

IN RE: : SUPERIOR COURT OF NEW
: JERSEY

MIRENA IUD PRODUCTS : LAW DIVISION; BERGEN
LIABILITY LITIGATION : COUNTY

This Document Relates to All :
Actions : CASE NO. 297
: CIVIL ACTION

FILED

OCT 04 2018

**RACHELLE L. HARZ
J.S.C.**

CASE MANAGEMENT ORDER NO. 57

Dismissal of Claims for Failure to Appear and Participate in the Litigation

The Parties have advised the Court that they have entered into a Confidential Master Settlement Agreement (“MSA”). Although the terms of the settlement are confidential, the MSA seeks to include all plaintiffs, including derivative claimants, who have asserted claims against one or more of the following Defendants: Bayer HealthCare Pharmaceuticals Inc., Bayer Oy and Bayer Pharma AG (“Bayer Defendants”), including those claims asserted in *In Re: Mirena Litigation*, Multi-County Litigation Case No. 297 pending in the Bergen County Law Division of the Superior Court of New Jersey (“MCL”). The deadline to participate in the MSA expired on June 29, 2018. Subsequently, this Court has been advised that various individual counsel for Plaintiffs have advised Co-Lead Counsel for the Plaintiffs that approximately a few hundred Plaintiffs have failed to respond to their individual counsel regarding whether or not they intended to participate in the MSA. This Court has also been advised that an additional significant number of other Plaintiffs have not participated in the Confidential Master Settlement Agreement, but Co-Lead Counsel for the Plaintiffs do not know and cannot determine whether these Plaintiffs are non-responsive to their individual counsel or if

they do not intend to participate in the MSA.

While the terms of the MSA do not require a Plaintiff who wishes to reject her/his settlement offer to affirmatively opt-out of the settlement, this court recognizes that individual counsel for hundreds of Plaintiffs have advised Co-Lead Counsel that their clients have failed to respond regarding their intent to participate in the MSA and that an additional significant number of Plaintiffs may also be failing to respond to their individual counsel regarding their intent to participate in the MSA. In turn, this Court finds that it is in the best interest of the Parties and this Court's resources, before continuing with this MCL, to determine the intentions of these two groups of Plaintiffs who have not expressed their intent with regards to participation in the MSA.

This Case Management Order No. 57 mandates the procedure by which these two groups of Plaintiffs (hereinafter referred to as "Non-Responsive Plaintiffs" and identified by way of the spreadsheet attached to this CMO as Exhibit "A") must declare their intentions with respect to participating in the MSA, and if they chose not to participate in the MSA, whether they intend to continue to litigate their claims in this MCL. In addition, this Case Management Order sets forth the conditions under which the Court will dismiss the cases of those Non-Responsive Plaintiffs who fail to respond to this Order:

1. The Bayer Defendants and Plaintiffs' Co-Lead Counsel have advised the Court that each plaintiff listed on Exhibit A to this CMO is a Non-Responsive Plaintiff.
2. Within three (3) days of entry of this CMO, counsel of record for each Non-Responsive Plaintiff shall send a letter to that plaintiff's last known address advising plaintiff of: (a) the obligations set forth in paragraphs 3 and 4 below; and that (b) the failure to comply with those obligations will result in the dismissal of their claims with prejudice. Counsel shall send this letter to the Non-Responsive Plaintiff by regular and certified mail, return receipt requested, and shall be prepared to share it with the Court *in camera*. For *pro se* plaintiffs, Co-Lead counsel for Plaintiffs shall be responsible for mailing such letters to

addresses available via Court filings, if applicable.

3. To promote the efficient resolution of this litigation, by October 18, 2018, each Non-Responsive Plaintiff must file and serve a completed Notice of Intent to Proceed (in a form substantially similar to that attached as Exhibit B to this CMO) and must also email the completed Notice of Intent to Proceed form to Mirena_Release@shb.com and mirena@motleyrice.com. The Notice of Intent to Proceed must be signed by the individual plaintiff and shall unambiguously identify which position the Non-Responsive Plaintiff is taking with respect to the MSA.
4. In addition to filing and serving a Notice of Intent to Proceed form, each Non-Responsive Plaintiff must also submit documents in accordance with the subparagraph below that reflects their MSA participation decision:
 - a. If the individual plaintiff intends to participate in the MSA she/he must, in addition to filing and serving a Notice of Intent to Proceed form, submit a signed and notarized Release (Exhibit C to this CMO) with a signed Stipulation of Dismissal (Exhibit D to this CMO) to the settlement's enrollment email addresses of Mirena_Release@shb.com and mirena@motleyrice.com before 12:00 p.m. EST on October 18, 2018. In addition, she/he must also submit a Claim Form (attached hereto as Exhibit "E" to each individual firm's ShareFile Account) also before 12:00 p.m. EST on October 18, 2018.
 - b. If the Non-Responsive Plaintiff does not intend to participate in the MSA but has given their counsel permission to execute a Stipulation for Dismissal with prejudice on their behalf, she/he must, in addition to filing and serving a Notice of Intent to Proceed form, must submit a signed Stipulation of Dismissal (Exhibit D to this CMO) to the email addresses of Mirena_Release@shb.com and mirena@motleyrice.com before 12:00 p.m. EST on October 18, 2018.
 - c. If the Non-Responsive Plaintiff does not intend to participate in the MSA but wishes to pursue her/his claim in Court, she/he must file

and serve a Notice of Intent to Proceed form and must also email the Notice of Intent to Proceed Form to Mirena_Release@shb.com and mirena@motleyrice.com before 12:00 p.m. EST on October 18, 2018..

5. Before 5:00 p.m. EST on October 18, 2018, the Parties shall jointly submit a list of Non-Responsive Plaintiffs that have not filed and served a Notice of Intent to Proceed pursuant to Paragraph 3 herein. Unless counsel for any of the identified Plaintiffs on this list or, alternatively, any of the Plaintiffs themselves, appears in Judge Harz's Courtroom on October 19, 2018 at 2:00 p.m. EST and shows cause why the Court should not issue an Order for Dismissal with Prejudice, the Court will consider such Non-Responsive Plaintiffs who fail to appear to have abandoned her/his case and will dismiss with prejudice, the Non-Responsive Plaintiffs' Claims at that time.

DATED: Oct 4 2018

Rachelle L. Harz
The Honorable Rachelle L. Harz, J.S.C.

EXHIBIT A

Use First Name	Use Last Name	Case Name	Origin County	Origin County	Grant County	Grant County
Elkoin	Dexter	Elkoin, Ben	NJ - Bergen County	NJ - Bergen County	BER-L-9092-14	Parker Walchman
Hammett	Drew	Hammett, Jessica	NJ - Morris County	NJ - Bergen County	BER-L-4797-13	Meyers & Flowers
Herring	Julius	Herring, Stalonda and Julius Herring	NJ - Bergen County	NJ - Bergen County	BER-L-8405-15	Parker Walchman
Phillips	Alton	Phillips, Anisha	NJ - Bergen County	NJ - Bergen County	BER-L-2893-14	Cohen, Placida & Roth
Reid	Samuel	Reid, Patricia	NJ - Morris County	NJ - Bergen County	BER-L-4705-13	Parker Walchman

EXHIBIT B

[ADD APPROPRIATE CASE CAPTION]

NOTICE OF INTENT TO PROCEED

[Insert name of plaintiff(s)] hereby notifies the Court of [his/her] intent to:

_____ Participate in the Confidential Master Settlement Agreement;

_____ Not Participate in the Confidential Master Settlement Agreement, but
authorize my counsel to submit a Stipulation of Dismissal, with prejudice,
on my behalf; or,

_____ Litigate his/her claims against the Bayer Defendant(s).

Dated: _____

[Signature of plaintiff]

EXHIBIT C

EXHIBIT D

[Counsel]
[Firm]
[Address]
[Tel.]

Attorneys for Plaintiff

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CAPTION

: SUPERIOR COURT OF NEW
: JERSEY LAW DIVISION:
: BERGEN COUNTY

: IN RE MIRENA IUD PRODUCTS
: LIABILITY LITIGATION

: CASE NO. 297
: X

STIPULATION FOR VOLUNTARY DISMISSAL PURSUANT TO RULE 4:37-1(a)

This matter having been amicably resolved by and among the parties, it is hereby stipulated and agreed that the above-captioned action may be, and is hereby is, dismissed, with prejudice against all Defendants and without costs as to any party. The Complaint and all claims therein are being dismissed with prejudice pursuant to Rule 4:37-1(a).

PLAINTIFFS

DEFENDANTS

[Counsel]
[Firm]
[Address]
[Tel.]

[Counsel]
[Firm]
[Address]
[Tel.]

EXHIBIT E

MIRENA IUD SETTLEMENT PROGRAM CLAIM FORM

INSTRUCTIONS FOR ATTORNEYS.

Claims packages, including a completed copy of this Claim Form, are to be uploaded by claimant's counsel to the firm ShareFile folder and submitted following these guidelines:

File format: Searchable pdf (Submission of non-searchable files will delay the review process)

File name: *lawfirm.claimantlastname.claimantfirstinitial.pdf*

Example: motleyrice.smith.j.pdf

No more than twenty-five (25) pages may be submitted in addition to this Claim Form. Acceptable proof of Mirena IUD use requires documentary evidence of Mirena IUD insertion and a perforation/non-perforation injury that is documented in a medical record. Only the insertion record, injury diagnosis, and removal record shall be included.

*****Failing to submit a completed claims package and/or submitting insufficient records to clearly identify elements necessary for eligibility will result in a claimant being assigned a lower injury category. Claimants who are incorrectly categorized as a result of incomplete or insufficient records will be required to appeal to Judge Corodemus for review, resulting in a cost for the time necessary for Judge Corodemus to review the appeal.*****

I. CLAIMANT INFORMATION (MIRENA PRODUCT USER)

Claimant Name	Last	First	Middle
Alternate Name(s)	Last	First	Middle
Social Security Number (SSN) XXX-XX-XXXX	Date of Birth MM/DD/YYYY		/ /
Address	Street	City, State	Zip code

II. PRIMARY COUNSEL INFORMATION

Firm Name	Attorney Name	Street Address / Suite	City, State Zip
E-mail for settlement information	Secondary email for settlement information		Phone

III. CASE INFORMATION

Case Status: <input type="checkbox"/> Filed <input type="checkbox"/> Unfiled	Current Case Number
Date Case Filed MM/DD/YYYY	Current Court/ Jurisdiction

IV. INSERTION INFORMATION

Date Mirena Inserted* MM/DD/YYYY	/ /	*If there are additional insertion dates, please provide	/ / / /
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Ex. 1: To be correctly categorized, a complete medical record created at or about the time of the Mirena insertion must be included with this Claim Form and clearly labeled in the upper right-hand corner of the record as **Ex. 1**.

V. INJURY INFORMATION

Injury (Check One)	<input type="checkbox"/> Perforation <input type="checkbox"/> Embedment <input type="checkbox"/> Other: Please describe <input type="checkbox"/> None
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Ex. 2: To be correctly categorized, a complete medical record created at or about the time of the injury checked above must be included with this Claim Form and clearly labeled in the upper right-hand corner of the record as Ex. 2.

Was the Mirena Removed? Yes No

If the Mirena IUD was NOT removed, and no documented medical reason explains why the Mirena IUD was not removed, Claimant must leave the rest of this section and Section VI. blank and skip down to Section VII. below.

Date of Mirena Removal** MM/DD/YYYY	/ /	State where removal of Mirena occurred	
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How was Mirena Removed? (Check One or Leave Blank)	<input type="checkbox"/> Open surgical removal (laparotomy) <input type="checkbox"/> Laparoscopic surgical removal <input type="checkbox"/> Hysteroscopic removal <input type="checkbox"/> Other: Please describe <input type="checkbox"/> Mirena was not removed due to documented medical reason**
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** If the Mirena was not removed due to a documented medical reason, please provide medical reason/ explanation

Ex. 3: To be correctly categorized, a complete medical record created at or about the time of the removal surgery must be included with this Claim Form and clearly labeled in the upper right-hand corner of the record as Ex. 3.

** If the Mirena was not removed due to a medical reason, to be correctly categorized, a complete medical record created at or about the time clearly stating that the Mirena could not be removed due to medical reasons must be included with this Claim Form and clearly labeled in the upper right-hand corner of the record as Ex. 3.

VI. EXTRAORDINARY INJURY FUND INFORMATION

Claimant is making an EIF claim Yes No

EIF Claims are Being Made For (Check All That Apply)	<input type="checkbox"/> A hysterectomy <input type="checkbox"/> A hospital stay in excess of 7 days <input type="checkbox"/> Medical expenses in excess of \$100,000.00
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EIF: An additional 10 pages of supporting documentation may be submitted for each EIF claim made. To be eligible for EIF categorization, complete records created at or about the time of the EIF Injury being claimed must be included with this Claim Form and clearly labeled in the upper right-hand corner of the record as EIF.

VII. CLAIMANT'S CERTIFICATION REGARDING BANKRUPTCY	
Claimant certifies that she	<input type="checkbox"/> IS a party in a bankruptcy action either currently pending or which was pending at the time of the removal of her Mirena IUD in which she is seeking/ sought bankruptcy protection. <input type="checkbox"/> is NOT a party in a bankruptcy action either currently pending or which was pending at the time of the removal of her Mirena IUD in which she is seeking/ sought bankruptcy protection.

VIII. ATTORNEY'S DECLARATION AND SIGNATURE			
I declare under penalty of perjury subject to 28 U.S.C. § 1746 that all of the information provided in this Claim Form is true and correct to the best of my knowledge, information, and belief.			
Attorney's Signature		Date	/ /
Attorney's Printed Name		Firm Name	