

**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 ALL
ACTIONS**

**[REDACTED] CASE MANAGEMENT ORDER NO. 11
Deposition Protocol**

Pursuant to the parties' agreement, it is ORDERED that the following deposition protocol ("Order") shall be followed in all depositions conducted in MDL No. 2775 (the "MDL").

I. GENERAL PROVISIONS

A. Attendance

1. Who May be Present. Unless otherwise ordered under Fed. R. Civ. P. 26(c), and subject to available space, depositions may be attended by counsel of record, members and employees of their firms, expert witnesses, consulting expert witnesses, attorneys specially engaged by a party for purposes of the deposition, the parties or the representative of a party (including in-house counsel), court reporters, videographers, the deponent, and counsel for the deponent. Upon application, and for good cause shown, the Court may permit attendance by a person who does not fall within any of the categories set forth in the preceding sentence. While the deponent is being examined about any document stamped "Confidential," "Confidential Foreign Personal Data," or "Confidential Foreign Sensitive Personal Data" or the confidential information contained therein, persons to whom disclosure is not authorized under the Protective

Order or Supplement to the Protective Order in this MDL [R. Doc. 88, 909] shall be excluded from the deposition.

2. Notice of Intent to Attend a Deposition. In order to make arrangements for adequate deposition space, Liaison Counsel for each party shall confer in advance of the deposition regarding the space constraints of the selected location and expected attendance. No later than three business days before the start of the deposition, the party who noticed and will be taking the deposition shall advise the other parties of (1) the names of the examining attorney(s), (2) the general division of topics for which each examining attorney will be responsible if there is more than one examiner, and (3) the identities of all other people planning to attend the deposition and their roles, if not counsel of record. No later than two business days before the start of the deposition, other parties should provide notice of the identities of defending or cross-noticed examining counsel and all other attendees. If unforeseen circumstances require the addition of any attendees or the substitution of a different or additional examining or defending attorney, immediate notice should be given to all other parties.

II. CONDUCT OF DEPOSITIONS

A. Examination

3. Absent agreement of the parties or an order of the Court, there shall be no more than two examining or defending attorneys for the MDL Plaintiffs and two examining or defending attorneys for Smith & Nephew, Inc. for each witness whose deposition is taken, exclusive of any attorney who has cross-noticed the deposition pursuant to Section D, below. In any deposition in which there is more than one examiner, every effort shall be made to avoid duplicative questions.

4. All deposition objections are reserved, except as to the form of the

question. Counsel shall otherwise comply with Fed. R. Civ. P. 30(d)(1) and the District of Maryland Local Rules and Guidelines concerning objections at depositions. An objection by one party preserves the objection for all parties.

B. Duration

5. Depositions of fact and expert witnesses shall not exceed a presumptive seven hours on the record, except as agreed upon by the parties and the witness or as ordered by the Court. A presumptive 14-hour limit (7 hours per day) shall apply to Rule 30(b)(6) depositions, except as agreed upon by the parties and the witness, or as ordered by the Court.

C. Location of Depositions

6. The Court expects counsel to mutually agree upon the date and location for depositions. In the absence of agreement regarding location, depositions of witnesses will take place in the deponent's home district for witnesses who reside in the United States. For depositions of witnesses who reside outside the United States, if no agreement on location can be reached, their depositions shall be taken not more than 100 miles from their place of work or place of residence.

D. Cross-Noticing of Depositions by Plaintiffs in State Actions

7. If any party or a state court plaintiff cross-notices a deposition being taken in the MDL, the party who noticed the MDL deposition shall be the primary examining attorney. Upon conclusion of the examination by the primary examining attorney, counsel for the state court plaintiff(s) may ask non-duplicative additional questions. The state court plaintiff counsel's time shall not count against the time limits identified in Section B or the total deposition hours set by the Court on September 17, 2018. State court plaintiff counsel shall collectively limit their time to asking non-duplicative, additional questions, for no longer than

two (2) hours, exclusive of breaks, or as otherwise ordered by the Court. The noticing party reserves the right to seek the Court's intervention to seek a limit of less than two (2) hours for such cross-noticing attorney's questioning or, in the case of Defendant, to produce the witness at a different time and place for the purpose of such state court plaintiff counsel's questioning, if the parties cannot agree on the time limitations or time and place for such questioning.

8. If a state court plaintiff cross-notices a deposition being taken in the MDL, counsel for that plaintiff shall be provided with a copy of this Case Management Order. If the plaintiff decides to maintain the cross notice, that plaintiff agrees to be bound by the provisions of this Case Management Order for purposes of the cross-noticed deposition and further agrees that he/she will not take a subsequent deposition of that witness in the state court proceeding except for good cause shown as determined by the presiding state court judge.

9. Nothing herein shall be construed as waiving a party's objection to a cross-notice and/or the appropriateness of the deposition in the pending state court action.

E. MDL Track Designation

10. A deposition notice shall indicate whether the deposition is intended to be taken in the BHR Track, the THA Track or in all cases in this MDL. The parties shall confer regarding whether the witness will be produced in the designated track, a different track, or in all cases, and in the event of disagreement, shall seek a ruling from the Court prior to the deposition. If a witness deposed in one track is later noticed for deposition in the other track, the second deposition shall be limited to non-duplicative questioning.

11. The use of depositions and deposition exhibits at trial shall be governed by the Federal Rules of Civil Procedure and the Federal Rules of Evidence. The noticed designation of a deposition as being taken in one track shall serve to limit the scope of the deposition to

topics relevant to the track in which it is being taken, but shall not be used as the basis for objection of the use of that deposition or deposition exhibits in another track if any testimony or exhibits are subsequently determined to be relevant to another track.

F. Disputes During or Relating to Depositions

12. Disputes between parties relating to depositions should be addressed to this Court. Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, shall be presented to the MDL Judge, the Honorable Catherine C. Blake, by telephone (410-962-3220) or Judge Blake's designee. If the MDL Judge (or her designee) is not available, the deposition shall continue with full reservation of rights for a ruling at the earliest possible time. Nothing in this Order shall deny counsel the right to suspend a deposition pursuant to Fed. R. Civ. P. 30(d)(3), file an appropriate motion with the Court at the conclusion of the deposition, and appear personally or telephonically before the Court.

13. Either party may move the Court for an adjustment of the remaining available deposition hours against the limit of 245 hours per side set by the Court (Dkt. No. 957), upon good cause shown.

G. Documents Used in Connection with Depositions

14. Objections to the relevance or admissibility of documents used as deposition exhibits are not waived and are reserved for later ruling by the Court or by the trial judge.

H. Confidentiality/Correcting and Signing Depositions

15. Confidential material at a deposition should be designated pursuant to

Section 4(b) of the Protective Order and the Supplement to the Protective Order, if applicable. Unless waived by the deponent, the transcript of a deposition shall be submitted to the deponent for correction and signature, and shall be corrected and signed within sixty (60) days after receiving the final transcript of the completed deposition. Absent agreement on extension, if no corrections are made during this time, the transcript will be presumed accurate.

III. FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL RULES APPLICABLE

16. The Federal Rules of Civil Procedure, Federal Rules of Evidence, and District of Maryland Local Rules and Guidelines shall apply in all proceedings unless specifically modified herein.

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



HON. CATHERINE C. BLAKE
UNITED STATES DISTRICT JUDGE