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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

In re	]	MDL Docket No. 01-CV-9000
	]	
Inter-Op Hip Prosthesis Product	]	JUDGE KATHLEEN M. O'MALLEY
Liability Litigation	]	
	]	THIS DOCUMENT RELATES TO ALL
	]	CASES
	]	

**JOINT PROPOSED CASE MANAGEMENT PLAN - ORDER 2**

This order shall apply to all cases currently a part of MDL-1401 as well as all cases subsequently filed in, removed to, or transferred to this Court as part of MDL-1401. This order also vacates any prior scheduling order issued by a federal court prior to the transfer of a case to MDL-1401. The local rules of a federal transferor court will not be binding on the parties once a case has been transferred to MDL-1401 so as long as the case remains before this transferee court.

**I. ORGANIZATION AND RESPONSIBILITIES OF COUNSEL**

A. Plaintiffs' Co-Lead Counsel, Plaintiffs' Steering Committee and Plaintiffs' Special Counsel.

The Court adopts the structure outlined in its "Practice and Procedure Order" dated July 6, 2001 on a permanent basis, with the addition of the following Special Counsel

Committee members attached hereto as Exhibit "A."

1. Responsibilities of Plaintiffs' Co-Lead Counsel.

Plaintiffs' Co-Lead Counsel shall be responsible for coordinating the activities of Plaintiffs during pretrial proceedings and shall:

- (a) determine (after consultation with other members of Plaintiffs' Steering Committee (PSC) and other counsel as may be appropriate) and present to the Court and opposing parties the position of Plaintiffs on all matters arising during pretrial proceedings;
- (b) delegate specific tasks to other counsel in a manner to assure that pretrial preparation for Plaintiffs is conducted effectively, efficiently and economically;
- (c) enter into stipulations with opposing counsel necessary for the conduct of the litigation;
- (d) prepare and distribute to the parties periodic status reports;
- (e) maintain adequate time and expense records covering services of the PSC and Special Counsel (SC);
- (f) monitor the activities of co-counsel to assure that schedules are met and unnecessary expenditures of time and funds are avoided;
- (g) perform such other duties as may be incidental to proper coordination of Plaintiffs' pre-trial activities or authorized by further order of the Court.
- (h) negotiate or appoint representatives to negotiate any and all resolutions in the MDL.

2. Term.

The persons who accept the appointment to serve, agree to serve for the duration of this litigation or until such time as the Court determines that a change in the duration of service or other terms of service shall be made. The Court may decide from time to time to enlarge or reduce the size of the PSC depending upon such need brought on by the litigation.

3. Personal Appointment.

The Court has appointed the named persons because of the expectation of their personal contribution to the work of the PSC and to the furtherance of the completion of the MDL portion of the litigation. For this reason, the Court will look to the individual members to satisfy the goals that the Court expects the PSC to achieve. The Court will likewise consider the contribution of each of the PSC members when the Court is called upon to determine appropriate compensation for service rendered by the PSC. While the Court contemplates that each of the PSC members will require the assistance of colleagues, paralegals, support staff, and others in the fulfillment of their committee assignments, the Court will expect the individual members to be responsible for the ultimate outcome of the activities performed by the PSC.

B. Liaison Counsel.

1. The Court hereby appoints the following Liaison Counsel:
  - a. Liaison Counsel for Plaintiffs:  
R. Eric Kennedy, Esq.
  - b. Liaison Counsel for Defendants:  
Kenneth Seeger, Esq.
2. Liaison Counsel Duties: The primary function of Liaison Counsel is

to receive service of all pleadings (except service of the original complaint naming a party), motions, briefs, orders, and similar papers on behalf of all plaintiffs and defendants, respectively, in all cases that have been or are subsequently filed in, removed to, or transferred to the United States District Court for the Northern District of Ohio, Eastern Division, as part of MDL-1401. They are also designated to receive service on behalf of other persons on the "Panel Service List" of all orders issued by, and all petitions, requests, motions, notices of opposition, briefs, and other papers filed with, the Judicial Panel on Multidistrict Litigation for MDL-1401. Liaison Counsel are responsible for promptly distributing such papers to the parties for whom they are acting as Liaison Counsel and who are not registered to receive Electronic Service on a "need to know" basis and for providing a convenient inexpensive means by which any other parties for whom they are acting can obtain copies if desired. In determining the persons to whom further distribution and dissemination of papers should be made, Liaison Counsel are expected to exercise discretion and judgment to eliminate unnecessary costs. Other administrative functions may be assigned from time to time to Liaison Counsel by the court.

3. Additional Service:

Service upon Liaison Counsel is sufficient service except in the following circumstances:

a. Defaults, Sanctions. Motions claiming default or seeking other penalties or sanctions against a party for failure to take some action within a time period measured from the date of service of a document must be served on counsel of record for that party as well as Liaison Counsel;

b. Case Specific Filings. Case specific filings (i.e. papers that affect

only a particular party or a particular case—for example, a motion seeking to dismiss a party in a case or to remand a case to state court) must be served on counsel in that specific case, as well as on Liaison Counsel.

4. Service of Orders.

The clerk shall copy each order to Liaison Counsel for distribution as appropriate to counsel and parties. The clerk shall also serve each order electronically to all counsel who have registered for Electronic Service.

C. Communication Among Counsel.

This Court recognizes that cooperation by and among plaintiffs' counsel and by and among defendants' counsel is essential for the orderly and expeditious conduct of this litigation. The communication of information among and between plaintiffs' counsel and defendants' counsel shall not be deemed a waiver of their attorney-client privilege or the protection afforded attorney's work product, and cooperative efforts contemplated above shall not in any way be used against any plaintiff by any defendant or against any defendant by any plaintiff. Nothing contained in this paragraph shall be construed to limit the rights of any party or counsel to assert the attorney-client or joint defense privilege or the attorney work-product doctrine.

**II. ELECTRONIC FILING**

A. Implementation.

The parties have conferred and feel that Electronic Filing is proper for this matter.

B. Protocol.

The parties are expected to follow The Northern District of Ohio's policies and

procedures on Electronic Case Filing. For further information on this topic, see the "NOTICE" included in the Court's "PRACTICE & PROCEDURE ORDER" dated July 6, 2001.

### **III. REFINEMENT OF ISSUES**

#### **A. Master Complaint.**

The Plaintiffs' Class Counsel filed An Amended and Consolidated Class Action Complaint (Master Complaint) on August 15, 2001. The allegations of the Master Complaint are not deemed automatically included in any particular case. However, in order to avoid possible problems with statutes of limitations or doctrines of repose, it shall be deemed (except to the extent a plaintiff thereafter files an amended complaint disavowing such claims and theories or limits its claims and theories to those contained in an amended complaint) that as of this date, for cases now pending in this Court (or as of the date other cases are filed in, removed to, or transferred to this Court) a motion is filed in each such case to amend the complaint to add any claims, theories and parties from the Master Complaint not contained in the complaint actually filed in that case.

#### **B. Master Answer.**

Within thirty days after the filing of the Master Complaint, defendants shall file a Master Answer that incorporates its defenses in law or fact to claims made against them that are presently pending in this MDL. When so filed, the Answer shall constitute an Answer in each case now pending or when hereafter filed in, removed to, or transferred to this Court, except to the extent that the defendant later files a separate Answer in an individual case.

#### **C. Cross-claims and Counterclaims.**

Defendants shall file any cross-claims or counterclaims within thirty days after the filing of the Master Complaint.

If no Answer or other responsive pleading has been filed by a defendant previously served with the Complaint in a newly transferred action prior to the date the case file is sent to this Court by the transferor Court, such defendant's Answer or other responsive pleading shall be due 21 days after the newly transferred action has been received, docketed and assigned a case number in this Court.

D. Additional Parties.

Except with Leave of Court, no additional parties may be added after November 15, 2001.

E. Certification of Class Action.

Plaintiffs filed a Motion for Order Provisionally Certifying a Rule 23(b)(2) and 23(b)(3) Class Action, Preliminarily Approving Settlement, and Enjoining All Inter-Op Hip Prosthesis Litigation, and Defendants filed a Motion for Conditional Class Certification, Preliminary Approval of Class Settlement and Approval of Class Notice on August 15, 2001, both Motions identify the Classes for which certification is sought, detail the facts on which satisfaction of the requirements of Federal Rule of Civil Procedure 23 is asserted and outline why preliminary approval should be granted.

F. Notice.

If the proposed settlement class is certified and the settlement preliminarily approved by the Court, the parties shall file a proposed plan of Notice for the Class within sixty days after ruling by the Court.

G. Summary Judgment.

Dates for Summary Judgment motions shall be set once substantial discovery is completed.

#### IV. DISCOVERY - BREADTH/SCOPE OF POST-SETTLEMENT DISCOVERY

##### A. Scope.

All discovery undertaken shall be limited to "confirmatory" discovery.

Confirmatory discovery is discovery to confirm or refute assertions of fact upon which the settlement is based.

##### B. Responsibility.

All discovery undertaken by the plaintiffs shall be at the direction of class and sub-class counsel.

#### V. DISCOVERY -- DOCUMENT REQUESTS AND INTERROGATORIES GENERAL RULES

##### A. Attempt to Resolve Disputes.

To avoid unnecessary litigation concerning discovery disputes, counsel are directed to meet in person and confer before filing a motion. In any motion filed, counsel for the moving party must certify that a good faith effort **was made to resolve the dispute**.

##### B. Preservation of Evidence.

###### 1. Preservation.

Each party and its respective officers, agents, servants, employees, subsidiaries and attorneys shall preserve all devices, tangible things, documents, and other records. Preservation includes the obligation not to alter any such thing as to its form, content or manner of filing. Each party shall notify in writing (which in this context excludes e-mail) its respective officers, agents, servants, employees, subsidiaries and attorneys of their obligation to preserve documents in accordance with this Order.

Before any devices, tangible things, documents, and other records which are

reasonably calculated to lead to admissible evidence are destroyed, altered, or erased, counsel shall confer to resolve questions as to whether the information should be preserved. If counsel are unable to agree, any party may apply to the Court for clarification or relief from this Order upon reasonable notice.

2. Scope.

The scope of this order is to tangible things and documents containing information potentially relevant to the subject matter of this litigation. Any tangible thing, document, or information described or referred to in any discovery request or response made during this litigation shall, from the time of the request or response be treated for purposes of this order as containing potentially relevant information unless and until the Court rules such information to be irrelevant.

"Document" shall mean any writing, drawing, film, videotape, chart, photograph, phonograph record, tape recording, retrievable data (whether carded, taped, coded, electrostatically or electromagnetically recorded, or otherwise), or other data compilation from which information can be obtained, including but not limited to) notices, memoranda, diaries, minutes, purchase records, purchase invoices, market data, correspondence, computer storage tapes, computer storage cards or discs, books, journals, ledgers, statements, reports, invoices, bills, vouchers, worksheets, jottings, notes, letters, abstracts, audits, charts, checks, diagrams, drafts, recordings, instructions, lists, logs, orders, recitals, transcripts, telegram messages, telephone bills and logs, resumes, summaries, compilations, computations, and other formal and informal writings or tangible preservations of information.

C. Confidentiality.

The "Stipulated Protective Order" signed by this Court on July 24, 2001 shall apply to this litigation.

D. Document Repositories.

Each side may establish document repositories at such locations and in such manner as the party decides. Within twenty (20) days after the initial conference, each side shall identify to the other the location and mailing address of their repositories. Each side shall bear the cost and administer its own repositories. All documents disclosed and produced pursuant to this order shall be produced to the appropriate document repository. Each side shall develop and submit to the Court a protocol for maintaining the repositories which shall address the location, filing system, access, copying, logs, and inventory records.

E. Numbering System and Indexing of Documents.

1. Numbering System.

The parties shall develop and use a system for identifying by a unique number or symbol each document produced or referred to during the course of this litigation. Each producing party will give each page of its documents produced a unique number, using a numbering system that identifies the producing party (using a letter or series of letters as a prefix). All reasonable efforts should be made to avoid having the same page assigned more than one identifying number except when there is a need to account for different copies of the same document or page, for example, because of special notations being placed on the document.

2. Indexing.

Each producing party shall prepare an inventory covering all of the documents produced. The inventory shall reasonably describe, given the time and expense

constraints and the volume of documents to be inventoried, the contents of each banker's box or similar unit of documents. If the producing party already has an index or inventory to some or all of the documents produced (an "existing index"), the inventory may consist (in whole or in part) of this existing index so long as it meets the criteria described within this paragraph. The inventory shall include any identifying number already on such box or similar unit. Each inventory shall also list the persons responsible for the preparation of the inventory.

The inventories are intended to permit the parties (i) to make a general determination of the existence or location of particular categories of documents, and (ii) to determine whether the parties have complied with this order. Each inventory shall contain a statement, under penalty of perjury, that the party has made a good faith effort to assure that the inventory matches the documents delivered by that party.

3. Documents Produced by Non-Parties.

In the event that documents are produced by persons or entities who are not parties to this action when produced, the party at whose request production was made shall be responsible for numbering the documents in accordance with the terms of subsection V. (E)(1) above.

F. Legibility of Documents.

Each producing party shall take reasonable steps to assure that the copies of the documents it produces are legible. To the extent a producing party cannot or does not produce a legible copy, it shall make the original document(s) available for inspection and copying.

G. Authentication.

Documents produced whether as part of the initial disclosure, in response to

formal document requests, or by agreement, shall by reason of such production be deemed to be authentic documents under Fed.R.Civ.P. 901 and to qualify as records of regularly conducted business activities under Fed.R.Evid. 803(5) unless at the time of production, or within fifteen days thereafter, or 15 days from the date of this Order for previously produced documents, the producing party specifies that a document is or may not be authentic or is or may not be a record of regularly conducted business activity. All such specifications shall identify the document with particularity and briefly indicate the basis or reason for the belief that the document is or may not be authentic or a business record.

H. Inadvertent Disclosures.

The inadvertent production or disclosure of any privileged, confidential or otherwise protected document shall not be deemed either a general waiver of privilege, confidentiality or work product protection as to the document inadvertently produced or disclosed. In the event of inadvertent disclosure of any document, promptly upon discovery of such inadvertent disclosure, the producing party may notify any party receiving the document that production was inadvertent, and that the producing party intends to move the Court for a protective order with respect thereto. Upon receipt of such notification, the receiving party shall treat the document as confidential, and shall not disclose the document to any other person or use the document for any purpose in this litigation. Upon finding that the document is privileged, confidential, or otherwise protected and that its production was inadvertent, the Court may direct the return of the document and all copies thereof to the producing party, preclude the use of the document and any information contained therein for any purpose in this litigation, and order such other relief as the Court deems necessary and appropriate. Before making application to the Court for such relief, the producing party shall confer with the

receiving party in an attempt to resolve informally any dispute regarding the inadvertent production.

## **VI. DISCOVERY -- INTERROGATORIES AND DOCUMENT REQUESTS**

### **A. Master Set - Scheduling.**

On or before thirty (30) days after the entry of this Order:

1. Plaintiffs may propound a single master set of interrogatories and document requests addressed to the defendants; and
2. Defendants may propound a single master set of interrogatories and document requests to the plaintiffs. Responses and answers shall be served and made within thirty days after receipt of the discovery requests. While the parties may be asked to identify potential fact witnesses relating to liability, they are not to be asked contention interrogatories. For purposes of these and any subsequent interrogatories, the limitations on the number of interrogatories of Fed.R.Civ.Proc. 33(a) shall not apply.

### **B. Additional Document Requests.**

The parties will confer concerning, and attempt in good faith to agree upon, any additional document requests not described above. In the absence of agreement, no further document requests may be propounded to plaintiffs or defendants without prior order of the Court.

### **C. Supplementation of Responses.**

The supplementation of responses required by Fed.R.Civ.P. 26(e) shall be made by the parties ninety days from the date of defendants' initial disclosures, and every ninety days thereafter.

D. Document Subpoenas to Non-Parties.

Commencing upon entry of this order, any party may serve subpoenas on non-parties for the production of documents without testimony pursuant to Fed.R.Civ.P. 45.

**VII. DISCOVERY -- DEPOSITIONS**

A. Cooperation.

Counsel are expected to cooperate with, and be Courteous to, each other and deponents.

B. Early Depositions.

If the **parties become aware of persons who possess** relevant information but who by reason of age or ill health may become unavailable for deposition, the deposition may be taken as soon as practicable.

C. Postponements.

Once a deposition has been scheduled, it shall not be taken off calendar, postponed, rescheduled, or relocated less than three calendar days in advance of the date it is scheduled to occur, except upon agreement or by leave of Court for good cause.

D. Attendance.

Unless otherwise agreed by the parties, depositions may be attended only by the parties, the deponents, the deponent's attorney, attorneys of record, in-house counsel for the parties, court reporters, videographers, and any person who is assisting the litigation whose presence is reasonably required by counsel. While a deponent is being questioned about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not necessary under the confidentiality order shall be excluded.

Unnecessary attendance by counsel is discouraged and may not be compensated in any fee application to the Court. Counsel who have only marginal interest in a proposed deposition or who expect their interests to be adequately represented by other counsel may elect not to attend and to conduct pursuant to paragraph of this order supplemental interrogation of the deponent should a review of the deposition reveal the need for such examination.

E. Numbering of Deposition Exhibits.

Each document referred to at **deposition shall be referred** to by its production **number (alpha-numeric) rather than** by exhibit numbers except in the case of documents which have not yet received production numbering at the time of the deposition.

F. Conduct.

1. Examination.

Each side should ordinarily designate no more than two attorneys to participate in the deposition. One attorney will normally conduct the principal examination of the deponent, and examination by the other attorney should be limited to matters not previously covered. Counsel should cooperate in the allocation of time so that time limits set by the Court are complied with.

2. Objections and Directions Not to Answer.

Counsel shall comply with Fed.R.Civ.P. 30(d)(1). Directions to the deponent not to answer are improper except on the ground of privilege or to enable a party or deponent to present a motion to the Court for termination of the deposition on the ground that it is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass,

or oppress the party or the deponent.

The only objections that may be raised at the deposition are those involving a privilege against disclosure or some matter that may be remedied if presented at the time, such as to the form of the question or the responsiveness of the answer. Objections on other grounds are unnecessary and should not be made. Any objections that are made must be stated concisely and in a nonargumentative and nonsuggestive manner, such as would be appropriate if the examination was **conducted before** a judicial officer.

When a privilege is claimed, the witness should nevertheless answer the questions relevant to the existence, extent, or waiver of the privilege, such as the date of a communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement.

3. Private Consultations.

Private consultations between deponents and their attorneys during the actual taking of the deposition are improper except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the Court for good cause shown, such conferences may be held during normal recesses and adjournments.

4. Disputes During Depositions.

Disputes arising during depositions that cannot be resolved by agreement and that if not immediately resolved will significantly disrupt the deposition schedule, would require a rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, may be presented to Magistrate Judge to be named by the Court by telephone. In the first instance, the parties are directed to negotiate such disputes in good faith. In the event

agreement cannot be reached after such negotiation, any party seeking a ruling from the Court shall arrange such a telephone conference call with the Judge or Magistrate's law clerk at the Court's earliest convenience. Facilities shall be provided so that counsel attending the deposition and the reporter can hear the proceedings.

The deposition reporters shall make a transcript of the conference call proceedings, which will be transcribed immediately and bound separately. During such proceedings, counsel shall have the opportunity to argue to the Court and the Court will, whenever possible, resolve the dispute during the conference call proceedings.

In the event the Court is unavailable by telephone to resolve disputes arising during the course of a deposition, the deposition shall nevertheless continue to be taken as to matters not in dispute.

None of the provisions in this paragraph shall deny counsel the right to continue the deposition, file an appropriate motion with the Court at the conclusion of the deposition, and appear personally before the Court if counsel deems it necessary.

Disputes between the parties should be addressed to this Court rather than to the district Court in which the deposition is being conducted.

G. Location.

Except as otherwise agreed by liaison counsel or ordered by the Court, all depositions of fact witnesses who are current or former officers, directors or employees of a party defendant shall be conducted in the witnesses' area. The location of non-party depositions will be determined by agreement of the counsel who notices the deposition and the witness or his/her counsel.

H. Stenographic Recording.

A certified court reporter shall stenographically record all deposition proceedings and testimony. The court reporter shall administer the oath or affirmation to the deponent. A written transcript by the Court reporter shall constitute the official record of the deposition for purposes of Fed.R.Civ.P. 30(e) (submission to the witness) and 30(f) (filing, exhibits).

I. Videotaping.

The provisions of this order regarding examination of deponents apply to videotaped depositions. Any deposition may be videotaped at the request of any party pursuant to the following terms and conditions:

1. Simultaneous Stenographic Recording.

All videotaped depositions shall be simultaneously stenographically recorded.

2. Cost of the Deposition.

The party requesting videotaping of the deposition shall bear the expense of videotaping.

3. Videotape Operator.

The operator(s) of the videotape recording equipment shall be subject to the provisions of Fed.R.Civ.P. 28(c). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

4. Attendance.

Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and demonstrative materials used during the deposition) will be videotaped.

5. Interruptions.

No attorney shall direct instructions to the video operator as to the method of operating the equipment. The video camera operation will be suspended during the deposition only upon stipulation by counsel and "off the record" discussions. The video operator shall record on camera the time of suspension and any subsequent reconvening of the deposition.

6. Standards.

The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at trial. Unless physically incapacitated, the deponent shall be seated at a table except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Eating and smoking by deponents or counsel during the deposition will not be permitted.

7. Index.

The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends at which objections are made and examination resumes, at which exhibits are identified, and at which any interruption of continuous tape-recording occurs, whether for recesses, "off-the-record" discussions, mechanical failure, or otherwise.

8. Filing.

After the deposition is completed, the video operator shall certify on camera the correctness, completeness, and accuracy of the video tape recording in the same manner as a stenographic Court reporter, and file a true copy of the video tape, the transcript, and certificate with liaison counsel for whomever notice the deposition.

9. Use.

Depositions may, under the conditions prescribed in Fed.R.Civ.P. 32(a)(1)-(4) or as otherwise permitted by the Federal Rules of Evidence, be used against any party (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this Court as part of this litigation):

- a) who was present or represented at the deposition,
- b) who had reasonable notice thereof, or
- c) who, within thirty (30) days after the filing of the deposition (or, if

later, within sixty (60) days after becoming a party in this Court in any action which is a part of this litigation), fails to show just cause why such deposition should not be usable against such party.

**VIII. DISCOVERY—ASSERTION OF PRIVILEGE**

A. Generally.

A party relying on any privilege, or the work product doctrine, who does not produce all relevant or requested documents, or does not fully answer a discovery probe, must state that it is invoking a privilege. A party who invokes a privilege must specify which privilege or doctrine it is invoking.

B. Attorney-Client Privilege.

A party who invokes the attorney-client privilege also must provide to the opposing party the following information for each document or communication not disclosed, to the extent that providing this information will not destroy the privilege:

1. The name and job title or capacity of the author(s)/originator(s);
  2. The name and job title or capacity of every person who received the document or a copy of it, or who was present when the communication was made or who overheard it;
  3. The relationship between the author(s)/originator(s) and each person who received the document or a copy of it, or who was present when the communication was made or who overheard it;
  4. Whether the primary purpose of the document or communication was to seek or provide legal advice or services; the date of the document or communication;
  5. The subject matter(s) addressed in the document or communication;
  6. Whether the document or communication was transmitted in confidence;
- and
7. A brief statement as to why, under the law, the document or communication is protected by the attorney-client privilege.

C. Work Product Doctrine and Other Privileges.

A party who invokes the work product doctrine or a privilege other than the attorney-client privilege must provide to the opposing party the following information for each document or communication not disclosed, to the extent that providing this information will not destroy the privilege:

1. Which doctrine or privilege the party is relying on;

2. Whether federal or state law of privilege applies to the documents or communications in question, and, if state law applies, which state;

3. A list of every requirement or element that must be satisfied in order to assert successfully the privilege or doctrine, with citation to legal authorities supporting the list of elements presented; and

4. With respect to each document or communication for which the doctrine or  
or  
privilege is invoked, information that shows that each element of the doctrine or privilege is satisfied.

D. Timing.

The information specified in subsections 2 and 3 above shall be provided contemporaneously with the service of the response to the discovery probe or the production of documents.

E. Depositions of Expert-Related Fact Witnesses.

The parties may also depose during the period reserved for depositions of expert witnesses, persons or entities whom any expert testifies he or she relied upon to form opinions or who form any part of the foundation for any of the testimony of the expert. The depositions of expert-related witnesses shall take place on no more than two tracks, one for the plaintiffs and one for the defendants, and shall be in addition to the single track for the depositions of the experts themselves.

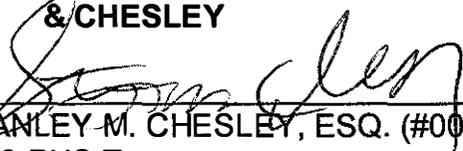
**IX. DISCOVERY–FAILURE TO DISCLOSE**

A party's failure to either produce or identify as withheld pursuant to privilege a relevant document will be viewed by the Court as a serious infraction of its orders, justifying appropriate

sanctions unless exceptional circumstance justify its failure. Upon learning that there are any additional relevant documents which have not been produced or identified, a party is under an obligation to promptly make known the existence of the documents, including the reason for its failure, and submit the documents to the opposing party, or if withheld under a claim of privilege or protection, identify the documents.

Respectfully submitted,

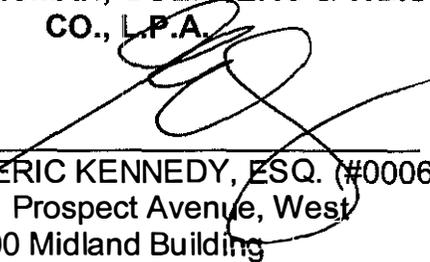
**WAITE, SCHNEIDER, BAYLESS  
& CHESLEY**



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STANLEY M. CHESLEY, ESQ. (#0000852)  
1513 PNC Tower  
5 West Fourth Street  
Cincinnati, Ohio 45202  
Tel: (513) 621-0262  
Fax: (513) 621-0262  
Email: [wsbclaw@aol.com](mailto:wsbclaw@aol.com)  
*Interim Co-Lead Counsel for Plaintiffs*

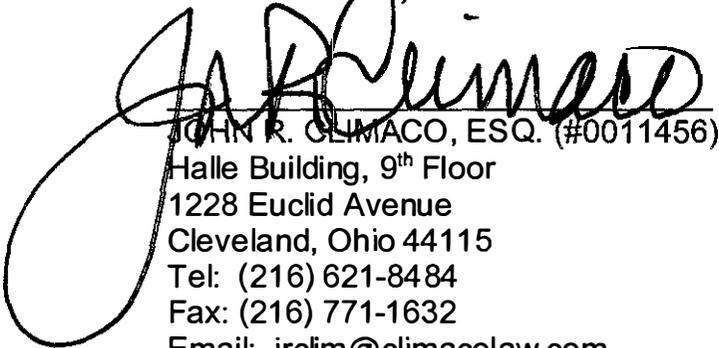
**WEISMAN, GOLDBERG & WEISMAN  
CO., L.P.A.**



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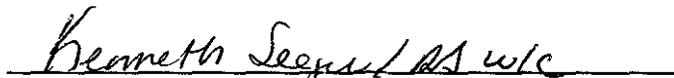
R. ERIC KENNEDY, ESQ. (#0006174)  
101 Prospect Avenue, West  
1600 Midland Building  
Cleveland, Ohio 44115  
Tel: (216) 781-1111  
Fax: (216) 781-6747  
Email: [dgoetz@weismanlaw.com](mailto:dgoetz@weismanlaw.com)  
*Interim Co-Lead/Liason Counsel for Plaintiffs*

**CLIMACO, LEFKOWITZ, PECA, WILCOX &  
GAROFOLI CO., LPA**



JOHN R. CLIMACO, ESQ. (#0011456)  
Halle Building, 9<sup>th</sup> Floor  
1228 Euclid Avenue  
Cleveland, Ohio 44115  
Tel: (216) 621-8484  
Fax: (216) 771-1632  
Email: jrclim@climacolaw.com  
*Interim Co-Lead Counsel for Plaintiffs*

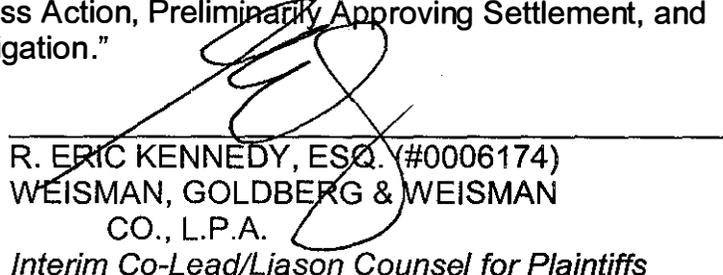
**CROSBY, HEAFEY, ROACH & MAY**



KENNETH M. SEEGER, ESQ.  
Two Embarcadero Center, Suite 2000  
San Francisco, CA. 94111  
TEL: (415) 543-8700  
FAX: (415) 391-8269  
Email: kseeger@chrm.com  
*Lead Counsel/Liason Counsel For Defendants  
Sulzer Orthopedics Inc., Sulzer Medica USA Inc.,  
Sulzer Medica USA Holding Co.*

**CERTIFICATE OF SERVICE**

A copy of the foregoing Joint Proposed Case Management Plan - Order 2 has been mailed via regular U.S. Mail on this 16<sup>th</sup> day of August, 2001; sent electronically via email and sent via facsimile on this 16<sup>th</sup> day of August, 2001, to all counsel identified and attached to "Plaintiffs Memorandum in Support of Plaintiffs' Motion for Order Conditionally Certifying a Rule 23(b)(2) and (b)(3) Class Action, Preliminarily Approving Settlement, and Enjoining All Inter-Op Hip Prosthesis Litigation."



R. ERIC KENNEDY, ESQ. (#0006174)  
WEISMAN, GOLDBERG & WEISMAN  
CO., L.P.A.  
*Interim Co-Lead/Liason Counsel for Plaintiffs*

**Addendum #1 to  
SPECIAL COUNSEL LIST\***

***MDL 1401 In Re: Inter-Op Hip Prosthesis Products Liability Litigation***

Samuel L. Davis, Esq.	Davis, Saperstein & Salomon	375 Cedar Lane Teaneck, NJ 07666	Tel: 201-907-5000 Fax: 201-692-0444 Email: <a href="mailto:sam@dsslaw.com">sam@dsslaw.com</a>
Cloyd Benjamin, Jr.	Piper & Associates	P.O. Box 69 Shreveport, LA 71161	Tel: 318-226-0826 Fax: 318-424-9000 Email: <a href="mailto:piper@mnss.com">piper@mnss.com</a>
Stephen B. Murray, Esq.	Murray Law Firm	909 Poydras Street, #2550 New Orleans, LA 70112	Tel: 504-525-8100 Fax: 504-584-5249 Email: <a href="mailto:smurray@murray-lawfirm.com">smurray@murray-lawfirm.com</a>

\*This list will be  
supplemented as necessary