

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
DOCKET NO. 1:15-cv-00091-MOC

**TERI MATHISON and
NORMAN MATHISON,**

Plaintiff,

v.

BOSTON SCIENTIFIC CORPORATION,

Defendant.

BERTIE FRANKUM,

Plaintiff,

v.

BOSTON SCIENTIFIC CORPORATION,

Defendant.

ORDER

THIS MATTER is before the court on several Motions of the parties. The court held a Final Pretrial Conference in this matter on January 4, 2016, at which time the court addressed these motions as they relate to the upcoming trial in this case, currently scheduled to begin February 1, 2016. At that time, the parties discussed with the court the potential benefits to continuing the upcoming trial to the April 2016 Asheville mixed term. Having conferred with counsel since the pretrial conference, it appears that all parties wish to have additional time to prepare for trial. For good cause, the court will grant its own motion to continue this matter to April. Additionally, for the reasons stated at the hearing and as explained herein, the court will enter the following Order as to the relief requested by the parties by their motions.

ORDER

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' "Motion to Permit Live Trial Testimony via Contemporaneous Transmission" (#137) is **GRANTED** as to Janice Connor, James Goddard, and Doreen Rao, as the court finds that good cause exists and justifies the requested relief pursuant to Fed. R. Civ. P. 43(a). Counsel is expected to make the necessary arrangements with court personnel in advance of trial. The relief requested in Plaintiffs' Motion (#137) as to Robert Miragliulo is **DENIED WITHOUT PREJUDICE**, and Plaintiffs may re-assert such motion pending this court's ruling on Plaintiff's Motion in Limine "regarding the FDA and other regulatory issues" (#144);
2. Defendants' "Motion to Strike Dr. Vladimir Iakovlev's December 9, 2015 Expert Report" (#140) is **DENIED** for the reasons explained at the hearing, and taking into account the court's granting of additional time for Defendant to adequately prepare for the inclusion of such report at trial;
3. Plaintiff's "Motion to Clarify, or in the Alternative, to Modify, Daubert Ruling in Relation to Jerry G. Blaivas, M.D." (#147) is **GRANTED** to the extent that Plaintiff seeks to have Dr. Blaivas offer the opinion at trial that polypropylene mid-urethral slings are not safe in the treatment of stress urinary incontinence, for the reasons explained at the hearing and taking into account the court's granting of additional time for Defendant to adequately prepare for the inclusion of such opinion at trial;
and

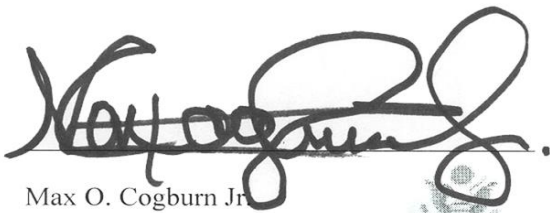
4. Defendants' "Motion to Strike Plaintiffs' Improper and Untimely Expert Disclosures" (#151) is **DENIED** for the reasons explained at the hearing and taking into account the court's granting of additional time for Defendant to adequately prepare for the inclusion of the reports of Dr. Iakovlev and Dr. Blaivas, the statements and opinions of physicians Dr. Geller and Dr. Zolnoun, and the to-be-filed report of Dr. Harris in accordance with the requirements of Rule 26.

IT IS FURTHER ORDERED that the following motions shall remain on the docket for disposition upon a date closer to trial of this matter:

1. Defendants' "Motion in Limine" (#143), listing twelve motions in limine;
2. Plaintiffs' "Motion in Limine No. 1 to Exclude Evidence Related to the FDA 510(k) Process" (#144);
3. Plaintiffs' "Motion in Limine No. 2 To Exclude Evidence of AUGS-SUFU Position Statement" (#146); and
4. Plaintiffs' "Omnibus Motion in Limine" (#145), asserting Motions in Limine No. 3-6.

IT IS FURTHER ORDERED that this matter be continued from the February mixed term, and the Clerk of Court is respectfully requested to place this matter on the calendar for a jury trial in the April 2016 mixed term in Asheville, which commences April 4, 2016.

Signed: January 8, 2016



Max O. Cogburn Jr.
United States District Judge