

**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

-----  
THIS DOCUMENT RELATES TO COLOPLAST  
WAVE 4 CASES

**PRETRIAL ORDER # 124  
(Docket Control Order – Coloplast Wave 4 Cases)**

By Pretrial Order # 122 (Third Amended Docket Control Order – Coloplast Wave 1 Cases; Second Amended Docket Control Order – Coloplast Wave 2 Cases), I returned certain cases in Coloplast Waves 1 and 2 to a scheduling order. There are two groups of remaining cases left in this MDL: (1) cases alleging a claim against certain biologic products, the Suspend-Tutoplast Processed Fascia Lata and/or the Axis-Tutoplast Processed Dermis; and (2) all remaining nonbiologic cases not already in Wave 1 or 2. In light of the remaining number of total cases left in this MDL, I find it necessary to place the cases alleging a claim against defendants' biologic products on a scheduling order as set forth below. *To the extent other defendants, in addition to Coloplast Corp. (“Coloplast”) and Mentor Worldwide LLC (“Mentor”), are named in these cases, deadlines below apply to those defendants as well.* The court **ORDERS** that the following deadlines apply in the remaining Coloplast Wave 4 cases attached hereto as Exhibit A:

**A. SCHEDULING DEADLINES.** The following deadlines shall apply in the Coloplast Wave 4 cases:

Plaintiff Fact Sheets. <sup>1</sup>	05/20/2017
Defendant Fact Sheets. <sup>2</sup>	06/20/2017
Deadline for written discovery requests.	08/28/2017
Expert disclosure by plaintiffs.	08/14/2017
Expert disclosure by defendants.	09/12/2017
Expert disclosure for rebuttal purposes.	09/28/2017
Deposition deadline and close of discovery.	10/12/2017
Filing of Dispositive Motions.	11/01/2017
Response to Dispositive Motions.	11/15/2017
Reply to response to dispositive motions.	11/22/2017
Filing of <i>Daubert</i> motions.	11/16/2017
Responses to <i>Daubert</i> motions.	11/30/2017
Reply to response to <i>Daubert</i> motions.	12/07/2017

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<sup>3</sup> is limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission per plaintiff.

---

<sup>1</sup> The court reminds plaintiffs who have named additional defendants other than Coloplast or Mentor to serve a defendant-specific Plaintiff Fact Sheet from that particular defendant’s MDL.

<sup>2</sup> Where plaintiffs have named multiple defendants (i.e., Mentor and/or Coloplast and Ethicon, Inc., Boston Scientific Corp., etc.), each defendant must serve a Defendant Fact Sheet using the form agreed to for that particular defendant’s MDL.

<sup>3</sup> In referring to the “defendant” or “defendants” throughout this order, it is my intention that a defendant(s) includes the defendant and its related entities, i.e., Ethicon, Inc. and Johnson & Johnson are related entities and treated as one defendant for purposes of these discovery limitations. Likewise, if more than one plaintiff is named, plaintiffs are treated as one entity for purposes of these discovery limitations.

- b. Plaintiffs are 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>4</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 4 cases. In light of the products involved in Coloplast 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, **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

---

<sup>4</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.

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 or multiple defendants utilize the same general causation expert or experts or general causation rebuttal 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.<sup>5</sup> 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

---

<sup>5</sup> If parties wish to adopt previous *Daubert* motions on general causation experts from other MDLs, they may so indicate in a filing in the main MDL 2387 which includes a notice of adoption and a copy of the previous filing they wish to adopt.

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 **September 16, 2017**, any response is due **October 2, 2017** and any reply is due **October 11, 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 **September 22, 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 **October 2, 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>6</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

---

<sup>6</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. I entered identical PTOs in the remaining MDLs assigned to me.

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).

**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<sup>7</sup>, 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.

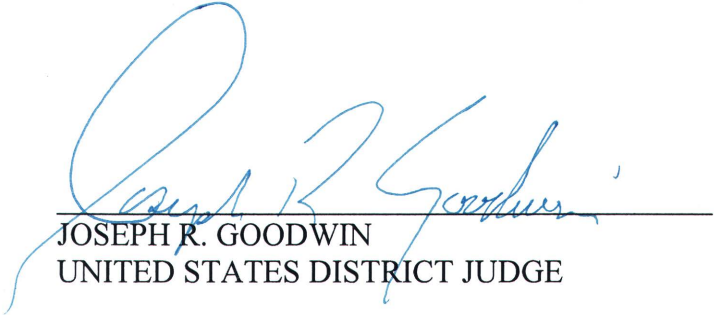
The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2387 **and in the Coloplast Wave 4 cases listed on Exhibit A**. In cases subsequently filed in this district after 2:17-cv-01924, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each 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

---

<sup>7</sup> I entered identical PTOs in the remaining MDLs assigned to me.

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 26, 2017



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE



**PTO 124**  
**EXHIBIT A**

	SDWV Case Number	Plaintiff
1	2:12-cv-07728	Ridge et al v. Mentor Worldwide LLC et al
2	2:13-cv-00437	Myers v. Coloplast A/S et al
3	2:13-cv-00485	Minihan v. Coloplast Corp. et al
4	2:13-cv-07480	Llamas v. Mentor Worldwide LLC et al
5	2:13-cv-07849	Saunders et al v. Mentor Worldwide LLC et al
6	2:13-cv-08238	Lall et al v. Mentor Worldwide LLC et al
7	2:13-cv-14547	Hicks et al v. Coloplast Corp.
8	2:13-cv-16600	Sanders et al v. Coloplast Corp.
9	2:13-cv-16838	Appel v. Coloplast Corp.
10	2:13-cv-17099	Papousek et al v. Mentor Worldwide LLC et al
11	2:13-cv-17389	Peele et al v. Mentor Worldwide LLC et al
12	2:13-cv-17578	Hatfield et al v. Coloplast Corp. et al
13	2:13-cv-18316	Bjur v. Mentor Worldwide LLC et al
14	2:13-cv-18509	Lodes et al v. Mentor Worldwide LLC et al
15	2:13-cv-18520	Arndt et al v. Mentor Worldwide LLC et al
16	2:13-cv-19585	Arcadia et al v. Mentor Worldwide LLC et al
17	2:13-cv-19587	Gordon v. Mentor Worldwide LLC et al
18	2:13-cv-19724	Acosta-Shannon et al v. Mentor Worldwide LLC
19	2:13-cv-20013	Lorenz et al v. Mentor Worldwide LLC et al
20	2:13-cv-20274	Tighe et al v. Coloplast Corp. et al
21	2:13-cv-20291	Monez-Heyer et al v. Coloplast Corp. et al
22	2:13-cv-20382	Taylor v. Mentor Worldwide LLC
23	2:13-cv-20395	Bridges v. Mentor Worldwide LLC et al
24	2:13-cv-20691	Hernandez v. Coloplast Corp.
25	2:13-cv-22383	Allen et al v. Coloplast Corp.
26	2:13-cv-22489	Yealey et al v. Mentor Worldwide LLC et al
27	2:13-cv-22492	Daniels et al v. Mentor Worldwide LLC et al
28	2:13-cv-33458	Wright et al v. Mentor Worldwide LLC et al
29	2:14-cv-01736	Richard et al v. Mentor Worldwide LLC et al
30	2:14-cv-07697	Kronmiller et al v. Coloplast Corp. et al
31	2:14-cv-11148	Jones v. Coloplast Corp.
32	2:14-cv-15170	Sheffield v. Mentor Worldwide LLC et al
33	2:14-cv-16379	Madrigal v. Coloplast Corp.
34	2:14-cv-16604	Yoder v. Coloplast Corp. et al
35	2:14-cv-16831	Beeler v. Mentor Worldwide LLC et al
36	2:14-cv-17378	Wolf et al v. Mentor Worldwide LLC et al
37	2:14-cv-18347	Cabellero v. Coloplast Corp.
38	2:14-cv-18649	Livingstone v. Coloplast Corp.
39	2:14-cv-25835	Chechila v. Mentor Worldwide LLC et al
40	2:14-cv-28911	Bailey et al v. Mentor Worldwide LLC et al

**PTO 124**  
**EXHIBIT A**

	SDWV Case Number	Plaintiff
41	2:15-cv-01733	Herrera v. Coloplast Corp.
42	2:15-cv-04242	Curiel v. Coloplast Corp.
43	2:15-cv-07421	Sansom v. Coloplast Corp.
44	2:15-cv-12884	Berry v. Coloplast Corp.
45	2:15-cv-13874	McCreary v. Coloplast Corp. et al
46	2:15-cv-15531	Rathburn et al v. Coloplast Corp.
47	2:16-cv-01321	King et al v. Coloplast Corp. et al
48	2:16-cv-01332	Dangerfield v. Coloplast Corp.
49	2:16-cv-01343	Arrington v. Coloplast Corp. et al
50	2:16-cv-01391	Richardson et al v. Coloplast Corp.
51	2:16-cv-01392	Hester et al v. Coloplast Corp. et al
52	2:16-cv-01562	Wright v. Coloplast Corp.
53	2:16-cv-02068	Reese v. Coloplast Corp. et al
54	2:16-cv-06374	Rodriguez v. Coloplast Corp.
55	2:16-cv-10267	Kocsis v. Coloplast Corp.
56	2:16-cv-10721	Fleckenstein v. Coloplast Corp.
57	2:16-cv-11332	Grimes v. Coloplast Corp.
58	2:16-cv-11333	Martin v. Coloplast Corp.
59	2:16-cv-11334	Cordova v. Coloplast Corp.
60	2:16-cv-11335	Harris v. Coloplast Corp.
61	2:16-cv-11336	Scruggs v. Coloplast Corp.
62	2:16-cv-11337	Adams v. Coloplast Corp.
63	2:17-cv-00490	Fernandaez v. Coloplast Corp.