

FILED

DEC 15 2023

JOHN C. PORTO, P.J.Cv.

IN RE TALC BASED POWDER PRODUCT
LITIGATIONSUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

CASE NO.: 300

CIVIL ACTION

**SECOND AMENDED CASE MANAGEMENT
ORDER 9**

THIS MATTER, having been brought before the Court with the purpose of establishing a process for working up cases for trial in this Multicounty Litigation, with consent of counsel and for good cause shown,

IT IS on this 15th day of December 2023

ORDERED that case selection and discovery shall proceed as follows:

STAGE 1 – CASE SELECTION

1. The initial pool shall have sixty-three cases which will be selected randomly based on the date of filing: seven cases randomly selected from each of the following groups: cases filed in 2013-2014; cases filed in 2015; cases filed in 2016; cases filed in 2017; cases filed in 2018; cases filed in 2019; cases filed in 2020; cases filed in 2021; and cases filed in 2023 on or before November 1, 2023.

2. The random selection process of the sixty-three cases will utilize the Third-Party draw service available on Random.org with both parties on Zoom during the process and will take place within a week of final agreement on the list of cases for each year.

3. The parties will submit the list of sixty-three randomly chosen cases to the Court within one week of selection.

STAGE 2-PLAINTIFF PROFILE FORMS

4. The plaintiffs in each of the sixty-three selected cases shall (1) produce a fully complete and verified Plaintiff Profile Form, or an updated verified Plaintiff Profile Form if necessary to make the responses complete and current, the form of which is attached hereto as Exhibit A; (2) produce executed medical record retrieval authorizations, the form of which is attached hereto as Exhibit B; and (3) promptly order the following core records and produce them to defense counsel via MDL Centrality upon receipt:

- a. All Medical records or reports from any hospital, physician, or other health care provider who treated plaintiff for ovarian cancer or any gynecologic disease, condition or symptom alleged in the Complaint and/or PPF: and,
- b. If applicable, decedent-user's death certificate and copies of letters testamentary or letters of administration confirming standing of the named plaintiff,

The plaintiffs in the sixty-three selected cases shall do all of the above by **January 26, 2024**, **regardless of deadlines set in prior case management orders.**

5. By consent, the parties have agreed to use MDL Centrality, an online data management tool specifically designed to manage discovery in mass tort litigations, to complete and serve the Plaintiff Profile Forms and for the exchange of any other responsive discovery documents between the parties. The system is accessible at www.mdlcentrality.com/talc. Plaintiffs' counsel will promptly register with MDL Centrality®.

6. If the plaintiff has already completed an "old form" Fact Sheet, that Fact Sheet shall be added to MDL Centrality, updated within the time provided herein and it will not be necessary for that plaintiff to complete the Plaintiff Profile Form attached as Exhibit A. That

plaintiff shall, however, update the responses as necessary to make them current and complete, and answer questions 3(c) (subtype of cancer), 3(d) (stage of cancer) and 4(b) (tubal ligation) from the Plaintiff Profile form at Exhibit A. In addition, fresh authorizations in the form attached as Exhibit B shall be provided.

STAGE 3 – DISCOVERY POOL

7. By **February 23, 2024**, the sixty-three randomly selected cases shall be narrowed down to a group of fifteen cases (“Discovery Pool”), with each party selecting five cases from the pool of sixty-three cases and five cases being selected randomly from the pool of sixty-three cases utilizing the Third-Party draw service available on Random.org with both parties on Zoom during the process. The five randomly selected cases shall be chosen first and then the parties will make their five respective case selections from the remaining fifty-three cases.

8. With respect to each party’s case selections, each party is required to select at least one case in which the original plaintiff is currently alive. Regarding the random case selections, at least one case must be a case in which the original plaintiff is currently alive. If the first five cases randomly selected at this stage are cases in which the original plaintiff is deceased, the last case randomly selected will be disregarded, and the parties will continue to randomly select cases until a case in which the original plaintiff is alive is chosen.

9. If plaintiffs in any of the Discovery Pool cases do not wish to proceed, they may dismiss their case with prejudice on or before **March 2, 2024**, with each party to bear their own costs. Thereafter, defendants reserve their right to seek sanctions for a voluntary dismissal which occurs during the process of further case work up. Any case dismissed shall be replaced by following the same process outlined in paragraphs 7 and 8 of this order (e.g., if a case selected by plaintiffs is voluntarily dismissed with prejudice after being selected for the Discovery Pool,

plaintiffs will then select another case)

10. By **March 9, 2024**, each plaintiff selected in the Discovery Pool shall file an Amended Complaint setting out specifically which causes of action they intend to pursue. If no Amended Complaint is filed, it will be assumed that they are pursuing all causes of action listed in the originally filed Complaint.

11. By **April 5, 2024**, the defendants shall file an Answer to each Amended Complaint include any previously asserted affirmative defenses that each defendant contends are actually being asserted in the particular case.

12. Except as specified in this Order and Amended Case Management Order 11, or otherwise authorized by the Court, all case-specific discovery in this MCL proceeding shall remain stayed. This does not affect the continuation of general liability and causation discovery.

STAGE 4 - DEPOSITIONS

13. Fact discovery in the fifteen Discovery Pool cases will be limited to the following:

a. The plaintiff in each case will be deposed; if a death case, then the spouse or significant other; or if a death case and there is no spouse or significant other, then the name personal representative or a family member selected by the plaintiff.

b. Up to two healthcare providers may be deposed in this phase with each side selecting one healthcare provider. The order of selection and questioning will alternate between plaintiffs and defendants based on alphabetical order. The list of fifteen cases in the Discovery Pool shall be put in alphabetical order.

Plaintiffs shall select and question a healthcare provider first in every alternate case starting with the first case on the list. As to the second healthcare provider in cases where plaintiffs select first, defendants shall select the second healthcare provider and question that healthcare provider first.

Defendants shall select and question the healthcare provider first in every alternate case starting with the second case on the list. As to the second healthcare provider in cases where defendants select

first, plaintiffs shall select the second healthcare provider and question that healthcare provider first.

If cases are added to the Discovery Pool after the creation of the original list, they will be put on the bottom of the list and selection and questioning shall proceed in the order above. The time for healthcare provider depositions shall be divided 50/50.

c. Plaintiffs are permitted to engage in *ex parte* communication with plaintiffs' healthcare providers limited solely to the discussions of the physicians' records, diagnosis, peer-reviewed, published scientific literature and the course of treatment. Documents other than medical records for the individual plaintiff and peer-reviewed, published scientific literature may not be provided to the healthcare providers, directly or indirectly, in any such *ex parte* meeting. If plaintiff's counsel engages in *ex parte* communications with her plaintiff's treating physician, plaintiff's counsel shall disclose to defendants' counsel each of the following:

- i. the date(s) of each such *ex parte* communication;
- ii. the method and approximate duration of each such *ex parte* communication;
- iii. the location of each *ex parte* communication, if in person meeting(s);
- iv. the participants in each such *ex parte* communication; and
- v. shall provide electronic copies of the documents or a specific cross-reference to a

set of documents produced to another healthcare provider previously or other materials that were shown or provided to the treating physician by plaintiffs' counsel in connection with each such *ex parte* communication.

If the communications are within 48 hours of the start of the deposition, the above information shall be provided no later than 30 minutes before the start of the deposition. *Ex parte* communications shall encompass substantive conversations regarding plaintiffs' claims, not discussions of scheduling or logistical matters.

d. Defendants' counsel are not permitted to engage in *ex parte* communications with plaintiff's treating healthcare providers. Nothing in this Order prohibits defendants' counsel from retaining a treating health care provider of a given plaintiff in this litigation, except that under no

circumstances shall that treating healthcare provider be retained by defendants and permitted to offer expert testimony or expert opinions in the MCL litigation about a current or former patient.

e. Nothing in this order is intended to place any limits on deposition or trial testimony of a treating healthcare provider other than those provided by New Jersey Rules of Court and the Rules of Evidence.

f. Further case specific discovery will be allowed before trial to the Trial Pool cases. No deposition is waived by not being taken in this phase of discovery.

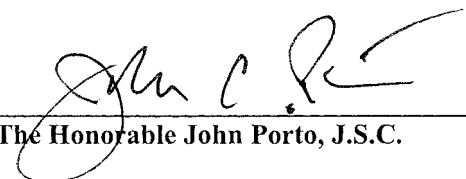
g. Within thirty days of being selected for the Discovery Pool, such plaintiffs will provide authorizations for social security disability records and, if a lost wage claim is being made, employment records and tax returns.

14. The depositions outlined in paragraph 13(a) and 13(b) of this order shall be completed by **June 9, 2024**.

STAGE 5- STRIKES

15. Following completion of the depositions outlined in paragraph 13(a) and 13(b) of this order, each party is entitled to strike four cases from the Discovery Pool, leaving seven cases ("Trial Pool") remaining for further work up.

16. The parties shall inform the Court of the cases they strike from the Discovery Pool by **July 1, 2024**. Thereafter the parties shall meet and confer to agree upon a schedule for expert discovery.



The Honorable John Porto, J.S.C.