FILED

APR 25 2012

Carol E. Higbee P.J.Cv.

IN re PELVIC MESH / GYNECARE LITIGATION,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, ATLANTIC COUNTY CIVIL ACTION Case No. 291 CT Master Case 6341-10 Hon. Carol E. Higbee, P.J. Cv. **ORDER AMENDING CASE MANAGEMENT ORDER NO. 3 CONCERNING RECORDS COLLECTION AND DISTRIBUTION**

Counsel for the parties having submitted their respective positions to the Court, and having appeared for a teleconference on April 2, 2012, and for the continued purpose of equitable, economic and expedient resolution of these cases:

IT IS ON THIS 25 day of April, 2012,

ORDERED that,

1. The parties previously agreed to utilize the services of The Marker Group for the collection and storage of plaintiffs' records. Consistent with the terms of that agreement, the parties will continue to share the costs for medical records requests limited to twenty (20) years prior to the date of plaintiff's initial mesh implant surgery. If defense counsel seeks records spanning longer time frames, the parties will meet and confer. If the matter cannot be resolved, the parties shall request a telephonic conference with the Court and in advance of that conference, will submit their positions in writing to the Court.

2. For any medical records requests more twenty (20) years prior to the date of plaintiff's initial mesh implant surgery, defense counsel shall exclusively bear all associated costs, regardless of whether plaintiffs' counsel agrees to or fails to object to the request.

3. The remaining terms of The Marker Group agreement, as amended, otherwise remain in effect, including the protocol for issuance of records authorizations by The Marker Group and the release of collected records, which is attached hereto as Exhibit A, as amended by letter agreement dated January 24, 2012, attached as Exhibit B.

4. The foregoing does not limit or preclude plaintiffs' counsel from objecting in any particular circumstance to the issuance of any medical record request whether it spans more or less than twenty (20) years.

5. If plaintiffs' counsel objects to the issuance of any medical record request, the parties are to meet and confer. If the objection cannot be resolved, the parties shall request a telephonic conference with the Court and in advance of that conference, will submit their positions in writing to the Court.

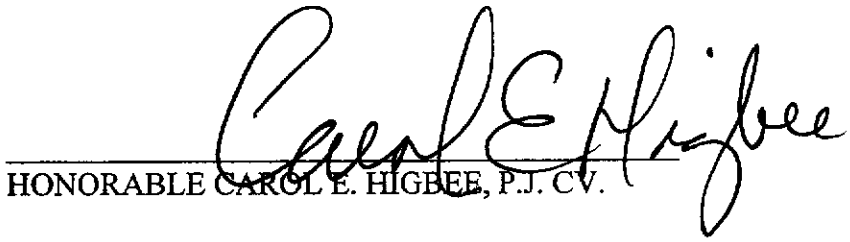
6. The authorization at issue shall not be released by The Marker Group unless it receives written notification from plaintiffs' counsel or the Court.

7. If a plaintiff's counsel does not wish to enter into the agreement with The Marker Group, plaintiff's counsel will provide executed authorizations with its plaintiffs' fact sheets which are fully completed to the best of plaintiffs' and plaintiffs' counsel's ability and knowledge with the names of plaintiff's treaters, complete and correct addresses for the treating physician and/or facility, and are generally consistent with the time frame set forth in Paragraph 1, above of twenty (20) years prior to the date of plaintiff's initial mesh implant surgery for every physician requested to be identified in the plaintiffs' fact sheet. If plaintiff's counsel does not

believe 20 year time frame appropriate based on the circumstances of plaintiff's case, the parties are to meet and confer. If the matter cannot be resolved, the parties shall request a telephonic conference with the Court and in advance of that conference, will submit their positions in writing to the Court.

8. If defense counsel is seeking medical records pertaining in particular to abortion procedures which occurred more than twenty (20) years prior to the date of plaintiff's initial mesh implant surgery, defense counsel must provide support for their position to plaintiff's counsel and the Court that these abortions are relevant to, impacted, or contributed to the injuries that plaintiff now attributes to the pelvic mesh which is the subject matter of her suit.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record within seven (7) days of the date hereof.



HONORABLE CAROL E. HIGBEE, P.J. CV.

EXHIBIT A

In re: Pelvic Mesh / Gynecare
Exhibit D to Marker Group Contract

Protocol for Issuance of Records Authorizations by Marker Group and Release of collected records

The following procedure shall be followed regarding the issuance of authorizations for the collection of records and the release of records. Plaintiffs shall execute blanket authorizations for the collection of records in accordance with the deadlines set forth in the protocol for the completion and service of plaintiffs' fact sheets ("PFS") established in the centralized cases in the Superior Court of New Jersey, Atlantic County. The executed blanket authorizations shall be sent directly to the Marker Group.

The party seeking the collection of records shall communicate with Marker Group to request the issuance of directed authorizations utilizing the blanket authorizations executed by plaintiffs. Marker Group shall post on the website the provider or location name and address to which the authorization will be issued. Plaintiffs' counsel shall have ten days from Marker Group's posting on the website to object to the issuance of the directed authorization. There shall be a mechanism on the website itself for Plaintiffs' counsel to object to each posted provider or location. If, after ten days from posting, no objection has been entered on the website, Marker Group shall issue the directed authorization and process the records collected.

Notices shall be issued by the Marker Group on a daily basis that providers or locations have been posted and are pending.

If plaintiff's counsel objects on the website to the issuance of a directed authorization, Marker Group shall not issue the authorization unless it receives written authorization from Plaintiffs' counsel or an order from the Court.

To the extent necessary, plaintiffs may need to provide updated blanket authorizations should the blanket authorization previously executed become stale or ineffective due to the expiration of time. Plaintiffs may also be required to execute provider specific authorizations should any records custodian so require.

Upon the Marker Group's receipt of records, notification shall be posted on the website indicating that records have been received and identifying the plaintiff and the provider. The records received initially shall be released only to the counsel for the plaintiff whose records were received. Plaintiff's counsel shall have ten-days to review records for the purpose of assessing and asserting privilege protections with regard to some or all of the records posted. There shall be a mechanism on the website itself for Plaintiff's counsel to indicate that a privilege assertion has been made. If, after ten days from posting, no privilege assertions have been made, Marker Group shall release the records to all parties to the matter. In the event that privilege assertions are made, Plaintiffs shall have an additional ten days from the time that the unredacted Bates-Stamped copy of the records have been released to them to redact privileged information and return the entire record set with redactions to Marker so that the entire record set, as redacted, can immediately be posted to all parties, and to provide Defense counsel with an appropriate privilege log.[1] The original records received from any provider shall be retained and maintained at all times by Marker until joint agreement regarding disposition at the conclusion of the litigation or by court order. The unredacted copies may be required to be made available to the court in connection with the resolution of any dispute over redacted information.

Notices shall be issued by the Marker Group on a daily basis indicating if records have been received.

[1] If Plaintiffs elect to resubmit to Marker only those pages of records that have been redacted, thus requiring Marker to replace the original pages with the redacted pages, an addition fee of $1.00 per page will be charged by Marker to Plaintiffs for the additional labor required.

If plaintiff's counsel makes a privilege assertion on the website, Marker Group shall not issue the unredacted records unless it receives written authorization from Plaintiffs' counsel or an order from the Court.

EXHIBIT B

RIKER
DANZIG
SCHERER
HYLAND
PERRETTI LLP

Riker Danzig

Kelly Strange Crawford
Partner

Direct:
t: 973.451.8417
f: 973.451.8635
kcrawford@riker.com
Reply to: Morristown

via email

January 24, 2012

Adam M. Slater, Esq.
Mazie, Slater, Katz & Freeman, LLC
103 Eisenhower Parkway
Roseland, New Jersey 07068

Jillian A. S. Roman, Esq.
Cohen, Placitella & Roth, PC
Two Commerce Square, Suite 2900
2001 Market Street
Philadelphia, PA 19103

Jeffrey Grand
Bernstein Liebhard LLP
10 East 40th Street
New York, NY 10016

Re: In Re Pelvic Mesh/Gynecare Litigation - CT 291

Dear Adam, Jillian and Jeff:

I wish to confirm the agreement reached during the meet and confer telephone call on January 19, 2012, on the issue of the waiting periods implicated in the medical records collection process. Specifically, we understand you have agreed that for the fourteen cases that have been selected for discovery (listed below), the plaintiffs will waive the initial ten-day waiting period before Marker can issue authorizations for any treating physicians identified in the PFS. The one exception to the waiver for these cases is that it does not apply to psychiatrists, psychologists, social workers, family therapists, or other mental health or therapy care providers; for such health care providers, the 10-day initial waiting period still applies.

Regarding the second ten-day waiting period upon receipt of records for plaintiffs to assert privileges, plaintiffs have agreed to reduce the waiting period to five days for these fourteen cases.

1. Diane and Donald Bacon (Mazie Slater) Docket No. ATL-L-6997-10
2. Mary Ann and Al Douglas Collins (Berstein Liebhard), Docket No. ATL-L-8565-11
3. Patricia and William Firman, (Mazie Slater) Docket No. ATL-L-6967-10

4. Sandra L. Darrah and Rockwell Hansen (Mazie Slater), Docket No. ATL-L-2211-11
5. Iraida and Francisco Mendez (Aylstock Witkin), Docket No. ATL-L-8879-10
6. Martha Smith (Wexler Wallace), Docket No. ATL-L-6931-10
7. Lanetia Weaver (Oshman Mirisola), Docket No. ATL-L-10650-11
8. Peggy Dyorak v. Ethicon, et al. (Motley Rice)
9. Maria Figueroa v. Ethicon, et al. (Ted Oshman)
10. Linda Gross v. Ethicon, et al. (Mazie Slater)
11. Brenda Gump v. Ethicon, et al. (Motley Rice)
12. Donna Rogers v. Ethicon, et al. (Mazie Slater)
13. Paula Rosoff v. Ethicon, et al. (Mazie Slater)
14. Pamela Wicker v. Ethicon, et al. (Mazie Slater)

Thank you for this accommodation, which will help the parties collect medical records for these cases in a more timely manner. If you confer and find that you are willing to waive the entire second waiting period (rather than reducing it to 5 days), we would appreciate it.

I request that at least one representative Plaintiffs' liaison counsel sign this letter and return it to me A.S.A.P. so that I can send it to Marker to confirm and document this agreement as to these 14 cases.

Very truly yours,

Kelly S. Crawford/e
Kelly S. Crawford

Consented to:

By: _____
Plaintiffs' Liaison Counsel
Jillian A. S. Ronan