

**United States District Court
District of Rhode Island**

In re: Kugel Mesh Hernia Products Liability Litigation
Multidistrict Litigation (MDL 1842)

MDL DOCKET NO. 07-1842-ML
All cases

An open session conference was held on April 30, 2012. The conference was transcribed and was made accessible to long distance participants via muted phone lines. The Court met with counsel and discussed the items listed on the agenda (docket #3776).

1. Status of Litigation

The case is in its fifth year of litigation and has moved into settlement mode. Two cases have been tried to conclusion, resulting in one plaintiffs' verdict and one defendants' verdict. That experience has informed what has transpired since.

2. Settlement Status

Defendants are settling as many cases as possible after categorizing the cases by objective criteria. To have cases individually considered, it is important to work within the established structure. Plaintiffs' counsel should make sure that:

- (a) Plaintiff Fact Sheets ("PFS") are filled out;
- (b) PFSs are up-to-date; and
- (c) the information is provided to Defense counsel.

Plaintiffs' counsel are encouraged to touch base with lead counsel Don Migliori and his team.

3. Settlement Process

Lead Counsel met with 20-30 plaintiffs' attorneys prior to the conference. Categorization forms were handed out and counsel discussed whether the categories fit. Attorneys were generally informed that there is a process to participate in face-to-face discussions regarding their respective inventory.

4. Information Deadline

Counsel for the parties will submit a proposed order to the Court, pursuant to which plaintiffs' attorneys will be required to provide information regarding their cases to lead counsel within thirty (30) days of issuance of such order. The information will include the type of product used, information regarding implant and/or explant, the alleged nature of the defect, and the scope of damages.

5. Court Assisted Mediation

Magistrate Judge Lovegreen and Magistrate Judge Almond have set aside blocks of time for settlement. Participants will be required to be present. Both Magistrate Judges are familiar with the issues, facts, and types of injuries in this litigation. Once the requisite information has been submitted to Don Migliori, cases will be scheduled for settlement.

6. Settled Cases

Defense counsel reported that, of 3,400 - 4000 cases in inventory, seven large groups of cases involving more than 100 firms and about 2,600 cases have been resolved. In four other groups of cases (consisting of less than 500 cases) an impasse has been reached and those cases will proceed to further negotiation or trial. Following the last conference - at which the Court indicated that firms should contact defense counsel - approximately 35 firms have approached defense counsel.

7. Information Prior to Settlement Conference

Plaintiffs' counsel should provide information regarding their cases to defense counsel at least two weeks prior to participating in a settlement conference. Use of categorization form is particularly helpful and Don Migliori will assist in that process. The Court will issue an order to set a specific deadline to submit such information. If those deadlines are not adhered to, defense counsel may request dismissal of the case.

8. Participation in Settlement Conference

The Court specifically advised all attorneys present or listening in, that no motions should be filed to have a particular case scheduled for mediation or settlement. In order to participate in settlement conferences, plaintiffs' attorneys should submit current PFSs and categorize their inventory.

9. Plaintiffs Fact Statements

At the beginning of this litigation, each plaintiff was required to submit a PFS that contained summary information in order to evaluate the plaintiff's claim. Although, after a change in defense counsel, new counsel regarded the litigation more globally, the PFS are still a valuable tool for both sides. If the PFSs are not provided within the 30-day deadline, defense counsel may seek relief in those cases.

10. Cases Proceeding to Trial

For cases which do not settle, there is a process of identifying them for trial. Cases scheduled for trial in March, May, and July 2012, respectively, were all dismissed by plaintiffs. The Court advised counsel that, if they were serious about trying a case, a true commitment would be required. The cost of working up a case for trial has been reported at approximately \$400,000 for the plaintiff's side. Plaintiffs should be asked whether they are willing to waive Lexecon and try the case in Rhode Island. If not, the Court will seek designation in other jurisdictions and proceed to trial there. Cases that are set for trial are subject to an expedited discovery schedule and such efforts result in significant expenses to defendants, which may reduce the amounts available for settlement. Defense counsel has also indicated that sanctions may be sought for failure of good faith efforts to proceed with a case that has been scheduled for trial.

11. Continuing Discussions

Following the conference, defense counsel introduced five additional members of defense counsel's firm available to meet with present plaintiffs' counsel to discuss status of cases and possibility of settlement.