

**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
WAVES 1, 2, 3 and 4 CASES

PRETRIAL ORDER # 132

**(Fifth Amended Docket Control Order – Coloplast Wave 1 Cases;
Fourth Amended Docket Control Order – Coloplast Wave 2 Cases; Second Amended
Docket Control Order – Coloplast Wave 3 Cases; Second Amended Docket Control
Order - Coloplast Wave 4 Cases)**

By PTO # 130, I stayed all wave deadlines in Coloplast Waves 1, 2, 3 and 4, but only as to claims involving Mentor Worldwide LLC or the biologic products (Suspend-Tutoplast Processed Fascia Lata and/or the Axis-Tutoplast Processed Dermis). I further provided in PTO # 130 that all other deadlines for claims in Waves 1, 2, 3 and 4 against Coloplast Corp. or other defendants remained in place. Upon further consideration, the court **ORDERS** that (1) the deadlines for all cases in Coloplast Wave 4 (all of which involve the biologic products) remain stayed for all purposes; and (2) the Coloplast Waves 1, 2 and 3 cases are stayed for purposes of general causation discovery only, but not as to specific causation discovery.

In light of the above, the court **ORDERS** that the following deadlines apply in the Coloplast Waves 1, 2 and 3 cases. The discovery, expert, dispositive and *Daubert* motion deadlines below pertain only to *specific causation* in Coloplast Waves 1, 2 and 3.

A. SCHEDULING DEADLINES.

Defendant Fact Sheets.	07/20/2017
Deadline for written discovery requests on Specific Causation.	09/21/2017
Specific Causation Expert disclosure by plaintiffs.	09/05/2017
Specific Causation Expert disclosure by defendants.	10/05/2017
Specific Causation Expert disclosure for rebuttal purposes.	10/20/2017
Specific Causation Deposition deadline and close of discovery.	11/04/2017
Filing of Dispositive Motions on Specific Causation.	11/24/2017
Response to Dispositive Motions on Specific Causation.	12/08/2017
Reply to response to dispositive motions on Specific Causation.	12/15/2017
Filing of <i>Daubert</i> motions on Specific Causation.	12/01/2017
Responses to <i>Daubert</i> motions on Specific Causation.	12/15/2017
Reply to response to <i>Daubert</i> motions on Specific Causation.	12/22/2017

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.¹
- 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 court has stayed general causation discovery as to Waves 1, 2 and 3, including Rule 30(b)(6) depositions. However, the parties may conduct specific causation expert discovery on all products at issue in the Coloplast Waves 1, 2 and 3 cases. In light of the products involved in the Coloplast Waves 1, 2 and 3 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) total and inclusive of specific and general causation experts.** It is the court's

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.

expectation that experts will overlap for plaintiffs who have the same product(s), to some extent, if not entirely.

- b. 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.
- c. The court will consider modifications to the above limitations upon good cause shown.

B. MOTION PRACTICE.

1. **Hearings.** Hearing dates for dispositive and *Daubert* motions, if any, will be set at a future status conference.
2. **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.
3. **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 **October 6, 2017**, any response is due **October 20, 2017** and any reply is due **October 27, 2017**.

4. **Locations of Filings.** 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 **October 13, 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 23, 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.²

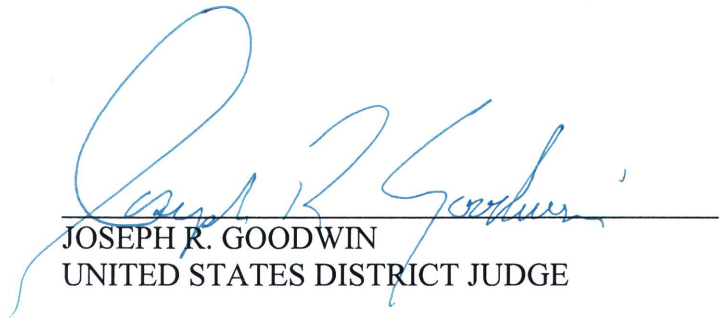
3. **Trial Settings.** If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed 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 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, 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.

² 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.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2387 **and in the Coloplast Waves 1, 2, 3, and 4 cases**. In cases subsequently filed in this district after 2:17-cv-03309, 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: June 22, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE