

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

MDL No. 17-md-2768-IT

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This Document Relates To: \*

All Cases \*

MDL Order No. 11

(Revised Leadership Structure for & Appointments of Plaintiffs' Counsel)

June 30, 2017

TALWANI, D.J.

After review of the Plaintiffs' Agreed Nomination for Leadership Structure [#164] and the individual attorney applications for nominated positions, and after further consideration, the court has revised the leadership structure for plaintiffs' counsel, and makes the following appointments. This leadership structure and the appointments made are subject to change by court order.

1. Co-Lead Counsel – The court appoints Peter J. Flowers of Meyers & Flowers, LLC, and Walter Kelley of Kelley Bernheim & Dolinsky, LLC, as Co-Lead Counsel. The responsibilities of Co-Lead Counsel are set forth in paragraph 8 of this order.

2. Administrative Counsel – The court appoints Ashleigh Raso of Meshbesh & Spence, as Administrative Counsel. The revised responsibilities of Administrative Counsel are set forth in paragraph 9 of this order.

3. State Liaison Counsel – The court appoints Ellen Relkin of Weitz & Luxenberg, P.C., as State Liaison Counsel. The revised responsibilities of State Liaison Counsel are set forth in paragraph 10 of this order.

4. Plaintiffs' Executive Committee – Co-Lead Counsel and State Liaison Counsel will serve on the Plaintiffs' Executive Committee. The court also appoints Joseph Osborne of Osborne & Associates Law Firm P.A., C. Calvin Warriner, III, of Searcy Denney Scarola Barnhart & Shipley, PA, and Michael J. Blakely, Jr., of Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C., to serve on the Executive Committee. The responsibilities of the Executive Committee are set forth in paragraph 7 of this order.

5. Plaintiffs' Steering Committee – Administrative Counsel will serve on the Plaintiffs' Steering Committee. The court also appoints the following attorneys to serve on the Plaintiffs' Steering Committee:

- a. Annesley H. DeGaris of DeGaris & Rogers, LLC;
- b. Brian Devine of Seeger Salvas & Devine LLP;
- c. Mark A. DiCello of DiCello, Levitt and Casey, LLC;
- d. Wendy Fleishman of Lieff Cabraser Heimann & Bernstein, LLP;
- e. M. Elizabeth Graham of Grant & Eisenhofer, P.A.;
- f. Jason P. Johnston of Zimmerman Reed LLP;
- g. William A. Kershaw of Kershaw, Cook & Talley, PC;
- h. Brian L. Kinsley of Crumley Roberts, LLP;
- i. Willard J. Moody, Jr., of The Moody Law Firm, Inc.; and
- j. Richard R. Schlueter of Childers, Schlueter & Smith, LLC.

The responsibilities of the Plaintiffs' Steering Committee are set forth in paragraph 11 of this order.

6. Changes in Membership – Appointments are personal in nature. Appointments may be changed by the court, on its own with notice to counsel; on motion of any member of the

Plaintiff's Executive Committee, or Steering Committee; or, if necessary to ensure the fair administration of justice, on motion of counsel who has filed a notice of appearance on the master MDL docket and who represents one or more plaintiffs in the coordinated actions.

7. Responsibilities of the Plaintiffs' Executive Committee – The Plaintiffs'

Executive Committee shall be generally responsible for coordinating the activities of plaintiffs' counsel during pretrial proceedings as well as monitoring and ensuring that work conducted by plaintiffs' counsel is reasonably necessary and avoids unnecessary costs and duplication of effort. The Plaintiffs' Executive Committee shall determine (after consultation with the Plaintiffs' Steering Committee and other plaintiffs' counsel as may be appropriate) the position of the plaintiffs on all matters arising during pretrial proceedings. The Plaintiffs' Executive Committee shall have the following specific responsibilities:

a. **Discovery**

- i. To coordinate all pretrial discovery on behalf of, and for the benefit of, plaintiffs in all actions subject to this order;
- ii. To develop schedules for the commencement, execution, and completion of all discovery on behalf of all plaintiffs; and
- iii. To initiate and conduct, or to delegate to Plaintiffs' Steering Committee members to initiate and conduct, all pretrial discovery on behalf of, and for the benefit of, plaintiffs.

b. **Pre-trial Motions and Hearings**

- i. To coordinate all pretrial motions and hearings on behalf of, and for the benefit of, plaintiffs in all actions subject to this order; and

- ii. To litigate, or to delegate to Plaintiffs' Steering Committee members to litigate, any pretrial motions and hearings that involve matters within the responsibilities of the Plaintiffs' Executive Committee.

**c. Trial**

- i. To coordinate the selection and management of any common issue, "bellwether," and/or "test" case trials; and
- ii. To present, or to delegate to the Plaintiffs' Steering Committee members to present, any common issue, "bellwether," and/or "test" case trials.

**d. Settlement**

- i. To coordinate negotiation and proposed settlement of cases on behalf of plaintiffs or plaintiff groups, including exploring and, where appropriate, pursuing all settlement options concerning any claim or portion of any case filed in this litigation; and
- ii. To coordinate negotiation of stipulations with defendants concerning this litigation, subject where appropriate to the objections of individual counsel and/or the approval of the court.

**e. Meetings**

- i. To call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the court; and
- ii. To initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matters concerning pretrial proceedings.

f. **Miscellaneous**

- i. To perform any task necessary and proper to accomplish the Plaintiffs' Executive Committee responsibilities, including organizing subcommittees or workgroups comprised of plaintiffs' counsel and assigning them tasks consistent with the duties of the Plaintiffs' Executive Committee;
- ii. To designate counsel of record to perform legal services for the common benefit of plaintiffs;
- iii. To prepare adequate and reasonable time and disbursement records where appropriate; and
- iv. To perform such other functions as may be expressly authorized by further orders of this court.

8. Responsibilities of Co-Lead Counsel – Co-Lead Counsel shall have the following additional responsibilities:

- a. To chair meetings of the Plaintiff's Executive Committee and Plaintiffs' Steering Committee, for any appropriate purpose, including coordinating responses to questions of other parties or of the court;
- b. To present, after consultation with the Plaintiffs' Executive Committee, Plaintiffs Steering Committee or other counsel as may be appropriate (in briefs, oral argument, or as otherwise appropriate), personally or by a designee, the position of the plaintiffs on all matters arising during pretrial proceedings;

- c. To delegate specific tasks to other counsel to ensure that pretrial preparation for the plaintiffs is conducted effectively, efficiently, and economically, including the creation of subject matter-specific or other working groups;
  - d. To prepare and distribute to the parties periodic status reports, as appropriate;
  - e. To ensure the preparation by the Plaintiffs' Executive Committee and Plaintiffs' Steering Committee members of adequate and reasonable time and disbursement records where appropriate; and
  - f. To ensure that court orders are followed, schedules are met, discovery is conducted and provided consistent with the requirements of Fed. R. Civ. P. 26, unnecessary expenditures of time and funds are avoided, and any negotiations are reasonably efficient and productive.
9. Responsibilities of Administrative Counsel – Administrative Counsel shall have the following additional responsibilities:
- a. To maintain an up-to-date, comprehensive service list of plaintiffs' counsel in this MDL proceeding and promptly advise the court of any changes;
  - b. To receive and distribute to plaintiffs' counsel, as appropriate, correspondence and pleadings not filed through CM/ECF;
  - c. To maintain and make available to other plaintiffs' counsel, on reasonable notice and at reasonable times, a complete set of all pleadings served but not filed in this MDL proceeding; and
  - d. To maintain adequate files of all discovery and pretrial matters, including establishing and maintaining a document or exhibit depository, in either real or

virtual format, and having those documents available, under reasonable terms and conditions, for examination by all plaintiffs' counsel.

10. Responsibilities of State Liaison Counsel – State Liaison Counsel shall have the following additional responsibilities:

- a. Where practicable, to communicate and coordinate discovery and litigation efforts with counsel in related state-court litigation, in order to avoid duplicative discovery, including minimizing the number of depositions taken of each witness, minimizing the number of lawyers who question witnesses at depositions, and reducing duplicative questioning;
- b. To provide information about related state-court proceedings to the court and counsel;
- c. To assist in providing access to participating state-court counsel to any common-benefit document depository and common-benefit work-product, in accordance with the terms of any common-benefit orders entered by the court;
- d. To assist in coordinating the efforts of counsel in related pending cases, whether part of this MDL proceeding or not;
- e. To participate in any group settlement discussions; and
- f. Otherwise to organize, simplify, and streamline the handling of the related matters on behalf of all plaintiffs in this MDL, consistent with the fair administration of justice.

11. Responsibilities of Plaintiffs' Steering Committee – The Plaintiffs' Steering Committee shall have the following specific responsibilities:

- a. To participate in work to advance the litigation, assigned and performed under the direction of the Plaintiffs' Executive Committee;
- b. To meet and confer with the Plaintiffs' Executive Committee to provide advice regarding any matter, as may be requested from time to time by the Plaintiffs' Executive Committee; and
- c. To prepare adequate and reasonable time and disbursement records where appropriate.

12. 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.

IT IS SO ORDERED.

Date: June 30, 2017

/s/ Indira Talwani  
United States District Judge