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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 #13

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 January 28, 2014, counsel appearing, for good cause shown and for the reasons set forth on the record,

IT IS on this 28th day of January 2014,

ORDERED:

I. COMPLIANCE WITH PRIOR ORDERS:

1. COMPLIANCE:

   A. Defendant Fact Sheet

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

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

1. Prior CMO #12 DFS language for 1/31/14, 3/31/14, and 4/30/14 deadlines remain in effect.

2. The 4/30/314 deadline for production of Defendant Fact Sheets is hereby expanded to include responses to all Plaintiff Fact Sheets received between 1/1/14 and 1/31/14.

3. All Plaintiff Fact Sheets received after 1/31/14 will have DFS responses served within 90 days of service of the PFS.

ii. Payment for Broadspire-related files in connection with Defendant Fact Sheet responses should be made by check in the amount of $50.00 (fifty dollars) payable to "Broadspire", with an indication in the memo field of both the plaintiff's name and Broadspire claim number. **Checks must be mailed to Nora Wolf, Gibbons P.C., One Gateway Center, Newark, NJ, 07102.**

B. Protective Order:

i. Plaintiffs submitted a revised draft to Defendant. The parties will confer in an attempt to resolve the remaining issues based upon the revised draft. The parties will submit a final form of Protective Order or competing forms with a letter

summarizing each party's position by February 21, 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).

1. **Phase I**: Two mediations were completed since the last case management conference: Maggi v. Howmedica Osteonics Corp., et al.(mediated by Judge Hamlin on January 16, 2014) and Murray v. Howmedica Osteonics Corp., et al. (mediated by Judge Welsh on January 22, 2014.) Murray resolved at mediation and Maggi remains in discussion. In total, eight of the ten Phase I mediations have been completed to date. Five of the eight matters have resolved through mediation. One of the remaining Phase I matters (Grossman v. Howmedica Osteonics Corp., et al.) was deferred from mediation in December due to Plaintiff's ongoing medical treatment. Another Phase I matter (Singh v. Howmedica Osteonics Corp., et al.) was previously withdrawn from mediation because of Plaintiff's ongoing medical treatment, but counsel has asked that it now be rescheduled. The parties are in the process of securing a new date.

2. **Phase II:**

a. The parties are in the process of finalizing the Phase II eligible matters (as identified in CMO #11 and possibly expanded to including additional eligible matters). The parties shall submit the list of eligible cases to the Court no later than February 4, 2014. The Court selection shall be announced by February 11, 2014 and a deadline for Defendant's selection shall then be set. All pertinent medical records, to the extent not already provided, shall be provided to defense counsel within 10 days of selection of a case for mediation. Plaintiff's 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.

b. Parties have conferred regarding the selection process for the "over seventy-eight year old Plaintiff" cases that will be included as part of Phase II per CMO #11. The parties have submitted the list of eligible cases to the Court. The Court selected Jane Geisler, BER-L-5035-13, with the Rheingold Law Firm. Plaintiffs will announce their selection for this group of

mediations by February 4, 2014. A deadline for Defendant Howmedica Osteonics Corp. selections shall be set.

c. The Parties are in the process of securing mediation dates for the second half of March and April of 2014.

D. **Exemplars:** The parties shall continue to meet and confer regarding the available inventory and production of exemplars.

II. DISCOVERY

1. Written Discovery:

A. Additional Corporate Structure Information was provided by Defendant to Plaintiffs on December 20, 2013.

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

2. ROLLING PRODUCTIONS:

A. The parties met and conferred on continued rolling document productions and will continue to do so prior to the next case management conference. In the interim, the parties have agreed to the next roll out production: (1) Defendant shall produce a custodial file no later than February 27, 2014. (2) Defendant shall produce two additional custodial files and a "group share drive" documents no later than March 14, 2014. (3) Defendant shall produce an additional custodial file and group shared

drive no later than March 31, 2014. Defendants hall continue to prepare for rolling document productions and prior to the next Case Management Conference, the parties shall advise the Court of a plan for additional rolling production.

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. 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).

5. **Committee Members**. Two Committee positions have become available in that certain members of the Science Committee and the Discovery Committee are devoting their time to the MDL in Minnesota and are withdrawn from the New Jersey leadership structure. Accordingly, pursuant to a recommendation by the Chair of the Plaintiff's Steering Committee, attorney Hadley Matarazzo of the Rochester, NY firm Faraci Lange is to replace Ben Gordon on the Science Committee. Additionally, Daniel Lapinski of the Wilentz Goldman

firm in Woodbridge, New Jersey is hereby appointed to replace Walter Kelly on the Discovery Committee.

A. **Counsel shall submit an Order memorializing the Committee Structure and current members**

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 February 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 February 26, 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 IS REMINDED THAT AS A REQUIRMENT TO PARTICIPATE IN MEDIATION, THEY MUST NOTIFY DEFENSE COUNSEL WITHIN THIRTY (30) DAYS OF SERVICE OF THEIR COMPLAINT. FOR ALL

THOSE COMPLAINTS FILED PRIOR TO THE DATE OF THIS ORDER, AND NOT WITHIN THE THIRTY (30) DAYS, COUNSEL SHALL BE PERMITTED TO ADVISE DEFENSE COUNSEL BY FEBRUARY 4, 2014 OF THEIR DESIRE TO PARTICIPATE IN THE MEDIATION PROGRAM.

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.