

litigation. These discussions will be useful to all parties, and will take place simultaneously with ongoing discovery so as not to impede the current progress of the litigation. As such, the PSC respectfully moves for entry of an MDL Order appointing a settlement master.

II. ARGUMENT

The Court's goal in managing any complex litigation is the just resolution for the parties as speedily, inexpensively and fairly as possible. *See* MANUAL FOR COMPLEX LITIGATION (FOURTH) §10.1 (2016). To achieve this goal, the Court has express and inherent powers to exercise extensive supervision and control of litigation. *See id.* Federal Rule of Civil Procedure 16(c)(12) specifically addresses complex litigation, authorizing the judge to adopt "special procedures for managing potentially difficult or protracted actions that many involve complex issues, multiple parties, difficult legal questions, or unusual proof problems."

The Court overseeing a complex litigation, "is usually uniquely situated to play a role in facilitating settlement discussions." Duke Law Center for Judicial Studies, STANDARDS AND BEST PRACTICES FOR LARGE AND MASS-TORT MDLS, at 131 (2014). The Manual for Complex Litigation recognizes that, at times, "resistance to settlement arises from unreasonable or unrealistic attitudes of parties and counsel, in which case the judge can help them reexamine their premises and assess their cases realistically." MCL 4th §13.11. The Court can promote settlement by appointing a settlement master to assist counsel and parties with these issues. *See id.*

The Court can fulfill its role in promoting settlement without interference with the current litigation track in these Zofran cases. Settlement-related activities, such as the appointment of a settlement master, “should not delay or divert the pretrial process; both can and should operate effectively on parallel tracks.” *Id.* at §13.11. Increasingly, courts overseeing complex litigations are appointing settlement counsel, settlement masters and/or settlement committees to facilitate initial settlement options among counsel and parties. *See e.g. In re Testosterone Replacement Therapy Prod. Liab. Litig.*, No. 14-md-1748, CMO No. 40 Appointing a Settlement Master, Dkt. No. 1795 (N.D. Ill. Mar. 20, 2017); *In re Taxotere (Docetaxel) Prod. Liab. Litig.*, 16-md-2740, PTO No. 6 Order Appointing Settlement Committees, Dkt. No. 133 (Ed. La. December 13, 2016); *In re Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Prod. Liab. Litig.*, 17-md-02775, CMO No. 4 Plaintiffs’ Settlement Counsel, Dkt. No. 108 (D. Md. July 20, 2017). The settlement track of these cases proceeds in conjunction with the regular progression of the litigation including ongoing depositions, discovery and bellwether trials.

Consistent with the role of this Court in settlement proceedings and best practices for managing complex multi-district litigations, the attached Proposed MDL Order No. 25 appoints a settlement master to help counsel explore and engage in settlement discussions, while discovery is ongoing, but prior to detailed trial preparations. Engaging in general settlement discussions prior the time-consuming nature of trial preparations will allow counsel to pursue potential resolution of some

or all of the issues in this litigation. Further, the appointed settlement master will hold discussions with appropriate counsel to establish common understandings that will help facilitate a more efficient resolution to this matter, prior to trial or remand of these cases to their individual districts.

III. CONCLUSION

The PSC was appointed, *inter alia*, to negotiate and propose settlement of cases on behalf of Plaintiffs or Plaintiff groups, if warranted. See MDL Order No. 8 (Dkt. No. 115). The appointment of a settlement master will help the parties explore all options for potential resolution of all or part of the claims at issue. Thus, the PSC respectfully requests this court enter MDL Order No. 25 appointing a settlement master.

Dated: October 19, 2017

Respectfully submitted,

/s/ Robert K. Jenner

Robert K. Jenner (MA, MD, DC)
JANET, JENNER & SUGGS, LLC
31 St. James Avenue, Suite 365
Boston, MA 02116
410-653-3200
rjenner@JJSjustice.com

Kimberly D. Barone Baden
MOTLEY RICE LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29464
843-216-9265
kbarone@motleyrice.com

M. Elizabeth Graham
GRANT & EISENHOFER P.A.
123 S. Justison Street
Wilmington, DE 19801
302-662-7063
egraham@gelaw.com

Tobias L. Millrood
POGUST, BRASLOW & MILLROOD LLC
8 Tower Bridge, Suite 940
Conshohocken, PA 19428
610-941-4204
tmillrood@pbmattorneys.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiffs' Steering Committee's Memorandum in Support of Motion for Entry of a MDL Order No. 25 Appointing a Settlement Master, which was filed with the Court through the CM/ECF system, will be sent electronically to all registered participants as identified on the Notice of Electronic Filing and paper copies will be sent via first class mail to those identified as non-registered participants.

/s/ Robert K. Jenner

Robert K. Jenner