

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

NOV 20 2020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

JAMES W. McCORMACK, CLERK
By: J. Onna
DEP CLERK

IN RE: PROFEMUR HIP IMPLANT)
PRODUCTS LIABILITY LITIGATION)

MDL No. 2949
ALL CASES

ORDER

The Judicial Panel on Multidistrict Litigation has transferred to this Court for centralized pretrial proceedings actions that concern alleged defects in the Wright Medical and MicroPort Profemur line of modular hip implants, which were offered in titanium and cobalt chromium alloys (the “MDL”). In a letter to counsel dated October 29, 2020, the Court scheduled an initial organizational meeting by telephone conference on Monday, November 30, 2020, and established a deadline of November 20, 2020, for the parties to submit preconference information to the Court (Dkt. No. 16). Before the Court is correspondence from counsel for Wright Medical Technology, Inc., Wright Medical Group, Inc., and Wright Medical Group, N.V. on their behalf and on behalf of MicroPort Orthopedics Inc. requesting a short continuance of the initial organizational meeting and the deadline for preconference submissions. *See* Court’s Exhibit 1. Counsel represents that they have met and conferred with counsel for plaintiffs N. Kirkland Pope and George E. McLaughlin who do not object to this request. Plaintiffs’ counsel N. Kirkland Pope, George E. McLaughlin, and Paul J. James have responded to defense counsel’s correspondence and state that plaintiffs do not oppose defendants’ request to postpone submissions and discussions of several of the organizational topics the Court addressed in its October 29, 2020, letter order, but plaintiffs request that the Court hold a conference as scheduled on November 30, 2020, to address plaintiffs leadership structure and some administrative matters. *See* Court’s Exhibit 2.

For good cause shown, the Court will hold a telephone conference on November 30, 2020, at 10:30 a.m. in Courtroom 4D for the limited purpose of addressing plaintiffs' leadership including liaison and co-lead counsel. The Court grants defense counsels' motion to continue the initial organizational meeting and postpone preconference submissions. The initial organizational meeting by telephone conference is rescheduled for Monday, December 21, 2020, beginning at 10:30 a.m. in Courtroom 4D. The parties are instructed to submit their position statements as well as other information requested in the Court's October 29, 2020, letter by December 14, 2020.

So ordered this 20th day of November, 2020.

A handwritten signature in black ink, reading "Kristine G. Baker", written over a horizontal line.

Kristine G. Baker
United States District Court Judge

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AND SRI LANKA

November 18, 2020

VIA EMAIL

The Honorable Kristine G. Baker
United States District Court
Eastern District of Arkansas
Richard Sheppard Arnold United States Courthouse
500 West Capitol Avenue, Suite D-469
Little Rock, Arkansas 72201-3325

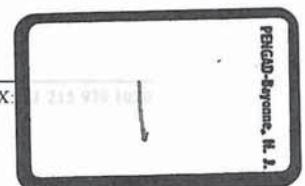
**Re: PROFEMUR HIP IMPLANT PRODUCTS LIABILITY LITIGATION
MDL NO. 2949 (ALL CASES)**

Dear Judge Baker:

This firm represents Defendants Wright Medical Technology, Inc., Wright Medical Group, Inc., and Wright Medical Group, N.V. (the "Wright Medical Defendants"). On behalf of the Wright Medical Defendants, together with MicroPort Orthopedics Inc. (collectively, "Defendants"), I write to respectfully request a short continuance of the upcoming November 30, 2020 initial organizational meeting and deadline for submission of the related position papers in the above-referenced MDL. As counsel for Defendants, we have met and conferred with counsel for Plaintiffs N. Kirkland Pope and George E. McLaughlin ("Designated Plaintiffs' Counsel"), who do not object to this request.

As background, Your Honor may be aware that last week, Wright Medical Group, N.V. – the corporate parent of Wright Medical Technology, Inc. and Wright Medical Group, Inc. – was acquired by an unrelated medical device company, Stryker Corporation.¹ As a result, there are new client contacts that need to be updated and involved in certain decision-making processes in this MDL, including the strategy issues requested to be documented by November 20, 2020 and

¹ See, e.g., <https://www.globenewswire.com/news-release/2020/11/11/2124675/0/en/Stryker-completes-acquisition-of-Wright-Medical.html> (dated Nov. 11, 2020).



Duane Morris

November 18, 2020

Page 2

discussed at the November 30, 2020 initial organizational meeting with the Court. In order to ensure that proper communications can take place to address strategic decisions and proposals with the necessary individuals, Defendants respectfully request a continuance of the conference from November 30, 2020 until the week of December 21, 2020. If acceptable to the Court, the Parties agree to submit their position statements as well as the other information requested in the Court's October 29, 2020 letter at least seven days prior to the new hearing date. Counsel for Defendants and Designated Plaintiffs' Counsel have met and conferred several times on the issues for discussion and will continue to do so in the interim to facilitate progress.

While Designated Plaintiff's Counsel consents to this partial continuance request, they have indicated an intent to separately request that the conference on November 30, 2020 continue for the limited purpose of addressing Your Honor's request for submissions on the proposed structure for the organization of plaintiffs' counsel. I understand Designated Plaintiffs' Counsel will follow up with the Court directly relating to that request.

Counsel for the Parties are available at the Court's convenience to discuss this request if helpful.

Respectfully,

/s/ Dana J. Ash

Dana J. Ash, Esq.

cc: N. Kirkland Pope, Esq.
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Erin M. Bosman, Esq.

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UNITED STATES DISTRICT COURT
Eastern District of Arkansas
Little Rock Division

November 20, 2020

Re: **PROFEMUR HIP IMPLANT PRODUCTS LIABILITY LITIGATION**
MDL 2949-PLAINTIFFS LEADERSHIP STRUCTURE SUBMISSION

Dear Judge Baker:

In an effort to accommodate the Wright Medical Defendants, Plaintiffs do not oppose Defendant's request to postpone submissions and discussions of several of the organizational topics the Court addressed in its October 29, 2020 Letter Order. However, Plaintiffs do request that the Court hold a conference as scheduled for November 30th to address plaintiffs' leadership structure and some administrative matters. Consistent with that request and in accordance with the Court's October 29th Letter Order, we offer the following proposal as a structure for the organization of plaintiffs' counsel:

MDL LIAISON COUNSEL: We submit that liaison counsel is critical and propose that Paul James, Little Rock, Arkansas lawyer with the firm James & Carter, serve this litigation in that capacity. As the Court has already recognized, the communications from the Court to the various plaintiffs' counsel is most



efficient through a designated person. Great efficiencies are gained by having a single individual tasked with receiving and distributing notices, orders, motions, and briefs. Additionally, it would be helpful to have a plaintiffs' representative that is located in close proximity to the Court that may convene meetings of counsel, inform plaintiffs' counsel on the developments of the litigation, assist in the filing of papers, advising counsel on the local rules of the Court, and act as a depository for documents and make same available to all plaintiffs' representatives. Paul James is currently providing these services by agreement of plaintiffs' counsel and we submit that he should be formally appointed.

PLAINTIFFS' CO-LEAD COUNSEL: Co-lead counsel is essential to the efficient and orderly conduct of these centralized pre-trial proceedings. There are nearly 70 cases currently pending in this MDL with others that will surely be added. A single unified presentation of plaintiffs' positions on substantive and procedural matters that reflect shared decisions of plaintiffs' counsel is the only efficient means of advancing the pre-trial proceedings. Moreover, decisions will need to be made as to the litigation plan, discovery, meeting with defense counsel, ability to enter into agreements with defense, the selection and creation of a document repository for discovery materials, the coordination of personnel to conduct discovery, and the decision and means by which previous discovered material of the various cases is consolidated.

Given the experience in the Profemur litigation and the experience in various MDLs and other state court coordinations, we submit that George McLaughlin and Kirk Pope have the requisite history with Profemur litigation and litigation leadership generally to serve as co-lead counsel. George and Kirk are currently serving as co-lead counsel in the Tennessee State Court Coordinations and have been litigating Profemur related claims for over 7 years. Both George and Kirk have already conducted multiple meetings with defense counsel in the planning of this MDL and with plaintiffs' counsel to discuss the relative positions of plaintiffs and defense.

PLAINTIFFS' STEERING COMMITTEE: We propose that a leadership committee be comprised that would consist of 5 to 6 lawyers separate from co-lead and liaison counsel. The volume of discovered material that has already been compiled in several of these cases will need to be structured and placed on a repository giving access to all plaintiffs' counsel. Additional discovery, to include electronic discovery, will need to be conducted, received, reviewed, and organized. Depositions transcripts taken in the individual cases prior to centralization will need to be reviewed, organized, and put on a digital platform for access by

plaintiffs' counsel. Additional depositions will need to be taken, as well as the drafting of briefs, schedules, research, etc. will need to be accomplished. Also, experts will need to be retained and provided with the necessary material to formulate opinions. There is plenty of work that will require talented lawyers to complete.

An invitation for consideration for leadership was made to all plaintiffs' lawyers that participated in phone conferences conducted by us over the last several weeks. We have had discussions with several lawyers that want to participate in a leadership role in this litigation, but believe that a decision by the Court as to lead counsel and liaison counsel would be best before we submit individual names for a leadership committee. Should the Court appoint co-lead, we propose to provide the Court with a slate of lawyers for Plaintiffs' Steering Committee for approval.

STATE LIASON COUNSEL: As this Court is aware, there are separate Tennessee State Court Coordinations concerning the Profemur line of products pending before Judge Robert Weiss in Shelby County. We propose that Murray Wells, a Memphis lawyer, be appointed as State Liaison. Murray has been intimately involved in the Tennessee Profemur cases for years and has a full understanding of the procedural status of that litigation. It is our position that there may be great efficiencies in coordinating the discovery of both the MDL with that of the Tennessee State Coordination. State Liaison will serve to keep this Court and the Shelby County Circuit Court apprised of the various orders, schedules, and notices of each.

PROPOSED FEE: We propose that a common benefit fee and common benefit expense be imposed on the gross settlement or judgment of each case that subject to this Court's common benefit order. The common benefit fee and common benefit expense collected from those cases that result in payment to plaintiffs would create two separate funds whereby those that provide work and financing in the conduct of this MDL will receive some compensation for their contribution and the expense fund would reimburse lawyers for the monies expended for the common benefit. We would submit a proposal for the percentage amount of the common benefit fee and common benefit expense to the Court when directed.

COMMON BENEFIT COMPENSATION STRUCTURE: Our proposal would be that compensation to each lawyer that contributes to the common benefit of plaintiffs' development of discovery and other matters in these pre-trial coordinated proceedings be determined by a modified Loadstar structure. The

Loadstar considerations would provide a basis to assign a percentage of the overall common benefit fee fund to be applied to each contributing lawyer. The lawyer would be entitled to receive his/her percentage of the common benefit fee pool. This would require the keeping of the lawyer's time and documentation as to the task being performed.

We look forward to the initial conference and should you need something further as to our proposal for plaintiffs' leadership structure prior to the conference, please let us know.

Respectfully,

N. Kirkland Pope

George E. McLaughlin

Paul J. James