FILED

JUN 29 2011

Carol E. Higbee, P.J.Cv.

In re PELVIC MESH LITIGATION/ BARD,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, ATLANTIC COUNTY CIVIL ACTION Case No. 292 CT Master Case Hon. Carol E. Higbee, P.J. Cv. **AMENDED CASE MANAGEMENT ORDER NO. 2**

Counsel for the parties having appeared for a preliminary case management conference on November 18, 2010, and for the continued purpose of equitable, economic and expedient resolution of these cases:

IT IS ON THIS 29 day of June, 2011,

ORDERED as follows:

GENERAL APPLICABILITY

1. All cases involving the use of pelvic mesh products alleged to have been manufactured, distributed, or marketed by C.R. Bard, with the exception of any cases where Ethicon /Gynecare is also a defendant, which have been centralized under the case number of CT 292 (previously collectively referred to as "the Bard litigation") shall hereinafter be captioned and referred to as "In re Pelvic Mesh Litigation/ Bard." Case Number CT 292 shall apply to any case in which plaintiffs allege personal

injuries resulting from a Bard product, even if the case also includes claims relating to other products.

2. All filed papers that are applicable to all cases in the In re Pelvic Mesh Litigation/ Bard matters shall also reference "Master Case No. L-6339-10" in the caption.

3. Before the case management conference scheduled for May 11, 2011, at 2 p.m. the parties shall meet and confer regarding a proposal for the management of cases involving multiple manufacturers. The parties should be prepared to discuss their joint proposals, if any, and any disputed issues at the June 16, 2011 conference.

4. Until entry of an order governing the management of cases involving multiple manufacturers, the parties have agreed that discovery in these cases should be stayed.

LIAISON COUNSEL

5. There are matters common among all plaintiffs and all defendants that require the coordinated efforts of counsel, including discovery, communications with the Court, and motion practice, and the appointment of liaison counsel would aid in these efforts. Plaintiffs' liaison counsel shall (1) serve as the primary contact for communication between the Court and other plaintiffs' counsel; (2) ensure that all notices, orders and material communications are properly distributed (to the extent they are not otherwise served on plaintiffs' counsel; (3) convene meetings of counsel as determined to be necessary; and (4) otherwise assist in the coordination of activities and positions of plaintiffs in this litigation. Defendants' liaison counsel shall serve the same function with respect to all defendants in this litigation.

6. Fidelma L. Fitzpatrick and Jonathan D. Orent of Motley Rice LLC are hereby appointed as Co-Plaintiffs' Liaison Counsel. Moreover, Motley Rice LLC will serve as the plaintiff's liaison between the In Re: Avaulta Pelvic Support System Product Liability Litigation MDL pending in the United States District Court for the Southern District of West Virginia ("In re: Avaulta") and the plaintiffs in New Jersey.

7. For Defendants, Melissa A. Geist of Reed Smith LLP is hereby appointed as liaison counsel.

8. **Lead Counsel For Defendant.** In these cases, the Plaintiffs allege various injuries claimed to have resulted from the implantation of different mesh products. Separate counsel handles the defense of the different products. The products are Pelvicol, PelviLace, PelviSoft, Pelvitex, Ugytex, and Uretex products, the Align product, the Avaulta Biosynthetic Support Systems, the Avaulta Solo, and the Avaulta Plus Support Systems. Richard B. North, Jr. of Nelson Mullins Riley & Scarborough, LLP is hereby appointed as Defendant's Lead Counsel for the Align product and the Avaulta Plus and Solo products. Sandra A. Bresnick of Quinn Emanuel is hereby appointed as Defendant's Lead Counsel for the Avaulta Biosynthetic Support Systems products. Deborah A. Moeller of Shook, Hardy, and Bacon LLP is hereby appointed as Defendant's Lead Counsel for the Pelvicol, PelviLace, PelviSoft, Pelvitex, Ugytex, and Uretex products.

9. The attorneys listed below are designated as primary contacts for the defendants listed. It shall be the responsibility of the attorneys listed below to ensure all notices, orders and material communications are properly distributed to any other counsel entering an appearance on behalf of that defendant.

a. For Defendants C.R. Bard, Inc., Bard Medical Division, and Bard Urological Division: Melissa A. Geist of Reed Smith LLP.

b. For Defendant American Medical Systems Inc.: Gerald Corcoran of Montgomery McCracken Walker & Rhoades LLP.

c. For Defendant Boston Scientific Corporation: Christopher J. Keale of Sedgwick Detert Moran & Arnold LLP.

d. For Defendant Caldera Medical, Inc.: Beth S. Rose, Esq. of Sills Cummis & Gross P.C.

ELECTRONIC FILE-AND-SERVE

10. The parties have agreed upon an electronic service for the filing and service of all papers in this litigation. The parties have previously submitted a proposed Order attached as Exhibit 1.

PLEADINGS

11. Defendants' obligation to answer complaints in this proceeding is hereby stayed pending the filing of a responsive pleading to a Master Complaint.

12. Plaintiffs shall file a Master Complaint on or before 30 days from the May 11, 2011, case management conference. Thereafter, plaintiffs may file a short form complaint. Short form complaints shall not be required with regard to matters in which complaints have already been filed. All prior filed complaints and short form complaints to be filed shall be deemed to incorporate by reference the allegations and requests for relief set forth in the Master Complaint.

13. Defendants shall file responsive pleadings or answers on or before 60 days from service of the Master Complaint. A Defendant's Master Answer will be deemed responsive to a Short Form Complaint upon the filing of a Notice of Appearance in properly served matters.

***PRO HAC VICE* MOTIONS**

14. Case Management Order No. 1, Part VI Motions, paragraph 2 is hereby amended as follows with respect to *pro hac vice* motions only: All *pro hac vice* motions must be accompanied by a list of all individual cases to which the motion is applicable (even if it is all cases filed to date). Such motion must be accompanied by a separate form of Order captioned in each case to which the motion applies. A separate filing fee will be assessed for each case to which the motion applies.

INITIAL DISCOVERY

(Paragraphs 15 through 20, below, do not apply to defendants other than the Bard defendants. Consistent with Paragraph 3, above, discovery related to cases involving multiple manufacturer defendants shall be addressed at a later date.)

15. The parties have reached agreement and submit proposed Orders on the following items:

a. Form of Plaintiffs' Fact Sheet (PFS) Exhibit 2;

b. The parties are close to agreement on a form of authorizations to be completed by plaintiffs and served contemporaneously with the completed PFS;

c. Form of Defendants' Fact Sheet (DFS) Exhibit 3.

d. The parties have agreed on a proposed protocol for the collection and distribution of plaintiffs' records, and have retained a records collection vendor who will receive executed releases from the plaintiffs and obtain records as directed by the parties, Exhibit 4.

e. Bard will begin the process of making exemplar products available to plaintiffs within 30 days.

16. For all cases filed by May 11, 2011, a fully completed PFS in the form as set forth in Exhibit 2, shall be due on a rolling basis within 90 days from May 11, 2011.

17. For every case filed after May 11, 2011, a fully signed and completed PFS (Exhibit 2) is due within 45 days of filing.

18. Within 45 days from the receipt of a fully signed and completed PFS, Defendants shall serve a DFS as set forth in Exhibit 3.

19. Plaintiffs' liaison counsel is to serve upon Defendants a master Notice to Produce Documents on behalf of all plaintiffs. Before the June 16, 2011 case management conference, the parties shall meet and confer to reach agreement on the deadlines for the service by Plaintiffs and the time period and protocol for Defendants to respond to the Master Request for Production of Documents. To the extent that the parties are unable to reach an agreement, the parties should be prepared to discuss the disputed issues at the next case management conference.

20. The parties shall meet and confer and shall present the agreed form of protective order to be entered before the June 16, 2011 case management conference, or be prepared to discuss any disputed issues

ELECTRONICALLY STORED INFORMATION

21. The parties have reached agreement in principle on the contours of a protocol for the production of electronically stored information (ESI) and submit a proposed Order, attached hereto as Exhibit 5.

EXPERT/CONSULTANT ISSUE

22. Defendants or any other party may file at any time a motion addressing whether Defendants may consult with or use as experts physicians who have also acted as treating physicians for one or more of the plaintiffs in this litigation. Upon the filing

of such motion, the parties shall meet and confer to reach agreement on a reasonable briefing schedule and shall present a proposed briefing schedule to the Court.

MDL COORDINATION

23. To streamline the litigation, it is the parties' intentions that all discovery taken in the In re: Avaulta MDL, including, but not limited to, written discovery responses and depositions, may be used in the New Jersey Litigation, subject to, and without waiver of, all objections and legal arguments and evidentiary rule requirements, provided that adequate protections for commercially-sensitive trade secret information are in place, for example, as agreed in advance by the party claiming protection and the party seeking disclosure of the information for use in this litigation, or by adequate protective order. To facilitate this coordination, Defendants will provide Plaintiffs' Liaison Counsel with copies of all such discovery, and service on Motley Rice in the MDL shall constitute service on Plaintiffs in this Litigation provided so indicated in writing.

DEPOSITIONS OF DEFENSE WITNESSES

24. Except by agreement of the parties, there shall be no depositions of defense witnesses pending the establishment of a protocol for such depositions that considers the schedule for the parties to provide completed Plaintiff's Fact Sheets, authorizations, Defendant's Fact Sheets (referenced in Paragraph 13, above), and the protocol for document and ESI production (referenced in Paragraph 17 above), as well as efforts to avoid the unnecessary production of any defense or plaintiff witness for more than one deposition. The parties shall meet and confer to establish such a protocol before the June 16, 2011 case management conference.

NEXT CASE MANAGEMENT CONFERENCE

25. The next case management conference shall be held on May 11, 2011, at 2:00 pm. Should any issues develop prior to the next conference such that the deadlines set forth in this Order cannot be met, liaison counsel shall promptly alert the Court.

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.

Carol E. Higbee, P.J. Cv.

Dated: June 29, 2011