

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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IN RE: DEPUY ORTHOPAEDICS,	)	MDL Docket No. 1:10-md-2197-DAK
INC. ASR HIP IMPLANT	)	
PRODUCTS LIABILITY	)	
LITIGATION	)	JUDGE DAVID A. KATZ
	)	
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	)	
This Document Relates to:	)	
ALL CASES	)	
_____	)	

**PLAINTIFFS' STATUS REPORT**

This status report is written to provide an update on various issues that remain pending both here in the MDL and in the various state court cooperating jurisdictions. As this Court is well aware, the MDL leadership and the leadership in the state court cooperating jurisdictions have met several times with the defense to address the various categories of cases at issue.

**Coordination between Leadership In the Various  
Jurisdictions and Cooperation Between Courts**

This Court made it clear from the outset of this litigation that it respected the jurisdictional rights and obligations of state courts and that coordinated efforts between the courts would be cooperative and voluntary. The MDL leadership and the leadership appointed in the various state courts worked together to conduct the discovery, including taking depositions, preparing and presenting the scientific experts, setting and preparing for trials and evaluating significant case specific data. The MDL leadership and the leadership in the cooperating state

court jurisdictions had, prior to settlement, coordinated trial settings in each venue. The case specific data obtained through these efforts and the cooperative efforts between leadership led in large part to the settlement itself. The quality of case specific work up by individual law firms, which included case specific discovery, evaluation of medical records and damage claims, and review of individual cases for extra-ordinary injuries led to the participation results achieved.

### **Settlement Program**

On November 19, 2013, the parties announced a settlement of qualifying ASR cases that essentially includes ASR patients who had a revision surgery prior to August 31, 2013. Since then, approximately 5000 individual ASR patients whose cases were pending in this MDL have enrolled in the settlement program. The participation rates for qualifying ASR cases in the MDL are in excess of 94%. The corresponding results in cooperating state court jurisdictions are similar. More than 2000 ASR patients who have claims pending outside of the MDL have also enrolled in the settlement. The settlement is fully vested and all qualifying claimants who enrolled are in the process of being compensated.

The vast majority of law firms did a very admirable job identifying the key records required under the terms of the Agreement, submitting the appropriate forms, and qualifying their ASR clients without claim defects. To date, Brown Greer has issued over 1000 claim notices and, after constant communication over the last two months with Brown Greer, including in person meetings earlier this week, Brown Greer projects that the overwhelming majority of claims will be complete by the end of the August.

The PSC will provide a more specific report on the settlement program at the hearing.

**ASR Patients Whose Revision Surgeries Took Place After August 31, 2014**

The Court has made it clear that a plan related to these cases is necessary. The parties have continued a significant amount of review and analysis of cases in which the revision took place after August 31, 2013. The parties are still gathering data on these claims and the PSC has recommended that counsel promptly disclose post August 31, 2013 revision claims. Other than registration updates and preliminary disclosures, the PSC does not believe that case specific discovery is necessary at this time because previous case specific evaluation efforts have revealed that most of these patients need time to medically clear post revision surgery. Whether these cases resolve through settlement or litigation efforts remains to be seen, but the parties are committed to the prompt evaluation of these cases.

**Non-Participating (Opt-Out) Cases**

There is no obligation for lawyers to recommend the settlement to all of their clients. Instead, the decision to participate in the Settlement Program belongs to each individual ASR patient and each ASR patient is entitled to make an informed individual decision based upon his or her specific medical and personal facts and circumstances. Much like with the voluntary cooperation achieved with state court jurisdictions, the Court has made it extremely clear to the parties that it respects the individual patient's decision to participate in the settlement or not. With respect to qualifying cases that have opted out of the Settlement Program, the Court has asked the PSC to attempt to conduct an analysis of these cases by category. Many of the issues that would trigger an individual decision to opt-out of the program have been under review for months and the company has thus far allowed late enrollment of hundreds of cases in which the questions have been resolved. Some of the patient issues, such as concerns over significant

medical liens, have been resolved. Still, almost all of the firms who have substantial inventories have some opt-out cases. The PSC's position has been to evaluate these cases with the assistance of the Special Masters and work towards a litigation plan with the defense relating thereto. The PSC remains adamantly apposed to *Lone Pine* orders under these circumstances.

Prior to the settlement announcement, the PSC made several requests for cases from all counsel for trial and remand consideration. The same efforts should be conducted for unsettled cases since almost all of the previously submitted cases have resolved. Much like with the original trial settings, the case specific discovery, expert preparation and discovery, and trial motions can be conducted under the supervision of this court. Much of that work has been completed so trial selection and settings should not be significantly delayed if other efforts fail.

**Unrevised ASR Patients**

Currently, discovery obligations are stayed as to ASR patients who have yet to undergo a revision surgery. There is one category of unrevised patients, where a revision is medically necessary but the patient cannot undergo a revision surgery for medical reasons, which needs to be explored further. The PSC has had significant contact with firms who have responded to requests for information regarding these cases. The PSC has been collecting information on this category of cases and there have been significant discussions with the defense about further discovery efforts necessary for evaluation of these cases and planning relating thereto.

Dated: July 16, 2014

Respectfully submitted,

ZOLL, KRANZ & BORGESS, LLC,

By:       /s/ Michelle L. Kranz      

Michelle L. Kranz (0062479)

ZOLL, KRANZ & BORGESS, LLC  
6620 W. Central Ave., Ste. 100  
Toledo, OH 43617  
Tel: (419) 841-9623  
Fax: (419) 841-9719  
Email: [michelle@toledolaw.com](mailto:michelle@toledolaw.com)

*Plaintiffs' Liaison Counsel*

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

Dated: July 16, 2014

/s/ Michelle L. Kranz  
*Plaintiffs' Liaison Counsel*