
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 #76

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

FILED

NOV 03 2021

RACHELLE L. HARZ
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 3rd day of ~~October~~ ^{November}, 2021, **ORDERED** as follows:

I. CASE MANAGEMENT

A. Status of the TVT-O cases the Court previously selected for an October 26, 2020 trial date:

1. Farnsworth, Cheri Lynn & Leland, (BER-L-014433-14), Hecht Kleeger and Oshman & Mirisola. This case has been reinstated to the trial pool calendar to be tried as a single plaintiff case before Judge Thurber beginning the third week of March 2022.

a. The parties will be submitting to the Court a tenth revised pretrial order to make certain adjustments to the ninth order entered on 9/21/2012.

b. The parties continue to meet and confer to agree upon submissions and/or presentations to submit for Judge Thurber's review. The parties will keep the Court updated on the progress, and will also try to submit agreed upon materials on a rolling basis.

B. Status of remaining single product TVT retropubic cases for discovery pool, previously slated for a January 11, 2021 trial date:

1. There remains 1 Case in the pool as of this date:

Nemcek, Madeline & Richard	Oshman & Mirisola	BER-L-012359-14
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2. The **Nemcek** case: The deadline by which Plaintiff is to make herself available for a medical examination in New Jersey by Defendants' expert, as extended, is November 15, 2021. If plaintiff fails to have the IME conducted, Defendants may move before the Court for appropriate relief. If the IME is completed, the Parties will meet and confer to propose to the Court a Sixth Amended Pre-Trial Order for the completion of discovery of this Case.

C. Status of **mixed-manufacturer cases**.

- (i) The parties continue to work together to identify the list of cases from CMO 74, Exhibit A, which will be proceeding for discovery.
- (ii) As to any case that the parties understand will not be removed from the list, the parties are to comply with the CMO 74 discovery directives, including the processing of updated authorizations for the collection of medical records and continue to meet and confer towards scheduling depositions as contemplated by CMO 74 and CMO 75.

D. Status of updated list of **active Ethicon cases not subject to MSA**.

- (i) The parties are to continue to meet and confer consistent with CMO 74 to report back to the Court at the next CMC as to the status of cases that will move forward with discovery.
- (ii) The Court and the parties will evaluate the status of the selected cases and the potential need to modify the lists and establish staggered interim deadlines. However, for the cases that will move forward, the parties are to process updated authorizations for the collection of medical records and continue to meet and confer towards scheduling fact discovery, depositions of plaintiff(s), any requested sales representative(s), and deposition of implanting and any other necessary treating physicians. The Court will establish formal interim deadlines for these preliminary discovery milestones, but the parties are not to delay awaiting the entry of these deadlines.

(iii) CMO 74 is amended as follows to correct an error regarding case selection and the below case that was identified as No. 3 in the TVT-O work up pool.

3	Gonzalez, Sandra. Ethicon (39)	BER-L-019551-14	Mazie Slater	TVT-O
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The proper case that is to be worked up as part of the TVT-O pool is:

Sayris Gonzalez, BER-L-11810-14 (Mazie Slater).

Sandra Gonzales, BER-L-19551-14 (Law Offices of Jan Meyer) shall part of the TVT-S work up pool, not the TVT-O pool.

E. **Ethicon's October 4, 2021 Motion to Dismiss Certain Cases that did not comply with the extended September 14, 2021 deadline to provide updated PFS, authorizations and related information pursuant to CMO 74.**¹ Defendants will be submitting a letter to the Court withdrawing the motion as to cases where the plaintiff has come into compliance. Defendants will be submitting a revised Schedule to the proposed order granting the motion to dismiss without prejudice that includes the cases where:

1. There has been no receipt of an updated PFS or Certification that there has been no change to medical status or PFS, or
2. Some information was provided, but not all material information that was required to be complaint with CMO 74. For example,
 - (i) if plaintiff provided and updated PFS, but failed to provide the necessary signed updated authorizations for the collection of records, or
 - (ii) the plaintiff provided an updated PFS, but did not provide a certification signed by the plaintiff;

Where the plaintiff is still deemed non-compliant, the Order will be entered dismissing that plaintiff's case without prejudice and the plaintiff will need to fully cure before the Complaint can be reinstated.

F. **Gynemesh/Prolene/Prolene Soft/Ultrapro/Mersilene cases.** It was reported to the Court that many plaintiffs with cases in this category have complied with the CMO 74 Section I.(G) September 14, 2021, deadline to meet and confer with liaison counsel to provide proof regarding product

¹ The parties are reminded that there is an ongoing obligation to update PFS and produce medical records if there is a change in the plaintiff's medical condition, including, but not limited to, additional treatment or revision surgeries.

identification and whether the product was implanted transvaginally or abdominally. Some plaintiffs have not complied. As noted in CMO 75, the Defendants are permitted to seek relief from the Court to the extent there has been non-compliance. The parties are to continue to meet and confer to ascertain the status of these cases with the goal of providing the Court with a report and recommendation as to how to proceed with these cases in the future. All communications regarding this issue are to be copied to plaintiffs' liaison counsel (Adam Slater ASlater@mazieslater.com) in addition to defense liaison counsel (Kelly Crawford kcrawford@riker.com).

- G. **Motions filed on product identification and failure to serve, as well as motions filed by Defendant Manufacturers other than Ethicon.** Defendants will work with the Court and Defense Liaison to create a chart of pending motions and the status of the briefing and return dates when the motions are ripe for disposition.
- H. **New Protocols to be Submitted.** The parties reported to the Court that they are negotiating new protocols to be submitted for entry. These include, but are not limited to
1. Amended CMO 3 to modify the medical records collection vendor from The Marker Group to Marker Group and LMI;
 2. Amended Protocol governing service and communications related to PFS; and
 3. Remote Deposition Protocol.

II. MISCELLANEOUS

The next case management conference will be held on **December 1, 2021** at 10:30 am for liaison counsel only and at 11:00 am for all counsel on the record. The Conference will be virtual or telephonic.


RACHELLE L. HARZ, J.S.C.