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*Counsel for Plaintiffs*

IN RE PROCEED MESH LITIGATION  
 (Proceed® Surgical Mesh and Proceed®  
 Ventral Patch Hernia Mesh)

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**FILED**

**FEB 10 2022**

**JOHN C. PORTO, J.S.C.**

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION – ATLANTIC COUNTY

MCL CASE NO: 630

MASTER DOCKET NO.: ATL-L-794-19

***CASE MANAGEMENT ORDER #2-B***  
**[AMENDING PLAINTIFFS’**  
**LEADERSHIP]**

This Court, having entered previously Case Management Order Nos. 2 and 2A, through which it appointed the Plaintiffs’ Executive Committee and a Plaintiffs’ Steering Committee respectively, hereby amends that Order as requested by the Plaintiffs’ Executive Committee. This Court, therefore, hereby amends CMO 2A as set forth below.

**I. PLAINTIFFS’ AND DEFENDANTS’ LEADERSHIP**

**A. PLAINTIFFS’ LEADERSHIP**

**1 Appointment of Counsel**

The Court appoints the following attorneys to serve on the Plaintiffs' Executive Committee ("PEC") and Liaison for all Plaintiffs.

**COUNSEL ON THE PLAINTIFFS' EXECUTIVE COMMITTEE:**

James A. Barry, Esq.  
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## **2. Designations, Funding, Future Changes in Leadership Structure**

These designations are of a personal nature. This Court looks to these counsel to undertake personal responsibility to perform the designated functions and reserves the discretion to replace these counsel should they become unable or unwilling to do so, or should such other circumstances arise that warrant the same. This Court may amend or expand the PSC upon request of the PEC or on its own motion, if and as circumstances warrant. This Court is mindful that counsel within the PSC will be advance funding much of the common benefit litigation and that each of the members of the PSC will warrant their ability and willingness to advance fund the common litigation as determined to be necessary by the PEC. The failure of any member of the PSC to meet any of the advanced funding obligations as determined are necessary by the PEC may constitute good cause for removal from the PSC.

## **3 Duties and Responsibilities of Plaintiffs' Lead and Liaison Counsel**

### **Plaintiffs' Executive Committee**

The Plaintiffs' Executive Committee ("PEC") shall be charged with formulating and presenting Plaintiffs' positions on all substantive and procedural issues arising during these pretrial proceedings, and shall be deemed able to bind all plaintiffs' counsel to decisions regarding same. The PEC shall submit and argue all motions and other matters. At least one member of the PEC shall attend status conferences and such other hearings or conferences as may occur. The PEC shall work with opposing counsel in developing and implementing a litigation plan to ensure pretrial proceedings are conducted effectively, efficiently, and economically. The PEC may delegate specific tasks to other counsel to further these prescribed goals. Upon creation of a PSC, it shall be the responsibility of the PEC to provide oversight to and coordinate the responsibilities of the PSC. Each member of the PEC shall have an equal vote. In the event that the PEC should disagree on any of the following, the majority vote of the PEC will prevail.

The duties of the PEC, and as delegated by such to the PSC, further include, but are not limited to, the following:

#### **Administration**

- a. Call meetings of counsel for Plaintiffs for any appropriate purpose;
- b. perform any task necessary and proper for the PEC to accomplish its responsibilities as defined by the Court's orders, including organizing a PSC, sub-committees comprised of plaintiffs' attorneys not on the PSC, and assigning them tasks consistent with the duties of the PSC;
- c. monitor the activities of the PSC and other co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;

- d. maintain adequate files of all pretrial matters, including establishing and maintaining a document or exhibit depository, in either real or virtual format, and having those documents available, under reasonable terms and conditions, for examination by all Plaintiffs or their attorneys in the MCL proceedings;
- e. provide periodic reports to non-PSC plaintiffs' counsel concerning the status of the litigation on no less than a quarterly basis;
- f. to coordinate services and filings;
- g. to maintain and distribute to co-counsel and to Defendants' Counsel an up-to-date service list;
- h. to receive and distribute all pleadings, all Court orders, and motions, provided all counsel shall continue to receive all notices through the New Jersey eCourts electronic filing system;
- i. to maintain in conjunction with their accountant records of receipts and disbursements advanced by members of the PSC and received by the PSC and to report in writing to the PSC concerning disbursements and receipts;
- j. to act as the treasurer for any common benefit assessments and expenses, which shall be allocated to one of the PEC members, not all;
- k. to maintain and make available to all Plaintiffs' counsel of record at reasonable hours a complete file of all documents served by or upon each party (except such documents as may be available at a document depository);
- l. to be available for any telephone conferences convened by the Court and to communicate the substance of any such telephone conference to all other Plaintiffs' counsel; and

- m. perform such other functions as may be expressly authorized by further orders of the Court.

### **Discovery**

- a. Initiate, coordinate, and conduct all pretrial discovery on behalf of all Plaintiffs who file civil actions in this Court or are consolidated with this multi-county litigation and are part of the MCL proceeding;
- b. develop and propose to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all Plaintiffs;
- c. initiate, coordinate, and cause to be issued in the name of all Plaintiffs the necessary discovery requests, motions and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial discovery of relevant issues developed by the PSC. Similar requests, notices and subpoenas may be caused to be issued by the PSC upon written request by the individual attorney in order to assist him/her in preparation of the pretrial stages of his/her client's particular claims; and
- d. conduct all discovery in a coordinated and consolidated manner on behalf of and for the benefit of all Plaintiffs with the assistance from the PSC.

### **Motion Practice and Hearings**

- a. Call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the Court. Initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matter(s) pertaining to pretrial proceedings;



- b. submit and argue or designate other counsel to argue any motions presented to the Court on behalf of all Plaintiffs as well as oppose when necessary any motions submitted by Defendants or third parties;
- c. examine or designate other counsel to examine witnesses and introduce evidence at hearings on behalf of Plaintiffs; and
- d. act or designate other counsel to act as spokesperson(s) for Plaintiffs at pretrial proceedings and in response to any inquiries by the Court.

#### **Contact with Defense Counsel**

- a. Initiate, coordinate and conduct (or designate others to do so) the requisite meet and confers with Defendants, confer with Defendants regarding procedural matters, and negotiate and enter into stipulations with Defendants regarding this litigation; and
- b. explore or designate other counsel to explore, develop and pursue settlement options with Defendants on behalf of Plaintiffs.

#### **4. Communications with the Court**

All communications from Plaintiffs with the Court should be through the PEC or Liaison Counsel or, as requested by the PEC, the PEC's designee. If circumstances require direct correspondence with the Court by an individual counsel, copies of any such communications shall be simultaneously served upon the PEC or as otherwise delegated.

#### **5. No Waiver of Privilege**

The Court recognizes that cooperation by and among plaintiffs' counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between plaintiffs' counsel shall not be deemed a waiver of the attorney-client privilege and/or the

work product doctrine, if the privilege or doctrine is otherwise applicable, and all of such persons shall maintain the confidentiality of such communications. Cooperative efforts contemplated above shall in no way be used against any plaintiff by any defendant. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

**6. Individual Claimants' Counsel Responsibility for Their Respective Clients.**

Under no circumstances are the members of the PEC, Liaison Counsel, or any member of the PSC responsible for filings, discovery, or any other issue or matter related to an individual plaintiff's case or claim. More specifically, the members of the PEC, Liaison Counsel, or any member of the PSC are in no way responsible for the attorney-client relationship and the duties and responsibilities each individual attorney or law firm owe to their client(s) in the prosecution of their individual case(s).

**B. Defendants' Leadership**

**1 Appointment of Counsel**

The Court appoints the following attorneys to serve as Co-Lead and Co-Liaison Counsel for Defendants Ethicon, Inc. and Johnson & Johnson.

**CO-LEAD COUNSEL FOR DEFENDANTS:**

William M. Gage, Esq.  
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-and-

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**CO-LIAISON COUNSEL FOR DEFENDANTS:**

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**2 Duties and Responsibilities of Defendants' Lead and Liaison Counsel**

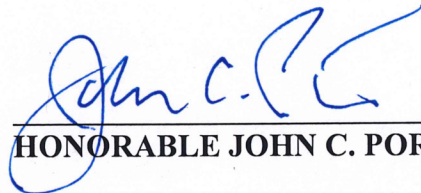
**Defendants' Lead Counsel**

Defendants' Lead Counsel shall be charged with formulating and presenting Defendants' positions on all substantive and procedural issues arising during these pretrial proceedings. Generally, Defendants' Lead Counsel shall submit and argue motions. Defendants' Lead Counsel shall work with opposing counsel in developing and implementing a litigation plan

to ensure pretrial proceedings are conducted effectively, efficiently, and economically. Defendants' Lead Counsel may delegate specific tasks to other counsel to further these prescribed goals.

**Defendants' Liaison Counsel**

Defendants' Liaison Counsel shall be charged with facilitating the administrative requirements of these pretrial proceedings. To the extent service is not otherwise achieved through eCourts, Defendants' Liaison Counsel shall act as the primary recipients of the Court's orders on behalf of Defendants, distributors of defendants' pleadings, notices, and motions to Plaintiffs' Lead and Liaison counsel, and shall coordinate service and filings. Defendants' Liaison Counsel shall be reasonably available to communicate with the Court on administrative or procedural matters when necessary. Defendants' Liaison Counsel shall attend status conferences and such other hearings or conferences as they may occur.

 2/10/2022  
HONORABLE JOHN C. PORTO, J.S.C.