

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

IN RE: KUGEL MESH HERNIA PATCH  
PRODUCT LIABILITY LITIGATION

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) MDL Docket No. 07-1842-ML  
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THIS DOCUMENT RELATES TO ALL  
CASES

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) JUDGE LISI  
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~~PROPOSED~~ ORDER SETTING PROCEDURES FOR INDIVIDUAL CASE  
SETTLEMENT EVALUATIONS

This Order Setting Procedures for Individual Case Settlement Evaluations (“Order”) follows the Open Conference held on April 30, 2012, in which the Court stated that it would issue an order relating to these issues on its own authority, pursuant to Federal Rule of Civil Procedure 16.

Thus, this Order shall apply to every case that is currently part of the MDL proceeding as of the date of this Order and to all subsequently filed cases that become part of this MDL proceeding.

**1. Plaintiffs Are to Categorize Their Cases and Provide Key Documentation**

All plaintiffs whose cases have not settled are ordered to categorize their cases into one of the six mutually exclusive categories listed below in writing and to provide key documentation to Plaintiffs’ Liaison Counsel, Donald A. Migliori, Esq., of Motley Rice LLC in Providence, Rhode Island within thirty (30) days of the date of this Order, except upon a showing of good cause and extraordinary circumstances.

For those cases where plaintiff’s counsel believes he has good cause and extraordinary circumstances, plaintiff’s counsel is to meet and confer with Defendants’ Counsel and Plaintiffs’ Liaison Counsel to discuss reasonable extensions. Defendants’ Counsel shall reasonably agree, where requested, to allow plaintiffs’ counsel to issue subpoenas to medical care providers to obtain documentation required by this Order only where other informal discovery methods have failed to secure such documentation. Only upon the exhaustion of the meet and confer process shall the plaintiff seek assistance from the Court and describe the good cause and extraordinary circumstances. Plaintiffs are encouraged to seek out Plaintiffs’ Liaison Counsel’s assistance, if needed.

The six categories are:

**Category 1** - Confirmed ring break cases that include: (i) extensive or permanent injury, such as bowel resection, perforation, fistula; (ii) extensive stays in the hospital and/or multiple stays in the hospital shortly after surgery; and (iii) substantial (i.e. in the six figures) medical, lost wages and out-of-pocket losses.

**Category 2** - Confirmed ring break cases with moderate or low injuries (no bowel resection or fistula) and/or losses.

**Category 3** - Cases involving a ringed product with evidence of a "buckle/fold/wrinkle/ balled-up/contracted/curled" mesh that include: (i) extensive or permanent injury, such as bowel resection and/or fistula; (ii) extensive stays in hospital and/or multiple stays in hospital shortly after surgery; and (iii) substantial (i.e., in the six figures) medical, lost wages and out-of-pocket losses.

**Category 4** - Cases involving a ringed product with evidence of a "buckle/fold/wrinkle/ balled-up/contracted/curled" mesh with moderate or low injuries and/or losses.

**Category 5** - Cases involving a ringed product, without evidence of a ring break or a "buckle/fold" etc., where the product has been prophylactically explanted or has been explanted for reasons including infection and recurrent hernias.

**Category 6** - Cases where: (i) the patch at issue has not been explanted, but remains in the claimant's body; and/or (ii) the patch at issue is a non-ringed product (e.g. Composix Mesh and E/X cases).

The documents that plaintiffs must provide to Defendants' Counsel, if available, include: (i) implant operative report and related pathology reports, CT scan and other imaging reports and all photos of any explanted patch and/or claimed injury; (ii) explant operative report and related pathology reports, CT scan and other imaging reports and all photos of any explanted patch and/or claimed injury; (iii) product ID sticker; (iv) any other information that substantiates claimed injuries; and (v) claimed dollar-amount of damages relating to alleged injuries. To the extent that Defendants' Counsel possesses these documents, plaintiffs need not reproduce these records. However, if Defendants' Counsel does not possess these documents, plaintiffs shall reproduce these records.

Plaintiffs' Liaison Counsel shall forward to Defendants' Counsel a copy of the letter and/or documentation received from plaintiffs' counsel as soon as reasonably practicable after receipt. If plaintiffs have not categorized their cases into one of the six mutually exclusive categories listed above and/or have not provided the key documents in full, and/or have not been provided with an extension of time to obtain medical records reasonably necessary to comply with this Order, Defendants shall have thirty (30) days from the last date of the expected receipt of the categorizations and/or key documentation to send deficiency letters to counsel for those deficient plaintiffs.

Plaintiffs shall then have thirty (30) days from the date of Defendants' Counsel's letter to provide categorizations to Plaintiffs' Liaison Counsel. Should plaintiffs' counsel fail to do so within the time period allotted, Defendants is entitled to seek an Order to Show Cause why the case should not be dismissed. Any such filing shall be served on Plaintiffs' Liaison Counsel and plaintiffs' individual counsel, with any response to be submitted within fifteen (15) days following the date of service. Any such motion shall contain the efforts the Defendants' Counsel made to meet and confer regarding the lack of case categorization.

## **2. Plaintiffs Are to Update Their Plaintiff Fact Sheets**

This Order amends the Order Amending the Amended Case Management Order and the Amended Case Management Order (docket numbers 3461 and 257) and requires plaintiffs whose cases have not settled and whose Plaintiff Fact Sheets are older than six (6) months from the date of this Order or who have never submitted a Plaintiff Fact Sheet and who are beyond the time period to submit one to update their Plaintiff Fact Sheets within sixty (60) days of the date of this Order, except Plaintiffs' firms with inventories at least ten (10) cases shall submit updated Plaintiff Fact Sheets within ninety (90) days of the date of this Order. The deficiency process stated in docket numbers 257 and 3461 shall apply, including, but not limited to, Defendants

seeking an order to show cause as to why a case should not be dismissed, although those orders shall be modified such that Defendants shall have thirty (30) days from the date of the receipt of the updated Plaintiff Fact Sheet to send deficiency letters to those plaintiffs for whom Defendants' records indicate that no Plaintiff Fact Sheet has been received and/or who have previously submitted timely Plaintiff Fact Sheets that contain a "material deficiency" and/or to challenge plaintiffs' categorization.

**3. The Parties Are to Conduct Settlement Discussions and, If Unsuccessful, Court Ordered Settlement Conferences Shall Be Set**

Only after the categorizations identified in paragraph 1 above have been completed, the documents stated in paragraph 1 have been provided, an updated Plaintiff Fact Sheet, if required, identified in paragraph 2 above has been provided, and the receipt of these and any reasonable requests for additional materials made by Defendants' Counsel, Defendants' Counsel shall negotiate in good faith in an attempt to resolve the individual plaintiff's case.

For those cases that do not resolve, Plaintiffs' Liaison Counsel and Defendants' Counsel will meet and confer to establish a schedule for setting the first round of Court-ordered settlement conferences. The parties will continue to seek to resolve cases prior to the date of the settlement conferences. If successful, the parties will notify the Court as quickly as reasonably practicable and shall recommend, if reasonably practicable, an alternative case to be slotted into the date and time.

4. All other terms of the Order Amending the Amended Case Management Order and the Amended Case Management Order (docket numbers 3461 and 257) shall remain in effect.

IT IS SO ORDERED.

Date: May 22, 2012

/s/Mary M. Lisi  
CHIEF JUDGE MARY M. LISI  
UNITED STATES DISTRICT JUDGE