

HONORABLE RACHELLE L. HARZ, J.S.C.
Superior Court of New Jersey, Law Division
Bergen County Justice Center
10 Main Street, Chambers 359
Hackensack, New Jersey 07601
(201) 221-0700

FILED
OCT 30 2020
RACHELLE L. HARZ
J.S.C.

Prepared by the court

IN RE: ALLERGAN BIOCELL
TEXTURED BREAST IMPLANT
PRODUCT LIABILITY
LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

MASTER CASE NO. BER-L-5064-20

CASE NO. 634

DECISION

Before this court is Defendants Allergan, Inc. and Allergan USA, Inc.'s (collectively, "Allergan" or "Defendants") Motion for Protective Order filed on October 8, 2020, seeking to preclude Plaintiffs from deposing a corporate representative of Allergan as set forth in Plaintiffs' August 25, 2020 deposition notice.

In addition, the parties were directed to submit to this court a five-page letter outlining their respective positions regarding Defendants' request for a stay of discovery until such time as Defendants' motion to dismiss based on federal preemption is decided. Defendants have filed a motion to dismiss based on federal preemption in the MDL and are scheduled to file same in this MCL. The Court heard oral argument on Defendants' motion for a protective order on October 27, 2020 via Zoom.

This court is coordinating with the Honorable Brian R. Martinotti, U.S.D.J., who presides over the Allergan MDL, MDL No. 2921, Case No. 2:19-md-2921-BRM-JAD. This court understands that until Defendants' preemption motion is decided in the MDL, there is no active ongoing ESI discovery and an informal stay of discovery in general is in effect. Although there

is no formal ordered stay of discovery in the MDL or MCL, Defendants voluntarily produced documents they believed maybe necessary for a court to render a decision regarding their federal preemption motions.

This court is further aware that other jurisdictions presiding over related litigation regarding the same products at issue have stayed discovery until deciding motions to dismiss based on federal preemption.

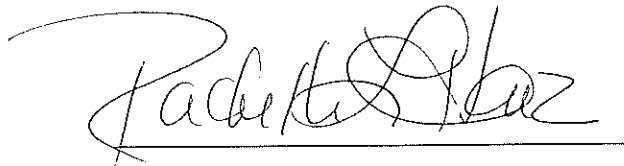
At this juncture, Defendants' motion to dismiss based on federal preemption will be fully briefed in the MDL by November 8, 2020. Defendants' motion to dismiss based on federal preemption will be fully briefed in this MCL by January 8, 2020. This court has coordinated with Judge Martinotti and together have determined that oral argument on said motions will be heard jointly, via Zoom in late January 2021.

While this court understands that Plaintiffs' counsel is anxious to delve into discovery, this court recognizes arguments of Defendants pertaining to efficiency of time, effort, and the saving of litigation resources. Said arguments are compelling to this court in light of the fact that Defendants' motion to dismiss based on preemption in this MCL will be resolved within four months.

This order and decision should not be construed as accepting Defendants' position that they have complied with Plaintiffs' requests pertaining to ESI discovery and protocol. Nor should this order be construed as accepting Defendants' position that a deposition of a corporate representative to provide information that was requested in said deposition notice is not appropriate. This decision is holding that at this juncture, this court will not compel Defendants to do more by way of discovery responses or be required to produce a corporate representative for deposition pursuant to Plaintiffs' August 25, 2020 deposition notice.

For the same reasons as set forth above, discovery is stayed until this court renders its decision on Defendants' forthcoming federal preemption motion.

Dated: October 30, 2020

A handwritten signature in cursive script, reading "Rachelle L. Harz", written over a horizontal line.

Hon. Rachelle L. Harz, J.S.C.

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ORDER

THIS MATTER having been opened to this Court by Defendants Allergan, Inc. and Allergan USA, Inc. (collectively, "Allergan" or "Defendants"), through its counsel Reed Smith, for a Protective Order to preclude Plaintiffs from deposing a corporate representative of Allergan as set forth in Plaintiffs' August 25, 2020 deposition notice, and for good cause shown,

IT IS on this 30th day of October 2020;

ORDERED that Defendants' Motion for a Protective Order is **GRANTED** at this time, for reasons set forth in the accompanying decision.



Hon. Rachelle L. Harz, J.S.C.