SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

CASE NO. 293

IN RE DePuy ASR ™ Hip Implants LITIGATION

CIVIL ACTION

INITIAL ORDER FOR CASE MANAGEMENT

This matter having been opened by the Court on its own motion, and in furtherance of the Order of the Supreme Court dated April 12, 2011, ordering centralized case management of DePuy ASR ™ Hip Implants, and good cause existing for its entry pursuant to R. 4:38A,

IT IS on this 15th day of April, 2011 ORDERED as follows:

1. Preamble. The court asserts its expectation that professionalism, courtesy, and civility will endure throughout these proceedings. The Manual for Complex Litigation, Fourth, §10.21 states the spirit in this language:

> Judicial involvement in managing complex litigation does not lessen the duties and responsibilities of the attorneys. To the contrary, complex litigation places greater demands on counsel in their dual roles as advocates and officers of the court. The complexity of legal and factual issues makes judges especially dependent on the assistance of counsel.

The certification requirements of R. 1:4-8(a) reflect some of the attorneys' obligations as officers of the court. Because of the high level of competence and experience that attorneys ordinarily bring to this type of litigation, the court is confident that its objective will be achieved without judicial intervention.

2. Effect of This Order.

(a) Applicability. This order applies to all DePuy ASR ™ Hip Implants Litigation actions centralized for coordinated management in the Bergen County Vicinage and all those hereinafter filed or transferred to the Bergen County Vicinage pursuant to the Supreme Court Order dated April 12, 2011. The actions are centralized to avoid duplication and to prevent conflicts. These actions are not consolidated. Each action will retain its own docket number. A master docket number for administrative purposes shall be assigned to this action by the Civil Division Manager.

(b) Transfer of Files. All court files including pleadings, motions, and other papers shall be transferred from the original vicinage of venue to the Civil Division Manager of the Bergen County Vicinage as soon as practicable.

(c) Stay. All motions pending in any vicinage are stayed until further order of the court. The filing of motions are stayed until further order of the court.

3. Initial Conference. All parties (in person or by counsel) shall appear for a conference with the undersigned on Tuesday, May 10, 2011, at 10:30 a.m. in

Courtroom 359, Bergen County Justice Center, 10 Main Street, Hackensack, New Jersey 07601.

(a) Attendance. To minimize costs and facilitate a manageable conference, parties are encouraged, but not required, to attend the conference, and parties with similar interests are expected to agree to the extent practicable on a single attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation. Attendance at the conference will not waive objections to jurisdiction, venue, or service.

(b) Service List. This order is being mailed to the persons shown on Attachment 1, which has been prepared by court staff. Counsel on this list are requested to forward a copy of the order to other attorneys who should be notified of the conference and immediately notify court staff of any necessary additions or corrections to the list. An updated service list will be prepared after the conference.

(c) Other Participants. Persons who are not named as parties in this litigation but may later be joined as parties or are parties in related litigation pending in other federal and state courts are invited to attend in person or by counsel.

(d) Agenda. A tentative agenda is appended as Attachment 2. Counsel are encouraged to advise the court at least seven (7) days prior to the initial case management conference of any items that should be added to the agenda.

4. Preparations for Conference.

(a) Procedures for Complex Litigation. Counsel are expected to be prepared at the conference to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation.

(b) Initial Conference of Counsel. Before the conference, counsel shall meet and confer -- in person, by telephone conference, or by video conference -- and seek consensus to the extent possible with respect to the items on the agenda, including a proposed discovery plan and a suggested schedule for joinder of parties, amendment of pleadings, motions, and trial.

(c) Statements. Counsel will submit to the court no later than seven days prior to the conference, a brief written statement, no more than three (3) pages, containing the following information, to the extent known:

1. Status of Discovery including Digital Information Identification, Collection, and Preservation.

2. List of Party's Witnesses Expected to Testify.

3. Status of Settlement Negotiations, Mediation, and Prospects for Settlement.

4. Concise Demand and/or Offer to Resolve the Dispute.

5. Proposed Schedule of Necessary Events Prior to Trial.

**6. List of any Pending or Anticipated Motions.**

**7. Current Status of Request for Jury Trial.**

**8. Any Other Issues that Need to be Addressed by the Court.**

**These statements will not be filed with the clerk, will not be binding, will not waive claims or defenses, and may not be offered into evidence against a party in later proceedings.**

**(d) List of Affiliated Companies and Counsel. To assist the court in identifying any problems of recusal or disqualification, counsel will submit to the court no later than seven days prior to the conference a list of all companies affiliated with the parties and all counsel associated in the litigation.**

**(e) List of Related Actions. Counsels' statements shall list all related actions pending in state or federal court and their current status, to the extent known.**

**5. Interim Measures. Until otherwise ordered by the court:**

**(a) Pending and New Discovery. Pending the conference, all outstanding disclosure and discovery proceedings are not stayed and further discovery may be initiated. In addition to any ongoing discovery, all parties shall, without awaiting a discovery request, engage in the following discovery:**

**1. Provide to all other parties the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information.**

**2. Provide to all other parties a copy of, or description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings.**

**3. Provide to all other parties a computation of any category of damages claimed by the disclosing party, making available for inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.**

**4. Provide to all other parties the opportunity for inspection and copying any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.**

**(b) Discovery of Digital Information Including Computer-Based Information and Electronically Stored information.**

**1. Duty to Investigate and Disclose. Prior to the conference, counsel shall review with the client the client's information management systems including computer-based and other digital systems, in order to understand how information is stored and how it can be retrieved. To determine what must be disclosed pursuant to Paragraph 5(a) of this order, counsel shall further review with the client the client's information files, including currently maintained computer files as well as historical, archival, back-up, and legacy computer files, whether in current or historic media or formats, such as digital evidence that may be used to support claims or defenses. Counsel shall also identify a person or persons with knowledge about the client's information management systems, including computer-based and other digital systems, with the ability to facilitate, through counsel, reasonably anticipated discovery.**

**2. Duty to Notify. A party seeking discovery of computer-based or other digital information shall notify the opposing party as soon as possible, but no later than the conference, and identify as clearly as possible the categories of information that may be sought. A party may supplement its request for computer-based and other digital information as soon as possible upon receipt of new information relating to digital evidence.**

**3. Duty to Meet and Confer. During the meeting required by Paragraph 4(b) of this order, the parties shall confer and attempt to agree on computer-based and other digital discovery matters, including the following:**

**(a) Preservation and production of digital information; procedures to deal with inadvertent production of privileged information; whether restoration of deleted digital information may be necessary; whether backup or historic legacy data is within the scope of discovery; and the media, format, and procedures for producing digital information.**

**(b) Who will bear the costs of preservation, production, and restoration (if necessary) of any digital discovery.**

**(c) Preservation of Records. The parties should attempt to reach agreement on all issues regarding the preservation of documents, data, and tangible things. These issues include, but are not necessarily limited to:**

**1. the extent of the preservation obligation, identifying the types of material to be preserved, the subject matter, time frame, the authors and addressees, and key words to be used in identifying responsive materials;**

**2. the identification of persons responsible for carrying out preservation obligations on behalf of each party;**

**3. the form and method of providing notice of the duty to preserve to persons identified as custodians of documents, data, and tangible things;**

**4. mechanisms for monitoring, certifying, or auditing custodian compliance with preservation obligations;**

**5. whether preservation will require suspending or modifying any routine business processes or procedures, with special attention to document-management programs and the recycling of computer data storage media;**

**6. the methods to preserve any volatile but potentially discoverable material, such as voicemail, active data in databases, or electronic messages;**

**7. the anticipated costs of preservation and ways to reduce or share these costs; and**

**8. a mechanism to review and modify the preservation obligation as discovery proceeds, eliminating or adding particular categories of documents, data, and tangible things.**

**(d) <u>Duty to Preserve</u>.**

**1. Until the parties reach agreement on a preservation plan, all parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things in the possession, custody and control of the parties to this action, and any employees, agents, contractors, carriers, bailees, or other nonparties who possess materials reasonably anticipated to be subject to discovery in this action. Counsel are obliged to exercise reasonable efforts to identify and notify such nonparties, including employees of corporate or institutional parties.**

**2. "Documents, data, and tangible things" is to be interpreted broadly to include writings; records; files; correspondence; reports; memoranda; calendars; diaries; minutes; electronic messages; voicemail; E-mail; telephone message records or logs; computer and network activity logs; hard drives; backup data; removable computer storage media such as tapes, disks, and cards; printouts; document image files; Web pages; databases; spreadsheets; software; books; ledgers; journals; orders; invoices; bills; vouchers; checks; statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic presentations; drawings; films; charts; digital or chemical process photographs; video, phonographic, tape, or digital recordings or transcripts thereof; drafts; jottings; and notes. Information that serves to identify, locate,**

**or link such material, such as file inventories, file folders, indices, and metadata, is also included in this definition.**

**3. "Preservation" is to be interpreted broadly to accomplish the goal of maintaining the integrity of all documents, data, and tangible things reasonably anticipated to be subject to discovery under R. 4:10 to R. 4:19 in this action. Preservation includes taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of such material, as well as negligent or intentional handling that would make material incomplete or inaccessible.**

**4. If the business practices of any party involve the routine destruction, recycling, relocation, or mutation of such materials, the party must, to the extent practicable for the pendency of this order, either:**

**(a) halt such business processes;**

**(b) sequester or remove such material from the business process; or**

**(c) arrange for the preservation of complete and accurate duplicates or copies of such material, suitable for later discovery if requested.**

**5. Before the conference to develop a preservation plan, a party may apply to the court for further instructions regarding the duty to preserve specific categories of documents, data, or tangible things. A party may seek permission to resume routine business processes relating to the storage or destruction of specific categories of documents, data, or tangible things, upon a showing of undue cost, burden, or overbreadth.**

**6. If, after conferring to develop a preservation plan, counsel do not reach agreement, the parties are to submit to the court within three days of the conference a statement of the unresolved issues together with each party's proposal for their resolution of the issues. In framing an order regarding the preservation of documents, data, and tangible things, the court will consider those statements as well as any statements made at the conference.**

**(e) Protective Order. The parties should attempt to reach agreement on all issues regarding the necessity for, scope of, and terms of a protective order covering confidential, privileged, or protected information.**

**(f) Document Depositories. The parties should attempt to reach agreement on all issues regarding the establishment and operation of a document depository program.**

**6. Later Filed Actions. This order shall apply to related actions later filed in or transferred to this court.**

7. Applications for Lead and Liaison Counsel Appointments. The court may appoint plaintiffs' lead counsel and/or a plaintiffs' steering committee, as well as plaintiffs' liaison counsel. Applications for these positions must be filed with the court no later than seven days prior to the conference. The court will only consider attorneys who have filed a civil action in this litigation. The main criteria for these appointments are (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. Applications should also set forth attorney fee proposals, rates, and percentages that applicants expect to seek if the litigation succeeds in creating a common fund.

8. Internet Notice. All orders, notices and other pertinent documents filed with the court common to the entire litigation shall be available on the Judiciary Web Page for Mass Tort Litigation, which may be accessed at www.judiciary.state.nj.us/mass-tort/index.htm.

9. Appearances Pro Hac Vice. Attorneys must be admitted to practice and in good standing in New Jersey; those not admitted to speak pro hac vice in this litigation may not participate.

(a) Appearances pro hac vice are limited to three (3) counsel per party in each action, subject to adjustment for good cause.

(b) An attorney seeking to speak pro hac vice shall apply by formal notice of motion or by consent order with supporting affidavit and proposed form of order, in compliance with R. 1:21-2. Motions for Pro Hac Vice admission filed with consent of opposing counsel shall be decided at the earliest convenience of the court without the need to be heard on the regular motion calendar. Counsel shall use the pro hac vice application form posted on the judiciary's website at http://www.judiciary.state.nj.us/civil/forms/10880.pdf.

(c) Pro hac vice counsel may try the action but shall not be designated trial counsel under R. 4:25-4. No proceedings shall be adjourned because pro hac vice counsel is not available.

(d) All pleadings, motions and correspondence to the court must be submitted by New Jersey counsel unless the court specifically waives this provision.

(e) Out-of-state attorneys representing plaintiffs must certify that all retainer agreements with clients in the subject litigation do not, and in the future will not, violate any provisions of the New Jersey Rules of Court.

(f) Out-of-state attorneys seeking permission to speak on behalf of a corporate defendant must certify as to any prior involvement with that corporation or its related entities, including the capacity in which the attorney was involved. Further, the attorney must include in the affidavit a statement of the good faith belief that the attorney was not involved with policy or management decisions that would require the attorney to be called as a witness in any matter before the court.

(g) Counsel permitted to speak pro hac vice shall be required to make annual payments to the Disciplinary Oversight Committee (R. 1:20-1(b)), the New

**Jersey Lawyers' Fund for Client Protection (R. 1:28-2(a)), and the New Jersey Lawyers Assistance Program (R. 1:28B-1(e)).**

**(h) The following conditions shall apply to the admission to speak pro hac vice of any attorney in these matters:**

**1) Counsel permitted to speak pro hac vice shall abide by the New Jersey Rules of Court, including all disciplinary rules of the Courts of the State of New Jersey.**

**2) Counsel permitted to speak pro hac vice shall consent to the appointment of the Clerk of the Supreme Court of New Jersey as an agent upon whom service of process may be made for all actions against their firm that may arise out of their participation in this matter.**

**3) Counsel permitted to speak pro hac vice must be accompanied by a member of the New Jersey Bar at all proceedings, unless specifically waived by the court.**

**4) Discovery proceedings, motions, trial, and any other court proceedings will not be adjourned due to the inability of pro hac vice counsel to be in attendance.**

**5) All pleadings, briefs, and other papers filed with the court shall be signed by an attorney of record authorized to practice in this State, who shall be held responsible for them, the conduct of the cause, and the attorney permitted to speak pro hac vice.**

**6) Counsel permitted to speak pro hac vice must notify the court immediately of any matter affecting the standing at the Bar of any State in which they are admitted or of any other jurisdiction.**

**7) Counsel permitted to speak pro hac vice shall continue to comply with Rules 1:20-1(b), 1:28-2(a), and 1:28B-1(e) on an annual basis and shall submit affidavits of compliance within thirty (30) days of such compliance.**

**8) Permission to speak pro hac vice shall be automatically terminated for failure to make any required annual payment, upon appropriate notification from the Administrative Office of the Courts that the annual payment has not been made. Proof of such payment, after filing proof of the initial payment, shall be made no later than February 1 of each year.**

**9) Noncompliance with any of the requirements of pro hac vice admission shall constitute grounds for removal.**

**10) A copy of the order granting, denying, extending, or revoking permission to speak pro hac vice shall be served on all parties within seven (7) days of its entry.**

**10. Captions, Pleadings, and Fees.**

**(a) All parties shall file individual actions at the Bergen County Justice Center, 10 Main Street, Room 415, Hackensack, New Jersey 07601. The Case Information Statement accompanying the pleading shall identify the case type as 293 Filing fees shall be paid pursuant to the Rules of Court and N.J.S.A. 22A:2-6 and -7.**

**(b) Each action shall be limited to one plaintiff or a related household of plaintiffs. No plaintiff shall use the mass tort caption on an individual complaint.**

**(c) All pleadings, all motion papers, and all correspondence shall add the designation "CM" after the docket number indicating Centralized Case Management and under the caption Civil Action shall add the title of this litigation, "In Re DePuy ASR ™ Hip Implants Litigation."**

**(d) The Bergen County Vicinage shall maintain a master docket and case file caption under the style "In Re DePuy ASR ™ Hip Implants Litigation" master file number as assigned by the Civil Division Manager. All orders, pleadings, and other papers filed therein are deemed filed and docketed in each individual action.**

**(e) The individual actions are not consolidated, but they shall be managed as a coordinated group, according to mass tort principles.**

**11. Case Management Conferences.**

**(a) The court may conduct, [it is anticipated these conferences will be held every 30 to 45 days] and the parties may request, periodic status, scheduling, and case management conferences to assess the progress regarding the matters scheduled herein. Reasonable notice of all such conferences will be provided to all counsel of record.**

**(b) All conferences or parts thereof will be on the record and recorded. Anyone desiring a transcript may order one directly from the Bergen County Transcription Department. Counsel may also provide a private reporter. In any proceeding in which a transcript is ordered, either from the court or a private reporter, counsel shall ensure that one copy of the transcript is also filed with the court.**

**(c) Counsel appearing at each conference shall sign an attendance sheet, be familiar with the issues to be discussed, and not schedule other matters for the date and time of the conference.**

**(d) All counsel are required to comply with the provisions of each order whether or not he or she was in attendance at the conference giving rise to the order.**

**12. Motions.**

**(a) All motions are to be filed with the Civil Division Manager's Office (Mass Tort Team), Superior Court of New Jersey, Bergen County Courthouse, 10 Main Street, Room 415, Hackensack, New Jersey 07601. All motion papers shall include**

**a return date, scheduled in accordance with the Rules of Court. Courtesy copies for the judge are not required.**

**(b) Any motion that is applicable to more than one case -- including motions that seek permission to speak pro hac vice -- shall be noted on the first page by listing each docket number affected or if all, the notation "Applicable To All Cases" with a list of docket numbers attached as Schedule "A" to the notice of motion. Filing fees associated with motions shall be paid pursuant to the Rules of Court and N.J.S.A. 22A:2-6 and -7. A separate fee shall be required for each docket number affected by a motion.**

**(c) Movants shall file an original and one copy of each Notice of Motion, supporting documents and proposed form of order with the Mass Tort Team, along with a self-addressed envelope with sufficient postage for the return of the signed order. One additional copy of these papers along with a self-addressed envelope with sufficient postage may be supplied if a request is made for a return of that copy marked "filed."**

**(d) A proposed form of order shall be submitted for all motions and a stamped self-addressed envelope must be included.**

**(e) No dispositive motions pursuant to R. 4:46 shall be filed before discovery is complete, except by permission of the court, which may be applied for ex parte.**

**(f) Counsel shall not file any discovery motions without first meeting and conferring with each other to try to resolve any discovery dispute. If the issue cannot be resolved, then in that event, the Court will address same at the next scheduled case management conference. [Counsel should include this issue on their Agenda. See Section 3(d).]**

**(g) Counsel may, and in fact is encouraged, to correspond to the Court via e-mail:**

**Brian.Martinotti@judiciary.state.nj.us**

**Brenda.Battaglia@judiciary.state.nj.us**

**Michel.Szponder@judiciary.state.nj.us**

**Edward.Jacobson@judiciary.state.nj.us**

**Any e-mail to the Court shall be copied to all counsel.**

**(h) Oral argument shall be governed by R. 1:6-2.**

**Hon. Brian R. Martinotti, J.S.C.**

**Attachment 1 : Service List For Conference Scheduled on Tuesday, May 10, 2011**

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**Attachment 2: Agenda For Conference Scheduled on Tuesday, May 10, 2011**

1. **Status of Discovery**
2. **Status of Motions**
3. **Status of Settlement/Mediation Efforts**
4. **Organization of Counsel**
5. **Discovery Plan**
6. **Coordination with MDL**
7. **Miscellaneous**