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

CHARLESTON DIVISION

IN RE: BOSTON SCIENTIFIC CORP.,
PELVIC REPAIR SYSTEMS
PRODUCTS LIABILITY LITIGATION

MDL NO. 2326

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 4
(Initial Hearing Summary - Counsel Structure, Procedural and Discovery Issues and Future Status Conferences)

An initial case management conference was held on April 13, 2012, by Judges Joseph R. Goodwin and Mary E. Stanley. Substantive matters that were addressed are summarized below.

A. Plaintiffs' Counsel Structure

Some counsel for the plaintiffs submitted to the court a proposed counsel organizational structure in accordance with paragraph 3 of PTO #1. The proposal, the memorandum in support and all of the individual applications for appointment to the plaintiffs' steering committee were reviewed by the court. After carefully considering the matter and finding no objection, the court **APPOINTED** the following attorneys as part of the plaintiffs' counsel structure:

1. Coordinating Co-Lead Counsel for the Plaintiffs

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It shall be the responsibility of Coordinating Co-Lead Counsel to work across MDL lines in conjunction with the Executive Committee named below to determine which attorneys are best suited to handle a given task, be it common corporate discovery, expert identification, deposition preparation, motions practice and brief drafting, trial teams and other similar matters that develop as this litigation progresses. Coordinating Co-Lead Counsel will also determine when separate groups from the PSC named below should be designated to work on MDL specific issues that do not cross MDL lines. Coordinating Co-Lead Counsel in conjunction with the Executive Committee will be responsible for coordinating the efforts of the members of the PSC.

2. Plaintiffs' Executive Committee

Bryan F. Aylstock (see contact information above)
Henry G. Garrard, III (see contact information above)
Fred Thompson, III (see contact information above)

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It will be the responsibility of the Executive Committee to work in conjunction with Coordinating Co-Lead Counsel to perform the duties outlined above.

3. Plaintiffs' Steering Committee (PSC)

The proposed counsel organizational structure submitted to the court recommended a singular PSC to coordinate across MDL lines in the four separate pelvic mesh MDLs before this court. All of the applications for appointment to the PSC were carefully reviewed and considered by the court. No objections were received by the court as to the appointment of any proposed applicant or nominee. The attorneys listed on the attachment to this PTO are **APPOINTED** to the PSC.

The PSC will have the responsibilities enumerated in PTO #1. The appointment of the PSC is of a personal nature. Accordingly, the above appointees cannot be substituted by other attorneys, including members of the appointee's law firm, to perform the PSC's exclusive functions, such as committee meetings and court appearances, except with prior approval of the court.

4. Plaintiffs' Co- Lead Counsel MDL 2326

Recommendations were received by the court for the position of Plaintiffs' Co-Lead Counsel in MDL 2326. After review of the submitted application materials and discussion at the initial hearing, the following attorneys were **APPOINTED** as Plaintiffs' Co-Lead Counsel in MDL 2326:

Clayton Clark (see contact information above)
Aimee Wagstaff (see contact information above)

The Plaintiffs' Co-Lead Counsel shall have the following responsibilities in this MDL:

1. Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the court, subject to the right of any plaintiff's counsel to present non-repetitive individual or different positions as long as the presentation does not unduly delay the proceedings.

2. Submit and argue any verbal or written motions presented to the court or magistrate judge on behalf of the plaintiffs as well as oppose, when necessary, any motions submitted by the defendants which involve matters within the sphere of the responsibilities of Lead Counsel.

3. Examine witnesses and introduce evidence at hearings on behalf of plaintiffs.

4. Negotiate and enter into stipulations with defendants regarding this litigation. All stipulations entered into by Lead Counsel, except for strictly administrative details such as scheduling, must be submitted for court approval and will not be binding until the court has ratified the stipulation. Any attorney not in agreement with a non-administrative stipulation shall file with the court a written objection thereto within ten (10) days after service by liaison counsel of the stipulation. Failure to object within the term allowed shall be deemed a waiver and the stipulation will automatically be binding on that party.

5. Explore, develop and pursue all settlement options pertaining to any claim or portion

thereof of any case filed in this litigation.

6. Perform such other functions as may be expressly authorized by further orders of this court.

5. Plaintiffs' Co-Liaison Counsel

Recommendations were received by the court for the position of Plaintiffs' Co-Liaison Counsel. After review of the submitted application materials and discussion at the initial hearing, the following attorneys were **APPOINTED** as Plaintiffs' Co-Liaison Counsel:

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The responsibilities of Plaintiffs' Co-Liaison Counsel shall be the following:

1. to receive and distribute pleadings, orders and motions for pro se parties;

2. to coordinate service and filings;

3. to periodically review the attorney service list on the court's website, promptly communicate necessary revisions to the Clerk and effectuate required revisions in accordance with direction from the Clerk;

4. to receive and distribute pleadings, orders, and motions by overnight courier service and telecopier within two days after receipt, unless such service has been waived, in writing, by a receiving counsel **or is otherwise achieved through CM/ECF** ;

5. to establish and maintain a document depository, real or virtual, to be available to all plaintiffs counsel;

6. to maintain and make available to all plaintiffs counsel of record at reasonable hours a complete file of all documents served by or upon each party (except such documents as may be available at a document depository); and

7. to carry out such other duties as the court may order.

B. <u>Defendant's Lead and Liaison Counsel</u>

1. Lead Counsel

Having received a recommendation for defendant's lead counsel and discussed the same at the initial conference, Mr. Robert Adams was **APPOINTED** as lead counsel for defendant Boston Scientific Corp. in MDL 2326.

Robert T. Adams
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Lead Counsel for the defendant shall have the following responsibilities:

1. To determine (after consultation with the defendant) and present (in brief, oral argument or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of the defendant on all matters arising during these pretrial proceedings;
2. To delegate the specific tasks in a manner to ensure pretrial preparation for the defendant is conducted effectively, efficiently and economically;
3. To negotiate and enter into stipulations with the plaintiffs on behalf of the defendant;
4. To act as the spokesperson to explore and develop settlement options pertaining to the cases filed against the defendant; and
5. To perform such other duties as may be incidental to proper coordination of the defendant's pretrial activities or authorized by further order of the court.

2. Defendants' Co-Liaison Counsel

Recommendations were received by counsel for the defendants for the position of Defendants' Liaison Counsel. After review of the submitted application materials and discussion at the initial hearing, the following attorneys were **APPOINTED** as Defendants' Co-Liaison

Counsel along with Mark Williams who was previously appointed in MDL 2187 *In re C.R. Bard, Inc.*:

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The responsibilities of Defendants' Co-Liaison Counsel shall be the following:

1. to serve as the recipient for all court orders for and on behalf of all defendants;

2. to coordinate service and filings for all defendants whether presently included or subsequently added;

3. to periodically review the attorney service list on the court's website, promptly communicate necessary revisions to the Clerk and effectuate required revisions in accordance with direction from the Clerk;

4. to receive and distribute pleadings, orders, and motions by overnight courier service and telecopier within two days after receipt, unless such service has been waived, in writing, by a receiving counsel **or is otherwise achieved through CM/ECF**; and

5. to carry out such other duties as the court may order.

C. Representation of Clients

All attorneys representing parties to this litigation, regardless of their role in the management structure of the litigation and regardless of this court's designation of Lead and Liaison Counsel, a Plaintiffs' Executive Committee and a Plaintiffs' Steering Committee, continue to bear the responsibility to represent their individual client or clients.

Going forward, the court reiterates its expectation that the lawyers in this complex civil action will devote their best efforts toward cooperation and positive interaction, a course of action that will doubtless lead to the service of their clients' best interests and the fair and orderly disposition of this litigation.

D. Procedural and Discovery Issues

A number of procedural and discovery issues were presented to the court as part of the proposed agenda for the initial hearing including: master complaints, short form complaints and defendants answers thereto, fact sheets, preliminary motions, production of documents and

medical records, privilege log protocol, protective orders, preservation of evidence, redaction protocol, ESI protocols, amendment of pleadings, issues as to proper party defendants and service of process issues. The court directed the parties to continue to meet and confer about these important foundational issues and to have proposals pertaining to them at the time of the next scheduled status conference.

Counsel were advised that lead counsel will be required to attend case management conferences and hearings in person. Status conferences will henceforth be scheduled approximately every 45 to 60 days. The date of the next status conference will be forthcoming in a PTO after consultation with lead counsel appointed at the initial hearing.

Judge Stanley advised counsel of her general expectations during the discovery process. Counsel was directed to use the orders and protocols previously developed and entered in MDL 2187 *In re C. R. Bard, Inc., Pelvic Repair System Products Liability Litigation* when making proposals on procedural and discovery issues in this MDL and the other pelvic mesh MDLs. The court urged the parties to be creative and devise proposed approaches to discovery which will accomplish discovery of the material facts in an efficient and economical manner.

E. Coordination with State Pelvic Mesh Cases

The court advised counsel of its intention to coordinate to the extent possible with the judges and counsel involved in state pelvic mesh cases, especially in states where a majority of the state cases have been filed and coordinated to date.

The court **DIRECTS** the Clerk to file a copy of this order in 2-12-md-2326 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 2-12-cv-

01166. 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 www.wvsd.uscourts.gov.

ENTER: April 17, 2012

Joseph R. Goodwin, Chief Judge

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