

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: ZIMMER DUROM HIP CUP
PRODUCTS LIABILITY
LITIGATION

Civil Action No.

2:09-CV-04414-SDW-SCM

MDL-2158

AMENDED SCHEDULING ORDER

[D.E. 746]

THIS MATTER having come before the Court on August 18, 2015 by way of telephone conference on the record, and informal motion to modify the scheduling order pursuant to Fed.R.Civ.P. 16(b)(4) and L.Civ.R. 6.1, and having considered the arguments of all counsel and for good cause having been shown,

IT IS on this Tuesday, August 18, 2015 ordered as follows:

1. Informal Motion(s):

a) Plaintiffs' Informal Motion to Compel Defendant to Update the "Revision Rate" is denied for these reasons set forth today on the record. Defendant shall produce the raw data to calculate the rate through May 31, 2015.

2. Joint Dispute Letters: All disputes should be raised by joint letter. No discovery motion or motion for sanctions for failure to provide discovery shall be made without prior leave of Court. Counsel "shall confer" in good faith and attempt to informally resolve any discovery disputes before seeking the Court's intervention. L. Civ. R. 37.1(a). Poison pen letters are not permitted. See D.N.J. App. R. Should informal efforts fail within 14 days of the occurrence of the dispute, the dispute shall immediately be brought to the undersigned Judge's attention via a **joint dispute letter** filed on ECF and mailed, not to exceed 6 pages that sets forth: (a) the request; (b) the response; (c) efforts to resolve the dispute; (d) why the complaining party believes the information is relevant and why the responding party's response continues to be deficient; and (e) why the responding party believe the response is sufficient. If the discovery dispute is complex and requires the filing of briefs and affidavits, counsel may separately file and mail same on the date of their joint dispute letter. No further submissions regarding the dispute may be submitted without leave of Court. Thereafter, the Court will schedule a telephonic discovery conference pursuant to Fed. R. Civ. P. 26(f) if necessary to resolve the dispute. *See* L. Civ. R. 16.1(f).

- a. Trial counsel must meet and confer to resolve any disputes concerning privilege before raising such disputes to the Court. If the dispute cannot be resolved by a joint proposed Fed.R.Evid. 502(d) order, the Court may refer the parties to a special master.

3. Case Status Letters:

- a. By 9/25/2015, defendant shall provide the undersigned with a list of cases wherein the plaintiff has failed to produce the discovery required by the Case Management Order(s) and not cured the deficiency within 30 days of a written request.
- b. By 9/25/2015, Plaintiff Liaison Counsel shall provide the undersigned with a list of cases wherein the plaintiff has produced the discovery required by the Case Management Order(s), has opted out of mediation, and wants to proceed with case specific discovery.

4. Joint Agenda Letter: The parties will file a joint agenda letter (up to three double spaced pages) or a joint dispute letter (up to 6 pages) with the Court on 9/29/2015 itemizing the issues, if any, that need to be discussed in the upcoming status conference.

5. Status Conference: The court will hold a status conference on 10/7/2015 **at 2:00 p.m.** All counsel who will be heard on the record must attend in person. Counsel who wish to listen in by telephone should meet and confer to make arrangements for a conference call and to call into the Court at the requested time. Audio or video recordings of any proceeding are not permitted. Additional conferences may be scheduled by the Court via text order every 90 to 120 days or as necessary.

6. Trial Dates and Pre-trial Schedule for Trial Ready Cases:

- a) Plaintiffs will serve their case-specific expert reports for the next four trial-ready cases, produce to Defendants the devices at issue, and provide possible deposition dates for the experts by August 21, 2015;
- b) Defendants will serve their case-specific expert reports for the next four trial-ready cases, and provide possible deposition dates for the experts by October 9, 2015;
- c) the Parties will complete all remaining case-specific fact discovery for the next four trial-ready cases by November 2, 2015;
- d) the Parties will complete all case-specific expert discovery for the next four trial-ready cases by November 13, 2015;
- e) all *Daubert* and dispositive motions for the next four trial-ready cases by December 4, 2015; Opposition is to be filed by 12/21/2015. Replies are

to be filed by 12/29/2015. The motion will returnable before the Hon. Susan D. Wigenton, U.S.D.J., and the Judge's chambers will advise whether oral argument will be requested.

7. **Settlement Conference:**

- a) Settlement conferences for trial-ready cases One and Two with Judge Mannion in courtroom 2B on November 12, 2015 at 10:00 a.m. and 2:00 p.m. Trial counsel and clients (plaintiffs within 150 miles in person otherwise by telephone) who have settlement authority must appear. Confidential settlement positions no longer than 5 pages should be delivered to Judge Mannion at least **8 days** before the conference and not filed via ECF.

- b) Settlement conferences for the trial-ready cases Three and Four with Judge Steve Mannion in courtroom 2B on November 13, 2015 at 10:00 a.m. and 2:00 p.m. Trial counsel and clients (plaintiffs within 150 miles in person otherwise by telephone) who have settlement authority must appear. Confidential settlement positions no longer than 5 pages should be delivered to Judge Mannion at least **8 days** before the conference and not filed via ECF.

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER OR ANY SUBSEQUENT SCHEDULING ORDERS ENTERED BY THIS COURT MAY RESULT IN SANCTIONS. See Fed.R.Civ.P. 16(f) and 37.



Steve C. Mannion

Honorable Steve Mannion, U.S.M.J.
United States District Court,
for the District of New Jersey
phone: 973-645-3827

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Original: Clerk of the Court
cc: All parties
File