

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
(BROOKLYN)

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**IN RE: EXACTECH POLYETHYLENE  
ORTHOPEDIC PRODUCTS LIABILITY  
LITIGATION**

**Case No.: 1:22-md-03044-NGG-MMH**

**District Judge Nicholas G. Garaufis  
Magistrate Judge Marcia M. Henry**

*This Document Relates to All Cases*

**MDL No. 3044**

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**PRETRIAL ORDER #1**

**WITH RESPECT TO SCIENCE DAY ON MAY 10, 2023**

**WHEREFORE**, on May 10, 2023, this Court will hold “Science Day” in person at the Civil and Family Courthouse in Gainesville, Florida, to educate the Court about the basic medical and scientific issues associated with the devices at issue in this Multidistrict Litigation (“MDL”) and the Exactech Master Case, No. 01-2022-CA-002670 before the Honorable Judge Donna M. Keim in the Court of Alachua County, Florida, in an objective format without advocacy, and the Parties having consented to the form, substance, and entry of this Order;

**NOW**, this 13th day of April, 2023, it is hereby **ORDERED**:

1. The goal of Science Day is to educate the court about how the devices at issue in these proceedings work and the scientific and medical theories underlying the proceedings without advocacy.
2. The topics to be addressed at Science Day shall only include:
  - a. A background on the devices and joint replacement surgery;
  - b. How the devices work;
  - c. The materials used in the devices;
  - d. The design and packaging of the devices;

- e. How each device is manufactured;
  - f. The injuries alleged in this litigation; and
  - g. Other matters on which the parties agree consistent with the purpose of Science Day.
3. The Parties and their respective experts shall not address liability or attempt to establish claims or defenses in their respective presentations.
  4. The Science Day presentations shall be “off the record” and closed to any person other than the Parties and counsel for the Parties attending the session live, this Court, the Court of Alachua County, the presenting experts, the Court staff, and any other judges presiding over state court cases involving the devices at issue that are willing to coordinate with this MDL and/or the Florida proceedings pending in Alachua County.
  5. No recording of the presentation will be permitted unless performed on behalf of the Court for the Court’s sole use. Copies may not be distributed to any Party or counsel.
  6. The presentations may be made by the Parties and their respective experts. The expert witnesses will not be questioned by each other or opposing counsel. The Court and Judge Keim will have the opportunity to ask questions of the experts. The Federal Rules of Evidence will not be enforced during Science Day, including during the presentations by or questioning of any experts.
  7. The participation of any expert in Science Day shall not be an independent basis for subjecting the expert to discovery and shall not waive any consulting expert privilege. No party shall conduct discovery of the presenting experts regarding their presentations or Science Day itself, whether or not later designated as a testifying expert.
  8. Science Day will be conducted in open court, but the proceeding is intended to be informal, and no expert will be placed under oath.

9. Each side will make presentations which may incorporate the use of public and non-confidential information, including PowerPoints, demonstrative aids, articles, publicly available scientific data, or other public and non-confidential documents which will not be exchanged by the Parties in advance of Science Day but will be provided to the Court and exchanged by the Parties at the close of Science Day. Neither confidential Defendant company documents nor Exactech implant recipients' (including Plaintiffs') medical records shall be presented or offered to the Court during Science Day. The Parties may present materials and information illustrating the alleged type of injuries giving rise to the claims at issue, including X-rays, pathology slides and photos of retrieved devices from specific individual plaintiffs. However, the Parties may provide this information only as generic examples of the injuries that can arise from the alleged defects, and the Parties will not be permitted to provide testimony identifying the specific individuals or regarding specific claims against Defendants.
10. No demonstrative aid or party statement or any part of the Science Day presentation shall be discoverable, admissible, used beyond the sole purpose of Science Day or shared beyond this MDL and the Exactech Master Case, or used for any purpose (including impeachment) other than for this Court's, Judge Keim's, and/or any other coordinating court's benefit to gather background and technical information informally (however neither Party is precluded from using their own demonstrative exhibits later in the case).
11. The Plaintiffs collectively and the Defendants collectively shall each be allotted a total of two hours and fifteen minutes inclusive for their entire presentation, including any attorney statements, but not including the time for any questions the Court has after the Parties' presentations. Each side may present up to three experts. Science Day shall proceed in accordance with this Order, which is subject to change by the Court.
12. Plaintiffs' experts shall present first, followed by the Defendants' experts; and

13. Any objections to or suggestion for amendment of this order shall be filed on or before May 2, 2023.

**IT IS SO ORDERED.**

s/Nicholas G. Garaufis

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HON. NICHOLAS G. GARAUFI~~S~~  
UNITED STATES DISTRICT JUDGE

*April 14, 2023*