

**IN THE UNITED STATES DISTRICT COURT  
FOR THE 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  
THA TRACK ACTIONS**

**[REDACTED] CASE MANAGEMENT ORDER NO. 10  
THA Track Master Amended Consolidated Complaints and Motion to Dismiss**

The parties hereby submit this Stipulated Order regarding Plaintiffs' BHR-THA Track Master Amended Consolidated Complaint ("BHR-THA MACC"), R3-THA Master Amended Consolidated Complaint ("R3-THA MACC") (collectively, the "THA MACCs"), and briefing on Smith & Nephew, Inc.'s ("S&N") anticipated motion to dismiss the two THA MACCs.

1. On or before September 14, 2018, Plaintiffs will serve on S&N a draft of the R3-THA MACC that may include references to documents or information designated as "confidential" pursuant to the Protective Order entered by this Court. The parties will confer in an effort to determine whether any such documents or information can be included in the R3-THA MACC without need of filing under seal.

2. On or before September 21, 2018, Plaintiffs will file their R3-THA MACC. If necessary, Plaintiffs will file a redacted version of the R3-THA MACC in the public record and will file an unredacted version under seal. Leave to file an unredacted version of the R3-THA MACC under seal is hereby granted by the Court.

9/24/18  
CMB

3. On or before September 21, 2018, Plaintiffs will file a notice of voluntary dismissal of defendants Smith & Nephew plc and Smith & Nephew Ltd. from the BHR-THA MACC. Adoption of either of the THA MACCs by filing of a Short Form Complaint pursuant to paragraph 4 of this CMO will not act as a means of or be effective to add these or any other foreign defendants to any Plaintiff's case. No defendants other than Smith & Nephew, Inc. shall be named in any Short Form Complaint.

4. All Plaintiffs with cases identified on the Updated Listing of Pending THA Track Cases filed with the Court on September 17, 2018 shall file a Short Form Complaint on or by October 5, 2018, in substantially the form attached as Exhibit "A" attached to this Order (for BHR-THA cases) or Exhibit "B" (for R3-THA cases). The applicable THA MACC (BHR-THA MACC or R3-THA-MACC) shall be deemed adopted by and applicable to Plaintiffs with cases identified on the Updated Listing of Pending THA Track Cases filed with the Court on September 17, 2018,

5. On or by November 9, 2018, S&N shall answer and/or file a motion to dismiss Plaintiffs' THA MACCs and any other claims against S&N in any Short Form Complaint filed in any case on the Updated Listing of Pending THA Track Cases filed with the Court on September 17, 2018. The memorandum in support of the motion to dismiss filed pursuant to this paragraph shall not exceed, in total, sixty (60) pages, exclusive of any caption, table of contents, table of authorities, certifications, and signature block.

6. On or by December 14, 2018, Plaintiffs shall file their response to S&N's motion to dismiss. The response filed pursuant to this paragraph shall not exceed, in total, sixty (60) pages, exclusive of any caption, table of contents, table of authorities, certifications, and signature block.

7. On or by January 15, 2019, S&N shall file its reply brief in support of the motion to dismiss. Any reply brief filed pursuant to this paragraph shall not exceed, in total, twenty-five (25) pages, exclusive of any caption, table of contents, table of authorities, certifications, and signature block.

8. The Court will set a hearing date on the motion in January or February 2019.

9. Any plaintiff whose case is identified on the Updated Listing of Pending THA Track Cases filed with the Court on September 17, 2018, who does not file a Short Form Complaint on or before October 5, 2018 must file by October 12, 2018 a motion for leave to file the Short Form Complaint after the October 5, 2018 deadline. The motion for leave should address the reasons the Short Form Complaint was not timely filed and must establish good cause for failing to meet the deadline. Defendant shall have until October 26, 2018, to file any oppositions to motions for leave to file a Short Form Complaint, and plaintiffs shall have until November 9, 2018 to file their replies.

11. Nothing in this Order shall be deemed to revive any claim asserted in any case pending in or transferred into this MDL that was dismissed prior to the commencement of or during the pendency of this MDL.

12. Any Plaintiff whose THA Track case is filed in or transferred to this MDL and is identified on Updated Listings of Pending THA Track Cases filed with the Court subsequent to September 17, 2018 shall file a Short Form Complaint within thirty (30) days after filing in or transfer to this MDL. All responses by S&N to Short Form Complaints filed after October 5, 2018, shall be stayed pending further Order of this Court, without prejudice to S&N to answer or move to dismiss on such schedule as the Court may later determine.

IT IS SO ORDERED, this 24<sup>th</sup> day of Sept 2018.

CCB

HON. CATHERINE C. BLAKE  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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

MDL-17-md-2775  
Hon. Catherine C. Blake

This Document Relates to  
THA TRACK CASES

Case No. \_\_\_\_\_

**THA TRACK SHORT FORM COMPLAINT FOR PLAINTIFFS WITH BHR CUPS,  
MODULAR FEMORAL HEADS AND STEMS (THA CASES  
NOT INVOLVING THE R3 METAL LINER)**

1. Plaintiff, \_\_\_\_\_, states and brings this civil action involving a total hip arthroplasty ("THA") as part of the "THA Track" in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint pursuant to CMO No. 10, entered on [DATE] by this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff is a resident and citizen of \_\_\_\_\_ and claims damages as set forth below.

3. Plaintiff's Spouse \_\_\_\_\_ is a resident and citizen of \_\_\_\_\_ and claims loss of consortium damages as set forth below.

4. Federal jurisdiction is based on diversity of citizenship.

5. The Federal District in which Plaintiff's initial implant took place:  
\_\_\_\_\_

6. The Federal District in which Plaintiff's revision(s) surgeries took place:  
\_\_\_\_\_

7. Plaintiff brings this action [check the applicable designation]:

\_\_\_\_\_ On behalf of [himself/herself];

\_\_\_\_\_ In a representative capacity as the \_\_\_\_\_ of the \_\_\_\_\_ having been duly appointed as the \_\_\_\_\_ by the \_\_\_\_\_ Court of \_\_\_\_\_. A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.

*[Cross out if not applicable.]*

**FACTUAL ALLEGATIONS**

8. On or about \_\_\_\_\_, Plaintiff underwent surgery during which the \_\_\_\_\_ [IDENTIFY BHR SYSTEM AND/OR COMPONENT(S)] was implanted into Plaintiff's (RIGHT/LEFT) hip, along with the following non-BHR System component(s): \_\_\_\_\_  
[SEPARATELY IDENTIFY THE SPECIFIC COMPONENTS THAT PLAINTIFF RECEIVED, INCLUDING, WHERE APPLICABLE, THE SPECIFIC CUP, LINER, HEAD, SLEEVE, STEM, AND ANY OTHER COMPONENT(S)].

9. [IF BILATERAL]: On or about \_\_\_\_\_, Plaintiff underwent surgery during which the \_\_\_\_\_ [IDENTIFY BHR SYSTEM AND/OR COMPONENT(S)] was implanted into Plaintiff's (RIGHT/LEFT) hip, along with the following non-BHR System component(s): \_\_\_\_\_  
[SEPARATELY IDENTIFY THE SPECIFIC COMPONENTS THAT PLAINTIFF RECEIVED, INCLUDING, WHERE APPLICABLE, THE SPECIFIC CUP, LINER, HEAD, SLEEVE, STEM, AND ANY OTHER COMPONENT(S)].

10. Plaintiff's [LEFT/RIGHT] hip implant surgery was performed at \_\_\_\_\_ by \_\_\_\_\_.

11. [IF BILATERAL]: Plaintiff's [LEFT/RIGHT] hip implant surgery was performed at \_\_\_\_\_ by \_\_\_\_\_.

12. Plaintiff underwent the following medically-indicated revision (or revisions) of the hip implant(s) on or about the following date (or dates): \_\_\_\_\_

[INCLUDE DATE(S) OF REVISION AND ALL RE-REVISIONS, IF APPLICABLE].

Plaintiff received the following hip components during the revision surgery (or surgeries):

\_\_\_\_\_ [SEPARATELY IDENTIFY THE SPECIFIC COMPONENTS THAT PLAINTIFF RECEIVED IN EACH REVISION AND RE-REVISION SURGERY, INCLUDING, WHERE APPLICABLE, SPECIFIC CUP, LINER, HEAD, SLEEVE, STEM, AND ANY OTHER COMPONENT(S)].

13. Plaintiff alleges the following complications and/or injuries as a result of the component(s) implanted in Plaintiff's hip(s), some or all of which made revision surgery medically necessary:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Plaintiff's revision surgery/surgeries was/were performed by \_\_\_\_\_ at \_\_\_\_\_ [SEPARATELY IDENTIFY THE PHYSICIAN AND LOCATION FOR EACH REVISION SURGERY].

15. Plaintiff's revision surgery/surgeries resulted in the following intra-operative findings and/or diagnoses:

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[TO INCLUDE, AS APPLICABLE, METAL STAINED TISSUE, PSEUDOTUMOR, ALVAL, ARMD, METALLOSIS, FEMORAL NECK FRACTURE, OR OTHER INTRA-OPERATIVE FINDINGS AND/OR DIAGNOSES].

16. Plaintiff adopts the allegations of the BHR-THA Master Amended Consolidated Complaint (“BHR-THA MACC”) filed August 14, 2018, against Smith & Nephew, Inc.<sup>1</sup> and all amendments to the BHR-THA MACC:

Yes \_\_\_\_ No \_\_\_\_

17. Notwithstanding the foregoing, Plaintiff does not adopt the following paragraphs of the BHR-THA MACC: \_\_\_\_\_.

18. Notwithstanding the foregoing, Plaintiff additionally alleges that:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ALLEGATIONS AS TO INJURIES**

19. (a) Plaintiff claims damages as a result of (check all that are applicable):

- \_\_\_\_\_ INJURY TO HERSELF/HIMSELF
- \_\_\_\_\_ INJURY TO THE PERSON REPRESENTED
- \_\_\_\_\_ WRONGFUL DEATH
- \_\_\_\_\_ SURVIVORSHIP ACTION

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<sup>1</sup> Plaintiffs have since voluntarily dismissed two additional defendants named in the BHR-THA MACC, Smith & Nephew plc and Smith & Nephew Ltd. Adoption of the BHR-THA MACC does not act as a means by which a plaintiff can sue these now-dismissed defendants or any other foreign defendants.



\_\_\_\_\_ ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable):

*[Cross out if not applicable.]*

\_\_\_\_\_ LOSS OF SERVICES

\_\_\_\_\_ LOSS OF CONSORTIUM

20. In addition to the allegations in the THA-MACC, Plaintiff alleges that [Plaintiff and/or Plaintiff's physician] (i) viewed and/or heard the following representations that Plaintiff alleges are false, misleading, incomplete, or otherwise were misrepresentation(s):

\_\_\_\_\_  
\_\_\_\_\_

on or about \_\_\_\_\_, and (ii) relied upon those representations or misrepresentations as described in the THA-BHR MACC as well as in the following manner:

\_\_\_\_\_

21. Defendant(s), by its/their actions or inactions, caused the injuries to Plaintiff(s) as alleged in the BHR-THA MACC. Plaintiff(s) additionally allege(s) that Defendant(s) caused his/her injuries as follows: \_\_\_\_\_

**DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

22. (If applicable) The following claims and allegations in the BHR-THA MACC are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

\_\_\_\_\_ COUNT I (Strict Products Liability, Design Defect and Failure to Warn)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT II (Negligence and Negligent Failure to Warn)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT III (Negligence Per Se)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT IV (Breach of Express Warranty)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT V (Breach of Implied Warranty)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT VI (Negligent Misrepresentation)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT VII (Unfair and Deceptive Trade Practices)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT VIII (Fraudulent Concealment)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT IX (Punitive Damages)

Specific state common law and statutory law that applies: \_\_\_\_\_

23. In addition to the above in paragraph 22, Plaintiff(s) assert that the facts as alleged in the BHR-THA MACC and as additionally alleged above support the following additional causes of action under applicable state law:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff(s) pray for judgment against Defendant(s) as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement; and
7. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: \_\_\_\_\_

Respectfully submitted,

# **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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

MDL-17-md-2775  
Hon. Catherine C. Blake

This Document Relates to  
THA TRACK CASES

Case No. \_\_\_\_\_

**THA TRACK SHORT FORM COMPLAINT FOR R3-THA CASES**

1. Plaintiff, \_\_\_\_\_, states and brings this civil action involving a total hip arthroplasty with an R3 metal liner ("R3-THA") as part of the "THA Track" in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint pursuant to CMO No. 10, entered on [DATE] by this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff is a resident and citizen of \_\_\_\_\_ and claims damages as set forth below.

3. Plaintiff's Spouse \_\_\_\_\_ is a resident and citizen of \_\_\_\_\_ and claims loss of consortium damages as set forth below.

4. Federal jurisdiction is based on diversity of citizenship.

5. The Federal District in which Plaintiff's initial implant took place:

\_\_\_\_\_

6. The Federal District in which Plaintiff's revision(s) surgeries took place:

\_\_\_\_\_

7. Plaintiff brings this action [check the applicable designation]:

\_\_\_\_\_ On behalf of [himself/herself];

\_\_\_\_\_ In a representative capacity as the \_\_\_\_\_ of the \_\_\_\_\_ having been duly appointed as the \_\_\_\_\_ by the \_\_\_\_\_ Court of \_\_\_\_\_. A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.

*[Cross out if not applicable.]*

**FACTUAL ALLEGATIONS**

8. On or about \_\_\_\_\_, Plaintiff underwent surgery during which the \_\_\_\_\_ [IDENTIFY THE SPECIFIC COMPONENTS THAT PLAINTIFF RECEIVED, INCLUDING, WHERE APPLICABLE, THE SPECIFIC CUP, LINER, HEAD, SLEEVE, STEM, AND ANY OTHER COMPONENT(S)] was implanted into Plaintiff's (RIGHT/LEFT) hip.

9. [IF BILATERAL]: On or about \_\_\_\_\_, Plaintiff underwent surgery during which the \_\_\_\_\_ [IDENTIFY THE SPECIFIC COMPONENTS THAT PLAINTIFF RECEIVED, INCLUDING, WHERE APPLICABLE, THE SPECIFIC CUP, LINER, HEAD, SLEEVE, STEM, AND ANY OTHER COMPONENT(S)] was implanted into Plaintiff's (RIGHT/LEFT) hip.

10. Plaintiff's [LEFT/RIGHT] hip implant surgery was performed at \_\_\_\_\_ by \_\_\_\_\_.

11. [IF BILATERAL]: Plaintiff's [LEFT/RIGHT] hip implant surgery was performed at \_\_\_\_\_ by \_\_\_\_\_.

12. Plaintiff underwent the following medically-indicated revision (or revisions) of the hip implant(s) on or about the following date (or dates): \_\_\_\_\_

[INCLUDE DATE(S) OF REVISION AND ALL RE-REVISIONS, IF APPLICABLE].

Plaintiff received the following hip components during the revision surgery (or surgeries):

\_\_\_\_\_ [SEPARATELY IDENTIFY

THE SPECIFIC COMPONENTS THAT PLAINTIFF RECEIVED IN EACH REVISION AND RE-REVISION SURGERY, INCLUDING, WHERE APPLICABLE, SPECIFIC CUP, LINER, HEAD, SLEEVE, STEM, AND ANY OTHER COMPONENT(S)].

13. Plaintiff alleges the following complications and/or injuries as a result of the component(s) implanted in Plaintiff's hip(s), some or all of which made revision surgery medically necessary:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Plaintiff's revision surgery/surgeries was/were performed by \_\_\_\_\_ at \_\_\_\_\_ [SEPARATELY IDENTIFY THE PHYSICIAN AND LOCATION FOR EACH REVISION SURGERY].

15. Plaintiff's revision surgery/surgeries resulted in the following intra-operative findings and/or diagnoses:

\_\_\_\_\_  
[TO INCLUDE, AS APPLICABLE, METAL STAINED TISSUE, PSEUDOTUMOR, ALVAL, ARMD, METALLOSIS, FEMORAL NECK FRACTURE, OR OTHER INTRA-OPERATIVE FINDINGS AND/OR DIAGNOSES].

16. Plaintiff adopts the allegations of the R3-THA Master Amended Consolidated Complaint ("R3-THA MACC") filed September 21, 2018, and all amendments to the R3-THA MACC:

Yes \_\_\_ No \_\_\_

17. Notwithstanding the foregoing, Plaintiff does not adopt the following paragraphs of the R3-THA MACC: \_\_\_\_\_

18. Notwithstanding the foregoing, Plaintiff additionally alleges that:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ALLEGATIONS AS TO INJURIES**

19. (a) Plaintiff claims damages as a result of (check all that are applicable):

- \_\_\_\_\_ INJURY TO HERSELF/HIMSELF
- \_\_\_\_\_ INJURY TO THE PERSON REPRESENTED
- \_\_\_\_\_ WRONGFUL DEATH
- \_\_\_\_\_ SURVIVORSHIP ACTION
- \_\_\_\_\_ ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable):

*[Cross out if not applicable.]*

- \_\_\_\_\_ LOSS OF SERVICES
- \_\_\_\_\_ LOSS OF CONSORTIUM

20. Pursuant to Rule 9(b), in addition to the representations as alleged in the R3-THA



MACC, Plaintiff alleges that [Plaintiff and/or Plaintiff's physician] (i) viewed and/or heard the following representations that Plaintiff alleges are fraudulent, false, misleading, incomplete, or otherwise were misrepresentation(s):

\_\_\_\_\_

\_\_\_\_\_

on or about \_\_\_\_\_, and (ii) relied upon those representations or misrepresentations as described in the R3-THA MACC as well as in the following manner:

\_\_\_\_\_

21. Defendant(s), by its/their actions or inactions, caused the injuries to Plaintiff(s) as alleged in the R3-THA MACC. Plaintiff(s) additionally allege(s) that Defendant(s) caused his/her injuries as follows: \_\_\_\_\_

**DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

22. (If applicable) The following claims and allegations in the R3-THA MACC are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

\_\_\_\_\_ COUNT I (Strict Products Liability, Design Defect and Failure to Warn)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT II (Negligence and Negligent Failure to Warn)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT III (Negligence Per Se)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT IV (Breach of Express Warranty)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT V (Breach of Implied Warranty)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT VI (Negligent Misrepresentation & Fraud)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT VII (Unfair and Deceptive Trade Practices)

Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT VIII (Punitive Damages)

Specific state common law and statutory law that applies: \_\_\_\_\_

23. In addition to the above in paragraph 22, Plaintiff(s) assert that the facts as alleged in the R3-THA MACC and as additionally alleged above support the following additional causes of action under applicable state law:

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff(s) pray for judgment against Defendant(s) as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement; and
7. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: \_\_\_\_\_

Respectfully submitted,