

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY
MASTER CASE NO. ATL-L-3857-21

CASE NO. 636

Civil Action

IN RE STRATTICE HERNIA MESH
LITIGATION

THIRD AMENDED CASE MANAGEMENT
ORDER NO. 5
[DISCOVERY, SCHEDULING AND CASE
MANAGEMENT – FIRST TRIAL POOL AND
FIRST TRIAL]

This matter having been opened to the Court by the parties, and for good cause appearing:

IT IS on this 14th day of September, 2023,

ORDERED as follows:

1. Amendments and Joinder

- a. Except as may be further ordered by the Court, all motions for leave to amend a complaint or to join additional parties shall be filed by Plaintiffs no later than 60 days after selection in the First Trial Pool.

2. General Discovery Rules

- a. Except as otherwise provided by this Court's Case Management Orders, the Rules governing the Courts of the State of New Jersey shall apply in this MCL.

3. Selection of Cases for First Trial Pool Workup

- a. On May 2, 2022, 6 cases shall be selected for Trial Pool workup ("Trial Pool Plaintiffs") in the following manner:
 - i. The Plaintiffs shall select 3 Plaintiff Pick cases; and
 - ii. The Defendants shall select 3 Defense Pick cases.

- b. Other than provision of Plaintiff Profile Forms (to be set out in a future Case Management Order), the cases selected for the First Trial Pool shall be the only cases that move forward with case-specific discovery or dispositive motion practice except upon further Order of the Court.
- c. Upon notice of selection for the First Trial Pool, Counsel for Trial Pool Plaintiffs shall obtain affirmation by May 30, 2022 from each Trial Pool Plaintiff that they presently intend to proceed through the Trial Pool process and desire to go to trial.
- d. If a Trial Pool Plaintiff voluntarily dismisses their case for any reason at any time, a replacement case will be selected in the same manner that the dismissed case was originally selected. In that event, the parties shall meet and confer to devise a schedule to ensure that the replacement case is on the same track as the remaining cases in the First Trial Pool.
- e. Trial Pool Plaintiffs will provide a completed Plaintiff Fact Sheet by May 30, 2022. Defendants will provide a complete Defendant Fact Sheet on each by July 29, 2022.
- f. The sales representative document production shall be produced to Plaintiffs no later than August 22, 2022 for each case in the Trial Pool.
- g. Fact discovery on Trial Pool cases may begin immediately after the deadline for service of the Plaintiff Fact Sheets. Depositions of physicians may be scheduled to occur on and after September 12, 2022. If either party asserts that physician depositions should not go forward due to incomplete discovery, the parties shall promptly meet and confer to resolve the discovery issues and, if resolution cannot be reached, shall bring the matter to the Court's attention promptly.

- h. The parties are directed to work together to schedule case-specific depositions, including, but not limited to, addressing issues regarding which party questions first, how costs associated with depositions are paid, and how the depositions get scheduled. Absent agreement of the parties, Defendants shall not contact a plaintiff's physicians.

4. First Trial Selection and Trial Schedule

a. First Trial Selection

- i. On July 7, 2023, the Parties shall make their respective trial selection from the 6 Trial Pool Cases by choosing one case per side to be their "First Trial Selection." The Parties shall only make their First Trial Selection from their prior respective selected Trial Pool cases.
- ii. The Parties have agreed that the Plaintiffs' First Trial Selection shall be the first case tried, and Defendants' First Trial Selection shall be the second case tried.

b. Expert Disclosures and Discovery for First Trial Selection; and Science Day:

- i. Plaintiffs' expert disclosures and reports shall be served by September 15, 2023. Defendant's expert disclosures and reports shall be served by October 20, 2023. Rebuttal reports by Plaintiff's experts, if any, shall be served by October 27, 2023.¹

¹ Given the short timelines and the considerable time it takes to review, analyze, and transfer pathology, Plaintiffs shall declare to Defendants by September 8, 2023 if any of their expert(s) intend to base their opinions on the personal physical examination (i.e. gross, macroscopic, or microscopic) of any pathology specimen(s). If so, Plaintiffs shall transfer any pathology specimen(s) to Defendants' experts in an agreed-upon manner so that it arrives to Defendants' experts' facility by September 15, 2023. Likewise, Defendants shall declare the same to Plaintiffs by October 2, 2023 and transfer any pathology specimen(s) so that the material(s) arrive at Plaintiffs' experts' facility no later than October 11, 2023.

- ii. The parties will meet and confer with respect to scheduling of expert depositions and depositions of experts may commence as soon as the respective expert reports are served. All expert depositions for the First Trial Selection cases shall be completed by November 1, 2023.
 - iii. The parties will coordinate and present to the Court a Science Day that will occur on May 18, 2023. A separate Case Management Order will govern the specifics of that proceeding.
- c. Motions: All dispositive and expert-related motions for the Plaintiffs' First Trial Selection are to be fully briefed and filed with the Court by December 1, 2023, according to the following schedule:
- i. Dispositive Motions:
 - 1. The parties are directed to meet and confer on or before October 2, 2023 regarding specifically which legal claim(s) and defense(s) the parties intend to pursue at trial in order to mitigate unnecessary briefing.
 - 2. (1) Motions and supporting memoranda and materials due October 30, 2023; (2) Memoranda in opposition due November 20, 2023; (3) Reply memoranda in support due November 27, 2023.
 - ii. Expert Motions: (1) Motions and supporting memoranda and materials due on November 3, 2023; (2) Memoranda in opposition due November 24, and (3) Reply memoranda in support due on December 1.
 - iii. Oral Argument on dispositive and expert-related motions for Plaintiffs' First Trial Selection will be held on January 5, 2024.

iv. The parties shall agree to and inform the Court of a briefing schedule that contemplates all dispositive and expert-related motions for Defendants' First Trial Selection to be briefed after Plaintiffs' First Trial Selection is resolved or otherwise disposed of, whether through motion practice, trial verdict, or settlement. The parties shall not file any other dispositive or expert-related motions in any other case until after the parties' First Trial Selections are resolved or disposed of either through motion practice, trial verdict, or settlement, unless leave of Court is sought and granted. If Plaintiffs' First Trial Selection is dismissed due to dispositive motion practice and/or expert motion practice, then Defendants may proceed to the first trial with Defendants' First Trial Selection. Immediately following disposition of the First Trial Selection cases, the Court shall set a hearing to determine future trial dates and scheduling for the remaining cases.

d. Pretrial Exchanges for Plaintiffs' First Trial Selection:

- i. Witness Lists shall be exchanged by December 22, 2023. Objections to Witness Lists shall be exchanged by January 5, 2024.
- ii. Deposition Designations:
 1. Deposition Designations shall be filed by December 15, 2023.
 2. Objections and Counter-Designations shall be filed by January 5, 2024.
 3. Objections to Counter-Designations and Cross-Designations shall be filed by January 12, 2024.

- iii. Motions *in Limine* shall be filed by January 12, 2024, with responses filed by January 19, 2024. No replies shall be filed. Rather than file multiple separate individual motions, each side will file one omnibus Motion in *Limine* that contains all motions and arguments therein, limited to 20 substantive pages of argument (not including case captions, table of contents) per side.
 - iv. Exhibit Lists shall be exchanged by January 19, 2024. Objections to Exhibit Lists shall be exchanged by January 26, 2024.
 - v. Proposed and Stipulated Jury Instructions shall be filed by January 29, 2024.
- e. Pretrial Conferences: The Court has reserved the week of January 29, 2024 for Pretrial Conferences. The parties will confer and inform the Court by no later than January 16, 2024 the times and dates needed for Pretrial Conferences that week to resolve disputes surrounding evidentiary issues, jury instructions, jury questionnaires, and other Pretrial Exchanges. The parties are directed to meet and confer throughout the month of January 2024 and are encouraged to resolve as many evidentiary disputes as possible without Court intervention. The parties shall send the Court a joint agenda no later than January 25, 2024 outlining the proposed conference agendas. For evidentiary issues that have not been subjected to briefing via the Motions in *Limine* process, at least 24 hours prior to each pretrial conference, the parties shall send the Court a Joint Position Paper of no more than 6 pages (if the parties cannot agree on how to frame the dispute(s), each party gets an equal amount of pages per side to frame the dispute(s) from their perspective).

These Position Papers will briefly summarize the nature of the dispute and parties' positions for all active issues necessitating Court intervention.

- f. First Trial: The Court will set the first trial for February 12, 2024 and will set further trials thereafter at regular intervals to be determined by the parties and the Court.


HONORABLE JOHN C. PORTO, P.J.Cv.