

**FILED**

AUG 20 2020

**JOHN C. PORTO, J.S.C.**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ATLANTIC COUNTY  
MASTER CASE NO. ATL-L-2122-18

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IN RE PHYSIOMESH LITIGATION  
(Flexible Composite Mesh)

CASE NO. 627  
Civil Action

**THIRD AMENDED CASE  
MANAGEMENT  
ORDER NO. 10  
[DISCOVERY, SCHEDULING AND  
CASE MANAGEMENT — INITIAL  
DISCOVERY POOL]**

This matter having been originally opened to The Court at a Case Management Conference held on August 20, 2020; and in light of the COVID-19 pandemic, and all parties in agreement and good cause appearing;

IT IS on this 20<sup>th</sup> day of August, 2020,

**ORDERED:**

1. Amendments and joinder.
  - a. Except as may be further ordered by the Court, all motions for leave to amend a complaint or to join additional parties shall be filed by Plaintiffs no later than 60 days after the Court's selection of such case to be within the "Initial Discovery Pool" as described below.
2. General discovery rules.
  - a. *Applicability of rules.* Except as otherwise provided by this Court's Case Management Orders, the Rules governing the Courts of the State of New Jersey in this MCL.

- b. In accordance with the Supreme Court of New Jersey's July 17, 2018 creating this MCL, the Court will determine at a later time if any cases should be transferred for trial to a county where venue would be proper.

3. Selection of Cases for Individual Discovery:

- a. On October 1, 2019, 18 cases shall be selected for individual discovery (“Initial Discovery Pool”) in the following manner:
  - i. The Court shall randomly select 10 cases;
  - ii. The Plaintiffs shall select 4 cases; and
  - iii. The Defendants shall select 4 cases.

Other than provision of Plaintiff Profile Forms, the cases selected for the Initial Discovery Pool shall be the only cases that move forward with case-specific discovery, except upon further Order of the Court.

- b. Plaintiffs will provide a completed Plaintiff Fact Sheet on each of the cases in the Initial Discovery Pool by December 2, 2019. Defendants will provide a completed Defendant Fact Sheet on each of the cases in the Initial Discovery Pool by February 3, 2020.
- c. To the extent not already provided, Sales Representative documents shall be produced no later than July 16, 2020.
- d. Fact discovery on the cases in the Discovery Pool may begin immediately after the deadline for service of the Plaintiff Fact Sheets. Depositions of implanting and explanting physicians may be scheduled beginning March 16, 2020, or as otherwise agreed by the parties.

- e. The parties are directed to work together to schedule the appropriate case-specific depositions. Plaintiffs shall have the first responsibility for scheduling treating physician's depositions that are desired by either party. If Plaintiffs have not obtained a date for a physician deposition within 21 days of a request by Defendants, then a non-lawyer from a law firm representing Defendants may contact the physician's office or scheduling assistant for the purpose of scheduling the deposition.
- f. For the Initial Discovery Pool, the parties shall be limited to a maximum of five case-specific depositions per case of deponents who fit the following criteria:
  - i. The physician(s) who implanted the Ethicon mesh device(s) that are subject to the claims pending in this Court;
  - ii. The physician(s) who performed a revision and/or removal surgery of the Ethicon mesh device(s) that are subject to the claims pending in this Court;
  - iii. If there are no physician(s) who fit the criteria in ii. above, then up to, but no more, than two physician(s) who have treated the Plaintiff for his/her alleged injuries; and
  - iv. The Plaintiff and Consortium Plaintiff, if applicable.
- g. The parties anticipate that these limits are sufficient, however, some cases may present specialized circumstances and, if so, if either party seeks to take additional depositions beyond those specified above, the parties shall meet and confer and if unable to agree shall apply to the Court for permission for the additional depositions. In applying to the Court, the party applying for more depositions

shall set forth with particularity why the depositions listed above do not provide sufficient discovery as to why or why not the case is an appropriate trial pool case.

- h. The parties shall complete case-specific depositions by February 1, 2021 and proceed to selection of Trial Pool Cases.

4. Selection of Trial Pool Cases and Trial Cases from Initial Discovery Pool.

- a. On March 1, 2021, the Plaintiffs will choose 2 cases, the Defendants will choose 2 cases, and the Court will choose 2 cases, which will proceed with expert discovery (“Trial Pool Cases”).
- b. Additional Depositions for Trial Pool: For each Trial Pool Case, each party may conduct such additional depositions as may be necessary. All such additional discovery must be completed by June 1, 2021. The parties may also serve non-duplicative written discovery in the trial pool cases.
- c. All fact discovery, including case-specific and general company discovery, shall be completed on or before June 1, 2021. If Plaintiffs contend that there is a basis to take general company discovery after this date, they shall meet and confer with Defendants and, if no agreement can be reached, Plaintiffs may apply to the Court for permission to take such discovery.<sup>1</sup>
- d. Expert Disclosures: For each Trial Pool case, Plaintiffs' expert disclosures and reports shall be served by June 1, 2021. Defendants' expert disclosures and reports shall be served by August 2, 2021. Rebuttal and/or supplemental reports by Plaintiffs' experts shall be served by August 20, 2021. The parties will meet and

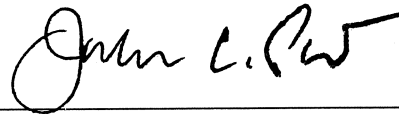
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<sup>1</sup> This deadline applies only to plaintiffs in the Initial Trial Pool. The Court will address any discovery sought by the PEC in a future order, if necessary.

confer with respect to the scheduling of expert depositions and depositions of experts may commence as of May 11, 2021. All expert depositions for the Trial Pool Cases shall be completed by November 1, 2021.

- e. By November 5, 2021, each side shall submit to the Court, outside of the electronic filing system, a memorandum in support of their proposed manner of trial, order of selection of plaintiffs for the initial trials, and timing of trial(s). For clerical and tracking purposes, each party shall simultaneously e-file a document under “general correspondence” alerting the clerk and administrative personnel that said trial memorandum has been filed. By July 30, 2021, the parties may submit a response to the opposing party's memorandum regarding the proposed manner of trial and order of cases for trial, and timing of trial(s).
- f. Motions: Any dispositive motions in the Trial Pool Cases shall be filed by December 1, 2021. Responses shall be filed by December 15, 2021. Replies shall be filed by December 20, 2021.
- g. General Evidentiary Motions. For the filing of evidentiary motions relating to general expert opinions (non-case-specific opinions), the parties are instructed to file only one motion per expert in the main MCL docket instead of the individual member case docket. Case-specific motions (addressing opinions applicable to only an individual Trial Case) should be filed only in the individual Trial Case. To the extent the same expert offers both general and case-specific opinions, the parties are directed to file any motion addressing the general opinions in the main MCL and any motion addressing the case-specific opinions in the appropriate Trial Cases.

- h. The Court will set the first trial for February 2022 and will set further trials thereafter. The Court will schedule a pre-trial conference for purpose of trial at an appropriate time. Deadlines for filing motions *in limine* in the Trial Cases will be established at a later date.
- i. If Plaintiffs voluntarily dismiss a Discovery Pool Case for reasons other than settlement of the case, a replacement case will be selected in the same manner that the dismissed case was selected pursuant to paragraph 3a above. If Plaintiffs dismiss a Trial Pool Case for reasons other than settlement after it has been set for trial, the Defendants shall have the right to select a replacement case to be tried on the same date from the Trial Pool.
- j. Regarding depositions of Defendants' general experts, the Plaintiffs' Executive Committee shall designate who will question the witness on their "general" opinions.
- k. The parties should coordinate the depositions of expert witnesses to the extent there is overlap in the use of experts in multiple Trial Pool Cases. Insofar as either party utilizes or relies on the same general (non-case-specific) expert or experts in multiple cases, those experts shall be deposed only once with respect to their general opinions, unless the expert has offered additional general opinions beyond the expert's initial expert report.



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