

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

IN RE: DEPUY ORTHOPAEDICS,	§	
INC. PINNACLE HIP IMPLANT	§	MDL Docket No.
PRODUCTS LIABILITY	§	
LITIGATION	§	3:11-MD-2244-K
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This Document Relates to all Cases	§	
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**ORDER SUPPLEMENTING CASE MANAGEMENT ORDER NO. 4**

The purpose of this order ("Order") is to supplement Case Management Order No. 4 (Document No. 133) ("CMO 4") by providing a specific mechanism for the production and handling of native files produced pursuant to the provisions of CMO 4, as well as databases and systems which are specifically excluded from the provisions of CMO 4. Section III.A.2.r. of CMO 4 states: "The parties acknowledge that production in TIFF and load file format may be inadequate for certain types of ESI (e.g. spreadsheets). Upon request, producing party will comply with reasonable requests to produce particularly identified ESI in its native format. If a dispute arises with respect to the provision, the parties agree to meet and confer in an effort to resolve their differences.")

This Order is intended to apply to all actions currently pending in MDL No. 2244, all future actions transferred to MDL No. 2244, and all future actions direct-filed in MDL No. 2244. In the event that any provisions of this protocol conflict with any

provisions of CMO 4, this Order supersedes those provisions. All capitalized terms used in this Order have the meanings ascribed in section II of CMO 4.

### **General Provisions**

- A. It is contemplated that virtually all native files produced pursuant to CMO 4 will have a corresponding TIFF image(s) produced.
- B. The parties acknowledge, however, that certain ESI from certain enterprise databases may not be appropriate for production in TIFF. The parties will meet and confer regarding the scope and format of such native productions and the use of such native productions to the extent that the terms of this Order do not fully address their production and/or use.
- C. If compliance with any of the procedures set forth in this Order becomes unduly burdensome to either the producing or the receiving party, the parties shall meet and confer to discuss reasonable alternatives.

### **Production of Native Files**

#### *1. Numbering of Native Files*

- A. The filename of the native file shall be the Beginning Bates number of the corresponding TIFF document produced followed by the word (a) "Confidential", if the document has been designated as a "Protected Document" under the May 5, 2012 Stipulated Protective Order of Confidentiality entered in this action (the "Protective Order"), or by the words (b) "Atty Eyes Only", if the document has been designated as "Attorneys' Eyes Only" under the Protective Order.
- B. The content of the native file will not include any reference to Bates numbers, unless by special agreement among the parties for particular documents.

2. *Designation of Native as Protected Documents*

- A. In addition to adding the words "Confidential" or "Atty Eyes Only" to the filename as set forth in Section III.A.1. above, the producing party may, if reasonably practical, mark the native file in some manner with the words required by the Protective Order.
- B. Due to the nature of native files and the volume of materials requested, certain native files may not be able to be marked and others may not reasonably be able to be marked as required by the Protective Order (e.g., the requirement of marking every page). Such failure to comply with the Protective Order will have no effect on the producing party's designation under the Protective Order, and the designation of the TIFF file will govern the designation of both the TIFF and corresponding native files.

3. *Redactions*

- A. The producing party may remove from the native file any information that has been redacted from the corresponding TIFF image produced and not otherwise challenged by the receiving party. Such redacted information will be replaced with the word "Redacted", if reasonably practical or, if not reasonably practical, the producing party will otherwise identify all information that has been redacted, either on the face of the file or in writing at the time of production.
- B. Data that cannot be redacted in its original format without unreasonable expense, delay, or difficulty may be converted into another format that provides similar functionality as native for purposes of redaction.
- C. Where redacted information has been challenged by the receiving party, the parties will abide by the terms of the Protective Order, and handle such challenges in accordance with those terms.
- D. The producing party may redact any hidden data in native files on the basis of privilege, privacy, and/or highly confidential information that is not otherwise relevant to the claims in this case. All such redactions will be made consistent with sections III.C.1. and 2 above.

- E. To the extent that redaction of information will require the elimination of any embedded formulas in any spreadsheet produced in native, the producing party will identify such elimination to the receiving party in writing at the time of production.

#### *4. Production of Load File*

Native files produced shall be accompanied by a load file. The load file format, including delimiters and column headers, shall comply with CMO 4. The load file shall contain the following fields of information. The definition for each field, to the extent not specifically set forth below, is the definition contained in CMO 4.

- A. BEGBATES
- B. FILESIZE
- C. NATIVEFILESIZE:
  - I. The file size of the produced version of the native file, taking into account the redaction of information or addition of confidentiality designations described in section III above.
- D. HASHVALUE
- E. NATIVEHASHVALUE

### **Use of Native Files**

#### *1. Presentation of Native Files*

- A. To the extent that the receiving party affirmatively changes the production file name described in Section III.A.1. above, the receiving

party shall make best efforts to ensure that the new file name contains the production file name described in Section III.A.1.

- B. If the receiving party chooses to print or otherwise display at deposition or in court a copy of the native file, the receiving party shall include a footer on every page that includes the corresponding Bates number, followed by the words "generated from native". The footer shall also reflect the producing party's confidentiality designation of the document with the following words: PROTECTED DOCUMENT. DOCUMENT SUBJECT TO PROTECTIVE ORDER" or "PROTECTED DOCUMENT – ATTORNEYS' EYES ONLY. DOCUMENT SUBJECT TO PROTECTIVE ORDER"
- C. If the receiving party challenges the confidentiality designation by the producing party, the receiving party shall abide by the terms of the Protective Order, and handle such challenges in accordance with those terms.

## *2. Alternations to Native Files*

- A. The parties shall not make any alterations to a native file (e.g., by adding or deleting text) that create a potential for confusion or prejudice.
- B. The parties may make alterations to a native file to facilitate its use with a witness and that do not create a potential for confusion or prejudice, with express, specific and contemporaneous disclosure of each such change at the time of use. To the extent that such alterations are made, the party seeking to use such altered native file with a witness shall attach to the native file a copy of the corresponding unaltered TIFF image. If the foregoing attachment requirement is not practical in light of the number of pages of the corresponding unaltered TIFF image, an excerpt of at least 5 pages that is representative of the unaltered TIFF image may be used. Examples of such permitted alterations include, but are not necessarily limited to the following:

1. Hiding columns or rows that contain no information; and
  2. Hiding columns that contain information that is not relevant to the subject matter of the columns presented and that would not otherwise be reasonably relevant for context.
- C. Nothing herein waives the right of any party to object to the use of such altered document on any and all grounds.

3. *Reports Created from Native File Data*

- A. The parties are permitted to create summaries, extracts or reports to use as deposition exhibits, subject to the limitations set forth in section IV.B. above.

1. For example, a party may run a query over a large database extract in order to isolate data believed to be relevant, and create a report from the same; or
2. Also by way of example, a party may extract information from native spreadsheets, and create printouts of the same.

- B. In such cases, the proffering party shall disclose in writing contemporaneously with the use of any such summary or report a description of how the report was created. The description must identify the query run and the source data set, or identify by Bates number the spreadsheet and the columns and rows extracted from it. The writing describing the methodology shall be marked as an exhibit.

C. If a summary prepared in accordance with these provisions is used at deposition, objections to its admissibility shall be made within 60 days of its first use.

SO ORDERED.

Signed July 16<sup>th</sup>, 2013.



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ED KINKEADE  
UNITED STATES DISTRICT JUDGE