

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 JULY 17, 2014 STATUS CONFERENCE

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

1. Report on Filings, Judicial Contacts, and State Court Litigation

There are approximately 1,772 cases filed in or on their way to the MDL, 2,108 cases filed in the New Jersey coordinated proceedings, 77 cases filed in Florida, and approximately 34 additional cases filed in California, Illinois, Indiana, Kansas, Massachusetts, Michigan, New York, and Oregon.

2. Report on Discovery

a. Proposed Second Amended PTO No. 8

The parties have agreed upon deadlines for service of PFS in cases where a plaintiff filed a lawsuit prior to having a revision surgery, and thus pursuant to agreement of the parties is not initially required to submit a PFS, but that plaintiff later requires and undergoes initial revision surgery, thus obligating him/her to submit a PFS. The agreed

upon deadlines applying to plaintiffs in this situation are now incorporated into a proposed Second Amended PTO No. 8, attached hereto as **Exhibit B**.

b. PTO No. 20

i. Parties' Agreement

The parties have conferred and agreed that immediate obligations regarding “missing fact sheets” discussed in paragraph I.A.1. of PTO No. 20 are limited to those cases that were subject of Defendants’ Motion to Compel Compliance with PTO No. 8, which was heard at the June Status Conference. The parties have further agreed that PFS that are currently overdue, but were not included in the Motion, are not affected by paragraph I.A.1. of PTO No. 20, and as such, would not be subject to dismissal at the July Status Conference.

The parties have conferred and reached agreement that the bellwether trial pool described in paragraph I.A.3. of PTO No. 20 consists of those cases filed in or transferred to the MDL prior to April 28, 2014, and for which complete or partially complete PFS, medical records, and/or authorizations were served prior to May 1, 2014, and that paragraph I.A.3. of PTO No. 20 does not expand the number of cases originally eligible for inclusion in the bellwether pool. Rather, it extends the deadline to cure any alleged material deficiencies by serving complete PFS, medical records, and authorizations in these cases up to August 1, 2014.

ii. Materially deficient PFS

Pursuant to paragraph I.A.2., Defendants report they are sending written notice of materially deficient PFS to Plaintiffs’ counsel. Defendants are working with PLCC on

broad issues related to claims of deficiency, and with individual plaintiff's counsel to resolve the claimed deficiencies.

iii. DFS Deadlines

PTO No. 20 states, in part, "for any case nominated by Defendants to be a lead case in any bellwether category, the DFS shall be served by August 1, 2014."

Defendants respectfully suggest the August 1, 2014 deadline should be August 21, 2014, which is the deadline for the parties to identify 15 potential bellwether lead cases. August 1st is the deadline for Plaintiffs to serve complete PFS, medical records, and authorizations. As written, the Order requires Defendants to complete the following on August 1st: (1) evaluate PFS, medical records and authorizations served shortly before or on August 1st, (2) identify 15 potential bellwether lead cases, and (3) complete and serve DFS in those cases. Defendants have no control over when Plaintiffs will submit materially complete PFS, medical records and authorizations, whether shortly before or on August 1st. Logistically, it is literally impossible for Defendants to complete all these tasks on the same day. For these reasons, Defendants respectfully suggest the DFS deadline for any case Defendants nominate to be a lead case in any bellwether category should be August 21, 2014.

The PLCC respectfully submits that Defendants have sufficient time to comply with PTO No. 20 as written. At this time, there are no entirely missing PFS. Accordingly, Defendants have at least some information on all potential bellwether candidates. The PLCC believes that Defendants have, at this time, the information most

critical to evaluating bellwether candidates, meeting and conferring with the PLCC in the hopes of reaching agreement on bellwether candidates, and eventually nominating bellwether candidates to this Court.

c. Deposition Protocol

The parties in the MDL, as well as Plaintiff representatives from New Jersey and Florida have conferred on multiple occasions and reached agreement on several terms of a deposition protocol to govern depositions noticed in and cross-noticed in these venues. The parties anticipate remaining disputes will be resolved or brought to the Court's attention on or before the next Status Conference.

d. Depositions

The parties are continuing to confer on the scope and timing of noticed Rule 30(b)(6) depositions. The parties are planning additional conferrals and depositions in the coming months.

3. Report on ADR

Pursuant to PTO No. 20, PLCC and Defendants have filed consents to the appointment of Judge Boylan (Ret.) as an Assistant Special Master.

4. Miscellaneous

The parties will be prepared to report to the Court on a number of miscellaneous items, as outlined in the attached Agenda.

Dated: July 14, 2014

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EXHIBIT A

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STATUS CONFERENCE AGENDA

PLCC and Defense Counsel propose the following agenda for the July 17, 2014 status conference:

1. Report on Federal and State Court Litigation
 - a) MDL filings
 - b) State court filings and important developments
 - c) Judicial contacts
2. Report on Discovery
 - a) Proposed Second Amended PTO No. 8 (**Exhibit B**)
 - b) PTO No. 20
 - c) Document Productions
 - d) Deposition Protocol
 - e) Depositions
3. Report on ADR
 - a) Consent to Judge Boylan (Ret.)
4. Miscellaneous
 - a) Deadline for Answer to Master Long Form Complaint and Master Short Form Complaint or bring Rule 12 Motion
 - b) Motion to Amend Complaint in Jenks
 - c) The recent transfer of a consolidated complaint naming 10 plaintiffs
 - d) Stipulation to Toll Statute of Limitations on French entities
 - e) Appeal of Common Benefit Order to Eighth Circuit
5. Scheduling Status Conferences
 - a) Next status conference – 2:00 p.m., August 21, 2014
 - b) Future status conferences

EXHIBIT B

**UNITED STATES DISTRICT COURT
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**SECOND AMENDED PRETRIAL
ORDER NO. 8 REGARDING
SERVICE OF PLAINTIFF
PRELIMINARY DISCLOSURES AND
FACT SHEETS**

The Parties previously submitted an agreed-upon pretrial order regarding service of Plaintiff Preliminary Disclosures and Fact Sheets, and forms for use by each Plaintiff in providing preliminary and more extensive case-specific factual information in the above-referenced matter, which was memorialized in Pretrial Order No. 8. (*See* Doc. No. 146.) For clarity, the forms are attached hereto as Exhibits A and B, respectively. The Parties have agreed that the forms can be computerized, which may necessitate format modifications.

The Parties subsequently reached an agreement to suspend Plaintiff Fact Sheet obligations in cases where the Plaintiff had not undergone any revision surgery prior to commencing suit, which was memorialized in Amended Pretrial Order No. 8. (*See* Doc. No. 363.) The Parties have now agreed that in cases in which a previously unrevised Plaintiff undergoes revision surgery subsequent to commencing an action, the Plaintiff shall serve a completed Fact Sheet, medical records and authorizations within 90 days of

the revision surgery. This Order is intended to memorialize that agreement, as well as clarify the previously ordered deadlines.

IT IS HEREBY ORDERED that:

1. The form and content of the Master Plaintiff's Preliminary Disclosure Form attached hereto as Exhibit A is approved and adopted. Deadlines to file the Master Plaintiff's Preliminary Disclosure Form are as follows:

a. Plaintiffs in matters pending in MDL 13-2441 (DWF/FLN) as of the date of Pretrial Order No. 8, December 23, 2013, will serve executed Master Plaintiff's Preliminary Disclosure Form within 50 days thereof, or by February 11, 2014.

b. Plaintiffs in matters filed in or transferred to MDL 13-2441 (DWF/FLN) after the date of Pretrial Order No. 8, December 23, 2013, will serve executed Master Plaintiff's Preliminary Disclosure Form within 30 days after the case is transferred to or filed in MDL 13-2441 (DWF/FLN).

2. The form and content of the Plaintiff Fact Sheet attached hereto as Exhibit B is approved and adopted. Deadlines to file the Plaintiff Fact Sheet are as follows:

a. Plaintiffs in matters pending in MDL 13-2441 (DWF/FLN) as of the date of the date of Pretrial Order No. 8, December 23, 2013, will serve an executed Plaintiff Fact Sheet within 80 days thereof, or by March 13, 2014.

b. Plaintiffs in matters filed in or transferred to MDL 13-2441 (DWF/FLN) after the date of Pretrial Order No. 8, December 23, 2014, will serve an executed Plaintiff Fact Sheet within 60 days after the case is transferred to or filed in MDL 13-2441 (DWF/FLN).

3. Where a Plaintiff has not yet undergone revision surgery, the Plaintiff's Fact Sheet obligations are suspended. If such Plaintiff subsequently undergoes revision surgery, the Plaintiff shall serve a completed Fact Sheet, medical records and authorizations within 90 days following the revision surgery.

Dated: July __, 2014

DONOVAN W. FRANK
United States District Judge