

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

**JOINT REPORT AND AGENDA FOR FEBRUARY 20, 2014 STATUS
CONFERENCE**

Pursuant to Pretrial Order No. 3, in advance of the February 20, 2014 Status Conference, the parties submit this Joint Status Conference Report, with a proposed Agenda attached hereto as **Exhibit A**.

A. Update on Filings

There are approximately 576 cases filed in or on their way to the MDL, 773 cases filed in the New Jersey coordinated proceedings, 56 cases filed in Florida, and approximately 28 additional cases filed in California, Illinois, Massachusetts, Michigan, Oregon, Tennessee, and West Virginia . Attached hereto as **Exhibit B** are summaries of the cases filed by law firm and venue.

B. Service of Complaints

Prior to the adoption of the Master Long and Short Form Complaints, many plaintiffs filed individual complaints naming only one or two defendants. Given the Master Long Form Complaint names four defendants, some attorneys have inquired as to whether a new summons must be issued and served on each defendant not previously named. The PLCC and Defense Counsel conferred on this issue and agreed the PLCC will provide a list of cases impacted and the parties will discuss a global solution.

C. Discovery

1. Plaintiffs' Preliminary Disclosures and Fact Sheets

a. Electronic Service

The parties agreed to entry of a pretrial order permitting electronic service of Plaintiffs' preliminary disclosures and fact sheets, subject to plaintiffs' privacy concerns. The PLCC recently proposed a revised pretrial order, and Defense Counsel is reviewing it. Until the entry of an acceptable Pretrial Order, plaintiffs must serve their preliminary disclosures and fact sheets *via* U.S. Mail.

b. Plaintiffs' Preliminary Disclosures

For the 463 cases pending in the MDL as of December 23, 2013, plaintiffs' preliminary disclosures were required to be served by February 11, 2014. Defendants have received less than half of these responses.¹ The PLCC's records reflect a much larger percentage have been served. For the 90 cases filed in or transferred to the MDL on or after December 24, 2013, plaintiffs' preliminary disclosures are required to be served within 30 days. Thirty-three cases were filed in or transferred to the MDL between December 24, 2013 and January 12, 2014. Defendants have received a smaller percentage of these response.

c. Plaintiffs' Fact Sheets

For the 463 cases pending in the MDL as of December 23, 2013, plaintiffs' fact sheets are required to be served by March 13, 2014. For cases filed in or transferred to the MDL on or after December 24, 2013, plaintiffs' fact sheets are required to be served within 60 days.

The parties will be meeting and conferring to discuss how best to handle those cases in which plaintiffs do not meet the disclosure deadlines.

¹ Defendants have agreed to requested extensions of 3-5 day with respect to several of the outstanding preliminary disclosure forms.

2. ESI and Plaintiffs' Written Discovery

Defendants continue to produce documents and information in the MDL as it is produced in the multicounty coordinated litigation in New Jersey. On January 21, 2014, the PLCC served on defendants in the MDL interrogatories and requests for production of documents and things previously served in the New Jersey litigation, as well as additional written discovery. Plaintiffs have agreed to extend the deadline to respond to this written discovery, and the parties are discussing how to avoid duplication and coordinate discovery in New Jersey, in the MDL, and elsewhere.

D. ADR

The parties have discussed recent settlements in two MDLs involving hip implant products, as well as the mediation program for Rejuvenate and ABG II multicounty litigation in New Jersey. The parties are in general agreement that an early mediation program may be worth exploring in this MDL, and will continue to discuss ideas.

1. Plaintiffs' Position. Plaintiffs are adamant that any potential exploration into possible mediation be done parallel to substantive work litigating these matters, and must not delay appropriate discovery efforts and work up of these cases. In short, the litigation of these cases must not take a back seat to the real work required of the LCC and PSC to meet their responsibilities to the Court and the class of plaintiffs that comprise this MDL. Without thoroughly analyzing myriad issues relating to both liability and damages in this case, it would be premature and unwise to settle individual cases except in unusual or extraordinary circumstances. Accordingly, plaintiffs are opposed to any ADR program that would distract counsel from either side from the immediate discovery tasks and burdens at hand, which we maintain have languished to a greater extent than is appropriate already.

2. Defendants' Position. The parties agree that an early mediation program should have no effect on the Pretrial Orders entered in the underlying litigation. In order to determine the level of interest in an early mediation program, defendants propose an order that will, among other things, require the parties to jointly identify third party mediators who are acceptable to the parties to serve as mediators in this litigation. Defendants further propose for all cases filed and served on or before December 23, 2013, in which Plaintiff Fact Sheets are due by March 13, 2014, each current counsel for Plaintiff(s) shall state whether the Plaintiff(s) in each counsel's first twenty-five (25) filed lawsuits intend to participate in the mediation process by providing Defense Counsel and Plaintiffs' Liaison Counsel a list of all such cases in writing, identified by case name and docket number, no later than March 1, 2014.

E. Scheduling

The parties have exchanged drafts of proposed scheduling orders, and have discussed their competing concerns. They continue to meet and confer to narrow the points of disagreement.

F. Common Benefit Order

The parties have agreed to submit letter briefs and responses thereto on February 10th and 17th, respectively, and seek to discuss this issue with the Court at the February 20th Status Conference.

G. Tolling

The parties continue to discuss whether and how best to structure any tolling agreements in the MDL. Plaintiffs seek tolling agreements with regard to any and all existing and former Stryker Corporation entities that may have been involved with the Rejuvenate and ABG II products, otherwise they will seek leave to amend the Master pleadings to name them as parties. Defendants have proposed and the parties are considering alternatives that would obviate the need for any tolling agreements. Plaintiffs have also proposed tolling agreements on behalf of individuals who have not yet undergone revision surgery, and the parties continue to discuss this proposal as well.

H. Retention of Treating Physicians

Defendants have existing relationships with physicians who have clinical experience with the products at issue in this litigation, and they seek to develop new relationships with these physicians as well. These physicians may have patients who have or will assert claims in this litigation. Defendants seek an order that acknowledges their right to communicate with and retain such physicians, while ensuring there are appropriate protections in place to prevent patient-specific discussions regarding the physician's individual patient. Defendants propose filing simultaneous letter briefs and responses by 5:00 p.m. central time on March 3rd and March 17th, respectively, so that the Court may hear argument on these issues at the March 20, 2104 Status Conference.

Dated: February 17, 2014

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EXHIBIT A

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: STRYKER REJUVENATE AND
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LIABILITY LITIGATION

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STATUS CONFERENCE AGENDA 2014

Plaintiffs and Defendants propose the following agenda for the February 20, 2014 status conference:

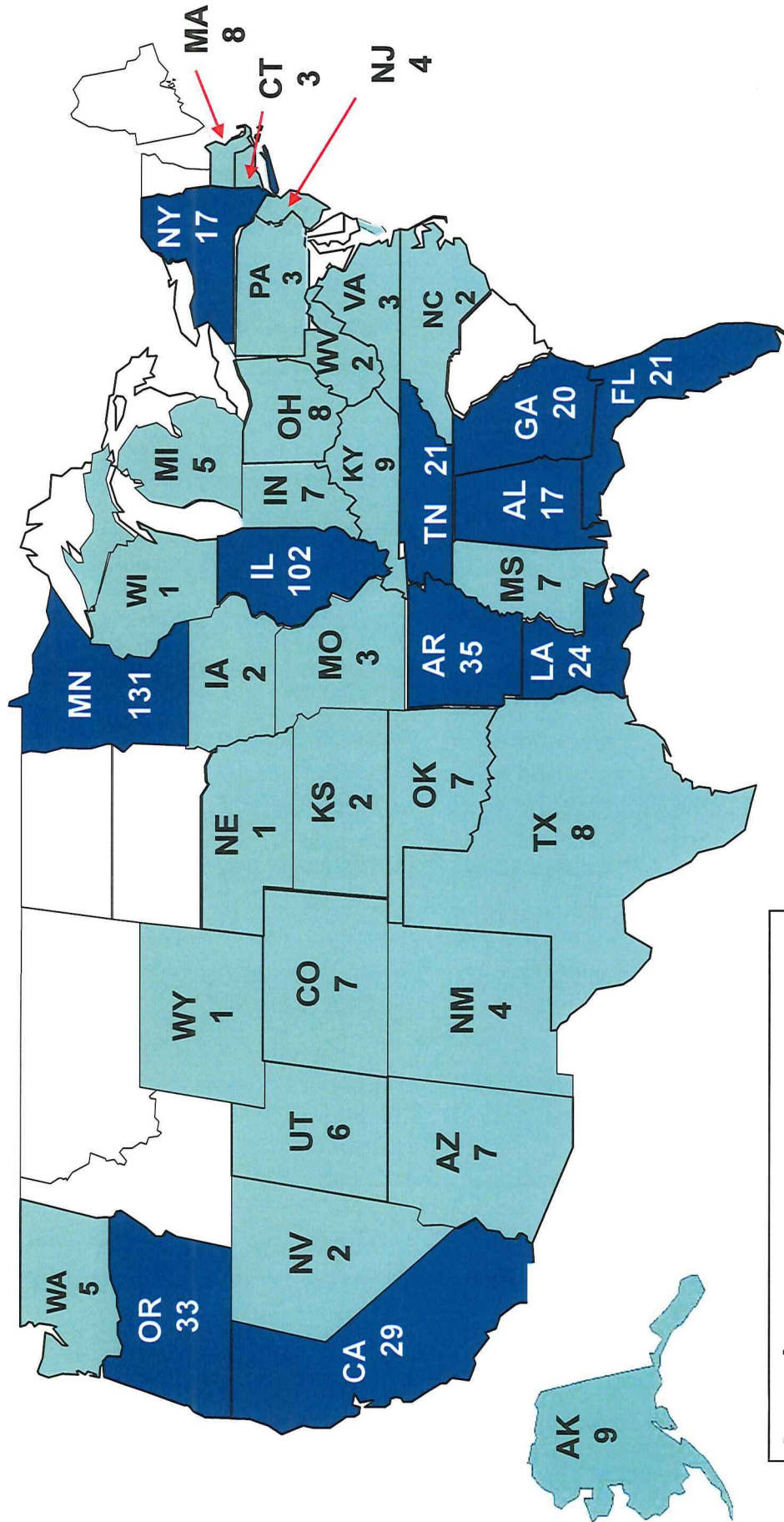
1. Reports on MDL filings, judicial contacts, and state court litigation
 - a) Report on MDL filings
 - b) Report on judicial contacts
 - c) Report on New Jersey litigation
 - d) Report on other state court litigation
2. Matters subject to ongoing conferral
 - a) Service of Complaints
 - b) Discovery
 - i. Plaintiffs' Preliminary Disclosures and Fact Sheets
 - ii. ESI
 - iii. Plaintiffs' Discovery Requests

EXHIBIT A

- c) ADR
 - d) Scheduling
 - e) Tolling
- 3. Disputed Issues
 - a) Common Benefit Order
 - b) Retention of Treating Physicians – Proposed briefing schedule
- 4. Other Issues
- 5. Scheduling status conferences
 - a) Next status conference – March 20, 2014
 - b) Future status conferences

EXHIBIT B

Geographical Breakdown of Stryker Rejuvenate/ABG II MDL Cases



	Plaintiff's Counsel	Minnesota	Transferred to Minnesota	Totals
1	Ahearne Law Firm		1	1
2	Allan Berger		1	1
3	Allen Kuehnle		1	1
4	Alley.Clark.Greiwe		3	3
5	Anderson, Helgen, Davis	1		1
6	Antonio Le Mon		1	1
7	Bailey & Glasser		1	1
8	Beckett & Webber		1	1
9	Beckman Weil	2		2
10	Bezou Law Firm		1	1
11	Blankenship Law Offices		1	1
12	Bowersox Law Firm		22	22
13	Brena Bell		3	3
14	Brent Barber		1	1
15	Bruno & Bruno		1	1
16	Burch & George		1	1
17	Capitelli & Wicker		1	1
18	Cellino & Barnes		1	1
19	Chehardy Sherman		1	1
20	Childers Schlueter	3	9	12
21	Cooley Manion		2	2
22	Cooper & Kowalski		1	1
23	Cory Watson		19	19
24	Costello McMahon		1	1
25	Cunningham Bounds		1	1
26	Cusack, Gilfillan & O'Day		1	1
27	Dell & Dean		1	1
28	Dell & Schaefer		1	1
29	Dewsnup King		3	3
30	Donahue Davies		1	1
31	Donald P. McKenna, Jr.		1	1
32	Doyle Firm		1	1
33	Dunlap & Seeger	1		1
34	Dunn Nutter		1	1
35	Dwyer Mc Carthy		1	1
36	Eisenberg Gilchrist		1	1
37	Ezell Law		1	1
38	Fabian & Clendenin		2	2
39	Finnerty Law Offices		1	1
40	Finz & Finz		1	1
41	Fisher Boyd		1	1
42	Fitzpatrick & Fitzpatrick		1	1
43	Folan & McGlone		1	1

	Plaintiff's Counsel	Minnesota	Transferred to Minnesota	Totals
44	Fox and Farmer		1	1
45	Galloway & Jefcoat		3	3
46	Gatti Gatti		10	10
47	Gentry Locke Rakes & Moore		2	2
48	Gertler Law Firm		1	1
49	Gilman Law		1	1
50	Gilreath & Associates		4	4
51	Godosky & Gentile		1	1
52	Goldberg Weisman		3	3
53	Goldenberg Law		1	1
54	Goldstein, Fluxgold & Baron		1	1
55	Grant & Eisenhofer		2	2
56	Hall Law	1		1
57	Hamilton Miller		1	1
58	Hardison & Cochran	1		1
59	Hare Wynn		11	11
60	Hollis Law Firm		1	1
61	Hurley McKenna		9	9
62	In Pro Se		1	1
63	Ingaldson Fitzgerald		1	1
64	James Lee Ford		1	1
65	Jeff Green		1	1
66	John M. Molloy		1	1
67	John Sileo Law		1	1
68	Jones Ward		9	9
69	Kelley Bernheim		13	13
70	Kelly Uustal		1	1
71	Kenneth J. Allen		1	1
72	Kershaw Cutter	1	35	36
73	Kingery Durree		5	5
74	Kitrick Lewis		1	1
75	Kristofer Kallman		1	1
76	Landendorf & Landendorf		1	1
77	Landskroner Greico		1	1
78	Larry Helvey Law Firm		1	1
79	Law Firm of Stephen M. Reck		1	1
80	Law Office of Jeffrey S. Glassman		1	1
81	Law Office of Lisa Douglas		1	1

	Plaintiff's Counsel	Minnesota	Transferred to Minnesota	Totals
82	Law Office of Thomas D. Nissen		1	1
83	Law Office of William H. Newkirk		1	1
84	Law Offices of C. Michael Lawson		1	1
85	Law Offices of Jeffrey A. Manheimer	2		2
86	Lee Borthick Law Offices		1	1
87	Levin Papantonio		9	9
88	Levin Simes		16	16
89	Lieff Cabrasher		6	6
90	Ludwig Law Firm		1	1
91	Matthews Sanders		1	1
92	McEwen Law Firm	1		1
93	McGartland Borchardt		2	2
94	McGinn Carpenter		2	2
95	McGowan Hood		1	1
96	McMath Woods		6	6
97	McSweeney Langevin		1	1
98	Meshbesher Spence	65		65
99	Meyers & Flowers	1	29	30
100	Michael A. Fakhoury, P.C.		2	2
101	Michael J. Shemper		1	1
102	Morgan & Morgan	2	4	6
103	Murray and Murray		1	1
104	Napolibern Ripka	1		1
105	Neblett Beard		1	1
106	Onder Shelton		4	4
107	O'Steen Harrison		1	1
108	Parker & Parker		20	20
109	Paul Byrd Law Firm		2	2
110	Pearson Randall	1		1
111	Pendley Baudin		4	4
112	Peterson & Associates		1	1
113	Piscitelli		2	2
114	Pittman Dutton		12	12
115	Plymale Law Firm		1	1
116	Podhurts Orseck		1	1
117	Pope McGlamry	3		3
118	Power Rodgers	5	12	17
119	Rajkowski Hansmeier	2		2
120	Rapoport Law		1	1

	Plaintiff's Counsel	Minnesota	Transferred to Minnesota	Totals
121	Reardon Law Firm		1	1
122	Richard Harris Law Firm		1	1
123	Richard J. Serpe, P.C.		2	2
124	Richardson Richardson		2	2
125	Robinson Calcagnie		5	5
126	Rosenbaum & Rosenbaum		1	1
127	Salim Beasley		1	1
128	Salley Hite		1	1
129	Salvi Schostok		13	13
130	Saunders Walker		3	3
131	Scanlan Law Group		1	1
132	Seeger Weiss		2	2
133	Showard Law Firm		3	3
134	Smith & Alspaugh		1	1
135	Sneckenberg, Thompson		1	1
136	Stadtmauer & Associates		1	1
137	Steven A. Denny		1	1
138	Steven F. Goldstein		1	1
139	Strong Law Offices		6	6
140	Sutin Thayer		1	1
141	Taylor Martino		1	1
142	The Kelly Firm		1	1
143	The Law Offices of Peter G. Angelos		1	1
144	Thornton & Naumes		3	3
145	Timothy O'Dowd		1	1
146	Tully Law Firm		1	1
147	Valenzuela & Stern		1	1
148	Wagstaff & Cartmell		1	1
149	Wallace Boggs		2	2
150	Watts Guerra	1	2	3
151	Weidner & Assoc		1	1
152	Williams Cuker		2	2
153	Woodley Williams		3	3
154	Zimmerman Reed	36	4	40
155	Zoll, Kranz & Borgess		1	1
	Totals:	93	433	576