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FILED

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

Attorneys for Defendants,
Ethicon, Inc. and Johnson and Johnson

SUSAN SMITH and WILLIAM SMITH,

Plaintiffs,

vs.

ETHICON, INC., ETHICON WOMEN'S
HEALTH AND UROLOGY, a Division of
ETHICON, INC., GYNECARE, JOHNSON &
JOHNSON, and JOHN DOES 1-20,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY
DOCKET NO. BER-L-16720-14 MCL

MASTER DOCKET NO. BER-L-11575-14

CIVIL ACTION

**PRE-TRIAL SCHEDULING ORDER
(Revised)**

THIS MATTER having been brought before the Court jointly by Defendants Ethicon, Inc. and Johnson & Johnson (“Defendants”), through their counsel Riker Danzig Scherer Hyland & Perretti, LLP, and Plaintiffs, through Plaintiffs’ liaison counsel, and for good cause shown;

IT IS on this 25 day of August, 2016, ORDERED as follows:

1. The following schedule will apply to Smith v. Ethicon, BER-L-16720-14:
 - a. Fact discovery is complete (with the exception of the deposition of one additional treating physician and a request for a supplemental deposition of plaintiff) on **August 31, 2016**.

- b. Plaintiffs' and Defendants' expert reports have been served with the exception of supplemental reports by both parties relating to pathology obtained from plaintiffs.
- c. Expert depositions shall be completed by **September 30, 2016**.
- d. Pre-trial motions (dispositive, Kemp, motions *in limine*) shall be served and filed directly with Judge Harz's chambers by **October 24, 2016**.
- e. Oppositions to pretrial motions shall be filed and served by November 14, **2016**.
- f. Only where necessary, on leave of Court, limited replies shall be filed and served by **November 21, 2016**.
- g. Oral argument on pretrial motions shall be on a date or dates in December, 2016, to be determined by the Court, but **not later than December 15, 2016**.

2. Other Trial Submissions (Smith):

- a. The parties shall exchange affirmative deposition designations for case-specific and non-case specific witnesses on or before **September 15, 2016**. The designations shall be identified by page and line number and the parties have agreed to use the same Excel spreadsheet format for ease of reference and exchange. The designations shall specifically identify exhibits to be offered through the deposition testimony.
- b. Any objections to designations or any of the accompanying exhibits sought to be entered through the deposition testimony, and any counter-designations and accompanying exhibits sought to be entered through the counter-designation testimony, shall be exchanged on or before **October 17, 2016**.
- c. Plaintiffs shall advise Defendants of any witness for whom Defendants have identified deposition designations to which Plaintiffs will object on

the grounds that the witness needs to be brought live to trial rather than played by video on or before October 17, 2016.

- d. Any objections to the counter-designations and exhibits, and any counter-designations to an opposing party's counter-designations, shall be exchanged on or before **October 31, 2016**.
- e. The parties shall meet and confer no later than **November 30, 2016**, to resolve objections to designated testimony and exhibits and to resolve any proposed redactions to exhibits.
- f. Deposition designations agreed upon to be read at trial, along with identified exhibits as agreed and properly redacted, as well as any deposition designations and related exhibits in dispute shall be submitted to the Court by **December 5, 2016**.
- g. The Court shall hold hearings to resolve all outstanding objections on a date or dates to be set in **December, 2016**, but no later than **December 15, 2015**.
- h. The parties shall exchange witness lists on **or before October 15, 2016**.
- i. On or before October 17, **2016**, Plaintiffs shall advise Defendants of Defendants' corporate witnesses whom they request to call as live witnesses at trial.
- j. The parties shall exchange their lists of all exhibits that may be offered during each party's case in chief no later than **October 31, 2016**.
Demonstratives and exhibits to be utilized solely for impeachment need not be included. The exhibit list shall be in the form of an Excel

spreadsheet. The parties may supplement their exhibit lists from time to time prior to and during trial provided the supplementations are reasonable in terms of scope and number of documents. The parties shall meet and confer regarding the deadline and manner by which they will exchange copies of all exhibits (e.g., on a hard drive, as separate .pdf or .tiff images, etc.).

- k. If a party elects to submit a hard copy of proposed exhibits to the Court for any purpose, and if the Court so permits, a duplicate shall also be provided to the adverse party.
- l. The parties shall disclose the identities of live witnesses who will testify at trial at least two business days prior to when the witness will be called. If the witness will be called on a Monday, then the witness must be disclosed by the end of court day on the preceding Friday.
- m. The parties shall exchange initial proposed jury instructions by **November 7, 2016**, and thereafter shall meet and confer regarding jury instructions.
- n. The parties shall meet and confer regarding proposed jury instructions by **November 30, 2016**.

3. Jury Selection

- a. The parties shall meet and confer on a juror questionnaire by **November 7, 2016**.
- b. A proposed agreed jury questionnaire must be submitted to the Court on or before **November 23, 2016**. If the parties are unable to agree upon a form

of juror questionnaire, the parties should submit competing forms and identify for the Court those questions upon which they cannot agree.

- c. The parties shall agree upon a service to copy the final questionnaire to insure that there are sufficient copies for distribution to the jury pool and for duplication of the completed questionnaires for distribution among counsel. The cost of copying shall be borne equally by Plaintiff and Defendants.
- d. By **December 5, 2016**, the parties shall submit a concise descriptive statement of the nature of the cause of action not to exceed three pages in length for the Judge's use during jury selection.
- e. It is the Court's intention to bring in a jury pool during the week of **January 2, 2017**, address hardship issues, and distribute the jury questionnaires, such that jury selection will begin on **January 9, 2017**.

4. Commencement of Trial

- a. Opening statements will commence on the first full court day following the selection of the jury (with the goal of no later than **January 12, 2017**).

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel within 7 days of the date of this Order.



Hon. Rachelle L. Harz, J.S.C.