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FILED

MAY 23 2023

**RACHELLE L. HARZ
J.S.C.**

<p>DEBORAH JEAN BARROW, <i>Plaintiff,</i></p> <p>v.</p> <p>ETHICON, INC., ETHICON WOMEN'S HEALTH AND UROLOGY, a Division of Ethicon, Inc., GYNECARE, JOHNSON & JOHNSON, AND JOHN DOES 1-20, <i>Defendants.</i></p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION – BERGEN COUNTY DOCKET NO. BER-L-15482-14 MCL</p> <p>MASTER CASE NO. BER-L-11575-14-CT</p> <p>CIVIL ACTION In Re Pelvic Mesh/Gynecare Litigation Case No. 291 CT</p> <p>ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT <i>without prejudice</i></p>
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AND NOW, on this 23 day of ^{May} April, 2023, upon consideration of Defendants'

Motion for Summary Judgment and Plaintiff's Response in Opposition thereto and any arguments
of counsel, it is hereby ORDERED that Defendants' Motion for Summary Judgment is DENIED.

It is further ORDERED that a copy of this Order shall be served on all counsel within seven ^{*without prejudice*}

(7) days of its receipt by counsel.



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

Opposed

Unopposed

see index attached

RIDER

Deborah Barrow v. Ethicon, Inc., et al., Docket No. BER-L-15482-14 MCL
In re: Pelvic Mesh/Gynecare Litigation, Case No. 291
Master Docket No. BER-L-11575-14

Oral argument was held on May 12th, 2023.

The instant motion seeks summary judgment based upon two-year statute of limitation period. Defense counsel has presented many arguments that Plaintiff discovered or by an exercise of reasonable diligence and intelligence should have discovered that there was a possibility of an actionable claim prior to September 5th, 2013. Defense counsel has presented arguments that this case is time barred by seven years and eight months, seven years and five months, seven years and twelve days.

It is the position of Plaintiff's counsel that plaintiff's claims accrued under New Jersey law in either October or November 2011, after plaintiff contacted her attorneys and therefore by commencing this action on September 5, 2013, Plaintiff's claims were timely filed under the New Jersey two-year statute of limitations period.

At this stage of the litigation, the deposition of the plaintiff has not been conducted. Furthermore, no depositions have been taken of any implanting or treating physicians.

This Court recognizes that a crucial inquiry is whether the facts presented to the plaintiff would alert a reasonable person exercising ordinary diligence that she was injured due to the fault of another.

In the opposition brief submitted, it is represented that plaintiff was never advised by a physician that her symptoms were due to a defect in the mesh throughout the course of her care

and treatment. It is maintained that plaintiff suspected that rather than a defect in the mesh product, it was her own body response to the mesh that was causing her symptoms. This Court recognizes that Plaintiff's subjective belief is not entirely dispositive of the statute of limitations issue. This Court is making this decision to deny this motion for summary judgment without prejudice based the lack of discovery completed to date.

This Court may not make any inferences in the moving party's favor without deposition testimony. The record before this Court is presently incomplete upon which a fair and reasoned determination can be made regarding this crucial statute of limitations issue.

Accordingly, this motion is **DENIED WITHOUT PREJUDICE** and may be refiled, if defense counsel so chooses, after the aforementioned necessary depositions are completed.