

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 #25

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

FILED

MAR 02 2016

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 2nd day of March 2016, **ORDERED** as follows:

PART I

I. ORDERS ENTERED SINCE LAST CASE MANAGEMENT CONFERENCE

- A. No orders entered, but Stipulation of Dismissal with Prejudice of the Cannon matter was entered on January 29, 2016.

PART II

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

- A. Revised Scheduling Order for TVT Retropubic Core Discovery Cases entered on July 23, 2015 (dates for which are all effectively moot).

Per CMO #22, all discovery was stayed in the Watkins and Cantrell matters pending further order of the Court. Subsequently, on December 23, 2015, the Court adjourned the trial in Corbet without date. The outstanding issues as of that time included:

1. Depositions of Plaintiffs' experts were to be completed by October 5, 2015
 - a. All necessary Plaintiffs' expert depositions have been completed for all three cases, with the exception of the

deposition of Dr. Iakovlev in the Cantrell matter (which had been scheduled for November 6, 2015). In light of Judge Martinotti selecting the Corbet case for trial in January, the parties agreed not to proceed with the Cantrell portion of the Iakovlev deposition on November 6, 2015. Rather, the deposition was to be rescheduled for a future date.

2. Depositions of Defendants' experts were to be completed by November 5, 2015. Those depositions as to the Corbet matter were completed.

a. Defense expert Rebecca Ryder was never deposed in Watkins but Watkins is now being dismissed). Defense expert Nicole Fleishmann performed a DME of plaintiff in Cantrell; supplemental report and deposition of Nicole Fleischmann has not yet been scheduled. Defense expert Nicolette Horbach was deposed only on general report not on her case-specific report in Cantrell.

B. Case Management Order No. 21 entered on October 21, 2015

1. TVT Retropubic Core Discovery Cases

a. The Watkins matter was to be the next matter tried in Bergen County. Plaintiffs have determined to dismiss the Watkins case with prejudice.

2. TVT Secur Core Discovery Cases

a. See Agenda items for outstanding issues related to the TVT Secur core discovery pool.

3. TVT-O Core Discovery Cases

a. See Agenda items for outstanding issues related to the TVT Obturator core discovery pool

C. Case Management Order No. 22 entered on December 2, 2015

1. Miscellaneous Issues

a. Mr. Slater requested to make an application before the Court for a Common Benefit Order and filed a motion for a Common Benefit Assessment on January 5, 2016. Opposition papers were filed. Reply was pending.

D. Case Management Order No. 23 was a docket entry order extending discovery in MCL Case No. 291 to April 30, 2016.

E. Case Management Order No. 24 entered on January 20, 2016

1. TVT Retropubic Core Discovery Cases.

a. The Watkins matter was to be the next matter tried in Bergen County, on May 2, 2016. Should Watkins not proceed, the Court stated that it would choose between Cantrell and a

Plaintiffs' pick and a Defense pick to be determined (of an on-the-market product). Plaintiffs have determined to dismiss the Watkins case with prejudice. Plaintiffs have requested to withdraw Cantrell as a trial candidate, but have not agreed to dismiss the case. The Court held a telephone conference on 2/18/2016 during which it stated that the parties will discuss how to handle the Cantrell matter at the 3/2/2016 CMC.

- b. The parties were to submit a pretrial order to Judge Harz by February 5, 2016. Such an order was submitted on consent, but has not been entered. As a result of the issues raised and discussed during the February 18, 2016 call with the Court, a revised proposed pretrial order contemplating a new trial date of June 1, 2016, is to be submitted to the Court.
2. TVT Secur Core Discovery Cases.
 - a. See agenda items regarding case management issues
 3. TVT-O Core Discovery Cases.
 - a. See agenda items regarding case management issues.
 - b. Burton v. Ethicon, (BER-L-12482-14). Defendants' request to file a motion to dismiss based on bankruptcy court issues was granted. The parties met and conferred to attempt to resolve. The motion was filed on February 16, 2016. Opposition was due by February 25, 2016. Reply due date was February 29, 2016. Motion is returnable on March 4, 2016. Oral argument will be held
 4. Miscellaneous Issues.
 - a. Parties were to continue to meet and confer regarding Plaintiffs' requests involving Mentor cases and plaintiffs' request for bellwether pools involving multi-product cases.
 - b. Regarding Mr. Slater's motion for Common Benefit Fund, Mr. Slater was to file a reply brief 14 days following the 1/20/2016 CMC. Mr. Slater reported on February 10, 2016, that as a result of conferring with the MDL Plaintiffs' Steering Committee, there is a tentative resolution with the MDL leadership that would result in a proposed order being submitted to the Court shortly.

PART III

III. CASE MANAGEMENT

- A. TVT Retropubic Core Discovery Cases
 1. Watkins. Consent Order of Dismissal With Prejudice was submitted by the parties.

2. Cantrell. The case is Dismissed Without Prejudice. Plaintiffs can make a Motion to Restore.

B. TVT-O Core Discovery Cases

1. A trial in Korzeb, Irene v. Ethicon, BER-L-15739-14 will begin September 6, 2016.
 - a. Over Plaintiffs' objection, the deposition of a licensed professional counselor and two primary care physicians will go forward, in addition to the other fact discovery contemplated.
 - b. Discovery on Smith, Susan v. Ethicon, BER-L-16720-14 shall continue.
2. Liaison counsel will meet and confer and submit revised pretrial order for September 6, 2016 trial setting, including dates for submission of pretrial motions and resolution of deposition designation disputes in advance of the trial date.
3. Liaison counsel to continue to meet and confer regarding ongoing scheduling of remaining discovery pool cases not selected for September trial setting. No trial setting has yet been made for this set of cases.
4. Burton v. Ethicon (BER-L-12482-14) – Defendants' motion to dismiss based on the status of the bankruptcy matter shall be heard for oral argument on March 22, 2016, unless otherwise ordered by the Court, with Defendants' Reply papers being due on March 11, 2016.

C. TVT Secur Core Discovery Cases

1. The discovery pool of cases was reduced as of February 5, 2016 to:
 - a. Cook, Rose v. Ethicon, BER-L-12792-14
 - b. Sheppard, Heather v. Ethicon, BER-L-13926-14
 - c. Nelson, Tamera v. Ethicon, BER-L-11949-14
2. Liaison counsel should continue to meet and confer to establish discovery schedule for these remaining cases. The parties will continue to meet and confer to prepare a scheduling order and to conduct discovery in preparation for a January 2017 trial. Discovery on cases not selected to proceed shall be stayed.

D. Miscellaneous

1. The Court declined Defendants' request for fees related to Plaintiffs' dismissal of Cantrell. However, in the future the Court will consider the totality of the circumstances of a dismissal and will consider Defendants' requests for an award of fees or costs or other appropriate relief for withdrawal or dismissal of a bellwether case.

2. Common Benefit Fund Consent Order – The Court has received Mr. Slater’s submission of March 1, 2016 regarding the negotiation CBO (between New Jersey and the MDL). Defendants will review the Order and, if necessary, submit to the Court a summary of their concerns within ten (10) days of this Order.
3. Case Management Order No. 23 was a docket entry order extending discovery in MCL Case No. 291 to April 30, 2016. That date shall be further extended to October 28, 2016.
4. The Court has granted Plaintiff’s request to prepare Mixed-Product Cases for possible trial selection. The Parties shall meet and confer to identify the products involved and the manner to select those cases and establish a discovery schedule.

PART IV

IV. CASE MANAGEMENT AGENDA ITEMS FOR NEXT (3/2/2016) CASE MANAGEMENT CONFERENCE

1. The next Case Management is scheduled for April 13, 2016 at 11:00 a.m. Liaison Counsel shall report at 8:30am. **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 Anna Celentano at Anna.Celentano@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 'B. R. Martinotti', written over a horizontal line.

BRIAN R. MARTINOTTI, J.S.C.