

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

<b>IN RE: SMITH &amp; NEPHEW BIRMINGHAM HIP RESURFACING (BHR) HIP IMPLANT PRODUCTS LIABILITY LITIGATION</b>	<b>MDL: 1:17-MD-2775-CCB  THIS DOCUMENT RELATES TO: ALL ACTIONS</b>
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**[PROPOSED] CASE MANAGEMENT ORDER NO. 1  
APPOINTING LEAD COUNSEL, LIASON COUNSEL,  
AND PLAINTIFFS' STEERING COMMITTEE, AND  
DESIGNATING RESPONSIBILITIES OF COUNSEL**

This Order is intended to create a leadership structure for plaintiffs' counsel in order to organize, simplify and streamline the handling of these matters on behalf of all plaintiffs, consistent with the fair administration of justice. To that end, the Court hereby orders the following organization structure for Plaintiffs:

**A. Plaintiffs' Lead Counsel**

Jasper D. Ward IV  
Jones Ward PLC  
1205 E. Washington St., Suite 111  
Louisville, Kentucky 40206

Genevieve Zimmerman  
Meshbesher & Spence  
1616 Park Ave. South  
Minneapolis, Minnesota 55404

The duties of Plaintiffs' Lead Counsel are as follows:

- i. Manage and direct all aspects of the litigation on behalf of Plaintiffs;
- ii. Determine, in consultation with other members of Plaintiffs' Steering Committee and other co-counsel, and present in the most efficient and reasonable fashion to the Court and opposing parties the position of Plaintiffs on all matters arising during pretrial proceedings;
- iii. Delegate specific tasks to other counsel in an effective and efficient manner that ensures the pretrial preparation for Plaintiffs is conducted efficiently, effectively and economically;

- iv. Maintain adequate files of all pretrial matters, including establishing and maintaining a document or exhibit depository, in either real or virtual format, and ensuring those documents are available under reasonable terms and conditions for examination by all MDL plaintiffs and/or their attorneys;
- v. Initiate and coordinate all pretrial discovery on behalf of Plaintiffs in actions consolidated in this multi-district litigation, including developing and proposing to the Court, schedules for the commencement, execution, and completion of all discovery on behalf of Plaintiffs;
- vi. Conduct settlement negotiations on behalf of Plaintiffs, but without entering into binding agreements except to the extent expressly authorized;
- vii. Enter into stipulations with opposing counsel necessary for the advancement and conduct of this litigation, which will be submitted to the Court for approval;
- viii. Hold meetings of counsel for Plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the Court, as well as providing periodic status reports;
- ix. Act as spokespeople for all Plaintiffs at pretrial proceedings and in response to any inquiries by the Court, subject to the right of any of Plaintiffs' counsel to present non-repetitive individual or differing positions;
- x. Maintain time and disbursement records covering services of designated counsel and establishing guidelines for approval by the Court, as to the keeping of time records and expenses;
- xi. Coordinate responsibilities of Plaintiffs' Steering Committee and Plaintiffs' Executive Committee, schedule Steering Committee and Executive Committee meetings, appear at status conferences and perform other necessary administrative or logistic functions as required, and carry out duties as ordered by the Court;
- xii. Submit and argue all verbal or written motions presented to the Court on behalf of Plaintiffs' Leadership Counsel as well as oppose any motions submitted by defendants or other parties, or delegate argument to other Plaintiffs' attorneys;
- xiii. Perform any such other duties as may be incidental to proper and efficient coordination of Plaintiffs' pretrial proceedings or authorized by further Order of the Court; and,
- xiv. Submit, if appropriate, additional committees and counsel for designation by the Court.

**B. Plaintiffs' Liaison Counsel**

Robert K. Jenner  
Janet, Jenner & Suggs, LLC  
1777 Reisterstown Road  
Suite 165  
Baltimore, Maryland 21208

The duties of Liaison Counsel are as follows:

- i. Maintain and distribute to co-counsel and to Defendants' Liaison Counsel an up-to-date service list;
- ii. Receive and distribute to co-counsel Orders from the Court and documents from opposing parties and counsel;
- iii. Coordinate the establishment of a document depository, and make available to co-counsel and other Plaintiffs' counsel a complete electronic file of all documents served by or upon parties;
- iv. Organize and submit necessary documents to the Court and the Clerk of the Court;
- v. Assist lead counsel in coordinating the efforts of all counsel in all pending cases, whether part of this MDL proceeding or not; and,
- vi. Carry out such other duties as the Court may order.

**C. Plaintiffs' Executive Committee**

Derek K. Burch  
Burch, George & Germany  
204 N. Robinson Ave., #1500  
Oklahoma City, Oklahoma 73102

D. Todd Mathews  
Gori Julian & Associates  
156 N. Main Street  
Edwardsville, Illinois 62025

The Plaintiffs' Executive Committee ("PEC") shall consist of the two Lead Counsel and the Liaison Counsel, as well as Mr. Burch and Mr. Mathews. The PEC will manage this litigation, including assisting in organizing subcommittees, delegating tasks to subcommittees, scheduling meetings for Plaintiffs' counsel, keeping minutes or transcripts of said meetings and any other logistic or administrative functions necessary.

**D. Plaintiffs' Liaison Counsel to State Courts:**

Gregory Hopper  
Bekman, Marder & Adkins  
300 W. Pratt Street, #450  
Baltimore, Maryland 21201

Plaintiffs believe it will be useful to appoint an attorney to serve as liaison counsel for similar BHR cases pending in state court. The duties of Plaintiffs' Liaison Counsel to State Courts include:

- i. Monitor and report to the Court when necessary the status of various state court proceedings;
- ii. Facilitate cooperation among attorneys representing plaintiffs in similar cases in state court and this multi-district litigation;
- iii. Organize and submit any necessary documents to both the Court and the Clerk of the Court; and,
- iv. Carry out such other duties as the Court may order.

**E. Plaintiffs' Steering Committee**

The members of Plaintiffs' Steering Committee shall consult with and be led by Plaintiffs' Lead Counsel in conducting all Plaintiffs' pretrial activities and in planning and conducting discovery and trial of these cases, and the potential resolution of these cases. Steering Committee members shall, at the direction of the PEC, work on research, briefing, discovery, expert retention and consultation, trial preparation, and any other work critical to the litigation. Subcommittees may also be formed from the members of Plaintiffs' Steering Committee and other attorneys involved in this litigation as determined by the Lead Counsel and PEC. It is envisioned that there will be at least three and as many as five subcommittees in areas such as discovery, law and briefing, science, and pre-trial depositions. The PEC will ensure that work performed by the 13 members of the PSC in each subcommittee is not duplicative.

The Plaintiffs' Steering Committee Members are:

Marie Napoli  
Napoli Shkolnik  
360 Lexington Ave., 11<sup>th</sup> Floor  
New York, New York 10017

Jeffrey Bowersox  
Bowersox Law Firm  
6960 SW Varns St., #200  
Portland, Oregon 97223

Diandra Debrossee Zimmermann  
Zarzaur Mujumdar & Debrossee  
2332 2<sup>nd</sup> Ave. N.  
Birmingham, Alabama 35203

Charles Weddle  
White & Weddle  
630 NE 63<sup>rd</sup> Street  
Oklahoma City, Oklahoma 73105

Jim Reeves  
Reeves & Mestayer  
160 Main Street  
Biloxi, Mississippi 39530

Whitney Butcher  
Whitley Law Firm  
2424 Glenwood Ave., #201  
Raleigh, North Carolina 27608

Ahmed Diab  
Gomez Trial Attorneys  
655 W. Broadway, #1700  
San Diego, California 92101

Gabriel Assaad  
Kennedy Hodges  
4409 Montrose Blvd., #200  
Houston, Texas 77006

Jean Sutton Martin  
Law Office of Jean Sutton Martin  
2018 Eastwood Road, Suite 225  
Wilmington, North Carolina 28403

David Selby  
Bailey Glasser  
209 Capitol Street  
Charleston, West Virginia 25301


Rip Andrews  
Marsh, Richard & Bryan  
800 Shades Creek Pkwy, #600-D  
Birmingham, Alabama 35209

Gregory Hopper  
Bekman, Marder & Adkins  
300 W. Pratt Street, #450  
Baltimore, Maryland 21201

**F. Privileged Communications**

Because cooperation among counsel and the parties is essential for the orderly and expeditious resolution of the litigation, the communication, transmission, or dissemination of information among plaintiffs' counsel shall be subject to the joint attorney-client privilege and the protections afforded by the attorney work-product doctrine; provided, however, that the conditions necessary to create such a privilege or protection have been satisfied and the privilege or protection has not been waived.

SO ORDERED, this 28<sup>th</sup> day of June 2017.

  
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Catherine C. Blake  
Chief Judge, United States District Court