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

CHARLESTON DIVISION

IN RE: AMERICAN MEDICAL SYSTEMS, INC.
PELVIC REPAIR SYSTEMS
PRODUCT LIABILITY LITIGATION MDL No. 2325

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #54
(Plaintiffs' Motions to Compel Discovery and Compliance with PTO #24)

Two motions are pending before the court pertaining to discovery issues. In the first motion, Plaintiffs seek an order compelling Defendant American Medical Systems, Inc. ("AMS") to produce custodial files for fact witness depositions; to supply dates for the noticed fact witness depositions; and to conduct a thorough search for all relevant documents in AMS's care, custody, or control. (ECF No. 452). In the second related motion, Plaintiffs seek an order compelling Defendant to hasten its compliance with PTO # 24 and complete production of any remaining discoverable documents located outside of the United States. (ECF No. 457). The parties submitted memoranda in support of their positions, and the court entertained argument on the motions on March 21, 2013. At that hearing, the parties advised the court that they had agreed to certain matters, but continued to disagree about other matters. The court requested some additional information, which has now been supplied to and reviewed by the undersigned.

Having considered the arguments of counsel and their points of compromise, the court **GRANTS** Plaintiffs' motions to the extent set forth herein and **ORDERS** the following:

1. The deposition of each fact witness shall take place within **forty-five (45) days** after Plaintiffs submit the name of the witness to AMS if the custodial file belonging to the witness has previously been produced in discovery. In the event that the custodial file of the named witness has not been previously produced, the deposition shall take place within **sixty (60) days** after Plaintiffs submit the name to AMS. AMS shall have **fourteen (14) days** after receiving the name of the witness to supply Plaintiffs with a date certain for the taking of the deposition. This fourteen-day period may be extended in the case of a witness not employed by AMS so long as AMS provides Plaintiffs with a reasonable explanation for the delay within the fourteen-day period. The parties may agree to an extension of these time frames for particular witnesses, but in no event shall such an extension alter other pre-trial deadlines already set by this court.

2. No later than **forty-five (45) days** after Plaintiffs have submitted to AMS the name of a fact witness for deposition, AMS shall produce to Plaintiffs the custodial file of the fact witness.

3. On or before **March 29, 2013**, AMS shall provide Plaintiffs with a list of key employees located inside and outside of the United States.

4. On or before **April 3, 2013**, AMS shall provide Plaintiffs with a list of the employees that received hold letters.

5. On or before **April 5, 2013**, AMS shall provide Plaintiffs with "in force" dates for items such as patient brochures, marketing materials, videotapes, and educational materials previously produced.

6. Within **thirty (30) days** of the date of this order, AMS shall make available for deposition a Rule 30(b)(6) witness from each of its primary corporate departments. The witnesses shall be prepared to testify regarding the organization of their departments, how records are maintained in their departments, the status of document collection from their departments, the anticipated volume of relevant documents not yet produced from their departments, the interface between the departments, as well as other information designed to identify key employees and documents.

7. On or before **April 5, 2013**, AMS shall provide Plaintiffs with a list of the search terms AMS used to collect documents already produced.

8. On or before **April 5, 2013**, AMS shall provide Plaintiffs with a reasonable estimate of the volume of documents stored both inside and outside of the United States that remain to be produced.

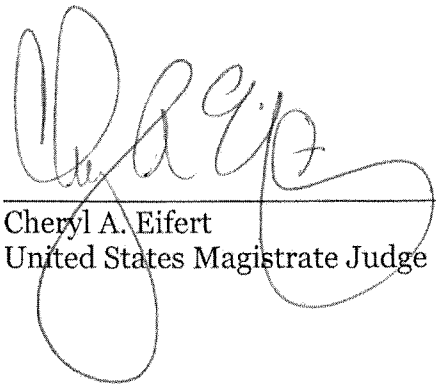
9. The parties shall submit memoranda on the issue of the production to Plaintiffs of AMS's objectively coded database. The memoranda shall be filed no later than **Friday, April 12, 2013** so that the issue may be addressed at the status conference on **April 18, 2013**.

10. The court **DENIES** the oral motion requesting that the parties be compelled to identify, in advance, the documents produced in this MDL that they intend to use at depositions. However, no later than **Friday, April 12, 2013,** the parties shall submit position statements (with relevant legal citations) on the access to and exchange

of documents discovered in other MDL's for use in this MDL.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2325 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 2:13-cv-06261. 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.wvsd.uscourts.gov**.

ENTERED: March 29, 2013.



Cheryl A. Eifert
United States Magistrate Judge