

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

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IN RE: DEPUY ORTHOPAEDICS,)	MDL Docket No. 1:10-md-2197-DAK
INC. ASR HIP IMPLANT)	
PRODUCTS LIABILITY)	
LITIGATION)	HONORABLE DAVID A. KATZ
)	
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)	<u>AMENDED CASE MANAGEMENT</u>
This Document Relates to:)	<u>ORDER NO. 24</u> ¹
ALL CASES)	
_____)	

AMENDED STIPULATED ORDER REGARDING NON-REVISION CASES

This Order hereby amends this Court’s previous Order Regarding Non-Revision Cases (CMO 24) issued October 30, 2014.

Plaintiffs who either now or in the future have lawsuits pending in this MDL, and who have not undergone a revision surgery (“Non-Revised Plaintiffs”), are subject to very limited discovery obligations, *e.g.*, the minimal obligations of the Preliminary Disclosure Form pursuant to Amended CMO 4, the ASR Supplemental Plaintiff Disclosure Form as required by CMO 15, and the registration obligations under the 11/22/2013 Order Regarding Registration of ASR Related Cases and Claims. Non-Revised Plaintiffs may serve a Plaintiff Fact Sheet pursuant to Amended CMO 9.

The Settlement Oversight Committee (“SOC”) has argued that the claims of Non-Revised Plaintiffs should be preserved while their medical course continues. DePuy² maintains that Non-

¹ For Counsel’s benefit, a redlined version of this order is attached to clarify the changes made to CMO 24 (Doc. No. 836.)

² As used herein, “DePuy” refers collectively to DePuy Orthopaedics, Inc. as well as any of its former or present parent companies, subsidiaries, affiliated companies, directors, officers, design surgeons, employees, distributors, detail representatives named in an action pending in MDL No. 2197.

Revised Plaintiffs do not have a cognizable claim. Under the unique circumstances of this litigation and in an effort to address this situation without prejudice to the positions of either side, DePuy is willing to, and hereby stipulates to the following:

- A. Toll the statute of limitations in such claims in return for the dismissal of such claims without prejudice, and;
- B. No further filing of such claims in any court during the period of tolling, subject to paragraph 4, below.

The time has come to turn to these cases. Therefore, the Court orders as follows:

1. **Election Obligation** - Non-Revised Plaintiffs with a pending ASR case in this MDL shall each, together with any of their derivative plaintiffs, file an election to either (i) dismiss the case without prejudice subject to the tolling provisions set forth below, or (ii) continue with the case.

2. Non-Revised Plaintiffs with existing MDL lawsuits shall satisfy the election required in Paragraph 1 by completing the election form attached as Exhibit A and serving it on Defendants' Liaison Counsel, Kristen L. Mayer at DServiceUnrevised@tuckerellis.com and Plaintiffs' Liaison Counsel, Michelle L. Kranz at PServiceUnrevised@toledolaw.com by September 30, 2015. Failure to file an election as required by this Order may result in sanctions to counsel and/or client.

3. Non-Revised Plaintiffs who file Complaints in this MDL after the entry of this Order shall submit their election form and serve it on Defendants' Liaison Counsel, Kristen L. Mayer at DServiceUnrevised@tuckerellis.com and Plaintiffs' Liaison Counsel, Michelle L. Kranz at PServiceUnrevised@toledolaw.com within 30 days after the filing of the Complaint. Failure to file an election as required by this Order may result in sanctions to counsel and/or client.

4. **Election - Dismissal without Prejudice with Tolling** - For those Non-Revised Plaintiffs who elect to dismiss their cases without prejudice, the tolling provisions which have been agreed upon by DePuy shall toll the applicable statute of limitations and statute of repose as to all defendants identified by name in the caption of Plaintiff's complaint until such time as a revision surgery occurs and shall extend the tolling for one year from the date of the revision surgery. Following the revision surgery, Plaintiffs may move to re-open the case in this Court within the tolling period and file an amended complaint; the amended complaint will be deemed a continuation of the previously filed suit for purposes of remand. Prior to the revision surgery, Plaintiffs who accept tolling and are subject to the tolling agreement will not file a separate lawsuit in any other court alleging claims for the same ASR product(s) at issue in the case being dismissed without prejudice, including but not limited to any claims against DePuy or any other person or entity. .

5. For those Plaintiffs who undergo a revision surgery and move to re-open the case, all other obligations related to the Plaintiff Fact Sheet (PFS) and Defendant Fact Sheet (DFS) under Amended CMO 9 and Amended CMO 10 remain unchanged.

6. For those Non-Revised Plaintiffs who elected to dismiss their cases without prejudice and who are subsequently told that a revision surgery is medically necessary but are unable to undergo a revision surgery for reasons related to an underlying medical condition, then that Non-Revised Plaintiff shall notify Defendants' and Plaintiffs' Liaison counsel within six (6) months of being told that the revision surgery is necessary. If such a Plaintiff wants to reinstate his/her lawsuit and prepare for trial, that Plaintiff must also complete a Plaintiff Fact Sheet within (90) days of informing Liaison counsel of the change in medical status (i.e the need for a revision surgery). The service requirements of the Plaintiff Fact Sheet shall be consistent with Amended CMO 9. The damage interrogatories as set out in Exhibit B shall be served in

accordance with Amended CMO 9. Upon a showing of good cause, a Non-Revised Plaintiff who is told that a revision surgery is medically necessary but is unable to undergo a revision surgery for reasons related to an underlying medical condition may re-file the lawsuit in this Court within the tolling period and the newly filed complaint will be deemed a continuation of the previously filed suit.

7. The tolling of the applicable statute of limitations and statute of repose, if applicable, by DePuy shall not for any purpose be deemed to limit or adversely affect any defense, other than a statute-of-limitations and/or a statute of repose defense, that DePuy has, may have, or would have had in the absence of this tolling. Upon completion of the tolling period, DePuy will have all defenses available to it as it had on the day the Non-Revised Plaintiffs case was originally filed, including any statute of limitations or statute of repose defenses existing as of that date. If, following the expiration of the tolling period, the statute of limitations and/or statute of repose runs before a new lawsuit or amended complaint is commenced, DePuy reserves its right to raise a statute of limitations and/or statute of repose defense.

8. Liaison Counsel shall jointly prepare and submit to the Court an Order of Dismissal encompassing the cases of those Non-Revised Plaintiffs who have elected to dismiss their case without prejudice subject to tolling.

9. **Non-Revised Plaintiffs Who Do Not Elect Tolling** - In the event a Non-Revised Plaintiff elects not to dismiss his or her claim with tolling, but to continue with their case, initial discovery must be completed pursuant to this Order. The initial discovery to be completed by each such a plaintiff shall be a Plaintiff Fact Sheet accompanied by all required document production, including medical authorizations, pursuant to Amended CMO 9, and the damage interrogatories which are attached hereto as Exhibit B. This initial discovery shall be completed

by each Non-Revised Plaintiff continuing with their case within ninety (90) days of the election deadline. The service requirements of the Plaintiff Fact Sheet shall be consistent with Amended CMO 9. The damage interrogatories as set out in Exhibit B shall be served in accordance with Amended CMO 9.

10. **Registration Obligations Remain in Effect for all Plaintiffs** - The requirements to update Registration status as set forth in the Court's Order of November 22, 2013 (Doc #637), and amended on October 17, 2014 (Doc #827) remain in full force and effect and shall continue to apply to all plaintiffs even where the Complaint is dismissed without prejudice. A Plaintiff who undergoes a revision surgery is required to update their Registration status to give notice that a revision surgery has occurred.

11. This Court shall maintain jurisdiction to enforce the tolling provisions with respect to those Non-Revised Plaintiffs who elect to dismiss their cases subject to the tolling provisions.

AGREED TO BY COUNSEL:

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Dated: September 10, 2015

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Dated: September 10, 2015

IT IS SO ORDERED.

Dated: September 10, 2015

s/ David A. Katz
DAVID A. KATZ
U.S. DISTRICT JUDGE