IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

IN RE MENTOR CORP. OBTAPE	*	
TRANSOBTURATOR SLING PRODUCTS	*	MDL Docket No. 2004 4:08-MD-2004(CDL)
LIABILITY LITIGATION	*	ALL CASES

O R D E R

Mentor produced two sample ObTape Transobturator Tapes to Plaintiffs on April 15, 2009. Mentor refuses to stipulate that the samples are authentic and the same as those sold in the U.S. for implantation in women, contending that Mentor cannot determine the chain of custody for the ObTape samples and that the samples were not maintained in the same manner as ObTape that was marketed and sold for implantation. Plaintiffs intend to have the samples analyzed in advance of trial, and they ask the Court to establish the authenticity of the samples.

The Court notes that the issues raised by Mentor regarding chain of custody, storage and expiration date of the ObTape samples likely affect the weight of the evidence rather than its authenticity. However, the Court is not convinced that it is appropriate to issue a ruling on the authenticity of the evidence under the present circumstances and based on the existing record, and the Court cannot compel Mentor to stipulate to the authenticity of the samples. Accordingly, Plaintiffs' Motion to Establish the Authenticity of the Sample ObTape (Doc. 90) is denied.

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The Court does find, however, that Plaintiffs must be given an opportunity to obtain the best ObTape sample available. If the two ObTape samples produced in April 2009 are not the best samples available, Mentor shall produce, within ten days of the date of this Order, the best sample available. If Mentor refuses to stipulate to the authenticity of the best sample available, Mentor shall, within fourteen days of identifying the best ObTape sample available, identify the person who can best describe that sample, where it came from, and other issues relating to authenticity. Plaintiffs shall be permitted to depose that person.

IT IS SO ORDERED, this 1st day of December, 2009.

S/Clay D. Land
CLAY D. LAND
UNITED STATES DISTRICT JUDGE