
IN RE: PELVIC MESH/GYNECARE
LITIGATION

FILED

APR 13 2016

BRIAN R. MARTINOTTI, J.S.C.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: BERGEN COUNTY

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

CIVIL ACTION

CASE MANAGEMENT ORDER #27

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

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 13th day of April 2016, **ORDERED** as follows:

PART I

ORDERS ENTERED SINCE LAST CASE MANAGEMENT CONFERENCE

1. Case Management Order #25 entered on March 2, 2016 (including provision that Cantrell v. Ethicon is dismissed without prejudice)
2. Watkins v. Ethicon, Consent Order of Dismissal With Prejudice entered on March 3, 2016
3. Chitwood v. Ethicon, Inc., Order Denying Leave to File First Amended Complaint Pursuant to Rule 4:9-1 entered on March 8, 2016
4. Walton v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 10, 2016
5. Dirusso v. Ethicon, Inc., Order to Amend Complaint entered on March 18, 2016
6. Errickson v. Ethicon, Inc., Order to Amend Complaint entered on March 18, 2016
7. Case Management Order #26 entered on March 22, 2016 (Common Benefit Fund)
8. Walker v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 22, 2016
9. Black v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 22, 2016

10. Castaneda v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 22, 2016
11. Cormier v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 22, 2016
12. M. Davis v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 22, 2016
13. Hoggatt v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 22, 2016
14. Marsden v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 22, 2016
15. Moody v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 22, 2016
16. Snare v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 22, 2016
17. Walker v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 22, 2016
18. Thomas v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 24, 2016
19. Westfall v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 24, 2016
20. Fallin v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on March 31, 2016
21. Orders of Dismissal with Prejudice for Failure to Provide PFS with Schedule A attached entered on April 1, 2016
22. Orders of Dismissal with Prejudice for Failure to Provide PFS with Schedule B attached entered on April 1, 2016
23. Sanders v. Ethicon, Inc., Order in Support of Motion for Leave to File an Amended Complaint entered on April 1, 2016
24. Murphy v. Ethicon, Inc., Consent Order of Dismissal Without Prejudice entered on April 4, 2016
25. Patriok v. Ethicon, Inc., Consent Order of Dismissal Without Prejudice as to This Docket Only entered on April 4, 2016
26. Reyes v. Ethicon, Inc., Consent Order of Dismissal Without Prejudice entered on April 4, 2016
27. Thurman v. Ethicon, Inc., Consent Order of Dismissal With Prejudice entered on April 4, 2016
28. Witherspoon v. Ethicon, Inc., Consent Order of Dismissal Without Prejudice entered on April 4, 2016

PART II

COMPLIANCE WITH PRIOR ORDERS (REMAINING OUTSTANDING ITEMS ONLY)

1. Case Management Order No. 21 entered on October 21, 2015
 - a. TVT Retropubic Core Discovery Cases
 - i. None active.
 - b. TVT-O Core Discovery Cases
 - i. See Section II. C. below for further updates regarding the status of the TVT-O Core Discovery Cases.
 - c. TVT Secur Core Discovery Cases
 - i. See Section II. C. below for further updates regarding the status of the TVT Secur Core Discovery Cases.
2. Case Management Order No. 22 entered on December 2, 2015
 - a. Miscellaneous Issues
 - i. Common Benefit Fund Order entered March 22, 2016.
 - b. TVT-O Core Discovery Cases.
 - i. See Section II. C. below for further updates regarding the status of the TVT-O Core Discovery Cases.
 - ii. See Section II. C. below for further updates regarding Burton v. Ethicon.
 - c. TVT Secur Core Discovery Cases.
 - i. See Section II. C. below for further updates regarding the status of the TVT Secur Core Discovery Cases.
 - d. Miscellaneous Issues.
 - i. Parties were to continue to meet and confer regarding Plaintiffs' requests involving Mentor cases and plaintiffs' request for bellwether pools involving multi-product cases.
3. Case Management Order No. 25 entered on March 2, 2016
 - a. TVT Retropubic Core Discovery Cases
 - i. None active.
 - b. TVT-O Core Discovery Cases
 - i. A trial in Korzeb, Irene v. Ethicon, BER-L-15739-14 will begin September 6, 2016.

1. Over Plaintiff's objection, the deposition of a licensed professional counselor and two primary care physicians will go forward, in addition to the other fact discovery contemplated.
 - a. Certain depositions have taken place and the parties are in the process of attempting to schedule and/or confirm dates for the remaining depositions.
 2. Discovery on Smith, Susan v. Ethicon, BER-L16720-14 shall continue.
 - a. The parties are in the process of working out a scheduling order to complete discovery.
 - ii. Liaison counsel will meet and confer and submit a revised pretrial order for the September 6, 2016 trial setting, including dates for submission of pretrial motions and resolution of deposition designation disputes in advance of the trial date.
 1. Liaison counsel continues to meet and confer regarding the revised pretrial order. See Section III.B.1. below for further details and issues.
 - iii. Liaison counsel to continue to meet and confer regarding ongoing scheduling of remaining discovery pool cases not selected for the September 6, 2016 trial setting. No trial setting has yet been made for this set of cases.
 1. Liaison counsel continues to meet and confer regarding these issues.
 - iv. Burton v. Ethicon (BER-L-12482-14) – Oral argument was held on Defendants' motion to dismiss based on the status of the bankruptcy on March 22, 2016. The Court's decision is pending.
- c. TVT Secur Core Discovery Cases
- i. The discovery pool of cases was reduced as of February 5, 2016 to:
 1. Cook, Rose v. Ethicon, BER-L-12792-14
 2. Sheppard, Heather v. Ethicon, BER-L-13926-14
 3. Nelson, Tamera v. Ethicon, BER-L-11949-14
- d. Liaison counsel should continue to meet and confer to establish discovery schedule for these remaining cases. Discovery on cases not selected to proceed shall be stayed.
- i. Liaison counsel continues to meet and confer to establish a discovery schedule for these remaining cases.

4. Miscellaneous

- a. The Court declined Defendants' request for fees related to Plaintiffs' dismissal in 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.
- b. Common Benefit Fund Order was entered March 22, 2016.
- c. The Court granted Plaintiff's request to prepare Mixed-Product Cases for a 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 III

CASE MANAGEMENT

1. TVT-O Core Discovery Cases

- a. For Korzeb, the parties have met and conferred, a case specific order with the appropriate scheduling dates will be emailed to Judge Harz, J.S.C.
- b. The parties will enter into a scheduling order on the Smith matter as if a trial was set for November 1, 2016.

2. TVT Secur Core Discovery Cases

- a. The parties will meet and confer to create a scheduling order for the remaining Core Discovery cases of Cook, Nelson and Sheppard, which have an anticipated trial setting of January 2017.

3. Mixed Ethicon Product Cases

- a. Counsel will meet and confer to select Core Discovery cases and will report back to the Court at the next CMC.

4. Miscellaneous

- a. The Court suggested the creation of a spreadsheet for its use of the cases pending in the litigation. To that end, the parties will meet and confer to establish the parameters for inclusion on the spreadsheet and the process by which the plaintiffs will need to provide that information for verification and inclusion. The parties will report back to the Court at the next CMC.

PART IV

GENERAL

1. The next Case Management is scheduled for June 7, 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 you 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 "Brian R. Martinotti". The signature is stylized and written in a cursive-like font.

BRIAN R. MARTINOTTI, J.S.C.