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IN RE: PELVIC MESH/GYNECARE  
LITIGATION

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SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: BERGEN COUNTY

CASE NO. 291

MASTER DOCKET NO.: BER-L-11575-14

CIVIL ACTION

CASE MANAGEMENT ORDER #37

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

**FILED**

**MAY 12 2017**

**RACHELLE L. HARZ  
J.S.C.**

**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 12th day of May 2017, **ORDERED** as follows:

**PART I**

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

- A. Case Management Order #36 entered on April 13, 2017
- B. Fantroy v. Ethicon, Inc. – Consent Order of Dismissal Without Prejudice entered on April 20, 2017
- C. G. Harris v. Ethicon, Inc. – Consent Order of Dismissal Without Prejudice entered on April 20, 2017
- D. Wester v. Ethicon, Inc. – Consent Order of Dismissal Without Prejudice entered on April 20, 2017

**PART II**

**II. COMPLIANCE WITH PRIOR ORDERS**

- A. Case Management Order #35 entered on February 28, 2017
  - 1. Briefing regarding the impact of the Gross decision.

1. Briefing is complete. The Court has not yet set a date by which a decision will be issued,
2. Settled Case Information
  1. The Parties will report on the status during the May 9, 2017 CMC.

B. Case Management Order #36 entered on April 13, 2017

1. March 2017 Discovery Cases
  - a) The Parties continue to meet and confer regarding pre-trial preparation and Plaintiffs' request that adequate numbers of Exemplar products be preserved and dedicated for use in New Jersey Superior Court trials and will report on the status during the May 9, 2017 CMC.
  - b) All expert reports will be served and then the 4 cases will be selected out of the pool of 8 cases.
    - (i) The Parties will report on the status during the May 9, 2017 CMC.
2. The Parties continue to meet and confer to address the impact of the McCarrell Supreme Court decision on statute of limitations issues for pending cases and will report on the status during the May 9, 2017 CMC.

III. CASE MANAGEMENT

A. March 2017 Discovery Cases

1. Status of order being entered by the Court regarding the March 2017 Discovery Cases. Two competing forms of order were submitted to the Court.
  - a) The Court determined to modify one of the parties' two competing forms of order. The Court will modify the order to include language permitting questions consistent with Stigliano to be asked at deposition, but will defer decision on admissibility of testimony until the time of trial.
2. Entry of Pre-trial discovery order for March 2017 Discovery Cases.
  - a) The Parties will be submitting a form of Order to the Court for entry.
3. Defendants' request to substitute another defense case for Moore, Hendree and Timothy, BER-L-015077-14.

- a) The Court will permit the case substitution. The schedule of the other pool cases will not be delayed if a different management schedule is required for the substitute case.
4. Plaintiffs request to compel production of documents requested of Dr. Nicole Fleischmann who is the implanter in the Burns case, and an Ethicon expert on the product implanted, the Prolift. These requests include the letters Dr. Fleischmann received from Ethicon regarding patients of hers who are plaintiffs, and Dr. Fleischmann's purported letters to her patients who are plaintiffs, and documentation of all amounts paid to Dr. Fleischmann in her capacity as an expert witness. This was requested shortly after the March 15, 2017 expert deposition of this doctor and the repeated requests have been ignored. Defendants disagree.
  - a) Defense counsel will promptly provide a written response to Plaintiffs' request.
5. Plaintiffs request to vacate the Protective Order in its entirety.
  - a) This issue will be deferred to a later Case Management Conference.
6. Oral Argument will be held on the collateral estoppel motion on May 23, 2017.
7. The Court adjourned the scheduled 3:00 p.m. telephone call on May 9, 2017 to discuss the scope of document requests made by Plaintiffs to treating physicians who are or were defense experts and Defendants' objections to same.
  - a) Defense counsel submitted a copy of the subject subpoena to the Court for review.
  - b) Plaintiffs' counsel will respond to Defense Counsel's May 5, 2017 letter by May 16, 2017.
  - c) Defense counsel will submit an example of the subpoena that is normally sent to treating physicians.
  - d) Oral Argument will be held on this issue on May 23, 2017.

## PART IV

### IV. GENERAL

1. The next Case Management Conference is scheduled for June 22, 2017 at 11:00 a.m. in Room 359. Liaison Counsel shall report at 10:30 a.m. **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.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 Jamie Colaneri at [Jamie.Colaneri@njcourts.gov](mailto:Jamie.Colaneri@njcourts.gov) and Sean Hanratty at [Sean.Hanratty@njcourts.gov](mailto:Sean.Hanratty@njcourts.gov).
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.

  
RACHELLE L. HARZ, J.S.C.