IN RE: PELVIC MESH/BARD LITIGATION

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: BERGEN COUNTY

CASE NO. 292
MASTER DOCKET NO.: BER-L-17717-14

CIVIL ACTION

CASE MANAGEMENT ORDER #6

FILED
JUN 11 2015
BRIAN R. MARTINOTTI, J.S.C.

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

THIS MATTER having been reassigned to the Bergen County Vicinage, from Atlantic County, pursuant to the Supreme Court's Order of October 31, 2014; having conducted a CMC; counsel appearing; for good cause shown and for the reasons set forth on the record;

IT IS on this 11th day of June 2015, **ORDERED** as follows:

PART I

ORDERS ENTERED SINCE LAST CASE MANAGEMENT CONFERENCE

1. N/A

PART II

COMPLIANCE WITH PRIOR ORDERS

1. **Case Management Order No. 5 entered March 18, 2015**
    a. The parties are proceeding with case-specific discovery. However, due to the length of time expended in records collection and updating authorizations for

same, the parties agree they will not be in a position to meet and confer to discuss the bellwether cases by the June 13, 2015 deadline since fact depositions are scheduled for after the deadline. Likewise, the parties further agree that fact discovery will not be concluded by the July 6, 2015 deadline. Accordingly, the parties jointly request additional time for the completion of fact discovery. A proposed new Case Management Order is attached here as Exhibit A and will be entered by the Court.

PART III

CASE MANAGEMENT

1. **Case specific discovery of bellwether trial pool cases**

   a. Pathology protocol. Defendants proposed a protocol substantially similar to the protocol that has been in place in the MDL for some time now, and in response Plaintiffs have requested substantial changes to the pathology protocol, consistent with the historical practice of the New Jersey plaintiffs over the last several years. The parties will continue to meet and confer on this issue and will include as Agenda item for the next Case Management Conference if necessary.

   b. Ex parte communications with plaintiff's treating physicians. The parties have not reached an agreement on the protocol to be utilized concerning Plaintiffs' counsel's discussions with treating physicians. The parties request permission from the Court to submit opposing protocols, with a brief statement in support; alternatively, Defendants request permission to file a motion within fourteen days. In the interim, consistent with the Court's instruction at the last case management

conference and CMO # 5, Plaintiffs' counsel may speak with treating physicians about their care and treatment of the plaintiff but may not discuss with or show the doctors internal company documents or otherwise discuss liability themes. Counsel shall continue to meet and confer to resolve this issue.

c. Defendant Fact Sheet ("DFS") production. Defendants have suggested that they be permitted to halt production of DFSs in the non-bellwether cases in exchange for Plaintiffs providing the limited Plaintiff Profile Form as opposed to the more extensive Plaintiff Fact Sheet. This agreement was reached in the MDL, and it is Defendants' position that it would be mutually beneficial to both sides to reach the same agreement here. The New Jersey plaintiffs disagree and have rejected this proposal. Plaintiffs see no basis for or benefit to relieving Defendants of their discovery obligations. Defendant shall serve Fact Sheets in all cases in which the Plaintiff has already prepare and served PFS. Thereafter, without prejudice to modification, Plaintiff shall file a Profile Form similar to that filed in the MDL.

d. Use of Marker (vendor) for the collection of medical records. A dispute has arisen regarding the scope of an Order entered in this litigation on May 11, 2011. The parties will continue to meet and confer on this issue and will include as Agenda item for the next Case Management Conference if necessary.

2. The cases involving Covidien are hereby stayed until July 23, 2015. On that day, the Court will re-visit whether the stay remains appropriate.

PART IV

GENERAL:

1. The next Case Management Conferences are scheduled for July 23, 2015 and August 19, 2015 at 12:00pm. Liaison Counsel shall report at 10:45am. **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 you 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.1:48 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.

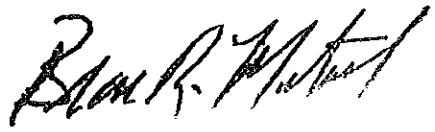
9. Counsel shall provide the Court with their preferred e-mail address by e-mailing same to Kelly Gibson at Kelly.Gibson@judiciary.state.nj.us and Yeon Ji Lee at Yeon-Ji.Lee @judiciary.state.nj.us.

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.



BRIAN R. MARTINOTTI, J.S.C.

IN RE PELVIC MESH/BARD LITIGATION	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – BERGEN COUNTY CASE NO. 292 MASTER DOCKET NO.: BER-L-17717-14 Civil Action **AMENDED BELLWETHER SCHEDULING ORDER (EXHIBIT A)**

Bellwether Selections, Case-Specific Discovery, and Pre-Trial Deadlines

a. This Court orders the potential pool of bellwether cases includes only those cases in which, as of February 13,2015, (I) the Plaintiff has served a substantially completed PFS and (2) the Plaintiff has provided the approved blank medical authorizations to Marker, the parties' agreed upon medical record vendor.

b. On or before February 13, 2015, Counsel shall correct and provide to Defendants completed PFSs in those potential bellwether cases in which defendants have already served Plaintiffs with timely notice of such deficiencies.

c. On or before February 27, 2015, the parties shall select potential bellwether cases according to the following criteria:

i. Bard shall select a total of four (4) potential bellwether cases. Of Bard's four selections, two (2) cases must involve only an SUI product and two (2) cases must involve only POP products. Bard may not select a case involving a product manufactured by a company other than Bard.

ii. Sofradim/TSL shall select a total of four (4) potential bellwether cases. Of Sofradim/TSL's four selections, two (2) cases must involve only an SUI product and two

(2) cases must involve only POP products. Sofradim/TSL may not select a case involving a product manufactured by a company other than Sofradim/TSL.

iii. Plaintiffs shall select a total of eight (8) potential bellwether cases. Of Plaintiffs' eight selections, three (3) cases must involve only POP products, and three (3) cases must involve only SUI products. Plaintiffs may only select two (2) cases that involve both a product manufactured by Bard and a product manufactured by Sofradim/TSL. In addition, Plaintiffs may not select a case in which the claimant was implanted with a product manufactured by a company other than Bard or Sofradim/TSL.

d. On March 9, 2015, case specific discovery shall commence in connection with the sixteen (16) cases selected above. Case specific discovery shall be completed on August 20, 2015.

e. On or before September 4, 2015, the parties shall meet and confer to discuss the status of the bellwether cases.

f. Plaintiffs' Initial General and Case Specific Expert Reports shall be served on or before September 30, 2015.

g. Defendants' General and Case Specific Expert Reports shall be served on or before October 15, 2015.

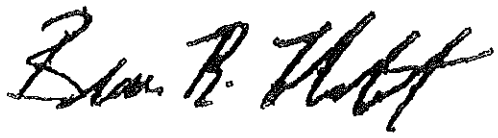
h. Supplemental expert reports addressing documents, information, and testimony obtained after the deadlines for the service of initial and rebuttal expert reports shall be served in compliance with R. 4:17-7.

i. Plaintiffs' Expert Depositions shall commence after September 30, 2015 and be completed on or before November 30, 2015.

j. Defendants' Expert Depositions shall commence after November 1, 2015 and be completed on or before December 31, 2015.

k. Dispositive motions shall be filed by January 15, 2016. Responses to dispositive motions shall be filed by February 19, 2016. Replies to dispositive motions shall be filed by February 26, 2016.

l. The next bellwether trial shall commence on a date to be decided by the Court and shall be a single manufacturer case only.



HONORABLE BRIAN R. MARTINOTTI, J.S.C.