

FILED

MAR 28 2012



Carol E. Higbee, P.J.Cv

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OPINIONS**

**SUPERIOR COURT OF NEW JERSEY
COUNTIES OF
ATLANTIC AND CAPE MAY**

CAROL E. HIGBEE, P.J.Cv.

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MEMORANDUM OF DECISION ON MOTION
Pursuant to Rule 1:6-2(f)

CASE: **In Re Pelvic Mesh/Gynecare**

DOCKET #: **ATL-L-6341-10**

DATE: **March 28, 2012**

MOTION: **Defendants' Motion for Protective Order**

ATTORNEYS: **Jeffrey S. Grand, Esq., Bernstein Liebhard, L.L.P., New York,
New York for Plaintiffs**

**Kelly S. Crawford, Esq., Riker, Danzig, Scherer, Hyland
Perretti, L.L.P., Morristown, New Jersey for Defendants**

Having carefully reviewed the papers submitted and any response received, I have ruled on the above Motion as follows:

Defendants Ethicon, Inc. and Johnson & Johnson have made an application to this court for a protective order seeking relief from proscription against redacting irrelevant information from certain production documents. At the January 12, 2012 Case Management Conference, this court stated that defendants are no longer permitted to redact discovery documents except for

privileges and for information required to be redacted by law, and that defendants must re-process all previously redacted documents within thirty days. Subsequently, on February 14, 2012, the court further instructed the defendants to file a motion for protective order within seven days if they so wish. Defendants have now moved for the entry of a protective order seeking relief from the court's ruling of January 12, 2012. More specifically, the defendants' request for relief relates to a subset of documents that fall into the following four categories:

1. Johnson & Johnson board meeting minutes containing confidential information of Johnson & Johnson's global business unrelated to Ethicon or the pelvic mesh products;
2. Johnson & Johnson confidential strategic business documents prepared for use in connection with Johnson & Johnson shareholder and board meetings, which contain highly confidential and sensitive information about businesses unrelated to Ethicon or the pelvic mesh products at issue;
3. Spreadsheets containing Ethicon's adverse event reports relating to products unrelated to the mesh products; and
4. Personal and private information not subject to protection by statute or regulation, such as Social security numbers, personal contact information, personal financial information, and tax ID information.¹

Defendants have made it perfectly clear, throughout their motion, that they do not seek to protect from discovery documents or portion of documents that contain statements that are either explicitly or contextually related to the pelvic products at issue. Rather, they seek protection from discovery only those sections that contain wholly irrelevant information unrelated to issues in this litigation.


¹ As indicated in Plaintiffs' opposition and Defendants' reply, the parties have already agreed that redaction is appropriate with regard to category #4. This agreement shall be formalized and incorporated in the same order that governs other redaction issues.

Under Rule 4:10-3, “the court, for good cause shown . . . may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” The court may choose to issue an order “that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters.” R. 4:10-3(d). The Appellate Division has ruled that “the scope of discovery is not infinite. It is limited by R. 4:10-2(a) to information that is relevant to the subject matter involved in the pending action.” K.S. and B.S. v. ABC Prof. Corp., et als., 330 N.J. Super. 288, 291 (App. Div. 2000); see also Bayer v. Twp. of Union, 414 N.J. Super. 238, 273-74 (App. Div. 2010) (restricting discovery after the *in camera* review revealed that no evidence could be found in the documents that was relevant to the underlying subject matter of the action). Relevancy is defined in accordance with N.J.R.E. 401 as having a “tendency in reason to prove or disprove any fact of consequence to the determination of the action.” Relevancy is defined more broadly on discovery grounds than it is on evidentiary ones. Therefore information could be relevant, for discovery purposes, if it “bears on, or . . . reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case.” Oppenheimer Fund v. Sanders, 437 U.S. 340, 351, 98 S. Ct. 2380, 2389, 57 L. Ed. 2d 253, 265 (1978). Nevertheless, even relevant evidence may be excluded if its probative value is substantially outweighed by undue prejudice. See N.J.R.E. 403.

Upon reviewing the parties’ respective positions and after conducting an *in camera* review of the documents and exemplars submitted by defendants, this court has now reconsidered its earlier position with regards to the production of all documents that contain both relevant and irrelevant information. Applying the broad relevancy standard to the motion at hand, I find no justification for the disclosure of information that is not related to the subject matter of this litigation. Defendants have unequivocally reiterated that they will produce documents that contain discussions of all pelvic mesh products, or which contain discussions

related to Ethicon Women's Health and Urology ("EWHU") bearing on those products. As a result, defendants are obliged to produce to plaintiffs all adverse event reports that relate to any pelvic mesh product. Furthermore, defendants must also produce board meeting minutes or confidential strategic business documents that were prepared for use in connection with those meetings, even if they contain confidential and sensitive information as long as those records relate in any way to any pelvic mesh product. However, defendants need not produce board meeting minutes or confidential strategic business documents that do not pertain in any way to any pelvic mesh product. Therefore, if a document contains both relevant and irrelevant information, defendants may redact *only* those portions that are completely unrelated to Ethicon, EWHU, or any pelvic mesh product.

Accordingly, defendants' motion seeking protective order seeking relief regarding proscription against redaction of irrelevant information in certain production documents is hereby GRANTED, limited to the relief set forth above.


CAROL E. HIGBEE, P.J.Cv.