

**FILED**

JUN 01 2011

**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.

**CASE MANAGEMENT ORDER  
NO. 4**

Counsel for the parties having appeared for a second case management conference on May 11, 2011:

IT IS ON THIS 1 day of <sup>June</sup> ~~May~~, 2011

**ORDERED** as follows:

**MULTIPLE MANUFACTURER CASES**

1. There shall be no discovery involving multiple manufacturer defendant cases until further order of the Court.

**PLAINTIFFS' FACT SHEETS**

2. Johnson & Johnson and Ethicon, Inc. (hereinafter "Defendants" or the "Ethicon Defendants") and Plaintiffs, through Plaintiffs' Liaison Counsel, (Defendants and Plaintiffs shall collectively be referred to herein as the "Parties") shall finalize the form of Plaintiffs' Fact Sheet ("PFS") and the

form of records release authorizations that shall be executed and provided with the PFS prior to the next case management conference currently scheduled for June 16, 2011, at 10:00 a.m., with the exception of any disputed issues, which shall be determined by the Court at the conference.

3. The Parties shall meet and confer and present to the Court at the next case management conference a protocol for the phased exchange of the PFS and the Defendants' Fact Sheets ("DFS"), including an agreement regarding the PFS in cases where written discovery and/or depositions already have been taken. Any disputed issues shall be determined by the Court at the June 16, 2011 conference.

**COURT-MAINTAINED ADMINISTRATIVE DATABASE/ SPREADSHEET**

4. In accordance with the Court's directive, the Court will be constructing a database of filed cases. Plaintiffs' counsel will be required to complete the Court-provided spreadsheet for each of its cases by filling in the blank fields as they apply to their clients. Some fields may have drop-down menus.

5. Upon receipt of correspondence from the Court regarding the construction of the database and completion of the spreadsheet for use in that database, Plaintiffs' counsel shall complete the Court's spreadsheet simultaneously with the timing for completion of the PFS in accordance with the established PFS protocol and serve copies on Defense Liaison Counsel along with the completed PFS for each case. The Court's spreadsheet is to be used for the Court's internal administrative purposes only and the information submitted shall not be binding on

either party and shall not be used or admissible as evidence by any party. The fields to be completed may be amended as the case progresses.

**DEFENDANTS' NOTICE TO PRODUCE AND DEFENDANTS' FACT SHEET**

6. On or before June 6, 2011, Defendants will serve written responses and objections to the Plaintiffs' global notice to produce and will provide a written response and objections to Plaintiffs' proposed DFS. Defendants also will provide with the written responses and objections a list of categories and/or document sources requested that they do not intend to produce and/or search. If any particular type or category of document is not to be produced, for any reason, each shall be identified on or before June 6, 2011 in a letter setting forth exactly what is at issue, and why it will not be produced. The Parties shall meet and confer following the June 6, 2011, deadline in order to resolve any disputed issues, and shall bring any disputed issues to the Court's attention at the next case management conference so that the disputed issues can be determined by the Court, with briefing if the Court so permits. Defendants are relieved from the "Certification or Affidavit of Completeness" obligation imposed by Court Rule 4:18-1(c) until further order of the Court.

**DISPUTES REGARDING PFS, DFS OR SCHEDULE OF EXCHANGE**

7. Should the Parties fail to reach agreement on the form of PFS, the form of DFS or the protocol for exchange of the PFS and DFS prior to the next conference, the Parties shall each submit to the Court their respective proposals prior to the next conference and the Court will consider the submissions and rule upon the forms of the documents and/or the protocols.

### **PROTECTIVE ORDER**

8. On or before May 19, 2011, the Parties shall meet and confer and agree upon a form of protective order. In the event the Parties cannot agree on the form of protective order, Liaison Counsel shall contact the Court to set up a telephone conference to establish a briefing schedule to address any remaining issues.

### **DISCOVERY OF ELECTRONICALLY STORED INFORMATION**

9. The Parties have agreed to a protocol for production of electronically stored information ("ESI") and will present the written protocol, including the agreed upon list of metadata fields, for incorporation into an order prior to the June 16, 2011 case management conference.


10. The Parties have conferred with regard to an initial list of search terms to use in connection with the ESI protocol. The Ethicon Defendants will begin processing documents and information using this protocol and set of search terms. The Court expects that the Defendants' identification and collection of ESI ultimately will include documents that are current and archived and will include documents from relevant, related corporate affiliates. The Court does not expect back up data to be searched at this time. Defendants have indicated that they object to any wholesale requirement to search archived sources or back up sources. Should any particular category of documents or document, information or data source that contains relevant and non-duplicative ESI be excluded from the search, Defendants will set forth in a letter on or before June 6, 2011, the categories or sources that are not being included and the explanation why. The

Parties are to meet and confer regarding the ESI search sources and present disputed issues to the Court at the next conference. Plaintiffs preserve their position that conferring regarding search terms is productive, but does not constitute Plaintiffs' agreement that all necessary search terms have been utilized, and that they are not precluded from submitting additional search terms to Defendants in the future. Defendants' ability to object to future search terms is likewise preserved (whether on grounds of relevancy, scope, burden, expense or otherwise). If the Parties cannot resolve the scope and extent of search terms to be used the matter shall be referred to the Court for resolution.

#### **INITIATION OF DEFENDANTS' PRODUCTION**

11. Subject to the entry of an acceptable protective order, Defendants will begin producing responsive documents on a rolling basis starting on June 1, 2011. On or before June 6, 2011, Defendants also will respond to Plaintiffs' request for corporate organization charts and information responding to plaintiffs' requests regarding the manner and location in which records and data relating to sales representatives are maintained, the employment status of sales representatives, and a list of the names and contact information for the Prolift and Prolift +M sales representatives. The Parties have agreed to meet and confer to address Plaintiffs' requests for prioritization of document production. To the extent there are disputed issues relating to these topics, they will be addressed by the Court at the next case management conference.

**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.

  
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Carol E. Higbee, P.J. Cv.