

UNITED STATES DISTRICT COURT
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. 8A
[DISCOVERY, SCHEDULING AND
CASE MANAGEMENT – INITIAL
DISCOVERY POOL]**

This matter having been opened to The Court a Case Management Conference held (by telephone) on February 16; and the parties having indicated they have no objection to the form and entry of the within Order; and good cause appearing;

IT IS on this 19th day of April, 2021,

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. This amended CMO supersedes the deadlines in CMO No. 8 as set forth below.

Selection of Initial Cases for Individual Discovery

- a. The pool of cases eligible for inclusion in the First Discovery Pool shall consist of all cases pending in this Court where Plaintiff Profile Forms and authorizations were provided by plaintiff before the date The Court selects the cases for the First Discovery Pool. A list of these cases is attached as Exhibit 1 to this Order.

- b. From among the cases listed in Exhibit 1 to this Order, ten cases will be randomly selected by The Court by December 7, 2020, seven cases identified as cases involving a Proceed product and three cases identified as cases involving a Prolene Hernia System product.
- c. These 10 cases will be the only cases that move forward with case-specific discovery Plaintiff Fact Sheets, which will be governed by a future Case Management Order, will be due on February 15, 2021. Depositions pursuant to Paragraph 2(d) below may commence on March 1, 2021.

1. Initial Discovery Pool – Procedures and Deadlines

- a. Defendants will provide a complete Defendant Fact Sheet for each of the cases in the Initial Discovery Pool by March 15, 2021.
- b. Fact discovery in the cases in the Discovery Pool may begin immediately after selection of the Initial Discovery Pool.
- c. The parties are directed to work together to schedule the appropriate case-specific depositions. Plaintiffs shall have the first responsibility for scheduling treating physician's depositions that are desired by either party. If Plaintiffs have not obtained a date for a physician deposition within 21 days of a request by Defendants, then a non-lawyer from a law firm representing Defendants may contact the physician's office or scheduling assistant for purposes of scheduling the deposition.
- d. For the initial round of discovery for the Initial Discovery Pool, the parties shall be limited to a total of five case-specific depositions per case of deponents who fit the following criteria:

- i. The physician(s) who implanted the Ethicon mesh device(s) that are the subject of the claims in this case;
 - ii. The physician(s) who performed a revision and/or removal surgery of the Ethicon mesh device(s) that are the subject of the claims in this case;
 - iii. No more than two physician(s) who have treated the Plaintiff for conditions relevant to the claims at issue in this case. If there is a disagreement as to relevancy, the parties will seek the Court's guidance prior to scheduling a deposition; and
 - iv. The Plaintiff and Consortium Plaintiff, if applicable.
- e. The parties anticipate that these limits are sufficient, however, some cases may present specialized circumstances and, if so, if either party seeks to take additional depositions beyond those specified above, the parties shall meet and confer and if unable to agree shall apply to the Court for permission for the additional depositions. In applying to the Court, the party applying for more depositions shall set forth with particularity why the depositions listed above do not provide sufficient discovery.
- f. The parties are directed to work together to schedule the appropriate depositions of company employees (current and former). All depositions of Defendants' employees or former employees shall be cross-noticed in all cases pending in the District. The parties will cooperate to coordinate company employee and former employee depositions with those being taken in *In re Prolene Hernia System Mesh Litigation* (Master Case No.

ATL-L-173-20) and *In re Proceed Mesh Litigation* (Master Case No. ATL-L-794-19) to avoid unnecessary duplication of effort and expense.

- g. The parties shall complete depositions of all fact witnesses, including case-specific depositions and depositions of former and current employees, by March 1, 2022.
- h. Expert Disclosures: For each Discovery Pool case, Plaintiffs' expert disclosures and reports shall be served by May 2, 2022. Defendants' expert disclosures and reports shall be served by July 1, 2022. Rebuttal and/or supplemental reports by Plaintiffs' experts shall be served by July 15, 2022. The parties will meet and confer with respect to scheduling of expert depositions. All expert depositions for the Discovery Pool cases shall be completed by October 7, 2022. The Plaintiffs' Leadership shall designate who will question each expert witness on their "general" opinions. The parties shall coordinate the depositions of expert witnesses to the extent there is overlap in the use of experts in multiple Discovery Pool cases. Insofar as either party utilizes or relies on the same general (non-case specific) expert(s) in multiple cases, those experts shall be deposed only once with respect to their general opinions, unless the expert has offered additional general opinions beyond the initial report. The parties will cooperate to coordinate general expert depositions with those being taken in the MCLs to avoid unnecessary duplication of effort and expense.

* The Court will conduct a telephone status conference on June 9 2021 at 2:30pm. Defense counsel must initiate the call.

D. E. Arpert

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