FILED
MAY 20 2014
BRIAN R. MARTINOTTI
J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

CASE NO. 296
MASTER DOCKET NO.:BER-L-936-13

IN RE Stryker Rejuvenate & ABG II

Modular Hip Implant LITIGATION

CIVIL ACTION
CASE MANAGEMENT ORDER #16

All prior orders remain in full force and effect except as modified by this Order

This Matter having been assigned to the Honorable Brian R. Martinotti, J.S.C., pursuant to the Supreme Court's Order of January 24, 2013, designating this matter for Multicounty Litigation Status ("MCL") of Stryker Rejuvenate & ABG II Modular Hip Implant Litigation (hereinafter referred to as "Stryker") [a Multidistrict Litigation ("MDL") pending before the Honorable Donovan W. Frank, USDJ][1], and the Court having reviewed the proposed agenda, conducting a CMC on May 20, 2014, counsel appearing, for good cause shown and for the reasons set forth on the record,

IT IS on this 20th day of May 2014,

ORDERED:

I. COMPLIANCE WITH PRIOR ORDERS:

[1] Also pending is the consolidated matter in Florida State Court, with the Honorable Marina Garcia-Wood presiding.

1. All Plaintiff Fact Sheets received after 1/31/14 will have DFS responses served within 90 days of service of the PFS.

B. Payment for Broadspire-related documents should be made by check payable to "Broadspire," with an indication in the memo field of both the plaintiff's name and Broadspire claim number. Checks may be mailed to Nora Wolf, Gibbons P.C., One Gateway Center, Newark, NJ 07102.

C. Protective Order: Status of meet & confer regarding final form [The parties have agreed to a final form in the MDL.] New Jersey counsel shall continue to confer in an attempt to resolve the remaining issues relating to a final protective order.

D. Mediation: See CMO #8 paragraphs (III)(2) & (3).

1. **Phase II:**

a. Status: Since the last case management conference, an additional Phase II matter has completed mediation and resolved: (1) Kile v. HOC, et al., Docket No. BER-L-6888-12 (Plaintiffs reside in Arizona and are represented by Searcy Denney). The twelve (12) mediated cases comprised of the Phase I and the completed Phase II matters have a 100% resolution rate. Three (3) more matters are

scheduled for mediation this week and additional matters are scheduled or in the process of being scheduled over the course of the next 30 days. [The Court has been advised that 14 filed MDL cases have been resolved with former Magistrate Boylan as the mediator in several of the cases.]

b. The Defendant selects the following additional matters for mediation: (1) Renee Tanitsky, et al., Docket No. BER-L-8615-13 (Sheller, P.C./Williams Cuker Berezofsky, LLC); (2) Morgan Procter, et al., Docket No. BER-L-1026-13 (Aylstock, Witkin, Kries & Overholtz, PLLC/Babbitt, Johnson, Osborne & Le Clainche, P.A./Foote, Meyers, Mielke & Flowers). Defendant will announce its third choice within 10 days. The mediation dates shall be scheduled by June 4, 2014.

c. All pertinent medical records for the selected matters, to the extent not already provided pursuant to the Plaintiff Fact Sheet process, shall be provided to defense counsel within 10 days of selection of a case for mediation.

Plaintiffs' counsel shall also secure and disclose any third-party lien information relating to any settlement no later than 30 days prior to the mediation date.

2. **Phase III:** The parties shall meet and confer to discuss the parameters and eligibility for Phase III mediation.

E. **Exemplars:** The parties have reached an initial agreement regarding the production of exemplars. This does not preclude the request for additional exemplars in the future which are being preserved. Defendant shall begin rolling out production of the exemplars by May 22, 2014.

II. DISCOVERY

1. Written Discovery:

A. Plaintiffs have served Interrogatories relating to exemplar issues. The deadline for service of responses to Plaintiffs' Exemplar Interrogatories currently is June 23, 2014.

2. Rolling Production:

A. Defendant will produce on a rolling basis all remaining identified custodial files not already produced or scheduled for production by July 15, 2014. Defendant has agreed to produce said custodial files ahead of schedule if the files are ready for production earlier than the scheduled

dates. The parties shall meet and confer about additional custodial files to be produced thereafter and scheduling of depositions.

B. Rolling productions of the custodial files and shared drive documents are continuing as per CMO #13 and CMO #14 through May 2014.

3. Records Authorizations:

A. All authorizations shall be in the form provided by Defendant. See CMO #8 paragraph (II)(4). Plaintiffs are directed to the Multi-County Litigation website to obtain appropriate approved authorizations.

B. All outstanding authorizations for all other cases with completed Fact Sheets shall be returned to Defendant's counsel in accordance with prior orders.

C. Authorizations for all other cases to be completed and returned to Defendant's counsel with completed Fact Sheet as per prior orders.

4. The parties have reached an agreement whereby for non-revision Plaintiffs, the Fact Sheet obligations of the parties will be suspended. This is without prejudice. Defendant reserves the right to request production of Fact Sheets in non-revision cases.

5. Continued ESI Information Exchange:

A. The parties continue to meet and confer regarding the ESI information exchange and potential additional depositions.

6. Plaintiff shall serve Fact Sheets on Kim Catullo, Esq. (Gibbons P.C.), Samantha Spicer, Esq. (Gibbons P.C.), Cynthia Gugg, (Gibbons P.C.) and Ellen Relkin, Esq. (Weitz & Luxenberg).

7. **Discovery End Date:** March 31, 2015 (CMO #15)

III. CASE MANAGEMENT:

1. Bellwether Selection Process: Status of Meet and Confer

A. The parties will continue to meet and confer on the issue of the bellwether selection process and advise of a resolution by May 30 or else the Court will hold a conference call to discuss resolution of the selection process.

2. All new complaints shall be served within thirty (30) days of receipt of a filed copy from the Court.

3. All other Plaintiffs shall serve completed Fact Sheets on Defendant and Liaison Counsel within sixty (60) days of service of the complaint.

4. Parties are required to comply with CMO #3 regarding the service of preliminary disclosure forms. (See CMO #3, paragraph (I)(2)(A)(i).)

5. Service on Defendants: The Court entered an order on August 13, 2013 and amended order on February 27, 2014.

6. If Plaintiffs are not receiving e-mails from Plaintiff's liaison counsel, please contact Ellen Relkin, ERelkin@weitzlux.com.

7. The Court has tentatively scheduled the first two Bellwether Trials for June 15, 2015 and July 13, 2015. The parties will meet and confer regarding the Bellwether Selection Process.

IV. STATUS OF LITIGATION & UNFILED CASES

[The 2 year statute of limitation expires in or around June of 2014.]

1. As of May 19, 2014, there are 1188 filed cases in New Jersey.

2. The Court, on its own motion, hereby directs Counsel within the jurisdiction of this Court to submit to the Court and liaison counsel [Kim Catullo, Esq. and Ellen Relkin, Esq.] , within 14 days, a list of their inventory of unfiled, retained matters, as of today's Order, which shall indicate if it was a revision or non-revision and ABGII or Rejuvenate modular.

3. The Court further directs liaison Counsel to meet and confer and submit to the Court an Order with a form to be filled out by Counsel with unfiled, retained matters by May 30, 2014.

V. GENERAL:

1. The next Case Management Conference is scheduled for June 23, 2014, at 1:00pm. Liaison counsel shall meet at 11:30 am. **Counsel shall submit a proposed agenda seven (7) days prior to this Case Management Conference.**

2. *Pro hac vice* motions shall not be filed until complaint is filed and served on Defendants.

3. The official record shall be the transcript provided by the court reporter retained by counsel. The reporter shall preserve all proceedings and shall email a transcript of any court proceeding to the court within 14 days of the proceeding.

4. Subject to agreement by and between counsel and with permission from the Court, counsel is permitted to appear telephonically; in order to have your appearance on the record, it is counsel's responsibility to Email liaison counsel and the court reporter at least one hour before the proceeding with your name, firm, and party representing, indicating that you intend to appear by phone; in addition you must confirm you appearance, immediately following the proceeding. Absent the above, counsel's appearance will not be noted.

5. By consent of all parties, the court may contact or be contacted on an *ex parte* basis regarding settlement issues only.

6. The court may, from time to time, conduct phone conferences with defense counsel and liaison counsel.

7. The Court directs all counsel to R.1:4-8 and expects all counsel to abide by the parameters set forth therein.

8. All Court proceedings will start at the designated scheduled time. Counsel is expected to arrive promptly for these proceedings.

9. COUNSEL IS REMINDED THAT AS A REQUIREMENT TO PARTICIPATE IN MEDIATION, THEY MUST NOTIFY DEFENSE COUNSEL WITHIN THIRTY (30) DAYS OF SERVICE OF THEIR COMPLAINT.

9. Counsel shall provide the Court with their preferred e-mail address by e-mailing same to Kelly Gibson at Kelly.Gibson@judiciary.state.nj.us and Stephanie Gino at Stephanie.Gino@judiciary.state.nj.us.

10. Counsel shall copy their co-counsel and all adversaries on all e-mails and other electronic correspondence submitted to the Court [COUNSEL IS PROHIBITED

FROM FILING ANY PLEADING ELECTRONICALLY]. Any such submission received after 4:30 p.m. will be deemed received at 9:00 a.m. on the next day Court is in session. Any such submission received after 4:30 p.m. on a Friday or over a weekend, will be deemed received on 9:00 a.m. on the next day Court is in session.

11. Counsel is directed to contact The Superior Court of New Jersey, Attorneys Accounts: P.O. Box 980, Hughes Justice Complex, 25 W. Market Street, Trenton, New Jersey 08625, (609) 633-8643 to establish a collateral account for any filing fees within seven (7) days.

12. Counsel is required to check the Judiciary's Web Site dedicated to this matter for any decisions/Orders/information contained therein.

13. A copy of this Order and any subsequent Orders to the Court will be posted on the Judiciary Web Site.

BRIAN R. MARTINOTTI, J.S.C.