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FEB 27 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 #14

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 February 27, 2014, counsel appearing, for good cause shown and for the reasons set forth on the record,

IT IS on this 27th day of February 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 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: Status of meet & confer regarding final form

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 March 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**: Since the last case management conference, the following cases have resolved: Specifically, (1) Sonia Singh v Howmedica Osteonics Corp., et al., (Judge Welsh); (2) Cotone v. Howmedica Oseonics Corp, et al. (Judge Hamlin); and (3) Cook v. Howmedica Osteonics Corp., et al. (Judge Hamlin and Settlement Conference with the Court on February 24, 2014).

   In total, nine of the ten Phase I mediations have been completed to date. The mediation of one matter (Grossman) has been postponed. Eight of the nine matters have resolved through mediation.

2. **Phase II:**

   a. The parties have finalized the lists of eligible Phase II matters, including matters for consideration in both the general mediation and the expanded pool of plaintiffs 78 years or older. The lists have been submitted to the Court.

b. The Court has made its random selections from both lists, as follows:

   i. Phase II 78+ List: Jane Geisler v. Howmedica Osteonics Corp, et al., Docket No. BER-L-5035-13

   ii. Phase II General List: (1) Lorraine Conklin, et al. v. Howmedica Osteonics Corp., et al., Docket No. BER-L-2319-13 (Anapol Schwartz); (2) Jeannita Gaudet, et al. v. Howmedica Osteonics Corp., et al., Docket No. BER-L-1188-13 (Pritzker Olsen); (3) Lois Krempski-Jones, et al. v. Howmedica Osteonics Corp., et al., Docket No. BER-L-5023-13 (Rheingold Valet); and (4) Jacquiline Watskin, et al. v. Howmedica Osteonics Corp., et al., Docket No. BER-L-4990-13 (Lieff Cabrasher).

c. Plaintiffs have made their selections from both lists, as follows:

   i. -Phase II 78+ List: (1) Roy Kile, et al. v. Howmedica Osteonics Corp, et al., Docket No. BER-L-6888-12 (Searcy

Denney); and (2) Jerald De La Fuente, et al. v. Howmedica Osteonics Corp., et al. (Pogust Braslow), Docket No. BER-L-1627-13.

ii. -Phase II General List: (1) Paul Dlutkowski, et al. v. Howmedica Osteonics Corp., et al., Docket No. BER-L-2621-13 (Anapol Schwartz); (2) Jeff Beard, et al. v. Howmedica Osteonics Corp., et al., Docket No. BER-L-3665-13 (Bohrer Law Firm); and (3) Connie Stevens v. Howmedica Osteonics Corp., et al., Docket No. BER-L-2323-13 (Weitz & Luxenberg).

d. Defendant must choose its selections no later than March 14, 2014.

e. 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.

D. **Exemplars:** The parties shall continue to meet and confer regarding the available inventory and production of exemplars. [Defendant shall have information relating to Plaintiffs' inquiry about the amount of available inventory within the next 30 days.]

E. **Amended Alternative Option for Service of Complaints**: The parties have agreed that the court's August 13, 2013 Order Regarding Alternative Opinion for Service of Complaints Under Certain Specific Circumstances shall be amended to allow Short Form Complaints to be served upon Counsel for HOC by all law firms, regardless of the number of cases they have properly filed and served upon HOC.

II. DISCOVERY

1. Written Discovery:

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

2. Rolling Production:

A. The parties will continue to meet and confer on continued rolling document productions and will continue to do so prior to the next case management conference. Rolling productions of custodial files and shared drive documents are continuing as per CMO #13.

B. In addition to the most recent continuing document productions previously set forth in CMO #13, which continue through March 31, 2014, the following additional document productions have been agreed to between the parties: (1) Defendant shall produce two additional custodial files no later than April 17, 2014; (2) Defendant shall produce two additional custodial files and a group shared drive no later than April 30, 2014; (3) Defendant shall produce two additional custodial files no later than May 16, 2014; and (4) Defendant shall produce two additional custodial files and a group shared drive no later than May 30, 2014.

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

4. 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.

5. 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).

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

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 April 1, 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 REQUIREMENT TO PARTICIPATE IN MEDIATION, THEY MUST NOTIFY DEFENSE COUNSEL WITHIN THIRTY (30) DAYS OF SERVICE OF THEIR COMPLAINT.

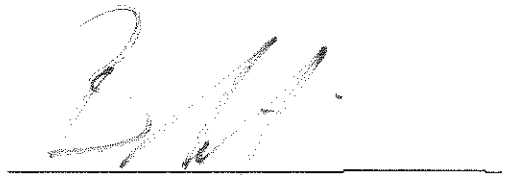
9. Counsel shall provide the Court with their preferred e-mail address by e-mailing same to Kelly Gibson at Kelly.Gibson@judiciary.state.nj.us and Stephanie Gino at Stephanie.Gino@judiciary.state.nj.us.

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.



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