

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

CHARLESTON DIVISION

IN RE: COLOPLAST CORP. PELVIC SUPPORT
SYSTEMS PRODUCTS LIABILITY LITIGATION

MDL 2387

THIS DOCUMENT RELATES TO CASES
LISTED ON EXHIBIT A

**PRETRIAL ORDER # 107
(Docket Control Order – Coloplast Wave 2 Cases)**

To date, leadership counsel for plaintiffs and defendants in this MDL, which was assigned to me in 2012, have agreed upon a settlement track for resolution of cases in this MDL. The parties have reported substantial progress in settlement of the cases in this MDL (as well as cases not filed in the MDL), leading me to stay discovery. More recently, I have advised the parties on several occasions that as of June 1, 2016, I would begin working up these cases for trial if further progress was not achieved in this MDL and that any docket control order entered would contain tight deadlines.¹ To that end, I recently entered a Docket Control Order for the Coloplast Wave 1 cases (PTO ##s 102 and 103). In addition, by PTO # 104, I took a second list submitted by the parties where the parties were unable to agree as to whether the cases were settled, removed all cases from the list except ones where Coloplast is the only defendant named and directed the parties to attempt once again to agree as to whether the cases on Exhibit 1 attached to the PTO are settled, i.e., covered by an executed master

¹ I note that with the 2015 amendments to the Federal Rules of Civil Procedure, Rule 1 states that the Rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” I find that the instant docket control order is necessary to accomplish my duties as an MDL Judge and is in keeping with Rule 1.

settlement agreement. The parties complied and submitted a revised list of cases to the court via email reflecting the cases on Exhibit 1 that remain unsettled. I have attached that list hereto as Exhibit A.² The cases on Exhibit A will be known as the “Coloplast Wave 2 cases.” It is **ORDERED** as follows regarding the Coloplast Wave 2 cases:

A. SCHEDULING DEADLINES. The stay of discovery contained in PTO # 100 is lifted as to the Coloplast Wave 2 cases, and the following deadlines shall apply:

Plaintiff Fact Sheets.	09/19/2016
Defendant Fact Sheets.	10/19/2016
Deadline for written discovery requests.	11/25/2016
Expert disclosure by plaintiffs.	11/09/2016
Expert disclosure by defendants.	12/09/2016
Expert disclosure for rebuttal purposes.	12/26/2016
Deposition deadline and close of discovery.	01/09/2017
Filing of Dispositive Motions.	01/30/2017
Response to Dispositive Motions.	02/13/2017
Reply to response to dispositive motions.	02/20/2017
Filing of <i>Daubert</i> motions.	02/09/2017
Responses to <i>Daubert</i> motions.	02/23/2017
Reply to response to <i>Daubert</i> motions.	03/02/2017
Filing of Motions in Limine	04/07/2017
Response to Motions in Limine	04/14/2017

1. **Discovery Completion Date.** The last date to complete depositions shall be the “discovery completion date” by which all discovery, including disclosures required by Federal Rule of Civil Procedure 26(a)(1), and (2), but not disclosures required by Federal Rule of Civil Procedure 26(a)(3), shall be completed.

2. **Limitations on Interrogatories, Requests for Admissions and Depositions.** The following limitations apply:

² I removed one case from the list submitted by the parties because it contained multiple defendants, 2:15-cv-16620.

- a. Defendants are limited to 10 interrogatories and 10 requests for admission per plaintiff.
- b. Plaintiffs are limited to 10 interrogatories and 10 requests for admission to the defendants.
- c. In each individual member case, no more than 4 treating physicians may be deposed.³
- d. Depositions of plaintiff's friends and family members may be taken at any time prior to trial provided the deposition is requested before the discovery completion date.
- e. Depositions of any witness are limited to 3 hours absent agreement of the parties.
- f. The court will consider modifications to the above limitations upon good cause shown.

3. **Limitations on Experts.** The following limitations related to experts apply:

- a. The parties may conduct general and specific expert discovery on the products at issue in Coloplast Wave 2. In light of the common products involved in Coloplast Wave 2, the likelihood of overlap in expert opinion from one case to another (except as to specific causation) and the need to streamline discovery in these cases in keeping with Rule 1 of the Federal Rules of Civil Procedure, **each side is limited to no more than five (5)**

³ To the extent disputes arise regarding the division of time between the parties for the deposition of treating physicians (three hours total absent agreement), I will address those disputes, rather than the assigned Magistrate Judge, Judge Eifert.

experts per case (exclusive of treating physicians). It is the court's expectation that these experts will overlap for plaintiffs who have the same product(s), to some extent, if not entirely.

- b. The parties shall coordinate the depositions of general causation experts.

Insofar as multiple plaintiffs utilize the same general causation expert or experts, those experts shall be deposed only once on the issue of general causation. As to Coloplast's experts, plaintiffs are instructed to choose a lead questioner.

- c. The court encourages the coordination of depositions of specific causation experts to the extent there is overlap in the parties' use of specific causation experts for multiple plaintiffs.

- d. The court will consider modifications to the above limitations upon good cause shown.

B. MOTION PRACTICE.

1. ***Daubert* Motions.** For the filing of *Daubert* motions on general causation issues only, the parties are instructed to file one *Daubert* motion per expert in the main MDL (MDL 2387) instead of the individual member case. The motion must include an exhibit identifying those Coloplast Wave 2 cases to which the motion applies. Each side may file one response and one reply in the main MDL to each *Daubert* motion. This limitation does not apply to specific causation *Daubert* motions, responses and replies. Specific causation *Daubert* motions, responses and replies must be filed in the individual member cases. To the extent an expert is both a general and specific causation expert, the parties may file a general

causation motion in the main MDL 2387 and an individual specific causation motion in an individual member case.

2. **Motions in limine.** Motions in limine are limited to 3 pages each, responses are limited to 2 pages each. The court expects the parties to file motions in limine only for the purpose of precluding highly prejudicial statements in opening or closing statements or questions at trial that, once heard by the jury, cannot be easily cured by an instruction to disregard. The court will not provide advisory opinions on the admissibility of evidence a party may offer at trial and will summarily deny those motions as premature.

3. **Hearings.** Hearing dates for dispositive and *Daubert* motions and motions in limine, if any, will be set at a future status conference.

4. **Page Limitations.** The page limitations provided in Local Rule of Civil Procedure 7.1(a)(2) apply to memoranda in support of all dispositive and *Daubert* motions, oppositions, and replies, and the court will not be inclined to grant motions to exceed the page limit.

5. **Confidential Documents.** In the past, the court has permitted parties to file placeholder exhibits in support of *Daubert*, dispositive and other motions, responses and replies in the place of confidential documents that may be sealed and then, within five days, redact/dedesignate the documents or file a motion to seal. *Moving forward, the court will no longer permit this practice. Parties may no longer file placeholder exhibits.* The court expects leadership counsel for plaintiffs and the defendants to resolve issues related to confidential designations well before the filing of motions. Filings containing placeholder exhibits will be struck. In the event there are issues related to sealing of confidential documents that the parties

are unable to resolve, they must be brought to the court's attention in a consolidated manner as follows: A consolidated motion to seal is due on or before **December 9, 2016**, any response is due **December 23, 2016**, and any reply is due **December 30, 2016**.

6. **Locations of Filings.** With the exception of the general causation *Daubert* motions as outlined above, the parties are reminded that they must file dispositive and *Daubert* motions on specific causation, responses and replies in the applicable member cases only, not in the Coloplast MDL.

C. CASES READY FOR TRANSFER, REMAND OR TRIAL

1. **Venue Recommendations.** By no later than **November 4, 2016**, the parties shall meet and confer concerning the appropriate venue for each of the cases, and the parties shall submit joint venue recommendations to the court by **November 18, 2016**. The parties' joint recommendation(s) shall identify the cases about which the recommended venue is in dispute. The court may then request briefing concerning the venue for those cases about which the parties disagree. Each party reserves the right to object to the venue selected by its adversary or the court.

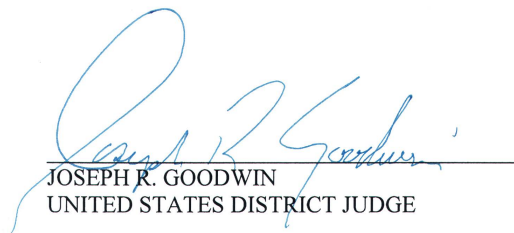
2. **Transfer and Remand.** At the conclusion of pre-trial proceedings, the court, pursuant to PTO # 15 and 28 U.S.C. § 1404(a), will transfer each directly-filed case to a federal district court of proper venue as defined in 28 U.S.C. § 1391. In the alternative, pursuant to PTO # 15 and 28 U.S.C. § 1407, cases that were transferred to this court by the MDL panel shall be remanded for further proceedings to the federal district court from which each such case was initially transferred.⁴

⁴ As expressly contemplated by PTO # 10, the defendants do not waive their right to seek transfer—pursuant to

3. **Trial Settings.** If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed and the court rules on the parties' pretrial motions. The trial date for cases transferred or remanded to other federal district courts shall be set by the judge to whom the transferred or remanded case is assigned (including the undersigned through intercourt assignment).

The Court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2387 and in the Coloplast Wave 2 cases identified in Exhibit A and to identify each case on Exhibit A as a Coloplast Wave 2 case. In cases subsequently filed in this district after 2:16-cv-05980, 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 www.wvsd.uscourts.gov.

ENTER: July 7, 2016



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

28 U.S.C. § 1406(a) or any other available ground—of any case to a court of proper venue, regardless of whether that case was transferred to or directly-filed in the Southern District of West Virginia.

EXHIBIT A

No.	Case Name	Case Number
1	April Smith v. Coloplast Corp.	2:13-cv-03120
2	Donna J. Riedel and William G. Riedel v. Coloplast Corp.	2:13-cv-05407
3	LaJuana Faye Moore and Charles Franklin Moore v. Coloplast Corp.	2:13-cv-09996
4	Annette Marie Hough McCracken and Todd McCracken v. Coloplast Corp.	2:13-cv-11405
5	Patsy Stubbs v. Coloplast Corp.	2:13-cv-11777
6	Dacey Morrow and Edward Morrow v. Coloplast Corp.	2:13-cv-13590
7	Mavis M. Hicks and James R. Hicks v. Coloplast Corp.	2:13-cv-14547
8	Brenda K. Nicholas and Thomas J. Nicholas v. Coloplast Corp.	2:13-cv-14600
9	Bonny Jean Sanders v. Coloplast Corp.	2:13-cv-15448
10	Patty Anderson v. Coloplast Corp.	2:13-cv-15869
11	Blanche L. Howard and George E. Howard v. Coloplast Corp.	2:13-cv-16254
12	Debra Lynn Nowak and Robert J. Nowak v. Coloplast Corp.	2:13-cv-16267
13	Kristen Renea Snyder and Jesse Snyder v. Coloplast Corp.	2:13-cv-16268
14	Mariana Alejo Muniz and Juan Muniz v. Coloplast Corp.	2:13-cv-16420
15	Jennifer Stuart and Wallace Stuart v. Coloplast Corp.	2:13-cv-17747
16	Marcella Booshu and Wayne Booshu v. Coloplast Corp.	2:13-cv-18713
17	Vanessa Range and Kevin Range v. Coloplast Corp.	2:13-cv-18754
18	Janet Svetichan v. Coloplast Corp.	2:13-cv-18978
19	Rita Clark and Douglas W. Clark v. Coloplast Corp.	2:13-cv-19285
20	Christine Heil and Daniel Heil v. Coloplast Corp.	2:13-cv-19351
21	Virga Harkness v. Coloplast Corp., et al.	2:13-cv-20131
22	Patricia Helmholdt v. Coloplast Corp.	2:13-cv-21722
23	Teresa Hartzoge v. Coloplast Corp.	2:13-cv-22285
24	Ann Carson and Thomas Carson v. Coloplast Corp.	2:13-cv-22528
25	Rhonda R. Richardson v. Coloplast Corp.	2:13-cv-23148
26	Amy Harryman and James Harryman v. Coloplast Corp.	2:13-cv-23240
27	Patricia Olier v. Coloplast Corp.	2:13-cv-27453
28	Jan Reed Tillipman and Jim Tillipman v. Coloplast Corp.	2:13-cv-33212
29	Joyce McGuire Warner v. Coloplast Corp.	2:13-cv-34064
30	Kathleen Schultz and Kenneth Shultz v. Coloplast Corp.	2:14-cv-02761
31	Kim Martinez v. AMS, et al.	2:14-cv-02873
32	Carolyn Catoe v. Coloplast Corp.	2:14-cv-03873
33	Sally Tominsky v. Coloplast Corp.	2:14-cv-07359
34	Paula Meserve-Nocchi and James Nocchi v. Coloplast Corp.	2:14-cv-10590
35	Linda Dixon and Richard Dixon v. Coloplast Corp.	2:14-cv-10747
36	Zenaida Kumar v. Coloplast Corp.	2:14-cv-11322
37	Rosanne Saxon and Steve Saxon v. Coloplast Corp.	2:14-cv-14041
38	Joan Safar and Joe Safar v. Coloplast Corp., et al.	2:14-cv-15426
39	Donna Layton v. Coloplast Corp.	2:14-cv-15747
40	Patricia Akers and Donald Akers v. Coloplast Corp.	2:14-cv-16599
41	Veronica Peats v. Coloplast Corp.	2:14-cv-16809
42	Pamela R. Bernand v. Coloplast Corp.	2:14-cv-16885
43	ToniAnn Bonime v. Coloplast Corp.	2:14-cv-16886
44	Teresa Czekalski and Joe Czekalski v. Coloplast Corp.	2:14-cv-16912
45	Imelda and Gerald Garcia v. Coloplast Corp.	2:14-cv-17984
46	Tammy L. Salisbury v. Coloplast Corp., et al.	2:14-cv-19262

EXHIBIT A

No.	Case Name	Case Number
47	Jimmie Best v. Coloplast Corp.	2:14-cv-19638
48	Cheryl Jones and Jace Jones, Jr. V. Coloplast Corp.	2:14-cv-19851
49	Margaret Church v. Coloplast Corp.	2:14-cv-19881
50	Mary Lykes and Phillip Lykes v. Coloplast Corp.	2:14-cv-19882
51	Sue Suarez v. Coloplast Corp.	2:14-cv-20353
52	Georgia Jones v. Coloplast Corp.	2:14-cv-22006
53	Helen Salandro and James Salandro v. Coloplast Corp.	2:14-cv-22011
54	Linda M. and Daniel B. Ball v. Coloplast Corp.	2:14-cv-24492
55	Donna Simon v. Coloplast Corp.	2:14-cv-24520
56	Constance MacTernan v. Coloplast Corp.	2:14-cv-24648
57	Selena Nelson v. Coloplast Corp.	2:14-cv-24770
58	Mary Arnold and James Ryan Arnold v. Coloplast Corp.	2:14-cv-25018
59	Arlene Gomez v. Coloplast Corp.	2:14-cv-25092
60	Sherri Hawes and George Hawes v. Coloplast Corp.	2:14-cv-25108
61	Wendy M. Vardeman v. Coloplast Corp.	2:14-cv-25313
62	Virginia Redding v. Coloplast Corp.	2:14-cv-25973
63	Jogayle Kowalik and Harold Kowalik v. Coloplast Corp.	2:14-cv-26624
64	Rebecca Maloney v. Coloplast Corp.	2:14-cv-27620
65	Mary Runge and Charles W. Runge v. Coloplast Corp.	2:14-cv-28200
66	Mallory Sessions v. Coloplast Corp.	2:14-cv-28201
67	Evette Vititoe v. Coloplast Corp.	2:14-cv-28203
68	Patricia Swann v. Coloplast Corp.	2:14-cv-28206
69	Trina LaCour and Roy LaCour v. Coloplast Corp.	2:14-cv-28207
70	Tammy Williams and James Ronald Williams v. Coloplast Corp.	2:14-cv-28209
71	Wendy Turner v. Coloplast Corp.	2:14-cv-29026
72	Lisa Huinker v. Coloplast Corp.	2:14-cv-29027
73	Phyllis Kaminowitz and Charles Kaminowitz v. Coloplast Corp.	2:14-cv-30768
74	Shannon Bingham and Michael Bingham v. Coloplast Corp.	2:14-cv-31270
75	Vicki Kuiken and Ronald Kuiken v. Coloplast Corp.	2:15-cv-00705
76	Donna Stewart and James Stewart v. Coloplast Corp.	2:15-cv-01516
77	Barbara Herrera v. Coloplast Corp.	2:15-cv-01733
78	Karen Wright and Marshall Wright v. Coloplast Corp.	2:15-cv-01736
79	Karla Blease and David Blease v. Coloplast Corp.	2:15-cv-01744
80	Courtney Allen v. Coloplast Corp.	2:15-cv-02100
81	Winnie Pearson v. Coloplast Corp.	2:15-cv-02543
82	Kimberly Hobbs v. Coloplast Corp.	2:15-cv-02633
83	Eva Buki v. Coloplast Corp.	2:15-cv-03504
84	Linda Everett v. Coloplast Corp.	2:15-cv-04152
85	Christina Jones v. Coloplast Corp.	2:15-cv-04153
86	Rebecca Westfall and Roy Westfall v. Coloplast Corp.	2:15-cv-04154
87	Linda Schoene v. Coloplast Corp.	2:15-cv-04874
88	Brooklyn Godin v Coloplast Corp	2:15-cv-05350
89	Karen Padilla v Coloplast Corp.	2:15-cv-05355
90	Karen Padilla v Coloplast Corp.	2:15-cv-05946
91	Kimberly Nygard v. Coloplast Corp.	2:15-cv-06236
92	Robyn Preis v. Coloplast Corp.	2:15-cv-06238
93	Glendora Davison v. Coloplast Corp.	2:15-cv-06516
94	Tina Daniels and Richard Daniels v. Coloplast Corp	2:15-cv-07204

EXHIBIT A

No.	Case Name	Case Number
95	Ana del Rio and Alfonso Del Rio et al v. Coloplast Corp.	2:15-cv-08432
96	Eva Mae Taylor v. Coloplast Corp.	2:15-cv-09916
97	Laura Bennett and Matthew Bennett v. Coloplast Corp.	2:15-cv-09958
98	Deborah Henderson and Alford Wayne Rogers v. Coloplast Corp.	2:15-cv-10997
99	Trixy S. Raymond and Marc J. Raymond v. Coloplast Corp.	2:15-cv-11358
100	Edith S. Hernandez v. Coloplast Corp.	2:15-cv-11415
101	Janis Karandjeff v. Coloplast Corp.	2:15-cv-12566
102	Catherine Quirk and William Quirk v. Coloplast Corp.	2:15-cv-12594
103	Martina Dunbar and Roosevelt Dunbar v. Coloplast Corp.	2:15-cv-12618
104	Kelli Odom v. Coloplast Corp.	2:15-cv-12619
105	SueAnn Sweatman and Raymond Sweatman v. Coloplast Corp.	2:15-cv-12673
106	Kim and Donald Brumbelow v. Coloplast Corp.	2:15-cv-12710
107	Katherine Thomas and Doug Thomas v. Coloplast Corp.	2:15-cv-12815
108	Katherine L. and Jeffrey T. Cook v. Coloplast Corp.	2:15-cv-12818
109	Dina Berry v. Coloplast Corp.	2:15-cv-12884
110	Gena Lewis v. Coloplast Corp.	2:15-cv-13051
111	Susan Kruse v. Coloplast Corp.	2:15-cv-13232
112	Mary Dutch v. Coloplast Corp.	2:15-cv-13245
113	Lorena Herrera v. Coloplast Corp.	2:15-cv-13484
114	Teresa K. Perry and Greg Perry v. Coloplast Corp.	2:15-cv-13555
115	Belinda Vigil and Juan Vigil v. Coloplast Corp.	2:15-cv-13643
116	Esmerelda Del Angel and Sergio Del Angel v. Coloplast Corp.	2:15-cv-14426
117	Sharon Ziegler v. Coloplast Corp.	2:15-cv-14475
118	Norma Zapata v. Coloplast Corp.	2:15-cv-14539
119	Jearline Grubb Simpkins v. Coloplast Corp.	2:15-cv-14559
120	Ruth McCann and Charles G. McCann, Sr. v. Coloplast Corp.	2:15-cv-14732
121	Frances Anderson v. Coloplast Corp.	2:15-cv-15083
122	Carla Ketner v. Coloplast Corp.	2:15-cv-15303
123	Julie Gooding v. Coloplast Corp.	2:15-cv-15507
124	Mikelle Malone v. Coloplast Corp.	2:15-cv-15509
125	Colleen Spence v. Coloplast Corp.	2:15-cv-15511
126	Lucille M. Boehler v Coloplast Corp.	2:15-cv-15919
127	Cecilia A. Alfaro v. Coloplast Corp.	2:15-cv-16306
128	Sherdine Johnson v. Coloplast Corp.	2:15-cv-16307
129	Shelley A. Mintz v. Coloplast Corp.	2:15-cv-16308
130	Kelly A. Dunn v. Coloplast Corp.	2:16-cv-02187
131	Juanita L. Mitchell v. Coloplast Corp.	2:16-cv-02361
132	LaQuida Wilson v. Coloplast Corp.	2:16-cv-02444
133	Regina Compton v. Coloplast Corp.	2:16-cv-02740
134	Martha Lebaron v. Coloplast Corp.	2:16-cv-02918
135	Pamela Ortiz v. Coloplast Corp.	2:16-cv-02920
136	Nidia Teran v. Coloplast Corp.	2:16-cv-03099
137	Victoria Rangel v. Coloplast Corp.	2:16-cv-03592
138	Kathleen Leonard v. Coloplast Corp.	2:16-cv-03660
139	Barbara A. Hoyrd and Percy Hoyrd, Jr. v. Coloplast Corp.	2:16-cv-03870
140	Susan L. McNally and Mark McNally v. Coloplast Corp.	2:16-cv-03871
141	Sandra E. Minter v. Coloplast Corp.	2:16-cv-03873
142	Billie Kirby v. Coloplast Corp.	2:16-cv-03967

EXHIBIT A

No.	Case Name	Case Number
143	Carol Masaitis v. Coloplast Corp.	2:16-cv-03987
144	Kathleen Pena v. Coloplast Corp., et al.	2:16-cv-04081
145	Janice Marszalek-Pacente and Charles A. Pacente v. Coloplast Corp.	2:16-cv-04241
146	Von King v. Coloplast Corp., et al.	2:16-cv-04326
147	Donna Simon v. Coloplast Corp.	2:16-cv-04445
148	Natalia Johnson v. Coloplast Corp.	2:16-cv-04897
149	Patricia L. Cramer and Robert G. Cramer v. Coloplast Corp.	2:16-cv-05023
150	Pansy Farber v. Coloplast Corp.	2:16-cv-05050