



IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA

IN RE: ARTELON® SPACER IMPLANT
LITIGATION

: APRIL TERM, 2011
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DOCKETED
COMPLEX LIT CENTER
JUN 8 2011
J. STEWART

CASE MANAGEMENT ORDER NO. 1:
GOVERNING ALL "ARTELON SPACER" CASES
MASTER DOCKET, LIAISON/LEAD COUNSEL,
SERVICE OF PROCESS AND PLEADINGS

It is the goal of this Court to secure the just, speedy, and inexpensive determination of each case that alleges that the Artelon® CMC Spacer caused a foreign body reaction and/or other injury and damages, and to eliminate duplication of effort, prevent unnecessary paperwork, and promote judicial economy. Hereinafter, these cases are referred to as the "Artelon® Spacer Cases."

In order to achieve these objectives, the following Case Management Order No. 1 regarding the Master Docket, Appointment of Liaison/Lead Counsel, Service of Process and Pleadings is deemed entered this 8TH day of June, 2011, for all Artelon® Spacer cases presently pending or hereafter filed in the Philadelphia Court of Common Pleas. The coordinated procedures set forth in this Order are without prejudice to any party's right to contest further coordination or consolidation of these actions.

I. MASTER DOCKET

A. On April 18, 2011, the Court established an Artelon® Spacer Implant Litigation Docket at April Term, 2011, No. 01932.

B. This docket number was established as a depository for the filing of motions, orders, and other documents common to all Artelon® Spacer Cases. However, no Short Form Complaints, Entries of Appearance, or *Pro Hac Vice* Motions shall be filed under the Master Docket. *Pro Hac Vice* Motions must be filed on a case by cases basis on the individual case dockets.

C. All filings in the Coordinated Action shall have the following caption:

IN RE: ARTELON® SPACER IMPLANT LITIGATION	:	APRIL TERM, 2011
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	:	Civil Action No. 01932
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and state “This Document Relates To All Actions” or, if it relates only to a specific action, state “This Document Relates To: [Identify specific case]”

D. Once a motion, order, or other document is filed under the Master Docket and copies are provided to all other interested counsel involved in the Artelon® Spacer Implant Litigation, the motion, order or other document may be incorporated by reference, either orally before the Court, or within another properly filed motion, order, or other document.

E. All motions filed in the Artelon® Spacer Cases shall be in letter format pursuant to Mass Tort Motion Procedures as set forth at <http://www.courts.phila.gov/common-pleas/trial/civil/clc.asp>

II. APPOINTMENT OF LIAISON AND LEAD COUNSEL

A. The following is appointed Liaison Counsel to Plaintiffs in the Artelon® Spacer Implant Litigation:

David D. Langfitt (DLangfitt@lockslaw.com)
The Locks Law firm
601 Walnut Street
Suite 720 East
Philadelphia, Pennsylvania 19106
(215) 893-0100
Fax: (215) 893-3444

B. The following are appointed Lead Counsel for defendants Artimplant USA, Inc.
and Artimplant AB in the Artelon® Spacer Implant Litigation:

Walter (“Pete”) H. Swayze, III (PSwayze@SMSM.com)
Megan E. Grossman (MGrossman@SMSM.com)
Segal, McCambridge, Singer & Mahoney Ltd.
1818 Market Street
Suite 2600
Philadelphia, Pennsylvania 19103
(215) 972-8015
Fax: (215) 972-8016

C. The following is appointed Lead Counsel for defendant Small Bone Innovations,
Inc. (“SBI”) in the Artelon® Spacer Implant Litigation:

Geoffrey M. Coan (GCoan@hinshawlaw.com)
Hinshaw & Culbertson LLP
28 State Street 24th Floor
Boston, Massachusetts 02109
(617) 213-7045
Fax: (617) 213-7001

D. Plaintiffs’ Liaison Counsel shall receive and, as appropriate, distribute to other
Plaintiffs’ counsel orders from the Court and documents from opposing parties and counsel.

E. No communications among Plaintiffs’ Counsel or among Defendants’ Counsel
shall be taken as a waiver of any privilege or protection to which the parties would otherwise be
entitled. This provision, however, does not in any way expand or create a protection or privilege
that counsel do not otherwise already enjoy.

III. SERVICE OF PROCESS OF COMPLAINTS

A. For the purposes of this Artelon® Spacer Implant Litigation only, a Complaint shall be deemed properly served when a copy of the Complaint is provided to Defendants in the manner prescribed below:

1. As to defendant SBI, a copy of the Complaint shall be sent via certified mail, return receipt requested to Lead Counsel for SBI (with courtesy copy via e-mail);
2. As to defendant Artimplant USA, Inc., a copy of the Complaint shall be sent via e-mail to Lead Counsel for Artimplant USA, Inc.;
3. As to defendant Artimplant AB, a copy of the Complaint shall be sent via e-mail to Lead Counsel for Artimplant AB; and
4. As to any defendant not yet named in the Artelon® Spacer Implant Litigation, service of process shall be executed in the proper manner prescribed under the Pennsylvania Rules of Civil Procedure.

B. Any Plaintiff who wishes to file a claim against a Defendant not yet named in the Artelon® Spacer Implant Litigation must simultaneously serve a copy of this Order and a Complaint on any such Defendant. Failure to do so will relieve a Defendant not named in the pending Complaints for the Artelon® Spacer Cases of the obligation to answer or preliminarily object to the Complaint.

IV. PLEADINGS – PREVIOUSLY FILED CASES

A. There shall be a Master Long Form Complaint and Short Form Complaints permitted in relation to this litigation which shall be served in accordance with Section III of this Case Management Order No. 1.

B. Within thirty (30) days from the entry of this Order, counsel for Plaintiffs shall file a Master Long Form Complaint which will supersede any pending Complaints and/or Amended Complaints. The Master Long Form Complaint must be served on each Defendant, in accordance with the provisions of this Order No. 1.

C. On or before thirty (30) days after valid service of the Master Long Form Complaint on a Defendant, that Defendant shall file either (a) a Master Answer or (b) a Master Preliminary Objections to the Master Long Form Complaint.

D. A Defendant may, but need not raise choice-of-law as a grounds for dismissal or other relief in a Master Set of Preliminary Objections, its election not to do so shall not be deemed a waiver, and a Defendant may raise choice-of-law as a grounds for dismissal or other relief at any point prior to trial.

E. Plaintiffs shall have thirty (30) days to respond to the Master Preliminary Objections. Replies may only be filed with leave of Court and are discouraged.

F. The Court will rule on the Master Preliminary Objections, and a hearing shall be held upon application of a party and the Court's discretion. The Court's ruling on the Master Preliminary Objections will be binding on all current and future Artelon® Spacer Cases.

G. If Master Preliminary Objections are sustained to one or more counts in Plaintiffs' Master Long Form Complaint, Plaintiffs, if so ordered, shall file a conforming Amended Master Long Form Complaint within twenty (20) days of the Order sustaining the Master Preliminary Objections.

H. Any subsequently added Defendant(s) shall have the right to file Master Set of Preliminary Objections within thirty (30) days of service of a Complaint. Plaintiffs shall then

have thirty (30) days after service to respond to the subsequently added Defendant's Master Set of Preliminary Objections.

I. In the event an Amended Master Long Form Complaint is filed after a ruling on the Master Set of Preliminary Objections, Defendants shall have thirty (30) days from filing of the Amended Master Long Form Complaint to file new Preliminary Objections, not previously asserted, to any new claims in the Amended Master Long Form Complaint.

J. If no new Preliminary Objections are filed by Defendants, Defendants shall file a Master Answer within thirty (30) days of the filing date of Plaintiffs' Amended Master Long Form Complaint.

K. If New Matter is pleaded in the Master Answer, such New Matter will be deemed denied, and Defendants' exceptions to the denials are preserved and Plaintiffs are not required to file any further responsive pleadings to Defendants' New Matter asserted in the Master Answer.

L. The Master Long Form Complaint for the Artelon® Spacer cases will substitute and supersede all Complaints and Amended Complaints filed in individual Artelon® Spacer cases pending in the Philadelphia County Court of Common Pleas. If any Complaint filed before the Master Answer asserts claims not asserted in the Master Long Form Complaint, those claims are deemed withdrawn without prejudice. In all respects, the Master Long Form Complaint controls over allegations contained in any previously filed Complaint. The filing of the Master Long Form Complaint does not toll any applicable statute of limitations in individual cases.

M. Defendants shall have no obligation to answer a complaint filed before the Master Long Form Complaint.

V. **PLEADINGS – NEWLY FILED CASES**

A. All Artelon® Spacer Cases filed after the date of this Order will be instituted by the filing of a Short Form Complaint.

B. The form of the Short Form Complaint is to be agreed upon by all counsel, using each action's original court term and number. The template form for each Short Form Complaint and the procedure for filing same, shall be agreed upon by all counsel and will be addressed in a subsequent Case Management Order by this Court.

C. All allegations in each Short Form Complaint will be deemed denied, and Defendants are not required to file answers to Short Form Complaints, unless any Plaintiff alleges a cause of action not included in the Master Long Form Complaint, in which case Defendants shall file Preliminary Objections or an Answer to such count(s) within (20) days of the filing date of the Short Form Complaint. If additional causes of action are alleged in a Short Form Complaint, the specific facts supporting these allegations shall be pleaded in accordance with the Pennsylvania Rules of Civil Procedure, and the defendants against whom they are alleged must be specifically identified on a separate sheet of paper attached to the Short Form Complaint.

D. Defendants will not file Preliminary Objections challenging claims as to which Preliminary Objections have previously been overruled.

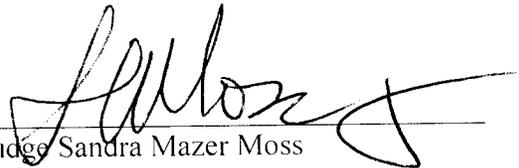
E. Plaintiffs shall have twenty (20) days from the date of service of Preliminary Objections to a Short Form Complaint to file a response. Replies may only be filed with leave of Court and are discouraged.

F. The Court will rule on the Preliminary Objections to a Short Form Complaint, and a hearing shall be held upon application of a party and the Court's discretion.

G. If Preliminary Objections to a Short Form Complaint are not filed by a Defendant, Defendants shall have twenty (20) days from the date of service of the Short Form Complaint or twenty (20) days from the date of the Court's ruling on the Master Set of Preliminary Objections, whichever is later, to file an Entry of Appearance on the Individual Docket.

H. An Entry of Appearance on behalf of a Defendant after a Short Form Complaint is filed shall be interpreted as a denial of all asserted claims and a reservation of all applicable defenses and cross claims.

BY THE COURT:


Judge Sandra Mazer Moss