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**FILED**

**NOV 01 2017**

**RACHELLE L. HARZ  
J.S.C.**

MATTHEW TIBBETTS,  
  
Plaintiff,

vs.

HOWMEDICA OSTEONICS CORP., D/B/A  
STRYKER ORTHOPAEDICS, JOHN DOES  
1-10, and ABC CORP. 1-10, said names  
being fictitious,  
  
Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-8160-16

CIVIL ACTION

**STIPULATION AND PROTECTIVE  
ORDER**

WHEREAS, Plaintiff Matthew Tibbetts and Defendant Howmedica Osteonics Corp., doing business as Stryker Orthopaedics ("Stryker") (collectively, the "Parties," each a "Party"), by and through their undersigned counsel, are engaged in discovery in the above-captioned matter (the "Litigation") that includes, among other things, written discovery and depositions; and

WHEREAS, the discovery will necessarily involve the production of certain information that the Parties believe to be confidential and sensitive commercial, financial, or business information and/or personnel or personal information;

IT IS HEREBY STIPULATED AND AGREED, by the Parties hereto, through their undersigned counsel, subject to the approval of the Court, that this Stipulation and Protective Order (the "Stipulation") will govern the handling of documents, deposition testimony, deposition exhibits, deposition transcripts, written discovery requests and responses, and any

other information or material produced, given or exchanged, including any information contained therein or derived therefrom ("Discovery Material") by or among any Party or Non-Party providing Discovery Material (each a "Producing Party") in this Litigation. The Parties further stipulate and agree that the Discovery Materials subject to this Order shall be used solely for the purpose of this litigation and pursuant to the following terms:

**A. Designation of Discovery Materials**

1. Any Producing Party has the right to designate Discovery Material as "CONFIDENTIAL" and/or "RESTRICTED - FOR COUNSEL'S EYES ONLY" (hereinafter, "RESTRICTED").

2. Any Producing Party designating Discovery Material as "CONFIDENTIAL" and/or "RESTRICTED," must, in good faith, believe that such Discovery Material constitutes or reveals sensitive business or proprietary information, or private personnel or personal, thus requiring the protection afforded by this Order.

3. Any Discovery Material designated as "CONFIDENTIAL" and/or "RESTRICTED" by a Producing Party will be so designated by stamping it with the legend "CONFIDENTIAL" and/or "RESTRICTED," respectively, within 21 days of its production. If any such Discovery Material is produced before entry of this Order, and is not so designated, a Producing Party shall have 21 days from the entry of this Order to so designate such Discovery Material.

**B. Disclosure of Designated Discovery Materials**

1. The Discovery Materials that are designated as "CONFIDENTIAL" shall not be disclosed to, discussed with, or used by anyone except:

- (a) Attorneys of record for the Parties in this action, including the Partners and Associates of the law firms appearing in this action on behalf of a Party;
- (b) Employees of the law firms appearing in this action on behalf of a Party, including paralegals and secretaries who are actively engaged in assisting counsel in this litigation;
- (c) Independent experts retained by a Party for purposes of assisting in the preparation and presentation of the claims or defenses in this case;
- (d) Any person indicated on the face of a document or accompanying covering letter, email, or other communication to be the author, addressee, or an actual or intended recipient of the document, or, in the case of meeting minutes, an attendee of the meeting;
- (e) Any person who has prepared, or assisted in the preparation of, the Discovery Material at the time of its creation;
- (f) The Parties and the directors, officers, employees, consultants, general partners, limited partners, and members of the Parties, or any subsidiary or affiliate thereof, who are assisting with or making decisions concerning the Litigation, to the extent deemed reasonably necessary by counsel of record for the purpose of assisting in the prosecution or defense of the Litigation for use in accordance with this Stipulation;
- (g) The Court, including Court employees, who have access to the material in the course and scope of their normal employment;

- (h) Any mediators or other mutually agreed upon or court-appointed person responsible for resolving this matter in a non-judicial forum; and
- (i) Court reporters, and others present at depositions or trial in this matter, with the consent of counsel for the Producing Party designating the Discovery Material at issue "CONFIDENTIAL," or by order of the Court.

2. The Discovery Materials that are designated as "RESTRICTED" shall not be disclosed to, discussed with, or used by anyone except:

- (a) Attorneys of record for the Parties in this action, including the Partners and Associates of the law firms appearing in this action on behalf of a Party;
- (b) Employees of the law firms appearing in this action on behalf of a Party, including paralegals and/or secretaries who are actively engaged in assisting counsel in this litigation;
- (c) Independent experts retained by a Party for purposes of assisting in the preparation and presentation of the claims or defenses in the case;
- (d) In-house counsel for Stryker, employees of Stryker's legal department, including paralegals and/or secretaries who are actively engaged in assisting counsel in this litigation and members of Stryker's litigation control group; and
- (d) Any mediators or other mutually agreed upon or court-appointed person responsible for resolving this matter in a non-judicial forum.

3. With the exception of the following people, any person furnished with a copy of any Discovery Material marked "CONFIDENTIAL" and/or "RESTRICTED" pursuant to

subsections B(1) and B(2) above shall first be given a copy of this Order, and must, prior to reviewing such Discovery Material, sign a written acknowledgment (in the form annexed hereto as Ex. A) indicating that s/he has read this Order and agrees to be bound by its terms:

- (a) Attorneys of record for the Parties in this action, including the Partners and Associates of the law firms appearing in this action on behalf of a Party;
- (b) Employees of the law firms appearing in this action on behalf of a Party, including paralegals and secretaries who are actively engaged in assisting counsel in this litigation;
- (c) The Parties to this action, including Stryker's in-house counsel; employees of Stryker's legal department, including paralegals and/or secretaries who are actively engaged in assisting counsel in this litigation; members of Stryker's litigation control group; and any other employees of Stryker who may need to be consulted concerning the Discovery Material;
- (d) Any mediators or other mutually agreed upon or court-appointed person responsible for resolving this matter in a non-judicial forum;
- (e) The author of any such Discovery Material and/or the person or people to whom the Discovery Material originally was/were addressed or delivered;  
and
- (f) Court reporters.

Counsel for the Party furnishing the Discovery Material designated as "CONFIDENTIAL" and/or "RESTRICTED" to individuals other than those people described in subsections (a) through (f) of this Section B(3) shall maintain all written acknowledgments of those who have

been shown, reviewed, or received the Discovery Material. The acknowledgments shall be made available for inspection if so ordered by the Court.

4. Each person to whom disclosure of Discovery Material is made pursuant to the terms of this Order shall subject him/herself to the jurisdiction of this Court for the purpose of contempt proceedings in the event of any violation of this Order.

**C. Dispute Regarding Designation**

1. If a Party objects to the designation of Discovery Material as “CONFIDENTIAL” and/or “RESTRICTED,” the objection shall be made in writing and served upon counsel for the Producing Party within twenty (20) business days of receiving the Discovery Material at issue. The objection shall specifically identify the designated “CONFIDENTIAL” and/or “RESTRICTED” Discovery Material that it contends is not “CONFIDENTIAL” and/or “RESTRICTED,” and the reasons supporting its contention. Within ten (10) business days after receipt of such objection, the Producing Party that designated the Discovery Material at issue as “CONFIDENTIAL” and/or “RESTRICTED” shall set forth in writing the basis for so designating the Discovery Material.

2. Thereafter, if a Party continues to object to the designation of Discovery Material as “CONFIDENTIAL” and/or “RESTRICTED,” the Producing Party designating the Discovery Material as “CONFIDENTIAL” and/or “RESTRICTED” shall bear the burden of applying to the Court for an appropriate determination with respect to the designation of the Discovery Material. On a motion to protect the Discovery Material as “CONFIDENTIAL” and/or “RESTRICTED,” the burden of demonstrating that the information is “CONFIDENTIAL” and/or “RESTRICTED” shall be on the Producing Party so designating the Discovery Material. If the restrictions of “CONFIDENTIAL” and/or “RESTRICTED” are not permitted by the Court, or by consent of

counsel, the Producing Party designating the Discovery Material as "CONFIDENTIAL" and/or "RESTRICTED" has the right to redact information from the Discovery Material, and reproduce it with the appropriate designation per the Court's decision. All Discovery Material designated "CONFIDENTIAL" and/or "RESTRICTED" shall remain so designated until it is declassified by the Court or by the consent of counsel.

**D. Return of Documents**

Upon completion of the Litigation, all Discovery Material designated as "CONFIDENTIAL" and/or "RESTRICTED" shall be returned to the Producing Party, destroyed in a mutually agreed upon manner or maintained in the ordinary course of business by counsel and not otherwise disclosed.

**E. Documents Filed with the Court**

1. In the event Discovery Material designated "CONFIDENTIAL" and/or "RESTRICTED" is filed with the Clerk of the Court in connection with motions or other matters pending before the court, the Party filing such Discovery Material designated "CONFIDENTIAL" and/or "RESTRICTED" shall take all reasonable and necessary steps to preserve the confidentiality of the information. Discovery Material designated "CONFIDENTIAL" and/or "RESTRICTED" shall be filed under seal and shall remain sealed while in the office of the Clerk and be treated as "CONFIDENTIAL" and/or "RESTRICTED".

2. Any Discovery Material designated "CONFIDENTIAL" and/or "RESTRICTED" filed under seal shall be filed in sealed envelopes or other appropriate sealed containers. The word "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the following form shall also be printed on the envelope:

This envelope is filed under seal by [name of party] pursuant to the Protective Order entered [date of this order], contains Discovery

Material designated "CONFIDENTIAL" and/or "RESTRICTED", and is not to be opened or the contents displayed or revealed except by Order of the Court or written agreement by the Parties.

3. In the event the Court or any third party believes any Discovery Material designated "CONFIDENTIAL" and/or "RESTRICTED" filed under seal pursuant to this Stipulation should be unsealed, the Producing Party shall be afforded reasonable notice and the opportunity to first argue that the "CONFIDENTIAL" and/or "RESTRICTED" Discovery Material at issue should remain under seal.

4. Oral argument on any motion in which reference is anticipated to be made to Discovery Material designated as "CONFIDENTIAL" and/or "RESTRICTED" shall be scheduled with the intent of minimizing disclosure of such Discovery Material, but counsel shall not be deemed in violation of this Order for disclosing any Discovery Material designated as "CONFIDENTIAL" and/or "RESTRICTED" during oral argument.

**F. Depositions**

1. Any Discovery Material designated as "CONFIDENTIAL" and/or "RESTRICTED" marked as an exhibit at a deposition shall be treated as such. A Party may, on the record of a deposition, or within ten (10) business days after receipt of the transcript(s) of such deposition, designate, in good faith, any portion or portions of such transcript(s), including exhibits and videotape, as "CONFIDENTIAL" and/or "RESTRICTED" under the terms of this Order. Until the ten-day period expires, the complete deposition transcript shall be treated as confidential unless otherwise specified in writing, or on the deposition record by the Producing Party designating the Discovery Material as "CONFIDENTIAL" and/or "RESTRICTED."

2. If a Party that noticed a deposition wishes to use Discovery Material that that has been designated under this Stipulation as "CONFIDENTIAL" and/or "RESTRICTED" and the



deponent is not a person identified in B(1) or B(2), the noticing Party shall identify the Discovery Material to the deponent's counsel (and to counsel for the other Parties, if different from the deponent's counsel) no later than two (2) business days prior to the date of the deposition, and confirm in writing that the document may be shown to the deponent for the sole purpose of preparing him or her for his or her deposition. The deponent shall not be permitted to retain a copy of any such document. Unless the deponent's counsel consents, a noticing Party shall not be permitted to enter as a deposition exhibit any document that has been designated under this Stipulation at the deposition of a deponent who is not a person identified in B(1) or B(2) unless it has identified such documents in advance of the deposition in accordance with this paragraph.

3. To the extent that testimony is sought concerning "COINIDENTIAL or "RESTRICTED" Discovery Materials, any Party may exclude any person from the deposition or other venue during such testimony if the Discovery Materials may not be disclosed to such person under the terms of this Stipulation.

4. All copies of deposition transcripts that contain Discovery Material designated as "CONFIDENTIAL" and/or "RESTRICTED" shall be prominently marked "CONFIDENTIAL" and/or "RESTRICTED" on the cover thereof and on each page that contains "CONFIDENTIAL" and/or "RESTRICTED" information, and, if filed with the Court, the portions of such transcripts so designated shall be filed in accordance with the provisions of Section E above.

**G. Objections to Production of Documents**

This Order shall not enlarge or affect the proper scope of discovery. No Party shall be deemed by the entry of this Order to have waived any objection to the production of any Discovery Material on any ground, or to have waived any other right, defense, or objection that

may otherwise be interposed in this action. Nothing in this Order shall be interpreted to require, or, as consent to, disclosure of Discovery Material that a Party contends is protected by the attorney-client privilege or the attorney work-product doctrine.

**H. Amendments**

Nothing in this Order shall be deemed to prevent a Party from seeking amendments: (1) to restrict the right of access to, and/or further utilize the Discovery Materials covered hereunder; (2) to allow access to Discovery Material to people not included within the terms of this Order; or (3) for any other reason.

**I. Inadvertent Production**

1. The inadvertent failure to stamp any Discovery Material with the “CONFIDENTIAL” and/or “RESTRICTED” designation in no way alters or waives the confidential and protected nature of the Discovery Material otherwise deserving of such designation, and does not remove it from the scope of this Order once it is properly designated by stamp or written notification.

2. Inadvertent failure to designate Discovery Material as “CONFIDENTIAL” and/or “RESTRICTED” may be corrected through written notice by the Producing Party so designating the Discovery Material to the other Parties. The Producing Party producing such Discovery Material shall promptly provide a replacement copy of such Discovery Material with the appropriate designation to the other Parties. The Parties that received the unmarked Discovery Material shall immediately return it to the Producing Party that produced it upon receipt of the replacement copy. Treatment of inadvertently produced confidential Discovery Material in a manner inconsistent with this Order prior to notice of such inadvertent production is not a breach of this Order. However, the Parties agree that no further disclosure will occur without following

the terms of the Order, and that the Parties that received such Discovery Material shall immediately locate and return such Discovery Material, including all copies that may have been distributed to any other person, as soon as practicable.

3. If a Party receiving undesignated Discovery Materials believes that such information should be designated "CONFIDENTIAL" and/or "RESTRICTED," that Party may request in writing that the Producing Party designate the Discovery Material "CONFIDENTIAL" and/or "RESTRICTED" and provide a replacement copy of such Discovery Material with the appropriate designation. Any dispute concerning such a request shall be resolved pursuant to the terms of Section C above.

4. Any Producing Party may request the return of any inadvertently produced Discovery Material as to which that Producing Party claims an attorney-client, work product, or any other applicable privilege. Any such inadvertent production will not be considered to have waived any claim of privilege or protection from discovery. A request for the return of any inadvertently produced Discovery Material shall identify the Discovery Material inadvertently produced, and the basis for withholding such document from production, as required by Court Rules. Upon receipt of such a request, the Parties that received the Discovery Material shall immediately locate and return the inadvertently produced Discovery Material, including all copies that may have been distributed to any other person, as soon as practicable. If a Party receiving the Discovery Material believes, in good faith, that the Discovery Material is not privileged, such Party may dispute such claim of privilege under the provisions of Section C above.

**J. Trial**

The issue of disclosure or non-disclosure of Discovery Material designated as "CONFIDENTIAL" and/or "RESTRICTED" at trial shall be resolved by further stipulation by the Parties and/or by further order of the Court. Prior to the issuance of any such further order of the Court, if Discovery Material designated as "CONFIDENTIAL" and/or "RESTRICTED" is to be offered into evidence at trial or at any hearing in open court, it may only be upon sufficient notice so that the Producing Party producing such Discovery Material may apply for an order that the evidence be received *in camera*, or under other less public circumstances in order to prevent unnecessary disclosure.

**K. Documents Produced by Party**

Subject to Section I(3), nothing herein shall be deemed to restrict in any manner the use by a Party of her/its own documents or materials.

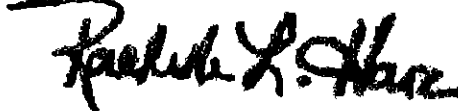
**L. Counterparts**

The Parties agree that the Order may be executed in counterparts, each of which, when so executed, shall be deemed to be an original.

**M. Effective Date**

This Order shall become effective immediately upon the Parties' execution of it even though prior to approval by the Court.

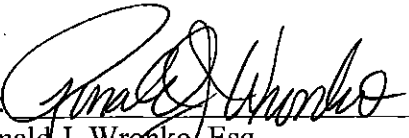
On this 1<sup>st</sup> day of November, 2017, it is SO ORDERED

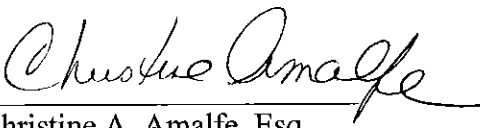


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Hon. Rachelle Lea Harz

The terms and form of this Order are hereby consented to:

By:   
Ronald J. Wronko, Esq.  
**LAW OFFICES OF RONALD J.  
WRONKO, LLC**  
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*Attorneys for Plaintiff*

By:   
Christine A. Amalfe, Esq.  
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Fax: (973) 596-4545  
*Attorneys for Defendant*

Date: 8/7/, 2017

Date: 8/16, 2017

**EXHIBIT A**

**CONFIDENTIALITY ATTESTATION**

I hereby attest to my understanding that information, documents, deposition transcripts, and/or deposition videotaped footage designated as "CONFIDENTIAL" and/or "RESTRICTED" may be shown, disclosed, and/or provided to me pursuant to the terms, conditions, and restrictions of the Stipulation and Protective Order signed by the Parties to the action captioned *Tibbetts v. Howmedica Osteonics Corp., et al.*, Superior Court of New Jersey, Law Division, Bergen County, Docket No. BER-L-8160-16. I have been given a copy of the Stipulation and Protective Order, and have had its effect and meaning explained to me by the attorneys providing me with such information, documents, deposition transcripts, and/or deposition videotaped footage. I hereby agree to be bound by the terms of the Stipulation and Protective Order.

I further agree that I shall not disclose to others, except in accordance with the Stipulation and Protective Order, such information, documents, deposition transcripts, and/or deposition videotaped footage, and that such information, documents, deposition transcripts, and/or deposition videotaped footage shall be used only for the purpose of the legal proceeding in which the documents were produced.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such information, documents, deposition transcripts, and/or deposition videotaped footage will continue even after the termination of this legal proceeding.

I further agree and attest to my understanding that, in the event that I fail to abide by the terms of the Stipulation and Protective Order, I may be subject to sanctions, including sanctions by way of contempt of court.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Dated: \_\_\_\_\_, 2017