

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

**In Re: Atrium Medical Corp. C-Qur Mesh
Products Liability Litigation (MDL No. 2753)**

**MDL Docket No. 16-md-2753-LM
ALL CASES**

**CASE MANAGEMENT ORDER 3H
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 at the monthly status conference on May 17, 2018, the court orders:

1. Amendments and Joinder

1.1 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. Pleadings

2.1 Pursuant to Case Management Order No. 3 (doc. no. 39), all individual case Long Form Complaints 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.

2.2 Pursuant to Case Management Order No. 3 (doc. no. 39), defendants shall answer or otherwise response to the individual case Long Form Complaint within the time provided for by the Federal Rules of Civil Procedure.

3. General Discovery Rules

3.1 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 Docket No. 16-md-2753-LM.

3.2 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).

4. Selection of Cases for Individual Discovery

4.1 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.

4.2 The Initial Discovery Pool cases will consist of a total of sixteen (16) cases selected by the parties from a pool of all cases which have plenary jurisdiction in the District of New Hampshire that are pending in MDL 2753 as of April 1, 2018. The selection shall be made by July 20, 2018, with a mutual exchange of lists. The plaintiffs shall select eight (8) cases and the defendants shall select eight (8) cases, which will collectively constitute the Initial Discovery Pool.

4.3 Plaintiffs will provide a completed Plaintiff Fact Sheet on each of the cases in the Initial Discovery Pool by September 18, 2018. Defendants will provide a completed

Defendant Fact Sheet on each of the cases in the Initial Discovery Pool by December 17, 2018.

4.4 Case-specific fact discovery, limited to the depositions of the individual plaintiff, implanting, and explanting physicians, on the cases chosen during the first selection shall begin immediately after the deadline for service of the Plaintiff Fact Sheets. All further case-specific fact discovery shall begin after the deadline for the service of the Defendant Fact Sheets.

4.5 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, and the presumptive limit of ten (10) depositions of seven (7) hours' duration per party shall apply in these cases.

4.6 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. In the event there is a dispute concerning a deposition, the parties shall meet and confer. If the dispute remains, the parties shall employ paragraph 5 of Case Management Order No. 3.

5. Selection of Trial Pool Cases and Trial Cases from Initial Discovery Pool

5.1 On or before March 1, 2019, the parties will select eight (8) 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 four (4) cases and defendants shall select four (4) cases.

5.2 **Expert Disclosures.** For each Trial Pool case, plaintiffs' expert disclosures and reports shall be served by June 3, 2019. Defendants' expert disclosures and reports shall be served by July 12, 2019. Rebuttal reports by plaintiffs' experts shall be served by August 9, 2019. Each party shall provide three potential dates for depositions each of their experts at the time they disclose each expert's report. All expert discovery for the Trial Pool Cases shall be completed by September 20, 2019.

5.3 By August 2, 2019, each side shall submit to the court, a memorandum in support of their proposed manner of trial, order of selection of plaintiffs for trial, and timing of trial(s). By August 16, 2019, 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 August 30, 2019, or the time most convenient for the court, the court shall determine the manner of trial, the order of selection of plaintiffs for trial, and timing of trial(s) ("Trial Cases").

5.4 **Motions:** Dispositive or Daubert motions shall be filed by in each of the Trial Cases by October 18, 2019. Responses shall be filed by November 1, 2019. Replies shall be filed by November 8, 2019. Except as stated herein or amended by further order of the Court, the Local Rules of the District of New Hampshire and the Federal Rules of Civil Procedure apply to such motions.

5.5 **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, spreading to the docket of the Trial Cases only, instead of solely the individual member case docket. Case-specific Daubert motions (addressing opinions applicable to only an individual Trial Case) should

be filed only in the docket of 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 docket, spreading to the docket of the Trial Cases only, and any motion addressing the case-specific opinions in the appropriate docket of the individual Trial Case(s).

5.6 The court will set the first trial for February 19, 2020, or the trial setting most convenient for the court. The court will schedule a pre-trial conference for purpose of trial at an appropriate time in accordance with LR 16.3. Deadlines for filing motions in limine, witness lists, and exhibit lists in the Trial Cases will be established at a later date.

5.7 A settlement conference for the first selected trial shall occur no later than January 6, 2020.

5.8 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.

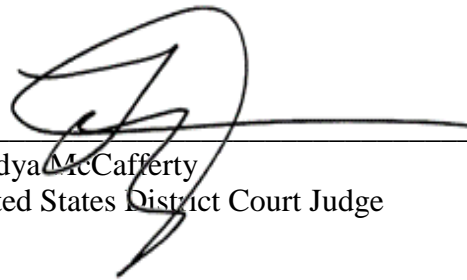
5.9 Lead/Liaison Counsel shall be responsible for keeping counsel that they represent fully apprised of the scheduling of any depositions in MDL 2753. As to defendants' general experts, plaintiffs' lead counsel shall designate who will question the witness.

5.10 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 May 3, 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.

5.11 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.

SO ORDERED.



Landya McCafferty
United States District Court Judge

May 29, 2018

cc: All Counsel of Record