

Joshua S. Kincannon, Esq.
WILENTZ, GOLDMAN & SPITZER,
P.A.
NJ Attorney ID No.: 034052000
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, NJ 07095
Tele.: 732.636.8000
Jkincannon@wilentz.com

James A. Barry, Esq.
LOCKS LAW FIRM, LLC
801 North Kings Highway
Cherry Hill, NJ 08034
856- 663-8200
jbarry@lockslaw.com

Michael G. Daly, Esq.
PGMBM, LLC
NJ Attorney ID No.: 025812010
161 Washington Street, Suite 250
Conshohocken, PA 19428
610-941-4204
mdaly@pgmbm.us

Kelsey L. Stokes, Esq.
FLEMING, NOLEN & JEZ, LLP
2800 Post Oak Boulevard, Suite 4000
Houston, TX 77056
713- 621-7944
kstokes@fleming-law.com

FILED

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JOHN C. PORTO, J.S.C.

Counsel for Plaintiffs

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

CASE MANAGEMENT ORDER #2-B
[AMENDING PLAINTIFFS’
LEADERSHIP]

This Court, having entered previously Case Management Order Nos. 2 and 2A, through which it appointed the Plaintiffs’ Executive Committee and a Plaintiffs’ Steering Committee respectively, hereby amends that Order as requested by the Plaintiffs’ Executive Committee. This Court, therefore, hereby amends CMO 2A as set forth below.

I. 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") and Liaison for all Plaintiffs.

COUNSEL ON THE PLAINTIFFS' EXECUTIVE COMMITTEE:

James A. Barry, Esq.
LOCKS LAW FIRM, LLC
801 North Kings Highway
Cherry Hill, NJ 08034
856- 663-8200
jbarry@lockslaw.com

-and-

Michael G. Daly, Esq.
PGMBM, LLC
NJ Attorney ID No.: 025812010
161 Washington Street, Suite 250
Conshohocken, PA 19428
610-941-4204
mdaly@pgmbm.us

-and-

Joshua S. Kincannon, Esq.
WILENTZ, GOLDMAN & SPITZER, P.A.
NJ Attorney ID No.: 034052000
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, NJ 07095
Tele.: 732.636.8000
Jkincannon@wilentz.com

-and-

Timothy M. O'Brien, Esq.
Florida Bar No. 055565
LEVIN, PAPANTONIO, RAFFERTY,

**PROCTOR, BUCHANAN, O'BRIEN,
BARR & MOUGEY, P.A.**

316 South Baylen St., Ste. 600
Pensacola, FL 32502
Tel: (850) 435-7084
tobrien@levinlaw.com

-and-

Kelsey L. Stokes, Esq.
FLEMING, NOLEN & JEZ, LLP
2800 Post Oak Boulevard, Suite 4000
Houston, TX 77056
713- 621-7944
kstokes@fleming-law.com

-and-

C. Brett Vaughn, Esq.
THE HOLLIS LAW FIRM P.A.
Kansas Bar ID: 26688
8101 College Blvd., Suite 260
Overland Park, KS 66210
(913) 385-5400
brett@hollislawfirm.com

LIAISON COUNSEL FOR PLAINTIFFS:

Joshua S. Kincannon, Esq.
WILENTZ, GOLDMAN & SPITZER, P.A.
NJ Attorney ID No.: 034052000
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, NJ 07095
Tele.: 732.636.8000
Jkincannon@wilentz.com

COUNSEL ON THE PLAINTIFFS' STEERING COMMITTEE:

Sheila M. Bossier, Esq.
BOSSIER & ASSOCIATES, PLLC
1520 N. State Street
Jackson, MS 39202
601.352.5450
sbossier@bossier-law.com

Katherine Cornell, Esq.
PULASKI KHERKHER, PLLC
2925 Richmond Avenue
Suite 1725
Houston, Texas 77098
(800)-223-3784

Scott C. Fraser
MCDONALD WORLEY, PC
TXBN: 24093452
1770 St. James Place, Suite 100
Houston, TX 77056
Tel (713) 523-5500
scott@mcdonaldworley

Andrea J. Giovannone, Esq.
DALIMONTE RUEB STOLLER, L.L.P.
515 S. Figueroa St.
Suite 1550
Los Angeles, CA 90071
(661) 527-3634
andrea@drlawllp.com

W. Todd Harvey, Esq.
CRUMLEY ROBERTS, LLP
2400 Freeman Mill Rd.
Suite 200
Greensboro, NC 27406
Office: 336-333-9899
wtharvey@crumleyroberts.com

Adam W. Krause, Esq.
KRAUSE & KINSMAN, LLC
NJ Attorney ID No.: 244322018
4717 Grand Ave., Suite 250
Kansas City, MO 64112
(816) 760-2700
adam@krauseandkinsman.com

Bradley L. Leger, Esq.
LEGER KETCHUM & COHOON, PLLC
10077 Grogan's Mill Road
Suite 325
The Woodlands, TX 77380
T: 832.764.7200
Bleger@lkclawfirm.com

Martin P. Schrama, Esq.
STARK & STARK, P.C.
Attorney ID # 039581997993
Lenox Drive, Building Two
Lawrenceville, New Jersey 08648
P) (609) 896-9060
mps@stark-stark.com

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. 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

The 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. Upon creation of a PSC, it shall be the responsibility of the PEC to provide oversight to and coordinate the responsibilities of the PSC. Each member of the PEC shall have an equal vote. In the event that the PEC should disagree on any of the following, the majority vote of the PEC will prevail.

The duties of the PEC, and as delegated by such to the PSC, further include, but are not limited to, the following:

Administration

- a. Call meetings of counsel for Plaintiffs for any appropriate purpose;
- b. perform any task necessary and proper for the PEC to accomplish its responsibilities as defined by the Court's orders, including organizing a PSC, sub-committees comprised of plaintiffs' attorneys not on the PSC, and assigning them tasks consistent with the duties of the PSC;
- c. monitor the activities of the PSC and other co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;

- d. maintain adequate files of all pretrial matters, including establishing and maintaining a document or exhibit depository, in either real or virtual format, and having those documents available, under reasonable terms and conditions, for examination by all Plaintiffs or their attorneys in the MCL proceedings;
- e. provide periodic reports to non-PSC plaintiffs' counsel concerning the status of the litigation on no less than a quarterly basis;
- f. to coordinate services and filings;
- g. to maintain and distribute to co-counsel and to Defendants' Counsel an up-to-date service list;
- h. to receive and distribute all pleadings, all Court orders, and motions, provided all counsel shall continue to receive all notices through the New Jersey eCourts electronic filing system;
- i. to maintain in conjunction with their accountant records of receipts and disbursements advanced by members of the PSC and received by the PSC and to report in writing to the PSC concerning disbursements and receipts;
- j. to act as the treasurer for any common benefit assessments and expenses, which shall be allocated to one of the PEC members, not all;
- k. to maintain and make available to all Plaintiffs' counsel of record at reasonable hours a complete file of all documents served by or upon each party (except such documents as may be available at a document depository);
- l. to be available for any telephone conferences convened by the Court and to communicate the substance of any such telephone conference to all other Plaintiffs' counsel; and

- m. perform such other functions as may be expressly authorized by further orders of the Court.

Discovery

- a. Initiate, coordinate, and conduct all pretrial discovery on behalf of all Plaintiffs who file civil actions in this Court or are consolidated with this multi-county litigation and are part of the MCL proceeding;
- b. develop and propose to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all Plaintiffs;
- c. initiate, coordinate, and cause to be issued in the name of all Plaintiffs the necessary discovery requests, motions and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial discovery of relevant issues developed by the PSC. Similar requests, notices and subpoenas may be caused to be issued by the PSC upon written request by the individual attorney in order to assist him/her in preparation of the pretrial stages of his/her client's particular claims; and
- d. conduct all discovery in a coordinated and consolidated manner on behalf of and for the benefit of all Plaintiffs with the assistance from the PSC.

Motion Practice and Hearings

- a. Call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the Court. Initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matter(s) pertaining to pretrial proceedings;

- b. submit and argue or designate other counsel to argue any motions presented to the Court on behalf of all Plaintiffs as well as oppose when necessary any motions submitted by Defendants or third parties;
- c. examine or designate other counsel to examine witnesses and introduce evidence at hearings on behalf of Plaintiffs; and
- d. act or designate other counsel to act as spokesperson(s) for Plaintiffs at pretrial proceedings and in response to any inquiries by the Court.

Contact with Defense Counsel

- a. Initiate, coordinate and conduct (or designate others to do so) the requisite meet and confers with Defendants, confer with Defendants regarding procedural matters, and negotiate and enter into stipulations with Defendants regarding this litigation; and
- b. explore or designate other counsel to explore, develop and pursue settlement options with Defendants on behalf of Plaintiffs.

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, 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.
MS Bar No. 8691
Butler Snow LLP
1020 Highland Colony Pkwy, Suite 1400
P.O. Box 6010
Ridgeland, MS 39158
601-985-4561
william.gage@butlersnow.com

-and-

G. Brian Jackson, Esq.

TN Bar No. 015497
Butler Snow LLP
150 3rd Avenue South, Suite 1600
Nashville, TN 37201
615-651-6716
brianjackson@butlersnow.com

CO-LIAISON COUNSEL FOR DEFENDANTS:

David R. Kott
NJ Attorney ID #018131977
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
973-639-2056
dkott@mccarter.com

-and-

Kelly S. Crawford
NJ Attorney ID #029141993
Riker Danzig Scherer Hyland &
Perretti LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981
973-451-8417
kcrawford@riker.com

2 Duties and Responsibilities of Defendants' Lead and Liaison Counsel

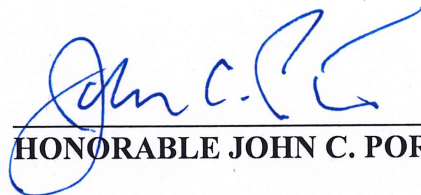
Defendants' Lead Counsel

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.

 2/10/2022
HONORABLE JOHN C. PORTO, J.S.C.