

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 THA
TRACK CASES**

**FIRST AMENDED
CASE MANAGEMENT ORDER NO. 18
(Pretrial Scheduling Order for THA Track Cases)**

The parties hereby submit this First Amended Case Management Order (CMO) 18 regarding scheduling for THA Track Cases, which have been affected by interruptions created by the COVID-19 pandemic. This CMO 18 amends certain provisions in CMO 14 and Second Amended CMO 16. As with Second Amended CMO 16, the definitions used in CMO 14 apply equally to this Order unless otherwise stated. Provisions of CMO 14 and Second Amended CMO 16 pertaining to the THA Track and not addressed herein remain in full effect, unchanged and applicable to all cases in this MDL.

I. Trial Dates

The first THA Track trial will commence on **January 18, 2022**. For this trial date, there will be selected a designated trial case and a back-up trial case. These cases are referred to herein as “THA Trial Case #1” and “THA Trial Case #2,” respectively (collectively “THA Trial Cases”). It is the Court’s intention to have THA Trial Cases ## 1 and 2 identified by no later than **June 7, 2021**. Smith & Nephew agrees to waive its right to remand under *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 40-41 (1998), for one THA Trial Case, provided it is tried alone and not part of a multi-plaintiff trial.

II. THA Track Pretrial Deadlines

1. Fact Discovery

- A. General liability fact discovery for all THA Track cases closed on **February 19, 2021** and is complete.
- B. *Paragraph IV.E of CMO 14 regarding Core Discovery in the THA Track Discovery Pool cases is amended as follows:* The deadline for completion of Core Discovery in THA Track Discovery Pool cases was **March 5, 2021**. With the exception of a single surgeon deposition that remains to be completed in March 2021, all THA Track Discovery Pool Core Discovery is complete.
- C. *Paragraph V.C of CMO 14 regarding additional case-specific fact discovery for the THA Track Trial Pool cases is amended as follows:* Any additional case-specific fact discovery beyond the Core Discovery will be completed by **May 27, 2021** for each of the four (4) THA Track Trial Pool cases selected pursuant to subsection 2 below. Case-specific discovery may include up to 50 interrogatories (including contention interrogatories) served by each side in each of the four Trial Pool cases. In addition, Plaintiffs may serve up to 40 additional requests for production on Smith & Nephew, and Smith & Nephew may serve up to 40 requests for production on Plaintiff in each of the four Trial Pool cases.
- D. The deadline for serving requests for admission of fact (“RFAs”) (except as to authenticity of documents) for THA Track Trial Cases ## 1 and 2 is **July 19, 2021**. Each side may serve up to 60 RFAs per case.

- E. The process and deadlines for handling the authenticity of documents in THA Trial Cases ## 1 and 2 will be addressed in the separate Scheduling Order discussed in Paragraph 6.A herein.

2. Selection of Trial Pool Cases

- A. On **March 23, 2021**, Defendant and Plaintiffs' Lead Counsel shall each select two (2) cases from the THA Track Discovery Pool cases in which Core Discovery is complete to move to the THA Track Trial Pool for a total of four (4) cases. Selections will be made simultaneously by e-mail exchange between Lead Counsel at 5 p.m. EST on March 23, 2021.

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 period between April 5 and May 4, 2021, shall be served by **March 22, 2021**.
- 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 between May 7 and June 30, 2021, shall be served by **April 23, 2021**.
- C. Defendant's general liability experts may offer different or additional opinions at deposition from those contained in their expert reports, in order to address testimony of Plaintiffs' general liability experts given at deposition.

D. All expert discovery on general liability and causation for THA Track cases shall be completed by **June 30, 2021**.

4. Case-Specific Expert Discovery for THA Trial Cases ## 1 and 2

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 between July 21, 2021 and August 23, 2021, shall be served by **June 23, 2021**.

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 between August 23, 2021, and September 15, 2021, shall be served by **July 23, 2021**.

C. Defendant's 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.

D. All case-specific expert discovery for THA Trial Cases ## 1 and 2 shall be completed by **September 15, 2021**.

E. 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 THA Track Trial Cases ## 1 and 2

- 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 **July 13, 2021**. Responsive briefing shall be filed by **August 20, 2021**, and Reply briefs by **September 14, 2021**.
- 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 **October 8, 2021** in THA Trial Cases ## 1 and 2. Responsive briefing shall be filed by **October 29, 2021**, and reply briefs by **November 12, 2021**.
- C. Oral argument on *Daubert* motions for THA general liability and causation experts will be in **late September or early October 2021** and oral argument for dispositive and case-specific *Daubert* motions in THA Trial Cases ## 1 and 2 will be in **late November 2021**, at dates and times separately ordered by the Court.
- D. **Motions in Limine.** Motions in limine for THA Trial Case ## 1 and 2 will be filed on **October 27, 2021**, with responsive briefing due on **November 19, 2021**, and replies due on **December 8, 2021**. A hearing on Motions in Limine for THA Trial Case ## 1 and 2 will be held in **December 2021**.

