

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**IN RE: STRYKER LFIT V40 FEMORAL  
HEAD PRODUCTS LIABILITY LITIGATION**

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**MDL No. 17-md-2768-IT**

**This Document Relates To:**

**All Cases**

**CASE MANAGEMENT ORDER NO. 7  
(Obligations for All Attorneys Representing Individual Plaintiffs in this MDL)  
August 3, 2020**

**TALWANI, D.J.**

This Order supplements the court’s prior procedural orders in MDL Docket No. 2768 (“MDL No. 2768”) as set forth herein. This Order applies to all cases previously or hereafter transferred to this MDL, or those which are or have been directly filed in this District for consolidation with this MDL. Plaintiffs’ Administrative Counsel shall promptly notify all counsel of record for Plaintiffs of this Order.

Counsel for each Plaintiff in this MDL is obligated to file a Notice of MDL Appearance in each civil action in which they represent a party and in the master MDL file, and to register electronically for an account on the District of Massachusetts’ CM/ECF system. MDL Order No. 3 [#5]. Those obligations remain in place. Plaintiffs’ counsel are reminded of their obligation to comply with all general court orders filed in the master MDL file and all orders filed in the civil action in which they are counsel of record. Plaintiffs’ counsel are also reminded of their obligation to take notice of, and respond as appropriate to, all motions and other filings in the civil action in which they are counsel of record. In order to meet these responsibilities, and basic attorney-client obligations, all attorneys who have appeared on behalf of a Plaintiff in this MDL

are also obligated to maintain up-to-date contact information for clients who are Plaintiffs in this MDL.

Recent motion practice has revealed the failure by some counsel to remain informed as to discovery orders and pending motions, to maintain client addresses and other contact information, and to ensure their clients' timely obligations to comply with discovery obligations. The court reiterates and underscores these obligations here. Violations of these discovery obligations are subject to all sanctions available under Federal Rules of Civil Procedure 37(b) (failure to comply with discovery orders) and 37(d) (party's failure to serve answers to interrogatories or respond to request for production). These include dismissal of the action and payment by the party and/or the attorney advising the party of Defendant's reasonable expenses, including attorney's fees, caused by the violation.

On August 8, 2017, the court issued Case Management Order No. 1 ("CMO #1") [#216]. Pursuant to ¶ 5.c.i of CMO #1, each Plaintiff is required to complete and serve the Case Questionnaire ("CQ"), a copy of which is attached as Exhibit A to CMO #1 [#216]. The CQ was originally due for each Plaintiff within the later of thirty days of entry of CMO #1, the direct filing of a case in the MDL, or the transfer of a complaint to the MDL. CMO #1 ¶ 5.c.i. On November 13, 2017, the court issued the Fact Sheet Implementation Order [#479]. Pursuant to that order, each Plaintiff is required to complete, verify, and serve the Plaintiff Fact Sheet ("PFS") attached as Exhibit A to the Fact Sheet Implementation Order [#479-1]. Paragraph II.1 of the Fact Sheet Implementation Order [#479] specifically provided that responses "shall be considered interrogatory answers pursuant to Fed. R. Civ. P. 33 and as responses to requests for production pursuant to Fed. R. Civ. P. 34 and will be governed by the standards applicable to written discovery under Fed. R. Civ. P. 26 through 37."

On November 5, 2019, the court issued Case Management Order No. 6 (“CMO #6”)

[#1030] which reiterated the CQ requirements and ordered further that:

For each case that has not otherwise been resolved or dismissed from this docket as of the date of this Order, Plaintiff’s counsel of record *shall execute a Case Questionnaire Certification attached hereto as Exhibit 1*, and shall serve the Case Questionnaire Certification *along with Plaintiff’s completed Case Questionnaire (including required documentation)* via Plaintiffs’ Co-Lead Counsel’s secure document repository (<https://www.hocv40.com>) **within thirty (30) days** of this Order, or within thirty (30) days of the direct filing of a case in, or the transfer of a complaint to, this MDL (whichever is later). Plaintiffs’ Co-Lead Counsel shall then promptly coordinate service on Defendant.

CMO #6 ¶ 2 [#1030] (emphasis in original). The Case Questionnaire Certification requires counsel of record to certify as follows:

After diligent and reasonable inquiry by me, I . . . represent, declare and certify that to the best of my knowledge, information and belief, all of the information provided in this Case Questionnaire is true, correct and complete. I further acknowledge my ongoing duty to supplement this Case Questionnaire in accordance with the court’s prior orders to provide complete, correct, and/or additional information within 30 days of becoming aware of such information.

CMO #6, Exh. 1 [#1030-1].

CMO # 6 similarly reiterated the prior requirements for the PFS, and ordered further that:

For each case that has not otherwise been resolved or dismissed from this docket as of the date of this Order, Plaintiff’s counsel of record *shall execute a PFS Certification attached hereto as Exhibit 2*, and shall serve the PFS Certification along with Plaintiff’s completed PFS (including required documentation, in the form previously approved in the Fact Sheet Implementation Order) **within forty-five (45) days** of this Order, or within forty-five (45) days of the direct filing of a case in, or the transfer of a complaint to, this MDL (whichever is later).

CMO #6 ¶ 3 [#1030]. The PFS Certification requires counsel of record to certify as follows:

After diligent and reasonable inquiry by me, I . . . represent, declare and certify that to the best of my knowledge, information and belief, all of the information provided in this Plaintiff Fact Sheet is true, correct and complete. I further acknowledge my ongoing duty to supplement this Plaintiff Fact Sheet in accordance with the court’s prior orders to provide complete, correct, and/or additional information within 30 days of becoming aware of such information.

CMO #6, Exh. 2 [#1030-2].

CMO #6 also set forth potential consequences for failing to comply with these requirements:

In the event that a Plaintiff does not provide a fully completed Case Questionnaire or PFS, or counsel fails to provide a signed Case Questionnaire Certification or signed PFS Certification by the above noted deadlines, and the deficiency is not cured within fifteen (15) days of notice of the deficiency by Defendant, Plaintiff's action may be dismissed pursuant to Fed. R. Civ. P. 41 for failure to prosecute. The court notes that failure to serve a fully completed Case Questionnaire accompanied by a signed Case Questionnaire Certification or failure to serve a fully completed PFS accompanied by a signed PFS Certification shall be deemed a failure to timely serve for purposes of this provision.

CMO # 6 ¶ 4 [#1030] (emphasis added).

Finally, CMO # 6 reiterated counsel's "ongoing obligations" as follows:

With regard to each complaint pending in this MDL, or filed or transferred to this MDL in the future, and each certification required by this Order, the court reminds Plaintiff's counsel of record of the ongoing "reasonable inquiry" obligations set forth in Fed. R. Civ. P. 11(b) and the duties to disclose or supplement under Fed. R. Civ. P. 26(e)(1). If the court determines that either of these rules has been violated, the court may impose an appropriate sanction under Fed. R. Civ. P. 11 or Fed. R. Civ. P. 37 on any attorney or law firm that violated the rule or is responsible for the violations.

CMO # 6 ¶ 6 [#1030].

Prior to issuance of this Order, the court has sanctioned the most egregious failures to comply with discovery obligations with dismissal of individual cases, but has allowed less egregious failures to be remedied. The court does not anticipate ongoing lenience with missed deadlines or failures to respond to court orders.

All attorneys who have appeared on behalf of a Plaintiff in this MDL shall promptly provide a copy of this Order to each Plaintiff for whom they are the attorney of record.

IT IS SO ORDERED.

Date: August 3, 2020

/s/ Indira Talwani  
United States District Judge