FILED

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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 #15

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 April 1, 2014, counsel appearing, for good cause shown and for the reasons set forth on the record,

IT IS on this 1st day of April 2014,

ORDERED:

I. COMPLIANCE WITH PRIOR ORDERS:

1. Orders Entered Since CMO #14

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

A. Amended Mediation Consent (entered March 14, 2014).

2. COMPLIANCE:

A. Defendant Fact Sheet

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

1. Prior CMO #12 DFS language for 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.

B. All Plaintiffs who have indicated in their Plaintiff Fact Sheet responses that they would like copies of their Broadspire-related files who have not already remitted payment must remit payment no later than April 30, 2014. **Payment, in the amount of $50 for each such matter, should be made by check payable to "Broadspire," <u>with an indication in the memo field of both the plaintiff's name and Broadspire claim number</u>. Checks may be mailed to Nora Wolf, Gibbons P.C., One Gateway Center, Newark, NJ 07102.**

C. Protective Order: Status of meet & confer regarding final form

i. The parties will continue to confer in an attempt to resolve the remaining issues based upon the revised draft. If the parties are unable to reach a compromise by April 15, 2014, the parties shall advise the Court on that date and a conference call with the Court shall be held on April 16 at 9:00 AM.

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

1. **Phase I:**

a. Status: Since the last case management conference, the only mediated Phase I matter that had not resolved, has settled (Maggi v. HOC, et al., Docket No. BER-L-1404-13 - Plaintiff resides in NY and is represented by Sullivan Papain).

2. **Phase II:**

a. Status: Since the last case management conference, two of the Phase II matters have completed mediation and both have resolved: (1) Dlutkowski v. HOC, et al., Docket No. BER-L-2621-13 (Plaintiffs reside in Indiana and are represented by Anapol Schwartz); and (2) Conklin v. HOC, et al., Docket No. BER-L-

2319-13 (Plaintiffs reside in New Jersey and are represented by Anapol Schwartz).

b. Defendant has selected its two matters for participation in Phase II Mediation from the 78+ list as follows:

   i. Betty White v. HOC, et al., Docket No. BER-L-2501-13; and

   ii. Doris Smith, et al. v. HOC, et al., Docket No. BER-L-3488-13.

   Defendant is in the process of choosing its remaining selections from the Phase II General list as additional records are obtained. Defendant shall make the remaining selections prior to the next case management conference.

c. 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.

E. **Exemplars:** The parties shall continue to meet and confer regarding the available inventory and production of exemplars. Defendant reports that the previously provided chart of available inventory remains accurate.

III. DISCOVERY

1. Written Discovery:

   A. Parties have met and conferred regarding the ESI information exchange 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 the custodial files and shared drive documents are continuing as per CMO #13 and CMO #14 through May 2014. Defendant has agreed to produce said custodial files ahead of schedule if the files are ready for production earlier than the scheduled dates. As of the end of May 2014, in addition to the other categories of documents already produced in the litigation, twelve (12) custodial files and four (4) group shared drive files will have been produced.

   B. Defendant shall continue to prepare for rolling document productions, and by April 14, 2014, the parties shall advise the Court of a plan for

additional rolling productions of the remaining identified 14 custodial files and additional shares drive documents.

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. The parties have reached an agreement whereby for non-revision Plaintiffs, the Fact Sheet obligations of the parties will be suspended. This is without prejudice. Defendant reserves the right to request production of Fact Sheets in non-revision cases.

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

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

6. 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 May 22, 2014, at 11:00am. Liaison counsel shall meet at 9:30 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.

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

8. 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.