

**COUGHLIN DUFFY LLP**

Lorna A. Dotro, Esq. – ID No. 031351997

350 Mount Kemble Avenue

P.O. Box 1917

Morristown, New Jersey 07962-2075

Telephone: (973) 267-0058

Facsimile: (973) 267-6442

*Attorney for Defendant Bayer HealthCare Pharmaceuticals Inc.*

**FILED**

**OCT 30 2014**

**BRIAN R. MARTINOTT  
J.S.C.**

\_\_\_\_\_  
THERESA WITHAM,

Plaintiff,

v.

BAYER HEALTHCARE  
PHARMACEUTICALS INC., BAYER  
HEALTHCARE AG, BAYER PHARMA AG,  
and BAYER OY,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BERGEN COUNTY

DOCKET NO.: BER-L-0696-14.

Civil Action

In Re: Mirena Litigation  
Case No. 297

**ORDER ON MOTION TO DISMISS WITH  
PREJUDICE FOR FAILURE TO  
PROVIDE A PLAINTIFF FACT SHEET**

THIS MATTER having been brought before the Court by way of motion of Coughlin Duffy LLP, counsel for defendant Bayer HealthCare Pharmaceuticals Inc. (“Defendant”), for an Order dismissing Plaintiff’s Complaint with prejudice for failure to provide a Plaintiff Fact Sheet pursuant to Case Management Order No. 3; and the Court having considered the papers submitted; and the Court having heard the arguments of counsel, if any; and for good cause shown;

IT IS, on this 30<sup>th</sup> day of October, 2014;

ORDERED that the Complaint of Plaintiff Theresa Witham is hereby dismissed with prejudice; and it is further

ORDERED that a signed copy of this Order be served upon all counsel within seven (7) days of the date hereof.

*Brian R. Martinotti*

\_\_\_\_\_, J.S.C.  
HONORABLE BRIAN R. MARTINOTTI, J.S.C.

Opposed

Unopposed

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY**

**CASE NO. 297**

**CIVIL ACTION**

**MEMORANDUM DECISION**

---

**IN RE MIRENA  
LITIGATION**

**FILED**

---

**OCT 30 2014**

**BRIAN R. MARTINOTTI  
J.S.C.**

Before this Court are 18 Motions to Dismiss for Failure to Provide a Plaintiff Fact Sheet. Please see Exhibit A for a list of the 18 Plaintiffs affected by this motion.

**I. Procedural Background**

On May 13, 2013, the Supreme Court designated litigation involving the Mirena contraceptive device be consolidated as a multicounty litigation in Bergen County, New Jersey before Superior Court Judge Brian R. Martinotti. Since then, 32 Case Management Orders, in addition to the initial Case Management Order, have been issued in the pending litigation. Case Management Order #3, dated August 23, 2013, regarded the Plaintiff Fact Sheet. Paragraph 3 explains that the Plaintiff Fact Sheet (hereinafter 'PFS') is a convenient form of interrogatories and requests for document production. It is governed by the standards applicable to written discovery under Rules Governing the Courts of the State of New Jersey. Paragraph 7 requires every Plaintiff to provide Defendant's Counsel with a PFS that is "substantially complete in all respects." This means all applicable questions must be answered, there must be a signed Declaration by the Plaintiff included, duly executed releases Authorizations must be provided, and responsive documents requested in the PFS must be produced to the extent they are in Plaintiff's possession.

Paragraph 17 of CMO #3 addresses non-compliance with the aforementioned requirements. Specifically, any Plaintiff who fails to comply with their PFS obligations as outlined in CMO #3 may have their claims dismissed. If Defendant has not received a PFS that is substantially complete, as previously described, from a Plaintiff within 30 days following the prescribed due date, Defendant must send a Notice of Overdue Discovery to Plaintiff's counsel identifying the discovery overdue and

explaining that unless Plaintiff complies with the Court's discovery order, the case may be dismissed. If Defendant has still not received a completed PFS within 30 days of the notice, Defendant was allowed to move before this Court for an Order dismissing the Complaint without prejudice. Upon filing, Plaintiff had 30 days to file a response either (1) certifying Plaintiff has served Defendant with a completed PFS, demonstrating Defendant has received it, and attaching appropriate documentation of that receipt or (2) opposing the motion.

If this Court grants Defendant's motion to dismiss without prejudice, Plaintiff has 90 days to serve Defendant with a completed PFS or moves to vacate the dismissal. If Plaintiff fails to do so within 90 days after the entry of the Order of Dismissal without Prejudice, the order will be converted to a Dismissal with Prejudice upon Defendant's motion.

## **II. The Present Motion**

Defendants filed a Motion to Dismiss the claims of 18 Plaintiffs with prejudice for failure to provide a Plaintiff Fact Sheet. Attached as Exhibit A to the Motion is a list of each individual Plaintiff, their Attorney, and the Date their Complaint was dismissed without prejudice. These 18 Defendants, as listed in Exhibit A of this Memorandum Decision, have failed to respond to repeated requests by Defense Counsel for their PFS. Their Complaints had previously been dismissed without prejudice and now, under CMO #3, Defendant is moving to dismiss with prejudice. All motions have been unopposed.

The time allowed to cure has lapsed. Plaintiffs had ample notice of their outstanding discovery, as well as the consequences to failing to cure their deficiencies. For those reasons, in accordance with CMO #3, paragraph 17, this Court GRANTS Defendant's motion to dismiss with prejudice these 18 complaints for failure to provide PFS.

EXHIBIT A

Motion to Dismiss with Prejudice for Failure to submit a PFS: October 30, 2014

Plaintiff	Plaintiff's Attorney	Date Case Dismissed Without Prejudice
Nina Ayers	Balkin & Eisbrough, LLC; The Webster Law Firm	2-Jul-14
Diana Becerra	Anapol Schwartz	2-Jul-14
Jennafer Bishop	D'Arcy Johnson Day, P.C.; Matthews & Associates	2-Jul-14
Farren Cheatham	D'Arcy Johnson Day, P.C.; Matthews & Associates	2-Jul-14
Amy Clem	D'Arcy Johnson Day, P.C.; Kirkendall Dwyer LLP	2-Jul-14
Lelia Coleman	Sanders Viener Grossman, LLP	2-Jul-14
Jessica Copeland	Parker Waichman LLP; Meyers & Flowers, LLC	2-Jul-14
Emily Danford	Sanders Viener Grossman, LLP	2-Jul-14
Nadine Edwards	The Levensten Law Firm, P.C.; Kabateck Brown Kellner, LLP; Milstein Adelman, LLP	2-Jul-14
Brittnee Greenhaw	Sanders Viener Grossman, LLP	2-Jul-14
Emily Mobley	Sanders Viener Grossman, LLP	2-Jul-14
Sara Perry	Sanders Viener Grossman, LLP	2-Jul-14
Sommer Sours	Sanders Viener Grossman, LLP	2-Jul-14
Jovanna Talks	The Levensten Law Firm, P.C.; Kabateck Brown Kellner, LLP; Milstein Adelman, LLP	2-Jul-14
Samantha Tritt	D'Arcy Johnson Day, P.C.; Matthews & Associates	2-Jul-14
Ada Watkins	Sanders Viener Grossman, LLP	2-Jul-14
Misty Webster	Sanders Viener Grossman, LLP	2-Jul-14
Theresa Witham	Sanders Viener Grossman, LLP	2-Jul-14