

**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. 1  
(Establishing Preliminary Procedures  
and Appointing Interim Counsel)**

The Court finds that the civil actions transferred to this Court as part of the MDL merit special attention as complex litigation pending a Status Conference which will be set in a separate order to be filed within one week from the date of this Order for a date in August of 2013 to be selected by the Court. Pending that status conference, the Court hereby enters the following:

**ORDER**

1. **APPLICABILITY OF THIS ORDER** – Prior to the initial pretrial conference and the entry of a comprehensive order governing all further proceedings in this case, the provisions of this Order shall govern the practice and procedure in those actions that were transferred to this Court by the Judicial Panel on Multidistrict Litigation (“JPML”) pursuant to its Order of June 12, 2013, as well as all related actions originally filed, transferred to or removed to this Court. This Order shall also apply to any “tag-along actions” later filed in, removed to or transferred to this Court, absent further order of this Court. Hereafter, those actions are referred to as the “Cases.”

2. **CONSOLIDATION** – The Cases are consolidated for pretrial purposes only. Any “tag-along” actions later filed in, removed to or transferred to this Court, or directly filed in the District of Minnesota, will automatically be consolidated with this action without the necessity of future motions or orders. 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 any action in which he, she or it has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

3. **SERVICE** – Prior to the initial pretrial conference, service of all papers relating to the initial conference shall be made on counsel of record appearing in the Cases. The docket is the official record of the service list. Plaintiffs’ Liaison Counsel and Defendants’ counsel are responsible for assuring service of this Order and all future documents on opposing *pro se* parties. This paragraph does not pertain to or alter the requirements for service of process of any summons and/or complaint.

4. **EXTENSION AND STAY** – Each defendant is granted an indefinite extension of time for responding by motion or answer to the complaint(s) until this Court, by subsequent order, sets a date by which defendants shall respond by motion, answer or otherwise. Pending the initial conference and further orders of this Court, all outstanding discovery proceedings are stayed, and no further discovery shall be initiated. However, in order to avoid duplicative discovery and to prevent the unnecessary expenditure of judicial resources and the resources of the parties, Interim Plaintiffs’ Lead Counsel, as appointed below, is authorized and shall coordinate the conduct of noticed defendant

corporate depositions in the coordinated New Jersey state court litigation (*In re Stryker Rejuvenate Hip Stem and ABG II Hip Stem Litigation*, Superior Court of New Jersey, Law Division, Bergen County, Master Docket No. BER-L-936-13) on behalf of Plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure. Defendants' counsel shall provide Plaintiffs' Interim Lead Counsel and Plaintiffs' known state court counsel with at least ten days notice of any cross notice in these proceedings by Defendants of a deposition originally noticed in the New Jersey proceeding. Plaintiffs' Interim Lead Counsel is authorized to enter into stipulations with opposing counsel necessary to participate in the depositions. This exception to the stay of discovery is limited to these depositions, and reflects this Court's desire for voluntary state-federal coordination.

5. **PREVIOUS ORDERS** – Any orders, including protective orders, previously entered by this Court or any transferor court, shall remain in full effect unless modified by this Court.

6. **MASTER DOCKET FILE** – Any pleading or paper shall be filed electronically according to this district's *CM/ECF Civil Manual For New Users* guide, available at [http://www.mnd.uscourts.gov/cmecf/reference\\_guides.shtml](http://www.mnd.uscourts.gov/cmecf/reference_guides.shtml). The Clerk of court will maintain a master docket case under the style "In Re: Stryker Rejuvenate and ABGII Hip Implant Products Liability Litigation" and the identification "MDL No. 13-2441." All papers filed in these actions shall bear the identification "MDL No. 13-2441". When a pleading is intended to be applicable to all actions, this shall be indicated by the words: "This Document Relates to ALL ACTIONS" and shall be filed

electronically in 13-md-2441. When a pleading is intended to apply to less than all cases, this Court's civil action number for each individual case to which the document(s) relate shall appear immediately after the words: "This Document Relates to . . ." and shall be filed electronically in each member case to which the document(s) applied. The following is a sample of the pleading style:

In re: STRYKER REJUVENATE AND MDL No. 13-2441 (DWF/FLN)  
ABGII HIP IMPLANT PRODUCTS  
LIABILITY LITIGATION

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This Document Relates to . . . .

7. **FILING** – Any pleading or paper filed in any of the Cases shall be filed electronically with the Clerk of this Court and not with the transferor district court.

8. **DOCKETING** – When an action that properly belongs as a part of In Re: Stryker Rejuvenate and ABGII Hip Implant Products Liability Litigation is filed in the District of Minnesota or transferred here from another court, the Clerk of this Court shall:

- a. File a copy of this Order in the separate file for such action,
- and
- b. Make an appropriate entry on the master docket sheet.

9. **APPEARANCES** – Counsel who appeared in a transferor court prior to transfer by the JPML need not enter an additional appearance before this Court.

Attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation, and the requirements of Local Rule of Civil Procedure 83.6 are waived. Association of local counsel is not required. Counsel in a

newly filed or transferred action shall complete (1) the Electronic Case Filing System Attorney Registration Form (“Registration Form”), and (2) the Notice of Appearance form available at

[http://www.mnd.uscourts.gov/FORMS/court\\_forms.shtml#attorneyforms](http://www.mnd.uscourts.gov/FORMS/court_forms.shtml#attorneyforms). After

completing the Registration Form, counsel will receive a CM/ECF log-in enabling them to electronically file the Notice.

10. **PRESERVATION OF EVIDENCE** – All parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action. Each party shall take reasonable steps to preserve all documents, data and tangible things, specifically including any explanted hip implant prostheses surgically removed from any plaintiff, potentially relevant to the subject matter of this action. Pending further orders of the Court, Plaintiffs and their counsel may not destroy, dispose of, alter or destructively test any such prostheses.

11. **INTERIM LEADERSHIP STRUCTURE** – To act on behalf of the Plaintiffs on an interim basis which, as of the date of this Order, shall be until at least the Status Conference, which the Court has referenced above, which shall be set in August 2013, the Court hereby designates the following counsel:

Genevieve M. Zimmerman  
**ZIMMERMAN REED P.L.L.P.**  
1100 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402  
Phone: (612) 341-0400  
Fax: (612) 341-0844  
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**Interim Plaintiffs' Lead Counsel**

Anthony J. Nemo  
**MESHBESHER & SPENCE, LTD.**  
1616 Park Avenue  
Minneapolis, MN 55404  
Phone: (612) 339-9121  
Fax: (612) 339-9188  
Email: [tnemo@meshbesh.com](mailto:tnemo@meshbesh.com)

**Interim Plaintiffs' Liaison Counsel**

Interim counsel shall, absent further order of this Court:

- a. **Service List:** Maintain and distribute to co-counsel and to Defendants' counsel an up-to-date service list; and
- b. **Accept Service:** Plaintiffs' counsel shall receive and, as appropriate, distribute to co-counsel Orders from the Court and documents from opposing parties and counsel.

12. **LEADERSHIP STRUCTURE** – Prior to the initial conference, counsel for the Plaintiffs and counsel for the Defendants shall, to the extent they have not already done so, confer and seek consensus on recommendations for the leadership structure for this litigation. Recommendations should be submitted to the Court, together with each nominee's resume or curriculum vitae, educational background, licensing status, a short list of relevant experience with cases in similar areas, and a certificate of good standing from the highest court from the individuals' jurisdiction. These recommendations should not be filed with the Clerk of Court, but instead should be submitted to the Court via email no later than fifteen days prior to the initial conference.

13. **COMMUNICATIONS** – Unless otherwise ordered, counsel must communicate with the Court in writing, with courtesy copies to all counsel. Communications with the Court and submissions which are not to be filed with the Clerk may be sent to [frank\\_chambers@mnd.uscourts.gov](mailto:frank_chambers@mnd.uscourts.gov).

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: July 5, 2013

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