

**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)

PRETRIAL ORDER NO. 6

This Document Relates to All Actions

Following transfer of this matter pursuant to 28 U.S.C. § 1407, the Court entered the following orders: Pretrial Order No. 1, extending and staying Defendants' deadlines to answer or otherwise respond to complaints, establishing preliminary procedures and appointing interim Lead and Liaison Counsel to act on behalf of Plaintiffs; Pretrial Order No. 2, extending the time for filing any motion or responding to any pending motion, and scheduling the September 9, 2013 initial prehearing conference; Pretrial Order No. 3, setting the agenda for the initial prehearing conference; Pretrial Order No. 4, permitting the direct filing of new actions in this District; and Pretrial Order No. 5, designating Plaintiffs' Lead Counsel Committee ("Plaintiffs' LCC"), Liaison Counsel, and Steering Committee and Defendants' Lead and Liaison Counsel.

Pursuant to the Court's jurisdiction over these actions, the Court now enters the following order governing procedures:

1. Address, Number of Copies and Electronic Filing. When filing documents relating to "ALL ACTIONS" with the Court, the parties will comply with the Court's requirements as to electronic filing and the documents shall be filed on the CM/ECF system under the Master File or, if electronic filing is not possible, a signed original shall

be sent to the Clerk, U.S. District Court, District of Minnesota, Suite 202, 300 South 4th Street, Minneapolis, MN 55415 for filing in the Master File. When filing documents relating to a particular case or cases, the documents shall be filed on the CM/ECF system under both the Master File and the particular case, or, if electronic filing is not possible, one signed original shall be sent for the Master File and an additional copy for each particular case to which the matter related. For all motions and briefs, send two three-hole punched courtesy copies of the documents to Brenda Schaeffer, the calendar clerk for The Honorable Donovan W. Frank.

2. Consolidation of Additional Actions. The cases are consolidated for pretrial purposes only. Any other action pending, subsequently filed or transferred to this Court, which arises out of the acts or transactions alleged in the Consolidated Action, will be reassigned to this Court, and shall be consolidated herewith if and when they are called to the Court's attention. This consolidation, however, does not constitute a determination that the cases should be consolidated for trial, nor does it have the effect of making any person or entity a party to the action in which he, or she or it has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

3. Applicability of Order. This Order applies automatically to all actions listed in Schedule "A" attached to the JPML's Transfer Order of June 12, 2013, as well as any other "tag-along actions" subsequently filed in, removed to, or transferred to this Court, as well as cases directly filed in this MDL pursuant to Pretrial Order No. 4, without the necessity of future motions or orders. Should parties in any subsequently transferred or filed action object to the terms of this Order, they must do so within thirty

(30) days of receipt of this Order from Plaintiffs' Liaison Counsel to the District of Minnesota.

4. Service List. Liaison Counsel for each party shall be responsible for establishing a service list and conferring with the Clerk of the Court to ensure that a Master Service List is established and kept current, which shall include all parties and counsel that may join this action.

5. List of Related Cases. Lead Counsel shall confer among themselves and jointly submit to the Court *via* email, no later than thirty days from entry of this Order, a list of all related cases pending in state and federal court and their current status, to the extent known.

6. Privileges Preserved. No communication among Plaintiffs' Counsel or among Defendants' Counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

7. Service Of Documents.

A. Orders. A copy of each Order will be provided to Defendants' Lead and Liaison Counsel, and to the Plaintiffs' LCC and Liaison Counsel for distribution as appropriate to other counsel and parties.

B. Pleadings, Motions, and Other Documents. Plaintiffs' LCC and Liaison Counsel and Defendants' Lead and Liaison Counsel shall be provided with one copy of each document served and/or filed by a party, including any and all attachments, to be delivered by electronic mail. Lead and Liaison Counsel shall also be provided with one non-electronic copy of

each document served and/or filed by a party, including any and all attachments. Pursuant to Fed. R. Civ. P. 5, service on Liaison Counsel constitutes service on other attorneys and parties for whom Counsel is acting.

8. Official Court Website. The Court will create and maintain a website devoted solely to the In re: STRYKER REJUVENATE AND ABG II HIP IMPLANT PRODUCTS LIABILITY LITIGATION, found at: [www.mnd.uscourts.gov/MDL/Stryker Rejuvenate](http://www.mnd.uscourts.gov/MDL/StrykerRejuvenate). Through the website, parties may access, as may be established, Court Orders, Court Minutes, Court Calendar, the Master Service List, Frequently Asked Questions, Court Transcripts, Court Docket, Current Developments and information as to Plaintiffs' leadership structure as well as Defendants' Lead and Liaison Counsel. Plaintiffs' and Defendants' Lead and Liaison Counsel shall confer with the Court regarding the content of the website.

9. Transcript Payment. The Official Transcript of all hearings shall be posted on the Court's website for this MDL. The cost of the Official Transcript shall be borne by the Plaintiffs and Defendants equally. Payment is to be made within fourteen (14) days of receipt of the Court Reporter's invoice.

10. Coordination of Discovery Between The MDL And The New Jersey Litigation. On January 15, 2013, the New Jersey Supreme Court ordered the coordination for centralized management *via* multi-county litigation of individual civil actions involving Rejuvenate and ABG II modular devices. Written discovery consisting of four sets of requests for production and one set of interrogatories has previously been

propounded on the Defendants in that action, styled *IN RE: Stryker Rejuvenate Hip Stem and ABG II Modular Hip Stem Litigation*, Superior Court of New Jersey, Law Division, Bergen County, Master Case No. BER-L-936-13 (“The New Jersey Litigation”). The Court and parties to this MDL litigation wish to avoid unnecessary duplication of discovery and, to that end, Plaintiffs’ LCC herein has been provided copies of the discovery. The MDL Plaintiffs will seek to coordinate discovery with New Jersey lead counsel to avoid duplicative discovery.

A. Discovery of Plaintiffs.

i. Discovery of individual MDL plaintiffs beyond required preliminary disclosures and fact sheets will be conducted in groups of specific cases, limited to a reasonable number of cases over a reasonable time period, with the specific number of cases and time period to be negotiated among the parties, and ordered by the Court in a future Pretrial Order(s);

ii. MDL Plaintiffs and Defendants will propose the specific cases to be included in each group, subject to a subsequent Pretrial Order(s); and

iii. Discovery Depositions of Plaintiffs’ treating physicians and medical providers will be discussed by counsel for both sides and addressed by the Court in a future Pretrial Order(s).

11. Status Conferences. Counsel for each side shall meet and confer in advance of each Status Conference and submit a Joint Agenda and Status Report to the Court, which shall list matters to be considered by the Court at the Status Conference. When the parties have met and conferred on a disputed issue and they are able to represent to the Court that an impasse has been reached, each party shall provide a brief summary of the party's positions as to any disputed items. The Joint Agenda and Status Report shall be submitted to the Court four business court days in advance of the Status Conference. Absent good cause, the Court will not consider issues outside the Joint Agenda. Each Status Conference will begin with an in-chambers meeting with Lead Counsel for each side before the scheduled Status Conference. The Court will convene the next status conference in its discretion, with the presumption that status conferences will be held on a monthly basis.

12. Motions Relating to Issues That Affect All Cases. Motions and hearings on issues of general application to all the constituent MDL cases, shall be briefed pursuant to applicable procedural and substantive law, and this Court's Local Rules. The Parties shall, with regard to briefing such motions, consolidate their efforts and shall not, without prior permission of the Court, file multiple briefs in support of, in opposition to, or in reply to, any such motion. A single Lead Plaintiffs' and Defendants' counsel, or his or her designee, may present oral argument, as permitted.

13. Plaintiffs' Initial Disclosures. For cases already filed in or transferred to this MDL, Plaintiffs' preliminary disclosures are to be completed and served on the defendants no later than thirty (30) days after entry of an implementing order adopting

the agreed form of disclosure. For cases initiated or transferred subsequent to the entry of an implementing order, plaintiffs' initial disclosures are to be completed and served on the defendants thirty (30) days from their filing or docketing in this Court.

14. Master Long and Short-Form Pleadings. The Court has determined, with the consent of counsel, that Master Long and Short Form Pleadings are an efficient approach to pleadings in this MDL.

A. Intent and Effect. The Plaintiffs shall develop Master Long and Short-Form Complaints that set forth all potential claims that individual Plaintiffs may assert against Defendants in this MDL, which the Court intends will have the following effect:

i. all claims pled in the Master Long-Form Complaints will supersede and replace all claims pled in any previously filed Complaint, to the extent applicable under the procedural and substantive law that applies to previously filed actions;

ii. the filing of the Master-Long Form Complaints will not constitute a new action commenced in the MDL, and thus they will not impact the procedural and substantive law applied in previously filed actions;

iii. the filing of the Master Long-Form Complaints will not constitute plaintiffs' consent to venue and jurisdiction in this District for previously-filed actions; and

iv. this Order contemplates motion practice on issues that impact claims and defenses in the long-form pleadings without the need to file duplicative motions in individual actions.

B. Timing. The parties shall meet and confer and attempt to reach agreement on the following timing issues:

- i. filing of long-form pleadings;
- ii. filing of short-form pleadings; and
- iii. the terms of an implementing Order, which will be addressed by the Court in a future Pretrial Order(s).

15. Remand Motions. It is the intent of the Court to expeditiously resolve motions to remand pending at the time an action is transferred by the JPML to this MDL. Upon transfer of an action with a pending motion to remand, the parties are directed to jointly contact the Court to schedule briefing and oral argument.

Dated: November 21, 2013

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