

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

**In Re: Atrium Medical Corp. C-Qur Mesh  
Products Liability Litigation (MDL No. 2753)**

**MDL Docket No. 16-md-2753-LM  
ALL CASES**

**CASE MANAGEMENT ORDER NUMBER 1**

**1. General Matters**

**1.1 Applicability of this Order.** This order shall govern the practice and procedure in actions transferred to this court by the Judicial Panel on Multidistrict Litigation pursuant to its December 8, 2016 order (doc. no. 1), and the “tag-along” actions transferred to this court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.1 of the Judicial Panel on Multidistrict Litigation’s Rules of Procedure, in its December 19, 2016 order (doc. no. 2). These actions are listed in Attachment A to this order. This order shall also govern any related actions subsequently filed in this court or otherwise transferred or removed to this court.

**1.2 Consolidation.** The actions listed in Attachment A are consolidated for pretrial purposes. Any “tag-along” actions later removed to or transferred to this court, or directly filed in this court, will automatically be consolidated with this action without the necessity of future motions or orders. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she, or it has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

**1.3 Filing of Documents.** Any pleading or document shall be filed electronically; no copies will be necessary. **The official docket of the MDL case will be 16-md-2753-LM.** All filings submitted in these actions shall bear the identification of MDL Docket No. 16-md-2753-LM, and when such filings relate to all actions, the MDL docket number shall be followed only by the notation “ALL CASES.” If such filing does not relate to all actions, the individual docket numbers assigned by the clerk of this court (as listed in Attachment A) shall also be listed on the filing. For example:

In Re: Atrium Medical Corp. C-QurMesh  
Products Liability Litigation

MDL Docket No. 16-md-2753-LM  
**ALL CASES**

**-or-**

In Re: Atrium Medical Corp. C-QurMesh  
Products Liability Litigation

MDL Docket No. 16-md-2753-LM  
**16-cv-2754-LM**  
**16-cv-2755-LM**

All filings will be submitted in this case and “spread” to the applicable underlying civil case. “Spreading” is where the docket entry created in the MDL case is automatically added to the applicable underlying civil cases that are selected by the filer during the docketing process. (See Attachment B to this order for instructions on spreading.) All “cv” designated cases to which entries are spread are for court record-keeping purposes only. Counsel will cite to only the MDL document number assigned to any entry. To the extent a filer spreads the docket entry to the wrong civil case(s), the Clerk’s Office is authorized to delete the incorrectly spread entry without further order of the court.

**1.4 Manual for Complex Litigation, 4th.** The court will be guided by the Manual for Complex Litigation (Federal Judicial Center 4th ed. 2004) (“MCL Fourth”) approved by the

Judicial Conference of the United States. Counsel are directed to familiarize themselves with that publication.

**1.5 Corporate Disclosure Statement.** The court will also be guided by the Rules of Procedure of the Judicial Panel on Multidistrict Litigation. Counsel's attention is specifically directed to Rule 5.1, which like Fed. R. Civ. P. 7.1, requires the filing of a corporate disclosure statement. The defendant Atrium Medical Corporation has filed a disclosure statement in one or more of the consolidated actions. Defendant Atrium Medical Corporation need not file duplicate statements in individual cases, but shall file a disclosure statement under the MDL docket number 16-md-2753-LM. The defendants are under a continuing obligation to update the disclosure statement should any changes occur.

**1.6 Local Rules.** Counsel shall familiarize themselves with the Local Rules of this court, as well as its Administrative Procedures for Electronic Case Filing, which are available on the rules page of this court's website. Counsel who have not previously obtained a CM/ECF login and password from the District of New Hampshire, shall register utilizing this court's online CM/ECF registration form.

**1.7 Sealed Documents.** Any document conventionally filed (i.e. sealed) in any of these actions shall be filed with the clerk of this court and not with the transferor district court. The address of this court is: 55 Pleasant Street, Room 110, Concord, NH 03301-3941.

**1.8 Appearances and Local Counsel.**

- 1.8.1 Counsel who appeared in the transferor district court prior to the transfer need not enter a separate appearance before this court. Any counsel who did not appear in a related action prior to the transfer order are directed to file an appearance in this MDL case in accordance with paragraph 1.3 of this order.
- 1.8.2 A corporation, unincorporated association, or trust must be represented by counsel in this action.

1.8.3 No parties to any of these actions shall be required to obtain local counsel in this district and the requirements of Rule 83.2(b) of the Local Rules of this court are waived as to any attorney appearing in these actions who is duly admitted to practice before any United States Court.

1.9 **Joint Pleadings.** If counsel for more than one party plan to file substantially identical pleadings, they shall join in the submission of such pleadings and shall file only one submission on behalf of all so joined.

1.10 **Prior Orders of Transferor Courts.** Any orders, including protective orders previously entered by any transferor district courts, shall remain in full force and effect unless modified by this court upon application.

1.11 **Pending Motions.** Any and all pending motions in the transferor courts are denied without prejudice, and will be adjudicated under procedures set forth in this order and subsequent orders issued by this court.

1.12 **Future Motions.**

1.12.1 No motion shall be filed under Rule 11, Rule 37, or Rule 56 without the court's prior approval. To obtain such approval, the movant shall contact the court's case manager via telephone for instructions.

1.12.2 No motion (other than under Rule 12) shall be filed unless it includes a certification that the movant has conferred with opposing parties and made a good faith effort to resolve the matter without court action.

1.13 **Hearings.** Hearings shall not be held on any motions filed except by order of the court upon such notice as the court may direct.

1.14 **Discovery Stayed.** All discovery proceedings in these actions are stayed until further order of this court, and the time requirements to perform any act or file any pleadings pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure are tolled until the initial case management conference at which time a discovery schedule will be established. This order does not (1) preclude informal discovery regarding the identification and location of relevant

documents and witnesses; (2) preclude parties from stipulating to the conduct of a deposition that already has been scheduled; or (3) prevent a party from voluntarily responding to an outstanding discovery request under Federal Rules of Civil Procedure 33, 34, or 36.

**1.15 Preservation Duty.** Each party shall take reasonable steps to preserve documents and other records, including electronic documents containing information potentially relevant to the subject matter of this litigation.

**1.16 Case Managers.** The case managers responsible for this litigation are Donna Esposito (603-225-1623) or her back-up, Judy Barrett-Weatherbee (603-225-1587), to whom inquiries shall be made.

## **2. Initial Case Management Conference**

**2.1 The court will hold an initial case management conference on February 24, 2017, at 10:00 a.m.** All parties and counsel shall arrive no later than 9:30 a.m. to check in with the case manager. The case manager will be in the assigned courtroom to handle the check-in process. You will see the assigned courtroom on the monitors after you enter the courthouse and pass through security.

**2.2 Personal Appearance Not Required.** Each party represented by counsel shall appear at the initial conference through his or her attorneys, who will have primary responsibility for the party's interest in this litigation. Should a party not represented by counsel appear in this MDL, that party must appear at future conferences in person, unless otherwise ordered. To minimize costs and facilitate a manageable conference, parties with similar interests may, to the extent practicable, agree to have an attending attorney represent their interests at the conference. A party will not, by so designating an attorney to represent his/her interests at the conference, be precluded from other representation during the litigation. Attendance at the conference will not

waive objections to jurisdiction, venue, or service. Counsel for persons or entities who currently are not named as parties, but may be later joined as parties or are parties in related litigation pending in other federal and state courts, are welcome to attend the conference.

**2.3 Appointment of Counsel.** The court presently intends to appoint Plaintiffs' Lead Counsel and Liaison Counsel from among counsel who have filed an action in this litigation.<sup>1</sup> Defendants shall also be prepared to designate a Lead and Liaison Counsel. Attorneys interested in serving as lead counsel or in any leadership role, must be physically present at the February 24 case management conference.

**2.3.1 Temporary Lead Counsel.** To facilitate the court's consideration of those issues, the court hereby designates the following as temporary Lead Counsel for plaintiffs ("Temporary Lead Counsel"):

Robert J. Bonsignore  
Bonsignore Trial Lawyers PLLC  
3771 Meadowcrest Drive  
Las Vegas, NV 89121  
781 350-0000  
Email: rbonsignore@class-actions.us

This temporary designation is not a precursor of a future appointment, but simply a means to initiate the process. All counsel should have a full opportunity to participate in the discussion and the briefing that the court requests in section 3 below.

**2.4 Compensation and Time and Expense Records.** Any counsel who anticipates seeking an award of attorneys' fees and reimbursement expenditures from the court shall comply

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<sup>1</sup> As the parties are likely aware, the MCL Fourth contemplates two different roles for counsel in the organizational structure of an MDL. Lead counsel is "[c]harged with formulating (in consultation with other counsel) and presenting positions on substantive and procedural issues during the litigation." MCL Fourth § 10.221 at 25. Liaison counsel is "charged with essentially administrative matters, such as communications between the court and other counsel (including receiving and distributing notices, orders, motions, and briefs on behalf of the group) convening meetings of counsel, advising parties of developments in the case, and otherwise assisting in the coordination of activities and positions." *Id.* at 24.

with the directives contained in the MCL Fourth Section 14.213 regarding the maintenance and filing of contemporaneous records reflecting the services performed and the expenses incurred.

**3. Pre-Hearing Briefs (due on or before February 17, 2017)**

**3.1 Introductory Briefs.** No later than February 17, 2017, plaintiffs (through Temporary Lead Counsel) and defendants shall file introductory briefs (that is, one letter on behalf of all plaintiffs and one brief on behalf of all defendants) setting forth the following information in separate paragraphs:

- 3.1.1 The parties' views on the appointment of Lead and Liaison Counsel, including the following:
  - 3.1.1.1 Counsels' views on the necessity and desirability (or lack thereof) of Lead and Liaison Counsel;
  - 3.1.1.2 Counsel's views on the necessity and desirability (or lack thereof) of a plaintiffs' steering committee or other committees, as defined and discussed in the MCL Fourth Section 10.221. Counsel should explain in their submission (and be prepared to discuss at the initial conference) the necessity and desirability of such committees, as well their size, composition, and scope;
  - 3.1.1.3 A proposed structure for Lead and Liaison Counsel, including the need for any steering committee or other committee; and
  - 3.1.1.4 A proposed method and schedule for the court to appoint Lead and Liaison Counsel — through open applications, nominations, or another process.
- 3.1.2 To the extent plaintiffs and defendants can reach a unanimous agreement on the proposed organizational structure (for Lead and Liaison Counsel, steering committees, etc.) to govern this MDL litigation, counsel should include this proposal in the introductory briefs. Any organizational structure is subject to approval by the court, and the court may change any and every portion of the proposed organizational structures. Absent a unanimous recommended organizational structure, the court will review the parties' answers to the topics listed above at 3.1 and address these matters at the February 24 case management conference.
- 3.1.3 A brief statement of the nature of the action and/or the principal defenses thereto, including any critical legal issues involved in the case(s);

- 3.1.4 Statement of all existing deadlines, due dates, and/or cut-off dates;
- 3.1.5 A brief statement with respect to whether a single consolidated complaint (or multiple consolidated complaints) can or should be filed in this action;
- 3.1.6 A brief description of any discovery that has already taken place and any discovery that is necessary for the parties to engage in meaningful settlement negotiations;
- 3.1.7 A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any;
- 3.1.8 A brief statement with respect to whether court-ordered mediation would be useful and, if so, whether such mediation should be conducted through the court's mediation program (which can include the services of this court's Magistrate Judge — who has skillfully settled numerous cases for this court), or by a privately retained mediator and when such mediation should be conducted;
- 3.1.9 A list of all related cases pending in state or federal court, together with their current status, including discovery taken to date and pending motions, to the extent known;
- 3.1.10 A list of all parents, subsidiaries, and companies affiliated with the corporate parties and of all counsel associated in the litigation to help the court identify any problems of recusal or disqualification; and
- 3.1.11 Any other information that the parties believe may assist the court in advancing the case to settlement or trial, including, but not limited to, a description of any dispositive issue or novel issue raised by the case.


Each brief shall not exceed twenty-five (25) pages (exclusive of the lists, which may be provided as attachments).

**3.2 Initial Conference Agenda.** Plaintiffs' Temporary Lead Counsel and Lead Counsel for Defendants shall confer in advance of the initial conference to discuss: (1) a proposed agenda for the initial conference; and (2) a proposed schedule for pretrial activities, including discovery and motions. The items listed in MCL Fourth Sections 22.6, 22.7, and 22.8, to the extent applicable to these actions, shall constitute a tentative agenda for the conference. Lead Counsel



shall file a joint brief, not to exceed twenty-five (25) pages, by February 17, 2017, setting forth the parties' proposals on these issues.

SO ORDERED.

A handwritten signature in black ink, appearing to be 'Landya McCafferty', is written over a horizontal line. The signature is stylized and cursive.

Landya McCafferty  
United States District Court Judge

January 13, 2017

cc: All Counsel of Record  
Clerk, MDL Panel