

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
(Baltimore Division)**

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:**

*Aron v. Smith & Nephew, Inc.*, No. 1:18-cv-01190

*Strader v. Smith & Nephew, Inc.*, No. 1:18-cv-01535

*Hartley v. Smith & Nephew, Inc.*, No. 1:18-cv-02993

*Giangiulio v. Smith & Nephew, Inc.*, No. 1:19-cv-01276

**SECOND AMENDED CASE MANAGEMENT ORDER NO. 18  
(Pretrial Scheduling Order for THA Track Cases)**

The Court hereby enters this Second Amended Case Management Order (CMO) 18 regarding scheduling for THA Track Cases. This CMO 18 amends certain provisions in CMO 14, Second Amended CMO 16, and First Amended CMO 18 to address delays due to Hurricane Ida and certain work the parties agreed to postpone as a result of the trial of the first BHR Track case. As with Second Amended CMO 16, the definitions used in CMO 14 apply equally to this Order unless otherwise stated. Provisions of CMO 14, Second Amended CMO 16, and First Amended CMO 18 pertaining to the THA Track and not addressed herein remain in full effect, unchanged and applicable to all cases in this MDL.

## I. Trial Dates

The first THA Track trial will commence on **June 6, 2022**. For this trial date, the Court has selected a designated trial case and a back-up trial case. These cases are referred to herein as “THA Trial Case #1” and “THA Trial Case #2,” respectively (collectively “THA Trial Cases”). THA Trial Case #1 is *Strader v. Smith & Nephew, Inc.*, No. 1:18-cv-01535. THA Trial Case #2, the back-up case, is *Giangiulio v. Smith & Nephew, Inc.*, No. 1:19-cv-01276. Smith & Nephew agrees to waive its right to remand under *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 40-41 (1998), for one THA Trial Case, provided it is tried alone and not part of a multi-plaintiff trial.

## II. THA Track Pretrial Deadlines

### 1. Fact Discovery

- A. General liability fact discovery for all THA Track cases closed on **February 19, 2021** and is complete.
- B. *Paragraph IV.E of CMO 14 regarding Core Discovery in the THA Track Discovery Pool cases is amended as follows:* The deadline for completion of Core Discovery in THA Track Discovery Pool cases was **March 5, 2021**. All THA Track Discovery Pool Core Discovery is complete.
- C. *Paragraph V.C of CMO 14 regarding additional case-specific fact discovery for the THA Track Trial Pool cases is amended as follows:* The deadline for completion of all case-specific fact discovery beyond the Core Discovery was **May 27, 2021** for each of the four (4) THA Track Trial Pool cases. Case-specific fact discovery is complete, except that the parties may

file motions to compel with regard to written discovery responses in the four (4) THA Track Trial Pool cases.

- D. The deadline for serving requests for admission of fact (“RFAs”) (except as to authenticity of documents) for THA Track Trial Cases ## 1 and 2 was **July 19, 2021**. Each side was permitted to serve up to 60 RFAs per case.
- E. The process and deadlines for handling the authenticity of documents in THA Trial Cases ## 1 and 2 will be addressed in the separate Scheduling Order discussed in Paragraph 5.A herein.

**2. Expert Discovery on General Liability and Causation**

- A. Plaintiffs’ expert disclosures related to issues concerning general liability and causation, pursuant to Fed. R. Civ. P. 26(a)(2), and at least two (2) dates of availability for the deposition of each expert in the period between April 5 and May 4, 2021, were served by **March 22, 2021**.
- B. Defendant’s expert disclosures related to issues concerning general liability and causation, pursuant to Fed. R. Civ. P. 26(a)(2), and at least two (2) dates of availability for the deposition of each expert between May 7 and June 30, 2021, were served by **April 23, 2021**.
- C. Defendant’s general liability experts may offer different or additional opinions at deposition from those contained in their expert reports, in order to address testimony of Plaintiffs’ general liability experts given at deposition.
- D. All expert discovery on general liability and causation for THA Track cases was completed by **June 30, 2021**.

**3. Case-Specific Expert Discovery for THA Trial Cases ## 1 and 2**

- A. Plaintiffs' case-specific expert disclosures, provided pursuant to Fed. R. Civ. P. 26(a)(2), and at least two (2) dates of availability for the deposition of each expert between July 21, 2021 and August 23, 2021, were served by June 23, 2021.
- B. Defendant's case-specific expert disclosures, provided pursuant to Fed. R. Civ. P. 26(a)(2), and at least two (2) dates of availability for the deposition of each expert between August 23, 2021, and September 15, 2021, were served by July 23, 2021.
- C. Defendant's case-specific experts may offer different or additional opinions at deposition from those contained in their expert reports, in order to address testimony of Plaintiffs' case-specific experts given at deposition.
- D. All case-specific expert discovery for THA Trial Cases ## 1 and 2 shall be completed by November 5, 2021.
- E. Should any case-specific expert appear in more than one case for a Party or if a general liability and causation expert appears as a case-specific expert, the Parties will meet and confer to determine reasonable limitations on any subsequent depositions. In the event the Parties are unable to reach agreement, the issue will be submitted to the Court for decision.

**4. Pretrial Briefing for THA Track Trial Cases ## 1 and 2**

- A. **General Liability and Causation *Daubert* Motions.** Motions to exclude or limit general liability and causation expert testimony or opinions pursuant to Fed. R. Evid. 702 or *Daubert v. Merrell Dow Pharmaceuticals*,

*Inc.*, 509 U.S. 579 (1993), were filed by **July 13, 2021**. Responsive briefing was filed by **August 20, 2021**, and Reply briefs will be filed by **October 22, 2021**.

- B. **Case-Specific *Daubert* and Dispositive Motions.** Motions to exclude or limit case-specific expert testimony or opinions pursuant to Fed. R. Evid. 702 or *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and case-specific dispositive motions will be filed by **December 2, 2021** in THA Trial Cases ## 1 and 2. Responsive briefing shall be filed by **December 21, 2021**, and reply briefs by **January 12, 2022**.
- C. Oral argument on *Daubert* motions for THA general liability and causation experts will be on **November 22, 2021, at 10 a.m. EST**, and oral argument for dispositive and case-specific *Daubert* motions in THA Trial Cases ## 1 and 2 will be on **February 23, 2022, at 10 a.m. EST**.
- D. **Motions in Limine.** Motions in limine for THA Trial Case ## 1 and 2 will be filed on **March 11, 2022**, with responsive briefing due on **April 1, 2022**, and replies due on **April 14, 2022**. A hearing on Motions in Limine for THA Trial Case ## 1 and 2 will be held in **late April 2022**.

**5. Other Deadlines**

- A. The Court will issue a separate Scheduling Order to address additional pretrial deadlines for THA Trial Cases ## 1 and 2, including witness lists, exhibit lists, and deposition designations.
- B. Additional trial dates for cases in the THA Track, if any, will be addressed by a separate Scheduling Order.

SO ORDERED, this 13<sup>th</sup> day of October, 2021.

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Catherine C. Blake  
United States District Judge