FILED

AUG 04 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 #18

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 August 4, 2014, counsel appearing, for good cause shown and for the reasons set forth on the record,

IT IS on this 4th day of August 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. A Final Protective Order was agreed to by the parties on July 3, 2014 and entered on July 8, 2014.

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

1. **Phase II:**

2. *Status*: Since the last case management conference, three additional Phase II matters have completed mediation: (1) Morgan Procter, Docket No. BER-L-1026-13 (Plaintiff resides in Florida and is represented by Babbitt, Johnson, Osborne & Le Clainche, P.A.); (2) Jane Geisler, Docket No. BER-L-5035-13 (Plaintiff resides in New York State and is represented by Rheingold, Valet, Rheingold, McCartney & Giuffra LLP); and (3) Lois Krempski-Jones, Docket No. BER-L-5023-13 (Plaintiffs reside in New York State and are represented by Rheingold, Valet, Rheingold, McCartney & Giuffra LLP). Of these three matters, an additional two (2) have resolved.

a. The twenty-one (21) mediated cases comprised of the Phase I and the completed Phase II matters have resulted in 19 of 21 settlements.

The three remaining Phase II matters and the Grossman matter are in the process of being scheduled for mediation.

b. 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 parameters set forth for eligibility for Phase III mediation. The parties have met and conferred and agreed to expand the criteria for Phase III mediation eligible cases as follows: Cases filed and served by March 1, 2014 in which Plaintiff(s) have submitted consent to mediation and who have served completed fact

sheets in accordance with prior Orders, or as extended by Counsel. The parties will submit a list of eligible cases for Phase III mediation by August 11, 2014.

B. 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 then Defendant reserves the right to adjourn the scheduled mediation date.

C. **Exemplars:** The previously referenced rolling production of exemplars has been completed.

II. DISCOVERY

1. Written Discovery:

A. HOC's Answers to Plaintiffs' Exemplar Interrogatories were served on July 25, 2014 and the updated product chart shall be produced by August 6, 2014.

2. Custodial Files:

A. Defendant completed its production of all identified custodial files. The parties are in the process of meeting and conferring about the production of additional custodial files.

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.

   HOC's Answers to Plaintiffs' Sixth Request for Production of Documents were served on July 30, 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. The parties continue to meet and confer regarding the ESI information exchange and potential additional depositions.

7. Depositions: The NJ parties are meeting and conferring together, as well as with their MDL counterparts regarding deposition scheduling and protocols, as well as cross-noticing of depositions.

8. Plaintiffs' have requested the production of original photographs contained in various technical reports previously produced in JPEG or PDF format. Defendant shall begin the rolling production of the requested original photographs, if available, in 30 days.
9. 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 actually undergoes revision surgery after filing his or her Short Form Complaint shall file with the Court a "Notice of Revision" form setting forth the details of such revision surgery without need to seek consent from the Court or Counsel for HOC. The filing of the Notice form shall be deemed an amendment to the Complaint, which shall be deemed denied by Defendant. Service of the Notice of Revision shall be made consistent with the prior Amended Order Regarding Alternative Option for Service of Complaints. A responsive pleading to the Notice of Revision is not required to be filed or served by Defendant. The form of the Notice of Revision Surgery has been agreed to by the parties and will be made available on the Court's website. [Sample form attached]

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

4. Improperly Filed Matters

A. Complaints Alleging Products Not at Issue in Litigation:

In accordance with the January 15, 2013 Order of the New Jersey Supreme Court, only those cases arising out of the use of the Stryker Rejuvenate Modular and/or ABGII Modular Hip Stems shall be filed in this Multicounty litigation, Case Type 296. Plaintiffs are advised that cases alleging the use of other products, including Monolithic products, are not properly filed in this litigation. The following matters have been identified to allege products not at issue in this Multicounty litigation. Counsel shall file a motion to dismiss/remove these matters from this litigation:

i. Beatrice Conway v. HOC, et al., Docket No. BER-L-4970-13 (Attorneys: Levin, Fishbein, Sedran & Berman);
ii. Wendy Mytu Au v. HOC, et al., Docket No. BER-L-8897-12 (Attorneys: Seeger Weiss LLP/Gomez Iagmin Trial Attorneys);
iii. John Glover v. HOC, et al., Docket No. BER-L-3484-14 (Attorneys: Bernstein Liebhard LLP);
iv. Lelia Lewis v. HOC, et al., Docket No. BER-L-4324-14 (Attorneys: Weitz & Luxenberg);
v. Robert and Barbara Cargill v. HOC, et al., Docket No. BER-L-5346-14 (Attorneys: Searcy Denney) [To be amended]; and
vi. Linda C. Vierra v. HOC, et al., Docket No. BER-L-6143-14 (Attorneys: The D'Onofrio Firm, LLC).

B. Duplicate Complaints:

No plaintiff shall file multiple Complaints arising out of the use of the same Stryker Rejuvenate Modular and/or ABGII Modular Hip Stems. Plaintiffs are advised that any such duplicate Complaints are improperly filed. Defense shall notify Plaintiffs' Counsel who have duplicate matters within 14 days. Plaintiffs' Counsel shall meet and confer and shall report back to the Court prior to the next Case Management Conference. Counsel shall report to Kelly Gibson at the Court (kelly.gibson@judiciary.state.nj.us) and copy liaison Counsel. The following matters have been identified to have filed multiple Complaints arising out of the use of the same product:

i. Nancy Russo v. HOC, et al.
    1. Docket No. BER-L-5633-14
    2. Docket No. BER-L-6249-14

ii. Steven Byrd v. HOC, et al.
    1. Docket No. BER-L-5966-14
    2. Docket No. BER-L-6243-14

iii. Ella Reely v. HOC, et al.
    1. Docket No. BER-L-1797-14
    2. Docket No. BER-L-6266-14

iv. Gary Sanford v. HOC, et al.
    1. Docket No. BER-L-4836-14
    2. Docket No. BER-L-4047-14

v. Patrick King v. HOC, et al.
    1. Docket No. BER-L-2232-14

2. Docket No. BER-L-5326-14

vi. Loyd File, Jr. v. HOC, et al.

1. Docket No. BER-L-6445-14

2. Docket No. BER-L-0090-14

Prior to filing any Complaint, it is incumbent upon Plaintiff's Counsel to Search the Docket to assure that there was no prior Complaint filed by this Plaintiff in this Litigation. The Case List is available on the Judiciary's Multicounty Litigation Website: http://www.judiciary.state.nj.us/mass-tort/abgstryker/case_list.htm

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

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

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

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

9. 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. GENERAL:

1. The next Case Management Conference is scheduled for September 22, 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. As of August 1, 2014, there are 2044 cases filed in New Jersey.

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

4. 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.

5. 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.

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

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

8. 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.

11. 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.

12. 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.

13. 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.

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

15. 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.

[INSERT NAME], **Plaintiff(s)** **vs.** **HOWMEDICA OSTEONICS CORPORATION, a New Jersey Corporation, d/b/a STRYKER ORTHOPAEDICS, JILL DOE MANUFACTURERS (1-10), JACK DOE WHOLESALERS (1-10), JAKE DOE SELLERS (1-10), JANE DOE DISTRIBUTORS and MARKETERS (1-10), JIM DOE HEALTH CARE PROVIDERS (1-10), and JEAN DOE (1-10),** **Defendants**	**SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: BERGEN COUNTY** **MASTER DOCKET NO. BER-L-936-13** **CASE NO. 296** **[INSERT INDIVIDUAL DOCKET NO.]** **NOTICE OF REVISION SURGERY**

1. Plaintiff(s), [NAME(S)], is/are filing this Notice of Revision Surgery as permitted by Case Management Order # 18 of this Court.

Notice as to **Right-Side** Revision Surgery(ies): *(Cross out if not applicable)*

2. Plaintiff had the right hip stem at issue explanted on _____, at _____ (medical center and address) by Dr. _____.

Notice as to **Left-Side** Revision Surgery(ies): *(Cross out if not applicable)*

3. Plaintiff had the left hip stem at issue explanted on _____, at _____ (medical center and address) by Dr. _____.

Counsel for Plaintiffs

Date:_____ _____