

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: :

MIRENA IUS LEVONORGESTREL-RELATED
PRODUCTS LIABILITY LITIGATION (NO. II) :

This Document Relates to All Actions :
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17-MD-2767 (PAE)
17-MC-2767 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has reviewed the parties' joint letter (Dkt. 130) setting forth the parties' alternative proposals for the format of the April 9 Science Day proceeding. The Court's views are as follows:

1. The Court does not wish to hear from counsel on Science Day. The purpose of Science Day is to educate the Court about scientific and medical matters, to assist the Court in understanding the science and medicine relevant to this overall case. The Court instead wishes to hear expert presentations, *i.e.*, by physician(s) and/or scientist(s). The Court envisions that such presentations would each take the form of an expert tutorial/lecture as to background scientific questions, supported by a Power Point and/or other demonstrative visuals.

2. The parties will be allowed to lead the experts through a modified direct format to focus the tutorial/lecture presentation(s). For avoidance of doubt, the Court expects that counsel's questions at these examinations will be non-leading and that counsel's participation will be non-obtrusive. The purpose of counsel's questions is solely to guide the expert to assure that all identified topics are covered. If the Court perceives that a presentation is being used as advocacy, the Court will terminate the presentation.

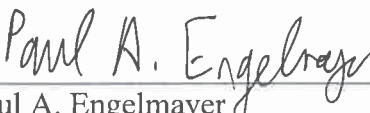
3. The Court asks counsel to jointly develop and submit to the Court by Monday, March 5, 2018 a letter listing the topics proposed to be covered, along the lines of the lists of topics that

appear in the orders attached as exhibits to the letter at Dkt. 130. Counsel should assume a complete lack of familiarity on the Court's part with the relevant science and medicine, including as to the means by which the Mirena IUD is intended to effectively operate. The Court also welcomes, in the same letter, counsel's joint suggestions as to the allocation of time for each side's expert(s). Inasmuch as it appears that the parties will be unable to identify a common expert, the Court expects that an identical amount of time (*e.g.*, 2 hours or 2.5 hours apiece) will be allocated to each side, beginning with plaintiffs' expert(s) and followed by defendants' expert(s). The Court rejects the idea of allocating "response" time afterwards, as the purpose of Science Day is education, not advocacy.

4. Counsel's concerns about exposing to the Court, during Science Day, witnesses whose expert testimony will be at issue in the pending *Daubert* litigation is well taken. The Court expects that counsel, for the purposes of the Science Day tutorial, will utilize doctors or scientists whose testimony is not at issue in the *Daubert* hearing (*e.g.*, consulting experts with whom counsel are working).

5. The Science Day presentations will be "off the record." A transcript will be prepared by a court reporter but will be accessible only to the Court. The transcript may not be ordered by, and will not be made available to, the public or the parties. Presentations at Science Day are solely for the Court's benefit to gather informal knowledge, shall not be used to question or impeach any witness, and are not admissible for any purpose in the litigation.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: February 28, 2018
New York, New York