

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:

BHR Track Trial Case ## 1-4:

Redick v. Smith & Nephew, Inc., No. 1:17-cv-00944

Mosca v. Smith & Nephew, Inc., No. 1:18-cv-03520

Albritton v. Smith & Nephew, Inc., No. 1:17-cv-03677

Sedgwick v. Smith & Nephew, Inc., No. 1:17-cv-01344

**FIRST AMENDED CASE MANAGEMENT ORDER NO. 19
(Amending Pretrial Scheduling Order for BHR Trial Case ## 1-4)**

The Plaintiffs and Defendant Smith & Nephew, Inc. hereby submit this First Amended Case Management Order (CMO) 19 to amend certain pretrial deadlines.

I. Extension of Deadlines for BHR Trial Cases ## 3-4.

1. Case-Specific Daubert and Dispositive Motions.

- a. **BHR Trial Case ## 3-4.** 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 shall be filed by **May 25, 2021** in BHR Trial Case ## 3-4. Responsive briefs shall be filed by **June 11, 2021**, and reply briefs by **June 23, 2021**. Oral

argument on case-specific *Daubert* and dispositive motions for BHR Trial Case ## 3-4 will be held on **June 30, 2021**.

2. Motions in Limine.

- a. *BHR Trial Case ## 3-4*. Motions in limine for BHR Trial Case ## 3-4 will be filed on **June 4, 2021**, with responsive briefing due on **June 25, 2021**, and replies due on **July 14, 2021**. A hearing on motions in limine for BHR Trial Case ## 3-4 will be held on **a date to be determined**.

II. Additional Pretrial Deadlines for Trial Case # 1.

1. Local Rule 106 Pretrial Order, Proposed Voir Dire & Final Exhibit Lists.

- a. The parties will prepare a Pretrial Order for Trial Case #1 in accordance with the schedule in this Order. Preparation of the Pretrial order for Trial Case #2 shall be deferred and addressed by separate Order.
- b. On **May 21, 2021**, Plaintiffs will send Defendant an updated initial draft of the Pretrial Order for Trial Case #1 pursuant to Local Rule 106, including updates to proposed voir dire, exhibit list (showing which exhibits Plaintiffs expect to offer and may offer), exhibit images, witness list (including identification of whether each witness will be called by deposition designation or is expected to be called live), and deposition designations for any witness who will not or may not appear live. On the same date, Plaintiffs will also send Defendant digital images of the exhibits listed by Plaintiffs in the draft Pretrial Order, with file names that correspond to the exhibit numbers, and will use Bates-stamped versions of documents produced in the litigation, if applicable.

- c. On **June 4, 2021**, Defendant will send Plaintiffs deposition counter-designations and Defendant's deposition designations for potential use in its case-in-chief.
- d. On **June 11, 2021**, Defendant will send Plaintiffs revisions and additions to the Pretrial Order pursuant to Local Rule 106, including proposed voir dire, exhibit list (showing which exhibits Defendant expects to offer and may offer), exhibit images, witness list (including identification of whether each witness will be called by deposition designation or is expected to be called live). On the same date, Defendant will also send Plaintiffs digital images of exhibits listed by Defendant in the draft Pretrial Order, with file names that correspond to the exhibit numbers, and will use Bates-stamped versions of documents produced in the litigation, if applicable.
- e. On **June 18, 2021**, Plaintiffs will send Defendant deposition counter-designations based on Defendant's June 4 deposition designations and counter-designations. If additional deposition counter-designations are made by Plaintiffs, Defendant will include any further counter-designations in the proposed Pretrial Order.
- f. On **June 25, 2021 by 12:00 p.m. EDT**, the parties shall submit to the Court the proposed Pretrial Order for Trial Case #1 pursuant to Local Rule 106, including the final exhibit lists, any authenticity objections to exhibits identified therein, previously-exchanged deposition designations (as provided in Section II(1)(b)-(e) above), any further counter-designations by Defendant (as provided in Section II(1)(e) above), and proposed voir dire.
- g. The parties will exchange tagged digital exhibit images with pretrial numbering to match the final exhibit lists in the Pretrial Order on **July 16, 2021**. For the Court's

convenience, the final exhibit list shall include columns for each exhibit identifying: (1) any unresolved objections to authenticity; (2) any objections to exhibits based on motion in limine or other pretrial motion rulings; and (3) a brief explanation of the nature of any such objection. All objections to exhibits for any reason are preserved and can be raised at trial, whether listed on the final exhibit list or not.

- h. The parties will submit final exhibit lists with pretrial numbering to the Court on **July 23, 2021**, pursuant to Local Rule 106(7)(a).
- 2. Pretrial Conference.** The pretrial conference for Case #1 pursuant to Local Rule 106 will be held on **June 30, 2021**, at **9:30 a.m. EDT**.
- 3. Deposition Designation Objections and Submission to Court.**
- a. On **July 9, 2021**, the parties will exchange and file with the Court any objections to deposition designations or objections to counter-designations that were included in the Pretrial Order.
 - b. On **July 16, 2021**, the parties will exchange and file with the Court a designations report for each witness to be presented at trial by deposition designation and/or counter-designation. The report must separately identify: (1) testimony designated or counter-designated by Plaintiffs; (2) testimony designated or counter-designated by Defendant; (3) objections to any designated testimony by any party and the basis for the objection; (4) the opposing party's response to any such objections.
 - c. The Court will separately set a schedule for considering and hearing deposition designation objections in advance of trial.

- 4. Jury Instructions & Special Verdict Form.** The parties will submit proposed jury instructions and special verdict forms to the Court on **July 12, 2021**.

APPROVED AND SO ORDERED this 26th day of May, 2021:

/s/

Catherine C. Blake
United States District Judge