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IN RE PHYSIOMESH LITIGATION
 (Flexible Composite Mesh)

FILED

JUN 06 2019

JOHN C. PORTO, J.S.C.

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

CASE NO. 627
 Civil Action

CASE MANAGEMENT ORDER NO. 9
**[ORDER GOVERNING TRANSLATION OF
 FOREIGN LANGUAGE DOCUMENTS]**

This matter having been opened to The Court by McCarter & English, LLP, attorneys for the Defendants; and the attorneys for the Defendants having represented to The Court that the attorneys for the Plaintiffs have no objection to the form and entry of the within Order; and good cause appearing;

IT IS on this 6th day of June, 2019,

ORDERED:

1. Definitions.

“Document” or “Documents” has the meaning set out in Rule 4:18 and includes electronically stored information.

“Party/Parties” means the plaintiffs, defendants, and any other parties to this Proceeding. For purposes of this Order, the terms “Party” and “Parties” shall also include any and all third parties who elect to avail themselves of, and agree to be bound by, the terms and conditions of Case Management Order No. 4 (Confidentiality and Protective Order) entered and filed on November 14, 2018 by signing the Agreement attached as Exhibit A to that Order.

“Protective Order” means the Case Management Order No. 4 (Confidentiality and Protective Order) entered and filed on November 14, 2018.

“Proceeding” means the above-captioned proceeding.

2. Introduction, Scope and Applicability.

This Order shall govern the translation and use of non-English documents in this proceeding (including at depositions or at trial). Non-English Documents shall include, but not necessarily be limited to, Documents that were created and maintained in the ordinary course of business in a language other than English (in whole or in part) for which there is no English version that was made in the ordinary course of business. No non-English documents shall be shown to a witness at deposition or at trial, filed or otherwise submitted to the Court, or otherwise used at trial without being accompanied by a translation prepared in accordance with this Order (except as otherwise provided herein).

3. If either party has a certified translation of a non-English document already in its possession, custody or control, it will produce a copy of said translation along with any certifications as to the accuracy of said translation. If either party has non-certified translations of documents in its possession, custody or control which it is withholding from production it shall advise the opposing party as to the basis for withholding production of the non-certified translations and the number of pages withheld from production under the privilege asserted.

4. Appointment of Translators.

TransPerfect Translations Inc. and Eriksen Translations Inc. shall be the “Professional Translators.” In the event that TransPerfect Translations Inc. and Eriksen Translations Inc. are not able to satisfy the demand for translations in this Proceeding, the parties shall meet and confer to select an alternative qualified professional translation provider to serve as a Professional Translator under this Order. If the parties are unable to agree upon an alternative qualified professional translation provider, they shall raise the issue with the Court for resolution. The Professional Translators shall execute Exhibit A to the Protective Order.

5. Form of Translated Documents.

A Party seeking to use a non-English Document in connection with this Proceeding shall have the following portions translated by one of Professional Translators:

- a. **Correspondence and Memoranda:** The entire document must be translated.
- b. **E-mails:** The entire e-mail string must be translated.
- c. **Attachments:** Attachments that are not going to be used and are not necessary for an understanding of the parent Document need not be translated.
- d. **Large documents** (e.g., regulatory filings, annual reports and spreadsheets): Large documents do not need to be translated in their entirety. However, the entirety of any

portion (e.g., a section or subsection) that will be used must be translated along with any tables of contents or other sections that provide an overview of the entire document.

Any party may request the translation of additional parts of a document, or all or part of an attachment that is not required to be translated, at its own expense.

Document translations shall bear the same CONFIDENTIAL or HIGHLY CONFIDENTIAL designation as the original. Each page shall be Bates numbered and marked "Translation." Because different languages may take different amounts of space on a page to communicate the same information, the translation may not be paginated the same way as the original. Unless otherwise agreed, the parties shall use the same Bates number as the original, followed by .01, .02, etc. for any additional pages where text from the original page requires an additional page(s), with each Bates number to end in "T" to denote that it is a translation.

A translation may not contain words that are not direct translations of the text of the original document (e.g., notes from the translator or counsel). Words in the translation must appear in the same form (e.g., bold, italics, underlined) as in the original document. However, translator notations such as "original text is in English," "original text is handwritten," or "untranslatable symbol" may be included in brackets.

All translations prepared by a Professional Translator shall be accompanied by a translation certification and shall also be presumed to be accurate, subject to the provisions of ¶ 6 of this Order.

6. Cost.

The party submitting the Document for translation shall pay for the translation, and shall be billed for it directly by the Professional Translator; provided that if both parties request within a reasonable period of time that the same Professional Translator translate the same Document, then the Professional Translator shall bill each party half the cost of translating that Document.

7. Disclosure of Translated Documents and Objections Thereto.

Translations may be offered as an exhibit to live testimony (as at a deposition or trial) or as an exhibit to briefing on a motion. Any party intending to introduce a translated document at a deposition shall provide notice to the other party at least ten (10) days of the deposition along with a copy of the translated document so that the non-introducing party may object to the accuracy of the translation. Objections to the accuracy of a translation shall state the specific inaccuracies of the translation and offer an alternative translation of the portions of the Document objected to. If the parties are unable to resolve the dispute, it shall be submitted to the Court. If no objection is made to a translation within the time limit provided above, no objection to admissibility on grounds of inaccuracy of that translation will be permitted, and that translation shall be deemed to be accurate and the sole translation of that Document for use in this proceeding; provided, however, that if the translation is offered at a deposition, the witness shall not be limited from commenting on, or critiquing, the accuracy of the translation.

8. Use of Translated Documents at Depositions.

Under Case Management Order No. 3 [Depositions], ¶ IV.F, certain depositions may be taken through interpreters. In those depositions, if a party wishes to use a translation of a Document and the original, non-English document is in the same foreign language as the Deponent speaks, both the translation and the original non-English Document shall be marked as exhibits, under the same exhibit number, with the original non-English Document marked as exhibit number__-o and the translation marked as exhibit number__-t.

Similarly, if a translated Document is used at a deposition or live testimony of an individual who sent, received, authored, or was the source custodian of the original non-English Document, both the translated document and the original non-English Document shall be marked

as exhibits, under the same exhibit number, with the original non-English Document marked as exhibit number_-o and the translation marked as exhibit number_-t.

9. Modification and Exceptions.

The Parties may, by stipulation, provide for exceptions to this Order and any party may seek an order of this Court modifying this Order.


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