

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

IN RE: DEPUY ORTHOPAEDICS,	§	
INC. PINNACLE HIP IMPLANT	§	MDL Docket No.
PRODUCTS LIABILITY	§	
LITIGATION	§	3:11-MD-2244-K
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This Order Relates To:	§	
<i>Aoki</i> – 3:13-cv-1071-K	§	
<i>Christopher</i> – 3:14-cv-1994-K	§	
<i>Greer</i> – 3:12-cv-1672-K	§	
<i>Klusmann</i> – 3:11-cv-2800-K	§	
<i>Peterson</i> – 3:11-cv-1941-K	§	
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**ORDER GRANTING IN PART AND DENYING IN PART
THE PARTIES' MOTIONS IN LIMINE**

Before the Court are Plaintiffs' Motion in Limine [*Aoki* (3:13-cv-1071-K) Doc. 75, *Christopher* (3:14-cv-1994-K) Doc. 63, *Greer* (3:12-cv-1672-K) Doc. 69 *Klusmann* (3:11-cv-2800-K) Doc. 94, and *Peterson* (3:11-cv-1941-K) Doc. 86], Defendants' Omnibus Motion in Limine [*Aoki* (3:13-cv-1071-K) Doc. 74, *Christopher* (3:14-cv-1994-K) Doc. 62, *Greer* (3:12-cv-1672-K) Doc. 68 *Klusmann* (3:11-cv-2800-K) Doc. 93, and *Peterson* (3:11-cv-1941-K) Doc. 85], and Plaintiffs' Supplemental Motion in Limine [*Aoki* (3:13-cv-1071-K) Doc. 89, *Christopher* (3:14-cv-1994-K) Doc. 77, *Greer* (3:12-cv-1672-K) Doc. 83 *Klusmann* (3:11-cv-2800-K) Doc. 108, and *Peterson* (3:11-cv-1941-K) Doc. 100]. For the reasons set forth below, the motions are GRANTED in part and DENIED in part.

The parties 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 this litigation may cause an increase in the cost of purchasing or maintaining insurance.
2. 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.
3. Any reference to the Plaintiffs' fee arrangement and/or who is paying expenses or is responsible for expenses in connection with this litigation.
4. 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.
5. Any reference to or mention of any settlement demands, offers, or negotiations.
6. 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.
7. Any reference to the filing of Plaintiffs' motion in limine, its contents, other such motions and their contents, and any agreements or proceedings in connection with this motion or reference to any such matter.
8. Any reference that an award of punitive damages is unconstitutional or illegal.
9. Any reference to alleged recreational drug use by any Plaintiff.

10. Any reference to Dr. Greer's work with gender dysphoria patients or patients seeking gender reassignment surgery, or surgeries performed on male or female genitalia.
11. Any reference to Jay Christopher's tattoos.
12. Any reference to malpractice claims asserted against Donald Greer.
13. Any evidence or testimony that the medical care provided to (1) Plaintiff Margaret Aoki by Dr. Pearce; (2) Plaintiff Jay Christopher by Dr. Kearns; (3) Plaintiff Donald Greer by Dr. Goletz or Dr. Morrey; or (4) Plaintiff Robert Peterson by Dr. Schoch was improper, inadequate, fell below the standard of care, or constituted malpractice.
14. Any comment or reference to philanthropy or good deeds carried out by Defendants or their employees.
15. The personal use of drugs or products produced or manufactured by Defendants by any of Defendants' employees or their family members.
16. Any reference suggesting or in any way reflecting the financial status or resources of any of the attorneys, or their law firms, or any of those attorneys' other businesses or cases.
17. Any reference to how, when, or under what circumstances the parties selected or employed their attorneys, the name of any other lawyer retained or consulted, 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.
18. 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.
19. Any reference that the attorneys representing the Plaintiffs and their 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.
20. Any reference to counsel's use of jury consultants.

21. 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.
22. Any reference to the Plaintiffs' fee arrangement and/or who is paying expenses or is responsible for expenses in connection with this litigation.
23. Any reference to any medical condition of any member of Plaintiffs' family.
24. 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.
25. Any reference to any alleged malpractice claims involving Dr. Pearce, Dr. Kearns, Dr. Goletz, Dr. Morrey, Dr. Schoch, Dr. Lozman, Dr. Haidukewych, Dr. Evans, Dr. Irving, Dr. Kantor, Dr. Gannon, Dr. Athanasou, Dr. Phillips, Mr. (Dr.) Nargol, Dr. Egilman, or Dr. Kessler.
26. Any evidence or reference to any Plaintiff receiving counseling, medication, or other treatment for mental health care conditions.
27. Any reference to the outcome of the *Paoli* trial.
28. Any reference to non-public information about products sold by Immucor, or questioning of Dr. Kessler regarding confidential or proprietary matters relating to Immucor.
29. Any reference to or mention of a decision by another court to exclude or limit the expert testimony of any witness.
30. 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.
31. Any reference to matters unrelated to a witness's professed areas of expertise, experience, or payment (including past legal, consulting, and expert work in a different subject area), including but not limited to personal matters such as divorce proceedings, employment disputes, and any other unrelated matters.

32. Any reference to medical treatment or a medical condition of Plaintiffs that is unrelated to the claims in this case.
33. Any reference to a military disability rating for Plaintiff Robert Peterson.
34. Any reference to Arthrocare, Inc. including, but not limited to, Barbara D. Boyan and any convictions and underlying conduct of former executives.
35. Any reference to any insurance policy for Defendants or their affiliated companies.

All other requested relief in the motions is DENIED.

SO ORDERED.

Signed January 11, 2016.


ED KINKEADE
UNITED STATES DISTRICT JUDGE