

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

MIRENA IUD PRODUCTS LIABILITY LITIGATION

This Document Relates To All Actions
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ORDER No. 24
(Second
Disposition Pool)

13-MD-2434 (CS)
13-MC-2434 (CS)

CASE MANAGEMENT ORDER RE:
SECOND DISPOSITION POOL SELECTION PROCESS

Seibel, J.

This Order governs the selection of cases pending in MDL No. 2434 to be included in the Second Disposition Pool.

I. Selection of Cases for the Second Disposition Pool

1. Each side shall select five cases for potential inclusion in the Second Disposition Pool. Only cases with a Plaintiff Fact Sheet in which the Core Criteria has been completed by May 1, 2015 are eligible for selection to the Second Disposition Pool. Each side may select up to two cases previously struck from the Initial Disposition Pool. By 4 p.m. Eastern on July 2, 2015, Lead Counsel for the Plaintiffs' Steering Committee ("PSC") and Lead Counsel for the Defendants shall identify to the Court by email each party's selections for the Second Disposition Pool.

2. The Court expects the parties to exercise good faith in selecting cases for potential inclusion in the Second Disposition Pool, and to not select cases presenting unique or idiosyncratic facts that would render the results of these cases unenlightening. The Court cannot police this request and will not entertain applications regarding whether one side or another has abided by it. The Court merely sets forth its expectations.

3. An additional five cases shall be chosen at random from all cases which have been filed and a Plaintiff Fact Sheet with Core Criteria completed served as of May 1, 2015. To accomplish this, by June 16, 2015, Defense counsel will provide a complete list of cases to Lead Counsel for the PSC with each case consecutively assigned a number beginning with the number 1 (*e.g.*, 1 through 500). On June 23, 2015, the parties shall inform the Court of the total number of cases on the list. On June 29, 2015, the Court shall identify a random five numbers in the range between 1 and the highest numbered case. The five cases corresponding to those numbers shall be the included in the Second Disposition Pool.

II. Voluntary Dismissal of Second Disposition Pool Cases

4. After a case is selected for inclusion in the Second Disposition Pool, a case may not be voluntarily dismissed without prejudice without a showing of good cause.

5. If a Second Disposition Pool case that is selected by the Defendants is voluntarily dismissed by Plaintiffs, Defendants shall identify a replacement case to the Court within fourteen days of the dismissal order.

6. If a Second Disposition Pool case selected by Defendants is voluntarily dismissed with prejudice by Plaintiffs after September 15, 2015 or more than 30 days after selection, whichever comes later, Defendants shall, within fourteen days of the dismissal order either (i) identify up to two replacement cases, or (ii) identify a case selected by Plaintiffs to remove from the Second Disposition Pool. In the event that Defendants choose option (ii), neither the dismissed case nor the removed case shall be replaced. If a voluntary dismissal and subsequent removal of a case from the Second Disposition Pool pursuant to option (ii) would cause the number of cases in the Second Disposition Pool to fall under six total cases, then Defendants must choose option (i).

7. If a Second Disposition Pool case selected by Defendants is voluntarily dismissed

without prejudice pursuant to ¶II.4 by Plaintiffs after September 15, 2015 or more than 30 days after selection, whichever comes later, Defendants shall, within fourteen days of the dismissal order identify two replacement cases.

8. If a Second Disposition Pool case selected by Plaintiffs is voluntarily dismissed **without** prejudice pursuant to ¶II.4 by Plaintiffs more than 90 days before the close of case-specific discovery, Plaintiffs shall identify a replacement case within fourteen days of the dismissal order. If a Second Disposition Pool case selected by Plaintiffs is voluntarily dismissed without prejudice pursuant to ¶II.4 by Plaintiffs less than 90 days before the close of case specific discovery, Plaintiffs shall not be entitled to a replacement case.

9. If a Second Disposition Pool case that is randomly selected by the Court is voluntarily dismissed more than 90 days before the close of case-specific discovery, the Court shall identify a replacement case by selecting a number from the numbers previously assigned to the Court. If a Second Disposition Pool case that is randomly selected by the Court is voluntarily dismissed less than 90 days before the close of case-specific discovery, the case will not be replaced.

10. If a Second Disposition Pool case selected by Plaintiffs is voluntarily dismissed due to resolution, Plaintiffs shall identify a replacement case to the Court within fourteen days of the dismissal order.

11. If a Second Disposition Pool case selected by Defendants is voluntarily dismissed due to resolution, Defendants shall not be entitled to a replacement case.

12. If a Second Disposition Pool case selected by Plaintiffs is voluntarily dismissed with prejudice plaintiffs shall not be entitled to a replacement case.

III. Venue Waiver in Second Disposition Pool Cases

13. If a party in a Second Disposition Pool case that is later selected for trial refuses to

waive venue objections and consent to trial in the Southern District of New York, that party will be expected to consent to trial by the undersigned in the district where venue is proper.

14. By 4 p.m. Eastern on August 28, 2015 or 30 days after selection for the Second Disposition Pool, whichever comes later, the parties will inform the Court and opposing counsel by email whether they agree to waive any venue objections and consent to trial in the Southern District of New York. If a party declines to waive its venue objection, the party shall identify the district in which it believes venue is proper.

IV. Schedule for Second Disposition Pool

15. Generic discovery is governed by CMO 9A.

16. Case-specific discovery in the Second Disposition Pool shall be completed by February 18, 2016. Upon agreement or showing of good cause, case-specific discovery may continue beyond February 18, 2016.

17. Each side shall select four of the Second Disposition Pool cases for trial and shall identify its selections by e-mail to the Court and opposing counsel by 4 p.m. Eastern on March 4, 2016. Each side shall exercise two vetoes from the other side's selections and inform the Court of such by email by 4 p.m. Eastern on March 11, 2016. Nothing in this Order shall prevent dispositive motions from being filed in cases that are not selected for trial upon application to the Court.

18. Generic expert reports are governed by CMO 9A.

19. Plaintiffs' case-specific expert reports for the cases selected for trial are due on May 1, 2016. Defendants' case-specific expert reports for cases selected for trial are due on June 1, 2016.

20. The parties shall conduct depositions of all experts for the cases selected for trial between June 15, 2016 and September 15, 2016. Plaintiffs shall not depose any defense expert

on a case as to which Defendants have not already deposed Plaintiffs' case-specific expert(s).

21. By August 15, 2016, the Court will set briefing schedules for dispositive motions and *Daubert* motions as well as a trial schedule for the Second Disposition Pool Trial Cases.

V. Sales Representative Custodial Productions

22. CMO 18C will apply to cases in the Second Disposition Pool subject to the following deadlines: Plaintiffs shall identify all sales representatives pursuant to Paragraph 1 of CMO 18C by:

- a. 4 p.m. Eastern on August 17, 2015;
- b. 30 days after selection for the Second Disposition Pool; or
- c. 30 days after Defendants have provided a completed Defense Fact Sheet

identifying all sales representatives, whichever comes later.

SO ORDERED.

Dated: April 20, 2015
White Plains, New York



CATHY SEIBEL, U.S.D.J.