

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re: STRYKER REJUVENATE AND  
ABGII HIP IMPLANT PRODUCTS  
LIABILITY LITIGATION

MDL No. 13-2441 (DWF/FLN)

This Document Relates to All Actions

**ORDER REGARDING  
LEADERSHIP STRUCTURE  
FOR PLAINTIFFS' COUNSEL**

As noted in Pretrial Order No. 3, the Court previously received two competing applications to be lead counsel in this MDL. (Doc. No. 48 at 2.) At the Status Conference held on September 9, 2013, counsel reported that they had met and conferred and had reached an agreement in principle regarding a leadership structure for Plaintiffs' counsel. Counsel anticipated that within a week they could complete their negotiations and submit to the Court an agreed upon Order regarding a leadership structure for Plaintiffs' counsel. On September 16, 2013, interim Lead Counsel for Plaintiffs submitted to the Court a proposed order regarding the leadership structure of Plaintiffs' counsel. (Doc. No. 62.) On September 25, 2013, the proposed order was modified because a key figure in the leadership structure withdrew from consideration and moved to dismiss the cases he has pending in this MDL. (Doc. No. 64.) In the wake of that withdrawal, a disagreement remains regarding a key component of the leadership structure. (*See, e.g.*, Doc. No. 66.)

On September 30, 2013 the Court entered a "Text Only Order" in the docket inviting responses to the Proposed Order regarding Plaintiff's Leadership Structure.

(Doc. No. 67.) The Court received a significant amount of e-mail correspondence prior to the issuance of the Text Only Order (much of which has since been filed on the docket), and additional submissions have been filed by Wendy Fleishman, Laura Yaeger, Don McKenna, and Daniel Gustafson, who has withdrawn his name from consideration for lead counsel. (Doc. Nos. 79, 80, 81 & 84.) Additionally, Adam Levitt and Gale Pearson have filed applications to serve as Chairs of Plaintiffs' Steering Committee. (Doc. Nos. 70 & 82.)

The Court appreciates counsels' effort at compromise and is grateful that counsel have sought to reach agreement regarding their leadership structure. Agreement among counsel is to be encouraged, and if counsel can agree, their agreement is entitled to great weight. Ultimately, however, it is the Court that must adopt an order that is in the best interest of all the parties and the Court, to "avoid unnecessary cost or delay," and to achieve a "just, speedy and inexpensive determination" of every case transferred or directly filed here in this MDL proceeding. *See generally* Fed. R. Civ. P. 1, 42. The coordination of lawyers involved in these cases, including federal and state counsel, is crucial to the effective resolution of the issues to be litigated in this MDL.

As such, the Court concludes that it needs Plaintiffs' leadership structure to include a single lead counsel supported by such subordinate committees as the Court may appoint.

## **ORDER**

Based upon the foregoing, and all of the files, records and proceedings herein, it is **HEREBY ORDERED** that, absent a stipulation of counsel or an agreed upon revised

proposal, each of the following attorneys, all of whom have been proposed by one or more parties as co-lead counsel, file with the Court on or before **October 15, 2013**, a memorandum, not to exceed 5 pages, explaining why he or she should be appointed lead counsel:

Annesley H. DeGaris

Wendy R. Fleishman

Peter J. Flowers

Adam J. Levitt

Genevieve M. Zimmerman

Shawn M. Raiter

Ben W. Gordon, Jr.

Yvonne Flaherty

In selecting a single Lead Counsel, among other criteria, the Court will consider:

- The number of plaintiffs counsel represents in this MDL proceeding;
- Counsel's experience in other complex MDL proceedings;
- Counsel's experience in other hip implant product liability litigation;
- Counsel's experience in cooperating with other lawyers in complex cases;
- Counsel's capacity to fairly and adequately represent the interest of all of the plaintiffs in this MDL proceeding.

Upon receipt of the memoranda, the Court will issue an order appointing Lead Counsel, including supporting committees.

Dated: October 9, 2013

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge