FILED

NOV 19 2014

BRIAN R. MARTINOTTI
J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

CASE NO. 293
MASTER DOCKET NO.: BER-L-3971-11

IN RE DePuy ASR™ Hip Implants

LITIGATION

CIVIL ACTION

CASE MANAGEMENT ORDER #31

This Matter having been opened to the Court by lead counsel for parties, and the parties consenting to the form, substance and entry of the Order, and for good cause shown,

IT IS on this 19th day of November 2014,

ORDERED as follows:

I. SCOPE OF THE ORDER

This Order applies to all DePuy ASR ™ Hip Implant Products Litigation actions, (hereinafter referred to as "DePuy"), 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.

II. Non-Revised Plaintiffs

Plaintiffs' Counsel have argued that the claims of Non-Revised Plaintiffs should be preserved while their medical course continues. Defendant[1] maintains

[1] As used herein, "Defendant" refers collectively to DePuy Orthopaedics, Inc. as

that Non-Revised Plaintiffs do not have a cognizable claim. Under the unique circumstances of this litigation and in an effort to address this situation without prejudice to the positions of either side, Defendant is willing to, and hereby stipulates to the following:

A. Toll the statute of limitations in such claims in return for the dismissal of such claims without prejudice, and;

B. No further filing of such claims in any court during the period of tolling, subject to paragraph 3, below.

The time has come to turn to these cases. Therefore, the Court orders as follows:

1. **Election Obligation** - Non-Revised Plaintiffs with a pending ASR case in the above-referenced litigation shall each, together with any of their derivative plaintiffs, file an election to either (i) dismiss the case without prejudice subject to the tolling provisions set forth below, or (ii) continue with the case.

2. The election required by Paragraph 1 shall be made by each Non-Revised Plaintiff by completing the election form attached as Exhibit A and serving it on Defendant's Counsel, Susan M. Sharko, Esq. at ServiceDUnrevised@dbr.com and Plaintiffs' Lead Counsel, Daniel Lapinski, Esq. at ServicePUnrevised@wilentz.com by December 31, 2014. Failure to file an election as required by this Order may result in sanctions to counsel and/or client.

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well as any of its former or present parent companies, subsidiaries, affiliated companies, directors, officers, design surgeons, employees, distributors, detail representatives named in an action pending in the above-referenced litigation.

3. **Election - Dismissal without Prejudice with Tolling -** For those Non-Revised Plaintiffs who elect to dismiss their cases without prejudice, the tolling provisions which have been agreed upon by Defendant shall toll the applicable statute of limitations and statute of repose as to all defendants identified by name in the caption of Plaintiff's complaint until such time as a revision surgery occurs and shall extend the tolling for one year from the date of the revision surgery. Following the revision surgery, Plaintiffs may re-file the lawsuit in this Court within the tolling period and the newly filed complaint will be deemed a continuation of the previously filed suit for purposes of remand. Prior to the revision surgery, Plaintiffs who accept tolling and are subject to the tolling agreement will not file a separate lawsuit in any other court alleging claims for the same ASR product(s) at issue in the case being dismissed without prejudice, including but not limited to any claims against Defendant or any other person or entity.

4. For those Plaintiffs that undergo a revision surgery and a lawsuit is re-filed, all other obligations related to the Plaintiff Fact Sheet (PFS) and Defendant Fact Sheet (DFS) under CMO 8 and CMO 9 remain unchanged.

5. CMO 8 is amended as follows:

Service of the PFS, authorizations and responsive documents shall be in an electronic format on CD via first class or overnight mail, addressed to:

ASR Plaintiff Fact Sheet
c/o Susan M. Sharko, Esq.
Drinker Biddle & Reath LLP
600 Campus Drive
Florham Park, New Jersey 07932

6. For those Non-Revised Plaintiffs who elected to dismiss their cases without prejudice and who are subsequently told that a revision surgery is medically necessary but are unable to undergo a revision surgery for reasons related to an underlying medical condition, then that Non-Revised Plaintiff shall notify Defendant's Counsel and Plaintiffs' Liaison counsel within six (6) months of being told that the revision surgery is necessary. If such a Plaintiff wants to reinstate his/her lawsuit and prepare for trial, that Plaintiff must also complete a Plaintiff Fact Sheet within (90) days of informing counsel of the change in medical status (i.e. the need for a revision surgery). The service requirements of the Plaintiff Fact Sheet shall be consistent with CMO 8. The damage interrogatories as set out in Exhibit B shall be served in accordance with CMO 8. Upon a showing of good cause, a Non-Revised Plaintiff who is told that a revision surgery is medically necessary but is unable to undergo a revision surgery for reasons related to an underlying medical condition may re-file the lawsuit in this Court within the tolling period and the newly filed complaint will be deemed a continuation of the previously filed suit.

7. The tolling of the applicable statute of limitations and statue of repose, if applicable, by Defendant shall not for any purpose be deemed to limit or adversely affect any defense, other than a statute-of-limitations and/or a statute of repose defense, that Defendant has, may have, or would have had in the absence of this tolling. Upon completion of the tolling period, Defendant will have all defenses available to it as it had on the day the Non-Revised Plaintiffs case was originally filed including any statute of limitations or statute of repose defenses existing as of that date. If, following the expiration of the tolling period,

the statute of limitations and/or statute of repose runs before a new lawsuit is commenced, Defendant reserves its right to raise a statute of limitations and/or statute of repose defense.

8. Defense counsel and Plaintiff's Liaison counsel shall jointly prepare and submit to the Court an Order of Dismissal encompassing the cases of those Non-Revised Plaintiffs who have elected to dismiss their case without prejudice subject to tolling.

9. **Non-Revised Plaintiffs Who Do Not Elect Tolling** - In the event a Non-Revised Plaintiff elects not to dismiss his or her claim with tolling, but to continue with their case, initial discovery must be completed pursuant to this Order. The initial discovery to be completed by each such a plaintiff shall be a Plaintiff Fact Sheet accompanied by all required document production, including medical authorizations, pursuant to CMO 8, and the damage interrogatories which are attached hereto as Exhibit B. This initial discovery shall be completed by each Non-Revised Plaintiff continuing with their case within ninety (90) days of the election deadline of December 31, 2014. The service requirements of the Plaintiff Fact Sheet shall be consistent with CMO 8. The damage interrogatories as set out in Exhibit B shall be served in accordance with CMO 8.

10. **Registration Obligations Remain in Effect for all Plaintiffs** - The requirements to update Registration status as set forth in the Court's Order of November 25, 2013 (CMO 28) remain in full force and effect and shall continue to apply to all plaintiffs even where the Complaint is dismissed without

prejudice. A Plaintiff who undergoes a revision surgery is required to update their Registration status to give notice that a revision surgery has occurred.

11. This Court shall maintain jurisdiction to enforce the tolling provisions with respect to those Non-Revised Plaintiffs who elect to dismiss their cases subject to the tolling provisions.

BRIAN R. MARTINOTTI, J.S.C.

EXHIBIT A

IN RE DEPUY ASR™ HIP IMPLANTS LITIGATION	)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY
This Document Relates To Case:	)	CASE NO. 298 MASTER DOCKET NO.: BER-L-3971-11
_____	)	
_____	)	Individual Case No. _____
	)	**ELECTION FORM FOR**
		NON-REVISED PLAINTIFFS

Pursuant to the Court's Order and after consultation and due consideration, Plaintiffs in the above referenced individual case, through authorized counsel below, make the election indicated (check only one):

_____Plaintiff(s) elect to dismiss the case without prejudice subject to the stipulated tolling provisions in the Court's order.

OR

_____Plaintiff(s) elect to continue with the case.

Dated: _____, 2014

Plaintiff(s)
By authorized counsel:

_____
[Name]
[Firm]
[Address]
[City, State, Zip]

Counsel for Plaintiff(s)

EXHIBIT B

PROPOSED INTERROGATORIES FOR UNREVISED PLAINTIFFS

INTERROGATORY NO. 1:

Has any health care professional told you that you need to have a revision surgery to remove your ASR Hip System? If your answer is yes, please state:

a. What you were told.

b. The name and address of the health care professional telling you that you need to have your ASR Hip System removed.

c. When you were told you need to have your ASR Hip System removed.

ANSWER:

INTERROGATORY NO. 2:

If you have been told by a health care professional to have your ASR Hip System removed, state why you have not done so.

ANSWER:

INTERROGATORY NO. 3:

What have your health care professionals told you about the need for revision surgery to remove your ASR Hip System? Please identify the healthcare provider by name and address and the date of the conversation.

ANSWER:

INTERROGATORY NO. 4:

State the dollar amount that you contend you are out-of-pocket (that is, amounts you have paid and not been reimbursed for) as a result of having received an ASR Hip System, and please itemize each out-of-pocket expense.

ANSWER: