

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: C. R. BARD, INC.
PELVIC REPAIR SYSTEMS
PRODUCT LIABILITY LITIGATION

MDL No. 2187

THIS DOCUMENT RELATES TO
ALL CIVIL CASES

PRETRIAL ORDER #144

(Plaintiffs' Emergency Motion to Strike Written Deposition Questions)

Pending before the court is Plaintiffs' Emergency Motion to Strike and Objections to Defendant C. R. Bard, Inc.'s "Preliminary Written Questions" to Plaintiffs' Treating Physicians. (ECF No. 1191). Defendant C. R. Bard ("Bard") filed a response in opposition to the motion, (ECF No. 1196), and the parties argued their positions to the court on November 7, 2014. (ECF No. 1199). Having fully considered the arguments, the court **GRANTS**, in part, and **DENIES**, in part, Plaintiffs' motion to strike.

In PTO #131, the parties were instructed to depose treating physicians in Wave 3 cases by written questions pursuant to Federal Rule of Civil Procedure 31. Bard was permitted to initiate the process by serving the physicians with thirty questions designed to collect the "necessary information." Plaintiffs now object to (1) the number of questions served by Bard, which Plaintiffs claim is in excess of thirty; (2) the form of many questions, which Plaintiffs claim is leading and misleading; (3) the scope of questions, which Plaintiffs claim is overly broad; (4) the lack of specificity of the questions given that the same set of questions is posed to both implanters and

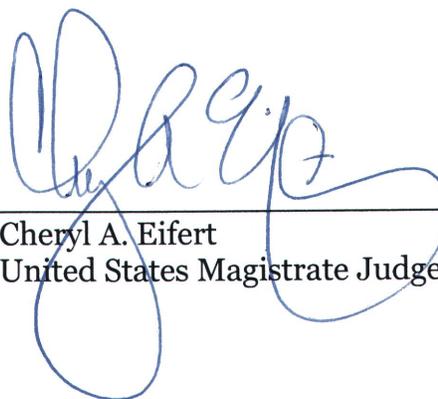
explaners; and (5) the substance of many questions. Plaintiffs complain that Bard asks questions that seek expert opinions, or request testimony on topics that have clearly been ruled inadmissible by the presiding District Judge in prior transvaginal mesh cases. In response, Bard denies Plaintiffs' contentions, but argues that, nevertheless, Plaintiffs' objections go largely to admissibility of evidence, and the depositions are being taken for discovery. Accordingly, the questions should be permitted, and the objections should be reserved until trial.

As is reflected in the transcript of the hearing, the undersigned and the parties addressed each written question separately. The court granted Plaintiffs' motion to strike question numbers 27 and 30, and after several other questions were recounted and reconfigured, Bard was **ORDERED** to select thirty remaining questions to provide to physicians. The hearing was recessed until Monday, November 10, 2014, at which time Bard presented a draft letter to provide to the treating physicians explaining modifications to the previously served written questions. The court approved the letter with Plaintiffs' objections noted.

In addition, the court **ORDERS** Plaintiffs to provide to Bard by **noon on Wednesday, November 12, 2014** the draft cross-questions Plaintiffs intend to submit to the treating physicians. A telephonic conference shall take place on **Friday, November 14, 2014 at 2:00 p.m.** at which the court shall rule on any objections Bard has to the Plaintiffs' proposed cross-questions. Bard is also **ORDERED** to provide its final set of questions to Plaintiffs' lead counsel no later than **noon on December 1, 2014**, and the court shall conduct a telephonic conference on **December 2, 2014** to rule on any objections to Bard's final set of written deposition questions.

The court **DIRECTS** the Clerk to file a copy of this order in 2:10-md-2187 and it shall apply to each member related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:14-cv-27775. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at <http://www.wvsc.uscourts.gov>.

ENTERED: November 10, 2014



Cheryl A. Eifert
United States Magistrate Judge