

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

IN RE: KUGEL MESH HERNIA PATCH LITIGATION  
This document relates to all actions.

MDL DOCKET NO. 07-1842-ML

~~PROPOSED~~ PRACTICE AND PROCEDURE ORDER NUMBER 18

This matter came before the Court on February 24, 2009 for a status conference. The Court considered items listed on the Meeting Agenda (Docket #1707). The Court now makes the following orders:

1. **Document Discovery.** Plaintiffs may submit targeted document requests to Defendants regarding what they consider to be gaps in the current document production. Defendants shall then make a reasonable affirmative effort consistent with their obligations under the Federal Rules of Civil Procedure to respond to such requests. If the requested documents exist in the already produced document sets, Defendants shall provide Plaintiffs with bates ranges or other appropriate method to identify such documents. If no documents are found, Defendants shall so advise Plaintiffs.

2. **Plaintiff Fact Sheets.** In all cases that were filed directly in this Court or removed to this Court by December 31, 2008, Plaintiff Fact Sheets accompanied by all medical records in plaintiffs' care, custody or control will be provided to Defendants, and plaintiffs' counsel will make every best effort to cure outstanding deficiencies with regard to Plaintiff Fact Sheets pertaining to these cases that have already been provided, by March 15, 2009.

3. **Case Selection for Trial.** From the cases that were filed directly in this Court or removed to this Court by December 31, 2008, Plaintiffs and Defendants will each select ten proposed cases for trial. On or before April 6, 2009, the parties will make their submissions to the Court *ex parte*, and will provide the Court with a description for each case, not to exceed three pages, of the claims, injuries, amount of damages claimed, and a statement of why the

case should be selected for trial. Plaintiff's statement will describe why the case is representative of a substantial number of cases in the litigation. Defendant's statement will describe why the case demonstrates the absence of liability. The Court will select ten cases for trial from those submitted by the parties and will provide the parties with its selections at or before the April MDL hearing.

**4. Agreement Regarding Second Amended Consolidated Master Class Action Complaint.** Prior to the next MDL hearing, the parties will meet and confer regarding an agreement as to when Plaintiffs will submit a Second Amended Consolidated Master Class Action Complaint and when discovery will resume with regard to putative class representatives.

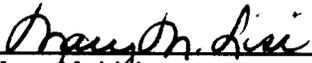
**5. Early Neutral Settlement / Evaluation.** Mediations scheduled for March 2-6, 2009 with Magistrate Judge Lovegreen are cancelled. On or before April 10, Plaintiffs shall provide Defendants with detailed statements regarding each of the cases selected for the second round of early neutral evaluations, including, in each case, identification of the exact product defect alleged to have occurred, identification of any fact witness who claims that the plaintiffs' injury was caused by such a defect, a statement by an expert witness that the product at issue was defective and that the defect caused the plaintiffs' injury, plaintiffs' evaluation of causation and liability, and the amount demanded for settlement. Such statements will be treated as confidential and submitted for purposes of settlement only. Plaintiffs will report on their progress towards providing this information at the next MDL hearing on March 24. Defendants will evaluate the information provided and take a fresh look at each of the 10 cases, and will advise Plaintiffs and the Court as soon as possible whether they are in a no-pay position with regard to any of the cases.

**6. Withdrawals and Dismissals.** On or before March 10, plaintiffs' liaison counsel will submit withdrawals as counsel or stipulations of dismissal with regard to the following cases in which a Show Cause order is pending: Philburn, Phillips, Holley, Anderson, Barker, Myers, Purcell, Askins, Brown, Cannon, Castaneda-Rivera, Ravanales, and Youmans.

7. **Proposed Agenda Items and Pending Motions List.** In consultation with lead defense counsel, plaintiffs' liaison counsel shall submit to the Court a list of proposed agenda items and a current list and status of all motions on or before March 16, 2009. The Court will publish the agenda on or before March 17, 2009.

8. **Next Meeting.** The Court will meet with lead plaintiffs' counsel and defendants' counsel on March 24, 2009 at 2:00 p.m. in Room 151 of the United States Courthouse, One Exchange Terrace, Providence, RI. This meeting will be an "open" session.

SO ORDERED:

  
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Mary M. Lisi  
Chief United States District Judge  
March 17, 2009