

**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 CASES
IDENTIFIED ON EXHIBIT A

**PRETRIAL ORDER # 147
(Docket Control Order – Coloplast Wave 7 Cases)**

The cases on Exhibit A originally named Coloplast (or other defendants in the Coloplast MDL, such as Mentor) (collectively referred to as “Coloplast”), and other defendants (AMS, Ethicon, etc.) and resided in Coloplast Waves 1, 2 or 3. Coloplast represented that claims against it in the cases on Exhibit A had been resolved and requested that the cases be moved from the Coloplast MDL to MDLs of the remaining defendants in each case. The court agreed, and the cases on Exhibit A were moved to other MDLs. In the meantime, the defendants other than Coloplast were dismissed from the cases on Exhibit A. The cases were returned to Coloplast. Because resolution has not occurred for the cases on Exhibit A, despite representations to the contrary, the court **ORDERS** that:

1. The cases on Exhibit A are removed from their previous waves, Coloplast Waves 1, 2, and 3, and placed in Wave 7;
2. *To the extent other defendants, in addition to Coloplast are named in the cases on Exhibit A, the deadlines below also apply to them;*

A. SCHEDULING DEADLINES. The following deadlines shall apply in all Coloplast Wave 7 cases *with the following exceptions as noted:*

| | |
|---|----------------|
| Plaintiff Fact Sheets. ¹ | Not applicable |
| Defendant Fact Sheets. ² | Not applicable |
| Deadline for written discovery requests for cases on Exhibit A. | 01/28/2019 |
| Expert disclosures served by plaintiffs pursuant to Fed. R. Civ. P. 26 as limited by ¶ 3.a. of this order for cases on Exhibit A. | 02/22/2019 |
| Expert disclosure served by defendants pursuant to Fed. R. Civ. P. 26 as limited by ¶ 3.a. of this order ³ for cases on Exhibit A. | 03/22/2019 |
| Expert disclosure served for rebuttal pursuant to Fed. R. Civ. P. 26 as limited by ¶ 3.a. of this order for cases on Exhibit A. | 03/29/2019 |
| Deposition deadline and close of discovery for cases on Exhibit A. | 04/29/2019 |
| Filing of dispositive motions for cases on Exhibit A. | 05/13/2019 |
| Response to dispositive motions for cases on Exhibit A. | 05/28/2019 |
| Reply to response to dispositive motions for cases on Exhibit A. | 06/04/2019 |
| Filing of <i>Daubert</i> motions for cases on Exhibit A. | 05/13/2019 |
| Responses to <i>Daubert</i> motions for cases on Exhibit A. | 05/27/2019 |

¹ The court notes that cases previously in Coloplast Waves 1, 2 and 3, as was the case for Exhibit A cases, were subject to plaintiff fact sheet deadlines that have long since passed. This deadline does not apply to former Coloplast Wave 1, 2 and 3 cases.

² The court notes that the cases previously in Coloplast Waves 1, 2 and 3, as was the case for Exhibit A cases, were subject to defendant fact sheet deadline that have long since passed. This deadline does not apply to former Coloplast Wave 1, 2 and 3 cases.

³ Paragraph 3.a. of this order states the “the plaintiffs and each defendant are limited to no more than five (5) experts per case (exclusive of treating physicians).”

1. **Completion Date.** The last date to complete depositions shall be the “discovery completion date” by which all discovery 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 case.
 - 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.⁴
 - d. Depositions of plaintiff’s friends and family members only may be taken at any time prior to trial provided the deposition is requested before the discovery completion date.
 - e. The Deposition of any witness is limited to 3 hours absent agreement of the parties.
 - f. ***The court does not intend for the parties to duplicate discovery already conducted under the previous waves. The parties should not serve duplicate interrogatories, requests for production or***

⁴ 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.

requests for admissions or take depositions for a second time. The parties are subject to the provisions of the Federal Rules of Civil Procedure requiring the proper supplementation of discovery.

3. **Limitations on Experts.** The following limitations related to experts apply:

- a. The parties may conduct general and, to the extent not already conducted, specific expert discovery on all products at issue in this Wave. In light of the products involved in this Wave, 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).**
- b. The parties shall coordinate the depositions of general causation experts. Insofar as multiple plaintiffs or multiple defendants use 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.

4. **Transferring to another MDL, requesting removal from the Wave and extensions of deadlines.**

- a. *Transfer of any case from this wave to any other MDL, whether by ruling upon a motion from plaintiff or defendants or sua sponte by the court, does not relieve the plaintiff or any remaining defendant(s) from the deadlines of this Docket Control Order.*
- b. If an Amended Short Form Complaint properly filed pursuant to Federal Rules of Civil Procedure 15(a), names a new party, then any party may move for an extension to the Docket Control Order.

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.⁵ 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 the individual member case.

⁵ If parties wish to adopt previous *Daubert* motions on general causation experts from other MDLs, they may file a notice of adoption with a copy of the previous filing (if necessary) they wish to adopt in the main MDL 2387.

2. **Page Limitations.** The page limitations provided in Local Civil Rule 7.1(a)(2) apply to memoranda in support of all dispositive and *Daubert* motions, oppositions, and replies. The court will not consider pleadings that exceed these limitations.

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. *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. 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: Any consolidated motion to seal is due on or before **March 25, 2019**, and any response is due by **April 8, 2019**. Any reply is due by **April 15, 2019**. The court expects full compliance with Local Civil Rule 26.4(c).

4. **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 **April 6, 2019**, the parties shall meet and confer concerning the appropriate venue for each of the cases, and the parties are **ORDERED** to submit joint venue recommendations to the court by **April 13, 2019**. The parties' joint recommendation(s) shall identify cases where venue is in dispute. The court may then request briefing.

2. **Transfer and Remand.** 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.⁶

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' summary judgment 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).

⁶ As expressly contemplated by PTO # 10, Coloplast 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. I entered identical PTOs in the remaining MDLs assigned to me.

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. I direct the parties' attention to PTO # 6⁷, 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 court is of the opinion it is highly unlikely that any work performed by counsel on individual wave cases will be considered 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 7 cases identified on Exhibit A.** 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: December 11, 2018



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

⁷ I entered identical PTOs in the remaining MDLs assigned to me.

Exhibit A

| Civil Action No. | Case Name |
|-------------------------|--|
| 2:13-cv-00013 | Barfield v. Mentor Worldwide LLC et al |
| 2:13-cv-16800 | Lawson v. Coloplast Corp. |
| 2:15-cv-09608 | Martinez v. Mentor Worldwide LLC et al |
| 2:16-cv-03093 | Koster et al v. Coloplast Corp. et al |