

Genevieve Zimmerman

From: Genevieve Zimmerman
Sent: Monday, September 16, 2013 4:52 PM
To: frank_chambers@mnd.uscourts.gov
Cc: Anthony J. Nemo; Griffin, Timothy; Daniel E. Gustafson
Subject: proposed Order - MDL 2441 - In re Stryker Rejuvenate and ABGII Hip Implant Products Liability Litigation
Attachments: [proposed] Order - Plaintiffs Leadership Structure - MDL 2441 In re Stryker Rejuvenate and ABGII Hip Implant Products Liability Litigation.docx

Dear Judge Frank,

Pursuant to Pretrial Order No. 3, the respective counsel involved in each of the two applications submitted for leadership of the Plaintiffs in this case have met and conferred. The groups have reached an agreement on a proposed leadership structure that represents a compromise by both groups but that all believe will be in the best interest of the Plaintiffs.

Additionally, pursuant to the conversation that the Court had with us, we reached out to Tara Sutton on behalf of this newly agreed upon leadership group and discussed with her the possibility of serving as a liaison with the New Jersey state court litigation. As we understand it, Ms. Sutton has dismissed her cases that were originally part of the MDL and no longer has any pending cases before this Court. Although Ms. Sutton indicated she would be willing to serve in that liaison position, she would agree to do so only if we (the proposed leadership group) agreed that this role would not subject her or the New Jersey state court cases to any MDL common benefit assessment in the future. We advised her that we could not agree to that condition at this time because it was premature to decide what, if any, assessment should be imposed on cases at this stage of the litigation. Thus, Ms. Sutton declined to be added to our proposed slate and is not included on the proposal that we now present to the Court.

The Court should know, however, that our proposed New Jersey State Court Liaison, David Szerlag, is also involved in the New Jersey State Court litigation and is willing to serve as Liaison without any preconditions regarding common benefit assessments.

Attached is a proposed stipulated Order that represents the compromised structure. It identifies Co-Lead Counsel and a PSC structure. It also sets out the duties of those various positions.

If you have any questions, please call.

Sincerely,

GUSTAFSON GLUEK PLLC

ZIMMERMAN REED PLLP

Daniel E. Gustafson

Genevieve M. Zimmerman

C: All counsel of record (via email)

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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

**[Proposed]
ORDER**

I. ORGANIZATIONAL STRUCTURE: PLAINTIFFS

Pursuant to the Court's direction in PTO No. 3, counsel seeking leadership have met and conferred regarding the proposed organizational structure. Counsel has now advised the Court that they have reached an agreement. Based on that agreement, the Court hereby orders the following organizational structure for Plaintiffs:

A. Plaintiffs' Co-Lead Counsel:

Annesley H. DeGaris
Cory Watson Crowder & Degaris, PC

Peter J. Flowers
Meyers & Flowers

Daniel E. Gustafson
Gustafson Gluek PLLC

Genevieve M. Zimmerman
Zimmerman Reed PLLP

The duties of the **Co-Lead Counsel** are as follows:

1. To consult regularly with the Plaintiffs' Steering Committee and other co-counsel as may be appropriate) to determine the best strategy to efficiently prosecute, discover, prepare for trial and/or settle the MDL pending before this Court;
2. To present (in briefs, oral argument, or such other fashion as may be appropriate) to the Court and opposing parties, the position of the Plaintiffs on all matters arising during these MDL proceedings;

3. To coordinate and conduct discovery on behalf of Plaintiffs; To conduct settlement negotiations on behalf of Plaintiffs;
4. To delegate specific tasks to other counsel, as necessary to ensure that pretrial preparation for the Plaintiffs is conducted effectively, and efficiently;
5. To enter into stipulations with opposing counsel as necessary;
6. To prepare and distribute to the parties periodic status reports;
7. To adopt a system to maintain adequate time and expense records covering services of designated counsel and submit those guidelines for keeping time and expense records to the Court for approval no later than October 1, 2013;
8. To monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided; and
9. To perform such other duties as may be incidental to proper coordination of Plaintiffs' pretrial activities or authorized by further Order of the Court.

B. Plaintiffs' Liaison Counsel

**Liaison Counsel to the District of
Minnesota**

Anthony J. Nemo
Meshbeshier & Spence, Ltd.

**Co-Liaison Counsel to the State
Courts**

David Szerlag
Pritzker Olsen

The duties of **Liaison Counsel to the District of Minnesota** are defined as:

1. Maintain and distribute to co-counsel and to Defendants' Liaison Counsel an up-to-date service list;
2. Receive and, as appropriate, distribute to co-counsel Orders from the Court and documents from opposing parties and counsel; and
3. Maintain and make available to co-counsel and other Plaintiffs' counsel at reasonable hours a complete electronic file of all documents served by or upon each party.

The duties of **Liaison Counsel to the State Courts, including the Multi-County Litigation pending in New Jersey**, include:

1. Monitor and report to the Court regarding status of various state court proceedings, including particularly the Multi-County Litigation coordinated before Judge Martinotti in New Jersey.
2. Assist Co-Lead Counsel as requested in promoting an efficiently run and coordinated MDL.

C. Plaintiffs' Steering Committee

1. PSC Chairs

Brooks Cutter
Kershaw, Cutter & Ratinoff LLP

Yvonne Flaherty
Lockridge Grindal Nauen, PLLP

Ben W. Gordon, Jr.
Levin Papantonio, P.A.

Douglas Kreis
Aylstock, Witkin, Kreis & Overholtz, PLLC

Eric Kennedy
Weisman, Kennedy & Berris Co., L.P.A.

Shawn Raiter
Larson King, LLP

2. PSC Members

Rachel Abrams
Levin Simes LLP

Jesse Bernheim
Kelly, Bernheim & Dolinsky, LLC

Jeff Bowersox
Bowersox Law Firm PC

Chris Coffin
Pendley, Baudin & Coffin, LLP

Chris Hellums
Pittman, Dutton & Hellums, PC

Richard Lewis
Hausfeld LLP

Don McKenna
Hare, Wynn, Newell and Newton, LLP

Mike McGartland
McGartland & Borchardt, LLP

Dianne Nast
Nastlaw, LLC

Joe Osborne
Babbitt Johnson Osborne & LeClainche, P.A.

Richard Schlueter
Childers, Schlueter & Smith, LLC

Laura Yaeger
Morgan & Morgan, PA

The duties of the PSC Chairs and the PSC Members include:

- a. To consult regularly with and assist Co-Lead Counsel as necessary for the efficient prosecution of the MDL;
- b. To consult regularly with and assist Co-Lead Counsel in the pretrial discovery and trial preparation of the MDL;
- c. To consult regularly, and assist Co-Lead Counsel in any settlement talks related to the MDL and to give prior approval to any such settlement.

II. ORGANIZATIONAL STRUCTURE: DEFENDANTS

A. Defendants' Liaison Counsel

Timothy Griffin
Leonard, Street and Deinard, PA

B. Defendants' Lead Counsel

Ralph Campillo
Karen Woodward
Segwick LLP

Dated: _____

DONOVAN W. FRANK
United States District Judge

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