

**FILED**

**MAR 30 2020**

**JOHN C. PORTO, J.S.C.**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ATLANTIC COUNTY  
MASTER CASE NO. ATL-L-~~2122-18~~ 173-20

CASE NO. ~~627~~ 633  
Civil Action

804

IN RE PROLENE HERNIA SYSTEM MESH  
LITIGATION

**CASE MANAGEMENT ORDER NO. 5**  
**[DISCOVERY, SCHEDULING AND CASE**  
**MANAGEMENT — INITIAL**  
**DISCOVERY POOL]**

This matter having been opened to The Court at a Case Management Conference held on February 20, 2020; in the presence of the attorneys for the Plaintiffs and the attorneys for the Defendants; and good cause appearing;

**IT IS** on this 30<sup>th</sup> day of March, 2020,

**ORDERED:**

1. Amendments and joinder.

- a. Except as may be further ordered by the Court, all motions for leave to amend a complaint or to join additional parties shall be filed by Plaintiffs no later than 60 days after the Court’s selection of such case to be within the “Initial Discovery Pool,” described below.

2. General discovery rules.

- a. *Applicability of rules.* Except as otherwise provided by this Court’s Case Management Orders the Rules governing the Courts of the State of New Jersey in this MCL.

- b. In accordance with the Supreme Court of New Jersey's January 6, 2020 creating this MCL, the Court will determine at a later date if any cases should be transferred for trial to a county where venue would be proper.
3. Selection of Initial Cases for Individual Discovery:
- a. The pool of cases eligible for inclusion in the First Discovery Pool shall consist of all cases transferred to this Court where written discovery responses have been provided by plaintiff before the case was transferred. A list of these cases is attached as Exhibit 1 to this Order.
  - b. From among the cases listed in Exhibit 1 to this Order, the following cases shall proceed with further individual discovery at this time ("Initial Discovery Pool"):
    - (1) The 13 cases in which the plaintiffs' deposition has been completed or scheduled at the time of transfer. These cases are designated with an asterisk on Exhibit 1 to this Order.
    - (2) Five cases selected randomly by the Court from the remaining cases listed on Exhibit 1 to this Order. This selection shall be made by May 15, 2020.
    - (3) Three cases selected by the Plaintiffs from the remaining cases listed on Exhibit 1 to this Order. This selection shall be made by May 18, 2020.
    - (4) Three cases selected by the Defendants from the cases listed on Exhibit 1 to this Order. This selection shall be made by May 18, 2020.
    - (5) Other than a future provision of Plaintiff Profile Forms, which will be addressed by separate order, the cases selected for the Initial Discovery Pool

shall be the only cases that move forward with case-specific discovery at this time.

4. Initial Discovery Pool—Procedures and Deadlines

- a. No additional written discovery will be served on Plaintiffs until after the selection of the Initial Trial Pool as set forth in Section 5(c) below. Defendants will provide a complete Defendant Fact Sheet on each of the cases in the Initial Discovery Pool by July 15, 2020.
- b. Further fact discovery may commence on May 22, 2020.
- c. Sales representative documents shall be produced on or before November 1, 2020.
- d. The parties are directed to work together to schedule the appropriate case-specific depositions. Plaintiffs shall have the first responsibility for scheduling treating physician's depositions that are desired by either party. If Plaintiffs have not obtained a date for a physician deposition with 21 days of a request by Defendants, then a non-lawyer from a law firm representing Defendants may contact the physician's office or scheduling assistant for purposes of scheduling the deposition.
- e. For the initial round of discovery for the Initial Discovery Pool, the parties shall be limited to a total of five case-specific depositions per case of deponents who fit the following criteria:
  - i. The physician(s) who implanted the Ethicon mesh device(s) that are the subject of the claims in this case;
  - ii. The physician(s) who performed a revision and/or removal surgery of the Ethicon mesh device(s) that are subject to the claims pending in this Court;
  - iii. No more than two physician(s) who have treated the Plaintiff for conditions relevant to the claims at issue in this case. If there is a disagreement as to

relevancy, the parties will seek the Court's guidance prior to scheduling a deposition; and

- iv. The Plaintiff and Consortium Plaintiff, if applicable.
- f. The parties anticipate that these limits are sufficient, however, some cases may present specialized circumstances and, if so, if either party seeks to take additional depositions beyond those specified above, the parties shall meet and confer and if unable to agree shall apply to the Court for permission for the additional depositions. In applying to the Court, the party applying for more depositions shall set forth the with particularity why the depositions listed above do not provide sufficient discovery as to why or why not the case is an appropriate trial pool case.
- h. The parties shall complete case-specific depositions other than sales representatives by January 31, 2021 and proceed to selection of Trial Pool Cases.

5. Selection of Initial Trial Pool

- a. On March 4, 2021, the Court shall randomly select four cases for the Initial Trial Pool.
- b. On March 5, 2021, the Plaintiffs and the Defendants shall respectively select two cases for the Initial Trial Pool.
- c. Additional Depositions for Initial Trial Pool: For each Trial Pool case, each party may conduct such additional case-specific depositions as may be necessary, which shall be complete by May 30, 2021. The parties may also serve non-duplicative written discovery in the Trial Pool cases.
- d. All fact discovery, including case-specific and general company discovery, shall be completed on or before July 15, 2021. If Plaintiffs contend that there is a basis

to take general company discovery after this date, they shall meet and confer with Defendants and, if no agreement can be reached, Plaintiffs may apply to the Court for permission to take such discovery.<sup>1</sup>

- e. Expert Disclosures: For each Trial Pool case, Plaintiff's expert disclosures and reports shall be served by July 31, 2021. Defendants' expert Disclosures and reports shall be served by August 31, 2021. Rebuttal and/or supplemental reports by Plaintiffs' experts shall be served by September 15, 2021. The parties will meet and confer with respect to scheduling of expert depositions. All expert depositions for the Trial Pool Cases shall be completed by December 1, 2021. The Plaintiffs' Executive Committee shall designate who will question each expert witness on their "general" opinions. The parties shall coordinate the depositions of expert witnesses to the extent there is overlap in the use of experts in multiple Trial Pool Cases. Insofar as either party utilizes or relies on the same general (non-case specific) expert(s) in multiple cases, those experts shall be deposed only once with respect to their general opinions, unless the expert has offered additional general opinions beyond the initial report
- f. By November 20, 2021, each side will submit to the Court, outside of the Court's electronic filing system, a memorandum in support of their proposed manner of trial, order of selection of plaintiffs for the initial trials, and timing of trial(s). For clerical and tracking purposes, each party shall simultaneously e-file a document under "general correspondence" alerting the clerk and administrative personnel that said trial memorandum has been filed. By December 1, 2021, the parties may

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<sup>1</sup>This deadline applies only to plaintiffs in the Initial Trial Pool. The Court will address any discovery sought by the PEC in a future order, if necessary.

submit a response to the opposing party's memorandum regarding the proposed manner of trial, order of cases for trial and timing of trial(s). No reply briefs will be permitted. The Court will select the Trial Cases on or before December 15, 2021.

- g. Motions: Any Dispositive motions in the Trial Cases shall be filed by January 15, 2022. Responses shall be filed by December 10, 2021. Replies shall be filed by February 15, 2022
- h. General Evidentiary Motions. For the filing of evidentiary motions relating to general expert opinions (non-case-specific opinions), the parties are instructed to file only one motion per expert in the main MCL docket instead of the individual member case docket. Case-specific motions (addressing opinions applicable to only an individual Trial Case) should be filed only in the individual Trial Case, with a copy to every member of the Plaintiffs' Executive Committee.
- i. The Court will set the first trial for May 2022 and will set further trials thereafter. The Court will schedule a pre-trial conference for purpose of trial at an appropriate time. Deadlines for filing motions in limine in the Trial Pool Cases will be established at a later date.
- j. If Plaintiffs voluntarily dismiss an Initial Discovery Pool case that is one of the cases where plaintiffs' deposition has already been completed, the replacement case will be selected randomly by the Court. If Plaintiffs voluntarily dismiss any other Initial Discovery Pool cases for reasons other than settlement, a replacement case will be selected in the same manner as the dismissed case was selected. If Plaintiffs voluntarily dismiss a Trial Pool Case that is set for trial for reasons other

than settlement, death, or illness of a Plaintiff, Defendants shall have the right to select the replacement case. If Plaintiffs dismiss a Trial Pool Case that is set for trial due to the death or illness of the Plaintiff, a replacement case will be selected in the same manner as the dismissed case was selected.

A handwritten signature in blue ink, appearing to read "John C. Porto", is written over a horizontal line.

**HONORABLE JOHN C. PORTO, J.S.C.**

# *EXHIBIT 1*



<b>Name</b>	<b>Docket #</b>
Alguacil, Leila	ATL-L-0305-20
Bailey, Kenneth and Lori	ATL-L-0213-20
Barnes, Robert	ATL-L-0277-20
Baucom III, Ransom	ATL-L-0539-20
Bolyard, Glenn	ATL-L-0181-20
Boston, Courtney D	ATL-L-0178-20
Bradford, William*	ATL-L-0230-20
Briscoe, Anthony*	ATL-L-0338-20
Bromley, Mark	ATL-L-0324-20
Caridi, Dale	ATL-L-0549-20
Carlson, Richard	ATL-L-0311-20
Chavira, Juan	ATL-L-0296-20
Coleman-Jefferson, Sarah	ATL-L-0231-20
Collazo, Vimary	ATL-L-0257-20
Concepcion, Willie	ATL-L-0279-20
Connell, Paul and Pia	ATL-L-0249-20
Cooper, Nicolas	ATL-L-0313-20
Corgan, Travis	ATL-L-0303-20
Day, Joseph	ATL-L-0199-20
Dodd, Kirsten and Dustin	ATL-L-0222-20
Dodd, Timothy Bruce	ATL-L-0206-20
Eiben, Christopher and Barbara	ATL-L-0198-20
Ettner, Erick	ATL-L-0251-20
Evans, Roderick	ATL-L-0212-20
Galvez, Michael*	ATL-L-0263-20
Gioia, William	ATL-L-0204-20
Godfrey, Holly L	ATL-L-0236-20
Graves, Ernest	ATL-L-0254-20
Graves, Randall Eric	ATL-L-0227-20
Greenklepper, Rochelle	ATL-L-0197-20
Guy, Louise and Raymond	ATL-L-0301-20
Hager, Karen	ATL-L-0314-20
Hanton, Peter and Ruthie Mae	ATL-L-0211-20
Harris, James	ATL-L-0217-20
Hausman, Robert	ATL-L-0312-20
Henley, James*	ATL-L-0195-20
Henry, Tracy L.	ATL-L-0306-20
Hernandez, Kathy and Leo	ATL-L-0221-20
Hickey, Barbie and John	ATL-L-0309-20
Jackson, Lewis and Doris	ATL-L-0316-20
Johnson, Heather*	ATL-L-0175-20
Josephs, Dolores	ATL-L-0276-20
Lind, Dale	ATL-L-0226-20
Lindly, James*	ATL-L-0291-20
Loschen, Shirley	ATL-L-0218-20
Lotridge, Robin	ATL-L-0292-20
Maestas, Joseph*	ATL-L-0293-20
Maggard, Saundra	ATL-L-0224-20
Marcus, Arlene	ATL-L-0270-20

<b>Name</b>	<b>Docket #</b>
Martinez, Toby and Cathy	ATL-L-0537-20
Mata, Raul*	ATL-L-0294-20
McDuffie, Gregory	ATL-L-0248-20)
McGrew, Keith and Watkins, Jessica	ATL-L-0317-20
Medina, Rogelio	ATL-L-0250-20
Miller, Ronald*	ATL-L-0295-20
Mitchell, Peggy	ATL-L-0253-20
Morley, Keith	ATL-L-0219-20
Mosby, Russell W.	ATL-L-0239-20
Mullins, James	ATL-L-0245-20
Nease, Willie	ATL-L-0210-20
Newman, Stephen	ATL-L-0238-20
Nomikos, Michael	ATL-L-0242-20
O'Leary, Shannon	ATL-L-0258-20
Olsgard, Georgiann	ATL-L-0320-20
Pepper, Timothy and Cynthia	ATL-L-0308-20
Perez, Nora*	ATL-L-0267-20
Poston, Paul	ATL-L-0332-20
Reed, James	ATL-L-0310-20
Rigney, Jonetta and Darell	ATL-L-0307-20
Ritter, Mark	ATL-L-0326-20
Rivas, Angelina*	ATL-L-0283-20
Robertson, Lenny	ATL-L-0327-20
Roggow, Joleen	ATL-L-0247-20
Schnetzer, Christopher	ATL-L-0205-20
Self, Joel	ATL-L-0232-20
Senkel, William*	ATL-L-0235-20
Shaw, Jerry	ATL-L-0240-20
Siddall, James	ATL-L-0318-20
Singer, Herbert and Joan	ATL-L-0200-20
Slaczka, Stanley	ATL-L-0215-20
Smith, Terrence and Lucy	ATL-L-0180-20
Snyder, Rick C.	ATL-L-0243-20
Soutner, Ronald and Janelle	ATL-L-0414-20
Stone, Lewis D.	ATL-L-0203-20
Strauss, Nathan K.	ATL-L-0275-20
Szaroleta, Christopher*	ATL-L-0171-20
Tavian, Michael	ATL-L-0176-20
Taylor, Richard	ATL-L-0330-20
Teunissen, Emily	ATL-L-0333-20
Towner, Michael	ATL-L-0256-20
Tuell, Glenda	ATL-L-0321-20
Vinas, Daniel	ATL-L-0450-20
Volquardsen, Jamie	ATL-L-0202-20
Walker, Linda	ATL-L-0223-20
Weldon, Terry L.	ATL-L-0328-20
Whipple, Candice	ATL-L-0244-20
Williams, Stanley and Seneca	ATL-L-0315-20
Williams, Wilton	ATL-L-0334-20

<b>Name</b>	<b>Docket #</b>
Wilson, Donald and Bernadette	ATL-L-0297-20
Wilson, Jennifer	ATL-L-0214-20
Wojcik, Darrell	ATL-L-0323-20
Wunrow, Jamie	ATL-L-0278-20
Yost, Jeffrey	ATL-L-0209-20
Zwiebel, Jeffrey and Ellen	ATL-L-0268-20