

**FILED**

DEC 02 2015

**BRIAN R. MARTINOTTI**  
**J.S.C.**

**IN RE: PELVIC MESH/GYNECARE  
LITIGATION**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY**

**CASE NO. 291  
MASTER DOCKET NO.: BER-L-11575-14**

**CIVIL ACTION**

**CASE MANAGEMENT ORDER #22**

All prior orders remain in full force and effect except as modified by this Order.

**THIS MATTER** having been reassigned to the Bergen County Vicinage, from Atlantic County, pursuant to the Supreme Court's Order of October 31, 2014; the Court having conducted a Case Management Conference; counsel appearing; for good cause shown and for the reasons set forth on the record;

**IT IS** on this 2<sup>nd</sup> day of December 2015, **ORDERED** as follows:

**PART I**

**I. ORDERS ENTERED SINCE LAST CASE MANAGEMENT CONFERENCE**

- A. Case Management Order No. 21 entered on October 21, 2015.
- B. Benson v. Ethicon, Inc., et al. – Order reinstating complaint entered on November 2, 2015
- C. Decker v. Ethicon, Inc., et al. – Order reinstating complaint entered on November 2, 2015
- D. Velazquez v. Ethicon, Inc., et al. – Order granting Defendants' Motion to Dismiss for Lack of Standing and to Judicially Estop Plaintiffs from Personally Recovering Any Damages on Account of the Claims in This Action entered on November 17, 2015.
- E. Velazquez v. Ethicon, Inc., et al. – Order granting Plaintiffs' Motion to Substitute Trustee of the Bankruptcy Estate as the Plaintiff and Proper Party in Interest entered on November 17, 2015

## PART II

### II. COMPLIANCE WITH PRIOR ORDERS (REMAINING ITEMS)

#### A. Revised Scheduling Order for TVT Retropubic Core Discovery Cases entered on July 23, 2015

1. Depositions of Plaintiffs' experts shall be completed by October 5, 2015.
  - a. This scheduling order is still the order in place prior to the selection of Corbet v. Ethicon (BER-L-14589-14) for trial. The Court has not formally abated the deadlines for the Cantrell or Watkins matters, though the parties have been proceeding de facto as if those deadlines have been abated until further order of the Court. That being stated, all necessary Plaintiffs' expert depositions have been completed for all three cases, with the exception of the deposition of Dr. Iakovlev in the Cantrell matter (which had been scheduled for November 6, 2015). In light of Judge Martinotti selecting the Corbet case for trial in January, the parties agreed not to proceed with the Cantrell portion of the Iakovlev deposition on November 6, 2015. Rather, the deposition will be rescheduled for a future date.
2. Depositions of Defendants' experts shall be completed by November 5, 2015.
  - a. All necessary depositions have been completed with the exception of the deposition of Nicolette Horbach, which needed to be adjourned from its scheduled 11/19 date. On November 23, 2015, Defendants proposed that the expert be deposed on either December 17, 21 or 23. Plaintiffs object to Dr. Horbach as a duplicative general causation expert.
3. Deadlines for exchanging material and filing pretrial motions.
  - a. November 12, 2015 – Deadline to exchange affirmative deposition designations for case-specific witnesses.
    - (1) The parties have exchanged case-specific, affirmative deposition designations.
  - b. November 23, 2015 – Deadline to file Core TVT Retropubic pretrial motions
    - (1) All pretrial motions regarding Corbet were filed, with the exception of motions pertaining to defense experts Drs. Fromer, Sexton and Fleischmann. As those depositions were not completed until November 20, 23, and 24, respectively, Plaintiffs have requested that those motions proceed on a separate track, with initial motions to be filed Dec. 14, 2015 and oppositions to be filed on Dec. 29, 2015.

- c. December 12, 2015 – Deadline to exchange objections/counter designations, witness lists and exhibit lists
- d. December 23, 2015 – Deadline to file opposition to Core TVT Retropubic pretrial motions.

4. Plaintiffs have confirmed that they will dismiss the Cannon case.

B. Case Management Order No. 20 entered on September 16, 2015

1. Miscellaneous Issues

- a. Scheduling of depositions – The parties will meet and confer to discuss a protocol for questioning at depositions of treaters and a possible modification of Orders in place. The parties will report to the Court as to the status of this issue
- b. Parties will meet and discuss the revised IFUs for the TVT products.
  - (1) Defendants responded to Plaintiffs' formal document demand and produced a corporate representative for deposition on November 12 and 13, 2015.

C. Case Management Order No. 21 entered on October 21, 2015

- 1. Counsel shall submit a proposed agenda seven (7) days prior to the Case Management Conference.
  - a. Agenda was submitted seven (7) days prior to the Case Management Conference
- 2. TVT Retropubic Core Discovery Cases
  - a. Wakins matter will be the next matter tried in Bergen County, date to be discussed as a subsequent CMC.
- 3. TVT Secur Core Discovery Cases
  - (a) Liaison counsel continue to meet and confer regarding ongoing scheduling issues. Plaintiffs requested setting a trial date and the first bellwether trial was tentatively scheduled for May 2, 2016.
  - (b) DuBose – Defendants await confirmation from Plaintiffs as to whether this Case is being reinstated as a Core Discovery case or not.
- 4. TVT-O Core Discovery Cases
  - a. Liaison counsel continue to meet and confer regarding ongoing scheduling issues. No trial setting has yet been made for this set of cases.
  - b. Velazquez – Oral argument was held on November 17, 2015. See Section I above for details regarding the orders that were entered.
- 5. Miscellaneous Issues

- a. On November 11, 2015, Judge Harz held a conference call and set a schedule to address allegations of document spoliation. In accordance with that schedule, Plaintiffs' filed an opening brief on November 23, 2015. Defendants' deadline to file a brief in opposition is December 7, 2015. Plaintiffs' deadline to file a reply brief is December 11, 2015 and oral argument regarding spoliation is set for December 22, 2015.

### PART III

#### III. CASE MANAGEMENT AGENDA ITEMS FOR NEXT CASE MANAGEMENT CONFERENCE

##### A. TVT Retropubic Core Discovery Cases

1. The Court has designated Corbet v. Ethicon (BER-L-14589-14) to be the case that will be tried January 11, 2016 pursuant to approval of the Honorable Bonnie J. Mizdol, A.J.S.C. and the Honorable Robert L. Polifroni, P.J. Cv, the Honorable Rachelle L. Harz, J.S.C. will preside over the trial. All issues related to Corbet will be addressed in a separate order. Counsel will meet and confer to discuss the parameters of this order.
2. All discovery is stayed on the Watkins and Cantrell matters pending further order of the Court. Watkins v Ethicon (BER-L-13787-14) will be the next matter tried in New Jersey. The trial date will be set at the next Case Management Conference.
3. Request to file reply briefs for subset of pretrial motions.

##### B. TVT Secur Core Discovery Cases

1. The parties are proceeding with scheduling and taking depositions and addressing issues related to same.

##### C. TVT-O Core Discovery Cases

1. The parties are proceeding with scheduling and taking depositions and addressing issues related to same.
2. Johnson – A stipulation was filed on November 11, 2015 dismissing this matter with prejudice.
3. Velazquez – On November 17, 2015, Order entered granting Defendants' Motion to Dismiss for Lack of Standing and to Judicially Estop Plaintiffs from Personally Recovering Any Damages on Account of the Claims in This Action and Order entered granting Plaintiffs' Motion to Substitute Trustee of the Bankruptcy Estate as the Plaintiff and Proper Party in Interest.

##### D. Miscellaneous Issues

1. Defense counsel shall review its inventory of pending matters and shall send to the Court a breakdown to a reasonable degree of accuracy of matters implicating the multiple Ethicon products that are pending in New Jersey in the 291 Multi-County Litigation docket prior to the December 22, 2015 Science Day.
2. Plaintiffs request to make application before the Court for a Common Benefit Order is granted. Plaintiffs shall within 30 days submit to the Court a proposed Common Benefit Order with an appropriate memorandum of law. Defendants may place a position on the record if they so desire within 14 days of Plaintiffs' filing.

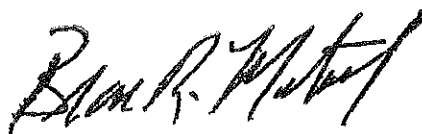
#### **PART IV**

##### **GENERAL:**

1. The next Case Management is scheduled for January 20, 2016 at 11:00 a.m. Liaison Counsel shall report at 8:30am. **Counsel shall submit a proposed agenda seven (7) days prior to this Case Management Conference.**
2. By consent of all parties, the court may contact or be contacted on an *ex parte* basis regarding settlement issues only.
3. The court may, from time to time, conduct phone conferences with defense counsel and liaison counsel.
4. Subject to agreement by and between counsel and with permission from the Court, counsel is permitted to appear telephonically; in order to have your appearance on the record, it is counsel's responsibility to e-mail liaison counsel and the court reporter at least one hour before the proceeding with your name, firm, and party representing, indicating that you intend to appear by phone; in addition you must confirm your appearance, immediately following the proceeding. Absent the above, counsel's appearance will not be noted.

5. The official record shall be the transcript provided by the court reporter retained by counsel. The reporter shall preserve all proceedings and shall email a transcript of any court proceeding to the court within 14 days of the proceeding.
6. Counsel is permitted to serve one motion with a schedule of attached cases for *pro hac* admission. However, a separate order per case/docket number and filing fees is required.
7. The Court directs all counsel to R.1:4-8 and expects all counsel to abide by the parameters set forth therein.
8. All Court proceedings will start at the designated scheduled time. Counsel is expected to arrive promptly for these proceedings.
9. Counsel shall provide the Court with their preferred e-mail address by e-mailing same to Anna Celentano at Anna.Celentano@judiciary.state.nj.us and Yeon Ji Lee at Yeon-Ji.Lee@judiciary.state.nj.us.
10. Counsel shall copy their co-counsel and all adversaries on all e-mails and other electronic correspondence submitted to the Court [COUNSEL IS PROHIBITED FROM FILING ANY PLEADING ELECTRONICALLY]. Any such submission received after 4:30 p.m. will be deemed received at 9:00 a.m. on the next day Court is in session. Any such submission received after 4:30 p.m. on a Friday or over a weekend, will be deemed received on 9:00 a.m. on the next day Court is in session.
11. Counsel is directed to contact The Superior Court of New Jersey, Attorneys Accounts:  
P.O. Box 980, Hughes Justice Complex, 25 W. Market Street, Trenton, New Jersey  
08625 (609) 633-8643 to establish a collateral account for any filing fees within seven (7) days.

12. Counsel is required to check the Judiciary's Web Site dedicated to this matter for any decisions/Orders/information contained therein.
13. A copy of this Order and any subsequent Orders to the Court will be posted on the Judiciary Web Site.

A handwritten signature in black ink, appearing to read "Brian R. Martinotti". The signature is written in a cursive, somewhat stylized font.

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BRIAN R. MARTINOTTI, J.S.C.