
IN RE: PELVIC MESH/GYNECARE
LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

CASE NO. 291
MASTER DOCKET NO.: BER-L-11575-14

CIVIL ACTION

CASE MANAGEMENT ORDER #21

All prior orders remain in full force and
effect except as modified by this Order.

FILED

OCT 21 2015

BRIAN R. MARTINOTTI
J.S.C.

THIS MATTER having been reassigned to the Bergen County Vicinage, from Atlantic County, pursuant to the Supreme Court's Order of October 31, 2014; the Court having conducted a Case Management Conference; counsel appearing; for good cause shown and for the reasons set forth on the record;

IT IS on this 21st day of October 2015, **ORDERED** as follows:

PART I

ORDERS ENTERED SINCE LAST CASE MANAGEMENT CONFERENCE

- A. Case Management Order No. 20 entered on September 16, 2015.
- B. Wicker v. Ethicon, Inc., et al., BER-L-13702-14 – Dismissed with Prejudice,
Resolved on September 16, 2015.

PART II

COMPLIANCE WITH PRIOR ORDERS

- A. Revised Scheduling Order for TVT Retropubic Core Discovery Cases entered on July 23, 2015.
1. Depositions of Plaintiffs' experts shall be completed by October 5, 2015.
 - a. The deposition of a plaintiffs' case-specific urogynecology expert in Nemcek did not go forward because Plaintiffs' counsel verbally withdrew the Nemcek matter from the TVT Retropubic Core Discovery cases.
 - b. The deposition of plaintiffs' case-specific expert in Cannon, which had been scheduled for October 1, 2015, was cancelled by Plaintiff's counsel, advising that the report of the expert, Dr. Walmsley, was being withdrawn.
 - c. The outstanding deposition of one of Plaintiffs' experts in Cantrell (Dr. Iakovlev) is scheduled for October 27, 2015.
 - d. All other depositions have occurred.
 2. Depositions of Defense experts shall be completed by November 5, 2015.
 - a. The parties are in the process of attempting to schedule depositions of Defendants' experts.
 3. Selection of the case or cases that will be the subject of the first trial setting including a TVT Retropubic will be determined by no later than November 9, 2015. Absent agreement between the parties as to the case or cases that will be involved in the first TVT-Retropubic trial setting, the court will schedule a conference or teleconference to resolve the case selection dispute.
 - a. As of the September CMC, there were five remaining TVT cases that were candidates for a possible January 2016 trial. Since the last CMC, it appears that two additional cases have been withdrawn from the pool of candidates. The remaining cases are Corbet (Plaintiffs' selection); Cantrell (Plaintiffs' selection) and Watkins (Defendants' selection).
 4. Specifics regarding deadlines for filing pretrial motions, including summary judgment motions, Kemp motions and *in limine* motions, as well as other deadlines relating the Trial were set.
 - a. The parties are proceeding based on the deadlines set forth in the Revised Scheduling Order.
- B. Case Management Order No. 19 entered on August 19, 2015.

1. Velazquez (TVT-O - Core Discovery) – Defendants may file motion based on the status of the bankruptcy matter no sooner than 30 days from August 19, 2015.
 - a. On September 23, 2015, Defendants filed a motion to dismiss based on the status of the bankruptcy matter. The motion return date was October 9, 2015. The Court addressed the motion Section III(D)(1)(c) of this Order.
- C. Case Management Order No. 20 entered on September 16, 2015.
1. Counsel shall submit a proposed agenda seven (7) days prior to the Case Management Conference.
 - a. Agenda was submitted seven (7) days prior to the Case Management Conference
 2. TVT Retropubic Core Discovery Cases
 - a. Corbet: Plaintiffs shall provide to defense counsel dates for the scheduling of the depositions of plaintiffs' daughter and her husband.
 - (1) Plaintiffs have provided defense counsel dates.
 3. TVT Secur Core Discovery Cases
 - a. DuBose – Counsel was in the process of attempting to schedule the depositions of Laurel and Timothy DuBose at a mutually convenient time. Unfortunately, Plaintiffs' counsel has advised that Laurel DuBose passed away. The parties will meet and confer regarding whether the case is being reinstated as a Core Discovery case or not.
 4. TVT-O Core Discovery
 - a. Velazquez – As was mentioned in Section II above, Defendants filed a motion to dismiss based on the status of the bankruptcy matter. The Court addressed the motion Section III(D)(1)(c) of this Order.
 5. Miscellaneous Issues
 - a. Scheduling of depositions – The parties will meet and confer to discuss a protocol for questioning at depositions of treaters and a possible modification of Orders in place.
 - (1) The parties will report to the Court as to the status of this issue.
 - b. Parties will meet and discuss the revised IFUs for the TVT products. Plaintiffs will forward to Defense counsel a formal request for information related to the revised IFU.
 - (1) Plaintiffs made a formal request for a deposition with a related document demand regarding revised TVT IFUs and amended and broadened that discovery request on October 12, 2015 to include Gynemesh PS. Overlapping requests were made by plaintiffs' counsel in the MDL and plaintiffs' counsel in a pending Texas state court case. A meet and confer was held on October 12, 2015, with NJ Plaintiffs'

Liaison counsel, MDL plaintiffs' counsel and Texas plaintiffs' counsel during which Defendants proposed a coordinated approach to document production and a deposition so as to avoid duplicative and overly burdensome efforts. The parties will provide the Court with a report as to the status of the issue at the October 21, 2015 CMC.

PART III

CASE MANAGEMENT

A. TVT Retropubic Core Discovery Cases

1. Tentative trial setting remains scheduled for January 11, 2016; pursuant to directive of the Hon. Robert L. Polifroni, P.J.C., the Hon. Rachelle L. Harz, J.S.C. will preside over this trial. Counsel shall file all pre-trial motions directly with Judge Harz's chambers with courtesy copies to the Hon. Brian Martinotti.
2. Status of selection of the case or cases that will be the subject of the first trial setting including a TVT Retropubic, in light of November 9, 2015 deadline: As of the September CMC, there were five remaining TVT cases that were candidates for a possible January 2016 trial. Since the last CMC, it appears that two additional cases have been withdrawn from the pool of candidates. Defendants request that Plaintiffs confirm in writing the dismissal of the Nemcek and Cannon matters. The remaining cases are Corbet (Plaintiffs' selection); Cantrell (Plaintiffs' selection) and Watkins (Defendants' selection). Parties to continue to meet and confer regarding an agreement as to the case to be tried on January 11, 2015; if they are unable to agree, they shall submit by October 30, 2015, ex parte, to the Court the order in which they want to cases to be tried; the Court will review that submission and render a decision as to the case to be tried.
3. Counsel will meet and confer and submit by November 2, 2015 a Trial-Specific Order for the January 11, 2015 trial before Judge Harz.
4. Parties shall meet and confer regarding the number of motions to be filed being cognizant of the prior stipulations in Wicker, and if need be shall arrange, subject to Judge Harz's schedule, a pre-trial "science day" to present information about the products.

B. TVT Secur Core Discovery Cases

1. Liaison counsel continue to meet and confer regarding ongoing scheduling issues. Plaintiffs requested setting a trial date and the first bellwether trial was tentatively scheduled for May 2, 2016.
2. DuBose – Counsel was in the process of attempting to schedule the depositions of Laurel and Timothy DuBose at a mutually convenient time. Unfortunately, Plaintiffs’ counsel has advised that Laurel DuBose passed away. The parties intend to meet and confer as to whether the case is being reinstated as a Core Discovery case or not.

C. TVT-O Core Discovery

1. Liaison counsel continue to meet and confer regarding ongoing scheduling issues. No trial setting has yet been made for this set of cases.
2. Velazquez – As was mentioned in Section II above, Defendants filed a motion to dismiss based on the status of the bankruptcy matter. The Court addressed the motion Section III(D)(1)(c) of this Order.
3. Korzeb – Defendants’ request to Plaintiff to waive or shorten the two 10-day review periods for documents requested and obtained by The Marker Group, Inc.

D. Miscellaneous Issues:

1. Prior Motions
 - a. The Court RESERVES opinion in Plaintiff’s motions to reinstate complaints in:
 - (1) Rebecca Decker v. Ethicon, Inc., et al., BER-L-15031-14
 - (2) Cindy Lynn Kazmierski v. Ethicon, Inc., et al., BER-L-15633-14
 - (3) Donald Benson v. Ethicon, Inc., et al., BER-L-8842-15
 - b. Defendants’ omnibus motion to dismiss 97 cases with prejudice for failure to submit a Plaintiff Fact Sheet is RESERVED as to Plaintiff Rebecca Decker and Plaintiff Cindy Lynn Kazmierski and GRANTED as to remaining Plaintiffs.
 - c. Counsel will meet and confer to select a day for oral argument in Defendants’ motion to dismiss for lack of standing and to judicially estop Plaintiffs from personally recovering damages in Gisselle Velazquez v. Ethicon, Inc., et al., BER-L-10304-14. The Court will conduct a telephonic argument.
2. Hearing on admissibility of evidence regarding loss/destruction of evidence – Plaintiffs seek the scheduling of a hearing to establish a

comprehensive record for determination of the admissibility of this evidence for bellwether trials in this consolidated litigation. Defendants have responded in writing to this request. Judge Martinotti and Judge Harz will discuss whether a hearing will be held and will notify counsel.

3. Counsel shall meet and confer to discuss a trial plan for the trials to begin in May 2016 paying significant attention to those products that constitute the most significant number of cases in New Jersey.

PART IV

GENERAL:

1. The next Case Management Conference is scheduled for December 2, 2015 at 12:00pm. Liaison Counsel shall report at 9:30am. **Counsel shall submit a proposed agenda seven (7) days prior to this Case Management Conference.**
2. By consent of all parties, the court may contact or be contacted on an *ex parte* basis regarding settlement issues only.
3. The court may, from time to time, conduct phone conferences with defense counsel and liaison counsel.
4. Subject to agreement by and between counsel and with permission from the Court, counsel is permitted to appear telephonically; in order to have your appearance on the record, it is counsel's responsibility to e-mail liaison counsel and the court reporter at least one hour before the proceeding with your name, firm, and party representing, indicating that you intend to appear by phone; in addition you must confirm your appearance, immediately following the proceeding. Absent the above, counsel's appearance will not be noted.

5. The official record shall be the transcript provided by the court reporter retained by counsel. The reporter shall preserve all proceedings and shall email a transcript of any court proceeding to the court within 14 days of the proceeding.
6. Counsel is permitted to serve one motion with a schedule of attached cases for *pro hac* admission. However, a separate order per case/docket number and filing fees is required.
7. The Court directs all counsel to R.1:4-8 and expects all counsel to abide by the parameters set forth therein.
8. All Court proceedings will start at the designated scheduled time. Counsel is expected to arrive promptly for these proceedings.
9. Counsel shall provide the Court with their preferred e-mail address by e-mailing same to Kelly Gibson at Kelly.Gibson@judiciary.state.nj.us and Yeon Ji Lee at Yeon-Ji.Lee@judiciary.state.nj.us.
10. Counsel shall copy their co-counsel and all adversaries on all e-mails and other electronic correspondence submitted to the Court [COUNSEL IS PROHIBITED FROM FILING ANY PLEADING ELECTRONICALLY]. Any such submission received after 4:30 p.m. will be deemed received at 9:00 a.m. on the next day Court is in session. Any such submission received after 4:30 p.m. on a Friday or over a weekend, will be deemed received on 9:00 a.m. on the next day Court is in session.
11. Counsel is directed to contact The Superior Court of New Jersey, Attorneys Accounts: P.O. Box 980, Hughes Justice Complex, 25 W. Market Street, Trenton, New Jersey 08625 (609) 633-8643 to establish a collateral account for any filing fees within seven (7) days.

12. Counsel is required to check the Judiciary's Web Site dedicated to this matter for any decisions/Orders/information contained therein.
13. A copy of this Order and any subsequent Orders to the Court will be posted on the Judiciary Web Site.

A handwritten signature in black ink, appearing to read "Brian R. Martinotti". The signature is written in a cursive, slightly slanted style.

BRIAN R. MARTINOTTI, J.S.C.