

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 CASES**

**[PROPOSED] FIRST AMENDMENT TO CASE MANAGEMENT ORDER NO. 8
Plaintiff and Defendant Fact Sheets for BHR Track Cases**

The parties hereby submit this stipulated First Amendment to Case Management Order No. 8 (CMO 8) (D.E. 814) relating to the online submission and service of Plaintiff and Defendant Fact Sheets, (“PFS” and “DFS”, collectively referred to as “Fact Sheets”) in BHR Track cases. Provisions of CMO 8 not addressed herein remain in effect, unchanged and applicable to all BHR Track cases in this MDL.

I. Manner of Completion and Service of Fact Sheets, Authorizations, and Supporting Documentation. Instead of serving completed Fact Sheets by mail, email, or both as indicated in CMO 8 Sections II.A and III.B, Plaintiffs and Defendants shall use the online MDL Centrality System designed and provided by BrownGreer PLC and accessible at www.mdlcentrality.com/ to complete and serve Plaintiff and Defendant Fact Sheets, as follows:

(A) Each Plaintiff required to submit a PFS under CMO 8, shall, by counsel or as *pro se*, establish a secure online portal in the MDL Centrality online system and obtain authorized user names and secure login passwords to permit use of MDL Centrality by such counsel or Plaintiff. Except as set forth herein, Counsel for a Plaintiff or each *pro se* Plaintiff shall be permitted to view, search and download on MDL Centrality only those materials submitted by that Plaintiff and by Defendant relating to that Plaintiff, and not materials submitted by or relating to other Plaintiffs.

(B) The Defendant shall establish a secure online portal with the MDL Centrality online system and obtain authorized user names and secure login passwords to permit use of MDL Centrality by Defendant's counsel.

(C) The Plaintiffs' Steering Committee and Plaintiffs' attorney designees appointed by the Plaintiffs' Steering Committee, shall have access to and be able to view, search and download all materials submitted by all Plaintiffs and by Defendant.

(D) Each Plaintiff and Defendant shall use the MDL Centrality online system to obtain, complete or upload data, and serve the appropriate Fact Sheet online (including the upload of PDFs or other documents, images, photographs and videos required by the Fact Sheets). Each Plaintiff and Defendant shall provide a signed verification with their Fact Sheets, which will be signed in hard copy, uploaded and served through MDL Centrality.

(E) Each Plaintiff shall use the MDL Centrality online system to obtain, complete and serve online the record release Authorizations. Each Plaintiff shall sign each of the required Authorizations, which will then be uploaded and served through MDL Centrality.

(F) Service of a completed Fact Sheet, Authorizations, and supporting documentation shall be deemed to occur when the submitting party has performed each of the steps required by the MDL Centrality online system to execute the online submission of the materials, and the submitting party has received confirmation on screen that the materials have been successfully submitted.

(G) If a party must amend a previously served Fact Sheet, all subsequent versions must be named accordingly ("First Amended Fact Sheet", "Second Amended Fact Sheet", etc.), and all iterations of a Party's Fact Sheet must remain available and accessible to all Parties to a case through trial, appeal (if any), or other resolution of the litigation.

(H) By using MDL Centrality, each Plaintiff authorizes the disclosure of his or her medical records and other health information submitted as part of the PFS or DFS to BrownGreer PLC as the administrator of the MDL Centrality online system, the Court, Plaintiff Leadership and Defendants, and to the authorized agents, representatives and experts of the foregoing, for purposes of this litigation.

(I) BrownGreer charges \$20 per PFS for the use of MDL Centrality online system as described above. The cost will be split between the parties, with each side paying \$10 for each submitted PFS. There is no charge for PFS amendments or the DFS, and no user or administrative fees.

II. Exception to Use of MDL Centrality For Good Cause Shown. For good cause shown, a Plaintiff may request submission of Fact Sheets by mail, email, or both as indicated in CMO 8 Sections II.A and III.B, in lieu of the MDL Centrality online system. Requests should be

made to Jimmy Irwin at bhr-mdl-ppd@irwinllc.com (copy to Alex Davis at bhr@jonesward.com) at least two weeks prior to the PFS due date. For purposes of this subparagraph, good cause requires a demonstration of undue hardship with the use of the MDL Centrality online system, including but not limited to being a *pro se* plaintiff without Internet access. If good cause is shown, requests and responses to requests for extensions, additional authorizations, and Deficiency Letter communication shall be made in the manner outlined in CMO 8 in lieu of MDL Centrality as outlined in this Amendment.

III. Schedule of Service of PFS. To allow for implementation of the MDL Centrality online system, the deadline for submission of the PFS for Plaintiffs with BHR cases identified in Exhibit B to CMO 8 shall be extended to September 7, 2018. The other deadlines in Section II.C of CMO 8 remain unchanged.

IV. Extensions of Time. Requests and responses to requests for extensions of time under CMO 8 Sections II.C and III.C shall be made through the MDL Centrality online system.

V. Additional Authorizations. Requests and responses regarding additional authorizations under CMO 8 Section IV.A.2 shall be made through the MDL Centrality online system.

VI. Non-Compliance with Fact Sheet Requirements. Service of Deficiency Letters pursuant to CMO 8 Sections IV.B and IV.C, shall be made through the MDL Centrality online system.

VII. No Impact on Privileges or Work Product Protection. The use of the MDL Centrality online system by any party shall not alter or otherwise waive or affect any attorney-client privilege or work product doctrine protection that would otherwise apply to a document or communication in the absence of the use of MDL Centrality. Any notations placed on materials,

comments entered, or documents stored or uploaded to MDL Centrality by a user shall be considered to be the work product of such user unless and until the material is served on or purposefully disclosed to the opposing party through the use of the MDL Centrality online system or otherwise. Pursuant to Rule 502(d) of the Federal Rules of Evidence, this Order with respect to privilege and work product doctrine protection applies to any other federal or state proceeding.

VIII. ECF Notifications. The Clerk of Court may execute the steps necessary to include BrownGreer as the MDL Centrality Administrator as an interested party for purposes of receiving emailed ECF notifications related to this matter.

IX. MDL Centrality Administrator Contact Information. Questions regarding MDL Centrality online system setup, use, or technical issues should be directed to BrownGreer at smithnephew@browngreer.com.

IT IS SO ORDERED, this 1st day of August 2018.



HON. CATHERINE C. BLAKE
UNITED STATES DISTRICT JUDGE