

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: DePUY ORTHOPAEDICS, INC.,
ASR HIP IMPLANT PRODUCTS

Case No. 1: 10 md 2197

**ORDER RE: ENROLLMENT AND
INFORMED CONSENT**

This matter comes before the Court on the status of enrollment regarding the U.S. Settlement Program.

On May 5, 2014 the undersigned requested a status report on Plaintiff/Claimant enrollment from the parties and Claims Administrators. The parties provided the Court with the Brown Greer Report which documents the participation rates for potential qualified United States Claimants (PQUSC's) based upon registration data both generally and on a law firm by law firm basis.

Following review of the Report, the Court inquired of the Special Masters with respect to one particularly notable anomaly. The data provided by Brown Greer documents a fourteen percent (14%) participation rate for the Harrison Davis Steakley Morrison, P.C., firm and an overall ninety-five percent (95%) participation rate for the remaining 800 law firms that have cases pending in either state or federal court exclusive of Harrison Davis. Stated differently, the Harrison law firm has the lowest participation rate in this MDL as contrasted with the rest of the country combined.

Brown Greer also notes Parker McDonald is listed as interested counsel for the Harrison firm on these cases. Without delineating the multiple complaints raised with the Court since 2011

concerning Parker McDonald's case acquisition issues and their attempt to defeat resolution of this matter, suffice to say those complaints raise serious concerns in this Court's view.

On May 5, 2013 the Court requested that Special Master Marina Corodemus informally address the disparate participation rate issue with the Harrison Davis firm.¹ The Defendants have also raised the issue to commence case specific discovery including case specific expert reports for the Harrison Davis/Parker McDonald cases if they are eligible for but not participating in the U.S. Settlement Program. Special Master Corodemus provided a proposed order drafted by defense counsel to the Harrison firm and continued the meet and confer process with them.

On May 13, 2014 the Court received a report from Special Master Corodemus that did not satisfy the Court's concerns with respect to informed consent, due primarily to a lack of cooperation from the Harrison Davis firm.

This Court takes the informed consent process very seriously. The totality of circumstances with respect to these particular cases calls into question whether each individual client has had a full and fair opportunity to make a meaningful decision regarding participation in this settlement. Such a meaningful opportunity would include, at a minimum, a complete understand of the program benefits, including case specific base payments, extra-ordinary injury fund analysis based upon medical record review and consultation with the client, and lien resolution analysis. The Court expects that such an analysis was completed for each client and communicated to each client prior to the opt-out decision.

¹ Each Special Master worked with individual firms to assist with questions relating to the settlement and the informed consent process. This process has worked exceptionally well as hundreds of inquiries were made to the Special Masters, the Settlement Oversight Committee and Claims Administrators. Special Master Corodemus has been in communication with Harrison Davis since March 2014.

Therefore, this Court orders that Special Master Corodemus shall meet and confer with Harrison Davis/Parker McDonald to ensure the the ethical requirements of this Court are met and each individual plaintiff has been given a full, fair and meaningful opportunity to participate in this settlement program.

Within 20 days of the entry of this Order, Harrison Davis, Parker McDonald and Special Master Corodemus shall provide the Court with a complete report as to each eligible claimant of these firms.

The Court notes that the Special Masters will remain available to address any questions relating to the settlement available and assist in the informed consent process.

IT IS SO ORDERED.

S/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE