

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT  
DOCKET NO. 11-3750M

THIS DOCUMENT RELATES  
TO ALL CASES

In Re: SPECIALLY ASSIGNED MESH IMPLANT CASES

**PROCEDURAL ORDER NO. 3**

1. This Order shall govern all actions currently pending in the M-Session and to all future cases filed and/or transferred into the M-Session.

**ELECTRONIC FILE-AND-SERVE**

2. The parties have agreed upon an electronic service (LexisNexis® File & Serve) for the filing and service of all papers in this litigation. A copy of the proposed Order is attached hereto as Exhibit A.

**PLEADINGS**

3. Defendants' obligation to answer or otherwise respond to complaints in this proceeding is hereby stayed. Defendants shall file responsive pleadings consistent with the schedule set out below.

On February 10, 2012, this Court entered its Memorandum of Decision and Order Re: Choice of Law as well as its Memorandum of Decision and Order on Defendants' Motions to Dismiss. The Court specifically granted Plaintiffs leave to amend their Complaints consistent with the Court's Choice of Law Order.

Order.

5. Plaintiffs' Liaison Counsel shall submit a Master Long Form Complaint ("Master Complaint") to govern all matters pending in this session that complies with the Court's Orders of February 10, 2012. This Master Complaint shall be ~~submitted by May 11, 2012.~~ The Master Complaint shall not constitute the inception of a new "case or controversy" in this jurisdiction. The filing and service of the Master Complaint does not toll any applicable statutes of limitations as to any individual Plaintiff, and does not relieve any individual Plaintiff of the requirement to perfect service of process of his or her Short Form Complaint, as described below. All Complaints filed before the filing of the Master Complaint shall be deemed amended by the Master Complaint, consistent with the leave granted in the Court's February 10, 2012 Orders.
6. Defendants shall then answer or otherwise respond to the Master Complaint within 45 days of service.
7. Plaintiffs' Liaison Counsel shall file a Short Form Complaint, attached hereto as Exhibit B. This Short Form Complaint shall refer to and adopt the Master Complaint as appropriate. Plaintiff's counsel for each individual plaintiff with a Complaint filed before May 11, 2012 shall file a Short Form Complaint for each case within 60 days of the entry of the Master Complaint.
8. All individual Complaints filed after May 11, 2012 shall be filed and served in the Short Form Complaint format. For these cases, the date of filing of the Short Form Complaint shall be deemed the filing date for all purposes, including any statute of limitations purposes.

9. Defendants are not required to file answers to Short Form Complaints. An entry of appearance shall constitute a denial of all allegations in the Short Form Complaint and an assertion of all defenses that are included in the Defendant's Master Answer. This paragraph does not preclude the filing of Rule 12 motions ~~or any other motion in an individual matter.~~

10. When an individual case is selected for case-specific discovery, Plaintiff shall at that time file a full Long Form Complaint specific to that case that will govern the case moving forward. Defendants will file a response to the Long Form Complaint within the time allowed under the Massachusetts Rules of Civil Procedure. The procedures for such Long Form Complaints will be set out in more detail in future procedural orders governing the case-selection process.

#### **PRO HAC VICE MOTIONS**

11. A *pro hac vice* motion may be filed in the master M-Session docket and shall apply to all M-Session cases. An individual attorney whose admission *pro hac vice* is reflected on the master M-Session docket need not file a *pro hac vice* motion in each individual case, but shall file an appearance in each individual case in which he represents a party.

#### **INITIAL DISCOVERY**

*(Paragraphs 12 through 24, below, do not apply to defendants other than Boston Scientific. Consistent with Procedural Order # 2, above, discovery related to cases involving multiple manufacturer defendants shall be addressed at a later date.)*

#### **Plaintiffs' Fact Sheet**

12. For all currently pending cases, a fully signed and completed Plaintiff's Fact Sheet ("PFS"), prepared in accord with the provisions of Procedural Order #2

and attached hereto as Exhibit C, shall be due on a rolling basis beginning 50 days from the entry of this Order. Plaintiffs agree to produce a reasonable portion of the PFS forms 50 days from the entry of this Order. All such PFS forms shall be served no later than 120 days from the entry of this Order. Each PFS shall be served with a complete copy of the already collected medical records. This applies to all cases pending as of the date this Order is entered by the Court.

13. For every case filed after the PFS form is approved by the Court, a fully signed and completed PFS shall be due within 60 days of service of the Short Form Complaint.

14. Every Plaintiff is required to provide Defendant with a PFS that is substantially complete in all aspects. A completed PFS shall be considered interrogatory answers under Mass. R. Civ. P. 33 and responses to requests for production under Mass. R. Civ. P. 34, and will be governed by the standards applicable to written discovery under Mass. R. Civ. P. 26 through 37.

15. If a Plaintiff fails to timely submit a PFS or if Defendant receive a PFS in the allotted time but the PFS is not substantially complete, Defendant's Liaison Counsel shall send a deficiency letter by email and U.S. Mail to Plaintiffs' Liaison Counsel and the individual Plaintiff's attorney specifically identifying the purported deficiencies by PFS question number. Plaintiff shall have no fewer than twenty (20) days from receipt of the letter to respond or otherwise serve a PFS that is substantially complete in all respects. Should a Plaintiff fail to cure the deficiencies identified, Defendant may, after conducting the

prerequisite meet and confer, move under Mass. R. Civ. P. 37 for appropriate relief.

**Defendant's Fact Sheet**

16. A fully signed and completed Defendant's Fact Sheet ("DFS"), prepared in ~~accord with the provisions of Procedural Order #2~~ and attached hereto as Exhibit D, shall be due within 60 days from the receipt of a fully completed and signed PFS.
17. Defendant is required to provide Plaintiff with a DFS that is substantially complete in all aspects. A completed DFS shall be considered interrogatory answers under Mass. R. Civ. P. 33 and responses to requests for production under Mass. R. Civ. P. 34, and will be governed by the standards applicable to written discovery under Mass. R. Civ. P. 26 through 37.
18. If a Defendant fails to timely submit a DFS or if a Plaintiff receives a DFS in the allotted time but the DFS is not substantially complete, Plaintiffs' Liaison Counsel or the individual Plaintiff's attorney shall send a deficiency letter by email and U.S. Mail to Defendant's Liaison Counsel specifically identifying the purported deficiencies by DFS question number. Defendant shall have no fewer than twenty (20) days from receipt of the letter to serve a DFS that is substantially complete in all respects. Should a Defendant fail to cure the deficiencies identified and fail to provide responses that are substantially complete in all respects, Plaintiff may, after conducting the prerequisite meet and confer, move under Mass. R. Civ. P. 37 for appropriate relief.
19. The parties agree to meet and confer on the form and process for discovery

concerning specific sales representatives. If the parties are unable to agree on a form and process for such discovery, they should be prepared to discuss their differences at the next conference with the Court.

**Joint Records Collection**

~~20. The parties will discuss the possibility of a Joint Records Collection Agreement in advance of the next case management conference.~~

**Initial Document Discovery and Related Issues**

21. Boston Scientific and Plaintiffs have agreed on a proposed form of Stipulated Protective Order, attached hereto as Exhibit E. This Protective Order does not apply to the non-Boston Scientific defendants. The terms of any Protective Order for the non-Boston Scientific defendants will be addressed at a later date.

22. Boston Scientific and Plaintiffs have agreed on a proposed Stipulation for the Production of Documents and Electronically Stored Information, attached hereto as Exhibit F. This ESI Order does not apply to the non-Boston Scientific defendants. The terms of any ESI Order for the non-Boston Scientific defendants will be addressed at a later date

23. Within 60 days after entry of the Protective Order and ESI Order referenced above in paragraphs 21 and 22, Boston Scientific shall produce the following documents for the Advantage, Lynx, Obtryx, Prefyx, Solyx, Pinnacle, and Uphold products:

- a. The "Design History File";
- b. The 510k file;
- c. The "Device Master Record";

- d. Directions For Use (“DFUs”); and
- e. A reasonable set of Organization Charts for the relevant divisions of Boston Scientific.

24. Plaintiffs’ Liaison Counsel has served upon Defendant a Master Request to Produce Documents on behalf of all plaintiffs. This Master Request to Produce will supersede any previous document requests served on Defendant. Therefore, Defendant’s obligation to answer discovery previously served in an individual action is hereby relieved. Defendant shall have 50 days from the entry of this Order to provide written responses and objections to the Master Request to Produce. Production of documents will commence, unless subject to an unresolved objection, and proceed on a rolling basis. The parties will meet and confer to agree on a specific production schedule once the written requests and responses have been served. Plaintiffs’ Master Request to Produce is subject to the limitations set out in the Massachusetts Rules of Civil Procedure.

**COORDINATION WITH OTHER LITIGATION**

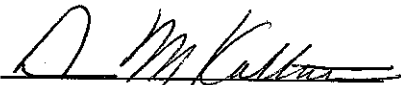
25. The parties shall work to coordinate the conduct of this litigation with other product liability actions involving Boston Scientific. To the greatest extent practicable so as not to cause delay, the parties shall coordinate with other pelvic mesh product liability litigation involving Boston Scientific; including federal pelvic mesh litigation that is part of MDL No. 2326 *In re: Boston Scientific Corp. Pelvic Repair System Products Liability Litigation* that was transferred by the Judicial Panel on Multidistrict Litigation to the Honorable Joseph R. Goodwin in the United States District Court for the Southern District

of West Virginia on February 7, 2012. Such coordination is intended to conserve resources, eliminate duplicative document discovery and depositions where possible, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. Nothing in this paragraph shall be read to limit the rights of any of the parties under the Massachusetts Rules of Civil Procedure.

**NEXT CASE MANAGEMENT CONFERENCE**

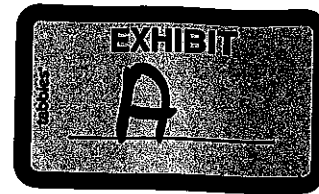
26. The next case management conference shall be held on June 5, 2012, at 2:00 p.m.

**IT IS SO ORDERED.**

  
Diane M. Kottmyer  
Justice of the Superior Court

Entered: May 16, 2012, as of May 11, 2012





COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT  
DOCKET NO. 11-3750M

THIS DOCUMENT RELATES  
TO ALL CASES

In Re: SPECIALLY ASSIGNED MESH IMPLANT CASES

**THIS MATTER** having been brought before the Court for adoption of procedures for electronic service in these coordinated cases, and good cause having been shown,

**IT IS ON THIS \_\_\_ DAY OF \_\_\_\_\_, 2012, ORDERED AS FOLLOWS:**

When a party to this litigation wishes to serve a document to counsel of record, that party shall effectuate service of the document by the procedure set forth in this Order (subject to the exceptions outlined herein):

**I. LEXISNEXIS FILE & SERVE**

To facilitate case management, document retrieval and case organization, the parties will utilize the services of LexisNexis and its litigation system File & Serve for providing electronic service, storage and delivery of court-filed and discovery-related documents through a secure website to facilitate expeditious, efficient and economical communication by and amongst counsel. LexisNexis File & Serve was chosen by counsel, who have agreed to employ this service and entered into their own agreements with LexisNexis. The Court, at its option, may also use File & Serve for these purposes as well as communicate with counsel of record.

## **II. SERVICE ONLY**

File & Serve shall apply only to the service of documents, and not to their filing. Original documents must still be filed in the traditional manner (i.e., filing the signed original document with the Court), pursuant to the applicable Massachusetts Court Rules. The parties agree, for purposes of the time lines set forth in the Rules of Civil Procedure, that the date the document was posted to LexisNexis File & Serve shall be treated as the date of filing. The filing of a Complaint is only effective at the time the original Complaint is filed with the Clerk's Office in accordance with the Massachusetts Rules of Court and any other applicable Massachusetts law.

## **III. SERVICE LIST & SIGN-UP**

1. Within five (5) days of this Order or five (5) days of the initiation of a new case in this litigation, plaintiff's or liaison counsel to LexisNexis shall submit via email to LexisNexis, [lngcl-efile-di@lexisnexus.com](mailto:lngcl-efile-di@lexisnexus.com), a complete and current service list of counsel of record for this litigation. Within five (5) days of this Order, each attorney of record for this litigation, or within five (5) days of the entry of appearance for a new attorney of record, shall register for electronic service in this litigation by completing the registration located at the following website: <http://www.lexisnexus.com/fileandserve> and shall notify plaintiff's or liaison counsel that they will need to be added to the service list.

2. Plaintiff's Liaison Counsel shall be liaison counsel to LexisNexis for all service list changes. Plaintiff's Counsel shall be responsible for monitoring the service list and advise LexisNexis File & Serve of any changes or corrections. The service list will identify counsel of record for each firm, along with parties they represent, who are to receive service of documents in the case utilizing File & Serve. Once a firm is registered on File & Serve, each firm will be

provided functionality on File & Serve, and will be responsible for designating a firm administrator to control the addition and deletion of registered users on File & Serve for their firm. Counsel for each party is responsible for providing an accurate email address. Each party shall bear its own cost in the use of File & Serve service.

**IV. SERVICE OF DOCUMENTS AND WEBSITE**

**A. Establishment and Use of the File & Serve Website Generally**

1. When any counsel of record wishes to serve a document, that counsel shall serve the document according to all the requirements and procedures of this Order. All references to “document” in this Order shall be interpreted to include any exhibits or attachments to the document and shall include both pleadings and discovery-related documents (such as interrogatories, requests for production, deposition notices/transcripts, etc.); provided, however, that each attorney shall determine individually whether to utilize File & Serve to serve correspondence and/or the actual production of discovery documents in response to another party’s request for production.

2. LexisNexis will maintain the File & Serve internet website (“File & Serve”) for this litigation. When a transaction is submitted on File & Serve, File & Serve will electronically serve each document on the parties included on the service list provided to LexisNexis in accordance with the procedures herein. Each document will be served only upon the attorneys appearing in the case or cases identified by the attorney submitting the document.

3. Each attorney shall serve each document via electronic transfer of the document through File & Serve via the Internet (either as a word-processing file or a scanned image of the document). Each attorney shall title each document to identify the type and purpose of each document and the party who is submitting such document. The parties agree that for each

document electronically served pursuant to this Order, the date the document was posted to File & Serve shall be deemed the date of service, for purposes of the time lines set forth under Massachusetts Court Rules.

4. After an attorney uploads a document onto File & Serve, File & Serve will ~~convert such document into Adobe Portable Document Format (“PDF”).~~

5. All documents posted on File & Serve will be identified by: (a) the name of the serving law firm; (b) the caption(s) of the case(s) to which the document belongs; (c) the title of the document set forth on its caption; and (d) the identity of the party on whose behalf the document is being served.

6. Access to File & Serve will be limited to registered users. Registered users will consist of authorized Court personnel, counsel of record and their designated staff members. Upon registration, LexisNexis will provide each registered user with a user name and password to access File & Serve and the documents served in the litigation.

7. Every pleading, document and instrument served electronically shall bear a facsimile or typographical signature, along with the typed name, address, and telephone number of such attorney. Typographical signatures shall be treated exactly as personal signatures for purposes of electronically served documents under the Massachusetts Court Rules. The serving party of any document requiring multiple signatures (e.g., stipulations, joint status reports) must list thereon all the names of other signatories by means of an “/s/ \_\_\_\_\_” block for each. By submitting such a document, the serving party certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the serving party has the actual authority to submit the document electronically. The serving party must maintain any records evidencing this concurrence for subsequent production to the Court if so ordered or for


inspection upon request by a party.

8. Any document transmitted to File & Serve shall certify in the Proof of Service that a true and correct copy was electronically served on counsel of record by transmission through LexisNexis File & Serve. The date and time to be used on the Proof of Service will be ~~the date and time reflected on the Transaction Receipt provided after submitting a transaction on~~ File & Serve.

9. Documents to be filed under seal will be governed by a separate order of the Court.

10. LexisNexis will make available to counsel of record and the Court a 24-hour 365 days Customer Support hotline at (888) 529-7587 and website – <http://www.lexisnexis.com/fileandserve/support.asp>. In addition, each attorney is instructed to review Exhibit A attached to this Order which sets forth the procedure for registration with and service through LexisNexis File & Serve. See Exhibit A, *LexisNexis File & Serve Welcome Kit*.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Diane M. Kottmyer  
Justice of the Superior Court

Dated: *May 11, 2012*

Your File & Serve Litigation Executive:  
Susan Burns  
800-467-8674 x7811  
susan.burns@lexisnexis.com

## Exhibit A

### LexisNexis® File & Serve Welcome Kit

#### Step 1. Registration

If this is your firm's first LexisNexis File & Serve case, *you will need to create a LNF&S account before registering. The firm must designate an administrator who will create the account and add users. The administrator will follow the Instructions for New Subscribers in Section A.*

If your firm has a LexisNexis File & Serve account, *contact your firm's administrator to obtain a user name & password for yourself and anyone else who will need to serve or access documents in the case. The administrator will follow the Instructions for Existing Subscribers in Section B.*

To find out if your firm has a LexisNexis File & Serve account or the name of your administrator, please call Customer Support at 1.888.529.7587.

#### Section A: Instructions for New Subscribers

(Administrator sets up account and registers new users)

1. Visit [www.lexisnexis.com/fileandserve/lawfirms/register.asp](http://www.lexisnexis.com/fileandserve/lawfirms/register.asp) and click Register.
2. Add organization information.
3. Add user information for administrator (primary contact).
4. Add user information for every attorney and staff member in your firm who will need a user ID and password. Include full name, phone, fax, email and bar number (for attorneys). **All attorneys of record must have a user ID and password.**
5. Review system requirements.
6. Review and accept Terms of Service Agreement by selecting an authorizing attorney.

#### Section B: Instructions for Existing Subscribers

(Administrator adds users to existing account)

1. Sign on to [www.lexisnexis.com/fileandserve](http://www.lexisnexis.com/fileandserve).
2. Select Preferences in the upper right hand corner of the screen. Click Firm Profile.
3. Click the Add Users tab and enter user information for every attorney and staff member who will need a user ID and password. Include full name, phone, fax, email and bar number (for attorneys). **All attorneys of record must have a user ID and password.**

#### Step 2: Training

**We strongly recommend that all of the users in your firm (including attorneys) take advantage of LexisNexis File and Serve free, online training classes.**

##### Classes will cover:

- The basics of using LexisNexis File & Serve to serve documents
- How to retrieve your documents
- Setting up User Preferences

To register for a class, please sign on to the product, click on the Resource Center link in the upper right of the product, then choose your state from the drop down menu for online training classes under Education & Training. Dates and times of classes will be posted on the Resource Center.

For training questions, call Angela Melton 866-921-6972 or email