

**This Order hereby supersedes and replaces all prior Notices and Orders Regarding
Records Collection, including CMO 3 entered on April 25, 2012**

Kelly S. Crawford – NJ Attorney ID #029141993
RIKER DANZIG SCHERER HYLAND & PERRETTI LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981
(973) 538-0800

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

FILED

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

IN RE PELVIC MESH/GYNECARE
LITIGATION,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

MASTER DOCKET NO.
BER-L-11575-14

CIVIL ACTION
In re Pelvic Mesh/Gynecare
Litigation
Case No. 291

**AMENDED CASE MANAGEMENT ORDER
NO. 3 (Records Collection and Distribution as to
Ethicon and Johnson & Johnson)
(This Order Supersedes CMO 3 entered on April
25, 2012 (UPDATED DECEMBER 2021))**

TO: All Counsel of Record.

This matter having been opened to the Court by the parties; and Liaison Counsel having indicated they have no objection to the form and entry of the within Order; and good cause appearing;

IT IS on this 18th day of December, 2021,

ORDERED:

This Order establishes updated procedures for the Plaintiffs to access the records the Defendants collect pursuant to any signed authorizations provided by Plaintiffs to Defendants' Ethicon and Johnson & Johnson counsel to obtain from third parties certain medical records in connection with cases pending in this Multi-County Litigation, In re Pelvic Mesh/Gynecare, Case No. 291 ("MCL"). This Order is not intended to and does not create any obligation for any Plaintiff to access any of the records collected by Defendants, although it is recommended.

In cases filed in, transferred to, or otherwise made part of the MCL before this Court, it shall be the responsibility of the Parties to review and abide by all pretrial Orders previously entered by the Court, as amended. To the extent that any previously governing provisions are not altered and/or updated by this Order, they shall remain in effect. The Orders may be accessed through the Multi-County Litigation Page on the njcourts website.

<https://www.njcourts.gov/attorneys/mcl/bergen/pelvicmesh.html>

A. PLAINTIFFS' ACCESS TO RECORDS THE DEFENDANTS COLLECT

1. Plaintiffs' counsel shall have the opportunity to receive notice, and to review and obtain copies of records collected by the Defendants, by the means specified in Section B below, through the use of an assigned record collection service vendor. Two record collection vendors have been retained by Defendants Johnson & Johnson and Ethicon, Inc, as the record collection service vendors to perform the services: *The Marker Group, Inc.* ("Marker") and *Litigation Management, Inc.* ("LMI").

2. **For all cases filed in, transferred to, or otherwise made part of this MCL after the date of entry of this Order**, the records collection vendor will be *LMI*. **For all cases filed in, transferred to, or otherwise made part of this MCL prior to**

and including the date of entry of this Order, the records collection vendor will remain *Marker*.¹

3. Upon establishment of a *User Account* (with the assigned record collection vendor) by counsel representing a particular plaintiff(s), as set forth in Section B below, the authorized user will receive E-mail alerts on each date that new records for the Plaintiff(s) associated with that account are posted to the on-line repository for access by the counsel representing such Plaintiff(s).

4. The E-mail alert will identify Plaintiff(s)' name(s), and the name(s) of the records provider(s), the type of record, and the bates label range for the records.

5. Plaintiffs shall have the ability, but not the obligation, to obtain copies of the records that are retrieved by Defendants through the assigned record collection vendor. The Fees related to the record collection vendor services are set forth on Exhibit "A" attached hereto, and shall not increase during the course of this litigation.

B. ESTABLISHMENT OF USER ACCOUNTS

1. Plaintiff(s)' counsel may establish *User Accounts* with the assigned vendor by contacting:

- *LMI* at pelvicmesh@lmiweb.com
- *Marker* at GoMarker@marker-group.com

2. Plaintiff(s)' counsel will be required to provide the assigned vendor the following:

¹ Nothing in this Protocol and Order shall prevent the parties to any individual case from agreeing to utilize LMI instead of Marker as the records collection vendor.

a. A list of the name(s) and E-mail address(es) of each individual in the law firms representing Plaintiff(s) who are authorized to access the Record Repository, so that *User Accounts* can be established for the law firm;

b. A valid credit card [MasterCard, Visa, or American Express] to be used for the purchase of any plaintiff(s)' records. The credit card will be charged in accordance with the fee schedules for the assigned Vendor as set forth in the attached Exhibit A²;

c. A listing of the Plaintiff(s) for whom those counsel are attorneys of record, including for each individual person the following information: last name, first name, middle name and maiden name if applicable, docket number, case caption, and jurisdiction where the case is currently pending. If a Plaintiff is representing an estate, the decedent as well as the estate administrator/representative must be identified. If the Plaintiff has a common name, an additional identifier may be requested to ensure access is granted only to that specific person. This list must be updated by Plaintiffs' counsel with the assigned record collection vendor during the first week of each month with respect to any cases newly filed during the prior month and/or any corrections that may need to be made;

d. The name, title, and E-mail address of the primary contact person for Plaintiff(s)' counsel for interactions with the assigned record collection vendor; and,

e. The name and E-mail address of the person to whom receipts for credit card charges should be directed.

² Should any Plaintiff elect to receive copies of all or nearly all records collected by the Vendor and split the collection costs as per the Vendor's agreements rather than purchase records on a provider-by-provider basis, that plaintiff may separately agree with the Vendor to have monthly invoices issued rather than per-provider purchase by credit card. This option is only available if the plaintiff elects to receive copies of all or nearly all records collect and split the collection costs.

f. Establishing a user account with the assigned record collection vendor does not obligate Plaintiffs' counsel to obtain any records through the assigned record collections vendor.

C. MENTAL-HEALTH RELATED RECORDS

1. The following provisions pertain only to receipt of mental-health related care records, whether by a psychiatrist or psychologist or other readily identifiable mental health specialist. Upon receipt of mental-health related care records, the assigned record collection vendor, shall:

a. Notify both Parties (Defendants and the counsel for that individual Plaintiff by E-mail (not attaching the records)) that mental-health related care records have been received;

b. Quarantine the records for ten days to afford Plaintiff(s)' counsel an opportunity to obtain and review the records (using the process and fees to retrieve copies of the records as set forth herein and on Exhibit "A" attached hereto). During the Quarantine, the assigned record collection vendor shall not release or give access to the Defendants of any of the mental-health related care records;

c. Plaintiff(s)' counsel shall have ten (10) days to assert a recognized privilege or other legal protection prohibiting the disclosure of the records and notify both the assigned record collection vendor and the requesting Defendants, with an appropriate privilege log if required;

d. Absent notification within ten (10) days of the assertion of such a privilege, the assigned record collection vendor shall then provide the records to the requesting Defendants.

2. If the Plaintiff provides a notification within ten (10) days of the assertion of such a privilege or other legal protection prohibiting the disclosure of the records, with an appropriate privilege log where necessary, the assigned record collection vendor shall maintain the Quarantine until further Order of this Court or agreement of the parties via written agreement signed by counsel for Plaintiff and Defendants, and/or withdrawal by Plaintiffs' counsel of the assertion of a privilege or other legal protection prohibiting the disclosure of the records.

D. INADVERTENT OR MISTAKEN DISCLOSURE OF PRIVILEGED DOCUMENTS - "CLAWBACK" PROCEDURE

Notwithstanding any other provision or paragraph of this Order, the procedure regarding notification and "clawback" of inadvertent or mistaken disclosure of privileged or otherwise protected documents or information set forth in Paragraph 12 of the Confidentiality and Protective Order entered on November 2, 2011 shall apply equally to the inadvertent or mistaken disclosure of Plaintiffs' records produced to or otherwise obtained by Defendants which are privileged or otherwise legally prohibited from disclosure.

Last updated: December 1st, 2021

So Ordered:



Honorable Rachelle Lea Harz, J.S.C

EXHIBIT A

LMI PRICING	
OPPOSING COUNSEL REPOSITORY	
Email notification of records received is included and will be issued nightly.	
A per record fee for each record downloaded will be assessed to the credit card on file as the time of purchase.	
User Set-Up Fee	No Cost
Records Received Notification Email Fee	No Cost
Record Review/Download Fee - Large Fee is assessed per record set over 100 pages	\$10.00
Record Review/Download Fee-Small Fee is assessed per record set under 100 pages	\$5.00

MARKER PRICING	
OPPOSING COUNSEL REPOSITORY	
Email notification of records received is included and will be issued nightly.	
A per record fee for each record downloaded will be assessed to the credit card on file as the time of purchase.	
User Set-Up Fee	No cost for Initial Primary User set up. Subsequent user set-up fee is \$25.00 per user.
Records Received Notification Email Fee	No Cost
Record Review/Download Fee - Large Fee is assessed per record set over 100 pages	\$20.00
Record Review/Download Fee-Small Fee is assessed per record set under 100 pages	\$15.00