UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: ETHICON PHYSIOMESH FLEXIBLE COMPOSITE HERNIA MESH PRODUCTS LIABILITY LITIGATION	MDL DOCKET NO. 2782 CIVIL ACTION NO. 1:17-md-02782-RWS
THIS DOCUMENT RELATES TO ALL CASES	

PRACTICE AND PROCEDURE ORDER NO. 18

(Amended Proposed Discovery, Scheduling, and Case Management Order - Initial Discovery Pool)

Having heard the comments and considered the proposals of the parties presented to this Court relative to case management, the Court ORDERS:

1. <u>Amendments and joinder.</u>

    a. Except as may be further ordered by the Court, all motions for leave to amend a complaint or to join additional parties shall be filed by Plaintiffs no later than sixty (60) days after the Court's selection of such case to be within the "Initial Discovery Pool" as described below.

2. <u>General discovery rules.</u>

    a. *Applicability of rules.* Except as otherwise provided by Order of this Court, the Federal Rules of Civil Procedure and the Local Rules of this Court shall apply in MDL 2782.

    b. *Rule 26(a)(J) initial disclosures.* The parties are relieved from any duty to provide initial disclosures pursuant to Fed. R. Civ. P. 26(a)(l) in any action that is, upon the date of entry of this Pretrial Order, a part of MDL 2782 or which thereafter becomes a part of the MDL 2782.

    c. Nothing in this Order should be interpreted as waiving, abridging, modifying or limiting any parties' rights under *Lexecon v. Milberg Weiss,* 523 U.S. 26 (1998).

3. <u>Selection of Cases for Individual Discovery:</u>

    a. Selection of the initial pool of cases for individual discovery ("Initial Discovery Pool") shall involve cases chosen by the parties which will be selected on two different dates as described below. Other than provision of Plaintiff Profile Forms, the cases selected pursuant to this Order shall be the only cases that move forward with case-specific discovery, except upon further Order of the Court.

b. Twenty-four (24) cases will be selected by the parties from a pool of all cases pending in MDL 2782 as of January 11, 2018. The selection shall be made by May 15, 2018 with a mutual exchange of lists. The plaintiffs shall select twelve (12) cases and the defendants shall select twelve (12) cases from this pool.

c. Plaintiffs will provide a completed Plaintiff Fact Sheet on each of the cases in the Initial Discovery Pool by June 15, 2018. Defendants will provide a completed Defendant Fact Sheet on each of the cases in the Initial Discovery Pool by July 31, 2018.

d. Fact discovery on the cases chosen during the first selection shall begin immediately after the deadline for service of the Plaintiff Fact Sheets.

e. A second selection often (10) additional cases for inclusion in the Initial Discovery Pool shall be made on June 22, 2018 from a pool of all cases pending in MDL 2782 as of that date. The selection shall be made with a mutual exchange of lists. The plaintiffs shall select five (5) cases and the defendants shall select five (5) cases.

f. Plaintiffs will provide a completed Plaintiff Fact Sheet and completed Plaintiff Profile Form (if not otherwise already provided) for each of the cases chosen during the second selection by July 13, 2018. Defendants

will provide a completed Defendant Fact Sheet for each of the Court-selected cases by August 21, 2018.

g. Fact discovery on the cases chosen during the second selection shall begin immediately after the deadline for service of the Plaintiff Fact Sheets.

h. The parties may serve case-specific written discovery in the Initial Discovery Pool cases, provided such discovery requests are not duplicative of the Plaintiff Fact Sheets or Defendant Fact Sheets. The Federal Rules of Civil Procedure shall apply to the case-specific written discovery.

i. The parties are directed to work together to schedule the appropriate case-specific depositions in order to make a recommendation to the Court for the Trial Pool cases, as defined below.

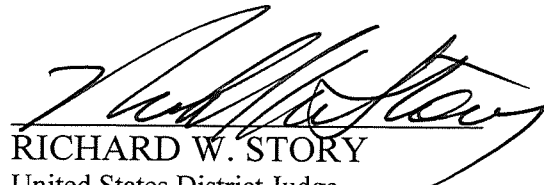5. <u>Selection of Trial Pool Cases and Trial Cases from Initial Discovery Pool.</u>

a. On or before April 15, 2019, the parties will select ten (10) cases from the Initial Discovery Pool which will proceed with expert discovery ("Trial Pool Cases"). The selection shall be made with a mutual exchange of lists. Plaintiffs shall select five (5) cases and Defendants shall select five (5) cases.

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b. <u>Expert Disclosures:</u> For each Trial Pool case, Plaintiffs' expert disclosures and reports shall be served by August 5, 2019. Defendants' expert disclosures and reports shall be served by September 16, 2019. Rebuttal and/or supplemental reports by Plaintiffs' experts shall be served by September 30, 2019. The parties will meet and confer with respect to the scheduling of expert depositions and depositions of experts will commence as of November 14, 2019. All expert discovery for the Trial Pool Cases shall be completed by February 3, 2020.

c. By January 13, 2020, each side shall submit to the Court, outside of the ECF system, a memorandum in support of their proposed manner of trial, order of selection of plaintiffs for trial, and timing of trial(s). By January 20, 2020, the parties may submit a response to the opposing party's memorandum regarding the proposed manner of trial and order of cases for trial, and timing of trial(s). On or before January 27, 2020, the Court shall determine the manner of trial, the order of selection of plaintiffs for trial, and timing of trial(s) ("Trial Cases").

d. <u>Motions:</u> Dispositive or *Daubert* motions shall be filed in each of the Trial Cases by February 24, 2020. Responses shall be filed by March 16, 2020. Replies shall be filed by March 30, 2020.

e. General *Daubert* Motions. For the filing of *Daubert* motions relating to general expert opinions (non-case-specific opinions), the parties are instructed to file only one *Daubert* motion per expert in the main MDL docket instead of the individual member case docket. Case-specific *Daubert* motions (addressing opinions applicable to only an individual Trial Case) should be filed only in the individual Trial Case. To the extent the same expert offers both general and case-specific opinions, the parties are directed to file any motion addressing the general opinions in the main MDL and any motion addressing the case-specific opinions in the appropriate Trial Case(s).

f. The Court will set the first trial for June 22, 2020. The Court will schedule a pre-trial conference for purpose of trial at an appropriate time. Deadlines for filing motions in limine in the Trial Cases will be established at a later date.

g. The parties are encouraged in making selections for Discovery Pool and Trial Pool cases to select cases that will be representative of all filed cases in order that the process of selection and trial will be a helpful process for evaluation of the entire docket of cases for trial and resolution of the entire docket of cases.

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h. Lead/Liaison Counsel shall be responsible for keeping counsel that they represent fully apprised of the scheduling of any depositions in MDL 2782. As to Defendants' general experts, Plaintiffs' Lead Counsel shall designate who will question the witness.

i. Absent an Order from the Court to the contrary or agreement by the parties, all corporate and case-specific discovery for the Trial Cases shall be completed by July 29, 2019. However, nothing in this Order shall be construed to limit other Plaintiffs from the Initial Discovery Pool, Trial Pool or any other MDL Plaintiffs from continuing corporate discovery.

j. The parties should coordinate the depositions of expert witnesses to the extent there is overlap in the use of experts in multiple Trial Pool Cases. Insofar as either party utilizes or relies on the same general (non-case- specific) expert or experts 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 expert's initial expert report.

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SO ORDERED, this _23rd_ day of _Sept_ , 2019.

RICHARD W. STORY
United States District Judge