

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: WRIGHT MEDICAL)	MDL DOCKET NO. 2329
TECHNOLOGY, INC.,)	
CONSERVE HIP IMPLANT)	
PRODUCTS LIABILITY)	1:12-MD-2329-WSD
LITIGATION)	
)	CASE MANAGEMENT ORDER NO. 1
)	COMPREHENSIVE PLEADINGS,
This Document Relates To:)	MOTIONS AND DISCOVERY
ALL CASES)	SCHEDULE

GENERAL

1. Description of the Case:

Within 30 days of the execution of this Order, the parties (in the aggregate) will provide the following information to the Court:

(a) Describe briefly the nature of this action.

BY PLAINTIFFS:

BY DEFENDANTS:

(b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.

BY PLAINTIFFS:

BY DEFENDANTS:

(c) The legal issues to be tried are as follows:

BY PLAINTIFFS:

BY DEFENDANTS:

The parties reserve the right to supplement with other or additional issues as identified later or as discovery continues.

2. Regular Telephone Conferences: Beginning Monday, May 7, 2012, a telephone conference by and between the Court and counsel for the Defendants and Lead and Liaison Counsel for the Plaintiffs will be conducted at 2:00 p.m. once each month. Therefore, conference calls shall be scheduled as follows:

May 7, 2012	2:00 p.m.
June 4, 2012	2:00 p.m.
July 2, 2012	2:00 p.m.
August 13, 2012	2:00 p.m.
September 10, 2012	2:00 p.m.
October 8, 2012	2:00 p.m.
November 5, 2012	2:00 p.m.
December 3, 2012	2:00 p.m.
January 2, 2013 ¹	2:00 p.m.
February 11, 2013	2:00 p.m.
March 11, 2013	2:00 p.m.

The scheduling of said conference calls may be altered or amended by direction of the Court. The parties also reserve the right to request an unscheduled conference call. Liaison Counsel² shall be responsible for placing the conference calls.

¹ Monday of that week falls on December 31, 2012, so the call is moved to Wednesday, January 2, 2013.

² Pursuant to Pretrial Order No. 1, the Court has established a procedure to select Lead and Liaison Counsel and a Steering Committee, if necessary (See Pretrial

PLEADINGS AND NON-DISCOVERY MOTIONS

3. Direct Filing of Complaints:³

(a) In order to eliminate delays associated with transfer of cases in or removed to other federal district courts to this Court, and to promote judicial efficiency, any plaintiff whose case would be subject to transfer to MDL No. 2329 may file his or her case directly in the MDL proceedings in the Northern District of Georgia.

(b) Each case filed directly in MDL No. 2329 that emanates from a district outside the Northern District of Georgia will be filed in MDL No. 2329 for pretrial proceedings only, consistent with the Judicial Panel on Multidistrict's February 27, 2012, Transfer Order.

(c) Upon completion of all pretrial proceedings applicable to a case directly before this Court, pursuant to this Order, this Court, pursuant to 28 U.S.C. § 1404(a), will transfer that case to a federal district court of proper venue, as defined in 28 U.S.C. § 1391, based on the recommendations of the parties to that case.

Order No. 1, ¶15): Herein, any reference to Defendants' or Plaintiffs' Counsel shall mean Lead Counsel for the respective parties.

³ Cases transferred into the MDL No. 2329 after April 23, 2012 shall be referenced herein as "Transferred Cases." Cases hereinafter directly filed in the MDL proceeding shall herein be referenced as "Direct Filed Cases."

(d) The inclusion of any action in *In re: Wright Medical Technology, Inc., Conserve Hip Implant Products Liability Litigation*, MDL No. 2329, whether such action was or will be filed originally or directly in the Northern District of Georgia, shall not constitute a determination by this Court that jurisdiction or venue is proper in this district.

(e) This Order does not preclude a party from seeking to remand, or otherwise filing any motion or seeking any relief to which it would otherwise be entitled, if the party determines that any Direct Filed Case or Transferred Case is not related to this MDL.

(f) The fact that a case was directly filed in MDL No. 2329 pursuant to this Order will have no impact on the choice of law to be applied.

(g) All attorneys with cases in MDL No. 2329 shall familiarize themselves with the Pretrial Order No. 1, ¶¶ 3-6, which addresses attorney admission, electronic filing, and PACER (Public Access to Court Electronic Records) accounts.

4. Short-Form Complaint/Master Answer:

(a) On or before June 6, 2012, Counsel shall prepare and submit to the Court for approval, a Short-Form Complaint and Short-Form Answer. Thereafter, in the interests of judicial economy, Direct Filed Cases shall file or adopt the short-

form complaint⁴ which is in an abbreviated form and which briefly articulate the injury, the dates, the home state, the plaintiff's date of birth, the basic theories of liability, without the need for detailed pleadings, and the suggested jurisdiction for remand.⁵ In turn, the Defendants may file a Short-Form Answer in response thereto in accordance with the Federal Rules of Civil Procedure and the Local Rules, which shall set forth a General Denial and which shall be deemed to deny all allegations in all Short-Form Complaints, and which shall further set forth all Separate Defenses.

(b) In lieu of incorporating this Short-Form Answer in response to any Short-Form Complaint filed in a Direct Filed Case, Defendants may only file an individualized motion to dismiss for the purpose of asserting statute of limitations and/or lack of subject matter jurisdiction defenses that, if granted, would be dispositive of and therefore would result in the dismissal of the entire complaint.

(c) Upon completion of the pretrial proceedings of MDL No. 2329, and remand of individual cases, this Court will provide in its remand order a provision

⁴ Transferred cases and cases pending in the MDL prior to April 23, 2012 may adopt the Short-Form Complaint by notification to the Court within thirty (30) days of the date the case is transferred to this MDL or, if already transferred, within 30 days after the Short-Form Complaint is agreed to by the parties.

⁵ Notwithstanding the provisions of this Order for procedures for complaints and answers, the defendants do not waive service and all defendants must be served in accordance with the Federal Rules of Civil Procedure.

requiring the parties to amend all pleadings to conform to the evidence as adduced by discovery. Plaintiffs have the express right to file and serve Amended Complaints more fully setting forth the facts specific to their case, the cause of actions and allegations against the Defendants, theories of liability and damages alleged. Defendants will be required to file within 30 days of service of the Amended Complaint a responsive pleading, motion or Answer and assert any and all cognizable defenses based on the allegations and theories set forth in the Amended Complaint.

5. Answer/Motions to Dismiss:

(a) The stay on motions briefing – set forth in Pretrial Order No. 1 (Docket No. 35) remains in effect, except as described above in Paragraph 4(b) or below in Paragraphs 5(b)-(e).

(b) For Transferred Cases in which a response to the complaint has not yet been filed in the transferor court and Plaintiff has not adopted the Short-Form Complaint within 30 days from the date of transfer (as set forth in Footnote 4 *supra*), Defendants may answer or file any motion with this Court as set forth by the Federal Rules of Civil Procedure. Briefing on any such motion will proceed in accordance with the Federal Rules of Civil Procedure and the Local Rules.

(c) In Transferred Cases where a motion has been filed in response to the complaint with the transferor court and Plaintiff has not adopted the Short-Form Complaint, Defendants may re-file the motion with this Court (in accordance with Pre-Trial Order No. 1). The briefing schedule for these motions will proceed in accordance with the Federal Rules of Civil Procedure and the Local Rules, with the date of the re-filing acting as the trigger date for Plaintiffs' response.

(d) For those cases transferred to the MDL prior to April 23, 2012, in which a response to the complaint has not yet been filed in the transferor court and Plaintiff has not adopted the Short-Form Complaint within 30 days from the date on which the parties agree to a Short-Form Complaint (as set forth in Footnote 4 *supra*), Defendants may answer or file any motion with this Court as set forth by the Federal Rules of Civil Procedure. Briefing on any such motion will proceed in accordance with the Federal Rules of Civil Procedure and the Local Rules.

(e) For those cases transferred to the MDL prior to April 23, 2012 where a motion has been filed in response to the complaint with the transferor court and Plaintiff has not adopted the Short-Form Complaint within 30 days from the date on which the parties agree to a Short-Form Complaint (as set forth in Footnote 4 *supra*), the stay order on such motions (as set forth in Pre-Trial Order No. 1) is

lifted and Plaintiff will have 30 days to thereafter file a response. Any reply brief by the Defendants is due 14 days after Plaintiff's response is filed.

6. Pending Motions:

This Order vacates any case management or scheduling order issued by a federal court prior to the transfer of a case to MDL No. 2329. All pending motions filed in the transferor courts, with the exception of those motions now re-filed in this docket, are vacated and superseded by Pretrial Order No. 1 Practice and Procedure Order Upon Transfer Pursuant to 28 U.S.C. § 1407(a), this Order and subsequent orders issued by this Court. Those motions now re-filed in this docket are stayed with the exception of those motions identified in Section 4(b). This Order applies to any "tag-along" actions transferred to this Court by the Judicial Panel on Multidistrict Litigation.

7. Potentially Dispositive Motions:⁶

(a) Dispositive motions shall be filed no later than 45 days after the close of all discovery, including expert discovery. (See ¶ 14 *infra*.)

(b) Responses to any dispositive motion shall be filed no later than 30 days after the filing of a dispositive motion.

⁶ Format, legibility, forms of motions and requirements thereof are subject to the Civil Local Rules of Practice for the United States District Court for the Northern District of Georgia ("LR 5.1, NDGa.").

(c) The party filing a dispositive motion will be entitled to file a reply brief no later than 15 days after filing of a corresponding responsive brief.

(d) By not filing a dispositive motion within 45 days after the close of discovery in this action, a party does not waive its right to file such a motion with the transferee court upon remand.

8. Preliminary Disclosures:

(a) Each individual Plaintiff shall complete the one-page Plaintiff's Preliminary Disclosure Form, attached as Exhibit A, within thirty (30) days of the date of this Order or within thirty (30) days of the direct filing of a case into the MDL or the transfer of any Complaint to this Court.⁷ The Plaintiff's Preliminary Disclosure Form shall be served on Plaintiffs' and Defendants' Lead and Liaison Counsel.

(b) The Plaintiff's Preliminary Disclosure Form shall be completed by counsel for each individual Plaintiff. It is not a verified discovery response.

(c) Defendant shall respond to the Plaintiff's Preliminary Disclosure Form within forty-five (45) days to disclose whether Defendant is in possession of any of the material (explanted device, blood, tissue) from revision surgeries identified in Plaintiff's Preliminary Disclosure Form.

⁷ Initial Disclosures pursuant to FRCP 26(a)(1)(A) are not required.

9. Non-Expert Discovery:

(a) Non-expert discovery shall begin May 7, 2012. At this time, the parties cannot accurately determine a date for the close of non-expert discovery. As such, the parties will proceed with non-expert discovery until further direction from the Court.

10. Confidentiality, Privileges, ESI

Neither responses to interrogatories nor document production will be delayed based on issues related to confidentiality, assertions of privilege or by the need to produce electronically stored information (ESI).

(a) Issues of confidentiality shall be governed in accordance with a Stipulated Protective Order of Confidentiality, which will be prepared by the parties and submitted to the Court on or before May 7, 2012. In the event either party withholds a response to an interrogatory or withholds production of a document on the basis of an asserted privilege, that party, contemporaneously with the obligation to provide a written discovery response or produce documents in response to discovery requests, must provide the following information in a written response, designating and identifying such information withheld from production on grounds of privilege:

(a) The reason for withholding the information;

(b) A statement of the legal basis for the claim of privilege, work product or other ground for non-disclosure:

(c) A brief description of the information, including:

- i. The date:
- ii. The number of pages, attachments, and appendices if a document;
- iii. The name(s) of the source(s) or preparer(s) of the information and identification by employment and title of each such person;
- iv. The name of each person who was involved with or has had access to or custody of the information, together with an identification of each such person;
- v. The present custodian(s); and
- vi. The subject matter of the information, and in the case of any information relating or referring to a meeting or conversation, identification of such meeting or conversation, in sufficient detail to enable the court to determine the propriety of any claim of privilege.

(d) Electronically stored information shall be governed in accordance with the Electronically Stored Information (ESI) Order, which will be prepared by the parties and submitted to the Court on or before June 1, 2012.

11. Explant Preservation:

Plaintiffs presently in MDL No. 2329 or whose case may later be transferred into MDL No. 2329 or filed directly herein, may have hip revision surgery. In the event of a hip revision surgery, issues of explant (Wright Conserve Hip Implant System) and associated tissue, blood/serum and synovial fluid possession, custody and control may arise. This protocol shall be governed in accordance with an Explant Preservation Order, which will be prepared by the parties and submitted to the Court on or before May 7, 2012.

12. Plaintiff Fact Sheet:

(a) On or before May 23, 2012, the parties shall submit the Plaintiff Fact Sheet ("PFS"), including medical record authorization for health care providers, for approval by the Court.

(b) Each Plaintiff in MDL No. 2329 who has undergone revision surgery shall complete and serve a PFS. The PFS and authorizations shall be served electronically on Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel. The PFS shall be served electronically on Plaintiffs' Liaison Counsel at: _____ . Service on Plaintiffs' Liaison Counsel need not include the documents responsive to the request in the PFS. Service of the PFS, authorizations

and responsive documents on Defendants' Liaison Counsel shall be in an electronic format on CD via first class or overnight mail, addressed to:

Wright Conserve Plaintiff Fact Sheet
c/o Dana J. Ash, Esq.
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103

(c) For cases currently pending before the Court in MDL No. 2329, the PFS and authorizations for each Plaintiff in MDL No. 2329 shall be served no later than 90 days from the date the Court executes an order adopting the PFS. Plaintiff must also provide along with the PFS all responsive non-privileged documents in his or her possession requested in the PFS.

(d) For all cases transferred to or direct-filed in MDL No. 2329 after the date of this Order, the PFS and authorizations for each Plaintiff in MDL No. 2329 shall be served no later than 90 days from the date a case is transferred to or direct-filed in the MDL to complete and serve the PFS and authorizations. A case shall be deemed transferred to the MDL either: (a) on the date that the certified copy of the Conditional Transfer Order issued by the Judicial Panel on Multidistrict Litigation ("JPML") is entered in the docket of this Court, or (b) where transfer is contested, the date of transfer in any subsequent order from the JPML.

Defendants' liaison counsel will notify each new plaintiff's counsel of his/her obligation under this paragraph promptly.

(e) Each Plaintiff in MDL No. 2329 who undergoes revision surgery at some point after filing suit shall complete and serve an updated PFS and authorizations as set forth above no later than 120 days from the date of the revision surgery. Plaintiff must also provide along with the PFS all responsive non-privileged documents in his or her possession requested in the PFS.

(f) A Plaintiff who is not obligated to complete a PFS may nevertheless voluntarily choose to complete a PFS and produce the required documents and authorizations.

(g) Nothing in the PFS shall be deemed to limit the scope of inquiry at depositions and admissibility of evidence at trial. The scope of inquiry at depositions shall remain governed by the Federal Rules of Civil Procedure. The admissibility of information in the PFS shall be governed by the Federal Rules and no objections are waived by virtue of any fact sheet response.

(h) The parties may agree to an extension of the above time limits for service of the PFS. Consideration should be given to requests for extensions to stagger PFS deadlines where a single law firm has a large number due on or near

the same dates. If the parties cannot agree on reasonable extensions of time, such party may apply to the Court for such relief upon a showing of good cause.

13. Defendant Fact Sheet:

(a) The Wright Defendants in each action currently pending before the Court in MDL No. 2329 shall complete and serve upon Plaintiff's Liaison Counsel a completed Defendant Fact Sheet ("DFS") within 120 days from the date the Plaintiffs' Fact Sheet ("PFS") is served on Defendants' Lead and Liaison Counsel as prescribed in ¶ 15 *supra*. The individual DFS shall also be served on the counsel identified in Section I of the PFS by regular or electronic mail. The DFS shall be completed and served on a rolling basis.

(b) An alleged deficiency in the PFS will not delay service of the DFS unless the deficiency materially and substantially impacts the Wright Defendants' ability to complete the DFS.

(c) For all cases transferred to MDL No. 2329 after the date of this Order, the Wright Defendants shall complete a DFS and serve upon each individual Plaintiff's counsel identified in Section 1 of the PFS and upon Plaintiff's Liaison Counsel a completed DFS by regular or electronic mail within 120 days from service of the PFS.

(d) Nothing in the DFS shall be deemed to limit the scope of inquiry at depositions and admissibility of evidence at trial. The scope of inquiry at depositions shall remain governed by the Federal Rules of Civil Procedure. The admissibility of information in the DFS shall be governed by the Federal Rules, and no objections are waived by virtue of any fact sheet response.

(e) The parties may agree to an extension of the above time limits for service of the DFS. Consideration should be given to requests for extensions to stagger DFS deadlines where the Wright Defendants have a large number due on or near the same dates. If the parties cannot agree on reasonable extensions of time, such party may apply to the Court for such relief upon a showing of good cause.

14. Expert Discovery:

(a) Plaintiffs' expert disclosures pursuant to FRCP Rule 26(a)(2)(B) and (E) and LR 26.2(c) NDGa are due no later than 30 days following the completion of non-expert discovery.

(b) Defendants' expert disclosures pursuant to FRCP Rule 26(a)(2)(B) and (E) and LR 26.2(c) NDGa are due no later than 45 days following the date set forth in ¶ 14(a) *supra*.

(c) The parties may identify rebuttal experts by disclosures pursuant to FRCP Rule 26(a)(2)(B) and (E) and LR 26.2(c) NDGa no later than 45 days after the date set forth in ¶ 14(b) *supra*.

(d) Depositions of experts shall be completed no later than 60 days following the date set forth in ¶ 14(c) *supra*.

(e) *Daubert* motions, if any, shall be filed no later than 30 days following the date set forth in ¶ 14(d) *supra*.

15. Discovery Motions:

(a) The Court requires parties to submit their discovery disputes to the Court before formal motions to compel or for a protective order are filed. These disputes often are resolved in a telephone conference with the Court, thus avoiding the expense and delay of discovery motion practice. The Court generally is available to convene a telephone conference shortly after it is advised of a dispute.

(b) If a dispute cannot be resolved in a conference, the Court will advise the parties at the conference on how to present the dispute for resolution. The Court is available by telephone to address disputes that arise during depositions. Ms. Birnbaum is the best person to contact regarding discovery disputes.⁸

⁸ Discovery motions shall otherwise be governed by the LR, NDGa.

BELLWETHER TRIALS

16. The parties will endeavor to work through with the Court appropriate Bellwether trial practices and procedures as the case develops. Until such time as the Court identifies or the parties agree on a pool of cases to participate in a Bellwether program, the parties will refrain from discovery of the individual plaintiffs, both individualized discovery by the Defendants of the Plaintiff and discovery by the individual Plaintiff, other than as set forth in ¶¶ 8, 12 and 13, *supra*.

So ORDERED this ____ day of _____, 2012.

WILLIAM S. DUFFEY, JR.
United States District Judge