

**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

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THIS DOCUMENT RELATES TO  
ALL CIVIL CASES

**PRETRIAL ORDER #140**

(Motion to Amend Pretrial Order; Motion to Compel Discovery;  
Motion for Protective Order)

Still officially pending on the court's docket are two discovery motions that have been the subject of multiple telephone conferences and have been resolved. First, Plaintiffs' Emergency Motion to Amend Pretrial Order No. 121 was **GRANTED**. (ECF No. 926). The parties worked diligently to develop a new process for the collection, retention, storage, and division of surgical specimens removed from Plaintiffs during mesh revision or removal procedures. That process was memorialized in Pretrial Order #136. (ECF No. 1036).

Second, Plaintiffs' Motion to Compel Responses from Defendant C. R. Bard, Inc. to Plaintiffs' Seventh and Eighth Requests for Production of Documents was **GRANTED**, in part, and **DENIED**, in part. (ECF No. 1022). In their seventh and eighth sets of requests for production of documents, Plaintiffs sought materials related to the "Web project," a product design and development project conducted by a division of C. R. Bard, Inc. ("Bard") during a period of time when Bard was also marketing and

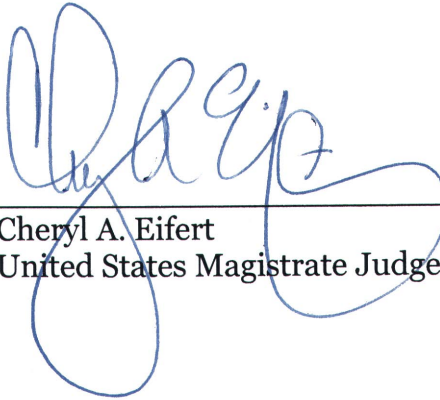
selling its Avaulta line of products, which are at issue in this multidistrict litigation (“MDL”). The Web project involved larger pore, lighter weight mesh products, which are not at issue in the MDL, but according to Plaintiffs, are relevant nonetheless. Plaintiffs contend that the Web project documents are important to establish the feasibility of a safer alternative design. In addition, Plaintiffs assert that Defendants used test results from the Web project in prior trials to discredit evidence offered by Plaintiffs; therefore, Plaintiffs are entitled to explore the remaining project materials to challenge the strength of that defense.

After a lengthy discussion, the undersigned ruled that Plaintiffs were entitled to some of the documents generated as a result of the Web project, although Plaintiffs’ requests were overly broad. Therefore, Defendant Bard’s motion for a protective order, (ECF No. 1046), was **GRANTED**, in part, and **DENIED**, in part. The parties were given some guidance and were instructed to meet and confer to determine if they could agree on some parameters. Plaintiffs were advised that they were not entitled to receive documents pertaining to products that were never placed on the market. This ruling was later clarified in a second telephonic hearing, and the parties expressed their understanding. Accordingly, at this time, all matters in controversy regarding this discovery motion appear to be resolved as set forth in the transcripts of the hearings.

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-25801. 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:** September 16, 2014



Cheryl A. Eifert  
United States Magistrate Judge