

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

IN RE: DEPUY ORTHOPAEDICS, INC.
PINNACLE HIP IMPLANT
PRODUCTS
LIABILITY
LITIGATION

MDL Docket No.

This Order Relates to:

Alicea – 3:15-cv-03489-K
Barzel – 3:16-cv-01245-K
Kirschner – 3:16-cv-01526-K
Miura – 3:13-cv-04119-K
Stevens – 3:14-cv-01776-K
Stevens – 3:14-cv-02341-K

3:11-MD-2244-K

ORDER

Before the Court are Plaintiffs' Motion in Limine [*Miura* Doc. 65; *Stevens* Doc. 58; *Stevens* Doc. 58; *Alicea* Doc. 62; *Barzel* Doc. 61; *Kirschner* Doc. 56] and Defendants' Omnibus Motion in Limine [*Miura* Doc. 73; *Stevens* Doc. 66; *Stevens* Doc. 66; *Alicea* Doc. 67; *Barzel* Doc. 69; *Kirschner* Doc. 64]. As set forth below, the motions are GRANTED in part and DENIED in part.

I. Agreed Motions in Limine

The parties agree that they will not offer evidence or make arguments without first asking for a ruling from the Court, outside the jury's presence, on the following subjects:

1. Any reference that this litigation may cause an increase in the cost of purchasing or maintaining insurance.
2. Any reference or evidence that Plaintiffs are covered by some form of insurance or other collateral source for the incident in question, specifically including, but not limited to, health insurance or Medicare/Medicaid.
3. Any reference to or mention of any settlement demands, offers, or negotiations.
4. Any reference to or mention of the refusal of either party to enter into a stipulation prior to trial or otherwise seeking any stipulation from counsel in the presence of the jury.
5. Any reference that an award of punitive damages is unconstitutional or illegal.
6. Any reference to alleged recreational drug use by any Plaintiff.
7. Any suggestion or reference that any recovery that Plaintiffs may receive in this case will be subject to pre-judgment interest or post-judgment interest.
8. Any reference to the outcome of the Paoli, Aoki, or Andrews trials.
9. Any reference to experts not designated in these cases.
10. Any reference to or mention of a decision by another court to exclude or limit the expert testimony of any witness.
11. Any reference to any activities of any Plaintiffs involving medical marijuana or other marijuana activities.
12. Any reference to, or evidence of, criminal record of any Plaintiff with respect to misdemeanor charges not involving crimes of dishonesty.
13. Evidence of, or any reference to, arrests or criminal charges that did not result in a conviction or a guilty plea.
14. Any questions or references to the sexual relations of any of the Plaintiffs that go beyond change in frequency and duration due to injuries at issue in this lawsuit, including questions or references regarding position.
15. Any reference to the fact Plaintiff Eugene Stevens has never been married to the mothers of his children.

16. Any reference to a child support judgment or wage garnishment against Plaintiff Eugene Stevens for failure to pay child support.
17. Any reference to a potential lawsuit by Plaintiff Eugene Stevens for the failure of his ceramic on metal implant.
18. Any reference to a credit card judgment against Plaintiff Yolanda Stevens.
19. Any reference to the fact Plaintiff Hazel Miura has never been married to the father of her child.
20. Any reference to bankruptcy proceedings by any of Plaintiffs.
21. Any reference or questions that suggest an extramarital relationship or extramarital impropriety by Plaintiff Ramon Alicea.
22. Any reference to the marital status or separation from spouse of Plaintiff Hazel Miura.
23. Any reference that the attorneys representing the Plaintiffs and the attorneys' law firms primarily represent plaintiffs in lawsuits or specialize in personal injury or product liability litigation, advertise, seek to obtain clients in a manner different from that used by defense counsel, or routinely employ contingent fee arrangements, except with respect to Plaintiffs' counsel's advertisements or to the extent Plaintiffs seek to suggest that Defendants' counsel are better funded or that companies are typically funded in litigation.
24. Any reference to either party filing motions in limine, the contents thereof, or other such motions to exclude evidence and their contents, and any agreements or proceedings in connection with this motion or reference to any such matter.
25. Any evidence or testimony that the medical care provided to (1) Plaintiff Ramon Alicea by Dr. Jonathan Mallen or Dr. James Germano; (2) Plaintiff Uriel Barzel by Dr. David Shein; (3) Plaintiff Denise Buonaiuto by Dr. Scott Russinoff; (4) Plaintiff Claudia Heroth by Dr. Thomas Eagan or Dr. Jonathan Gainor; (5) Plaintiff Karen Kirschner by Dr. Bradley Gerber or Dr. David Shein; (6) Plaintiff Hazel Miura by Dr. David Shein; (7) Plaintiff Eugene Stevens by Dr. David Shein or Dr. Elton Strauss; or (8) Plaintiff Michael Stevens by Dr. Peter Terhaar or Dr. Graham Huckell fell below the standard of care, or constituted malpractice.

26. Any reference to any insurance policy for Defendants or their affiliated companies.
27. Any reference to any expert's personal matters such as divorce proceedings and employment disputes.
28. Any reference to other lawsuits by or against any of the parties, including any reference to the amount of money recovered by settlement or trial.
29. Any reference to any of the parties' or witnesses' religious views.
30. Any reference to any of the parties' conversations protected by attorney-client privilege.
31. Any reference to lost wages by any Plaintiff.
32. Any reference to size of defense team/number of defense counsel/references to lawyers not trying the case to the jury/gestures to defense side of room when plaintiffs have shadow jury sitting on that side.
33. Any reference to insurance.
34. Any reference to attorneys' fees.
35. "Golden Rule" Arguments.
36. Any reference to Settlement Negotiations/Offers To Settle.
37. Any evidence or suggestion that Eugene Stevens' ceramic head may have been recalled or that he contemplated a lawsuit over it.
38. Examinations regarding pleadings.
39. Any reference to pain killers.
40. References to *Doubt Is Their Product: How Industry's Assault on Science Threatens Your Health*.

II. Plaintiffs' Contested Motions in Limine

Defendants are prohibited from offering evidence or making arguments without first asking for a ruling from the Court, outside the jury's presence, on the following subjects:

1. Any reference that the attorneys representing the Plaintiffs and the attorneys' law firms primarily represent plaintiffs in lawsuits or specialize in personal injury or product liability litigation, advertise, seek to obtain clients in a manner different from that used by defense counsel, or routinely employ contingent fee arrangements.
2. Any reference to the Plaintiffs' fee arrangement and/or who is paying expenses or is responsible for expenses in connection with this litigation.
3. Any evidence or testimony that the medical care provided to (1) Plaintiff Ramon Alicea by Dr. Jonathan Mallen or Dr. James Germano; (2) Plaintiff Uriel Barzel by Dr. David Shein; (3) Plaintiff Denise Buonaiuto by Dr. Scott Russinoff; (4) Plaintiff Claudia Heroth by Dr. Thomas Eagan or Dr. Jonathan Gainor; (5) Plaintiff Karen Kirschner by Dr. Bradley Gerber or Dr. David Shein; (6) Plaintiff Hazel Miura by Dr. David Shein; (7) Plaintiff Eugene Stevens by Dr. David Shein or Dr. Elton Strauss; or (8) Plaintiff Michael Stevens by Dr. Peter Terhaar or Dr. Graham Huckell was improper, inadequate, fell below the standard of care, or constituted malpractice.
4. The personal use of drugs or products produced or manufactured by Defendants by any of Defendants' employees or their family members. (i.e., references to Defendants' employees or their parents, spouses, etc. having Pinnacle hip implants).
5. Any mention of advertisements or other communications by any lawyer or law firm, or that lawyers may have advertised for persons injured by the use of Pinnacle hip implants, or that metal-on-metal hip implant revision rates have been affected by lawyers or lawyer advertising.

6. Any reference suggesting or in any way reflecting the financial status or resources of any of the attorneys representing the Plaintiffs, or those attorneys' law firms, or any of those attorneys' other businesses or cases. (i.e., any references to any lawyer's financial status or assets, or their success in other litigation).
7. Any references to the means of transportation of witnesses, Plaintiffs, or any of the lawyers by private aircraft before or during the pendency of this litigation.
8. Any reference to how, when, or under what circumstances Plaintiffs selected or employed their attorneys, the name of any other lawyer retained or consulted by Plaintiffs, whether or not such lawyers were the original attorneys of record, and whether such lawyer or any other lawyer referred them to their current attorneys. (i.e., in order to avoid confusion since lawyers appointed by the Court to the PEC will be handling the trial, referencing any Plaintiff's primary counsel or other associated counsel in the case).
9. Any reference to Plaintiffs' counsel's use of jury consultants.
10. Any reference to any alleged malpractice claims involving the parties' designated experts.
11. Any reference to or questioning of Dr. Kessler regarding confidential or proprietary matters relating to Immucor, Inc., Tokai Pharmaceuticals, Aptalis Holdings, or any other company in which TPG Capital has an interest.
12. Any evidence or reference to Dr. Gannon's reports or testimony in the Paoli case.
13. Any evidence or reference to any Plaintiff receiving counseling, medication, or other treatment for mental health care conditions.
14. Any reference to or mention of a decision by another court to exclude or limit the expert testimony of any witness.
15. Any reference to or mention of the former military service of any lawyer representing a party in this case.
16. Use of any deposition video or associated technology that alters the appearance of what was displayed at the deposition, including but

- not limited to the use of “highlighting,” enlarging, or otherwise emphasizing documents or portions of documents, unless the emphasis was done during the deposition and is part of the deposition video record.
17. Any reference to matters unrelated to any expert’s professed areas of expertise, experience, or payment (including past legal, consulting, and expert work), including but not limited to personal matters such as divorce proceedings, employment disputes, and any other unrelated matters.
 18. Any reference to medical treatment or a medical condition of any Plaintiff that is unrelated to the claims in this case, or conditions mentioned in Plaintiffs’ medical records that were never in fact confirmed as diagnoses, any reference to opinions in the medical records of the Plaintiffs made by healthcare personnel that are not witnesses at trial or by deposition, and any reference to any medical condition of any member of any Plaintiff’s family.
 19. Any reference to any drug use by any Plaintiff, including prescription medication, over-the-counter medication, or recreational drugs, unless it is specifically related to the claims at issue in this case.
 20. Any reference to Plaintiff Ramon Alicea’s use of Percocet or any other medication while driving.
 21. Any reference to alcohol consumption, tobacco use, drug addiction, or to “drug-seeking” or other addictive behavior on the part of any of the Plaintiffs.
 22. Any reference to any activities of any Plaintiffs involving medical marijuana or other marijuana activities.
 23. Any reference to vulgar language used by Plaintiff Ramon Alicea at his deposition.
 24. Any reference to the separation of Plaintiff Michael Stevens and Plaintiff Audra Stevens and subsequent marital counseling that took place prior to Plaintiff Michael Stevens’ first hip implant surgery.
 25. Any reference to court advocating by Plaintiff Hazel Miura.
 26. Any reference to alleged spoliation by Hazel Miura, including reference to her throwing out documents in 2014 that were related to research she did prior to her index surgery.

III. Defendants' Contested Motions in Limine

Plaintiffs are prohibited from offering evidence or making arguments without first asking for a ruling from the Court, outside the jury's presence, on the following subjects:

1. Demands for documents or stipulations in the presence of the jury.
2. Evidence or argument concerning the deferred prosecution agreement ("DPA") entered between DePuy and the Department of Justice in September 2007, including: the affidavit signed by Special Agent Brian D. Dyson in support of the criminal complaint that resulted in the DPA; the existence, activities or reports of the DPA Monitor; and the separate civil settlement agreement and any evidence of the \$84 million settlement amount DePuy paid to resolve purely civil claims by the government arising out of the matters covered by the DPA.
3. Evidence of any other civil or criminal action or investigation involving J&J or any affiliated company and its employees that has been undertaken by any agency or branch of any state or national government, including, but not limited to: (1) any investigations related to, or alleged violations of, the Foreign Corrupt Practices Act ("FCPA"), including those related to Greece, Iraq, Poland and Romania; (2) any investigations, claims or settlements related to the prescription drugs Risperdal, Invega and Natrecor; (3) any investigations or claims related to opioid products manufactured by Janssen Pharmaceutical, a non-party subsidiary of Johnson & Johnson; (4) any prosecutions, investigations, indictments or trials of employees of Johnson & Johnson and its subsidiaries or affiliated entities or distributors; (5) any fines, monetary penalties, or disgorgements of any sums of money by Johnson & Johnson or any of its subsidiaries or affiliated entities; and (6) any reference to Saddam Hussein or his "henchmen."
4. Evidence or argument related to any alleged "systemic harm,"¹¹ including cancer, erectile dysfunction, vertigo or hearing loss, from the release of metal particles or ions associated with Pinnacle or other metal-on-metal devices.
5. Evidence, testimony, reference, or suggestion that metal ions can cross a

placenta during a woman's pregnancy, or evidence, testimony, or argument regarding any other medical problems that plaintiffs have not experienced and do not allege they are likely to experience in the future. As set forth below, such evidence would be irrelevant and unduly prejudicial.

6. References to the RCH email.
7. References to any issues or litigation involving non-hip products manufactured by subsidiaries of Johnson & Johnson.
8. MHRA June 29, 2017 Medical Device Alert.

All other requested relief in the motions is DENIED.

SO ORDERED.

Signed September 19, 2017.



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UNITED STATES DISTRICT JUDGE