

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: ALLERGAN BIOCELL TEXTURED :
BREAST IMPLANT PRODUCTS LIABILITY : **Case No. 2:19-md-02921 (BRM)(JAD)**
LITIGATION : **MDL NO. 2921**
: **JUDGE BRIAN R. MARTINOTTI**
: **JUDGE JOSEPH A. DICKSON**

THIS DOCUMENT RELATES TO: ALL CASES

CASE MANAGEMENT ORDER #3

These matters having been transferred to this Court by order of the Judicial Panel on Multidistrict Litigation pursuant to its order of December 18, 2019, meriting special attention as complex litigation, the Court having entered its Initial Case Management Order (ECF No. 13) on January 7, 2020, setting forth the Court's parameters and expectations of counsel during the course of this litigation and having scheduled this initial case management conference, the Court having held a case management conference on February 10, 2020, with the Honorable Joseph A. Dickson, U.S.M.J., also presiding, for good cause shown and for the reasons set forth on the record, the Court enters the following Order:

I. STATUS OF LITIGATION SINCE CASE MANAGEMENT ORDER #2

A. Pursuant to Case Management Order #2, Plaintiffs submitted a proposed leadership structure. (ECF No. 31.) The Court accepted objections or comments until January 28, 2020 (ECF No. 32), and Allergan submitted a comment regarding communication with counsel (ECF No. 38).

- i. Plaintiffs are ordered to submit a proposed order for the Court's consideration. Any designation who shall participate in a conference shall

have expertise in the respective area and authority to resolve the matters at issue in the conference.

- B. Plaintiffs' emergency motion (ECF No. 5) was terminated without prejudice and the parties were ordered to engage in limited discovery in connection with the subject matter of the motion. (ECF No. 35.) Allergan requested reconsideration (ECF No. 40) and Plaintiffs responded (ECF No. 45). The January 31, 2020 deadline was stayed in the interim. (ECF No. 44.)
- C. Allergan filed a letter request for leave to file a motion seeking identification of the plaintiffs who have filed complaints against Allergan anonymously (ECF No. 46) and a letter regarding its intention to file a motion to dismiss on the issue of federal preemption (ECF No. 47).

II. CASE MANAGEMENT

- A. The Court will reserve decision on Defendants' request for reconsideration (ECF No. 40) of the Court's Order (ECF No. 35). Discovery deadlines remain stayed. (ECF Nos. 35, 44.) Defendants shall submit a response to Plaintiff's emergency motion (ECF No. 5) within 8 days.
- B. Defendants' request for leave to file a motion seeking identification of the plaintiffs who have filed complaints against Allergan anonymously (ECF No. 46) is granted. A proposed briefing schedule shall be submitted by the parties. Briefing shall not exceed 15 pages each.
- C. Defendants' request for leave to file a motion to dismiss on the issue of federal preemption is noted. Plaintiffs shall submit a response to Defendants' letter by February 13, 2020; Defendants to reply by February 20, 2020.

D. Counsel shall advise the court of any MCL applications.

E. Counsel shall meet and confer regarding but not limited to the following the issues:

- i. ESI protocols and protective orders
- ii. Direct filings
- iii. Service on Allergan
- iv. Development of Plaintiff Profile Form, Plaintiff Fact Sheet, and Defendant Fact Sheet
- v. Science Day

F. The following will be held pending disposition of Defendants' motion seeking identification of the plaintiffs who have filed complaints against Allergan anonymously: Master Class Complaint, Master Individual Complaint, Short Form Complaint, and responses thereto.

III. SCHEDULING

The following dates have been scheduled for 2020 case management conferences at 12:00 p.m. Liaison counsel shall appear at 11:00 a.m.

March 16, 2020

April 20, 2020

May 18, 2020

June 1, 2020

July 13, 2020

August 10, 2020

September 14, 2020

October 19, 2020

November 2, 2020

December 14, 2020

IV. COMMUNICATION WITH THE COURT AND FILINGS

No motions shall be filed without leave of Court.

Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel. Nevertheless, the Court recognizes that cooperation by and among plaintiffs' counsel and by and among defendants' counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between plaintiffs' counsel and among and between defendants' counsel shall not be deemed a waiver of the attorney-client privilege or the protection afforded attorney's work product, and cooperative efforts contemplated above shall in no way be used against any plaintiff by any defendant or against any defendant by any plaintiff. 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.

Counsel may contact *ex parte*, for the purpose of settlement discussions only, Judge Martinotti via email at brian_martinotti@njd.uscourts.gov or Judge Dickson via email at Chambers_of_Magistrate_Judge_Joseph_Dickson@njd.uscourts.gov.

Date: February 10, 2020

/s/Brian R. Martinotti
BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE