

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Stryker Rejuvenate and ABG II Hip
Implant Products Liability Litigation

MDL No. 13-2441 (DWF/FLN)

This Document Relates to All Actions

PRETRIAL ORDER NO. 3

The Judicial Panel on Multidistrict Litigation has transferred actions in the above-captioned matter to this Court for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 as part of a nationwide litigation involving Stryker Rejuvenate and ABG Hip Implant Products Liability Litigation. In Pretrial Order No. 2, filed on July 22, 2013, the Court set a Status Conference for Monday, September 9, 2013 (“September 9 Status Conference”), at 1:30 p.m., in Courtroom 7C, Warren E. Burger Federal Building and United States Courthouse, 316 North Robert Street, St. Paul, Minnesota. At that time, the Court indicated its intention to file a subsequent order setting forth an agenda and procedure for the initial Status Conference. Pursuant to this Court’s jurisdiction and the prior orders of this Court in this matter, the Court hereby enters the following order setting forth the agenda for the September 9, 2013 Status Conference which should be read in the context of the Court’s Pretrial Order No. 1, filed on July 5, 2013.

1. Introductions
2. The Court’s objectives

3. Number and status of cases transferred into the MDL/Master Service List
4. Cooperation among counsel (counsel for Plaintiffs and Defendants have conferred on several items and anticipate conferral as required on a going forward basis)
5. Protocol for appropriate contact with the Court
6. Selection of Plaintiffs' Lead and Liaison Counsel, including Plaintiffs' leadership structure

The Court has received two applications for Plaintiffs' Lead Counsel. In those applications, the respective counsel have recommended a leadership structure addressing the customary issues in multidistrict litigation including Lead Counsel, a Lead Counsel Committee (LCC), Liaison Counsel, and a Steering Committee. This issue will be discussed as an agenda item, as noted, with the goal of reaching a consensus. However, in the event a consensus is not reached and approved by the Court between the respective counsel who have petitioned for leadership positions and recommended a leadership structure, the Court will establish an accelerated application procedure and take an active role in selecting counsel.

The Court contemplates that respective counsel involved in each of the two applications the Court has received will meet and confer prior to the September 9 Status Conference.

7. Status of New Jersey state court multi-county coordinated proceedings

The Court wants to discuss the efforts that the parties have made and the communications that have occurred, in addition to the Court's Pretrial Order No. 1, to coordinate issues including, but not limited to, discovery, motion hearings, and settlement discussions.

8. Discovery status in the New Jersey state court multi-county coordinated proceeding

9. Service of newly filed complaints

10. Common benefit order

11. Additional pretrial orders (including, but not limited to, rules and procedures, preservation order, and protective order of confidentiality)

12. Plaintiffs' initial disclosures

13. Master pleadings

14. Pending motions (including *Akin* motion to remand and establishing a schedule for a hearing on an expedited basis of any pending motions)

15. Official Court Website: [www.mnd.uscourts.gov/MDL/Stryker Rejuvenate](http://www.mnd.uscourts.gov/MDL/Stryker%20Rejuvenate)

It is anticipated that, through this website, the parties may access, as may be established, court orders, court minutes, a court calendar, a master service list, frequently asked questions, court transcripts, and information as to Plaintiffs' Lead Counsel Committee and Liaison Counsel, as well as Defendants' Lead and Liaison Counsel, once they are established. Importantly, once Plaintiffs' Lead Counsel Committee and Liaison Counsel and Defendants' Lead and Liaison Counsel are selected, they shall confer with the Court regarding the content of the website, including preparing a brief written

summary indicating their joint understanding of the facts involved in the litigation and the important factual and legal issues. Specifically, the Court will give input to counsel for the summary of the case that will appear on the Court's website entitled "Introduction." In the event the parties cannot agree on what the substance of the "Introduction" or summary should be, the parties should note what they agree on and what they do not agree on.

16. Status conferences

The Court will convene Status Conferences in its discretion.

Status Conferences shall be regularly scheduled by the Court to permit substantial advance notice to all parties. Except as otherwise provided herein, and to accommodate the schedules of the Court and the parties, all arguments or hearings on any motion will be scheduled to coincide with calendared Status Conferences. Any hearing or oral argument deemed necessary by the Court on motions that require a ruling on an expedited basis will be scheduled with notice of at least five business days. If circumstances warrant, the Court may shorten a notice period.

The next Status Conference is scheduled for November 21, 2013, at 9:00 a.m., in Courtroom 7C, Warren E. Burger Federal Building and United States Courthouse, 316 North Robert Street, St. Paul, Minnesota. For future Status Conferences, counsel for each side shall meet and confer in advance of the Status Conference and provide the Court, within four business days before each Status Conference, an agreed upon Agenda and Status Conference report, and provide a brief—one or two paragraph—summary of the

party's positions as to any disputed issues. The Agenda and Status Conference report shall be submitted to the chambers e-mail box at frank_chambers@mnd.uscourts.gov.

Further, unless otherwise ordered herein, it shall be the intent of the Court to meet in chambers with lead counsel for Plaintiffs and lead counsel for Defendants 45 minutes before each Status Conference.

Beginning in November 2013, unless otherwise ordered by this Court, Status Conferences shall be held on the third Thursday of each month at 9:00 a.m. in Courtroom 7C, Warren E. Burger Federal Building and United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

17. Plaintiffs' initial disclosures
18. Scheduling recommendations, including discovery recommendations as well as case management recommendations that will promote the efficient administration of this case

As soon as Lead Counsel and Liaison Counsel are established and the appropriate leadership structures are established for Plaintiffs and Defendants, the Court will address discovery guidelines, including deposition protocol and guidelines, as well as drafting a Plaintiffs' Fact Sheet.

19. Disputed issues known to the Court to be discussed at the September 9 Status Conference
 - a. Direct filing order (competing versions of draft order)
 - b. HOC's claims and reimbursement program
 - c. Litigation hold, ESI and predictive coding
 - d. Availability of exemplar devices

HOC has asserted to the Court that items (b), (c), and (d) proposed by Plaintiffs are not appropriate for discussion at the September 9 Status Conference.

20. Use of telephonic conferences

21. Next considerations

22. Concluding remarks

The Court DIRECTS the Clerk to send a copy of this Order to the Clerk of the Judicial Panel on Multidistrict Litigation, and counsel of record.

Dated: September 5, 2013

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge