

FILED

DEC 06 2021

SUPERIOR COURT OF NEW JERSEY

RACHELLE L. HARZ

LAW DIVISION: BERGEN COUNTY

IN RE: PELVIC MESH/GYNECARE
LITIGATION

CASE NO. 291

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

CIVIL ACTION

CASE

MANAGEMENT ORDER #77

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 6th day of December, 2021, **ORDERED** as follows:

I. CASE MANAGEMENT

A. Status of the Farnsworth TVT-O case:

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. The trial is to be adjourned until at least the last week of April, 2022.

a. The parties have a call scheduled with the Court on Friday, December 3, 2021 at 2:30 p.m., after which the parties will submit to the Court a tenth revised pretrial order to make certain adjustments to the ninth order entered on 9/21/2012 and account for the adjournment of the trial date.

b. The parties continue to meet and confer to agree upon submissions and/or presentations to submit for Judge Thurber's review. The Court has set as a goal deadline December 17, 2021 for the submissions. The Court may request that a live Science Day be scheduled for a

time that pre-dates the beginning of any deposition designation or motion arguments in connection with the trial, which currently places the target time frame for late January or early February 2022.

B. Status of remaining single product TVT retropublic 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: Defendants filed a motion to dismiss on November 22, 2021, and at Plaintiff's request the Court has adjourned the return date of the motion to January 21, 2022. Opposition will now be due on 1/6/2022 and reply on 1/14/2022.

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, as well as to work with the court and clerk's office to ensure that proper dismissal documents are entered to completely close any cases that will not be proceeding in 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 make every effort to collect medical records sufficient to proceed with depositions and to schedule depositions. To that end, the Defendants have asked counsel for plaintiffs to consider waiving or reducing the waiting periods between receipt of the records by the vendor and release of the records to defense counsel to expedite the ability to review and schedule depositions.
- (ii) The parties will 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 and those that will not.

- (iii) The Court and the parties will continue to evaluate the status of the selected cases and the potential need to modify the lists and establish staggered interim deadlines. The Court intends to establish formal interim deadlines for preliminary discovery milestones at a future date, but the parties are not to delay awaiting the entry of these deadlines to proceed with records collection and schedule of plaintiffs' depositions and necessary medical provider depositions.
- (iv) It was reported to the Court that certain parties have entered into Stipulations to defer certain depositions to a later time such as consortium plaintiffs, friends and family and sales representatives in an effort to facilitate the schedule of depositions of plaintiffs and medical providers, and the Court has indicated that the parties may enter into such stipulations, however these stipulations will not be a basis to delay trial dates.

E. **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 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).

F. **Motions filed on product identification and failure to serve, as well as motions filed by Defendant Manufacturers other than Ethicon.** Defense liaison counsel has provided the Court with a chart of pending motions and the status of the briefing and return dates when the motions are ripe for disposition, and has endeavored to update the chart until motion disposition.

G. **New Protocols to be Submitted.** The parties reported to the Court that they are negotiating new protocols to be submitted for entry. The following is the status of those protocols.

1. Settlement Conference Protocol Proposed Order. Agreed upon and entered by the Court on December 1, 2021.

2. Amended CMO 3 to switch the medical records collection vendor from the Marker Group to Marker Group and LMI for cases filed after the entry of the protocol. Agreed upon and entered by the Court on December 1, 2021;
3. Amended Protocol governing service and communications related to PFS. Agreed upon and entered by the Court on December 1, 2021.
4. Remote Deposition Protocol. Still under negotiation. The parties will submit an agreed upon form of order or request a conference with the Court to resolve disputes by no later than December 10, 2021.
5. Pathology Protocol. Still under negotiation. The parties intend to have a meet and confer to discuss the provisions and if agreement cannot be reached a conference with the court will be requested within two weeks of the entry of this order.
6. Sales Rep Deposition Protocol Order. Still under negotiation. The parties intend to provide the Court with a single written submission denoting the areas of dispute in the proposed order by no later than December 10, 2021.

H. Improper Filings on eCourts

1. Counsel are reminded not to use eCourts to file pleadings and other documents. This MCL requires paper filing or filing through the JEDS system. Any fees charged through an improper submission on eCourts will not be refunded.

II. MISCELLANEOUS

The next case management conference will be held on **January 19, 2022** at 10:30 am for liaison counsel only (via Zoom) and at 11:00 am for all counsel on the record; The Conference will be virtual or telephonic.


RACHELLE L. HARZ, J.S.C.