

MINUTE ENTRY
GOODWIN, J.
April 12, 2013

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

**In re: C.R. Bard, Inc., Pelvic Repair System
Products Liability Litigation**

MDL No. 2187

**In re: American Medical Systems, Inc., Pelvic Repair System
Products Liability Litigation**

MDL No. 2325

**In re: Boston Scientific Corporation Pelvic Repair System
Products Liability Litigation**

MDL No. 2326

**In re: Ethicon Inc., Pelvic Repair System
Products Liability Litigation**

MDL No. 2327

**In re: Coloplast Corp. Pelvic Support Systems
Products Liability Litigation**

MDL No. 2387

THIS DOCUMENT RELATES TO ALL CASES

On March 21, 2013, the court conducted a status conference in the above-referenced MDLs. The following is a brief summary of the status conference:

1. General & Specific MDL Issues – Judge Goodwin

a. Wisdom and status of tolling agreements

Henry Garrard explained that a number of attorneys anticipate the rate of filings may increase in the coming months. Mr. Garrard proposed that the parties consider tolling agreements that are not prejudicial to the defendants, but that

allow there to be an rapid identification of the cases, types of products, etc. He noted how well this process has worked in the Coloplast MDL.

Kristy Jones, counsel for Ethicon, commented on Ethicon's willingness to enter into tolling agreements. She stated that if there is a benefit to her clients to proceed with one, they are willing to consider it. However, in the absence of some benefit, it is to their detriment not to know the entire universe of filings.

Mr. Garrard pointed out that the tail concerns the defendants, but with a tolling agreement, defendants could know very quickly the current universe of cases.

Judge Goodwin asked Mr. Garrard about the July 11, 2014, deadline which is two years after the FDA came down with its warning about prolapse cases. Mr. Garrard noted the differing schools of thought as to the meaning of this warning. In any event, Mr. Garrard agreed this is a date about which plaintiffs are concerned, and he predicted that there would be a substantial number of filings in the interim.

Debbie Moeller, counsel for Sofradim and TSL, indicated her client is not interested in a tolling agreement.

Judge Goodwin stated that he is interested in a short tolling agreement, possibly 90 days, for court administrative purposes. In particular, cases filed after July 1, 2013, would assist the court from an administrative standpoint.

Mr. Garrard estimated that the number of cases coming in per month (approximately 1500) could double or triple.

Judge Stanley pointed out that it would be helpful for plaintiffs filing multiple cases to spread them out over several days, rather than filing them all on one day.

Ms. Jones indicated a willingness to look at a 60 or 90 day tolling agreement.

Judge Goodwin stated that he will respect whatever decision is reached.

b. Additional MDL trial settings in 2014

The plaintiffs asked Judge Goodwin to set additional trials continuing after those that have already been set through February of 2014. Judge Goodwin stated that he would provide dates to the parties in March or April 2014, beginning with

Bard and proceeding in rotation thereafter with AMS, Ethicon, and Boston Scientific and then beginning again with Bard. Bard Group 2 bellwethers have already been chosen. For the remaining MDLs, Judge Goodwin plans to pull cases from the trial pools which were not chosen as bellwethers in the MDL trials in December 2013, and January and February 2014.

Ms. Binis noted that there are a total of six bellwethers against AMS set in Minnesota and Delaware, some involving plaintiffs' counsel from this MDL. Ms. Binis asked that the court take those cases into consideration.

Judge Goodwin noted he has and continues to reach out to State court judges. Judge Goodwin encouraged plaintiffs to work with defendants to avoid these conflicts.

c. Innovative trial ideas

Stephen McConnell, counsel for AMS, and Mr. Garrard reported on conversations about innovative trial ideas.

d. Contact with State court judges

This topic is covered above.

e. Agenda Issues for MDL 2325 (American Medical Systems, Inc.)

1. AMS Motion to Strike bellwethers designated by Plaintiffs

Judge Goodwin heard additional arguments from counsel then denied the motion to strike.

2. Update on PTO 37

Ms. Binis reported that the Plaintiff's Fact Sheets and the Defendant's Fact Sheets have been exchanged except for one plaintiff. AMS agreed to give this plaintiff a ten-day extension.

3. Update on Delaware and Minnesota consolidated cases

This issue is covered above.

4. Boston Scientific

Judge Goodwin stated that the motion to amend to add defendants is denied, and an order would be entered in the next five days.

f. Agenda Issues for MDL 2327 (Ethicon, Inc.)

1. Foreign entity/Johnson & Johnson/Ethicon joint and several liability stipulation

Tom Cartmell, plaintiffs' counsel in Ethicon, reported that the parties had been working together to reach agreement about naming certain international and other defendants.

Mr. Cartmell also explained that in the New Jersey litigation, the parties agreed that Johnson & Johnson is responsible for the acts of its subsidiaries. Mr. Cartmell indicated he hoped the same agreement would be reached in this litigation.

2. Timing of amendments to master complaint

To the extent the parties cannot reach a stipulation on foreign entities and other defendants not currently named in the Master Amended Complaint, they would file a motion to amend the Master Complaint.

3. New Jersey update

Ms. Jones reported there are no current trial settings at this stage.

g. Agenda Issues for MDL 2387 (Coloplast)

1. Agreed stipulation and service of process on foreign defendants

Robert Salim, counsel for the plaintiffs in Coloplast, stated that the parties had agreed to a tolling agreement and plaintiff fact sheet and that the process was working extremely well. The defendants have set up a web portal where plaintiffs can send their medical records.

The parties have discussed a stipulation regarding foreign defendants. They have exchanged a draft, and hope to agree to it by the end of the day.

2. Status of early case assessment program

Mr. Salim stated that overall, the early case assessment process has worked well, eliminating many lawsuits once the defendants look at

the case. Defendants often point out that the plaintiffs have the wrong product or multiple products. As a result, the plaintiffs receive a useful early evaluation on a significant number of cases, without having to file them.

h. Agenda Issues for MDL 2187 (C. R. Bard, Inc.)

1. Status of trial setting

Judge Goodwin met with the parties in Bard before the status conference.

2. General & Specific MDL Issues – Judge Stanley and Judge Eifert

a. Designation of documents as confidential by Defendants

Mr. Garrard stated that some of the defendants are designating almost every document they produce as confidential. Mr. Garrard also described the need for using documents that have been produced in one MDL in another MDL for deposition or other purposes.

Richard North, counsel for Bard, responded and stated that at the beginning of the litigation, Bard turned over an enormous amount of documents fairly expeditiously and there was some overdesignation. However, since then, he and others from his firm have spent several days talking and meeting with Mr. Garrard's partners to work that out. And, they are willing to continue to do so. Regarding documents in other MDLs, Mr. North felt that the parties should confer and prepare an order for the court's consideration. Mr. North is most concerned about notice to counsel in the other MDL where documents from that MDL will be used.

Ms. Jones, Mr. McConnell, Jon Strongman, counsel for Boston Scientific, and Ronn Kreps, counsel for Coloplast, agreed that conferring on the issue would be useful.

b. Method for utilization of documents across MDLs

The parties agreed to work together on an order regarding use of documents from one MDL in other MDLs. To the extent there is a procedure for using confidential documents either in a different MDL or using confidential documents

in a particular MDL that will be used in court, this should be done in the context of an amendment to the existing protective order.

c. Agenda Issues for MDL 2325 (American Medical Systems, Inc.)

1. Plaintiff's Motion to Compel outside U.S. production of documents

This matter was set for hearing later in the day.

2. Plaintiff's Motion to Compel document production and depositions

This matter was set for hearing later in the day.

d. Agenda Issues for MDL 2327 (Ethicon, Inc.)

1. Narrowing of products discovery

The parties had discussed at the last status conference, the possibility of narrowing the discovery to a certain number of products, but the parties reported they are at impasse on this issue. The defendants are concerned about producing witnesses more than once.

2. Production of outside U.S. documents

Ms. Jones reported that the parties have agreed upon the priorities and there are no disputes in this area at the moment. The defendants are producing these in rolling productions and the process has begun.

e. Agenda Issues for MDL 2326 (Boston Scientific Corporation)

1. Status of MDL discovery

Mr. Strongman reported that the parties are in the middle of company witness depositions.

f. Next Status Conference

April 18, 2013 at 1:00 p.m. [the status conference has since been rescheduled to 10:00 a.m.].


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE