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IN RE: PELVIC MESH/GYNECARE  
LITIGATION

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SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: BERGEN COUNTY

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

CIVIL ACTION

CASE MANAGEMENT ORDER #34

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

**FILED**

**FEB 01 2017**

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

THIS MATTER having come before the Court or a Case Management Conference on  
January 26, 2017; and for good cause shown and for the reasons set forth on the record;

IT IS on this 1st day of February 2017, **ORDERED** as follows:

**PART I**

**I. ORDERS ENTERED SINCE LAST CASE MANAGEMENT CONFERENCE**

- A. Case Management Order #33 entered on December 15, 2016
- B. Notice and Order Regarding Service of Plaintiff's Fact Sheets and Application for Extension of Service Dates (Updated December 2016) entered on December 15, 2016

**PART II**

**II. COMPLIANCE WITH PRIOR ORDERS (REMAINING OUTSTANDING ITEMS ONLY)**

- A. Case Management Order #33 entered on December 15, 2016
  - 1. Smith. The Court denied without prejudice Plaintiffs' request for separate oral argument regarding its Motion for Partial Summary Judgment for Inadequate Warning. It is the parties' expectation to receive guidance from the Court about whether this motion will be refiled/reasserted following the determination of Plaintiffs' motion for collateral estoppel on the Gross decision.
  - 2. TVT Secur Core Discovery Cases
    - a. The parties reported on the status at the January 26, 2017 CMC.

B. Mixed-Ethicon Product Cases

1. The parties reported on the status at the January 26, 2017 CMC.

C. Settled/Settling Ethicon Cases

1. The parties reported on the status at the January 26, 2017 CMC.

D. Plaintiffs' Request to Discuss Impact of Gross Decision

1. Plaintiffs' deadline to file a Motion for Collateral Estoppel on the Failure to Warn and punitive damages verdict pertaining to Prolift products only has been adjusted. The Briefing schedule is now February 7, 2017 for Plaintiffs' Motion, Defendants' deadline to file opposition is March 7, 2017 and Plaintiffs' deadline to file a reply is March 24, 2017.

III. CASE MANAGEMENT

A. TVT Secur Core Discovery Cases – Nelson and Sheppard

1. The trial date has been moved to April 24, 2017.
2. Motion on the Statute of Limitations issues
  - a. Defense will file their papers by February 17, 2017
  - b. Plaintiffs' Opposition will be filed by March 17, 2017.
  - c. Defendants' Reply will be filed by March 31, 2017.
  - d. Oral Argument will be on a date TBD.
3. Status of pre-trial preparation and the current pre-trial schedule and related issues, including:
  - a. The pretrial motion schedule has been adjusted as follows:
    - i. Pretrial motions will be submitted by March 1, 2017.
    - ii. Opposition will be submitted on March 22, 2017.
    - iii. Replies will be submitted on March 28, 2017.
    - iv. Oral argument will be on a date TBD.
  - b. Determination as to whether Nelson or Sheppard will be tried first.
    - i. Plaintiffs' position paper on which case will be tried first will be submitted by February 1, 2017.
    - ii. A decision by the Court will be made by February 8, 2017.
  - c. Status of remaining pretrial deadlines and related issues.

- i. The parties will meet and confer to discuss outstanding pretrial deadlines and prepare a revised Pretrial order given the revised trial date.
- d. Status of deposition designations.
  - i. The parties will continue to meet and confer regarding the scope and status of deposition designations and suggested dates for hearings on unresolved disputes after decisions are issued on the pretrial motions.
- e. Status of issues relating to Plaintiffs' request for live defense company witnesses at trial.
  - i. The parties will meet and confer regarding the witnesses.

#### B. Mixed-Ethicon Product Cases

- 1. Status of discussions regarding Mixed-Ethicon Product Core Discovery Cases.
  - a. The parties will select 4 cases each, and exchange the cases within 20 days.
    - i. 2 cases selected by each side are expected to be mixed-product cases with a combination of a Prolift, and another Ethicon pelvic mesh product, for example, TVT, TVT-O, TVT-S products.
    - ii. The 2 remaining cases selected by each side may be from any product or combination of Ethicon products.
  - b. The parties will meet and confer to discuss and set the parameters for the selection of cases and for the submission of any disputes as to selected cases to the Court for disposition. The parties will advise one another of any dispute as to the appropriateness of selected cases, giving an opportunity to voluntarily replace the challenged case or submit the dispute to the Court.
  - c. The parties will also meet and confer to establish a discovery schedule for this next pool of cases.
  - d. The first trial involving the new discovery pool will have an initial trial date of November 27, 2017, with jury selection to take place the week of November 13, 2017, with the intention that opening statements will commence on November 27 or 28.
  - e. The parties will discuss at the next CMC on February 28, 2017, future discovery pools.

#### C. Settled Case Information

1. In response to Plaintiffs' request, Defendants have provided an updated spreadsheet listing active cases and will further provide a list of cases that are subject to agreements to settle. The parties will continue to meet and confer together and with the Court regarding a mechanism to address removing these inactive cases from the docket.

D. Status of Plaintiffs' Request to modify Order regarding Defendants' communications with Plaintiffs' treating physicians as potential experts

1. Plaintiffs have requested modification of the Appellate Division decision and existing protocol regarding defense counsel contact with physicians who have treated plaintiffs with cases pending in the New Jersey MCL. The parties will meet and confer as to whether agreement can be reached on a modifying order or will bring disputed issues to the Court for resolution.

E. TVT-O Core Discovery Cases.

1. Hickman case. Plaintiffs request to discuss status.
  - a. The depositions in Hickman will be adjourned 90 days.

## PART IV

### I. GENERAL

1. The next Case Management Conference is scheduled for February 28, 2017 at 11:00 a.m. in Room 359. Liaison Counsel shall report at 10:00 a.m. **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.: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 Jamie Colaneri at [Jamie.Colaneri@njcourts.gov](mailto:Jamie.Colaneri@njcourts.gov) and Sean Hanratty at [Sean.Hanratty@njcourts.gov](mailto:Sean.Hanratty@njcourts.gov).
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.

  
RACHELLE L. HARZ, J.S.C.