

Prepared by the court

SAYRIS J. GONZALEZ,

Plaintiff,

vs.

ETHICON, INC., ETHICON WOMEN'S
HEALTH AND UROLOGY, a Division of
ETHICON, INC., GYNECARE, JOHNSON &
JOHNSON, and JOHN DOES 1-20,

Defendants.

KIMBERLEY SUE HILDEBRAND and BARRY
JOE HILDEBRAND,

Plaintiffs,

vs.

ETHICON, INC., ETHICON WOMEN'S
HEALTH AND UROLOGY, a Division of
ETHICON, INC., GYNECARE, JOHNSON &
JOHNSON, and JOHN DOES 1-20,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY
DOCKET NO. BER-L-011810-14-MCL

MASTER DOCKET NO. BER-L-11575-14

CIVIL ACTION

In Re Pelvic Mesh/Gynecare Litigation
Case No. 291

FILED

02 02 2022

RACHELLE L. HARZ
J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY
DOCKET NO. BER-L-012896-14-MCL

MASTER DOCKET NO. BER-L-11575-14

CIVIL ACTION

In Re Pelvic Mesh/Gynecare Litigation
Case No. 291

**ORDER AND DECISION REGARDING
MEDICAL EXAMINATIONS**

THIS MATTER having been brought before the Court by motion on short notice by Defendants Ethicon, Inc. and Johnson & Johnson, through its counsel Riker Danzig LLP, seeking an Order compelling Plaintiffs to submit to independent medical examinations; and the Court

having considered the Motion, and opposition filed with respect to the Motion, and arguments of counsel; and for good cause shown,

IT IS on this 2nd day of December 2022,

ORDERED that Defendants' Motion compelling Plaintiffs to submit to independent medical examinations is hereby granted; and

IT IS FURTHER ORDERED that Plaintiff Sayris Gonzalez shall submit to an examination by Dr. Salil Khandwala at his office located at Advanced Urogynecology of Michigan PC, 22731 Newman Street, Suite 200, Dearborn, Michigan, 48124;

IT IS FURTHER ORDERED that Plaintiff Kimberley Sue Hildebrand shall submit to an examination by Dr. Peter Rosenblatt at his office located at 725 Concord Avenue, Suite 3500, Cambridge, Massachusetts 02138;

A copy of this order has been served on all counsel by the court.



Hon. Rachelle Lea Harz, J.S.C.

Opposed

Unopposed

See Rider Attached.

RIDER

Before this court is defendants, Ethicon, Inc. and Johnson and Johnson's (hereinafter "Ethicon") motion to compel medical examinations of Plaintiffs Sayris Gonzales and Kimberley Sue Hilebrand pursuant to Rule 4:19. The issue in dispute is not the medical examinations themselves, but rather the location of the medical examinations which are sought in locations far from their homes. Here, the Plaintiffs have put their medical conditions is controversy. It is understood that Plaintiffs will have physicians who have treated the Plaintiffs testify about their medical conditions at the time of trial and Defendants seek to have their expert physician witnesses be able to state to the jury that they too have examined the Plaintiffs.

Plaintiffs' counsel argues that many qualified physicians are located within 1 or 2 hours driving distance of Plaintiffs' homes. Ethicon argues it has the right to select the physicians of its choice to perform the examinations, and maintain that these physicians selected possess the qualifications needed for the testimony to be elicited at trial. This court is aware that the physicians selected understand the role of being a defense expert for pelvic mesh litigation, and that this is certainly a factor in the choice of the examining physicians. However, on the other hand, the physicians that will be testifying for Plaintiffs understand the role of being an expert witness for Plaintiffs in pelvic mesh litigation.

Ms. Gonzales lives in New Jersey, and Ethicon seeks for her to attend an IME by Dr. Salil Khandwala at the doctor's office located in Dearborn, Michigan. Ms. Hildebrand lives in Maryland, and Ethicon seeks for her to attend an IME by Dr. Peter Rosenblatt at the doctor's office located in Cambridge, Massachusetts.

Plaintiff's counsel argues, among other things, that scheduling these examinations which are located more than one hour driving distances from their respective homes is designed to harass and inconvenience Plaintiffs.

After reviewing all the case law submitted by both parties, this court recognizes that the standard that should be utilized for the location of the examinations is one of reasonableness under the circumstances. There is no case law directly on point. Moreover, this court is making this decision in the context of a Multi-County Litigation-Mass Tort. This decision should not be misconstrued to apply to cases outside of Multi-County Litigation.

This court will not differentiate between Plaintiffs based upon whether or not they reside in the State of New Jersey. In this MCL, women from all states have

brought their claims. This decision is not binding on any future applications in this MCL regarding the location of defense medical examinations. Each case must be analyzed in light of case specific facts.

With regard to Ms. Gonzales, it is undisputed that she has travelled from New Jersey to California to see Dr. Margolis and Dr. Raz and flew to Arizona to see Dr. Hibner. Dearborn Michigan is a 2-hour flight from Newark to Dearborn.

With regard to Ms. Hildebrand, it is undisputed that she travelled from Maryland to Georgia to see Mr. Moore. Cambridge Massachusetts is a 1 ½ hour flight from Baltimore to Boston.

Although this court appreciates that travel is difficult for Plaintiffs, they are able to do so when necessary, such as for their own treatment. This court does not order travel lightly, but considering the importance of a defense medical exam by a qualified examiner and the amount of money at issue in these cases, this court finds the requested travel reasonable under the circumstances. This court is mindful in its determination that the airplane flights in question are two hours or less.

Plaintiffs also object to the scope of the examination. During oral argument there was representation that there will be no urine sample via catheterization. With regard to any additional medical history that these examining physicians may request, the Plaintiffs shall not be required to fill out any form or answer any questions while attending the examinations. Defense counsel must provide all relevant medical records to the examining physicians. Any information form that the physicians wish to be answered must be sent to Plaintiffs' counsel at least 7 days before the examinations to allow Plaintiffs to provide any requested medical history with the advice of counsel.

Both Plaintiffs may be accompanied with a companion on the plane and all tickets purchased shall be Economy Plus or Economy with extra leg room. Counsel shall discuss between themselves the need for additional costs, such as transportation to and from the airport, hotel reservations, and meals. If there is any dispute regarding these costs, the parties shall advise this court and this court will schedule a conference via Zoom and decide these monetary issues.