

Prepared by the court

BARBARA HOLLER,
Plaintiff,

v.

ETHICON, INC, ETHICON WOMEN'S
HEALTH AND UROLOGY, a Division of
Ethicon, Inc., GYNECARE, JOHNSON &
JOHNSON, and JOHN DOES 1-20,
Defendants,

SUMMER RICHMOND and MELVIN
VALLADARES, w/h,
Plaintiff,

v.

ETHICON, INC, ETHICON WOMEN'S
HEALTH AND UROLOGY, a Division of
Ethicon, Inc., GYNECARE, JOHNSON &
JOHNSON, and JOHN DOES 1-20,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

MASTER DOCKET NO.: BER-L-11575-14

DOCKET NO.: BER-L-5539-23

CIVIL ACTION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-3274-24

CIVIL ACTION

ORDER

FILED
AUG 27 2025
GREGG A. PADOVANO, J.S.C.

THIS MATTER having been brought before the court upon a motion filed by Anapol Weiss, counsel for the plaintiffs Barbara Holler and Summer Richmond and Melvin Valladares ("Plaintiffs"), seeking a protective order; and a cross-motion to compel depositions having been filed by Riker Danzig LLP, counsel for the defendants Ethicon, Inc., Ethicon Women's Health and Urology, Gynecare, and Johnson & Johnson ("Defendants"); and the court having considered all papers submitted; and for the reasons set forth in the attached rider; and for other good cause having been shown

IT IS ON THIS 27th DAY OF AUGUST 2025

ORDERED that Plaintiffs' motion for a protective order is **DENIED**; and it is further

ORDERED that Defendants' cross-motion to compel depositions is **GRANTED**. In the event that the parties cannot agree to remote depositions, Plaintiffs shall provide three dates for an in-person deposition; Plaintiffs shall secure a reasonable office location, closer to each Plaintiff's residence, for their respective deposition; and Plaintiffs shall reimburse Defendants for their reasonable travel and lodging costs for each Plaintiff's deposition; and it is further

ORDERED that a copy of this Order shall be served on all counsel within seven (7) days of its receipt by counsel.


GREGG A. PADOVANO, J.S.C.

RIDER TO AUGUST 27, 2025 ORDER¹

DOCKET NUMBERS: BER-L-5539-23; BER-L-3274-24

Before the court is motion for a protective order filed on behalf of the plaintiffs Barbara Holler, Summer Richmond and Melvin Valladares (collectively "Plaintiffs"). Defendants Ethicon, Inc., Ethicon Women's Health and Urology, Gynecare, and Johnson & Johnson (collectively "Defendants") filed a cross-motion seeking an order to compel the depositions of Plaintiffs. The court has reviewed all papers filed in connection with the motion.

This matter arises from Plaintiffs' complaints filed in the J&J Pelvic Mesh Litigation MCL in Bergen County, New Jersey. The record reveals that Plaintiff Barbara Holler resides in Seattle, Washington and Plaintiff Summer Richmond resides in Tillamook, Oregon. Plaintiffs are seeking a protective order to relieve them from paying expenses, costs, and/or fees associated with defense counsel's appearance at depositions which are proposed to be conducted near Plaintiffs' residences. Plaintiffs also seek an order to require Defendants to pay their own expenses, costs, and/or fees associated with the depositions.

Defendants cross-move to compel Plaintiffs to travel to New Jersey for their depositions in this matter. In the alternative, Defendants seek to require Plaintiffs to reimburse Defendants for their reasonable travel and lodging costs associated with Defendants' appearances at each Plaintiff's deposition conducted near Plaintiffs' residences.

In support of their motion for a protective order, Plaintiffs argue that they have provided doctor's notes supporting the assertion that Plaintiffs are not physically able to travel to New Jersey for deposition. Plaintiffs' Brief at 2, citing Certification of Catelyn McDonough, Esq., Exhibits A and B. Plaintiffs argue that requiring them to pay defense counsel's travel costs and expenses would impose an undue expense upon Plaintiffs given that a remote deposition option was offered and that local defense counsel appears to be available to conduct depositions near Plaintiffs' residences. Id. Plaintiffs rely on D'Agostino v. Johnson & Johnson to argue that the court should evaluate the respective economic positions of the parties when deciding whether the costs should be shifted. Id. at 4, citing 242 N.J. Super. 267, 278 (1990). Plaintiffs contend that they are everyday individuals whose financial positions dwarf that of a multi-billion dollar entity like Ethicon. Id. As such, Plaintiffs assert that they should not have to pay the travel expenses of defense counsel to conduct their depositions. Id.

In opposition and in support of their cross-motion to compel depositions, Defendants argue that it has always been the longstanding practice in this MCL that plaintiff depositions are to be conducted in New Jersey, absent agreement of the parties or a court order. Defendants' Brief at 1. Defendants assert that this practice was only changed briefly in 2022 due to the COVID pandemic, and the court has since reinstated the original protocol as promulgated in CMO No. 79. Id. at 2, citing Certification of Kelly S. Crawford, Esq. ("Crawford Cert."), Exhibit B. Defendants contend that the updated CMO permits the parties to conduct remote depositions in situations where a plaintiff has been diagnosed with a medical or physical condition that prevents travel. Id., citing Crawford Cert., Exhibit B. Defendants argue that Plaintiffs here have not demonstrated an inability to travel, as the proffered doctors' notes do not indicate that Plaintiffs' conditions actually prevent them from travelling. Id. at 2-3. Defendants also rely upon two matters in the subject MCL, wherein the court compelled the plaintiffs to either appear in New Jersey for their depositions or

¹ Not for publication without the approval of the committee on opinions. (See R. 1:36-1).

to secure a reasonable location near their residence and reimburse Defendants' associated expenses, costs, and fees. Id. at 3-4, citing Schweber v. Ethicon, BER-L-13497-14 and Davis-Boggs v. Ethicon, BER-L-7077-21.

Defendants maintain that the inconvenience that Plaintiffs may experience during travel does not constitute an inability to travel, and Plaintiffs can take steps to mitigate any discomfort or difficulty. Id. at 5-6. Defendants also assert that Plaintiff will be required to travel to New Jersey for other reasons relating to this litigation, including medical examinations and possible trial. Id. at 6. In the alternative, Defendants argue that if the court were to find that Plaintiffs are medically unable to travel, Plaintiffs should be required to reimburse Defendants for travel costs associated with conducting Plaintiffs' depositions near their residences. Id. at 7. Defendants also argue that Plaintiffs have not met R. 4:10-3's standard for the issuance of a protective order. Id. Relying on the Schweber matter, Defendants contend that they are entitled to in-person depositions. Id. at 8, citing Crawford Cert., Exhibit C at 7:22-8:4. Defendants further contend that no defense counsel is available near Plaintiffs' local areas to conduct the depositions. Id.

Lastly, Defendants assert that a comparison of Defendants' economic position to Plaintiffs' should not be determinative of who is responsible for costs and expenses. Id. at 9. Defendants differentiate the D'Agostino case by arguing that unlike the instant matter, D'Agostino was not part of mass tort litigation and the amount of damages at issue there was not comparable to the exorbitant amount of damages that Defendants face here. Id.

In reply, Plaintiffs argue that they have provided Defendants and this court with sufficient doctors' notes that satisfy the exemptions set forth in CMO #79, and Defendants have previously indicated that such doctors' notes were sufficient. Plaintiffs' Reply Brief at 3-4, citing McDonough Cert., Exhibit A, Exhibit B, and Exhibit G at 1-2. Plaintiffs further argue that the decision whether Plaintiffs are medically able to travel is solely that of the Plaintiffs' treating physicians, and Defendants' reliance on generic medical articles to argue on the contrary should be ignored by the court. Id. at 4-5. Plaintiffs contend that the cases relied upon by Defendants are distinguishable from the matter at hand. Id. at 5. Plaintiffs assert that in Schweber, the request was not based on the plaintiffs' medical needs, and in Davis-Boggs there was no evidence presented stating that the plaintiff's doctor medically restricted her from travelling. Id., citing Crawford Cert., Exhibit C at 6:14-18. Plaintiffs further assert that Plaintiffs' travel to New Jersey for purposes other than depositions are not before this court. Id. at 6.

Plaintiffs maintain that this court should order Defendants to pay their own fees and costs for travel to Plaintiffs' in person depositions. Id. Plaintiffs contend that ordering them to pay for Defendants' travel would be an undue burden upon them given the massive economic disparities between Defendants and Plaintiffs and the fact that Defendants already pay travel fees for their selected counsel to attend plaintiff depositions in this MCL. Id. at 6-7.

In their sur-reply, Defendants argue that Plaintiffs' alleged medical conditions do not prevent them from travelling to New Jersey. Defendants' Reply Brief at 1. Defendants argue that the unsworn statements of Plaintiffs' physicians are not conclusive evidence of Plaintiffs' inability to travel. Id. Further, Plaintiffs maintain that the doctors' notes relied upon Plaintiffs do not sufficiently explain why Plaintiffs' medical conditions actually prevent them from travelling. Id. at 1-3. Defendants contend that the fact that Plaintiffs will have to travel to New Jersey for other reasons in this litigation weighs in favor of compelling the depositions in New Jersey given that New Jersey courts have given significant weight to the travel of witnesses to the forum state for reasons other than depositions. Id. at 3, citing D'Agostino, 242 N.J. Super. at 277.

Alternatively, Defendants argue further that consistent with the court's prior rulings in Schweber and Davis-Boggs, Plaintiffs should reimburse Defendants' travel costs. Id. at 4. Defendants contend that the fact that the parties typically bear their own travel expenses for depositions does not establish an undue burden for Plaintiffs. Id. Defendants assert that Plaintiffs chose to litigate in New Jersey, and now cannot legitimately claim that the forum is inconvenient. Id. at 5. Relying on the holding in D'Agostino, Defendants further assert that the court should consider the total amount of potential damages to Defendants in this litigation when allocating travel costs for Plaintiffs' depositions. Id., citing D'Agostino, 242 N.J. Super. at 278. Defendants contend whether or not the court considers the total amount of potential damages to Defendants in the entire MCL or just the potential damages as they relate to Plaintiffs, Plaintiffs would not suffer an undue burden here given the exorbitant amount of potential damages. Id. at 6.

The court here recognizes that while it has been the longstanding protocol in this MCL that plaintiff depositions are to be conducted in-person in New Jersey, any disagreements regarding the appropriateness of conducting remote depositions or in-person depositions outside of New Jersey may be raised with the court. See Crawford Cert., Exhibit B at 2. All parties in this matter ultimately seem to agree that the depositions of Plaintiffs should be conducted in-person. Thus, the court must decide whether to compel Plaintiffs' depositions to take place in New Jersey or to require Plaintiffs to reimburse Defendants for travel expenses relating to the conducting of Plaintiffs' depositions near their residences.

In the event that the parties are unable to agree to remote depositions for Plaintiffs in this matter, the court finds that Plaintiffs shall, within a reasonable timeframe, provide three dates for the conducting of each Plaintiff's deposition; secure a reasonable office location, closer to each Plaintiff's residence, for their respective deposition; and reimburse Defendants for their reasonable travel and lodging costs associated with each Plaintiff's deposition. While the court recognizes that Defendants have submitted materials demonstrating that Plaintiffs can take steps to mitigate any difficulty or inconvenience associated with travel to New Jersey, Plaintiffs' treating physicians have provided notes indicating that Plaintiffs are unable to travel. The court is satisfied that these notes sufficiently demonstrate that Plaintiffs' medical conditions prevent them from travelling for such depositions. The court also recognizes the value in, and the parties' preference for, in-person depositions of Plaintiffs. Thus, if it is truly the position of Plaintiffs that they cannot travel to New Jersey for in-person depositions, such depositions shall take place in locations reasonably close to Plaintiffs' residences.

While the court recognizes that an analysis of each party's respective economic positions reveals that Defendants may be in a better position to cover their own travel expenses and costs, the court finds that Plaintiffs have not sufficiently demonstrated undue burden, given the exorbitant amount of damages that Defendants face in this litigation. See D'Agostino, 242 N.J. Super. at 277-78. Plaintiffs chose to litigate their claims in New Jersey and now claim they are medically unable to travel to New Jersey. In accordance with the longstanding practice in this MCL requiring plaintiff depositions to be conducted in-person, the court finds Defendants are entitled to reimbursement for the travel costs and expenses associated with Plaintiffs' depositions near their residences. Given that Plaintiffs are claiming they are unable to travel to their chosen forum state, the court finds no undue burden to Plaintiffs in ordering them to reimburse Defendants here. Accordingly, Plaintiffs' motion for protective order is **DENIED**. Defendants' cross-motion to compel depositions in **GRANTED**, as identified herein.