

**MINUTE ENTRY
GOODWIN, J.
DECEMBER 20, 2012**

**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 System
Products Liability Litigation** **MDL No. 2387**

THIS DOCUMENT RELATES TO ALL CASES

On December 6, 2012, the court conducted a status conference in the above-referenced MDLs. The following is a brief summary of the status conference:

1. General MDL Issues

- a. Proposals for additional trial settings as to AMS, J&J/Ethicon and Boston Scientific.

On November 26, 2012, the parties submitted position papers in response to a PTO asking that they identify their positions on (1) when bellwether trials should begin in 2013 in MDLs 2325, 2326 and 2327; (2) the size of the initial trial pool and justification for the trial pool size; (3) the makeup of the trial pool (percentage of SUI, POP or combo case); (4) whether they would like to make oral presentations in support of their selections; and (5) which MDL trial pool case should go first. The

defendants requested more time in order to submit a joint proposal, which the court granted.

The defendants commented at the status conference that whatever case is tried first, they believed it should be an SUI case. Judge Goodwin indicated he believed that would happen given the fact that he would be trying POP cases in the Bard MDL bellwether trials.

Judge Goodwin stated that he would adopt in concept the proposal of the plaintiffs regarding the approach to trial pool size for each MDL with substantial modifications. In particular there will be a three-step process wherein the parties are responsible for determining representative selections for Initial Pool, Discovery Pool and Trial Pool cases for each MDL defined as follows:

- The Initial Pool will be comprised of 80 cases rather than 100 (as suggested by plaintiffs) with plaintiffs choosing 40 cases and defendants choosing 40. This group will complete the Plaintiff Profile Form only and the final date for filing of eligible cases will be January 1, 2013.
- The Discovery Pool will be comprised of 30 cases rather than 40 cases (as suggested by plaintiffs) with plaintiffs choosing 15 cases and defendants choosing 15. These cases will proceed through limited discovery, including fact depositions, treating physician depositions, implanting and explanting physician depositions and depositions of sales reps.
- The Trial Pool will be comprised of 16 cases rather than 20 cases (as proposed by plaintiffs) with plaintiffs choosing 8 and defendants choosing 8. These cases will be worked up for trial.
- Judge Goodwin will choose 5 bellwether cases from the 16 Trial Pool cases in each MDL.
- Judge Goodwin will hear oral presentations in each MDL about the proposed Trial Pool selections.
- Judge Goodwin stated that trials in the three newer MDLs (AMS, Boston Scientific and Ethicon) will begin **December 3, 2013**. The plaintiffs sought an earlier start date of September 2012; defendants wanted to begin in February 2014. Judge Goodwin viewed a December trial date as an adequate compromise. Judge Goodwin moved the Group 2 Bard trials to fall into line after the AMS, Ethicon and Boston Scientific bellwether cases are tried. Judge Goodwin intends to try an AMS case first, assuming an AMS case is presented to him that is representative and appropriate, but the parties should have two AMS cases prepared for trial on this date. Judge Goodwin will try cases thereafter from each MDL in sequence, and hopes to know by then how long these cases will take to try.
- Judge Goodwin left it up to the parties to determine the make up of the Initial Pool, Discovery Pool and Trial Pool. Judge Goodwin hopes that the parties will choose representative cases that allow the lawyers to draw helpful conclusions about these cases. He will not, despite plaintiffs' wishes otherwise, choose multi-manufacturer or multi-product cases as

bellwether cases. Instead, at this time, Judge Goodwin intends to try only single product, single manufacturer bellwether cases.

- Judge Goodwin will not rule out the use of focus groups and mock trials, but does expect any such process to be meaningful.
- The parties will submit proposed scheduling orders in three (3) weeks. Judge Goodwin asked that the parties allow for completion of the *Daubert* motions first, followed by dispositive motions and that the parties provide the court sufficient time to consider these motions.

b. Plaintiff Profile Form issues

- Plaintiff Profile Forms were due December 3, 2012. Ethicon has received a substantial number of them, while 185 requests for extension have been given in Ethicon. Of the 1300 Plaintiff Profile Forms received, eighty percent are deficient. Instead of using the deficiency process outlined in the Plaintiff Profile Form PTO, Ethicon and plaintiffs' counsel agreed to an extension until January 15, 2013, to send out deficiency letters. AMS has received 900 Plaintiff Profile Forms and half of them are deficient. There are 130 requests for extension. As in Ethicon, AMS has granted extensions with a reciprocal 30-day extension. AMS has not received 800 Plaintiff Profile Forms. Under the PTO, a motion to dismiss may be filed. Approximately 600 Plaintiff Profile Forms have not been filed in Boston Scientific.
- Judge Goodwin emphasized that completion of the Plaintiff Profile Forms is a number one priority for the plaintiffs and plaintiffs' liaison counsel.
- Mr. Garrard indicated that deficiencies on the Plaintiff Profile Forms were minor.
- Judge Goodwin stated that when motions were filed related to deficient Plaintiff Profile Forms, he would take into account whether deficiencies were substantial or minor.
- Judge Goodwin agreed, at Mr. Garrard's request, to waive the notary requirement on the Plaintiff Profile Form and the requirement that each page be initialed by the plaintiff.

c. Motion to Remand questions

- Judge Goodwin is aware of and working on the motions to remand and appreciates the parties' patience in this regard.

d. Deposition Protocol

- Mr. Garrard reported that Deposition Protocols have been agreed upon in Boston Scientific, AMS and Ethicon. Ethicon's Deposition Protocol is

slightly different. The Deposition Protocols will be submitted in the next couple of days.

e. Stay from PTO #1 to remain in effect

- Judge Goodwin has had inquiries about the stay set forth in PTO # 1 in the various MDLs. In the five MDLs, Judge Goodwin granted each defendant an extension of time for responding by motion or answer to the complaints until a date to be set by this court. The MDL defendants (except the Coloplast defendants) have filed master answers, but the remaining non-MDL defendants have not. It is Judge Goodwin's intention that this stay remain in place for the non-MDL defendants.

f. Severance Orders

- Judge Goodwin entered a severance order in Ethicon and severance orders in AMS and Coloplast are in process. Judge Goodwin awaits severance orders in Bard and Boston Scientific.
- Judge Goodwin encouraged leadership counsel to monitor their MDLs for multi-party complaints, to discourage such filings, and to continue to submit severance orders from time to time. Also, Mr. Aylstock noted that some multi-party actions are class actions that may have subclasses.

g. Amending Short form Complaints to add Coloplast Corp.

- The parties in Bard, Boston Scientific, AMS and Ethicon wish to amend the short form complaints to add the Coloplast entities. The court will add Coloplast Corp. and other defendants from the Coloplast MDL to the Short Form and Amended Short Form complaints in the remaining four MDLs, and the parties must use the forms on the website.

2. Agenda Issues for MDL 2387 (Coloplast Corp.)

a. Update on status of Agreed Master Complaint and PPF

- The parties in Coloplast have submitted an Agreed Master Complaint and Short Form Complaint. They also have reached agreement on the Plaintiff Profile Form.

b. Update on Early Case Assessment Program

- Coloplast provided the court with an update on the Early Case Assessment Program, which is moving along. Counsel for Coloplast is working well with plaintiffs' counsel in terms of acquiring medical records so that Coloplast can begin the process of assessing them.

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

- a. Update on ENDO/AMS Motion to Dismiss
 - Judge Goodwin met with counsel for plaintiffs and AMS in chambers before the Status Conference. The parties are working towards resolution on this issue.
- b. Status of Outside the United States (“OUSA”) production
 - The parties are attempting to work through issues related to this topic. They will meet and confer. Judge Stanley indicated she would be available if the parties are unsuccessful.

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

- a. Motion to Amend Master Long Form Complaint to add additional Defendants
 - The parties have agreed to conduct limited jurisdictional discovery; Judge Goodwin gave the parties 50 days to do so. The parties will file simultaneous supplemental briefs on jurisdiction after the 50-day period has run, assuming agreement is not reached.

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

- a. 30(b)(6) deposition status update
 - The parties reported on the status of Rule 30(b)(6) depositions.
- b. Advamed Subpoena
 - Plaintiffs issued a subpoena to a third party, Advamed. Plaintiffs reported a discovery dispute may be forthcoming.
- c. New Jersey state court update
 - Judge Goodwin attended the Federal Judges’ MDL conference and met with Judge Higbee. She has not in the past had joint hearings on *Daubert* matters, but she was open to the idea. Judge Goodwin also met Judge Kottmeyer. Judge Goodwin asked that to the extent there are cases set for trial across the country in state courts and lawyers in these MDLs have such cases, he would ask that those lawyers be considerate of the MDL process.
 - Mr. Clayton Clark agreed to provide a status as to the state court cases. Mr. Clark believes it would be helpful to gather a list of judges in the various state courts and make contact with them. Judge Goodwin agreed.

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

a. Status of Group 1 Trials

- Mr. Garrard raised the possibility of presenting to Judge Goodwin, innovative approaches for case resolution at the next status conference. Judge Goodwin agreed to place the topic on next month's agenda.

b. Status of Group 2 trials

- See above.

7. Next Status Conference

- The next status conference will be conducted on January 10, 2013, at 1:00 p.m.



Joseph R. Goodwin
Joseph R. Goodwin, Chief Judge