

**FILED**

**MAY 12 2022**

**John C. Porto, Acting P.J.Cv.**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ATLANTIC COUNTY  
MASTER CASE NO. ATL-L-794-19  
CASE NO. 630

Civil Action

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IN RE PROCEED MESH LITIGATION  
(Proceed® Surgical Mesh and Proceed®  
Ventral Patch Hernia Mesh)

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**SIXTH AMENDED CASE MANAGEMENT  
ORDER NO. 7**

**[DISCOVERY, SCHEDULING AND CASE  
MANAGEMENT – INITIAL DISCOVERY  
POOL]**

This matter having been opened to the Court by the parties, and for good cause appearing:

**IT IS** on this 12th day of May, 2022,

**ORDERED** that Case Management Order No. 7 is hereby amended as follows<sup>1</sup>:

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 cases 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 shall apply in this MCL.

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<sup>1</sup> This amended scheduling order (CMO No. 7) supersedes all deadlines in the previous amendments of CMO No. 7 and is the operative scheduling order for any other CMO that incorporates the scheduling order/CMO No. 7 by reference.

- b. In accordance with the Supreme Court of New Jersey's March 12, 2019 Order 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 April 17, 2020, 30 cases shall be selected for individual discovery ("Initial Discovery Pool") in the following manner:
  - i. The Court shall randomly select 20 cases;
  - ii. The Plaintiffs shall select 5 cases; and
  - iii. The Defendants shall select 5 cases.
- b. Other than provision of Plaintiff Profile Forms (as set out in Case Management Order No. 6), the cases selected for the Initial Case Discovery Pool shall be the only cases that move forward with case-specific discovery at this time, except upon further Order of the Court.
- c. Plaintiffs will provide a completed Plaintiff Fact Sheet on each of the cases in the Initial Discovery Pool by July 15, 2020. Defendants will provide a complete Defendant Fact Sheet on each of the cases in the Initial Discovery Pool by December 18, 2020.
- d. Sales representative documents shall be produced no later than February 15, 2021.
- e. Fact discovery on the cases in the Initial Discovery Pool may begin immediately after the deadline for service of the Plaintiff Fact Sheets. Depositions of implanting and physicians may be scheduled beginning February 15, 2021 or as otherwise agreed by the parties.

- f. 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 requested 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.
- g. 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 the subject of the claims in this case;
  - 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.
- h. 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.

- i. The parties shall complete case-specific depositions by September 15, 2021 and proceed to selection of Trial Pool Cases.

4. Trial Pool Cases and Trial Cases

- a. On November 15, 2021 the Plaintiffs will choose 3 cases, the Defendants will choose 3 cases, and the Court will choose 3 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 depositions must be completed by June 17, 2022, unless otherwise agreed to by the parties. The parties shall identify any additional witnesses they wish to depose no later than May 13, 2022.
- c. All fact discovery, including case-specific and general company discovery, shall be completed on or before June 17, 2022, unless otherwise agreed to by the parties. Plaintiffs shall identify any additional company witnesses they wish to depose no later than May 13, 2022. 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>2</sup>
- d. Expert Disclosures and Discovery:
  - i. For each Trial Pool case, Plaintiffs’ expert disclosures and reports shall be served by July 8, 2022. Defendants’ expert disclosures and reports shall be

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<sup>2</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.

served by August 8, 2022. Rebuttal reports by Plaintiffs' experts shall be served by August 18, 2022.

- ii. The parties will meet and confer with respect to scheduling of expert depositions and deposition of experts may commence as of August 18, 2022. All expert depositions for the Trial Pool Cases shall be completed by October 31, 2022.
  - iii. The Plaintiffs' Executive Committee shall designate who will question each expert witness on their "general" opinions.
  - iv. 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(s) 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 initial report.
- e. Trial case selection: By October 24, 2022, each side will 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 submitted. By October 31, 2022, the parties may submit a response to the opposing party's memorandum using the same procedure.
- f. Motions: Any dispositive motions in the Trial Pool Cases shall be filed by November 11, 2022. Responses shall be filed by December 7, 2022. Replies shall be filed by

December 20, 2022. However, as to summary judgment motions based on the statute of limitations in Lowack (ATL-L-1178-19), Bogaard (ATL-L-1647-19) & E. Lee (ATL-L-1204-19), defendants may file summary judgment motions at any time after June 13, 2022.

- 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 Pool Case) shall be filed only in the individual case.
- h. The Court will set the first trial for a date in February of 2023 and will set further trials thereafter (the "Trial Cases"). The Court will schedule a pre-trial conference at the appropriate time. Deadlines for filing motions in limine in the Trial Cases shall 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 the parties dismiss a Trial Pool Case, the method of replacement is addressed in Case Management Order No. 23.

  
HON. JOHN C. PORTO, Acting P.J.Cv.