FILED

DEC 16 2013

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 #12

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 December 16, 2013, counsel appearing, for good cause shown and for the reasons set forth on the record,

IT IS on this 16th day of December 2013,

ORDERED:

I. COMPLIANCE WITH PRIOR ORDERS:

1. COMPLIANCE:

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

A. Defendants will use their best efforts to produce the fact sheets as follows

i. By January 31, 2014, Defendant's Fact Sheets relating to the first set of Plaintiff's Fact Sheets received prior to November 18, 2013 shall be produced.

ii. By March 31, 2014, Defendant's Fact Sheets related to the second set of Plaintiff's Fact Sheets received prior to November 18, 2013 shall be produced.

iii. Defendant shall serve responses to all Plaintiff Fact Sheets received between November 18, 2013 and December 31, 2013 by April 30, 2014.

B. Protective Order:

i. Plaintiff shall submit a revised draft regarding paragraph 14(b) based upon recent developments by January 10, 2014. The parties will confer thereafter, and the parties will submit a final form of Protective Order or competing forms with a letter summarizing each party's position by January 20, 2014. If the matter cannot be resolved at the next conference, a briefing schedule will be set.

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

i. **PHASE I** mediation will proceed as follows:

1. Six of the ten Phase I mediations have been completed to date. Four of the six matters have resolved through mediation: Mergel v. Howmedica Osteonics Corp., et al. (BER-L-1022-13); Seely v. Howmedica Osteonics Corp., et al. (BER-L-850-13); Seeman v. Howmedica Osteonics Corp., et al. (BER-L-6878-12); Dixon v. Howmedica Osteonics Corp., et al. (BER-L-1744-13).

   Three of the remaining Phase I matters (Maggi v. Howmedica Osteonics Corp. et al., Grossman v. Howmedica Osteonics Corp. et al., and Murray v. Howmedica Osteonics Corp., et al.) are scheduled to be mediated in January 2014.

   One Phase I matter (Singh v Howmedica Osteonics Corp., et al) has been withdrawn from mediation because of plaintiff's ongoing medical treatment.

ii. **PHASE II**: The final pool of Phase II eligible cases consists of 42 matters [an updated list to be submitted to the Court no later than January 10, 2014] :

1. The parties shall meet and confer regarding the selection of the Phase II eligible matters (as identified in CMO# 11) and shall advise the Court of same prior to the next case management conference. [There will be ten in Phase II, with four selected by the Court, three

selected by the Plaintiff, three selected by the Defendant].

2. The Court shall select the four Phase II eligible matters in advance of the next case management conference.

D. Parties shall continue to meet and confer regarding the production of exemplars.

II. DISCOVERY

1. Written Discovery:

A. Insurance policies were produced November 22, 2013.

2. Additional Corporate Structure Information shall be provided by Defendant to Plaintiffs no later than December 20, 2013 and the parties shall meet and confer prior to the next case management conference, regarding continued production, including custodial file production.

3. Parties have met and conferred regarding the ESI information exchange and potential additional depositions, and shall continue to meet and confer.

4. ROLLING PRODUCTIONS:

A. Parties shall meet and confer regarding further rolling document discovery productions and regarding the priority of plaintiffs' requested discovery categories prior to the next case management conference.

B. Defendants Phase III production was completed on November 25, 2013.

5. 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.

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).

III. CASE MANAGEMENT:

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

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

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

4. File & Serve Service: pending proposal and continued discussion

5. Service on Defendants: The Court entered an order on August 13, 2013

6. Preliminary discussion relative to issues involving Bellwether Trials will be discussed at the January Case Management Conference.

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

IV. GENERAL:

1. The next Case Management Conference is scheduled for January 28, 2014, at 11:00am. Liaison counsel shall meet at 10:00 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.

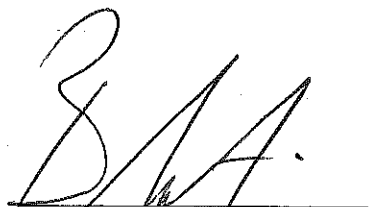
9. Counsel shall provide the Court with their preferred e-mail address by e-mailing same to Kelly Gibson at Kelly.Gibson@judiciary.state.nj.us and Stephanie Gino at Stephanie.Gino@judiciary.state.nj.us.

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.