

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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IN RE: DEPUY ORTHOPAEDICS,  
INC., PINNACLE HIP IMPLANT  
PRODUCTS LIABILITY  
LITIGATION

MDL Docket No.  
3:11-MD-2244-K

THIS DOCUMENT RELATES TO:  
ALL CASES

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**AMENDMENT TO CASE MANAGEMENT ORDER NO. 5**

The Court hereby enters the following amendment to CMO #5, entered on June 20, 2012, which replaces Section VI of that order:

**VI. SEVERANCE OF PARTIES**

1. **Joinder of Unrelated Parties in Direct Filed Cases.** In an effort to minimize the expense to the plaintiffs, the Court will allow the claims of up to 150 plaintiffs to be filed in a single complaint, also referred to as a Bundled Complaint, if the Bundled Complaint is filed directly in this court, as permitted in Case Management Order # 1, entered on June 29, 2011. However, by permitting the filing of Bundled Complaints, the Court does not intend to alter counsel's obligation under Fed. R. Civ. P. 11(b) to ensure that there is an adequate basis for the claims of each of the individual plaintiffs included in the Bundled Complaint.

A. The Bundled Complaint shall have a section entitled "Plaintiff Specific Allegations," in which each individual plaintiff, together with any

associated derivative claimants, such as a spouse, shall be listed in consecutively numbered paragraphs, and each paragraph shall include subsections containing case-specific allegations for each plaintiff and any associated derivative claimants. The caption of a Bundled Complaint should include the name of the plaintiff listed in the first numbered paragraph, followed by “AND OTHERS (BUNDLED COMPLAINT).”

- B. Only one Notice of Related Case and one Certificate of Interested Parties, captioned as described in Section A. above, are required to be filed with a Bundled Complaint.
- C. The filing attorney shall open one new civil case in ECF into which the Bundled Complaint shall be filed. When opening the case, the filing attorney is required to enter the first plaintiff and counsel of record and all defendants. The filing attorney must not add the other plaintiffs to this case.
- D. Once a Bundled Complaint is filed, the Clerk of Court will, pursuant to the authority of this order, sever each plaintiff and any derivative claimant as indicated in each numbered paragraph in the “Plaintiff Specific Allegations” section of the Bundled Complaint into a separate case. Individual civil action numbers and case captions will be assigned for each new case, and the clerk will enter the Bundled Complaint, Notice of Related Case, and Certificate of Interested Parties in each new

case created in this manner. A civil filing fee is not required for a case severed by the clerk pursuant to this order. All actions affected or created by this Order shall be treated in all respects as if they were filed on the date of the Bundled Complaint.

- E. The Clerk of Court shall then enter the following language on the docket of each such newly opened case: “Case severed from Bundled Complaint filed in Case No. (number of the first case into which the Bundled Complaint was filed). Refer to Case No. 3:11-md-02244-K for MDL master case entries.” To this entry, the clerk will attach a report that identifies the style of each new case severed from the Bundled Complaint and its assigned case number. The report will include all cases stemming from the Bundled Complaint. Notice of this entry to Plaintiff’s attorney will serve as notice of the new case number assigned for each individual plaintiff and any derivative complainant.
- F. The plaintiff shall include a copy of this order and the report described in section E. above when effecting service of process.
- G. After the initial filings are entered in CM/ECF, additional filings may be made in each severed case only after the clerk has made the entry in the case described in section E above. Filings thereafter must be made into each appropriate case. A filing that is erroneously entered into 3:11-md-

02244-K or into an incorrect case will not be considered, and will be unfiled.

**2. Joinder of Unrelated Parties in Transferred Cases.** The complaint of each individual plaintiff in any multi-plaintiff Pinnacle Cup System cases transferred to the MDL proceeding in which the plaintiffs do not have a pending remand motion or have not provided Defendants' Lead Counsel with notice that the plaintiffs intend to file a remand motion shall be severed, pursuant to Fed. R. Civ. P. 21, thereby creating an individual case on behalf of each such plaintiff (together with any associated derivative claimants). The Court does not intend for this severance to have any substantive effect on these cases. The Court directs the Clerk of the Court and each such new plaintiff to adopt the following procedure to implement the severance:

- A. The Clerk of Court will, pursuant to the authority of this order, sever each plaintiff and any derivative claimant into a separate case. Individual civil action numbers and case captions will be assigned for each new case, and the clerk will enter all prior filings entered in the transferred case into each new case created in this manner. A civil filing fee is not required for a case severed by the clerk pursuant to this order. All actions affected or created by this Order shall be treated in all respects as if they were filed on the date the Northern District of Texas received notification of the case's transfer.

- B. The Clerk of Court shall then enter the following language on the docket of each such newly opened case: “Case severed from NDTX Case No. (number of the case into which the transfer was filed). Refer to Case No. 3:11-md-02244-K for MDL master case entries.” To this entry, the clerk will attach a copy of this order and a report that identifies the style of each new case severed from the transferred case and its assigned case number. The report will include all cases stemming from the transferred case. Notice of this entry will serve as notice of severance to all parties and identify the new case number assigned for each individual plaintiff and any derivative complainant.
- C. Plaintiffs in these new cases need not serve new process provided that the original complaint was properly served.
- D. Furthermore, the Court ORDERS that: (1) all attorneys filing related cases in the future should avoid filing complaints joining unrelated individuals as parties-plaintiff, unless the method for filing a Bundled Complaint as described above is used; and (2) all attorneys and the Clerk of Court shall comply with the procedures discussed above, if they apply to any future-filed case.

E. If any plaintiff believes the severance to be improper or unwarranted, he or she may file an appropriate motion with the Court seeking joinder of the severed cases.

**SO ORDERED.**

Signed April 10<sup>th</sup>, 2015.

A handwritten signature in cursive script that reads "Ed Kinkeade". The signature is written in black ink and is positioned above the printed name.

ED KINKEADE

UNITED STATES DISTRICT JUDGE