

**FILED**

OCT 01 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)
 

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CASE NO. 627  
Civil Action**CASE MANAGEMENT ORDER NO. 13  
(PROTOCOLS FOR DEPOSITIONS TAKEN  
DURING COVID-19 PANDEMIC)**

This matter having been opened to the Court by the parties, the Court having heard this matter on August 20, 2020, and the Court having rendered a September 14, 2020 Letter Opinion, the Court hereby Orders that, pursuant to New Jersey Court Rule 4:14, the New Jersey Supreme Court's Omnibus Orders regarding COVID-19, and the Orders(s) of this Court, the provisions below will govern depositions taken during the COVID-19 pandemic in the *In re Physiomesh Litigation* MCL.

**IT IS** on this 1st day of October, 2020,

**ORDERED:**

**I. Applicability**

1. Recognizing that during the COVID-19 pandemic, health safety concerns prevent participants from physically attending depositions, there shall be a presumption that depositions taken in this litigation for the foreseeable future shall be completed remotely. The parties are ordered to meet and confer on a monthly basis to evaluate the reasonableness of conducting depositions in person. Any disagreements regarding the appropriateness of conducting depositions in person may be raised with the Court.

2. This Order shall apply to all parties and counsel for all parties. In the event that a deposition is requested of a treating physician or other third party, the parties shall endeavor to

conduct the deposition remotely consistent with this Order. If the third party refuses to consent to the protocol established in this Order, the parties shall meet and confer in good faith to determine the appropriate manner to conduct the deposition while maximizing all safety precautions. Any disagreements regarding the manner in which the deposition is taken may be raised with the Court.

## **II. In Person Depositions**

1. With the consent of all counsel, the deponent, the court reporter, and videographer, any witness may be deposed in person rather than by remote means. If consent to an in-person deposition cannot be obtained from the necessary participants, the party seeking an in-person deposition may bring the issue to the Court's attention for resolution.

2. Any in-person deposition must be conducted in accordance with all applicable mandates regarding COVID-19 and health, social distancing, and travel-related orders and mandates arising therefrom.

3. No person may attend the deposition in-person if:

- a. The person has tested positive or been exposed to someone who has tested positive for COVID-19 in the past 14 days;
- b. The person is awaiting test results of a COVID-19 test; or
- c. The person has had a fever within the past 14 days.
- d. The person is exhibiting symptoms of fever, chills, or shortness of breath.

4. Any in-person deposition must be conducted such that all participants in the room are seated at least six feet apart at all times.

5. No more than ten person(s) can be physically present in the room, with a presumption that no more than two attorneys per side can be present in the room representing PEC and Defendants.

6. Each person attending the deposition must procure his/her own face mask and hand sanitizer and use them accordingly. Masks shall be worn at all times by anyone in attendance, except for the witness, examining attorney, and on-record defending attorney. For the witness, examining attorney, and defending attorney, in lieu of masks the parties should use best efforts to implement additional safety measures such as sitting 7-8 feet away and/or implementing a transparent (e.g. plexiglass) barrier.

### **III. Service/Platform for Remote Depositions**

1. Golkow Global Litigation Services (“Golkow”) will serve as the preferred court reporting service. Unless otherwise agreed by the parties, Golkow shall provide the remote deposition videoconferencing platform through which the depositions will be conducted. Unless otherwise agreed, all remote depositions will be conducted through videoconference.

2. All parties, including the attorneys, the court reporter and videographer (to the extent a videographer is necessary), will appear remotely. If a witness requests that his/her counsel be present to defend the deposition, the parties shall meet and confer regarding the request. If the parties cannot agree on an accommodation to such a request, either party may present the matter to the Court for determination.

3. Golkow shall provide an additional service employee for purposes of IT support, troubleshooting, etc., unless the parties otherwise agree that such additional personnel is not necessary.

4. The remote deponent will be responsible for having adequate, functioning and sufficient technology to participate in the deposition (adequate internet connectivity, webcam, microphone, computer with ability for split screen, etc.). The party defending the witness shall coordinate with the witness and Golkow in advance of the deposition to ensure the technology is sufficient and functional. The parties should perform a “test run” of the equipment and technology no later than 3 business days in advance of the deposition. Should the deponent require renting additional hardware and/or software to ensure sufficient connectivity and ability to participate without technological issues, Golkow will be the preferred supplier of such equipment. The party noticing the deposition shall pay the costs associated with any such technological needs.

5. The remote deponent is not permitted to utilize any communicative device during the time of deposition for any purpose(s) other than responding to deposition questions, interacting with the court reporter or examining counsel, or viewing exhibits displayed electronically. During breaks in testimony, counsel defending the witness may communicate with the witness directly via telephone to discuss non-substantive matters. Any and all prohibitions regarding substantive conversations with the witness that would be in effect during an “in person” deposition will remain in place.

6. Any time spent resolving or attempting to resolve technical difficulties that occur during a remote deposition will not count against the time a party has to depose a witness under the agreed Deposition Protocol.

#### **IV. Swearing of the Witness/Officer Administering Oath in Remote Depositions**

1. The parties agree that the court reporter may administer the oath remotely, and any oaths administered remotely will satisfy the requirements of New Jersey Court Rule 4:14-3.

2. For depositions taken outside of the United States, a court reporter appearing remotely in the United States may administer the oath to a foreign deponent.

3. Any oath administered remotely shall be deemed to have the same effect as an oath administered in person.

4. All persons participating in and/or observing a remote deposition shall be identified on the record.

#### **V. Screen Stipulations for Remote Depositions**

1. The attorneys on record as conducting and defending the deposition shall appear onscreen, of which “onscreen” shall mean the attorney will have sufficient technology that allows the on-record attorneys and witness to visualize them in an individual window at all times on record. The witness shall likewise appear onscreen. Attorneys will not be recorded. Counsel taking the deposition may also display deposition exhibits onscreen. If a counsel is participating in the deposition in-person for an otherwise remote deposition, the in-person counsel shall appear onscreen.

2. If the deposition is shown/played to a fact finder (including juries), the recordings of the deponent will be shown to the fact finder.

3. The witness shall take every effort to provide his or her testimony in an environment with minimal background distractions. An agreed upon backdrop supplied by Golkow and/or artificial background may be used when appropriate. Any costs of supplying a background will be charged to the noticing attorney.

#### **VI. Marking and Using Exhibits in Remote Depositions**

1. Use of exhibits at deposition can include, but are not limited to the following:

- a. Electronic exhibits that are shared/marked as needed through Golkow's remote deposition platform.
  - b. Hard copies of exhibits sent to Golkow and the witness in advance of the deposition. Should examining counsel elect hard copy transmission, the method of transmission of exhibits will be agreed to by the parties in advance of the deposition.
2. Regardless of the method utilized by counsel, a copy (print or electronic) of any exhibits used, must be made available to opposing counsel at or before the time they are introduced. Counsel shall ensure that exhibits are ready to be shown to the witness. Counsel should endeavor to send voluminous documents to Golkow in advance of the deposition and should otherwise transmit exhibits in an expeditious fashion to avoid unnecessary delays during the deposition.
3. Should counsel admit exhibits electronically, counsel shall ensure that technology enables the exhibits to be displayed electronically and enable a witness to scroll up or back in the document and/or ask the technician to scroll so that the witness may see some or all of the document before or during examination about the exhibit.
4. In the event exhibits are introduced at deposition, all objections as to admissibility are reserved.
5. All documents remaining in possession of the witness must be returned pursuant to protective order at the close of the deposition.
6. Documents requested of the witness will be furnished shall be furnished consistent with any applicable deposition protocol. To the extent there is no applicable

deposition protocol to the witness, documents requested of the witness will be furnished to the examining counsel at least 10 days before the deposition.

**VII. Use of Remote Deposition and Trials**

1. The parties may inform the jury/finder of fact that these depositions were taken by Zoom conference/remotely rather than in person due to the COVID 19 pandemic.

2. The remote deposition will record the witness.

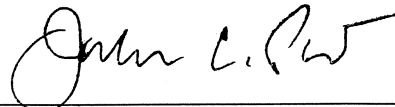
3. Remote depositions may be used at a trial or hearing in the same manner as an in-person deposition may be used at a trial or hearing.

4. The parties will not object to use of video recordings at a trial or hearing on the basis that the deposition was taken remotely unless the quality of the video or recording is poor or otherwise incomprehensible so that playing the same at trial would be either prejudicial to a party or unfair to the factfinder. Should the producing or examining party believe that a video recording would fit these circumstances, notice must be given to opposing counsel within a reasonable time in advance of said trial or hearing so that sufficient time is left to produce the witness for a second deposition or, if feasible, live at trial.<sup>1</sup>

5. The parties reserve all other objections to the use of any testimony or exhibits at trial.

**VIII. Miscellaneous**

This Order may be amended or modified at any time by agreement of the parties or order of the Court.



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

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<sup>1</sup> Nothing in this section will prohibit a party from petitioning opposing counsel and/or the Court for a witness's live testimony at the time of trial.