

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

STEPHANIE OGLESBY,
:
:
Plaintiff, :
v. :
:
JOHNSON & JOHNSON and ETHICON, INC., :
:
Defendants.:

Civil Action No. 3:18-cv-16079-FLW-DEA
Honorable Freda L. Wolfson
Honorable Douglas E. Arpert

**CASE MANAGEMENT ORDER NO. 9
[PRODUCTION OF ETHICON HERNIA
MESH EXEMPLARS]**

This matter having been opened to the Court by the parties; and the parties having indicated they have no objection to the form and entry of the within Order;

WHEREAS, plaintiffs in the Physiomesh Flexible Composite Mesh MCL¹, the Proceed Mesh MCL², the Prolene Hernia System Mesh MCL³, and the consolidated hernia mesh cases pending in the United States District for the District of New Jersey⁴ (collectively “New Jersey Hernia Mesh Litigation”⁵) have made personal injury claims regarding certain of Defendant Ethicon’s hernia mesh devices and have requested that Ethicon produce exemplars for use in the New Jersey Hernia Mesh Litigation;

WHEREAS, there is commonality among the attorneys serving in leadership capacities in the New Jersey Hernia Mesh Litigation (collectively “Plaintiffs’ Leadership”);

WHEREAS, there are, as of the date of this Agreed Order, approximately 131 plaintiffs who have filed lawsuits in the New Jersey Hernia Mesh Litigation involving PHYSIOMESH™;

¹ *In re: Physiomesh (Flexible Composite Mesh) Litigation*, Superior Court of New Jersey, Law Division – Atlantic County, MCL Case No. 627, Master Docket No. ATL-L-2122-18.

² *In re: Proceed Mesh Litigation (Proceed Surgical Mesh and Proceed Ventral Patch Hernia Mesh)*, Superior Court of New Jersey, Law Division – Atlantic County, MCL Case No. 630, Master Docket No. ATL-L-794-19.

³ *In re: Prolene Hernia System Mesh Litigation* - Superior Court of New Jersey, Law Division – Atlantic County, MCL Case No. 633, Master Docket No. ATL-L-173-20.

⁴ This includes all cases consolidated under *Stephanie Oglesby v. Johnson & Johnson and Ethicon, Inc.*, 3:18-cv-16079.

⁵ An identical copy of this Order will be presented to the Court for entry the District of New Jersey *Oglesby* consolidation and in each of the MCLs that comprise the New Jersey Hernia Mesh Litigation.

WHEREAS, there is a limited number of exemplar PHYSIOMESH™ devices as PHYSIOMESH™ is no longer manufactured;

WHEREAS, PROCEED™ Surgical Mesh, PROCEED™ Ventral Patch, PROLENE Polypropylene Hernia System, PROLENE 3D Patch, and PROLENE Soft Polypropylene Mesh are presently sold and, therefore, have a present market value;

IT IS on this 18th day of November, 2020,

ORDERED that:

This Order applies to all of the cases consolidated pursuant to the Court's Order of Consolidation for Discovery Purposes Only [Document 28, Filed 2/19/20], as well as any cases subsequently ordered consolidated for discovery purposes only by this Court.

1. Defense Counsel shall hold in reserve and make available for production to Plaintiffs' Leadership, within 30 days of the entry of this Order, or such time as can be reasonably be made available taking into account the health pandemic, the products and corresponding quantities listed on the attached Exhibit A, for the benefit of all plaintiffs in the New Jersey Hernia Mesh Litigation. If the product is still on the market, Defendants shall produce a non-expired product. If the product is not on the market, Defendants shall make reasonable efforts to produce a non-expired product. If there exists no such non-expired product, Defendants shall so represent in writing and produce a product with the most recent expiration date.

2. Plaintiffs' Leadership shall make a good-faith attempt to request sufficient quantities of the products listed on Exhibit A for the first bellwether trial in each of the consolidated actions that make up the New Jersey Hernia Mesh Litigation. However, nothing in this Order shall preclude Plaintiffs from requesting additional exemplars from Exhibit A. In the

event Plaintiffs need to request additional exemplars from Exhibit A beyond their initial order, the parties shall meet and confer on the timing of the production. In the event Plaintiffs need to order additional exemplars beyond the quantities reserved in Exhibit A, the parties shall meet and confer; Defendants reserve the right to object to any such additional request.

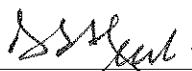
3. Plaintiffs' Leadership shall reimburse Defendants for the price of each exemplar that is currently sold by Defendants in the amount of \$500.00 per exemplar. Plaintiffs' Leadership is under no obligation to order all of the exemplars listed in Exhibit A and are only required to reimburse Defendants for the exemplars it actually orders from Exhibit A.

4. Plaintiffs are permitted to conduct destructive testing of the exemplars.

5. The exemplars provided pursuant to this Order shall, at the sole discretion of the Plaintiffs' Leadership (or its designee(s)), be made available to individual plaintiffs' counsel with cases in the New Jersey Hernia Mesh Litigation.

6. The individual plaintiffs in the New Jersey Hernia Mesh Litigation shall not request exemplars from Defendants and requests for additional exemplars in the New Jersey Hernia Mesh Litigation, if any, may be submitted only by the Plaintiffs' Leadership (or its designee(s)), except upon motion granted by the Court for good cause shown.

7. Nothing in this order waives or impacts any parties' right to later seek a ruling from the Court concerning (1) production of additional exemplars, or (2) the use of any exemplar, including limits on the use of exemplars at trial.



HONORABLE DOUGLAS E. ARPERT, U.S.M.J.

EXHIBIT A

PHYSIOMESH™ Product Code	Number of Exemplars
PHY0715R	4
PHY1015V	4
PHY1515Q	4
PHY1520R	4
PHY1520V	4
PHY2025V	4
PHY2030R	4
PHY2535V	4
PHY3035R	4
PHY3050R	4

PROCEED™ Surgical Mesh Product Code	Number of Exemplars
PCDN1	5
PCDD1	5
PCDM1	5
PCDG1	5
PCDH1	5
PCDJ1	5
PCDW1	5
PCDT1	5
PCDL1	5
PCDB1	5
PCDR1	5

PROCEED™ Ventral Patch Product Code	Number of Exemplars
PVPS	5
PVPM	5

PROLENE Polypropylene Hernia System Product Code	Number of Exemplars
PHSL	5
PHSE	5
PHSM	5

PROLENE 3D Patch	Number of Exemplars
3DPL	5
3DPM	5
P3DPL	5
P3DPM	5

PROLENE Soft Polypropylene Mesh	Number of Exemplars
SPMH	5
SPMXS	5
SPMLI	5
SPMXXL	5
SPMS	5
SPMII	5
SPM3XL	5