

**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:

Quirk v. Smith & Nephew, Inc., No. 1:18-cv-02328
Hand v. Smith & Nephew, Inc., No. 1:17-cv-00935

**CASE MANAGEMENT ORDER NO. 22
(Pretrial Scheduling Order for June 2022 BHR Trial)**

Plaintiffs Deborah Quirk and Marla Hand and Defendant Smith & Nephew, Inc., by their undersigned counsel, hereby submit this Case Management Order (CMO) 22 regarding completion of discovery and pretrial deadlines for the *Quirk* case, which is the designated trial case, and the *Hand* case, which is the back-up trial case, for the BHR Track trial set to begin on June 6, 2022. Both cases were part of the Discovery Pool and Core discovery is complete.

I. Fact Discovery

1. Plaintiffs will submit updated and verified Plaintiff Fact Sheets by **January 18, 2022**.
2. Each party may serve a set of no more than 10 interrogatories and 10 requests for production of documents limited to case-specific issues and non-duplicative of any prior discovery by **January 17, 2022**, and responses will be due by **January 24, 2022**.
3. Any additional discovery beyond Core Discovery, including any medical examinations of Plaintiffs by case-specific experts, will be completed by **January 28, 2022**.

4. The deadline for serving requests for admission of fact (“RFAs”) in the Quirk and Hand cases is **February 4, 2022**.

II. Case-Specific Expert Discovery

1. 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 in the early half of the period between February 10, 2022 and March 7, 2022, shall be served by **February 7, 2022**.
2. 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 in the latter half of the period between February 10, 2022, and March 7, 2022, shall be served by **February 21, 2022**.
3. Rebuttal case-specific expert reports, if any, along with at least two (2) dates of availability for the deposition of each expert between March 21, 2022 and March 25, 2022, shall be served by **March 4, 2022**.
4. Depositions of plaintiffs’ experts will be taken before depositions of defendant’s experts, except by agreement of the Parties. The Parties will work cooperatively to set depositions of plaintiffs’ experts who will not be issuing rebuttal reports earlier in the deposition period. Depositions of Plaintiffs’ experts who issue rebuttal reports will be taken after the depositions of the Defendant’s expert(s) whose opinions they are rebutting.
5. Defendants’ 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.

6. All case-specific expert discovery for the *Quirk* and *Hand* cases shall be completed by **March 25, 2022**.

III. **Pretrial Briefing.**

1. **Case-Specific *Daubert* and Dispositive Motions. Non-duplicative** 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 **April 1, 2022**. Responsive briefing shall be filed by **April 14, 2022**, and reply briefs by **April 22, 2022**.
2. Oral argument for dispositive and case-specific *Daubert* motions will be held on **May 4 2022, at 9:30 a.m. EDT**.
3. **Motions in Limine.** Non-duplicative motions in limine for the *Quirk* and *Hand* cases (no more than five per side for each case) will be filed on **March 29, 2022**, with responsive briefing due on **April 8, 2022**, and replies due on **April 20, 2022**. A hearing on Motions in Limine will be held on **May 4, 2022, following oral argument for dispositive and case-specific *Daubert* motions.**

IV. **Other Pretrial Deadlines.**

1. **Local Rule 106 Pretrial Order, Proposed Voir Dire & Final Exhibit Lists.**
 - a. On **April 11, 2022**, Plaintiffs will send Defendant an initial draft of the Pretrial Order for the *Quirk* Case pursuant to Local Rule 106, including proposed voir dire, exhibit list (showing, for each exhibit, which exhibits Plaintiffs expect to offer and may offer), exhibit images, witness list (including identification of whether each witness will be called by deposition designation or is expected to be called live), and deposition designations for any witness who will not or may not appear live.

Plaintiffs' initial draft of the Pretrial Order shall also include a listing or other specific identification (e.g., by Bates number, content, etc.) of each alleged false or misleading representation on which her claims rely, and the details of all past, present and future damages claimed by Plaintiffs, including dollar amounts (if applicable), and identification of the documents that support such claimed damages. On the same date, Plaintiffs will also send Defendant digital images of the exhibits listed by Plaintiffs in the draft Pretrial Order, with file names that correspond to the exhibit numbers, and will use Bates-stamped versions of documents produced in the litigation, if applicable.

- b. On **April 11, 2022**, Defendant will send Plaintiffs deposition designations for potential use in Defendant's case-in-chief.
- c. On **April 21, 2022**, Defendant will send Plaintiffs revisions and additions to the Pretrial Order pursuant to Local Rule 106, including proposed voir dire, exhibit list (showing, for each exhibit, which exhibits Defendant expects to offer and may offer), exhibit images, witness list (including identification of whether each witness will be called by deposition designation or is expected to be called live), and counter-designations to the deposition designations previously identified by Plaintiffs. On the same date, Defendant will also send Plaintiffs digital images of exhibits listed by Defendant in the draft Pretrial Order, with file names that correspond to the exhibit numbers, and will use Bates-stamped versions of documents produced in the litigation, if applicable.

- d. On **April 21, 2022**, Plaintiffs will send Defendant counter-designations to the deposition designations previously identified by Defendant pursuant to Section IV(1)(b) above.
 - e. On **April 29, 2022**, The parties will provide any deposition counter-designations based on the April 21 counter-designations in Sections IV(1)(c)-(d) above.
 - f. On **May 4, 2022**, the parties shall file with the Court the proposed Pretrial Order for the *Quirk* case pursuant to Local Rule 106, including the previously exchanged exhibit lists, any authenticity objections to exhibits identified therein, previously exchanged deposition designations (as provided in Sections IV(1)(a)-(e) above), and proposed voir dire.
 - g. The parties will exchange tagged digital exhibit images with pretrial numbering to match the final exhibit lists in the Pretrial Order on **May 31, 2022**.
 - h. The parties will submit final exhibit lists with pretrial numbering to the Court on **May 31, 2022**, pursuant to Local Rule 106(7)(a). For the Court's convenience, the final exhibit list shall include columns for each exhibit identifying: (1) any unresolved objections to authenticity; (2) any objections to exhibits based on motion in limine or other pretrial motion rulings; and (3) a brief explanation of the nature of any such objection. All objections to exhibits for any reason are preserved and can be raised at trial, whether listed on the final exhibit list or not.
2. **Pretrial Conference.** The pretrial conference for the *Quirk* case pursuant to Local Rule 106 will be held on **May 11, 2022**, at **9 a.m. EDT**.
3. **Deposition Designation Objections and Submission to Court.**

- a. At least four days before any particular deposition designations are expected to be used or played at trial in the party's case in chief, the party offering the deposition shall be required to provide its final deposition designations to the non-offering party, along with any exhibits introduced through the designations identified by PX or DX number. At least three days before such depositions are to be used or played during the case in chief at trial, the non-offering party will provide the offering party with its counter-designations, along with any exhibits introduced through the counter-designations identified by PX or DX number, and objections to any designated testimony. By no later than 2 days before the deposition is expected to be used or played during a case in chief at trial, the offering party will provide to the non-offering party its objections to any counter-designations and responses, if any, to the objections of the non-offering party.
- b. By no later than 2 days before the deposition is expected to be used or played during a party's case in chief at trial, the offering party will provide the Court with a designation and objection report for the witness to be presented at trial by deposition designation and/or counter-designation. The report must separately identify: (1) testimony designated or counter-designated by Plaintiff; (2) testimony designated or counter-designated by Defendant; (3) objections to any designated testimony by any party and the basis for the objection; (4) response, if any, to any such objections; and (5) identification by PX or DX number of any exhibits introduced through the designations.
- c. The Court will endeavor to consider and rule on deposition designation objections in a timely fashion during trial in order to permit the use of the depositions at trial

on the schedule proposed by the offering party. After the Court rules on deposition designation objections and before the deposition designations are shown or played at trial (at least the day prior to the deposition designations being played at trial, if possible based on the timing of the Court's ruling), the offering party must provide the non-offering party with a final playlist and video with exhibits as intended to be shown or played during trial

d. To the extent possible, the same schedule shall apply to deposition designations intended to be shown or played at trial during either side's rebuttal case.

4. **Jury Instructions & Special Verdict Form.** The parties will file with the Court proposed jury instructions and special verdict forms on **May 4, 2022**.

SO ORDERED, this 14th day of January, 2022.



Catherine C. Blake
United States District Judge