

FILED

DEC 20 2021

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY J.S.C.**

**IN RE STRYKER LFIT CoCr V40
FEMORAL HEADS HIP IMPLANT
LITIGATION**

**CASE NO. 624
MASTER DOCKET NO. BER-L-7859-17**

CIVIL ACTION

This Document Relates to ALL ACTIONS

CASE MANAGEMENT ORDER NO. 15

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

**ORDER REGARDING RESOLUTION
PROCESSES FOR CERTAIN MATTERS**

This Order applies to all cases previously or subsequently transferred to this multicounty litigation, Case No. 624, Master Docket No. 7859-17 (this "MCL"), or those which were directly filed in this MCL in which the plaintiff asserts that he/she has sustained a head disassociation ("HD") injury involving a Stryker LFIT CoCr head and whose case was *not already identified as part of the confidential December 16, 2021 settlement.*

Based upon the parties' demonstrated history of resolution of certain categories of cases within the scope of this MCL, and consistent with this Court's inherent authority to manage these judicial proceedings, the Court finds that the interests of a potential expedited resolution of certain matters would be served by referral to mediation, and hereby issues the following Order:

IT IS on this 20th day of December 2021 **ORDERED:**

I. SELECTION OF RESOLUTION PROCESS

1. Service of Resolution Election Form: Each plaintiffs' counsel for a plaintiff within the scope of this Order shall serve the completed Resolution Election Form selecting either a Settlement Discussion or Mediation option as set forth below along with the completed Plaintiff

Fact Sheet ("PFS") via Defendant's FTP site. A confirming email will be sent once the PFS and Resolution Election Form has been successfully uploaded.

2. HOC's Response: HOC shall respond to plaintiff's counsel within 14 days of receiving both the Resolution Election Form and PFS as follows: (1) agree that the plaintiff is an HD plaintiff and agree to the requested settlement discussion; (2) agree that the plaintiff is an HD plaintiff and agree to the requested mediation; or (3) disagree that the plaintiff is an HD plaintiff and decline the request. If a Resolution Election Form is *not* included with an HD plaintiff's PFS, HOC shall notify plaintiff's counsel of the deficiency and counsel shall provide a completed form within 7 days of notice by HOC. HOC's obligation to respond to plaintiff's counsel requires service of both the Resolution Election Form *and* the required PFS.

II. PROCEDURES FOR SETTLEMENT DISCUSSION OPTION

1. Scheduling: Following compliance with Section I(2) of this Order, within 30 days after HOC's response, Plaintiff's counsel and HOC shall agree upon a date for a settlement discussion.

2. Settlement Authority: In advance of the formal settlement discussion, counsel for the parties must actively discuss the matter and the impending settlement discussion. The participating parties or their participating counsel must have authority to enter into a full and complete compromise and settlement, and counsel for the parties must fully and accurately inform their respective clients of the settlement positions of the adverse party.

3. Conversion to Formal Mediation: If the parties cannot reach an agreement through direct settlement discussions, they may jointly elect to proceed to formal mediation. The parties must select a mediator within 14 days of the decision to proceed to mediation. If they are unable to agree on the mediator, then they should immediately advise the Court of their inability to do so.

III. PROCEDURES FOR FORMAL MEDIATION OPTION

1. Scheduling: Following compliance with Section I(2) of this Order, within 14 days after HOC's response, the parties shall select a mediator. If the parties cannot reach agreement on the mediator then they should immediately advise the Court of their inability to do so. The mediation should be scheduled for a date no later than 60 days from the selection of the mediator.

2. Settlement Authority: Parties or persons with authority to enter into a full and complete compromise and settlement of the case on behalf of the parties shall attend the mediation.

3. Attendance: The parties and lawyers shall attend mediation sessions as scheduled by the mediator. Participants in mediation discussions shall spend as much time as necessary to settle the case or until an impasse is declared by the mediator.

4. Mediation Costs and Payment: HOC and the individual plaintiff shall evenly split the mediator's costs and fees.

IV. SETTLEMENT AGREEMENTS AND PAYMENTS

1. Settlement Agreement: Should the parties reach a resolution then they should jointly advise the Court that a resolution has been reached *without disclosure of the settlement terms*. The parties should then work diligently to complete the formal written settlement package process.

2. Common Benefit: Unless otherwise agreed, all settlements pursuant to this Order shall effectuate this Court's March 1, 2019 Case Management Order No. 6 ("Order Establishing Common Benefit Fee and Expense Funds").

3. Payment: Parties who settle cases through the resolution process set forth in this Order shall receive the settlement amount no later than 90 days after the date of the service of the complete required written settlement package to HOC.

V. **ENFORCEMENT, GOOD FAITH PARTICIPATION, AND CONFIDENTIALITY**

1. Enforcement of Settlement Agreement: To the extent necessary, a party to a settlement shall enforce the written settlement agreement by bringing a motion before this Court.

2. Good Faith Participation: HOC and each plaintiff within the scope of this Order shall engage in the resolution procedures outlined in this Order in good-faith.

3. Confidentiality and Impact of Applicable Rules of Evidence: Except as specifically provided in this Order, a settlement discussion or formal mediation is a confidential process. Any communication related to the subject matter of the dispute made during the resolution process by any participant, mediator, or any other person present at the discussion/mediation shall be a confidential communication to the full extent contemplated by N.J.R.E. 408. No admission, representation, statement, or other confidential communication made in setting up or conducting the proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.

VI. **REPORTING TO THE COURT**: Counsel for HOC shall submit a report to the Court on a monthly basis detailing each eligible plaintiff who elected either a settlement discussion or mediation, and the status of same.

VII. **UNRESOLVED MATTERS**: All remaining HD Plaintiff cases that do not settle through the early resolution process set forth in this Order remain subject to mandatory mediation requirements at the time they are set for trial.

In addition to posting of this Order, Plaintiffs' Lead Counsel shall promptly notify all plaintiffs' counsel of record in this MCL of this Order.


HON. RACHELLE L. HARZ, J.S.C.

EXHIBIT A

IN RE STRYKER LFIT CoCr V40
FEMORAL HEADS HIP IMPLANT
LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

CASE NO. 624
MASTER DOCKET NO. BER-L-7859-17

CIVIL ACTION

RESOLUTION ELECTION FORM
FOR HEAD DISASSOCIATION PLAINTIFF(S)

Pursuant to Case Management Order No. 15, and after actual consultation between counsel and the Plaintiff(s), and due consideration, Plaintiff(s) in the above-referenced individual case, through authorized counsel below, make the election indicated below (*check only one*):

PLAINTIFF(S): _____

_____ Plaintiff(s) have/has claimed, and has a good faith belief that this matter is a Head Disassociation case and elect(s) to proceed with the option of an informal settlement discussion directly with HOC.

OR

_____ Plaintiff(s) have/has claimed, and has a good faith belief that this matter is a Head Disassociation case and elect(s) to proceed with the option of a formal mediation.

By electing to proceed with either a settlement discussion or mediation, the Plaintiff(s) identified above has/have agreed, through counsel, to participate in good faith in any resolution discussion conducted pursuant to the resolution processes set forth in Case Management Order No. 15.

Dated: _____, 2022

Plaintiff(s)
By Authorized Counsel:

Insert Attorney Name
Insert Firm Name
Insert Firm Address
Insert Firm Address

Counsel for Plaintiff(s)