

DOCKET NO.: UWY-CV-14-6025333S : **SUPERIOR COURT**
ROBIN SHERWOOD and
GREG HOELSCHER : **COMPLEX DOCKET**
V. : **AT WATERBURY**
STAMFORD HEALTH SYSTEM, INC.
D/B/A STAMFORD HOSPITAL : **May 4, 2016**

REPLY REGARDING SCHEDULING ORDER

Stamford Health System, Inc. (“Stamford Hospital”) and Ethicon, Inc. and Johnson & Johnson (collectively “Ethicon”) respectfully submit this caseflow request.

For some time, defense counsel have believed that the current trial date (jury selection / trial scheduled for 1/10/2017) is unworkable because of the difficulties they have had in trying to obtain basic discovery from Plaintiffs. For example, Stamford Hospital propounded interrogatories and document requests last year, yet Plaintiffs have not yet responded to the discovery requests. In the discovery requests, Defendants requested Ms. Sherwood to identify her medical providers. Without a list of medical providers, Defendants have not been able to obtain a complete set of medical records, and it may be several months before Defendants will have a complete set of records.¹ Because Defendants do not have a complete set of Plaintiffs’ medical records, the parties have not been able to take any depositions. Despite this, however, Plaintiffs’ counsel maintains that the case is nearly trial ready (see DE 141).

As it stands now, seven months before jury selection, Defendants do not have a complete set of medical records, have not deposed Plaintiffs, and have not deposed any of Ms. Sherwood’s

¹ Without a list of providers, obtaining medical records is an iterative process. Counsel obtains medical records from a provider which references other healthcare providers. Defendants then send new authorizations out to new providers. Defense counsel received a large amount of medical records recently and is reviewing them and sending out new records requests. It may be several months before defense counsel have a complete set of records.

treating physicians, of which there are more than a dozen.² Additionally, other than the scheduled trial date, the Court has not issued a scheduling order in the action. Therefore, there is no deadline for completing written discovery, deposing fact witnesses, disclosing expert witnesses, and completing expert depositions. Given the complexity of the issues involved, Defendants expect Plaintiffs will need to identify at least two experts and Defendants will likely need to identify at least three experts, all of whom will need to be deposed. Moreover, Defendants intend to notice an independent medical examination (“IME”) of Ms. Sherwood. Ethicon made a similar request in the *Farrell* action, which Plaintiffs’ counsel opposed, and Ethicon anticipates the issue of the IME will likely need to be litigated in this action. Finally, Defendants expect to move for summary judgment, and in order to provide the Court with 120 days as required by Practice Book § 11-19(a), briefing on the dispositive motions would need to be completed by September 2016, which means the motions would need to be filed by August 2016.

Defense counsel is well aware of the Court’s admonition to work with Plaintiffs’ counsel and avoid unnecessary motion practice. To that end, defense counsel have acquiesced to Plaintiffs’ repeated requests for more time for discovery. Nevertheless, given the current status of the action, and the fact that discovery has barely begun, defense counsel believe the January 10, 2017 date for jury selection / trial is unworkable. Defense counsel have had multiple conversations with Plaintiffs’ counsel to try to reach an agreement to continue the trial date. Despite those efforts, however, Plaintiffs’ counsel has refused to agree to move the trial date. .

² Many of the treaters are located in Connecticut, but some treaters are located in California and some are located in New York. The out-of-state depositions may require the issuance of commissions from the Court and will require defense counsel to serve the witnesses with subpoenas. Based on previous experience, it can be very difficult to schedule depositions of doctors and medical providers given their work schedules. Also, trying to schedule and take depositions in the summer is difficult given witnesses’ vacation plans.

Counsel for Stamford Hospital previously submitted a proposed scheduling order (DE 140) and would like the opportunity to meet with the Court, either telephonically or in person, to modify the existing scheduling order at the first available date. Defense counsel is deeply concerned that defendants will be prejudiced if the trial date is not changed and the proposed scheduling order, or something similar, is not entered.

DEFENDANT,
THE STAMFORD HEALTH SYSTEMS INC.

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CERTIFICATION

This is to certify that a copy of the foregoing was emailed this 4th day of May, 2016 to the

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