

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
ALL ACTIONS**

██████████ CASE MANAGEMENT ORDER NO. 16
Amending CMO 14 and Superseding CMO 15
(Pretrial Scheduling Order for BHR & THA Track Cases)

Plaintiffs and Defendant Smith & Nephew, Inc. (collectively, the “Parties”) hereby submit this Case Management Order (CMO) 16 to amend paragraphs IV.E and V.C of CMO 14 (D.E. 1646) and supersede CMO 15 (D.E. 1820), providing for the extension of pretrial deadlines for initial trials in the BHR Track and initial deadlines for THA Track Discovery Pool cases. The definitions used in CMO 14 apply equally to this Order unless otherwise stated. Provisions of CMO 14 not addressed herein remain in full effect, unchanged and applicable to all cases in this MDL.

I. Trial Dates

The first and second cases tried will be selected from the BHR Track Trial Pool as defined in CMO 14 with the first trial commencing on **January 11, 2021** and the second trial commencing on **March 1, 2021**. For each trial date, there will be selected a designated trial case and a back-up trial case. For the January 11, 2021 trial date, these cases are referred herein as “BHR Trial Case #1” and “BHR Trial Case #2,” respectively. For the March 1, 2021 trial date, these cases are referred to herein as “BHR Trial Case #3” and “BHR Trial Case #4,” respectively. It is the Court’s intention is to have BHR Trial Cases ## 1, 2, 3 and 4 identified no later than **August 14, 2020**.

The third trial is tentatively reserved for a THA Track case and will commence on a date to be later selected by the Court. The selection of THA Track cases for trial and a *Lexecon* waiver, if any, with respect to them, as well as all other pretrial scheduling dates for THA Track cases, are deferred to a later order.

II. BHR Track Pretrial Deadlines

1. Fact Discovery

- A. The close of general liability fact discovery for all BHR Track cases is **April 1, 2020**.
- B. The deadline for completion of Core Discovery in BHR Track Discovery Pool cases is **May 1, 2020**, and any additional case-specific fact discovery beyond the Core Discovery will be completed by **July 31, 2020** for each of the six (6) BHR Track Trial Pool cases selected pursuant to subsection 2 below. The deadline for serving requests for admission of fact (“RFAs”) in the BHR Track Trial Pool cases is **July 31, 2020**.
- C. The deadline for serving RFAs for the authenticity of documents in BHR Trial Cases #1 through 4 is **November 2, 2020**.

2. Selection of Trial Pool Cases

- A. On **May 18, 2020**, Defendant and Plaintiffs’ Lead Counsel shall each select three (3) cases from the BHR Track Discovery Pool to move to the BHR Track Trial Pool for a total of six (6) cases. This must include at least one (1) Maryland Plaintiff BHR Track Case per Party.

3. 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 early half of the period between May 1 and July 30, 2020, shall be served by **April 15, 2020**.

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 in the latter half of the period between May 1 and July 30, 2020, shall be served by **May 29, 2020**.

C. Rebuttal expert reports related to issues concerning general liability and causation, if any, along with dates for depositions between July 6 and July 30, 2020, shall be served by **June 26, 2020**.

D. 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.

E. All expert discovery on general liability and causation for BHR Track cases shall be completed by **July 30, 2020**.

4. Case-Specific Expert Discovery for BHR Trial Cases ## 1, 2, 3 and 4

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 in the early half of the period between

September 25 and October 26, 2020, shall be served by **August 31, 2020**.

- 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 in the latter half of the period between September 25 and October 26, 2020, shall be served by **September 25, 2020**.
- C. Rebuttal case-specific expert reports, if any, along with at least two (2) dates of availability for the deposition of each expert between October 9 and October 26, 2020, shall be served by **October 9, 2020**.
- D. 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.
- E. All case-specific expert discovery for BHR Trial Cases ## 1, 2, 3 and 4 shall be completed by **October 26, 2020**.
- F. 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.

5. Pretrial Briefing for BHR Track Trial Cases ## 1, 2, 3 and 4

- 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), will be filed by **August 28, 2020**. Responsive briefing shall be filed by **September 30, 2020**, and Reply briefs by **October 16, 2020**.
- 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 **November 16, 2020** in BHR Trial Cases ## 1, 2, 3, and 4. Responsive briefing shall be filed by **November 30, 2020**, and reply briefs by **December 7, 2020**.
- C. Oral argument on *Daubert* motions for BHR general liability and causation experts will be in **October 2020** and oral argument for dispositive and case-specific *Daubert* motions in BHR Trial Cases ## 1, 2, 3 and 4 will be in **December 2020**, at dates and times separately ordered by the Court.
- D. **Motions in Limine.** Motions in limine for BHR Trial Case ## 1 and 2 will be filed on **November 13, 2020**, with responsive briefing due on **December 4, 2020**, and replies due on **December 18, 2020**. A hearing on Motions in Limine for BHR Trial Case ## 1 and 2 will be held on

January 5, 2021. Motions in limine for BHR Trial Case ## 3 and 4 will be filed on January 22, 2021, with responsive briefing due on February 10, 2021, and replies due on February 19, 2021. A hearing on motions in limine for BHR Trial Case ## 3 and 4 will be held on February 25, 2021.

6. Other Deadlines

- A. The Court will issue a separate Scheduling Order to address additional pretrial deadlines for BHR Trial Cases ## 1, 2, 3 and 4, including witness lists, exhibit lists, and deposition designations.
- B. Additional trial dates for cases in the BHR Track, if any, will be addressed by a separate Scheduling Order.

III. THA Track Pretrial Deadlines

- 1. *Paragraph IV.E of CMO 14 regarding core discovery in the THA Track Discovery Pool cases is amended as follows:* Core Discovery shall be completed for each of the eight (8) initial THA Track Discovery Pool cases by September 1, 2020.
- 2. By September 15, 2020, Defendant and Plaintiffs' Lead Counsel shall each select two (2) cases from the THA Track Discovery Pool to move to the THA Track Trial Pool for a total of four (4) cases.
- 3. *Paragraph V.C of CMO 14 regarding case-specific fact discovery for the THA Track Trial Pool cases is amended as follows:* Any additional case-specific fact discovery to ready the THA Track Trial Pool cases for trial shall be completed by December 1, 2020.

- 4. The Court will issue a separate Scheduling Order to address additional pretrial deadlines for THA Track cases.

SO ORDERED, this 5th day of March, 2020.

CCB
Catherine C. Blake
United States District Judge