

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

IN RE: EXACTECH POLYETHYLENE
ORTHOPEDIC PRODUCTS LIABILITY
LITIGATION

No.: 1:22-MD-03044-NGG-MMH

This Document Relates to All Cases

MDL No. 3044

PRACTICE AND PROCEDURE ORDER NO. 4
(Direct Filing as to TPG Entity Defendants)

This Practice and Procedure Order (the “TPG Entity Direct Filing Order”) submitted by stipulation by Plaintiffs’ Co-Lead Counsel and TPG entities TPG Inc., Osteon Holdings, Inc., Osteon Merger Sub, Inc. and/or Osteon Intermediate Holdings II, Inc. (with those entities collectively referred to as the “TPG Entity Defendants”) incorporates and adopts the provisions of Amended Practice and Procedure Order No. 2 (dated January 11, 2023) stipulated to by Plaintiffs’ Co-Lead Counsel and Exactech, Inc. and Exactech U.S., Inc. (with those entities collectively referred to as “Exactech”), subject to the terms and conditions set forth below with respect to the TPG Entity Defendants. Accordingly, it is ORDERED as follows:

A. Subject to the terms and conditions below, in order to eliminate delays associated with the transfer to this Court of cases filed in or removed to other federal district courts and to promote judicial efficiency, any Plaintiff whose case would be subject to transfer to MDL No. 3044 as a tag along case may file his or her complaint against TPG Inc., Osteon Holdings, Inc., Osteon Merger Sub, Inc., and/or Osteon Intermediate Holdings II, Inc. as a new case directly in the United States District Court for the Eastern District of New York for inclusion in MDL No. 3044.

B. This TPG Entity Direct Filing Order applies only to personal injury cases subject to transfer to this MDL, namely only those alleging total joint replacement failure and injury due to accelerated polyethylene wear in the following Exactech devices: (1) Optetrak,

Optetrak Logic, and Truliant total knee replacement systems; (2) Exactech total hip replacement systems implanted with GXL polyethylene liners and certain MCS and Acumatch Conventional UHMWPE liners and (3) Exactech Vantage Total Ankle Replacement systems (JPML Transfer Order, Doc. 1, p. 2.), where the plaintiff's device implantation occurred *on or after February 14, 2018*, the date of the merger between Exactech and Osteon Merger Sub, Inc.

C. The TPG Entity Defendants reserve the right to file a motion to dismiss the Amended Master Complaint as to the TPG Entity Defendants pursuant to Federal Rule of Civil Procedure 12. The responsive pleading deadline for any complaint naming a TPG Entity Defendant shall be extended up to and including thirty (30) days after a ruling on the TPG Entity Defendants' motion to dismiss the Master Complaint. By agreeing to this Direct Filing Order, the TPG Entity Defendants waive only the argument that the MDL Court lacks personal jurisdiction or constitutes an improper venue for pretrial purposes in a direct-filed case; the TPG Entity Defendants do not waive any other argument based on personal jurisdiction or improper venue that the TPG Entity Defendants could have asserted if the action were filed in Plaintiff's home state or other venue.

D. Nothing herein shall preclude any of the TPG Entity Defendants from objecting to the federal district court designated by Plaintiff, pursuant to Amended Practice and Procedure Order No. 2, and seeking transfer pursuant to 28 U.S.C. § 1404(a) to a different federal district court, upon completion of pretrial proceedings.

E. Filing a case directly in this Court pursuant to this Direct Filing Order as to TPG Entity Defendants will not determine the choice of law, including the statute of limitations. Any choice of law issues will be decided at a later date.

F. Moreover, the TPG Entity Defendants and Plaintiffs reserve their rights under *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), applicable to actions transferred to this Court by the Judicial Panel on Multidistrict Litigation.

SO ORDERED.

Date: April 14, 2023
Brooklyn, New York

s/ Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge