

MAR 10 2022

JOHN C. PORTO, J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – ATLANTIC COUNTY

MCL CASE NO: 636

MASTER DOCKET NUMBER: ATL-L-3857-21

IN RE STRATTICE HERNIA MESH
LITIGATION**CASE MANAGEMENT ORDER #7
(Stipulated Order Regarding
Discovery and Deposition
Procedures)**

This matter, having come before the Court on the March 10, 2022 Case Management Conference and Leadership for both Parties having stipulated and agreed to certain procedures surrounding discovery and depositions, and good cause appearing;

IT IS on this 10th day of March 2022

ORDERED that:

I. Service of Correspondence, Discovery, and Deposition Notices

1. Counsel duly admitted *Pro Hac Vice* in this MCL may serve correspondence, deposition notices, and propound discovery and discovery responses via email service to all counsel of record (for individual cases) or to applicable Leadership Counsel (for matters appropriate for MCL docket). Counsel need not serve such correspondence or discovery documents via additional means (e.g. paper copy via mail, hand delivery) unless otherwise agreed to by the Parties and/or ordered by the Court.

II. Depositions by *Pro Hac Vice* Counsel

1. Counsel duly admitted *Pro Hac Vice* in this MCL may propound deposition notices and may conduct and/or attend depositions noticed in this MCL. It is not necessary for a New Jersey licensed counsel to attend a deposition, so long as the examining attorney(s) are duly admitted *Pro Hac Vice*.

III. Deposition Protocols Regarding In-Person Versus Remote Depositions in Light of COVID-19

A. Applicability

1. It is recognized that, at the time of entry of this order, although COVID-19 vaccines are widely available to the public, the United States and other parts of the world may experience COVID-19 surges such that it is prudent to discuss whether a deposition should be done in a remote format due to COVID-19 concerns.

2. Regarding depositions of Parties and Party representatives, agents, employees, and/or retained experts, the Parties shall strive to do depositions in-person. Leadership Counsel shall regularly meet-and-confer regarding whether a COVID-19 concern warrants going forward remotely instead of in-person.¹

3. Regarding depositions of a treating physician or other independent third-party, the Parties shall endeavor to conduct the deposition in-person. If the treating physician or independent third-party requests that the deposition be done in a remote format, the parties shall meet and confer in good faith to determine the appropriate manner to conduct the deposition and attempt to accommodate the treating physician or independent third party's request. Any disagreements regarding the manner in which the deposition is taken may be raised with the Court.

B. Protective Measures for In-Person Depositions

a. Any in-person deposition must be conducted in accordance with all applicable CDC and state mandates regarding COVID-19 and health, social distancing, and travel-related orders and mandates arising therefrom.

¹ When discussing COVID-19 concerns, the Parties should discuss circumstances with particularity, for example, if there occurs a significant surge in COVID-19 cases and/or a rise of COVID-19 variants, particularly variants deemed more contagious and/or deadly.

2. At least 7 days prior to a deposition, the Parties shall meet-and-confer to discuss ensuring the comfort and safety of the attorneys, staff, and witness, including, but not limited to, discussing the size of the meeting room and number of persons anticipated to be in attendance so that the Parties can ensure that the meeting room can comfortably accommodate the number of people anticipated to attend.

C. Procedures for Remote Depositions

1. Remote depositions shall occur through a videoconferencing platform. ZOOM shall serve as the preferred remote deposition platform. These depositions may, at the taking party's discretion, be videotaped by a videographer such that the deponent is being recorded both stenographically and on video while on the record.

2. In a remote deposition, all parties, including the attorneys, the court reporter and videographer, shall appear remotely. For the deposition of Parties and Party representatives, agents, or employees, one attorney representing the witness has the right to be physically present in the room with the witness should they choose. In this instance, any person in the room with the witness shall have their own ZOOM window open with webcam turned on ("on screen") and pointed on them while on the record, and all persons in the room with the witness during the deposition shall identify themselves on the record.

3. The witness as well as the attorneys examining and defending the witness shall be "on screen" during the entire deposition while on the record. Attorneys shall not be recorded. Attorneys attending remotely but not examining need not be "on screen" during the deposition.

4. The remote deponent will be responsible for having adequate, functioning and sufficient technology to participate in the deposition (adequate internet connectivity, webcam, microphone, computer with ability for split screen, etc.). The party defending the witness shall

coordinate with the witness in advance of the deposition to ensure to the best of their efforts that the technology is sufficient and functional. The party requesting the deposition may request to perform a “test run” reasonably in advance of the deposition, to which the defending attorney and witness should reasonably accommodate. Should the deponent require renting additional hardware and/or software to ensure sufficient connectivity and ability to participate without technological issues, then the deponent shall be entitled to rent such equipment from the applicable court reporting firm designated to staff the deposition. The party noticing the deposition shall pay the costs associated with any such technological needs.

5. The remote deponent is not permitted to utilize any communicative device or software during the deposition and the deponent shall not chat, message, text, or use any other communication medium to communicate with their counsel or any other person while on the record. Any and all prohibitions regarding substantive conversations with the witness that would be in effect during an “in person” deposition will remain in place.

6. The parties agree that the court reporter may administer the oath remotely, and any oaths administered remotely will satisfy the requirements of New Jersey Court Rule 4:14-3.

7. For depositions taken outside of the United States, a court reporter appearing remotely in the United States may administer the oath to a foreign deponent.

8. Any oath administered remotely shall be deemed to have the same effect as an oath administered in person.

9. All persons participating in and/or observing a remote deposition shall be identified on the record.

10. Use of exhibits at deposition can include, but are not limited to the following:

- i. Electronic exhibits that are shared/marked during the deposition as needed. If exhibits are entered electronically, they must be a) displayed on screen to the witness, and b) shared with opposing counsel via instant access through a sharefile, dropbox, chat link, or other medium to enable instant transmission to opposing counsel.
 - ii. Hard copies of exhibits sent to the court reporter and the witness in sealed envelopes in advance of the deposition and admitted during the deposition. Should examining counsel elect hard copy transmission, the method of transmission and sealing of exhibits will be agreed to by the parties in advance of the deposition.
11. Should counsel admit exhibits electronically, counsel shall ensure that technology enables the exhibits to be displayed electronically and enable a witness to scroll up or back in the document and/or ask the questioning attorney or technician to scroll so that the witness may see some or all of the document before or during examination about the exhibit.
12. In the event exhibits are introduced at deposition, all objections as to admissibility are reserved.
13. All documents remaining in possession of the witness must be returned pursuant to protective order at the close of the deposition.

The Parties, by undersigned counsel, hereby consent to the form and entry of this Stipulated Order.

Dated: March 10, 2022

s/Derek Braslow

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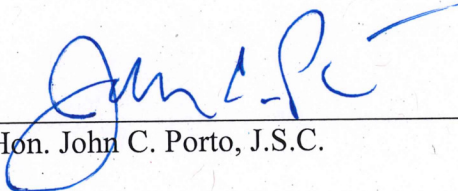
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IT IS SO ORDERED

Dated: March 10, 2022



Hon. John C. Porto, J.S.C.