

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

**CHARLESTON DIVISION**

IN RE: COLOPLAST CORP. PELVIC SUPPORT  
SYSTEMS PRODUCTS LIABILITY LITIGATION

MDL 2387

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THIS DOCUMENT RELATES TO COLOPLAST  
WAVE 1 AND 2 CASES

**PRETRIAL ORDER # 122**  
**(Third Amended Docket Control Order – Coloplast Wave 1 Cases;**  
**Second Amended Docket Control Order – Coloplast Wave 2 Cases)**

By Pretrial Order # 109 (Second Amended Docket Control Order – Coloplast Wave 1 Cases), I stayed all deadlines for Coloplast Wave 1 cases in PTO # 103 *except* the Plaintiff Fact Sheet deadline. Likewise, by Pretrial Order # 110 (First Amended Docket Control Order – Coloplast Wave 2 Cases), I stayed all deadlines for Coloplast Wave 2 cases in PTO # 107 *except* the Plaintiff Fact Sheet Deadline. Since the entry of these PTOs, plaintiffs have amended their master complaint to allege claims against certain biologic products, the Suspend-Tutoplast Processed Fascia Lata and/or the Axis-Tutoplast Processed Dermis. Recently, the parties identified the cases, some of which were in Coloplast Wave 1 and Wave 2, wherein the plaintiff alleges a claim as to the above biologic products. The court **ORDERS** that the cases in Coloplast Waves 1 and 2 alleging a claim against the biologic products referenced above are removed from those waves so that they can be placed in their own wave. I have attached as Exhibit A, the open cases from Coloplast Waves 1 and 2 that involve a biologic product and **DIRECT** the Clerk to remove the Coloplast Wave 1 or 2 marking from these cases.

As to the remaining open cases in Coloplast Wave 1 and 2, this MDL is now in its final phase with only a few hundred cases remaining. As a result, I find it necessary to place the cases remaining in Coloplast Waves 1 and 2 on a scheduling order as set forth below. The court **ORDERS** that the following deadlines apply in the remaining Coloplast Wave 1 and 2 cases attached hereto as Exhibit B:

**A. SCHEDULING DEADLINES.** The following deadlines shall apply in the Coloplast Wave 1 and 2 cases:

Defendant Fact Sheets.	06/02/2017
Deadline for written discovery requests.	07/31/2017
Expert disclosure by plaintiffs.	07/14/2017
Expert disclosure by defendants.	08/14/2017
Expert disclosure for rebuttal purposes.	08/29/2017
Deposition deadline and close of discovery.	09/12/2017
Filing of Dispositive Motions.	10/02/2017
Response to Dispositive Motions.	10/16/2017
Reply to response to dispositive motions.	10/23/2017
Filing of <i>Daubert</i> motions.	10/09/2017
Responses to <i>Daubert</i> motions.	10/23/2017
Reply to response to <i>Daubert</i> motions.	10/30/2017

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. Each defendant is limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission per plaintiff.

- b. Each plaintiff is limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission to each defendant.
- c. In each individual member case, no more than 4 treating physicians may be deposed.<sup>1</sup>
- 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 all products at issue in Coloplast Wave 1 and 2 cases. In light of the products involved in the Coloplast Wave 1 and 2 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, **the plaintiffs and each defendant are limited to no more than five 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.

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<sup>1</sup> 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.

- 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 defendants' 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 by multiple parties.
- 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 2387) 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 a challenged expert is both a general and specific causation expert, the parties must file a general causation motion in the main MDL 2387 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 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 **August 16, 2017**, any response is due **August 30, 2017** and any reply is due **September 6, 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 Coloplast MDL.

**C. CASES READY FOR TRANSFER, REMAND OR TRIAL**

1. **Venue Recommendations.** By no later than **August 23, 2017**, the parties shall meet and confer concerning the appropriate venue for each of the cases, and the parties shall submit joint venue recommendations to the court by **September 5, 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 # 10 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 # 10 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.<sup>2</sup>

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 intercircuit assignment).

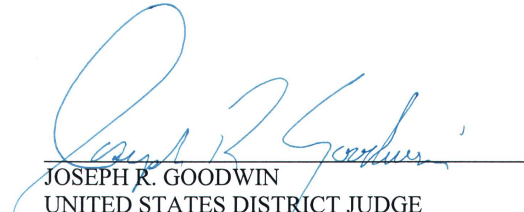
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<sup>2</sup> As expressly contemplated by PTO # 10, Coloplast and Mentor do not waive their right to seek transfer—pursuant to 28 U.S.C. § 1406(a) or any other available ground—of any case to a court of proper venue, regardless of whether that case was transferred to or directly-filed in the Southern District of West Virginia.

**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 # 6, 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 should be submitted, nor will time spent on any unauthorized work." Pretrial Order No. 6, ECF No. 15, ¶ 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 2:12-md-2387 **and in the Coloplast Wave 1 and 2 cases listed on Exhibits A and B.** In cases subsequently filed in this district after 2:17-cv-01924, 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](http://www.wvsd.uscourts.gov).

ENTER: April 25, 2017

  
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JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE

PTO 122  
EXHIBIT A

	<b>SDWV Case Number</b>	<b>Plaintiff</b>
1	2:13-cv-00485	Minihan v. Coloplast Corp. et al
2	2:13-cv-14547	Hicks et al v. Coloplast Corp.
3	2:13-cv-17578	Hatfield et al v. Coloplast Corp. et al
4	2:13-cv-20691	Hernandez v. Coloplast Corp.
5	2:13-cv-22383	Allen et al v. Coloplast Corp.
6	2:14-cv-11148	Jones v. Coloplast Corp.
7	2:14-cv-18347	Cabellero v. Coloplast Corp.
8	2:15-cv-04242	Curiel v. Coloplast Corp.
9	2:15-cv-07421	Sansom v. Coloplast Corp.
10	2:16-cv-01332	Dangerfield v. Coloplast Corp.
11	2:16-cv-01391	Richardson et al v. Coloplast Corp.
12	2:16-cv-01562	Wright v. Coloplast Corp.
13	2:15-cv-01733	Herrera v. Coloplast Corp.
14	2:15-cv-12884	Berry v. Coloplast Corp.



PTO 122  
EXHIBIT B

	SDWV Case Number	Plaintiff	Status
1	2:13-cv-09904	Dilling v. Mentor Worldwide LLC	2387-W1
2	2:13-cv-15065	Smith v. Coloplast Corp.	2387-W1
3	2:14-cv-05576	Pennine v. Coloplast Corp.	2387-W1
4	2:14-cv-22526	Rivera et al v. Coloplast Corp.	2387-W1
5	2:14-cv-27484	Sparks et al v. Coloplast Corp.	2387-W1
6	2:15-cv-03975	Bate et al v. Coloplast Corp.	2387-W1
7	2:15-cv-16290	Chapman v. Coloplast Corp.	2387-W1
8	2:16-cv-00871	Godreau-Rivera et al v. Coloplast Corp.	2387-W1
9	2:13-cv-20131	Harkness v. Mentor Worldwide LLC et al	2387-W2
10	2:14-cv-28206	Swann v. Coloplast Corp.	2387-W2
11	2:15-cv-03504	Buki v. Coloplast Corp.	2387-W2
12	2:15-cv-05355	Padilla v. Coloplast Corp.	2387-W2
13	2:15-cv-12815	Thomas et al v. Coloplast Corp.	2387-W2
14	2:15-cv-13643	Vigil et al v. Coloplast Corp.	2387-W2
15	2:15-cv-15303	Ketner v. Coloplast Corp.	2387-W2