

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**In Re: TAXOTERE (DOCETAXEL)
PRODUCTS LIABILITY LITIGATION**

MDL NO. 2740

SECTION “N” (5)

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

ORDER AND REASONS

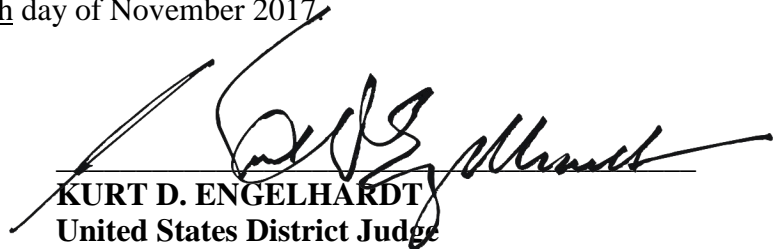
Before the Court is the “Defendants’ Motion for Case Substitution Protocol” (Rec. Doc. 888). Plaintiffs filed an opposition (Rec. Doc. 975). In their motion, Defendants object to the dismissal by Plaintiffs of one of the trial pool cases previously identified by Defendants. Defendants argue that, without a protocol to address such dismissals by way of case substitution, the pool of potential trial cases might be compromised by “strategic dismissals.”

Defendants’ Motion for Case Substitution Protocol” is **DENIED, without prejudice.** Defendants’ motion is in response to the dismissal of a single plaintiff’s case from among those in the trial pool of cases. Of course, the fact that there are designated several cases in the pool, one of which will be selected for trial, affords the Court and the parties an opportunity to select such case for trial from among several varying possibilities. The loss of a single plaintiff’s case from the trial pool does not prevent a fair and equitable choice of case for trial. On the showing made, the Court does not find that the dismissal of this plaintiff’s case was for “strategic” purposes, nor

does it find that the pool of potential trial cases is so adversely compromised that the requested relief is warranted.

On the other hand, the Court recognizes Defendants' argument that a unilateral dismissal of cases Defendants believe are more appropriate for trial (or even more favorable to the defense) might be subject to abuse, since each plaintiff (and her counsel) control whether and how far to pursue such claims. The Court denies Defendants' motion without prejudice, in the event further unilateral dismissals occur which could potentially compromise the pool of potential trial cases.

New Orleans, Louisiana, this 20th day of November 2017



KURT D. ENGELHARDT
United States District Judge