

Kelly S. Crawford - NJ Attorney ID #029141993
RIKER DANZIG LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981
(973) 538-0800

FILED

SEP 15 2022

JOHN C. PORTO, P.J.Cv.

Attorneys for Defendants
Ethicon, Inc. and Johnson & Johnson

**IN RE PROCEED MESH LITIGATION
(PROCEED SURGICAL MESH AND PROCEED
VENTRAL PATCH HERNIA MESH)**

**MCL CASE NO. 630
MASTER DOCKET NO. ATL-L-794-19**

CARL DAY, JR.,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ATLANTIC COUNTY
DOCKET NO. ATL-L-330-22

Plaintiff,

vs.

CIVIL ACTION

JOHNSON & JOHNSON and ETHICON,
INC.,

**ORDER DISMISSING COMPLAINT
WITHOUT PREJUDICE**

Defendants.

THIS MATTER having been brought before the Court by Defendants Ethicon, Inc. and Johnson & Johnson, seeking an Order Dismissing Plaintiff Carl Day, Jr.'s Complaint Without Prejudice pursuant to Third Revised Case Management Order No. 6 entered August 27, 2020, Case Management Order No. 19 entered January 14, 2021, and R. 4:23-5(a)(1) for failure to provide discovery; and good cause appearing;

IT IS on this 15th day of September, 2022,

ORDERED that Plaintiff's Complaint is dismissed without prejudice; and

IT IS FURTHER ORDERED that if no motion to vacate the dismissal and reinstate the Complaint is filed within sixty (60)

days of this Order's entry, Defendants may move to dismiss the case with prejudice. The motion to vacate and reinstate the Complaint must include a fully responsive Plaintiff Profile Form and the required fully executed authorizations.



Hon. John C. Porto, P.J.Cv.

Opposed

Unopposed

The Court's findings of fact and conclusions of law were placed on the record on the 15th day of September, 2022 and were:

Written

Oral



**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE
COMMITTEE ON OPINIONS**

JOHN C. PORTO, P.J.Cv.

1201 Bacharach Boulevard
Atlantic City, NJ 08401-4527
(609) 402-0100 ext. 47820

**MEMORANDUM OF DECISION
PURSUANT TO RULE 1:6-2(f)**

TO: Kelly S. Crawford, Esquire
David R. Kott, Esquire
*Attorney for Defendants, Ethicon, Inc.,
and Johnson & Johnson*

Joseph J. Fantini, Esquire
Attorneys for Plaintiff, Carl Day, Jr.

**RE: Carl Day, Jr. v. Johnson & Johnson
and Ethicon, Inc.**
Docket No. ATL-L-330-22
Master Docket No. 794-19
MCL Case No. 630

**NATURE OF MOTION: Defendants' Motion to Dismiss Plaintiff's Complaint
Without Prejudice**

**HAVING CAREFULLY REVIEWED THE MOVING PAPERS, I HAVE RULED ON THE
ABOVE CAPTIONED MOTION AS FOLLOWS:**

Nature of Motion and Procedural History

This matter arises from the implementation of Proceed Surgical Mesh and Proceed Ventral Patch Hernia Mesh and is a part of Multi-County Litigation ("MCL") Case No. 630, Master Docket No. ATL-L-794-19. Plaintiff, Carl Day, Jr.

(“Plaintiff”) filed the Complaint on February 14, 2022. The discovery end date is June 14, 2023. Trial is not currently scheduled.

Kelly S. Crawford, Esquire filed this Motion on behalf of Ethicon on August 8, 2022. On September 9, 2022, David R. Kott, Esquire filed an Entry of Appearance as co-counsel on behalf of defendants. Kelly S. Crawford, Esquire filed correspondence with the Court on September 9, 2022 advising the Plaintiff’s opposition was due on September 5, 2022. The motion is unopposed.

Parties’ Contentions

Defendants

Counsel argued under the Court’s Third Revised Case Management Order No. 6 [Plaintiff Profile Form] (hereinafter “CMO No. 6”) entered on August 27, 2020, every Plaintiff in this MCL is obligated to provide Defendants with a Plaintiff Profile Form (“PPF”).

Under Paragraph m of CMO No. 6, upon notice of a failure to comply with this obligation, a delinquent Plaintiff “shall be provided 14 additional days to cure such deficiency”. Paragraph 1 of Case Management Order No. 19 [Procedure For Filing Motions as to Plaintiffs Who Fail to Provide a Plaintiff Profile Form] (hereinafter “CMO No. 19”) entered January 14, 2021, further provides the Defendants may move to dismiss if the delinquency is not cured within the 14 days.

Plaintiff did not provide Defendants with a PPF in compliance with CMO No. 6. The Plaintiff’s PPF and related materials were due to be produced on May 20, 2022. Plaintiff did not comply with this deadline, and accordingly, Defendants sent his counsel a deficiency notice by letter dated June 8, 2022¹.

¹ Certification of Kelly S. Crawford (“Crawford Cert.”), Ex. A.

Plaintiff did not provide a PPF and related materials within the 14-day cure period provided by CMO 6. Additionally, this case was included on the delinquency charts provided by Defendants to Plaintiff's counsel on June 8, 2022, July 8, 2022, and August 4, 2022².

On August 3, 2022, Defendants sent Plaintiff's counsel an email stating their intention to file the instant motion³.

Notwithstanding Defendants alerting Plaintiff, through counsel, of the failure to comply with this Court's Order, Plaintiff did not provide the required PPF materials. Accordingly, Defendants request that the Court dismiss Plaintiff's claims in accordance with CMOs No. 6 and 19.

Discussion

The aforementioned Case Management Orders were formulated by consent and entered by the Court so as to govern the management and logistics of the many cases filed within this Multicounty Litigation case. Said Orders provide the requirements as well as the means to obtain discovery and cure any discovery default. The Court finds said orders must be strictly adhered to for effective case management.

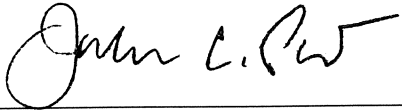
The Court finds Plaintiff failed to comply with CMO 6 & 19 to provide a PPF and related materials as required.

Accordingly, Defendants' motion is **GRANTED**. Plaintiff's Complaint is dismissed without prejudice as provided in the Court's order.

² See Crawford Cert., Ex. B.

³ See Crawford Cert., Ex. C.

An appropriate Order is entered on ecourts. Conformed copies accompany this Memorandum of Decision.

A handwritten signature in black ink, appearing to read "John C. Porto", written over a horizontal line.

JOHN C. PORTO, P.J.Cv.

Date: September 15, 2022