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 #19

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 October 8, 2014, counsel appearing, for good cause shown and for the reasons set forth on the record,

IT IS on this 8th day of October 2014,

ORDERED:

FILED
OCT 0 8 2014
BRIAN R. MARTINOTTI
J.S.C.

I. COMPLIANCE WITH PRIOR ORDERS:

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

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

2. 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.

3. A Final Protective Order was agreed to by the parties on July 3, 2014 and entered on July 8, 2014.

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

A. **Phase II Mediation Update:**

i. *Status*: Since the last case management conference, one additional Phase II matter, which was previously mediated, resolved: (1) Connie Stevens, Docket No. BER-L-2323-13 (Plaintiff resides in Illinois and is represented by Weitz & Luxenberg).

ii. The twenty-one (21) mediated cases comprised of the Phase I and the completed Phase II matters have resulted in 20 of 21 settlements. The remaining matters are in the process of being scheduled for mediation.

B. **Phase III Mediation Update:**

i. In accordance with the eligibility criteria for participation in Phase III mediation set forth in CMO #18, the Court has

selected 10 matters for participation in Phase III mediation, as follows:

1. Clara Coshatt v. HOC, et al., Docket No. BER-L-9529-13 (Attorneys: Bernstein Liebhard, LLP; Law Office of Jan Meyer & Associated, P.C.)

2. Antonio M. & Sandra Costa v. HOC, et al., Docket No. BER-L-1195-13 (Attorney: Javerbaum Wurgaft Hicks et al.)

3. Frederick L. & Ruby Jean Tilley v. HOC, et al., Docket No. BER-L-1016-14 (Attorney: Anapol Schwartz)

4. Terrence & Annette Gualandi v. HOC, et al., Docket No. BER-L-6634-13 (Attorneys: Beasley, Allen, Crow, et al.; Weitz & Luxenberg)

5. Joann Morgan v. HOC, et al., Docket No. BER-L-1254-14 (Attorney: Pope, McGlamry, Kilpatrick, et al.)

6. Michael & Anne Neubecker Moore v. HOC, et al., Docket No. BER-L-7425-13 (Attorney: Pogust, Braslow & Millrood, LLC)

7. Marlene M & Ernst Sauer v. HOC, et al., Docket No. BER-L-9175-13 (Attorney: Robins, Kaplan, Miller & Ciresi, LLP)

8. Herbert & Victoria Dornfield v. HOC, et al., Docket No. BER-L-0086-14 (Attorney: Weitz & Luxenberg)

9. Anna & Larry Deitz v. HOC, et al., Docket No. BER-L-1158-13 (Attorney: Anapol Schwartz)

10. Anne Drake v. HOC, et al., Docket No. BER-L-1935-13 (Attorney: Keefe Bartels)

ii. 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.

II. DISCOVERY

1. Written Discovery:

A. Defendant completed its production of all identified custodial files. Since the last Case Management Conference in August, Defendant has completed additional productions of available original photographs requested by Plaintiffs and updated core documents and organizational chart productions. The parties are in the process of meeting and

conferring about the production of additional custodial files and additional document discovery and discovery responses.

2. Continued ESI Information Exchange: The parties continue to meet and confer regarding the ESI information exchange and potential additional depositions.

3. 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

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.), Cindy Gugg, (Gibbons P.C.) and Ellen Relkin, Esq. (Weitz & Luxenberg).

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

III. CASE MANAGEMENT:

1. **Notice of Revision Surgery, *Reminder*:** 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. 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 has been made available on the Court's website.

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

3. 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 were previously identified to allege products not at issue in this Multicounty litigation and will be dismissed without prejudice via Stipulation by the parties:

i. John Glover v. HOC, et al., Docket No. BER-L-3484-14 (Attorneys: Bernstein Liebhard LLP);

ii. Lelia Lewis v. HOC, et al., Docket No. BER-L-4324-14 (Attorneys: Weitz & Luxenberg); and

iii. Linda C. Vierra v. HOC, et al., Docket No. BER-L-6143-14 (Attorneys: The D'Onofrio Firm, LLC).

B. The following matter was also previously identified to allege a product not at issue in this Multicounty litigation and Defendant has requested that plaintiff sign a Stipulation of Dismissal without Prejudice. To date, plaintiff's counsel has failed to respond to Defendant's requests. If plaintiff does not respond within 30 days, Defendant shall make a motion to dismiss:

i. Wendy Mytu Au v. HOC, et al., Docket No. BER-L-8897-12 (Attorneys: Seeger Weiss LLP/Gomez Iagmin Trial Attorneys);

C. As to the below matter which was previously identified as alleging a product not at issue in the litigation, plaintiff's counsel has made a motion to be relieved as counsel, which is returnable on October 10, 2014. Defendant shall make a motion to dismiss:

i. Beatrice Conway v. HOC, et al., Docket No. BER-L-4970-13 (Attorneys: Levin, Fishbein, Sedran & Berman);

D. 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. The following matters have been identified to have filed multiple Complaints arising out of the use of the *same* product and plaintiffs' liaison counsel shall resolve or report back within 14 days (October 22, 2014):

i. Nancy Russo v. HOC, et al.

1. Docket No. BER-L-5633-14 (Attorneys: Weitz & Luxenberg)

2. Docket No. BER-L-6249-14 (Attorneys: Parker Waichman LLP)

ii. Steven Byrd v. HOC, et al.

1. Docket No. BER-L-5966-14 (Attorneys: Weitz & Luxenberg)

2. Docket No. BER-L-6243-14 (Attorneys: Parker Waichman LLP)

iii. Ella Reely v. HOC, et al.

1. Docket No. BER-L-1797-14 (Attorneys: Weitz & Luxenberg)

2. Docket No. BER-L-6266-14 (Attorneys: Parker Waichman LLP)

iv. Gary Sanford v. HOC, et al.

1. Docket No. BER-L-4836-14 (Attorneys: Weitz & Luxenberg)

2. Docket No. BER-L-4047-14 (Attorneys: The Miller Firm, LLC)

v. Patrick King v. HOC, et al.

1. Docket No. BER-L-2232-14 (Attorneys: Weitz & Luxenberg)

2. Docket No. BER-L-5326-14 (Attorneys: Searcy Denney)

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

1. Docket No. BER-L-0090-14 (Attorneys: Seeger Weiss)

2. Docket No. BER-L-6445-14 (Attorneys: Weitz & Luxenberg)

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.

4. Crossover Complaints: It is hereby ordered that any matters arising out of the use of the Stryker Rejuvenate Modular and/or ABGII Modular Hip Stems and the use of DePuy ASR Hip Implants shall be initiated with the filing of a separate short form complaint in each applicable Multicounty litigation, Case Type 293 and Case Type 296. Plaintiffs' counsel shall designate in each R. 4:5-1 disclosure that a separate complaint has been filed. The following matter has

been identified as alleging injuries arising out of the use of both products and has been filed accordingly: William Gumble and Sandra Gumble, Docket No. BER-L-6469-14 (Attorneys: Weitz & Luxenberg)

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 have and will continue to meet and confer on the issue of the bellwether selection process. If the parties have not reached an agreement by November 17, 2014, then a phone conference with the Court will be scheduled for November 18, 2014 to establish a briefing schedule addressing this issue.

IV. GENERAL:

1. The next Case Management Conference is scheduled for November 12, 2014 at 1:00pm. Liaison counsel shall meet at 11:30am. **Counsel shall submit a proposed agenda seven (7) days prior to this Case Management Conference.**

2. As of October 8, 2014, there are 2,092 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 your 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.

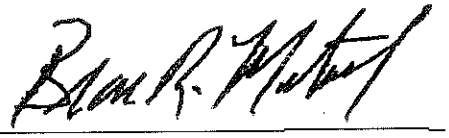
11. Counsel shall provide the Court with their preferred e-mail address by e-mailing same to Kelly Gibson at Kelly.Gibson@judiciary.state.nj.us and Stephanie Gino at Stephanie.Gino@judiciary.state.nj.us.

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.