

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. 15**  
**Pretrial Scheduling Order for BHR Track Cases**

Plaintiffs and Defendant Smith & Nephew, Inc. (“Defendant”) (collectively, the “Parties”) submit this Proposed Order regarding the pretrial deadlines for initial trials in the BHR Track. This Order is an extension of the process and deadlines established in Case Management Order (“CMO”) No. 14. The definitions used in CMO 14 apply equally to this Order unless otherwise stated.

**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 **November 2, 2020** and the second trial commencing on **January 11, 2021**. For each trial date, there will be selected a designated trial case and a back-up trial case. For the November 2, 2020 trial date, these cases are referred herein as “BHR Trial Case #1” and “BHR Trial Case #2,” respectively. For the January 11, 2021 trial date, these cases are referred to herein as “BHR Trial Case #3” and “BHR Trial Case #4,” respectively. The third trial will commence on **March 1, 2021** and is tentatively reserved for a THA Track case. Pursuant to CMO 14, the Court’s intention is to have BHR Trial Cases ## 1, 2, 3 and 4 identified no later than **June 15, 2020**. 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 **March 2, 2020**.
- B. As established by Case Management Order (“CMO”) 14, the deadline for completion of Core Discovery in BHR Track Discovery Pool cases is **March 2, 2020**, and any additional case-specific fact discovery beyond the Core Discovery will be completed by **June 1, 2020** for each of the six (6) BHR Track Trial Pool cases. The deadline for serving requests for admission of fact (“RFAs”) in the BHR Track Trial Pool cases is **June 1, 2020**.
- C. The deadline for serving RFAs for the authenticity of documents is **September 2, 2020**.

### **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 early half of the period between April 3 and June 5, 2020, shall be served by **March 2, 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 April 3 and June 5, 2020, shall be served by **April 3, 2020**.

C. Rebuttal expert reports related to issues concerning general liability and causation, if any, along with dates for depositions between April 30 and June 5, 2020, shall be served by **April 24, 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 **June 5, 2020**.

**3. 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 July 24 and August 24, 2020, shall be served by **June 30, 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 July 24 and August 24, 2020, shall be served by **July 24, 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 August 7 and August 28, 2020, shall be served by **August 7, 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 **August 28, 2020**.
- F. Should any case-specific expert appear in more than one case for a Party, 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 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 **June 29, 2020**. Responsive briefing shall be filed by **July 29, 2020**, and Reply briefs by **August 13, 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 **September**

15, 2020. Responsive briefing shall be filed by September 30, 2020, and reply briefs by October 7, 2020.

C. Oral argument on *Daubert* motions for BHR general liability and causation experts will be in September 2020 and oral argument for dispositive and case-specific *Daubert* motions in BHR Trial Cases ## 1, 2, 3 and 4 will be in October 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 August 28, 2020, with responsive briefing due on September 18, 2020, and replies due on September 25, 2020. Motions in limine for BHR Trial Case ## 3 and 4 will be filed on November 25, 2020, with responsive briefing due on December 16, 2020, and replies due on December 24, 2020.

5. **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.

SO ORDERED, this 9<sup>th</sup> day of October, 2019.

  
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Catherine C. Blake  
United States District Judge