

FILED

SEP 30 2020

RACHELLE L. HARZ

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY**

**IN RE: ALLERGAN BIOCELL
TEXTURED BREAST IMPLANT
PRODUCTS LIABILITY LITIGATION**

**MCL NO. 634
MASTER DOCKET NO. BER-L-5064-20**

This Document Relates to All Actions

**CASE MANAGEMENT ORDER # 5
(Master Long Form Complaint and Short-Form Adoptions Thereof)**

The Court finds that the Parties have conferred regarding a Case Management Order addressing Plaintiffs' Master Long Form Complaint and Jury Demand, filed on August 31, 2020 ("Master Complaint"), to be utilized in this Multicounty Litigation ("MCL"). The Parties having stipulated thereto, and for other good cause shown, it is **ORDERED** as follows:

I. GENERAL PROVISIONS

A. Scope of Order. This Order shall apply to all cases currently pending in MCL 634 and to all related actions that have been or will in the future be originally filed in or transferred to or remanded to MCL 634. This Order is binding on all parties and their counsel in all such cases.

B. Purpose of Order. In light of the number of complaints filed to date and likely to be filed in the future in MCL 634, the Parties have agreed to the following procedures. This Order is not intended to alter the applicable provisions of the Rules Governing the Courts of the State of New Jersey, except as otherwise provided herein or in any subsequent Case Management Order.

II. MASTER LONG FORM COMPLAINT AND MASTER SHORT FORM COMPLAINT

A. The Master Complaint is deemed filed as of August 31, 2020, and shall be deemed pleaded in all cases filed in this MCL.

B. The Court hereby **APPROVES** the Master Short Form Complaint attached to this Order as Exhibit A.

C. Every personal injury plaintiff with a pending action in MCL 634 as of the entry of this Order shall refile their respective actions within sixty (60) days of the entry of this Order utilizing the Master Short Form Complaint. Any individual complaint re-filed via a Short Form Complaint within the time provided in this section will be deemed to have been filed on, and relate back to, the original filing date of the initial Complaint.

D. All personal injury actions that are filed in MCL 634 after the date of this Order shall be filed utilizing the Master Short Form Complaint attached as Exhibit A.

E. All previously filed actions that have been or will be transferred or remanded to MCL 634 shall refile their respective cases within sixty (60) days of their case being docketed in MCL 634, utilizing the Master Short Form Complaint attached as Exhibit A.

F. When filing their Short Form Complaint(s) in cases that have already been filed, plaintiffs shall refer to and insert their original, individual docket number(s) to avoid the triggering of a filing fee. Nothing in this CMO or the filing of a short form complaint shall be construed as a dismissal of a prior filed complaint.

G. Pursuant to CMO No. 3, all plaintiffs filing Short Form complaints must use their full names and are prohibited from identifying themselves by their initials or other pseudonyms.

H. All cases that are filed after the entry of this Order shall pay the filing fee upon filing of the Short Form Complaint in accordance with normal practice (see Section III below).

III. ADDITIONAL PROVISIONS REGARDING MASTER PERSONAL INJURY COMPLAINT AND MASTER SHORT FORM COMPLAINT

A. It is the duty of the counsel representing any plaintiff(s) pursuing claims in MCL 634 to ensure that the Short Form Complaint(s) is completed properly, including any additional causes of action pleaded thereto.

B. All Short Form Complaints and individual actions shall be filed on e-courts, in accordance with the Court's Initial CMO, dated June 19, 2020, and CMO No. 3, dated August 24, 2020. Upon receipt of an electronically filed Complaint, wherein the data entered by Plaintiff's Counsel, does not accurately reflect the physical pleading, the Clerk is granted the authority to update the data in the Judiciary's Automated Case Management System (ACMS) to accurately reflect what is listed on the physical pleading absent a subsequent court order. All parties have consented to this provision.

C. Pursuant to CMO No. 2, dated July 31, 2020, service of a Short Form Complaint may be effectuated on defendants Allergan, Inc. and Allergan USA Inc., only, by sending a stamped copy of the Short Form Complaint to MCL634Pleadings@reedsmith.com. Sending an email to this address containing the stamped copy of the Short Form Complaint will constitute good, valid, and official service for these actions under Rule 4:4 as to Allergan, Inc. and Allergan USA, Inc. only. Actions shall be considered served on the date and time of the transmittal of the email containing the aforementioned items. All counsel are directed to refer to CMO No. 2 for the full details regarding timing and procedure for service. By waiving service of process and accepting complaints by email, Allergan, Inc. and Allergan USA Inc. are not waiving any affirmative defenses, but these defendants shall not challenge the adequacy of service if properly made pursuant CMO No. 2.

D. Nothing in this Case Management Order changes the respective roles and duties of Plaintiffs' Liaison Counsel, and the counsel for the individual plaintiffs. Nothing in this CMO confers on Plaintiffs' Liaison Counsel an attorney-client relationship with any individual plaintiff who utilizes the Short Form Complaint and as such, nothing in this CMO prevents counsel representing any individual plaintiff from including additional causes of action.

IV. SEVERANCE OF MULTI-PLAINTIFF COMPLAINTS

A. From the date of this Order, no multi-plaintiff Short Form Complaints may be directly filed in MCL 634. The clerk's office is instructed to reject for filing any multi-plaintiff complaint, except those naming a derivative plaintiff (e.g., cases in which a spouse is asserting a loss of consortium claim or there is some other derivative claim(s) filed based upon the same underlying injury to the recipient of the subject medical device).

B. For the multi-plaintiff complaints currently pending in MCL 634, the Court will issue a "Severance Order" that will sever the individual plaintiffs, but for the first named plaintiff (and derivative plaintiff, if applicable) in the Plaintiff Specific Allegations contained in the complaint. Within sixty (60) days of the issuance of such a Severance Order, the severed plaintiffs shall file separate individual Short Form Complaints pursuant to this Order, attaching the Severance Order as an Attachment to the filing, and pay the required filing fee for that separate individual case. Individual docket numbers will then be assigned for each individual case. Any individual Short Form Complaint filed within the time provided will be deemed to have been filed on and relate back to the original filing date of the applicable multi-plaintiff action. Any statute of limitations defenses that existed as of the filing dates of the original multi-plaintiff complaints are hereby preserved.

C. Counsel for defendants are directed to notify the Court of any multi-plaintiff complaints that are transferred or remanded to MCL 634 following entry of this Order, and the Court will issue a similar "Severance Order" directing any affected to follow the procedures set forth in Section IV, Paragraph B above.

V. MANDATORY COMPLIANCE WITH THIS CMO

Any plaintiff who fails to timely comply with this Order will be subject to involuntary dismissal by the Court pursuant to New Jersey Court Rule 4:37-2. The parties shall meet and confer prior to defendants requesting an Order to Show Cause on any plaintiff's failure to comply with this CMO.

IT IS HEREBY ORDERED:

DATED:
Sept 29, 2020



HON./RACHELLE L. HARZ, J.S.C.

Exhibit A

IN RE: ALLERGAN BIOCELL
TEXTURED BREAST IMPLANT
PRODUCTS LIABILITY LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO.: BER-L-

INSERT NAMES,

Plaintiff[s],

MASTER DOCKET NO. BER-L-5064-20
MCL CASE NO. 634

vs.

Allergan, Inc., Allergan USA, Inc., and
DOES 1-100,

**SHORT-FORM COMPLAINT
AND JURY DEMAND**

Defendants.

1. Plaintiff(s) _____, hereby state(s) and incorporate(s) by reference all of the allegations contained in Plaintiffs' Master Long Form Complaint and Jury Demand ("Master Complaint"), against Defendants Allergan, Inc., and Allergan USA, Inc. ("Allergan"), which are the sole named Defendants pursuant to the Stipulation of Proper Parties which is incorporated herein by reference, and Does 1-100.

2. If a Complaint was filed in this action prior to the filing of this Short Form Complaint, set forth here the date(s) of filing the prior Complaint(s), and ensure that the correct Bergen County docket number is inserted in the caption above: _____

I. IDENTIFICATION OF PLAINTIFFS AND RELATED INTERESTED PARTIES

3. Name and current residence, or residence on date of death, of individual who is alleged to have suffered personal injuries and related damages due to implantation of one or more Allergan Biocell Textured Breast Implant medical devices ("Biocell"):

4. Consortium Claim(s): Name and current residence of individual(s) alleging damages for loss of consortium: _____

5. If a survival and/or wrongful death claim is asserted, set forth Decedent's date of death due to Biocell-related injuries or conditions: _____
6. If this action is filed in a representative capacity, the name and current residence of the individual(s) bringing the claims on behalf of the injured individual or decedent's estate, and the representative capacity (i.e., personal representative, executor, administrator, next of kin, successor in interest, guardian, etc.):

II. DEVICE IDENTIFICATION

7. [Plaintiff/Decedent] was implanted with the following Biocell device[s], which Plaintiff contends caused her injury(ies). Check all that apply and provide all dates of implant and explant:

<input type="checkbox"/> NATRELLE Silicone-filled Breast Implants <input type="checkbox"/> Style 110 <input type="checkbox"/> Style 115 <input type="checkbox"/> Style 120 Date[s] and state of Implant: Date[s] of Explant (if any):	<input type="checkbox"/> NATRELLE Saline-Filled Breast Implants <input type="checkbox"/> Style 163 <input type="checkbox"/> Style 168 <input type="checkbox"/> Style 363 <input type="checkbox"/> Style 468 Date[s] and state of Implant: Date[s] of Explant (if any):
<input type="checkbox"/> NATRELLE 410 Highly Cohesive Anatomically Shaped Silicone-Filled Breast Implants <input type="checkbox"/> Style LL <input type="checkbox"/> Style LM <input type="checkbox"/> Style LF <input type="checkbox"/> Style LX <input type="checkbox"/> Style ML <input type="checkbox"/> Style MM <input type="checkbox"/> Style MF <input type="checkbox"/> Style MX <input type="checkbox"/> Style FL	<input type="checkbox"/> NATRELLE INSPIRA Silicone-Filled Breast Implants <input type="checkbox"/> Style TRL <input type="checkbox"/> Style TRLP <input type="checkbox"/> Style TRM <input type="checkbox"/> Style TRF <input type="checkbox"/> Style TRX <input type="checkbox"/> Style TSL <input type="checkbox"/> Style TSLP <input type="checkbox"/> Style TSM <input type="checkbox"/> Style TSF <input type="checkbox"/> Style TSX

<input type="checkbox"/> Style FM <input type="checkbox"/> Style FF <input type="checkbox"/> Style FX Date[s] and state of Implant: Date[s] of Explant (if any):	<input type="checkbox"/> Style TCL <input type="checkbox"/> Style TCLP <input type="checkbox"/> Style TCM <input type="checkbox"/> Style TCF <input type="checkbox"/> Style TCX Date[s] and state of Implant: Date[s] of Explant (if any):
<input type="checkbox"/> McGhan BioDIMENSIONAL® Silicone-Filled BIOCELL® Textured Breast Implants, Style 153 Date[s] and state of Implant: Date[s] of Explant (if any):	<input type="checkbox"/> NATRELLE Dual-Gel Breast Implants <input type="checkbox"/> Style LX <input type="checkbox"/> Style MX <input type="checkbox"/> Style FX. Date[s] and state of Implant: Date[s] of Explant (if any):
<input type="checkbox"/> NATRELLE Komuro Breast Implants <input type="checkbox"/> Style KML <input type="checkbox"/> Style KMM <input type="checkbox"/> Style KLL <input type="checkbox"/> Style RLM Date[s] and state of Implant: Date[s] of Explant (if any):	<input type="checkbox"/> NATRELLE Ritz Princess Breast Implants <input type="checkbox"/> Style RML <input type="checkbox"/> Style RMM <input type="checkbox"/> Style RFL <input type="checkbox"/> Style RFM Date[s] and state of Implant: Date[s] of Explant (if any):
<input type="checkbox"/> NATRELLE 150 Full Height and Short Height double lumen implants. Date[s] and state of Implant: Date[s] of Explant (if any):	<input type="checkbox"/> NATRELLE 133 Plus Tissue Expander Date[s] and state of Implant: Date[s] of Explant (if any):
<input type="checkbox"/> NATRELLE 133 Tissue Expander with Suture Tabs Date[s] and state of Implant: Date[s] of Explant (if any):	<input type="checkbox"/> OTHER (Please describe): Date[s] and state of Implant: Date[s] of Explant (if any):

III. PLAINTIFF'S BIOCELL-RELATED INJURIES

8. Has Plaintiff or Plaintiff's decedent ever been diagnosed with BIA-ALCL:

Yes

No

If Yes, date of diagnosis: _____

IV. CAUSES OF ACTION

9. The following claims asserted in the *Master Long Form Complaint and Jury Demand* are herein adopted by Plaintiff(s):

Count I: Manufacturing Defect

Count II: Failure to Warn

Count III: Breach of Express Warranty

Count IV: Design Defect

Count V: Negligence

Count VI: Consumer Fraud

Count VII: Survivorship and Wrongful Death

Count VIII: Loss of Consortium

Other Claims (please identify non-Allergan Defendant(s) if applicable, and state causes of action, and short summary of factual and legal bases for other claims not included in the Master Complaint; attach a separate sheet or sheets if necessary):

10. As a proximate result of the foregoing, Plaintiff(s) has/have suffered the injuries and damages set forth in the Master Complaint, and any other injuries and damages that may be proven.

WHEREFORE, Plaintiff(s) request the entry of Judgment awarding relief including compensatory damages, punitive damages, treble damages, attorneys fees, costs of suit, interest, and such further relief as the Court deems equitable and just.

V. JURY DEMAND

Plaintiff(s) demand(s) a trial by jury of all claims set forth herein.

VI. DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, Plaintiff(s) hereby designate(s) [INSERT ATTORNEY NAME] as trial counsel.

VII. CERTIFICATION OF VALID RETAINER AGREEMENT

Plaintiff(s)'s counsel of record hereby certifies that the retainer agreement utilized in this action fully complies with the New Jersey Court Rules, including R.1:21-7, and that if there is a recovery in this action, any attorney's fees and expenses shall be deducted and paid pursuant to the New Jersey Court Rules, including R.1:21-7.

[INSERT LAW FIRM NAME]
Attorneys for Plaintiff(s)

By: _____
[INSERT ATTORNEY NAME]

Dated: _____

VIII. RULE 4:5-1 CERTIFICATION:

I hereby certify that to the best of my knowledge the matter in controversy is the subject of numerous other actions filed in the Superior Court, all of which are consolidated and designated as an MCL under Master Docket Number BER-L-5064-20, Case No. 634, and including similar actions filed in the federal MDL assigned to the District of New Jersey, and potentially other state and federal courts, and that no other parties are necessary to join at this time.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

[INSERT ATTORNEY NAME]