

### Multiple Documents

Part	Description
1	14 pages
2	Exhibit

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

**IN RE: WRIGHT MEDICAL  
TECHNOLOGY, INC.,  
CONSERVE HIP IMPLANT  
PRODUCTS LIABILITY  
LITIGATION**

**MDL DOCKET NO. 2329**

**ALL CASES**

**1:12-MD-2329-WSD**

**CASE MANAGEMENT ORDER NO. 1  
COMPREHENSIVE PLEADINGS, MOTIONS  
AND DISCOVERY SCHEDULE**

**PLEADINGS AND NON-DISCOVERY MOTIONS**

This order sets forth the Court's initial instructions regarding the management of MDL Docket No. 2329 ("MDL No. 2329"). This Order applies to all cases previously or hereafter transferred to this MDL, or those which are directly filed in this MDL proceeding.<sup>1</sup>

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<sup>1</sup> Cases transferred to MDL No. 2329 after April 23, 2012, will be referred to as "Transferred Cases." Cases transferred to this MDL before April 23, 2012 will be referred to as "Early Transferred Cases." Cases directly filed in this MDL proceeding will be referred to as "Direct Filed Cases."

1. Direct Filing of Complaints

(a) Any plaintiff whose case would be subject to transfer to MDL No. 2329 may file their claims directly in this MDL<sup>2</sup> to be included in this proceeding for the purposes stated in the Judicial Panel on Multidistrict Litigation February 27, 2012, Transfer Order (the “Transfer Order”). Direct Filed Cases will be governed by the provisions of the Transfer Order and 28 U.S.C. § 1391.

(b) Consolidation of an action in MDL No. 2329, whether the action was transferred to, or originally filed, in this proceeding, will not be deemed a determination that jurisdiction or venue is proper in the Northern District of Georgia.

(c) This Order does not prohibit a party from filing an appropriate motion to remand, or for such other relief, if the party concludes that an action transferred to, or directly filed in, this MDL is not related to MDL No. 2329.

(d) The direct filing of a case in this MDL pursuant to this Order does not itself determine the choice of law to be applied to the case filed.

(e) Attorneys who appear in MDL No. 2329 are bound by Pretrial Order No. 1, ¶¶ 3-6, including its provisions regarding attorney admission, electronic

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<sup>2</sup> The Civil Local Rules of Practice for the United States District Court for the Northern District of Georgia (“LR 5.1, NDGa.”) will apply to these actions and all filings in the MDL.

filing, and use of the Public Access to Court Electronic Records (“PACER”) system and PACER accounts.

2. Short-Form Complaint/Short-Form Answer

On or before May 25, 2012, Co-Lead Counsel for Plaintiffs (“Co-Lead Counsel”) and Lead Counsel for Defendants (“Defendants’ Counsel”) will submit to the Court, for approval, a Short-Form Complaint and Short-Form Answer for use by plaintiffs and defendants in Direct Filed Cases. Direct Filed Cases will use the Short-Form Complaint. Plaintiffs in Early Transferred and Transferred Cases may file a Short-Form Complaint within thirty (30) days after the Short-Form Complaint is approved by the Court, or the date on which the case is transferred to this MDL. Defendants may file a Short-Form Answer, in response to Short-Form Complaints filed. Defendants only may file a motion to dismiss in response to a Short-Form Complaint if it would be dispositive of all of Plaintiff’s claims, such as, but not limited to, on the grounds that the statute of limitations bars Plaintiff’s claim or that there is a lack of subject matter jurisdiction.

3. Answers or Motions for Early Transferred and Transferred Cases

The stay provision in Pre-Trial Order No. 1 regarding the filing of new substantive motions and briefing of previously filed motions in this MDL shall remain in effect until thirty (30) days have elapsed following the approval of the

Short-Form Complaint by the Court. (See MDL No. 2329 Pre-Trial Order No. 1 at 4, 6).

For all cases transferred to this MDL after approval of the Short-Form Complaint, no party shall file any motions in such cases during the thirty (30) days immediately following the date on which the case is transferred to this MDL, in order to provide Plaintiff an opportunity to file the Short-Form Complaint.

Thirty (30) days after approval of the Short-Form Complaint or transfer of a case to this MDL, the following procedures shall apply:

(a) For Early Transferred or Transferred Cases in which a response to the Complaint was not filed in the transferor court or this Court, and for which Plaintiff has not adopted the Short-Form Complaint, Defendants may answer, or file, any motion permitted by the Federal Rules of Civil Procedure.

(b) For Early Transferred or Transferred Cases in which a motion was filed by Defendants in the transferor court in response to the Complaint, and for which Plaintiff has not adopted the Short-Form Complaint, Defendants may, on or after the thirtieth (30th) day following approval of the Short-Form Complaint,

re-file the motion in this MDL proceeding. (See id.)<sup>3</sup> The date of re-filing in this Court will determine the date for the filing of a response to the motion.

(c) For all cases where a plaintiff files a Short-Form Complaint, the procedures and limitations for answers and motions in paragraph 2 shall apply.

4. Pending Motions and Transferor Court Scheduling Orders

Case management or scheduling orders issued by a transferor court prior to the transfer of a case to MDL No. 2329 are vacated.

All pending motions filed in transferor courts, that are not refiled in this MDL pursuant to paragraph 3(b), are deemed vacated. All pending motions filed in Early Transferred and Transferred Cases are vacated upon a plaintiff filing a Short-Form Complaint.

5. Potentially Dispositive Motions

Thirty (30) days before the close of all, including expert, discovery, a conference will be held with the Court to consider the form and time for filing dispositive motions.

6. Preliminary Disclosures

(a) Each Plaintiff will complete the one-page Plaintiff's Preliminary Disclosure Form ("Plaintiff Form"), attached as Exhibit A. The Plaintiff Form will

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<sup>3</sup> A re-filed motion is, for the purposes of this Order, not considered a motion filed in the transferor court.

be filed within thirty (30) days after the date of this Order, or within thirty (30) days of the direct filing of a case in, or the transfer of a Complaint to, this MDL.<sup>4</sup> The Plaintiff Form will be served on Co-Lead Counsel and Defendants' Counsel.

(b) Defendant will, within forty-five (45) days of the date of this Order, disclose whether Defendant is in possession<sup>5</sup> of any material (explanted device, blood, tissue) from revision surgeries identified in Plaintiff's Form. Defendant's disclosure will be in writing and served on counsel for each Plaintiff who has completed and served a Plaintiff Form which discloses that revision surgery was performed on the Plaintiff who completed the Plaintiff Form. The disclosures also will be served on Co-Lead Counsel.

7. Non-Expert Discovery

Non-expert discovery will begin May 25, 2012. On or before June 11, 2012, Co-Lead Counsel and Defendants' Counsel will submit a detailed discovery plan in the form described in the Court's Standing Order re: Civil Litigation (the "Discovery Plan"). The Discovery Plan will show the schedule for the completion of non-expert discovery on or before February 22, 2013. Forty-five (45) days before the close of non-expert discovery, the parties will submit to the Court, for

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<sup>4</sup> Initial Disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A) are not required.

<sup>5</sup> "Possession" for the purpose of this Order means actual possession, control of, or access to those documents or material required to be identified and served.

review and approval, the detailed plan for the identification of experts and the service of expert written reports as required by Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure (the “Expert Plan”). The Expert Plan will state dates on which experts will be deposed. The Expert Plan will provide for the conclusion of expert discovery on or before April 26, 2013.

8. Confidentiality, Privileges, and Electronically Stored Information

The parties shall adhere to the Stipulated Protective Order of Confidentiality, which was approved by the Court on May 3, 2012. If either party withholds a response to an interrogatory or the production of a document or other material on the basis of legal privilege, the withholding party will, on the same day as service of the written discovery response or the production of documents or other material in response to the discovery request, provide to opposing lead counsel, in writing, the following information:

- (a) A brief description of the information, including:
  - i. Date;
  - ii. Number of pages, attachments, and appendices of a document;
  - iii. Name(s) of the source(s) or preparer(s) of the information and identification by employment and title of each such person;

iv. 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. 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.<sup>6</sup>

(b) The reason for withholding the information; and

(c) A statement of the legal basis for the claim of privilege, work product or other grounds for non-disclosure.

If a party disputes the withholding of information, documents or other materials on the basis of a privilege, Co-Lead Counsel and Defendants' Counsel will contact the Court to schedule a conference to discuss the procedure for asserting the challenge.

Electronically stored information ("ESI") will be governed in accordance with the Electronically Stored Information Order, which will be prepared by the parties and which will be submitted to the Court, on or before June 8, 2012, for approval.

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<sup>6</sup> This procedure substitutes for the procedures set forth in Federal Rule of Civil Procedure 26(b)(5).

9. Explant Preservation

Plaintiffs who are parties in MDL No. 2329 as of the date of this Order, or whose case may later be transferred into MDL No. 2329, or filed directly in this MDL, may have hip revision surgery. The parties have submitted to the Court on May 21, 2012, a Stipulated Explant Preservation Order for the Court's review and approval. Once entered, the parties will comply with the approved Order.

10. Plaintiff Fact Sheet

(a) On or before May 30, 2012, Co-Lead Counsel and Defendants' Counsel will file with the Court their proposed Plaintiff Fact Sheet ("PFS") and medical record authorization for health care providers ("Authorization").

(b) Each Plaintiff whose case is, or may hereafter be, included in MDL No. 2329 will complete a PFS. Counsel for each Plaintiff will serve the PFS and Authorization on Co-Lead Counsel and Defendants' Counsel. Service on Plaintiffs' Co-Lead Counsel is not required to include the documents responsive to the PFS. Service of the PFS, Authorizations, and responsive documents on Defendants' Counsel will be included on a CD or other electronic storage device and sent by overnight delivery, addressed as follows:

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

(c) The PFS and Authorizations for each Plaintiff in those cases currently included in MDL No. 2329 will be served no later than ninety (90) days from the date the Court approves the PFS.

(d) For 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 will be served no later than ninety (90) days from the date a case is transferred to, or direct-filed in, the MDL. For the purposes of calculating deadlines for submitting the PFS and Authorizations, a case will be deemed transferred to the MDL either: (a) on the date 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) if transfer is contested, a later date of transfer as ordered by the JPML. Defendants’ Counsel will promptly notify Plaintiff’s counsel in each case hereafter transferred to, or filed in, this MDL of Plaintiff’s obligation under this paragraph.

(e) A plaintiff who undergoes revision surgery after completing and serving a PFS will complete and serve an updated PFS and Authorizations, as set

forth above, no later than ninety (90) days after the date of the revision surgery. Plaintiff will serve all responsive documents in Plaintiff's possession that are requested in the PFS.

(f) A Plaintiff who is not required to complete a PFS may nonetheless complete a PFS and produce the required documents and Authorizations.

(g) The PFS will not be interpreted to limit the scope of inquiry at depositions nor will it affect whether evidence is admissible at trial. The admissibility of information in the PFS is governed by the Federal Rules of Evidence, and objections to admissibility are not waived by virtue of the completion and service of a PFS.

(h) The parties may request the Court to consider an extension of the time for service of the PFS.

11. Defendant Fact Sheet

(a) The Wright Defendants in each action currently pending in MDL No. 2329 will complete and serve upon Co-Lead Counsel a completed Defendant Fact Sheet ("DFS") within ninety (90) days from the date of service of the PFS on Defendants' Lead Counsel. The DFS for a plaintiff also will be served by overnight delivery on the counsel identified in Section 1 of the PFS.

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

(c) For all cases transferred to MDL No. 2329 after the date of this Order, the Wright Defendants will complete a DFS and serve it by overnight delivery on each individual Plaintiff's counsel identified in Section 1 of the PFS, and upon Plaintiff's Lead Counsel. Service of the DFS will be made within ninety (90) days from service of the PFS.

(d) The DFS will not be interpreted to limit the scope of deposition interrogations and it will not affect whether evidence is admissible at trial. The admissibility of information in the DFS is governed by the Federal Rules of Evidence, and objections to admissibility are not waived by virtue of a PFS response.

(e) The parties may request the Court to consider an extension of the time limits for service of the DFS.

## 12. Discovery Motions

(a) The Court requires the 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, 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 call, the Court will advise the parties during the conference call how to present the dispute for resolution. The Court is available by telephone to address disputes that arise during depositions.<sup>7</sup>

### 13. Regular Telephone Conferences

Regular telephone conferences by and between the Court, Defendants' Counsel, and Co-Lead and Co-Liaison Counsel will be conducted according to the following schedule:

June 4, 2012	2:00 p.m.
July 10, 2012	2:00 p.m.
August 13, 2012	2:00 p.m.
September 10, 2012	2:00 p.m.
October 9, 2012	2:00 p.m.
November 13, 2012	2:00 p.m.
December 3, 2012	2:00 p.m.
January 2, 2013	2:00 p.m.
February 11, 2013	2:00 p.m.
March 11, 2013	2:00 p.m.

In addition to those scheduled above, the parties may request additional conference calls with the Court, provided the issues to be discussed cannot be

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<sup>7</sup> Discovery motions will otherwise be governed by the LR, NDGa.

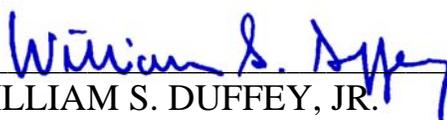
considered during a regularly-scheduled conference call. Co-Lead Counsel are responsible for placing the conference calls.

14. Service

For pleadings filed in CM/ECF, no additional service is required. For any pleading or submission not required to be filed in CM/ECF, service may be made upon Plaintiff by service of a copy of such pleading or submission on Co-Lead Counsel at mmcglamry@pmkm.com and upon Defendants' Counsel at DJAsh@duanemorris.com.

15. All communications with the Court are required to be made through Jessica Birnbaum, Deputy Courtroom Clerk at jessica\_birnbaum@gand.uscourts.gov.

**SO ORDERED** this 23rd day of May, 2012.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA**

**IN RE: WRIGHT MEDICAL TECHNOLOGY, )  
 INC., CONSERVE HIP IMPLANT )  
 PRODUCTS LIABILITY LITIGATION )  
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MDL DOCKET NO. 2329  
**1:12-MD-2329-WSD**  
 THE HON. WILLIAM S. DUFFEY, JR.

**Plaintiff's Preliminary Disclosure**

Instructions: Please provide the following information for each individual on whose behalf a claim is being made relating to implantation of the Wright Conserve Hip Implant System. When providing names and addresses please provide the full name and full address, including street number, street name, city, state and zip code.

<b>I. CASE INFORMATION</b>			
Caption:		Plaintiff's Attorney & Contact Information:	
Docket No.:			
<b>II. PATIENT PERSONAL INFORMATION</b>			
Name:		Wrongful Death Claim:	Y/N
Address:		Date of Birth:	
<b>III. WRIGHT PRODUCT INFORMATION</b>			
Type of Prosthesis:		Product Code/Lot Code:	
Side of Body:	Right / Left / Both (circle one) (Complete one Plaintiff's Preliminary Disclosure form for each implantation surgery involving a Conserve Device)	Date of Implantation:	
Name and Address of Implanting Surgeon:			
Name and Address of Hospital or Clinic where surgery performed:			
<b>*ATTACH MEDICAL RECORDS WITH MANUFACTURER/PRODUCT STICKERS FROM IMPLANTATION SURGERY.</b>			
<b>IV. REVISION SURGERY HAS NOT OCCURRED</b> (Complete this section if revision surgery has not occurred)			
Revision Surgery Scheduled	Y/N	Date of Revision Surgery (if scheduled):	
Imaging Study(ies) Conducted? (eg MRI/CT/ Ultrasound)	Y/N	If yes, list which reports are available:	
Blood Testing Conducted:	Y/N	If yes, list which reports are available:	
<b>V. REVISION SURGERY HAS OCCURRED</b> (Complete this section if a revision surgery has occurred)			
Date(s) of Revision Surgery:			
Name(s) and Address(es) of Revision Surgeon(s):			
Name(s) and Address(es) of Revision Surgery Hospital(s):			
Manufacturer(s) and Size(s) of Replacement Device(s):			
Are You in Possession of Explant?	Y/N	Location of Explant:	

BY: \_\_\_\_\_  
 Attorney for Plaintiff – *INSERT NAME*

\_\_\_\_\_ Dated