FILED

JUN 23 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 #17

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 June 23, 2014, counsel appearing, for good cause shown and for the reasons set forth on the record,

IT IS on this 23rd day of June 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.

A. 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. The parties shall use their best efforts to submit a final protective order to the Court by 4pm on July 2, 2014. If the parties cannot meet this deadline, the Court will be so advised and a conference call will be held on July 7th. The Interim Protective Order remains in effect.

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

1. **Phase II:**

a. Status: Since the last case management conference, five additional Phase II matters have completed mediation and resolved: (1) Jeannita Gaudet, Docket No. BER-L-1188-13 (Plaintiffs reside in Massachusetts and are represented by Lynch Daskall and Pritzker Olsen); (2) Doris Smith, Docket No. BER-L-3488-13 (Plaintiffs reside in New Jersey and are represented by Bernstein Liebhard); (3) Jeff Beard, Docket No. BER-L-3665-13 (Plaintiffs

reside in Arkansas and are represented by Weitz & Luxenberg and the Bohrer Law Firm); (4) Betty White, Docket No. BER-L-2501-13 (Plaintiff resides in Minnesota and is represented by Robins Kaplan) and (5) Renee Tanitsky, Docket No. BER-L-8615-13 (Plaintiffs reside in Pennsylvania and are represented by Williams Cuker Berezofsky, LLC and Sheller PC). Connie Stevens, Docket No. BER-L-2323-13 did not settle. (Weitz & Luxenberg).

b. The eighteen (18) mediated cases comprised of the Phase I and the completed Phase II matters have resulted in 17 of 18 settlements. Three (3) more matters are scheduled for mediation in the next 30 days. A matter that was originally schedule for Phase I mediation but removed due to continued treatment, the Grossman matter, shall be scheduled and mediated within the next 60 days.

c. HOC selects its final mediation pick: Ursula Wistehuff, et al., Docket No. BER-L-6645-13

(A resident of Illinois, Wistehuff is represented by Beasley Allen/Weitz & Luxenberg).

d. 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. In the event that these deadlines are not met, Defendant reserves the right to adjourn the scheduled mediation date.

2. **Phase III:**

a. The Court shall select 10 cases that fall within the following criteria for Phase III mediation: cases filed and served by January 1, 2014 with completed fact sheets served in accordance with prior Orders, or as extended by Counsel, and who submitted consent to mediation.

b. Counsel shall submit a list of eligible cases that fall within these parameters to the Court by July

14, 2014. The Court will announce its selections by August 4, 2014.

E. **Exemplars:** The rolling productions of exemplars has been completed.

II. DISCOVERY

1. Written Discovery:

A. Plaintiffs have served Interrogatories relating to exemplar issues. The deadline for service of responses to Plaintiffs' Exemplar Interrogatories is extended to July 11, 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. Plaintiffs have served a Fifth Request for Production of Documents. The deadline for service of responses to Plaintiffs' Fifth Request for Production of documents is extended to August 21, 2014.

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

6. Continued ESI Information Exchange: The parties continue to meet and confer regarding the ESI information exchange and potential additional depositions.

7. Depositions: The parties in both the MDL and New Jersey have, and are continuing to, meet and confer regarding deposition scheduling and protocols.

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

III. CASE MANAGEMENT:

1. Bellwether Selection Process: Status of Meet and Confer. The parties will continue to meet and confer on the issue of the bellwether selection process.

2. **Notice of Revision Surgery**: A plaintiff who undergoes revision surgery

after filing his or her Short Form Complaint shall file with the Court a Notice of Revision setting forth the details of such revision surgery without need to seek consent from the Court or Counsel for HOC. (Form to be agreed upon.) The notice shall be deemed an amendment to the Complaint. Service of such shall be made consistent with the prior Amended Order Regarding Alternative Option for Service of Complaints.

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

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

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

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

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

8. 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

1. As of June 23, 2014, there are 1616 cases filed in New Jersey.

2. All Counsel who have not already provided Liaison Counsel and the Court with a list of their inventory of unfiled, retained matters as ordered in Amended CMO #16 shall do so by June 30, 2014. When notifying the Court, notices shall be sent to

Kelly Gibson at kelly.gibson@judiciary.state.nj.us. Such inventory shall include information indicating the product at issue and whether or not the plaintiff underwent a revision.

V. GENERAL:

1. The next Case Management Conference is scheduled for August 4, 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.

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

10. 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.

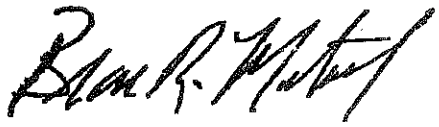
9. Counsel shall provide the Court with their preferred e-mail address by e-mailing same to Kelly Gibson at Kelly.Gibson@judiciary.state.nj.us and Stephanie Gino at Stephanie.Gino@judiciary.state.nj.us.

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.