

**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 2187

THIS DOCUMENT RELATES TO BARD WAVE 4 CASES

**PRETRIAL ORDER # 259
(Fourth Amended Docket Control Order – Wave 4 Cases)**

Pending are (1) a Joint Motion to Extend Deadlines in Wave 4 Cases, filed July 10, 2017 [ECF No. 4204]; and (2) an Amended Joint Motion to Extend Deadlines in Wave 4 Cases, filed July 12, 2017 [ECF No. 4246]. The court **ORDERS** that the Joint Motion [ECF No. 4204] is **DENIED** as moot. In the Amended Joint Motion, the parties seek an extension of the remaining Wave 4 deadlines to bring Wave 4 and 5 deadlines closer together in order to facilitate more efficient completion of discovery. In addition, the parties state that there are (1) six experts whose depositions have been scheduled after the proposed revised deadline for close of discovery in August; (2) nine experts whose depositions have not yet been set but the parties expect will be set in the month of August; and (3) one expert, Dr. Ostergard, whose deposition may be difficult to schedule because of personal circumstances, and, therefore, the parties request that they be permitted to file any *Daubert* motion for Dr. Ostergard 21 days after the completion of his deposition. For good cause shown, the court **ORDERS** that the Amended Motion [ECF No. 4246] is **GRANTED in part** as to the proposed changes in the remaining deadlines for Wave 4 and regarding the sixteen experts whose depositions the parties anticipate completing in August. The Amended Motion is **DENIED** as to Dr. Ostergard. The court is unwilling to provide an open-

ended extension for Dr. Ostergard and expects the parties to complete Dr. Ostergard's deposition in August or seek leave of court if that cannot be accomplished.

A. SCHEDULING DEADLINES. The following remaining deadlines shall apply in the Bard Wave 4 cases:

Deposition deadline and close of discovery including corporate discovery	08/11/2017
Filing of Dispositive Motions.	08/30/2017
Response to Dispositive Motions.	09/13/2017
Reply to response to dispositive motions.	09/20/2017
Filing of <i>Daubert</i> motions.	09/06/2017
Responses to <i>Daubert</i> motions.	09/20/2017
Reply to response to <i>Daubert</i> motions.	09/27/2017

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:

- a. Bard is limited to 10 interrogatories and 10 requests for admission per plaintiff.
- b. Plaintiffs are limited to 10 interrogatories and 10 requests for admission to Bard.
- c. In each individual member case, no more than 4 treating physicians may be deposed.¹

¹ 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.

- 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 Bard Wave 4 cases. However, because the parties have conducted substantial general expert discovery in the bellwether cases and waves prior to this wave, they are cautioned not to engage in duplicative general expert discovery. Instead, the parties should tailor their discovery to the products at issue in the Bard Wave 4 cases (to the extent such discovery is necessary), supplementing any discovery already completed and conducting specific causation discovery for the Bard Wave 4 plaintiffs. In light of the products involved in the Bard Wave 4 cases, 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, **each side is limited to no more than five (5) 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 Bard'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 2187) instead of the individual member case. 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 2187 and an individual specific causation motion in an individual member case.

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

3. **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.

4. **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 Ethicon 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 **July 14, 2017**, any response is due **July 26, 2017** and any reply is due **August 2, 2017**.

5. **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 Bard MDL.

C. CASES READY FOR TRANSFER, REMAND OR TRIAL

1. **Venue Recommendations.** By no later than **August 11, 2017**, the parties shall meet and confer concerning the appropriate venue for each of the cases, and the parties shall file joint venue recommendations in MDL 2187 by **August 21, 2017**. 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 # 51 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.²

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).

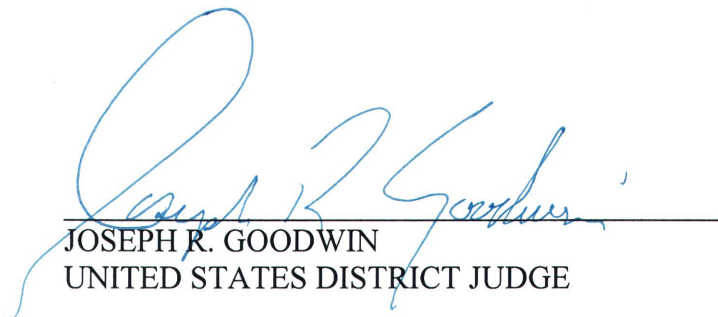
D. COMMON BENEFIT TIME. I have entered a number of Pretrial Orders related to the eventual recovery of the cost of special services performed and expenses incurred by participating counsel in this and the other MDLs assigned to me. While I have not yet expressed an opinion regarding whether payment of common benefit fees is appropriate, nor will I here, I direct the parties' attention to PTO # 54, and its warning that "[n]o time spent on developing or processing purely individual issues in any case for an individual client (claimant) will be considered or

² As expressly contemplated by PTO # 51, Bard does not waive its right to seek transfer—pursuant to 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.

should be submitted, nor will time spent on any unauthorized work.” Pretrial Order No. 54, ECF No. 365, ¶ C. The nature of this litigation persuades me that I should inform counsel that at this point in the litigation, where most if not all of the general causation discovery has been completed, it is difficult to envision that any work performed by counsel on individual wave cases would rise to the level of common benefit work.

The court **DIRECTS** the Clerk to file a copy of this order in 2:10-md-2187 and in the Bard Wave 4 cases. In cases subsequently filed in this district after 2:17-cv-03304, 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 13, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE