

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

CATHRINA ELLIS, ET AL.

VERSUS

ETHICON, INC., ET AL.

CIVIL ACTION

NO. 09-949-JJB-SCR

**RULING AND ORDER**

This matter is before the Court on a motion (doc. 44) for summary judgment or, alternatively, for the entry of a *Lone Pine* case management order, filed by defendants Johnson & Johnson and Ethicon, Inc. In opposition, plaintiffs have filed a Rule 56(f) motion (doc. 46) to dismiss or, alternatively, for continuance. Defendants have filed an opposition (doc. 50) to plaintiffs' motion, and plaintiffs have filed a reply (doc. 53). There is no need for oral argument.


Defendants' motion argues that plaintiffs' claim fails for lack of product identification and also because "it will be impossible for them to prove specific causation." Plaintiffs' opposing motion argues that defendants' motion should presently be denied because the disputes in this case are "intensively fact-based" and discovery has only recently begun. Plaintiffs specifically identify depositions and other necessary discovery being sought, which plaintiffs argue are necessary to provide additional support for their claims and to adequately oppose a motion for summary judgment. Plaintiffs correctly cite Fifth Circuit precedent which provides, "[t]he purpose of Rule 56(f) is to provide non-movants with a much needed tool to keep open the doors of discovery in order to

adequately combat a summary judgment motion.” *Wichita Falls Office Assocs. v. Banc One Corp.*, 978 F.2d 915, 919 (5th Cir. 1992). Such Rule 56(f) motions are broadly favored and should be liberally granted to effectuate that purpose. *Culwell v. City of Fort Worth*, 468 F.3d 868, 871 (5th Cir. 2006).

This court agrees with plaintiffs and finds that further opportunity for discovery is both necessary and appropriate. Indeed, the discovery deadlines previously imposed by this court reflect accordingly. Entry of a *Lone Pine* case management order is not necessary at this time.

For the foregoing reasons, plaintiffs’ Rule 56(f) Motion (doc. 46) is granted insofar as it requests that defendants’ motion for summary judgment be denied. Defendants’ motion (doc. 44) for summary judgment or, alternatively, for entry of *Lone Pine* case management order, is denied without prejudice. Defendants are free to file another motion for summary judgment after conclusion of discovery.

Signed in Baton Rouge, Louisiana, on December 6, 2010.



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**JUDGE JAMES J. BRADY**  
**UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF LOUISIANA**