

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

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

MDL No. 2775
Master Docket No. 1:17-md-2775

JUDGE CATHERINE C. BLAKE

**THIS DOCUMENT RELATES TO
BHR TRACK CASES**

**[REDACTED] CASE MANAGEMENT ORDER NO. 8
Plaintiff and Defendant Fact Sheets for BHR Track Cases**

The parties hereby submit this Stipulated Order regarding the exchange of Plaintiff and Defendant Fact Sheets in BHR Track cases.

I. Scope of this Order

This Order applies only to personal injury actions brought by any U.S. citizen or resident against Smith & Nephew, Inc. (“Smith & Nephew” or Defendant) 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 direct-filed in, removed to, or transferred to this Court and placed in the BHR Track (“BHR cases”).

II. Plaintiff Fact Sheets

A. Plaintiffs’ Obligation to Complete and Serve a Plaintiff Fact Sheet. Each individual Plaintiff bound by this Order shall serve upon Defendant’s Lead Counsel designated below a completed and signed Plaintiff Fact Sheet, in the form attached as Exhibit A as hereby approved by the Court, including responsive documents and executed authorizations

(collectively, the "PFS"), pursuant to the schedule ordered herein. Each completed PFS shall be mailed or emailed to both:

1. Defendant's Lead Counsel Contact for PFS:
Jimmy Irwin
Irwin Fritchie Urquhart & Moore LLC
400 Poydras Street, Suite 2700
New Orleans, Louisiana 70130
Email: bhr-mdl-ppd@irwinllc.com
2. Plaintiffs' Lead Counsel Contact for PFS:
Alex Davis
Jones Ward PLC
1205 E. Washington St., Suite 111
Louisville, Kentucky 40206
Email: bhr@jonesward.com

B. Answers Binding under Federal Rules of Civil Procedure and Signed Under Penalty of Perjury. Each PFS shall be signed and dated by the Plaintiff or the proper Plaintiff representative under penalty of perjury. All responses in a PFS are binding on each Plaintiff as if they were obtained in responses to interrogatories and responses to requests for production of documents under the Federal Rules of Civil Procedure, and will be governed by the standards applicable to written discovery under the Federal Rules of Civil Procedure. Nothing in this Order prohibits a Plaintiff from withholding or redacting information based on a recognized privilege. If information is withheld on the basis of privilege, Plaintiff shall provide Defendants with a privilege log in accordance with the Federal Rules of Civil Procedure, the Discovery Guidelines of this Court, and the Stipulated Order Regarding Discovery of Electronically Stored Information [D.E. 492].

C. Schedule for Service of PFS. Plaintiffs with BHR cases pending in MDL 2775 as of the date of this Order are identified in Exhibit B. Plaintiffs in these BHR cases shall serve a PFS within sixty (60) days of the date of this Order. Plaintiffs with BHR cases filed in or

transferred to MDL 2775 after the date of this Order should include a caption that identifies the case as a BHR Track case pursuant to CMO 7, and shall serve a PFS within sixty (60) days after the case is transferred to or filed in MDL 2775. The applicable time to serve a PFS may be extended by agreement of the parties. Requests for extension should be made to Jimmy Irwin at bhr-mdl-ppd@irwinllc.com (copy to Alex Davis at bhr@jonesward.com) and clearly state the reason such an extension is requested. If the parties cannot agree on a reasonable extension of time, Plaintiffs may apply to the Court for such relief upon a showing of good cause.

D. PFS Must Be Substantially Complete. Every Plaintiff is required to provide Defendant's Lead Counsel (as set forth above) with a PFS that is substantially complete in all respects. "Substantially complete" requires that a Plaintiff:

1. Answer all applicable questions in the PFS. Plaintiff may answer questions in good faith by indicating "not applicable," "I don't know," or "Unknown";
2. Include a signed Verification (found at Section XIV of the PFS);
3. Provide unaddressed, duly executed record release Authorizations (Section XIII of the PFS); and
4. Produce the documents requested in the PFS, to the extent such documents are in Plaintiff's possession, custody, or control.

E. PFS Supplement. Plaintiffs are required to supplement their PFS responses subject to the Federal Rules of Civil Procedure. Moreover, any Plaintiff who has a BHR System explanted subsequent to the service of his/her PFS must supplement the PFS with information about the explant procedure, including location of the explanted device and other applicable

information, and supplement the production of responsive documents, if any, within thirty (30) days from the date of the procedure.

III. Defendant Fact Sheets

A. Defendant's Obligation to Complete and Serve a Defendant Fact Sheet. For each BHR case in which a Plaintiff provides Defendant with a substantially complete PFS, Defendant shall complete and serve a Defendant Fact Sheet ("DFS"), attached as Exhibit C and hereby approved by the Court, on the following schedule. Within sixty (60) days from the date a substantially complete PFS is received by Defendant's Lead Counsel, Defendant shall serve the corresponding DFS for that Plaintiff so long as no more than twenty-five (25) DFSs are due in a given calendar week. If more than twenty-five (25) DFSs are due in a given calendar week, Defendant will serve DFSs on a rolling basis with twenty-five (25) DFSs served each week. The completed DFS shall be served on Plaintiff's counsel for the individual Plaintiff pertaining to the DFS, as well as on Plaintiff's Lead Counsel identified in Section II.A.2.

B. Nothing in the DFS shall be deemed to limit the scope of inquiry at depositions or affect the admissibility of evidence at trial. The scope of inquiry at depositions and the admissibility of information in the DFS shall be governed by the Federal Rules, applicable Local Rules, and any applicable Court order, and no objections are waived by virtue of any DFS response.

C. Extensions of Time. The applicable time to serve a DFS may be extended by agreement of the parties. Requests for extension should be made to Plaintiff's individual representative counsel (copy to Alex Davis at bhr@jonesward.com) and clearly state the reason such an extension is requested. If the parties cannot agree on a reasonable extension of time, Defendant may apply to the Court for such relief upon a showing of good cause.

IV. Authorizations and Compliance

A. Authorizations For the Release of Records.

1. As set forth in Section II.D above, unaddressed, executed Authorizations for the Release of Records together with copies of such records, to the extent that those records or copies thereof are in the Plaintiff's possession, custody, or control, or reasonably available to Plaintiff, shall be provided along with the PFS at the time that the Plaintiff is required to serve a PFS pursuant to this Order. Defendant may use unaddressed authorizations to obtain its own set of medical records, but only for healthcare providers identified in a PFS or any medical records produced with the PFS, and for the time periods described in the PFS, if such time periods are identified.

2. In addition to the Authorizations described above, Plaintiff's individual representative counsel shall also maintain in their file unaddressed, executed Authorizations. If Defendant wishes to obtain medical records for a healthcare provider other than those identified in a PFS or in any medical records produced with the PFS, Defendant shall provide Plaintiff's individual representative counsel (copying Alex Davis at bhr@jonesward.com) with a written request for an Authorization for that healthcare provider. The written request shall identify the healthcare provider, address, and time period of the records to be requested. Within seven (7) days of the date of the written request, Plaintiff's individual representative counsel shall provide the requested addressed, executed Authorization or respond with a written objection, clearly stating the basis for the objection. If Plaintiff's individual representative counsel does not respond in the allotted time by either providing the requested Authorization or objecting, Defendant may use the unaddressed, executed Authorization in Section IV.A.1 to obtain the records.

3. Undated Authorizations constitute permission for Defendant to date (and where applicable, re-date) Authorizations before sending to records custodians.

4. In the event that an institution or medical provider to whom any Authorization is presented refuses to provide records in response to that Authorization, Defendant shall notify Plaintiff's individual representative counsel. Should a particular form be required, Defendant will provide it to Plaintiff's individual representative counsel. The individual Plaintiff shall execute and return to Defendant's Lead Counsel within twenty-one (21) days whatever form is required by that institution or provider. Further, to the extent an institution or medical provider fails to respond to a medical records request with the executed Authorization, Plaintiff's individual representatives counsel agrees to contact that institution or medical provider directly, or otherwise to provide reasonable assistance in obtaining the requested medical records.

5. Defendant's record copy service shall have the right to contact institutions or medical providers to follow up on medical record copying or production.

B. Non-Compliance with PFS Requirements. If any Plaintiff fails materially to comply with his or her obligations under this Order within the timelines established herein, including the failure to serve a substantially complete PFS as defined in Section II.D herein, Defendant's Lead Counsel or designee shall send a notice of deficiency (the "Deficiency Letter") to the Plaintiff's counsel for the individual who allegedly failed to comply and copy Plaintiffs' Lead Counsel at bhr@jonesward.com. The Deficiency Letter shall identify the alleged material deficiency and state that the Plaintiff will have thirty (30) days to cure the alleged material deficiency. If the alleged material deficiency is not cured within that time (or within any

extension of that time as agreed by the parties), Defendant may move for dismissal of Plaintiff's claims, including dismissal with prejudice upon an appropriate showing.

C. **Non-Compliance with DFS Requirements.** If Defendant fails materially to comply with its obligations under this Order within the timelines established herein, Plaintiffs' Lead Counsel shall send written notice of the material deficiency to Defendant's Lead Counsel at bhr-mdl-ppd@irwinllc.com. The parties shall promptly meet and confer in an attempt to resolve the deficiency. If the parties are unable to resolve the material deficiency after conferring, Plaintiffs' Lead Counsel may request a telephone conference with the Court or may include the dispute on the agenda for the next regularly-scheduled status conference after providing reasonable notice to Defendant.

IT IS SO ORDERED, this 26th day of June 2018.



HON. CATHERINE C. BLAKE
UNITED STATES DISTRICT JUDGE