:38 17 they have extraordinary injuries related to the removal
00:34:42 18 of their ASR; for example, people who require multiple
00:34:46 19 hip surgeries following their ASR implant or rerevision
00:34:51 20 surgeries; people who have experienced extraordinary
00:34:55 21 medical events during the revision surgery, such as
00:34:58 22 heart attack or stroke. And the list goes on from
00:35:02 23 there.

00:35:04 24 Qualifying for a base award in Part A does
00:35:08 25 not automatically entitle a patient to a supplemental

00:35:12 1 award in the second part of the program. Medical
00:35:16 2 records must be produced to document all claims for
00:35:19 3 supplemental awards and the base award.

00:35:25 4 In addition to these benefits, DePuy will be
00:35:28 5 responsible for the negotiation and resolution of
00:35:34 6 certain liens by qualified lienholders for medical care
00:35:39 7 directly associated with revision surgery and certain
00:35:43 8 other treatment.

00:35:48 9 This is a private resolution and not a class
00:35:51 10 action settlement. It does not require court approval.
00:35:57 11 And it is the only settlement program available for
00:36:01 12 patients who have been revised as of August 31, 2013.
00:36:07 13 This is the settlement program.

00:36:12 14 The detailed terms and conditions are set
00:36:14 15 forth in the final settlement agreement.

00:36:18 16 We're most grateful to Your Honors, Judge
00:36:22 17 Katz in the MDL, Judge Martinotti in New Jersey, Judge
00:36:25 18 Kramer in California, Judge Dooling in Illinois, Judge
00:36:29 19 Mittelstaedt in Maryland for your careful and fair
00:36:34 20 management of this large litigation. We truly
00:36:37 21 appreciate the confidence you had in us, in all of us,
00:36:43 22 and your giving us the time and space we needed for
00:36:47 23 these complex negotiations.

00:36:51 24 We hope that you will now give U.S. patients
00:36:54 25 and their lawyers around the country the time and space

00:36:57 1 they need to consider carefully the benefits of this
00:37:01 2 important program so that they can make an informed
00:37:05 3 personal decision on whether participation is good for
00:37:11 4 them. Each eligible patient must have the right and
00:37:16 5 ability to consider the benefits of this program and to
00:37:19 6 receive accurate and objective information about it, not
00:37:23 7 rumor and speculation.

00:37:27 8 As for patients who are not eligible for the
00:37:31 9 U.S. program because they have not been revised, DePuy's
00:37:35 10 Broadspire program is available to them. It's important
00:37:39 11 to note that this product continues to perform well for
00:37:42 12 some people, and the decision whether to be revised is a
00:37:47 13 medical decision; it's not a legal decision. It should
00:37:51 14 be made by patients with their surgeons. We all,
00:37:57 15 plaintiff and defense, have worked very hard on this
00:38:00 16 program, wrestling over many issues over long nights and
00:38:06 17 days. We now come together with the common goal of
00:38:10 18 assuring that each eligible patient has the opportunity
00:38:15 19 to evaluate the program objectively and in good faith
00:38:20 20 and to reap the benefits of it.

00:38:23 21 Thank you.

00:38:24 22 THE COURT: Thank you very much, Susan.

00:38:34 23 Mr. Skikos.

00:38:38 24 MS. SKIKOS: Susan has accurately presented
00:38:45 25 the essential terms of the deal. I am going to try to

00:38:50 1 get us home. So we have three more speakers, and I
00:38:54 2 will -- Michelle Kranz is going to talk about
00:38:58 3 registration; Ed Blizzard and Eric Kennedy are going to
00:39:03 4 talk about some of the people who we've already hired to
00:39:06 5 assist with this process and with the informed consent
00:39:11 6 and the special masters. We're also going to talk about
00:39:17 7 the important issue of when you might get paid.

00:39:21 8 So before we get there, let me go through
00:39:25 9 some of the essential terms from the plaintiff's
00:39:27 10 perspective. Susan did accurately state the eligibility
00:39:32 11 requirements. With respect to eligibility, those
00:39:39 12 patients who have not been revised prior to August 31,
00:39:42 13 2013, and those patients who have not been revised now,
00:39:48 14 we will continue our efforts with respect to those
00:39:53 15 patients. This MDL group and state court group has
00:39:59 16 committed at the beginning to work together for both the
00:40:02 17 revised and unrevised patients. At the very first MDL
00:40:06 18 hearing I said with respect to the unrevised, those
00:40:09 19 patients have the right to make an informed decision
00:40:12 20 based upon facts that are medically available, and the
00:40:18 21 decision with respect to revision is a medical one with
00:40:22 22 their doctors and their families; it is not a legal one,
00:40:25 23 and we agree with that.

00:40:27 24 With respect to the patients who have been
00:40:29 25 revised and are eligible, the exclusions from the

00:40:36 1 program are limited. The revision must take place
00:40:40 2 within the first 180 days of implantation. You can
00:40:46 3 still enroll, and there may be circumstances in which
00:40:49 4 the parties, namely the defense, will allow that case to
00:40:53 5 come in. And there are some of those cases. If the
00:40:57 6 revision is caused by infection or trauma, there is a
00:41:02 7 very specific set of criteria that we negotiated over a
00:41:08 8 very long period of time that address infection and
00:41:11 9 trauma cases.

00:41:12 10 Otherwise, you are free to come into the
00:41:16 11 program. And we encourage people to come into the
00:41:21 12 program who have qualified. If you are a U.S. patient
00:41:26 13 implanted in the United States, and you have the
00:41:29 14 qualifying device, and a revision surgery, you are
00:41:34 15 qualified if you meet the criteria, and we encourage you
00:41:38 16 to enroll.

00:41:39 17 With respect to enrollment, the number
00:41:43 18 8,000 -- and there has been a lot of speculation about
00:41:47 19 this, but the number 8,000 is an estimate based upon the
00:41:51 20 evaluation of shared data among the various state
00:41:55 21 courts, which I hope to be a model for future
00:41:59 22 litigations because we were able to make informed
00:42:03 23 decisions regarding settlement because we had
00:42:06 24 information from all of the state courts with
00:42:09 25 significant numbers of cases, and the lawyers who had

00:42:12 1 those cases shared. The great majority of law firms in
00:42:17 2 this country, the great majority, would show up to the
00:42:21 3 meetings, would share their data, would put together
00:42:24 4 these preliminary disclosure forms, and we were able to
00:42:28 5 make some very solid estimates as to the number of
00:42:31 6 people who have been revised. However, there is no
00:42:36 7 limit in this settlement to the number of eligible
00:42:40 8 patients who can enroll and participate. Again, there
00:42:43 9 is no limit. If you qualify and you enroll, you can
00:42:52 10 participate. Even if there's 10,000 revisions right
00:42:56 11 now, or 9,000. We don't have the exact number; there's
00:42:59 12 no way to do that right now. But it's very clear, their
00:43:04 13 funding requirements are based upon ratio. So the base
00:43:11 14 payment would be 8,000 leading to a maximum of
00:43:16 15 \$2 billion; and the Part B payment, based upon 8,000,
00:43:21 16 would lead to a maximum of \$475 million. So I want
00:43:26 17 there to be no confusion with respect to those who might
00:43:29 18 report about this. There is no limit to the number of
00:43:33 19 people who can participate in this program so long as
00:43:36 20 they qualify.

00:43:38 21 With respect to the unrevised patients, all
00:43:41 22 of your legal rights, your claims are preserved. So
00:43:47 23 wherever the defenses, wherever you are right now, your
00:43:52 24 rights are preserved under this agreement. This
00:43:54 25 agreement will not affect you.

00:43:56 1 With respect to the lawyers in this
00:43:59 2 litigation, we represent both revised and unrevised
00:44:05 3 patients. And it is our job to make sure that we
00:44:09 4 continue that representation, and we are all committed
00:44:13 5 to do so.

00:44:16 6 Now let's talk about the base program. The
00:44:18 7 base program is distinguished from the extraordinary
00:44:22 8 injury or Part B program. The base program is for
00:44:27 9 somebody who simply had an implantation and revision.
00:44:32 10 So we are trying -- our group is trying to make the
00:44:36 11 enrollment for the base program as simple as possible.
00:44:41 12 There are those reductions within base that the parties
00:44:45 13 have agreed to, and those include smoking, BMI, ASR as a
00:44:52 14 revision device, length of use, and death unrelated to
00:44:55 15 the revision. And the specific terms of that will be
00:44:58 16 set out in the master settlement agreement.

00:45:02 17 With respect to Part B, there are three
00:45:07 18 elements to that program. The three elements are
00:45:14 19 bilaterals, so a patient had an ASR hip on the right,
00:45:17 20 and it's revised, and an ASR hip on the left, and it's
00:45:22 21 revised. You are eligible to participate in Part B as a
00:45:26 22 bilateral patient.

00:45:27 23 If you had an ASR on one hip that's been
00:45:33 24 revised and an ASR on the other hip that has not been
00:45:37 25 revised, your claims with respect to that second hip are

00:45:40 1 preserved.

00:45:43 2 We believe that the litigation outcome with
00:45:45 3 respect to unrevised patients should wait, from our
00:45:52 4 perspective, until the patient had an opportunity to
00:45:55 5 find out what's going to happen to them medically, and
00:45:58 6 that should be the way things proceed, is that the
00:46:02 7 medical should be in charge before the legal, and not
00:46:06 8 the other way around.

00:46:08 9 With respect to rerevisions, a number of
00:46:11 10 patients have unfortunately had a revision and then
00:46:14 11 subsequent rerevisions because the revision didn't work.
00:46:18 12 This program pays or compensates those patients.

00:46:23 13 And this Part B program is in the care of
00:46:32 14 the Settlement Oversight Committee and a team of special
00:46:36 15 masters that Mr. Kennedy will go over, and it will be
00:46:40 16 our obligation to make sure that the patients who enter
00:46:44 17 this program know what the categories of compensation
00:46:48 18 are and how to qualify and what documentation is
00:46:52 19 necessary. But there will be, from our perspective,
00:46:58 20 significant payments to patients who have had bilateral
00:47:04 21 double revisions and patients with rerevisions.

00:47:08 22 There is another category within the
00:47:11 23 settlement which are extraordinary injury categories.
00:47:15 24 And there are eight of them. So if, unfortunately,
00:47:20 25 somebody died as a result of their revision surgery,

00:47:23 1 that is a recognized category of compensation. Same
00:47:27 2 thing with myocardial infarction, stroke, pulmonary
00:47:32 3 embolism, DVT, all of those are categories of
00:47:36 4 compensation resulting from a revision surgery, and they
00:47:41 5 will be paid for. Dislocation, foot drop are also
00:47:46 6 categories of compensation that are within the
00:47:49 7 extraordinary injury fund.

00:47:53 8 We also have a category for infection that
00:47:56 9 is, let's say, complicated. But the patients will have
00:48:02 10 an opportunity to review the infection program related
00:48:05 11 to the revision surgery very soon.

00:48:09 12 This settlement is also unique in a certain
00:48:12 13 sense in that we are -- we are taking into consideration
00:48:17 14 future rerevisions. So if you had a revision surgery
00:48:22 15 within the last year, there might be a fear, a concern
00:48:29 16 that what happens if I have a rerevision? What happens
00:48:34 17 if this hip implant doesn't work? This program takes
00:48:40 18 that into consideration, and future rerevisions are a
00:48:43 19 factor. The parties, and to DePuy's credit, to
00:48:48 20 Johnson & Johnson's credit, they agree that the patient
00:48:51 21 should be allowed some compensation within our program
00:48:54 22 for that.

00:48:56 23 And then there is a fourth category within
00:48:59 24 Part B, which is, what I'll say, within our control, and
00:49:05 25 that is the special circumstances fund. And the special

00:49:09 1 circumstances fund are other categories of injuries
00:49:12 2 beyond what we agreed to with respect to bilaterals and
00:49:16 3 rerevisions and extraordinary injuries that the
00:49:20 4 patients, before they enter the program, will have the
00:49:23 5 opportunity to review and make an informed decision on.
00:49:27 6 And this has been, the creation of the Part B program,
00:49:32 7 for the patients who had the most significant injuries
00:49:36 8 resulting from the revision, was something that this
00:49:40 9 group has put together in cooperation with Johnson &
00:49:44 10 Johnson to make sure that the people who had the worst
00:49:46 11 outcomes are taken care of.

00:49:49 12 We have another element of this settlement
00:49:53 13 that is hopefully going to be a model. We believe
00:49:57 14 strongly in the informed consent process. And the power
00:50:02 15 of settlement belongs not -- belongs with the individual
00:50:07 16 patient. It is a truism that each of us believe that
00:50:16 17 the patient should have the right to know what the
00:50:19 18 settlement terms are, what the offer is, what the
00:50:23 19 categories of compensation are, and together with their
00:50:26 20 lawyer make an individual decision. We have decided in
00:50:31 21 this settlement, because there are over 1,000 law firms,
00:50:36 22 maybe more, with cases, that we were going to make
00:50:41 23 certain individuals with actual knowledge about this
00:50:45 24 settlement available beyond this Settlement Oversight
00:50:50 25 Committee so that the patients and their lawyers can

00:50:55 1 stop bothering Michelle and go to actual people with
00:51:00 2 knowledge of the case and knowledge of the settlement
00:51:03 3 and get real answers. So we plan on having the informed
00:51:10 4 consent documentation done relatively soon.

00:51:14 5 Susan is absolutely correct. This deal,
00:51:17 6 despite reports that may have been to the contrary, got
00:51:20 7 signed today. It got entered today. The negotiations
00:51:26 8 relating to this deal continued last night and up
00:51:31 9 through this afternoon. So it is our job now to turn to
00:51:36 10 the patients and their lawyers and try to get them the
00:51:39 11 information they need to enroll in the program and to
00:51:43 12 make some informed decisions relating to participation.

00:51:48 13 Liens. At the beginning when the product
00:51:56 14 was recalled, Johnson & Johnson sent up Broadspire. We
00:52:04 15 had some debates about that during the course of the
00:52:06 16 litigation. But to their credit, in this settlement, we
00:52:11 17 are happy to report that DePuy will be responsible for
00:52:15 18 the negotiation and resolution of the assumed liens
00:52:19 19 asserted by qualified lienholders that are identified by
00:52:22 20 qualified patients. What does that mean? That means
00:52:26 21 that assumed liens are those directly associated with a
00:52:34 22 compensable revision. There are not a lot of
00:52:40 23 settlements in which the patient going into the
00:52:44 24 settlement will have a very good understanding of what
00:52:48 25 they will net out of the settlement because they

00:52:52 1 didn't -- because now they don't have to worry about
00:52:56 2 these types of liens. And I have already drafted, and
00:53:01 3 it will come out soon, a point-by-point analysis
00:53:08 4 relating to the liens. So hopefully the patients will
00:53:14 5 have an opportunity to make sure that when they enter
00:53:19 6 the program, they are going to know what they're going
00:53:22 7 to get.

00:53:23 8 And the liens, which have been a tremendous
00:53:27 9 burden for those of us who have been doing these types
00:53:31 10 of cases -- I've been doing these types of cases for 23
00:53:34 11 years. Liens, if you take them seriously, which we do,
00:53:37 12 take a long time to resolve. And we very much believe
00:53:41 13 that this settlement does something very important for
00:53:44 14 the patients on this issue.

00:53:47 15 With that, let me talk briefly about
00:53:51 16 registration and turn it over. In the Gadolidium
00:54:01 17 litigation we started sharing specific information
00:54:07 18 relating to the cases with your friend, Judge Polster.
00:54:11 19 And it helped not only frame the litigation, but frame
00:54:16 20 the resolution. In this case we have the four
00:54:23 21 cooperating jurisdictions; we have a group of lawyers
00:54:28 22 who decided that they were going to work together and
00:54:31 23 put all the ego and all that stuff that happens in this
00:54:34 24 type of case aside and share things. The registration
00:54:40 25 order that we are going to propose to the Court is an

00:54:44 1 order that allows the parties to get more information,
00:54:50 2 to make more informed decisions about the future. It
00:54:53 3 also designates a primary counsel, one person
00:54:59 4 responsible to you and all the coordinating courts for
00:55:03 5 each case so that we can get information and they can
00:55:09 6 receive information, not only about this settlement, but
00:55:12 7 about this litigation. Managing 1,000 law firms,
00:55:16 8 Michelle had a great time trying, but it's very hard to
00:55:19 9 do. So this is going to help.

00:55:21 10 So I forgot one other speaker, Chris Seeger.
00:55:24 11 But right now I'm going to turn it over to Michelle,
00:55:27 12 Eric, and Chris. Thank you.

00:55:51 13 THE COURT: I want to emphasize a point that
00:55:58 14 both previous speakers, Susan Sharko and Steve Skikos,
00:56:06 15 raised. It is clear to everyone involved in this case,
00:56:16 16 both in federal and state courts, that there will be
00:56:20 17 those who will try to take advantage of this settlement
00:56:24 18 situation, may even have websites and advertise that
00:56:32 19 they have information. Those websites and ads may not
00:56:41 20 be accurate. So I say to all, not those just here, but
00:56:49 21 those around the country, please rely only on the
00:56:56 22 official claims administrator websites and those
00:57:03 23 attorneys who have the correct information as the result
00:57:10 24 of their involvement in this matter, and that will serve
00:57:16 25 you well. Thank you.

00:57:18 1 Eric, please proceed.

00:57:20 2 MR. KENNEDY: Eric Kennedy. Your Honor,
00:57:22 3 it's a pleasure again to be before you and the other
00:57:27 4 Judges that are participating here today. We thank you
00:57:29 5 for your efforts in getting us to where we are today,
00:57:33 6 obviously the benefits that are outlined in this
00:57:38 7 resolution, as Steve and Susan have talked about.
00:57:42 8 Obviously they are critically important to the claimants
00:57:45 9 in this case, and of great interest. What doesn't,
00:57:49 10 though, get the headlines, the New York Times, the Wall
00:57:52 11 Street Journal, Bloomberg, what doesn't get the
00:57:55 12 headlines is the process, The process by which these
00:57:58 13 benefits go from abstracts and words in the settlement
00:58:02 14 agreement to the claimants. Critically important. We
00:58:06 15 are confident, though, Your Honor that the structure
00:58:10 16 that we have in place and the people that we have in
00:58:13 17 place will insure an efficient and timely and fair, fair
00:58:20 18 distribution of benefits from the settlement agreement
00:58:22 19 and its implementation to the claimants.

00:58:26 20 At the first level, at the first level of
00:58:29 21 benefit or claim determination, we have agreed and we
00:58:33 22 have retained BrownGreer, a law firm to do the initial
00:58:36 23 determination of benefits. They are a nationally
00:58:39 24 recognized law firm and organization in this area. I
00:58:43 25 would say without question they are probably the most

00:58:46 1 experienced organization in the country with respect to
00:58:49 2 the processing and implementation of a mass tort
00:58:53 3 national resolution as we have here today. They have
00:58:59 4 already established a website. When I stood up today I
00:59:02 5 think that was the queue to e-mail them to come live
00:59:05 6 with the website. So that the claims process will be
00:59:08 7 handled virtually -- for the most part all can be done
00:59:11 8 online. It is up and running as I speak. That website
00:59:16 9 is USAASRsettlement.com. What is currently on that
00:59:23 10 website is an overview of this settlement, very similar
00:59:27 11 to what has been presented to the Court thus far. By
00:59:30 12 Friday of this week we anticipate that the settlement
00:59:34 13 agreements that we've all talked about, signed today,
00:59:37 14 approximately 100 pages, that will be posted by Friday.
00:59:41 15 The claim form for the base payment for an uncomplicated
00:59:44 16 revision surgery will be posted by Friday. The
00:59:47 17 registration process will also be posted by Friday.
00:59:51 18 Shortly thereafter we anticipate that there will be
00:59:54 19 guide type booklets that will be posted which will
00:59:58 20 simplify the process of filing claims, and the details
01:00:01 21 of extraordinary injury fund that Steve talked about
01:00:04 22 will also be posted. It will be a dynamic website.
01:00:08 23 People should check it consistently because we will
01:00:11 24 continuously add to it to clarify the benefits of the
01:00:17 25 resolution.

01:00:18 1 Important for people to note in this
01:00:20 2 process, that it will be a first in, first out; so that
01:00:23 3 the earlier that you file your claim, the earlier you
01:00:26 4 will receive your benefit.

01:00:29 5 With respect to the first level of review
01:00:32 6 after the initial determination of a claim by
01:00:36 7 BrownGreer, we have a system of three special masters.
01:00:39 8 We have agreed upon and retained Retired Judge Marina
01:00:44 9 Corodemus, Retired Judge John Trotter, and nationally
01:00:48 10 recognized mediator and arbitrator Cathy Yanni. We've
01:00:53 11 also created a position of a Chief Claims Administrator,
01:00:57 12 Judge James McMonigle, Retired Judge, will occupy that
01:01:01 13 role. I'm certain the Court is probably familiar with
01:01:05 14 his reputation here in Ohio, his work over the years, a
01:01:09 15 sitting state court judge for close to 20 years in the
01:01:12 16 State of Ohio, nationally -- certainly in the midwest
01:01:16 17 and nationally recognized mediator and arbitrator. He
01:01:19 18 has administered settlements of this sort, respected by
01:01:24 19 the plaintiff's bar, respected by the defense bar. His
01:01:27 20 role, basically he will be the final arbiter. He will
01:01:29 21 provide the final review in the claims process under
01:01:31 22 most circumstances and situations. He will also be
01:01:36 23 providing general oversight and management of the
01:01:39 24 resolution and its implementation consistent with the
01:01:43 25 terms of the implementation. So the buck will stop with

01:01:46 1 him.

01:01:46 2 With that, Your Honor, we are -- again, we
01:01:50 3 are confident this structure and the particular people
01:01:53 4 that we've involved in this process will be such that we
01:01:56 5 will not disappoint this Court nor the claimants nor the
01:01:59 6 attorneys that have gathered today and across the
01:02:02 7 country to provide, again, a fair, timely, and efficient
01:02:07 8 claims process.

01:02:09 9 THE COURT: Thank you very much.

01:02:21 10 Michelle.

01:02:23 11 MS. KRANTZ: Thank you, Your Honor. May it
01:02:25 12 please the Court. For almost 20 years I've had the
01:02:27 13 opportunity to appear in front of Your Honor. I've
01:02:30 14 brought countless clients and cases before Your Honor.
01:02:33 15 This is home. This is my home court. You're my home
01:02:35 16 Judge. But three years ago you assigned me the
01:02:38 17 responsibility and the duties that go along with being
01:02:41 18 liaison counsel in this litigation. In turn, I
01:02:44 19 immediately had the opportunity to meet with and work
01:02:47 20 with, truly, some of the most skilled and talented
01:02:51 21 lawyers in the country. Now, my assigned duties
01:02:55 22 included communicating with thousands of state and
01:02:58 23 federal clients, with thousands of state and federal
01:03:02 24 attorneys, communicating orders, communicating
01:03:05 25 information from our leadership, communicating

01:03:08 1 information sometimes necessary for the defense, and
01:03:11 2 certainly responding to, as has already been alluded to,
01:03:15 3 a relatively large number of questions. While certainly
01:03:19 4 a very pleasurable experience, it sometimes was somewhat
01:03:23 5 daunting.

01:03:23 6 And I would certainly be remiss if I did not
01:03:26 7 take a moment to mention my defense liaison colleague,
01:03:30 8 Kristin Mayer. Now, I can assure you that the
01:03:32 9 plaintiffs' lawyers did not always hear from Kristin the
01:03:35 10 answers that they necessarily wanted, but I can
01:03:37 11 certainly tell you that Ms. Mayer's efforts reflected a
01:03:41 12 very thorough and accurate effort to respond to those
01:03:44 13 questions; I think, most importantly to me, timely
01:03:47 14 response to those questions.

01:03:50 15 So now my role is somewhat modified from
01:03:53 16 what Your Honor assigned me three years ago. I will no
01:03:56 17 longer focus exclusively on the litigation in this case,
01:03:58 18 but certainly turn to the additional duties that may now
01:04:01 19 become incumbent upon me as we move through a portion of
01:04:04 20 the settlement.

01:04:06 21 As Steve has already alluded to, the first
01:04:09 22 thing for those in this courtroom and those reading this
01:04:11 23 transcript that they will need to do is familiarize
01:04:15 24 themselves with the concept of the registration order
01:04:18 25 that we will be proposing and asking Your Honor to

01:04:20 1 submit. That will be a joint and stipulated request.
01:04:25 2 Essentially it is going to require all attorneys who are
01:04:28 3 opting to enter this settlement program to register both
01:04:32 4 their filed and unfiled cases. Secondly to that,
01:04:38 5 they will be required to file both their revised and
01:04:41 6 unrevised cases as a portion of this order that we are
01:04:44 7 asking Your Honor to consider entering.

01:04:47 8 Steve has already also alluded to the
01:04:49 9 concept of, for administrative purposes, designating a
01:04:53 10 primary law firm. Again, for attorneys reviewing this
01:04:56 11 transcript, it is certainly at this moment we would ask
01:04:59 12 you to begin to contemplate who that principal contact
01:05:03 13 person will be for all of us working on these settlement
01:05:07 14 programs. That may require some coordinating efforts
01:05:09 15 with those of you who have secured referrals from other
01:05:13 16 attorneys, but it is imperative for both sides to move
01:05:16 17 forward in an efficient process and to bring this matter
01:05:19 18 to the swift conclusion that we believe both sides
01:05:22 19 endeavor to do that those particular designations be
01:05:26 20 taken particularly seriously.

01:05:28 21 Also let us be clear; the registration order
01:05:31 22 that we are proposing is distinct from the enrollment
01:05:36 23 and the claims forms in somewhat of the outline that Mr.
01:05:40 24 Kennedy has already provided and will be coming from the
01:05:43 25 claims administration forms. The registration

01:05:48 1 information that we will be seeking is basic information
01:05:51 2 that is very much consistent with what has already been
01:05:55 3 provided during the course of the plaintiff's
01:05:57 4 preliminary disclosure forms. It does require a slight
01:06:01 5 more detail with regard to dates, locations, and
01:06:05 6 additional information of the primary law firms, but we
01:06:08 7 do expect that the parties involved in this will be able
01:06:12 8 to secure that information very quickly.

01:06:15 9 We are anticipating requesting the Court
01:06:17 10 order the completion of the registration forms in
01:06:19 11 approximately early January, and those will be also
01:06:22 12 available through the claims administrator websites.

01:06:28 13 For those attorneys again in the courtroom
01:06:30 14 and reviewing the transcript at a later time, we will
01:06:33 15 notify you when those forms are ready. Those will take
01:06:37 16 the form of e-mail communication which, for those
01:06:40 17 attorneys who are MDL attorneys or who have signed a
01:06:43 18 participation agreement, they will continue to receive
01:06:46 19 direct notification from me as liaison counsel. There
01:06:49 20 will also be posted to the plaintiff's only website, a
01:06:53 21 website that has been maintained throughout this
01:06:56 22 litigation, the same information. Again, you must be an
01:06:59 23 MDL attorney; you must have signed the participation
01:07:02 24 agreement, and you must have acquiesced to the
01:07:05 25 continuing confidentiality order as it relates to

01:07:08 1 substantive matters in this case.

01:07:10 2 Finally, again, you'll be able to secure
01:07:11 3 information related to the registration form directly
01:07:13 4 from the claims administrator.

01:07:15 5 Ultimately this information, Your Honor, is
01:07:18 6 designed to assist the parties in administering and
01:07:21 7 organizing this settlement, meant to ultimately help
01:07:24 8 expedite these matters, and certainly it is critical for
01:07:27 9 both sides to allow us to make informed decisions and
01:07:31 10 all litigants and parties to make informed decisions by
01:07:34 11 reviewing this information.

01:07:35 12 Again, Your Honor, it has been a pleasure,
01:07:37 13 and thank you for the opportunity to have served in this
01:07:40 14 role.

01:07:48 15 THE COURT: Mr. Seeger -- I'm sorry; who's
01:07:57 16 going first?

01:07:58 17 MR. SEEGER: I get to go. Hi, Judge Katz,
01:08:03 18 and hello to the Judges attending by video conferencing.
01:08:07 19 I just have a very brief part here. I wanted to make
01:08:09 20 the Court aware that we have prepared a brief I would
01:08:14 21 like to submit to Your Honor whenever you're ready for
01:08:16 22 it on common benefit assessment. Just briefly, so for
01:08:20 23 people listening, if they want to know what's in it, it
01:08:24 24 will be seeking a five percent assessment with regard to
01:08:26 25 attorney's fees, and a one percent with regard to costs.

01:08:29 1 Now, in the brief you'll see that if you compare that to
01:08:31 2 other litigations like this, that's actually much lower
01:08:37 3 than some cases that are even larger. In Vioxx, for
01:08:40 4 example, we sought an eight percent assessment.
01:08:42 5 Ultimately Judge Fallon awarded six and a half. That
01:08:45 6 was a \$4.85 billion settlement.

01:08:48 7 A couple of important things about this.
01:08:50 8 This is sort of a way to make fair the fact that all
01:08:53 9 these phenomenon attorneys, most of whom are in the room
01:08:56 10 and elsewhere, worked very hard on this case, trying
01:08:59 11 cases, preparing cases, doing discovery, spending hours
01:09:02 12 and hours and hours putting this settlement together,
01:09:05 13 should be compensated for their time.

01:09:07 14 But most importantly it is not an assessment
01:09:09 15 that would come out of any share by the client.
01:09:11 16 Whatever the client has agreed to with their attorney --
01:09:14 17 it's a hold back for attorney's fees only. So there is
01:09:18 18 no additional cost to the clients out there with regard
01:09:20 19 to this.

01:09:22 20 Also importantly the one percent hold back
01:09:25 21 we seek for costs is not only for costs that have been
01:09:29 22 expended in litigating this case over the last years;
01:09:32 23 it's also to be used against settlement costs, costs
01:09:36 24 with regard to settlement administration going forward;
01:09:38 25 BrownGreer and the people that will be doing lien

01:09:42 1 resolution and the like. So whenever you're ready,
01:09:44 2 Judge, we're ready to send it to you.

01:09:47 3 THE COURT: We previously discussed this, I
01:09:49 4 believe, in Cleveland. Am I correct?

01:09:52 5 MR. SEEGER: Yes, you are.

01:09:54 6 THE COURT: Case management order CM Order
01:09:58 7 13 at paragraph 2(b)(2) set the three percent. The
01:10:07 8 increase to five percent, it seems to me, is in light of
01:10:16 9 the effort expended and that which will be needed in the
01:10:23 10 future months. But I await your motion accompanied by a
01:10:32 11 brief, and I will review it at that time.

01:10:35 12 My sense, to be very honest, is that -- I've
01:10:39 13 thought about this over the last couple of months, and
01:10:43 14 unless I hear or learn something to the contrary, the
01:10:48 15 motion will be looked upon favorably.

01:10:51 16 Thank you.

01:10:54 17 Now, the tall one here.

01:11:00 18 MR. BLIZZARD: Good evening, Your Honor.
01:11:01 19 My name is Ed Blizzard, and it's a privilege to be here
01:11:06 20 in front of Your Honor and in front of the State Court
01:11:08 21 Judges, as well as it has been a privilege for me to
01:11:12 22 work with the great lawyers that I've had the
01:11:15 23 opportunity to work with; not only my own colleagues,
01:11:21 24 but the great lawyers on the other side of this case.

01:11:24 25 As long and difficult as it has been to

01:11:26 1 reach this stage of the litigation -- and it has been
01:11:29 2 long and difficult. I heard Susan say that every word
01:11:33 3 was argued over, and I think that's a significant
01:11:36 4 understatement. There were probably words that weren't
01:11:39 5 there that were argued over as well. But as long and
01:11:43 6 difficult as it has been for the lawyers, it's been even
01:11:47 7 longer and more difficult for the clients that we
01:11:50 8 represent. And the most common question that I know I
01:11:54 9 get from my clients and I know others get from theirs
01:11:57 10 is: When? When am I going to get my compensation?
01:12:01 11 And so I'm here this afternoon or this evening to talk
01:12:04 12 about funding briefly.

01:12:07 13 And I'm not going to get into the granular
01:12:10 14 details of it, just to say really the concept that
01:12:15 15 overlays the very specific provisions of this settlement
01:12:19 16 agreement is that the money will be there to pay the
01:12:23 17 claims when they are evaluated and when they are ready
01:12:28 18 to be paid.

01:12:29 19 Now, to get a little bit more specific about
01:12:32 20 the deadlines here, there is an enrollment deadline and
01:12:37 21 a claim deadline that is April 1 of next year. And
01:12:41 22 you've heard that there are the documentation
01:12:46 23 requirements are in the details of the settlement
01:12:50 24 agreement. And they're actually very fair and
01:12:52 25 efficient. And we think it's going to be relatively

01:12:55 1 simple for people to meet those requirements. The
01:12:59 2 claims administrator, BrownGreer, has committed as part
01:13:03 3 of the agreement to be able to review the base claims
01:13:07 4 all within a 90-day period after the enrollment
01:13:11 5 deadline. The first payment that can be issued in this
01:13:18 6 case will come after the defendant has decided whether
01:13:22 7 or not to exercise its walk-away rights. They have 60
01:13:25 8 days to do that after the enrollment deadline which,
01:13:29 9 would put that date at June 1. They could decide before
01:13:33 10 June 1 to not exercise their walk away right, or they
01:13:38 11 could wait until June 1. Whenever it is that they
01:13:42 12 decide that the requirements of the agreement have been
01:13:44 13 met and they do not intend to walk away from the
01:13:47 14 settlement, whenever that is, the claims administrator
01:13:51 15 can issue an initial report of those people whose claims
01:13:54 16 are ready to be paid. And within 15 days of that report
01:13:59 17 being issued, 15 business days, the company is committed
01:14:03 18 to fund the escrow agent to pay those claims. So the
01:14:08 19 kind of funding mechanism we have here, I believe, is
01:14:11 20 very efficient and will get compensation out to our
01:14:16 21 clients quickly, likely in the late spring or early
01:14:21 22 summer of next year, beginning then. If the walk-away
01:14:25 23 deadline is -- or the walk-away rights are exercised
01:14:29 24 at -- are not exercised at the June 1 deadline, we
01:14:34 25 expect that initial payments on the base claim will go

01:14:37 1 out sometime in July perhaps. So again, we think the
01:14:42 2 funding here, the structure of this settlement, the
01:14:45 3 concepts and ideas that are incorporated within the
01:14:48 4 settlement agreement will answer the question of the
01:14:53 5 clients that we hear often: When will I receive my
01:14:56 6 compensation? Certainly for the base claims we believe
01:14:59 7 that it will be soon.

01:15:01 8 So those are the comments I would have to
01:15:03 9 offer on funding. And I again am privileged and happy
01:15:08 10 to have been able to appear before Your Honor today.
01:15:10 11 Thank you, Your Honor.

01:15:11 12 THE COURT: Thank you. I think that it is
01:15:23 13 important to recognize again that in light of the
01:15:37 14 history and today's developments with respect to this
01:15:41 15 case, there is a need to afford counsel across the
01:15:50 16 country sufficient opportunity to meet and confer with
01:15:55 17 their respective clients. That will take some
01:16:02 18 significant time. Within the next week, let us say by
01:16:09 19 the end of Wednesday, November the 27th, please advise
01:16:18 20 me and my fellow State Court Judges how long that
01:16:25 21 process is anticipated to take. I may, at that point,
01:16:35 22 have further action to take with respect to pending
01:16:44 23 cases, but will confer with both sides before doing so.
01:16:57 24 And I am sure that my State Court colleagues will review
01:17:03 25 the same thing and receive input from you and through

01:17:11 1 you from me.

01:17:16 2 I'd like to ask the State Court Judges,
01:17:23 3 starting with Judge Kramer, if they would like to make
01:17:29 4 additional comments or raise questions for any of the
01:17:33 5 speakers. Judge Kramer.

01:17:42 6 JUDGE KRAMER: This is Judge Kramer
01:17:43 7 speaking. I have no questions. I wouldn't even begin
01:17:47 8 to try to supplement or top the kudos that have been
01:17:52 9 expressed, although I would like to add one honorary
01:17:59 10 title to this group of cases: You shall all hereby be
01:18:02 11 known as the bellwether case and complex litigation and
01:18:06 12 multi district matters.

01:18:09 13 THE COURT: Thank you, Judge.
01:18:12 14 Judge Martinotti.

01:18:17 15 JUDGE MARTINOTTI: I echo what the Judge
01:18:19 16 said. There's an echo in my courtroom when I said that.
01:18:23 17 I would like to thank all counsel, commend all counsel
01:18:29 18 for cooperating with each other and the Court, and of
01:18:33 19 course Judge Katz; an outstanding job bringing it home
01:18:37 20 for us. Well done and much appreciated by New Jersey.

01:18:42 21 THE COURT: Thank you.
01:18:43 22 Judge Dooling.

01:18:55 23 JUDGE DOOLING: I want to thank Judge Katz.
01:18:57 24 I look forward to seeing all of my attorneys as soon as
01:19:00 25 possible.

01:19:01 1 THE COURT: And, Judge Dooling, I will add
01:19:04 2 one thing. As I've spoken to you by phone, it's your
01:19:08 3 obligation as a judicial officer to take care of our
01:19:11 4 grandchildren in Chicago and our new great granddaughter
01:19:16 5 in Chicago. And you've accepted that responsibility.

01:19:21 6 JUDGE DOOLING: I have.

01:19:24 7 THE COURT: Judge Mittelstaedt.

01:19:27 8 JUDGE MITTELSTAEDT: I'd like to say thank
01:19:29 9 you to everyone for all the hard work, particularly
01:19:33 10 Judge Katz and all counsel.

01:19:38 11 THE COURT: Thank you. I want to thank a
01:19:46 12 few people here in addition. I want to thank the I.T.
01:19:51 13 people; David McKiddie, who is our federal I.T., working
01:19:56 14 with Angela Stoldt, plaintiff's I.T. person; Tracy, our
01:20:04 15 court reporter. Finally, I'd like to thank Cathy
01:20:04 16 Garcia-Feehan, without whom I could not have performed
01:20:04 17 my duties, and whose help also benefited the attorneys
01:20:13 18 greatly. I know it sounds like gilding the lily too
01:20:21 19 much, but I have never been involved for such a long
01:20:27 20 period of time with people who have worked so diligently
01:20:33 21 as the people who occupy these special positions. I
01:20:39 22 thank you very much. I know -- I hope I'm not being
01:20:46 23 overly optimistic -- that this will work out well.
01:20:50 24 Thank you. And that concludes this hearing.

25 (Concluded at 5:50 p.m.)

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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/ Tracy L. Spore _____

Tracy L. Spore, RMR, CRR

Date

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