

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: STRYKER REJUVENATE AND
ABG II HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

This Document Relates to All Actions

MDL No. 13-2441 (DWF/FLN)

PRETRIAL ORDER NO. 17

**STIPULATED ORDER
REGARDING BELLWETHER
CATEGORIES**

Based upon the proposals and presentations of the parties, and the Court having reviewed the contents of the file in this matter, and being otherwise duly advised in the premises, the Court hereby enters the following Stipulated Order Regarding Bellwether Categories:

1. Except to the extent modified herein, all existing pretrial orders of this Court shall remain in full force and effect.
2. The bellwether case pool is defined as all MDL cases involving Plaintiffs who were implanted with a Rejuvenate or ABG II Modular hip implant, and subsequently underwent a revision procedure during which the neck and stem components were removed, who filed directly in this MDL, or transferred to this MDL, on or before April 28, 2014, and for which properly completed Plaintiff Fact Sheets, medical records and authorizations were provided to Defendants by 5:00 p.m. C.D.T. on May 1, 2014.
3. The bellwether case pool is divided into five categories depending on the product, the date of implant surgery, and the post-revision outcome as more fully described below. The order in which the categories appear is insignificant, and in no way

reflects an agreement by the parties on the order in which bellwether trials should be conducted. (See Paragraph #6, below.) The categories are:

a. Category One – Plaintiffs implanted with a Rejuvenate Modular hip implant prior to January 1, 2011, who subsequently underwent an “Uncomplicated Revision.” (See “Uncomplicated Revision” below.)

b. Category Two – Plaintiffs implanted with a Rejuvenate Modular hip implant prior to January 1, 2011, who subsequently underwent a “Complicated Revision.” (See “Complicated Revision” below.)

c. Category Three – Plaintiffs implanted with a Rejuvenate Modular hip implant on or after January 1, 2011, who subsequently underwent an “Uncomplicated Revision.” (See “Uncomplicated Revision” below.)

d. Category Four – Plaintiffs implanted with a Rejuvenate Modular hip implant on or after January 1, 2011, who subsequently underwent a “Complicated Revision.” (See “Complicated Revision” below.)

e. Category Five – Plaintiffs implanted with an ABG II Modular hip implant, who subsequently underwent a revision procedure during which the neck and stem components of the ABG II Modular device were removed. This category includes both “Complicated” and “Uncomplicated” ABGII cases.

4. An “Uncomplicated Revision” is defined as a surgery during which the stem and neck components of the implanted Rejuvenate device were removed from the Plaintiff and that Plaintiff experienced no significant intra-operative or post-operative complications.

A “Complicated Revision” is defined as a surgery during which the stem and neck components of the implanted Rejuvenate device were removed from the Plaintiff and that Plaintiff experienced significant intra-operative and/or post-operative complications causing unanticipated and extraordinary damages. “Complicated” revision surgeries may include, by way of example but not limitation: significant osteotomy, fractured femur, orthopedic cable cerclage, infection, and/or additional surgeries after the revision surgery.

The definitions of “Uncomplicated” and “Complicated” Revision strictly apply to the selection of future bellwether pools and have no bearing on future aspects of this litigation. The parties are hereby ordered to use best efforts to agree on the appropriate category into which each Plaintiff should be placed. Any unresolved disputes will be timely resolved by the Court.

5. Three lead cases from each of the five bellwether categories shall be selected for discovery and trial as follows: Counsel shall confer and attempt to agree upon three cases that should be designated as lead cases in each of the five categories. To qualify for such designation, a case should be reasonably representative of the other cases in the category. If counsel are not able to agree upon which cases in each category should be designated as lead cases, counsel shall file with the Court on or before July 21, 2014, the names of the three cases each contends should be the lead cases in each

category with a brief description (not to exceed 300 words per case) why each case should be so designated. Counsel may file with the Court on or before July 28, 2014, a letter not exceeding three pages explaining why one or more of the cases designated by the opposing side should not be a lead case. Thereafter, the Court will set this matter for a telephonic hearing on a date to be selected by the Court, if available, after August 5, 2014 and before the regularly scheduled status conference for the month of August. It is the intention of the Court to issue an Order that identifies three lead cases in each of the five bellwether categories prior to the August status conference.

6. The parties are in agreement that the first bellwether trial should be selected from Category #1. The parties disagree as to the order of subsequent bellwether trials. To resolve this disagreement, the Court will schedule a telephonic hearing on a date to be selected by the Court during the week of May 19, 2014 or as soon thereafter as available.

The respective positions are as follows:

Plaintiffs' Position:

Plaintiffs request that bellwether trials be conducted in the following order:

1st Bellwether Trial: Agreed: Category #1

2nd Bellwether Trial: Category #4

There are a substantial number of Plaintiffs with cases pending in this MDL who have suffered from a Complicated Revision. In order to provide meaningful guidance to the Court and the parties moving forward, Plaintiffs respectfully submit that one of the first two trials should involve a Plaintiff who has endured a Complicated Revision.

Additionally, because the first, stipulated trial will involve a hip initially implanted before

January 1, 2011, Plaintiffs believe the second bellwether trial should be chosen from those implanted after the January 1, 2011 date. The number of cases available for bellwether consideration splits about evenly between hips implanted prior to January 1, 2011 and after that date, and while Plaintiffs believe there is no known significance to this date, in the event that discovery uncovers meaningful distinctions to these date ranges, Plaintiffs respectfully request that the second bellwether trial be selected from the later date range contemplated by Category #4.

3rd Bellwether Trial: Category #5

This MDL involves two similar but distinct hip implants. Again, in order to provide meaningful guidance to the Court and the parties, Plaintiffs respectfully submit that an ABGII case should be one of the first three bellwether cases tried.

4th Bellwether Trial: Category #2

Plaintiffs suggest the 4th bellwether trial be chosen from Category #2, which is a Complicated Revision, following an original Rejuvenate hip implant surgery prior to January 1, 2011.

5th Bellwether Trial: Category #3

Plaintiffs suggest the 5th bellwether trial be chosen from Category #3: an Uncomplicated Revision case arising from an original Rejuvenate hip implant after January 1, 2011.

Defendants' Position:

Defendants request that bellwether trials be conducted in the following order:

1st Bellwether Trial: Agreed: Category #1

2nd Bellwether Trial: Category #3

The second trial should be of a Plaintiff selected from Category #3. This category contains a large number of cases equal in magnitude to the number in Category #1. These two categories combined account for nearly 73% of all Rejuvenate matters eligible for participation. It is estimated that, in contrast, Category #4 will only contain approximately 12% of the eligible cases while Category #2 is estimated to contain approximately 15% of the eligible Rejuvenate matters. Accordingly, resolution of a case from Category #3 should serve to: (1) provide “guidance” applicable to a far larger group of cases and (2) since this category is comprised of cases that were implanted after January 1, 2011 such a trial would address the 2nd period of implantations [not addressed in Category #1] and thereby completing coverage of the entire period during which the product was marketed.

3rd Bellwether Trial: Category #2

The third bellwether trial should be of a Plaintiff selected from Category #2, as it is estimated that this group will contain the next largest group of matters [after Categories #1 and #3].

4th Bellwether Trial: Category #4

The fourth bellwether trial should be of a Plaintiff selected from Category #4 as it is estimated that this group will contain the least number of eligible Rejuvenate matters.

5th Bellwether Trial: Category #5

The fifth bellwether trial should be of a Plaintiff selected from Category #5. It is estimated that the total number of eligible revised ABG II Modular Plaintiffs [including

all implantation dates and all outcomes] will be significantly less than those in any of the 4 revised Rejuvenate Categories. Putting an ABG II case fifth in line for a bellwether trial would serve to first provide “guidance” to the parties as it relates to Rejuvenate users [comprising more than 90% of the current and anticipated future Plaintiffs] before addressing the different issues to be addressed in ABG II context.

Dated: May 9, 2014

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