

**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. 22

**(Amended Discovery, Scheduling, and Case Management Order
- Trial Cases)**

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

1. Selection of Trial Cases.

a. The parties have selected the following cases for immediate trial work-up (“Trial Cases”):

- James Bovian – 1:17-cv-04840
- Jim B. and Diane Crumbley – 1:18-cv-00748
- Danielle Guffey – 1:18-cv-00402
- Jeffrey Smith – 1:17-cv-05031

b. Expert Discovery: Except as agreed by the parties or otherwise Ordered by the Court, all expert discovery for the Trial Cases shall be completed by July 15, 2020.

c. Additional Fact/Expert Discovery related to Guffey/Horton matters:

The parties have agreed to the following deadlines related to the Guffey/Horton matters.

- The Parties will complete the deposition of the newly identified surgeon in Guffey by July 24, 2020.
- Plaintiffs' will serve new expert report in Guffey by August 7, 2020.
- Defendants will advise Plaintiffs as to whether they will elect to substitute the Horton case for the Guffey case by August 14, 2020.
- Defendants will serve new or supplemental expert report in Guffey by August 24, 2020 (if needed/applicable).
- Any supplemental depositions of experts will be completed by October 5, 2020.

2. First Trial Case

a. Selection: Plaintiffs have selected the Crumbley matter as the first trial case ("First Trial Case").

b. Dispositive/Daubert Motions: Dispositive or *Daubert* motions shall be filed in the First Trial Case by July 31, 2020. Responses shall be filed

by August 28, 2020. Replies shall be filed by September 7, 2020.

- c. Lexecon Waiver: If applicable, the Parties shall notify the Court by July 31, 2020, whether they will waive their rights under *Lexecon v. Milberg Weiss*, 523 U.S. 26 (1998) in the First Trial Case.
- d. Deposition Designations: By August 14, 2020, each party shall serve designations of deposition testimony proposed in the First Trial Case to be introduced into evidence at trial. The designations shall specifically identify any exhibits to be offered through the deposition testimony. Any objections to an opposing party's designations and the accompanying exhibits, and any counter-designations and accompanying exhibits, shall be served by September 4, 2020. Any objections to the counter-designations and exhibits, and any further designations arising from an opposing party's counter-designations, shall be served by September 14, 2020. Additional deposition testimony may be designated after September 14, 2020 only by leave of Court. The parties shall meet and confer concerning objections and proposed testimony. On September 21, 2020, the Parties shall submit the designations and objections by filing transcripts clearly designating by color coding or another suitable method what testimony is agreed to, and what testimony is disputed. The nature of the objection and the party asserting the objection shall be noted on the transcript adjacent to the testimony in question.

- e. Motions in Limine: As a general matter, motions in limine for the First Trial Case shall be filed by September 21, 2020. Response briefs shall be filed by October 5, 2020. For any motions in limine filed prior to the deadline above, the response brief shall be filed within 21 days and any reply brief shall be filed within 7 days. With respect to the motion in limine filed by Plaintiffs' seeking exclusion of FDA evidence, Defendants' response brief is due on August 3, 2020 and Plaintiffs' reply will be due by August 10, 2010.
- f. Exhibit and Witness List: The parties will meet and confer concerning proposed trial exhibits for the First Trial Case. The witness and exhibit list shall be submitted to the Court on October 13, 2020. With respect to exhibits, the exhibit list shall clearly indicate whether each exhibit is stipulated to be authentic and/or admissible into evidence or whether there is an objection to the introduction of the exhibit.
- g. Joint Pretrial Order: The Joint Pretrial Order shall be submitted by October 15, 2020.
- h. Final Pretrial Conference: The Final Pretrial Conference Court is set for October 22, 2010 at 10:00 am.
- i. Trial: Trial of the First Trial Case shall begin on November 2, 2020. The trial is expected to last two (2) to (3) weeks.

3. Second Trial Case

- a. Second Trial Selection: Defendants shall select the second case to be tried from the Trial Cases by October 12, 2020 (“Second Trial Case”).
- b. Motions: Dispositive or *Daubert* motions shall be filed in the Second Trial Case by December 1, 2020. Responses shall be filed by December 14, 2020. Replies shall be filed by January 1, 2021.
- c. Lexecon Waiver: If applicable, the Parties shall notify the Court by October 26, 2020, whether they will waive their rights under *Lexecon v. Milberg Weiss*, 523 U.S. 26 (1998) for the Second Trial Case.
- d. Trial: Trial of the Second Trial Case shall begin on February 22, 2021. The trial is expected to last two (2) to three (3) weeks.
- e. All remaining deadlines for the Second Trial Case will be established by subsequent Order of the Court.

4. Third and Fourth Trial Cases

- a. Trial: The third trial setting shall be a consolidated trial. The court will set a time for the parties to be heard on the makeup of the consolidation. The trial will begin on May 10, 2021. The trial is expected to last three(3) to four(4) weeks.
- b. All remaining deadlines for the third trial setting will be established by subsequent Order of the Court.

SO ORDERED, this 28th day of July, 2020.

A handwritten signature in black ink, reading "Richard W. Story". The signature is written in a cursive style with a horizontal line underneath the name.

RICHARD W. STORY
United States District Judge