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**FILED**

**JUL 19 2019**

**JOHN C. PORTO, J.S.C.**

*Counsel for Plaintiffs*

IN RE PH PHYSIOMESH LITIGATION  
(Flexible Composite Mesh)

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – ATLANTIC COUNTY

MCL CASE NO: 627

MASTER DOCKET NUMBER: ATL-L-2122-18

**AMENDED CASE MANAGEMENT  
ORDER #2**

This matter having been opened to The Court at a Case Management Conference held on July 18, 2019; in the presence of the attorneys for the plaintiffs and the attorneys for the defendants; and good cause appearing;

IT IS on this 19<sup>th</sup> day of July, 2019,

**ORDERED:**

I. **INITIAL PROVISIONS**

A. **Applicability**

This Order applies to all cases previously filed and all those hereinafter filed or transferred to Atlantic County pursuant to the Supreme Court Order of July 17, 2018, establishing In Re Physiomesh Litigation, Case No. 627 ("Physiomesh MCL, Case No. 627").

B. **Continuing Obligations of CMO No. 1**

Except as modified herein or any subsequent Case Management Order ("CMO"), the provisions of CMO No. 1, entered August 20, 2018 by the Honorable Nelson C. Johnson, J.S.C., continue in all respects, including the expectation that all counsel are to act in a courteous, professional manner at all times, and the practices and procedures otherwise set out in CMO No. 1.

C. **Responsive Pleadings and Discovery Stay**

## **1 General Provisions re Stay of Responsive Pleadings and Discovery**

Unless as provided herein and as otherwise ordered by the Court, there shall be a temporary stay of the parties' responsive pleading deadlines and all discovery, including responses to discovery. This Order does not (1) preclude voluntary informal discovery as to the identification and location of relevant documents and witnesses; (2) prevent a party from voluntarily making disclosures or responding to an outstanding discovery request; (3) authorize a party to suspend its efforts in gathering information needed to respond to a request; and (4) obviate the obligations to preserve evidence relevant to the claims or defense of this matter.

## **2. Provisions Regarding Document Preservation, Production and Protective Order**

Each party is reminded of their obligations regarding the preservation of documents, records, and physical evidence such as explanted mesh and pathology, pursuant to Case Management Order No. 1 of this Court and the Rules Governing the Court of the State of New Jersey.

## **II. PLAINTIFFS' AND DEFENDANTS' LEADERSHIP**

### **A. Plaintiffs' Leadership**

#### **1 Appointment of Counsel**

The Court appoints the following attorneys to serve on the Plaintiffs' Executive Committee ("PEC") for all Plaintiffs.

#### **COUNSEL ON THE PLAINTIFFS' EXECUTIVE COMMITTEE:**

Joshua S. Kincannon, Esq.  
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**2. Designations, Funding, Future Changes in Leadership Structure**

These designations are of a personal nature. This Court looks to these counsel to undertake personal responsibility to perform the designated functions and reserves the discretion to replace these counsel should they become unable or unwilling to do so, or should such other circumstances arise that warrant the same. The PEC may, upon application and approval of the Court, organize and create a Plaintiffs' Steering Committee ("PSC"). This Court may amend or expand the PSC upon request of the PEC or on its own motion, if and as circumstances warrant. This Court is mindful that counsel within the PSC will be advance funding much of the common benefit litigation and that each of the members of the PSC will warrant their ability and

willingness to advance fund the common litigation as determined to be necessary by the PEC. The failure of any member of the PSC to meet any of the advanced funding obligations as determined are necessary by the PEC may constitute good cause for removal from the PSC.

### **3 Duties and Responsibilities of Plaintiffs' Lead and Liaison Counsel**

#### **Plaintiffs' Executive Committee**

Plaintiffs' Executive Committee ("PEC") shall be charged with formulating and presenting Plaintiffs' positions on all substantive and procedural issues arising during these pretrial proceedings, and shall be deemed able to bind all plaintiffs' counsel to decisions regarding same. The PEC shall submit and argue all motions and other matters. At least one member of the PEC shall attend status conferences and such other hearings or conferences as may occur. The PEC shall work with opposing counsel in developing and implementing a litigation plan to ensure pretrial proceedings are conducted effectively, efficiently, and economically. The PEC may delegate specific tasks to other counsel to further these prescribed goals.

#### **Plaintiffs' Liaison Counsel**

Plaintiffs' Liaison Counsel shall be charged with facilitating the administrative requirements of these pretrial proceedings. To the extent service is not otherwise achieved through eCourts, Plaintiffs' Liaison Counsel shall act as the primary recipients of the Court's orders on behalf of Plaintiffs, distributors of Plaintiffs' pleadings, notices, and motions to Defendants' Lead and Liaison counsel, and shall coordinate service and filings. Plaintiffs' Liaison Counsel shall communicate with Plaintiffs' Leadership in MDL 2782 in an effort to promote efficiency and judicial economy. Plaintiffs' Liaison Counsel shall be reasonably available to communicate with the Court on administrative

or procedural matters when necessary. Plaintiffs' Liaison Counsel shall attend status conferences and such other hearings or conferences as they may occur.

**4. Communications with the Court**

All communications from Plaintiffs with the Court should be through the PEC or Liaison Counsel or, as requested by the PEC, the PEC's designee. If circumstances require direct correspondence with the Court by an individual counsel, copies of any such communications shall be simultaneously served upon the PEC or as otherwise delegated.

**5. No Waiver of Privilege**

The Court recognizes that cooperation by and among plaintiffs' counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between plaintiffs' counsel shall not be deemed a waiver of the attorney-client privilege and/or the work product doctrine, if the privilege or doctrine is otherwise applicable, and all of such persons shall maintain the confidentiality of such communications. Cooperative efforts contemplated above shall in no way be used against any plaintiff by any defendant. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

**6. Individual Claimants' Counsel Responsibility for Their Respective Clients.**

Under no circumstances are the members of the PEC or Liaison Counsel, or any member of the PSC responsible for filings, discovery, or any other issue or matter related to an individual plaintiff's case or claim. More specifically, the members of the PEC, Liaison Counsel, or any member of the PSC are in no way responsible for the attorney-client relationship and the duties and responsibilities each individual attorney or law firm owe to their client(s) in the prosecution of their individual case(s).

**B. Defendants' Leadership****1 Appointment of Counsel**

The Court appoints the following attorneys to serve as Co-Lead and Co-Liaison Counsel for Defendants Ethicon, Inc. and Johnson & Johnson.

**CO-LEAD COUNSEL FOR DEFENDANTS:**

William M. Gage, Esq.  
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**CO-LIAISON COUNSEL FOR DEFENDANTS:**

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## **2 Duties and Responsibilities of Defendants' Lead and Liaison Counsel**

### **Defendants' Lead Counsel**

Defendants' Lead Counsel shall be charged with formulating and presenting Defendants' positions on all substantive and procedural issues arising during these pretrial proceedings. Generally, Defendants' Lead Counsel shall submit and argue motions. Defendants' Lead Counsel shall work with opposing counsel in developing and implementing a litigation plan to ensure pretrial proceedings are conducted effectively, efficiently, and economically. Defendants' Lead Counsel may delegate specific tasks to other counsel to further these prescribed goals.

### **Defendants' Liaison Counsel**

Defendants' Liaison Counsel shall be charged with facilitating the administrative requirements of these pretrial proceedings. To the extent service is not otherwise achieved through eCourts, Defendants' Liaison Counsel shall act as the primary recipients of the Court's orders on behalf of Defendants, distributors of defendants' pleadings, notices, and motions to Plaintiffs' Lead and Liaison counsel, and shall coordinate service and filings. Defendants' Liaison Counsel shall be reasonably available to communicate with the Court on administrative or procedural matters when necessary. Defendants' Liaison Counsel shall attend status conferences and such other hearings or conferences as they may occur.

### **III. PRO HAC VICE ADMISSIONS**

An attorney seeking to appear *pro hac vice* shall submit via eCourts a proposed form of order under the 5-day Rule. Said order may be submitted under the Master MCL docket number and need not be separately submitted in any individual matter or under any individual matter document number. Counsel admitted *pro hac vice* are admitted for all purposes.

### **IV. COORDINATION**

It is the Court's intention and desire that, to the extent possible, the scheduling deadlines, case management orders, and discovery in this MCL litigation will be coordinated with those entered by The Honorable Richard W. Story, U.S.D.J. in the Northern District of Georgia.

### **V. PROTECTIVE ORDER**

The parties will meet and confer by November 1, 2018 regarding the entry of a stipulated protective order. In the event the parties cannot reach an agreement as to the form and substance of a protective order, they must advise The Court, by letter(s) submitted via electronic mail to Chambers, no later than five (5) business days before the next Case Management Conference.

### **VI. CASE MANAGEMENT ORDERS**

The parties will meet and confer by November 1, 2018 regarding the entry of a Case Management Order governing practices and procedures not already addressed in this Order and a Case Management Order governing deposition protocol. In the event the parties cannot reach an agreement as to the form and substance of those orders, they must advise The Court, by letter(s) submitted via electronic mail to Chambers, no later than five (5) business days before the next Case Management Conference.

### **VII. WAIVER OF SERVICE**

Defense counsel will advise Plaintiffs' counsel within seven (7) days of this Order whether they consent to waive formal service on Defendants, such that filing of pleadings via eCourts will constitute service as required by the New Jersey Rules of Court. In the event that Defendants do not agree to initial service of process being effected by virtue of the filing of a complaint via eCourts, Plaintiffs shall be required to comply with the Rules Governing the Courts of the State of New Jersey regarding proper and effective service of initial process.

#### **VIII. DISCOVERY**

Defense counsel will advise Plaintiffs' counsel within seven (7) days of this Order whether it will provide written discovery and deposition transcripts pertaining to Defendants' corporate structure and the manner in which Defendants' electronically stored information is kept. Defense counsel will further advise whether the production of the aforesaid discovery is or must be subject to a protective order.

#### **IX. MOTIONS**

Counsel must advise The Court before filing any motion other than a motion seeking *pro hac vice* admission.

#### **X. EX PARTE SETTLEMENT COMMUNICATIONS**

By consent of all parties, The Court may contact or be contacted on an *ex parte* basis regarding settlement issues.

#### **XI. MEDICINE, FACT, AND LEGAL ISSUES HEARING**

At the next Case Management Conference, The Court will address the scheduling of a future conference, at which the parties will present to the Court key issues of medicine, fact, and law in a non-adversarial manner..

**XII. CASE MANAGEMENT CONFERENCE PROCEDURES**

Until further notice, The Court will conduct monthly case management conferences. The next Case Management Conference is scheduled for November 14, 2018, at 1:30 p.m. Plaintiffs' counsel shall initiate the call. Counsel may appear in person, by telephone or by Skype or any such other means that the Court can reasonably accommodate.

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