IN RE STRYKER REJUVENATE HIP STEM AND ABG II MODULAR HIP STEM LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, BERGEN COUNTY

FILED
JUL 08 2014
BRIAN R. MARTINOTTI
J.S.C.

CASE CODE 296
MASTER CASE NO. BER-L-936-13

CIVIL ACTION

FINAL AMENDED STIPULATED PROTECTIVE ORDER

Plaintiffs and Defendant Howmedica Osteonics Corp. (sometimes hereinafter referred to as "Plaintiffs" and/or "Defendant," or collectively, the "Parties") before this Court in *In Re Stryker Rejuvenate Hip Stem and ABG II Modular Hip Stem Litigation,* Case Code 296, hereby stipulate and agree through their respective attorneys of record, as follows:

1. This Final Amended Stipulated Protective Order of Confidentiality regarding any designated confidential documents, materials and information, whether written, graphic or electronic (hereinafter "Confidential Discovery Materials"), is intended to facilitate prompt discovery and the preparation for trial of the Rejuvenate Hip Stem and ABGII Modular Hip Stem Cases and provide those protections consistent with New Jersey Court Rule 4:10-3 and other applicable state and Federal laws and regulations. The parties further stipulate and agree that the Confidential Discovery Materials subject to this Protective Order shall be used solely for the purpose of this litigation.

2. This Protective Order shall govern any and all hard copy and electronic materials produced by any party to the litigation, including the information contained therein, and all other information including all copies, excerpts, summaries, or compilations thereof, whether revealed in a document, deposition, other testimony, discovery response or otherwise, produced by any party to this proceeding (the "Supplying Party") to any other party (the "Receiving Party"). This Protective Order is binding upon all

Parties including their respective corporate parents, subsidiaries, and affiliates and their respective attorneys, principals, experts, consultants, representatives, directors, officers, employees, and others as set forth in this Protective Order. If additional parties are added other than parents, subsidiaries or affiliates of current parties to this litigation, then their ability to receive the Confidential Discovery Materials as set forth in this Protective Order will be subject to them being bound, by agreement or Court Order, to this Protective Order.

3. The term "Confidential Discovery Materials" refers to confidential, proprietary, trade secret and/or sensitive commercial information, as designated in good faith by the Supplying Party in accordance with the terms of this Protective Order as being entitled to protection under New Jersey Rule of Court 4:10-3, other applicable case law or rules, the Uniform Trade Secrets Act and federal and state privacy laws, and/or other applicable laws and regulations. Confidential Discovery Materials containing confidential information as used in this Protective Order means documents containing trade secrets and other information that is of a proprietary, business, financial or technical nature and not known or available to competitors, potential competitors, or the public, the value of which arises from its being confidential and the disclosure of which (whether separately or in conjunction with other information being produced) is believed in good faith by the Supplying Party to have the potential, if disclosed, for causing competitive harm to it or giving a competitive advantage to others. Plaintiffs shall be permitted to designate materials that contain personal information as Confidential pursuant to this Order.

4. This Stipulated Protective Order does not confer blanket protections on all documents, disclosures or responses to discovery and the protection it affords extends only to the specific information or items that are entitled to protection under the applicable legal principles for treatment as confidential after individual review by the producing party.

5. Examples of Confidential Discovery Materials containing such confidential information, which is of a proprietary, business, financial, or technical nature, include but are not limited to:

a. Engineering drawings showing the dimensions, specifications, tolerances, and similar information related to the design of the Howmedica Osteonics Corp. ("HOC") components and/or system or other hip systems;

b. Raw material specifications and certifications and manufacturing process descriptions and records which provide details of the way in which HOC manufactures the components and/or system or other hip systems; and

c. Documents related to HOC's internal development, design, manufacturing, testing, and marketing processes, sales statistics, marketing plans, cost and pricing structures, customer lists, distributor lists, competitors and analysis of competitor products, independent contractors, complaint investigation, recall plans and processes, and similar matters which are confidential and proprietary and have independent economic value because they are not known to HOC competitors or potential competitors or the general public and have entailed substantial cost to develop and are necessary for a medical device company to compete in a heavily regulated industry and comply with governing FDA regulations.

6. No person who examines any item produced pursuant to a discovery request, or information that is protected by this Protective Order, shall disseminate orally, or by any other means, any protected information other than as permitted by this Order.

7. Any designation of Confidential Discovery Materials under this Stipulated Protective Order of Confidentiality shall not be construed as an admission or an agreement by any party:

a. That the designated disclosure constitutes or contains confidential information; or

b. That any document, material or information, or any portion thereof, constitutes competent, material, relevant, or admissible evidence in this case.

This Stipulated Protective Order of Confidentiality is entered into to facilitate a reasonable and prompt disclosure of discovery materials to facilitate preparation and trial of the Rejuvenate Modular Hip Stem

and ABGII Modular Hip Stem litigation and to provide those protections consistent with New Jersey Court Rule 4:10-3 and other applicable state and Federal laws and regulations.

8. This Stipulated Protective Order shall not be construed as a waiver by any party of the right to contest the designation of documents as Confidential under this Stipulated Protective Order. Any party may request a change in the designation of any information designated "Confidential." Any such document shall be treated as designated until the change is completed. If the requested change in designation is not agreed to, the party seeking the change may move the Court for appropriate relief, providing notice to any third party whose designation of produced documents as "Confidential" in the action may be affected. The party asserting that the material is Confidential shall have the burden of proving that the information in question is within the scope of protection afforded by R. 4:10-3.

9. Pending this Court's determination, no document designated as Confidential under this Order shall be disseminated other than as provided by this Order unless otherwise ordered by the Court or as stipulated by the Parties. To the extent that this Court determines that a document designated as Confidential under this Order is not entitled to protection under this Order, then said document will be considered non-confidential and non-protected for purposes of this litigation.

10. Pursuant to the terms and requirements of this Stipulated Order of Confidentiality, the Supplying Party may designate as Confidential all or any part of Discovery Materials produced by it in the course of litigation or in response to initial disclosures, and various interrogatories and requests for production of documents, as well as documents, electronic files and data compilations, and deposition transcripts and exhibits, or portions thereof, that contain or constitute confidential

information.

11. The designation of Discovery Materials as Confidential shall be made by placing or affixing on the material in a manner that will not interfere with its legibility the words **"CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER"** as long as the designation is conspicuously placed on produced documents in a uniform manner. The designation shall be made prior to, or contemporaneously with, production or disclosure of that material. All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as copies) of documents designated as Confidential under this Order, or any portion of such a document, shall be immediately affixed with the designation Confidential if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

12. Deposition testimony or any portion thereof may be designated Confidential by notifying the other party either (1) on the record at the time of the deposition, or (2) by writing within thirty (30) days of receipt of the final transcript by counsel making the designation specifying the testimony being designated by page and line number(s). Until the expiration of such 30-day period, the entire text of the deposition transcript, including all testimony therein, shall be treated as Confidential under the Protective Order. Any testimony which describes Discovery Material which has been designated as Confidential, as described above, shall be designated as Confidential. Any deposition exhibits which have been marked Confidential shall be treated as Confidential documents under the terms of this Protective Order and shall not be annexed to the deposition transcript as exhibits thereto unless the transcript is marked accordingly to maintain the confidentiality of documents. If the party seeking to maintain a deposition transcript as Confidential does not serve a letter on the court reporter and Plaintiffs' Liaison Counsel designating material as Confidential or confirming designations made on the record within 30

days of receipt of the final deposition transcript, then the entire transcript shall be deemed not to contain any Confidential Discovery Materials and any legend stating such Confidential Discovery Materials shall be removed.

13. A party may not file in the public record in this action any Confidential Discovery Materials, without written permission from the Supplying Party or a court order secured after appropriate notice to the parties. Discovery Materials designated as Confidential under this Stipulated Protective Order of Confidentiality shall not be used or disclosed by any party, or their counsel or any person acting on his/her behalf to any other persons except as provided for herein, and shall not be used for any business or competitive purpose, or for any other purposes whatsoever, other than the preparation and trial of an action involving a Rejuvenate Modular Hip Stem and/or ABGII Modular Hip Stem and any appeal in connection with such actions.

14. Confidential Discovery Materials under this Stipulated Protective Order of Confidentiality shall not be disclosed to any other person or entity, except in the following circumstances:

a. Disclosure may be made to employees of counsel for Plaintiffs or Defendant who have direct functional responsibility for assisting in the preparation and trial of this action or any appeal herein. Any employee to whom disclosure is made shall be advised of, shall become subject to, and shall agree in advance of disclosure to, the provisions of this Stipulated Protective Order requiring that the material and information be held in confidence.

b. Disclosure may be made to consultants or experts employed by Plaintiffs or Defendant, or their counsel to assist in the preparation and trial of this litigation. Receiving Party may not make disclosure of any Confidential Discovery Materials to any current employee, officer or director of any competitors of Supplying Party, or to anyone who, at the time of disclosure, is anticipated to become a current employee, officer or director of any competitors of Supplying Party. A "competitor" shall be defined as any medical device designer, developer, manufacturer or seller of artificial hip implants. Regarding current or anticipated consultants of competitors of Supplying Party, disclosure may be made to those consultants who are not involved in the design, development, manufacturing or sale

of any artificial hip implants. By way of example and not limitation, this specifically excludes those consultants who merely provide technical or scientific lectures or presentations to the public for competitors, or who merely receive funding from competitors to conduct scientific studies. In the event a Receiving Party wishes to make disclosure to any current or anticipated consultants of competitors of Supplying Party not addressed by this Order or who Receiving Party believes should be excluded from the prohibition on disclosure set forth herein, Receiving Party must provide Supplying Party in writing with information as to the general identification of the consultant to whom disclosure is to be made, without disclosing the identity of the consultant. Upon receipt of such information, Supplying Party must respond in writing within fourteen (14) days as to its position on the requested disclosure. If no agreement can be reached, Receiving Party may make a formal application to the Court for relief. Under all circumstances, prior to disclosure to any consultant or expert, independent or otherwise, the individual must agree to be bound by the terms of this Stipulated Protective Order of Confidentiality by executing the acknowledgement annexed hereto as Exhibit A. A copy of each executed acknowledgement shall be maintained for Plaintiffs by Plaintiffs' Liaison Counsel, and for Defendant by Counsel for Defendant during the course of the litigation. At the conclusion of the litigation, counsel for Receiving Party shall confirm in writing with counsel for Supplying Party that it will seek to have any Confidential Discovery Materials that were provided to experts returned to counsel for the Receiving Party.

c. Disclosure may be made to the Parties to the extent required for assisting in the preparation and trial of this matter or any appeal herein. To the extent such disclosure is made, such Party shall be advised of, shall become subject to, and shall agree in advance of disclosure to, the provisions of this Stipulated Protective Order of Confidentiality requiring that the material and information be held as confidential.

d. Disclosure may be made to the Court and court personnel (including the court having jurisdiction over any appeal).

e. Disclosure may be made to Court reporters only for the purposes of participating in the deposition process used in connection with the litigation. To the extent such disclosure is made, the Court reporter shall be advised of, shall become subject to, and shall agree in advance of disclosure to, the provisions of this Stipulated Protective Order of Confidentiality requiring that the material and information be held as confidential. Any court reporter to whom disclosure is made shall hold the material and information in confidence and shall not sell, distribute or otherwise disclose the material and information to anyone other than counsel of record.

f. Disclosure may be made to any person who (i) wrote or received a copy of the document designated confidential before it was furnished in this litigation, or (ii) was present or participated in a meeting or discussion of the protected information before it was furnished in this litigation.

g. Disclosure may be made to any mediators, secretaries, paraprofessional assistants, and other employees of such mediators who are actively engaged in assisting the mediators in connection with this matter. To the extent such disclosure is made, such individuals

shall be advised of, shall become subject to, and shall agree in advance of disclosure to, the provisions of this Stipulated Protective Order of Confidentiality requiring that the material and information be held as confidential.

h. Disclosure may be made to employees of outside copying, document imaging, litigation and trial support, and facsimile services. To the extent such disclosure is made, such employees shall be advised of, shall become subject to, and shall agree in advance of disclosure to, the provisions of this Stipulated Protective Order of Confidentiality requiring that the material and information be held as confidential.

i. Disclosure may be made to witnesses or deponents in the course of this litigation, only as necessary for the litigation if the witness or deponent is not an employee or agent of the defendant only after the person to whom such disclosure is made has been informed of the Stipulated Protective Order of Confidentiality and has agreed in writing to be bound by it, by signing the form of acknowledgement annexed as Exhibit A. The executed acknowledgement shall be retained by counsel for the Receiving Party, with a copy provided to counsel for the Supplying Party on a showing of good cause where providing a copy does not violate the attorney-client privilege, the work-product privilege or any other privilege. If the witness or deponent is an employee or agent of the defendant then such procedures need not be taken before using the document at the deposition or proceeding.

15. All counsel shall keep all Confidential Discovery Materials which are received under this Stipulated Protective Order of Confidentiality within its exclusive possession and control, except as provided in paragraph 14, and shall take reasonable steps to maintain such material in a secure manner. Except as provided in paragraph 14 above, no person shall have access to the foregoing material and information.

16. Any person having access to Confidential Discovery Materials under this Stipulated Protective Order of Confidentiality, including consultants and experts, are permitted to make copies, extracts, summaries, or descriptions of the material or information or any portion thereof as necessary for the preparation and trial of this litigation.

17. If, in connection with any motion or other proceeding except trial, any party intends to submit or offer into evidence any Confidential Discovery Materials by either Plaintiffs or Defendants, the parties shall utilize the following procedure, consistent with R. 1:38,

for submitting to the Court papers consisting of, relating to, containing, incorporating, reflecting, describing, or attaching any Confidential Discovery Materials:

a. For discovery-related motions, only the Notice of Motion will be filed with the Clerk of the Court. All other papers will be served on the parties, but not filed with the Court. Courtesy copies of all other motion papers will be provided to the Court for *in camera* use. Following its disposition of the motion, the Court will destroy the papers or return them to the filing party unless a party determines the matter needs a record on appeal. In that case, the parties shall set a schedule with the Court that is sufficient to allow ten (10) days after the completion of briefing by all parties to permit any party to file a motion to seal all or part of the papers so that the record will be clear.

b. For pre-trial non-discovery motions, only the Notice of Motion initially will be filed with the Clerk of Court. All other papers will be served on the parties, but not filed with the Court. Courtesy copies of all other motion papers will be provided to the Court for *in camera* use. The parties shall set a schedule with the Court that is sufficient to allow ten (10) days after the completion of briefing by all parties to permit any party to file a motion to seal all or part of the papers. The parties shall exchange their respective moving, opposition and reply papers in accordance with the schedule set by the Court, but shall not file these papers until ten (10) days after service of the moving party's reply papers and then *only if* no party has filed a motion to seal any of the papers in support or in opposition to the motion. In the event that a party moves to seal any of the motion papers, it shall file a Notice of Motion to seal directly with the Honorable Brian R. Martinotti, J.S.C. The parties shall also submit to the Honorable Brian R. Martinotti, J.S.C., at that time, for *in camera* use, their respective papers, including a version of the dispositive motion papers or exhibits

with appropriate redactions consistent with the party's position on the motion to seal. After the Court disposes of the motion to seal, the Clerk will file the papers on both motions in accordance with the Court's Order. Upon resolution of the sealing motion, within five (5) days the Supplying Party shall file with the Clerk of Court a copy of the motion, opposition, reply, or other submission, together with all supporting memoranda and exhibits, in such form as directed by the Court (under seal or otherwise) on the sealing motion. In connection with any application to seal records in accordance with R. 1:38-11, the Supplying Party shall be deemed the movant in connection with such request, and it shall be the Supplying Party's burden to demonstrate good cause to seal such Confidential Discovery Materials. Nothing in this Order shall be deemed to alter a Supplying Party's burden under R. 1:38-11. The Parties shall be entitled to identify and use documents for trial purposes regardless of a Confidential designation, provided that for any documents identified on Exhibit Lists for use at trial, the Parties shall be entitled to seek appropriate protection, by motions in limine or otherwise, for any document so identified.

18. If another court or an administrative agency subpoenas or otherwise orders production of Confidential Discovery Materials that a person has obtained under the terms of this Order, the person to whom the subpoena or other process is directed shall promptly notify the court or administrative agency which issued the subpoena or other process that the requested materials are the subject of an Order of Confidentiality and the person to whom the subpoena or other process is directed shall also notify liaison counsel for the Supplying Party in writing via fax and overnight delivery of all of the following: (1) the Confidential Discovery Materials that are requested for production in the subpoena; (2) the date on which compliance with the subpoena is requested; (3) the location at which compliance with the subpoena is requested; (4) the identity of the party

serving the subpoena; and (5) the case name, jurisdiction and index, docket, complaint, charge, civil action or other identification number or other designation identifying the litigation, administrative proceeding or other proceeding in which the subpoena or other process has been issued. In no event shall Confidential Discovery Materials be produced prior to the expiration of twenty (20) days following transmission of written notice to liaison counsel for the Supplying Party unless required to do so by the subpoena or order seeking the documents. Nothing in this Order shall prohibit the Supplying Party from filing an application to intervene in the litigation, administrative proceeding or other proceeding in which the subpoena or other process has been issued.

19. If any party learns of any unauthorized disclosure of Confidential Discovery Materials by Parties or counsel in this litigation, it shall immediately inform the Court in writing of all pertinent facts relating to such disclosure.

20. Inadvertent production of any Discovery Materials without a designation of Confidential will not be deemed to waive a later claim to its confidential nature or preclude a party from designating said document or information as Confidential pursuant to this Order at a later date. Any party may designate as Confidential or withdraw a Confidential designation from any Discovery Materials that it has produced, provided, however, that such re-designation shall be effective only as of the date of such re-designation. A party must treat such documents and things with the noticed level of protection from the date such notice is received. Such re-designation shall be accomplished by notifying counsel for each party in writing of such re-designation and providing replacement images bearing the appropriate description. Upon receipt of any re-designation and replacement image that designates Discovery Material as a Confidential, all Parties shall (1) treat such material in accordance with this Order; (2) take reasonable steps to

notify any persons known to have possession of any such material of such re-designation under this Protective Order; and (3) promptly endeavor to procure all copies of such material from any persons known to have possession of such material who are not entitled to receipt under this Protective Order.

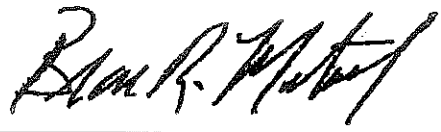
21. Inadvertent production of documents or information (hereinafter "Inadvertently Produced Materials") subject to work-product immunity, the attorney-client privilege, or other legal privilege protecting information from discovery shall not constitute a waiver of the immunity or privilege, provided that the party producing the materials shall notify all Parties in writing within a reasonable period of time from the discovery of the inadvertent production. If such notification is made, such Inadvertently Produced Materials and all copies thereof shall, upon request, be returned to the party making the inadvertent production, all notes or other work product of the Receiving Party reflecting the contents of such materials shall be destroyed, and such returned or destroyed material shall be deleted from any litigation-support or other database. If the party receiving the production disputes in writing the claim of privilege or the claim of inadvertence they may retain possession of the Inadvertently Produced Materials as well as any notes or other work product of the Receiving Party reflecting the contents of such materials pending the resolution by the Court of the motion below. If the Receiving Party's motion is denied, the Receiving Party shall promptly comply with the immediately preceding provisions of this paragraph or such other directives as may be issued by the Court. No use shall be made of such Inadvertently Produced Materials during depositions or at trial, nor shall they be disclosed to anyone who was not given access to them prior to the request to return or destroy them. The party receiving such Inadvertently Produced Materials may, after receipt of the notice of inadvertent production, move the Court to oppose the request for return of the subject materials. Each party

retains all rights and arguments as to any proceeding regarding Inadvertently Produced Materials.

22. Upon final termination of this action, whether by judgment, settlement or otherwise, upon written request from counsel for the Supplying Party, counsel for all Parties shall return to counsel for the Supplying Party all materials and all copies thereof in his/her possession that were designated by Supplying Party as Confidential Discovery Materials in accordance with this Stipulated Protective Order of Confidentiality, unless otherwise agreed or ordered.

23. Any party for good cause shown may apply to the Court for modification of this Protective Order, or the Protective Order may be modified by consent of the Parties in writing. This Stipulated Protective Order of Confidentiality shall remain in full force and effect and each person subject to this Order shall continue to be subject to the jurisdiction of this Court, for the purposes of this Order, in perpetuity, and the Court shall not be divested of jurisdiction of any person or of the subject matter of this Order by the occurrence of conclusion of this case, or by the filing of a notice of appeal, or other pleading which would have the effect of divesting this Court of jurisdiction of this matter generally.

IT IS SO ORDERED:



Hon. Brian R. Martinotti, J.S.C.

AGREED TO BY COUNSEL OF RECORD:

[ENTERED PURSUANT TO AUTHORIZATION OF COUNSEL]

Plaintiffs' Liaison Counsel	Counsel for Defendant

DATED: July 8th, 2014

EXHIBIT A

CONFIDENTIALITY AGREEMENT

The undersigned hereby acknowledges that he/she has read the Stipulated Protective Order of Confidentiality executed by the attorneys of record for the Parties and entered by the Court in the action presently pending in the Superior Court of New Jersey, Law Division, Bergen County, entitled *In Re Stryker Rejuvenate Hip Stem and ABG II Modular Hip Stem Litigation,* Case Code 296, and understands the terms thereof and agrees, upon threat of penalty of contempt, to be bound by such terms.

Date: _____ Signature: _____

Printed Name: _____