

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

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CLERK'S OFFICE
AT BALTIMORE

IN RE: SMITH & NEPHEW
BIRMINGHAM HIP RESURFACING
(BHR) HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

MDL No. 2775 BY _____ DEPUTY
Master Docket No. 1:17-md-2775

JUDGE CATHERINE C. BLAKE

**THIS DOCUMENT RELATES TO ALL
ACTIONS**

**[REDACTED] [REDACTED] CASE MANAGEMENT ORDER NO. 5
Direct Filing and Service of Complaints**

The parties hereby submit this Stipulated Order regarding direct filing and service of complaints in the MDL.

I. Scope of Order

This Order applies only to personal injury actions properly made part of this MDL by the JPML Transfer Order of April 5, 2017. *See* Transfer Order [DE 81], MDL 2775 (J.P.M.L. Apr. 5, 2017). Specifically, this Order applies to actions brought by any U.S. citizen or resident against Smith & Nephew, Inc. by a plaintiff implanted with the following components of the Birmingham Hip Resurfacing (BHR) System, and only these components: (1) Birmingham Hip Resurfacing Femoral Head; and (2) Birmingham Hip Resurfacing Acetabular Cup, that (i) are currently pending in MDL No. 2775, or (ii) will be filed in, removed to, or transferred to this Court (collectively, "the MDL Proceedings"). Defendant's agreement to this Order shall not constitute an appearance by or for any defendant not properly served and/or not subject to personal jurisdiction.

II. Direct Filing of Cases in MDL 2775

A. Direct Filing. In order to eliminate delays associated with transfer to this Court of cases filed in or removed from other federal district courts to this Court, and to promote judicial efficiency, any plaintiff whose case would be subject to transfer to MDL No. 2775 may file his or her case directly in the MDL Proceedings in the District of Maryland, 17-md-2775, by service of a Short Form Complaint pursuant to Case Management Order No. 3 and by opening a new civil action pursuant to Case Management Order No. 5, Section H Electronic Filing (hereinafter, "Direct-Filed Cases").

B. Pretrial Proceedings Only; No *Lexecon* Waiver. Each case filed directly in the MDL Proceedings by a plaintiff who resides in a federal district other than the District of Maryland will be filed in the MDL Proceedings for purposes of pretrial proceedings, consistent with the Judicial Panel on Multidistrict Litigation's April 5, 2017 Transfer Order ("Transfer Order"). The parties agree that this Order does not constitute a waiver under *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998) by either party.

C. Transfer for Trial to Federal District Court of Proper Venue. Defendant will not challenge the venue of any Direct-Filed Case. Upon the completion of pretrial proceedings consistent with the Transfer Order, this Court pursuant to 28 U.S.C. §1404(a), will transfer Direct-Filed Cases to the federal district court in the district of proper venue as defined by 28 U.S.C. §1391, which could include the district where the plaintiff allegedly was injured by the BHR System, or where the plaintiff resides at the time of such transfer. The parties will jointly advise the Court of the district to which each Direct-Filed Case should be transferred, and in the event the parties are unable to agree on a district of proper venue for the case, defendant reserves its right to file a motion under 28 U.S.C. §1404(a). Nothing contained in this Order shall

preclude the parties from agreeing, at a future date, to try cases filed pursuant to this Order in the District of Maryland.

D. Choice of Law. Filing a case directly in MDL No. 2775 pursuant to this Order will not determine the choice of law, including the statute of limitations. Any choice of law principles will be decided at a later date.

E. No Concession as to Jurisdiction or Proper Venue. The inclusion of any action in the MDL Proceedings, whether such action was or will be filed originally or directly in the District of Maryland, shall not constitute a determination by this Court that jurisdiction or venue is proper in this district.

F. Motions. Nothing in this Order shall be construed as a waiver of defendant's right to move to remand any cases directly filed in the MDL Proceeding or to move to dismiss any and all causes of action in any Direct-Filed Complaint.

G. Caption. Complaints in Direct-Filed Cases shall bear the following caption:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN RE: SMITH & NEPHEW
BIRMINGHAM HIP RESURFACING
(BHR) HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

JOHN DOE,

Plaintiff,

vs.

XYZ CORPORATION,

Defendant.

MDL No. 2775

Master Docket No. 1:17-md-2775

JUDGE CATHERINE C. BLAKE

**DIRECT-FILED SHORT FORM
COMPLAINT
PURSUANT TO CASE MANAGEMENT
ORDER NO. ____**

Civil Action No.: _____

H. Electronic Filing. All complaints must be filed electronically absent extraordinary circumstances. Prior to any attorney filing a Direct-Filed Case, that attorney must file a notice of appearance in MDL No. 2775 and obtain a District of Maryland CM/ECF login name and password by submitting a motion for admission pro hac vice in an MDL case. Instructions for doing so can be found on the Court's website at www.mdd.uscourts.gov/multidistrict-litigation-pro-hac-vice-admission. Other than this modification, the normal local filing requirements will apply. See Local Rules of the United States District Court for the District of Maryland, available at <http://www.mdd.uscourts.gov/local-rules>. These rules include, but are not limited to, the following specifics:

1. **Civil Cover Sheet.** A civil cover sheet, indicating that the new matter is related to the MDL Proceedings (*i.e.*, MDL No. 2775), must be filed with the complaint.
2. **Signature Block.** When electronically filing the pleadings, the signature block shall follow the format below:

RESPECTFULLY SUBMITTED,

/s/ Jane Doe

Jane Doe

NAME OF LAW FIRM

ADDRESS

TELEPHONE

FAX

EMAIL@EMAIL.com

Bar Identification No.:

Attorney for Plaintiff

3. Filing Fees. Internet credit card payments are required for all complaints and are made online through Pay.gov. Plaintiff's counsel will be prompted to pay the required filing fee at the time the complaint is filed.
4. Summons. After the complaint is filed, plaintiff's counsel is free to create the necessary summonses and proceed with service as required by law.

III. Service of Complaints

A. **Defendant's Acceptance of Service by Mail.** Requests for waiver of service pursuant to Fed. R. Civ. P. 4(d)(1) for Smith & Nephew, Inc. should be sent by mail or overnight courier to the address listed below:

Smith & Nephew, Inc.
Legal Department
ATTENTION: Jean Mercer
7135 Goodlett Farms Parkway
Cordova, Tennessee 38016

These requests must be accompanied with a copy of the complaint and otherwise comply with the requirements of Fed. R. Civ. P. 4(d)(1).

IT IS SO ORDERED, this 3^d day of August 2017.

CCB
HON. CATHERINE C. BLAKE
UNITED STATES DISTRICT JUDGE