

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: COLOPLAST CORP. PELVIC SUPPORT
SYSTEMS PRODUCTS LIABILITY LITIGATION MDL No. 2387

**PRETRIAL ORDER # 74
(Docket Control Order – Wave 1 Cases)**

I recently requested informally that the parties submit a joint list of 200 of the oldest cases in the Coloplast MDL that name only Coloplast Corp. or allege claims against only Coloplast Corp.'s products. That joint submission is due September 28, 2015. It is **ORDERED** as follows:

A. CONFIRMATION OF CASES. On **September 29, 2015**, I will enter an order, attaching as Exhibit A, the 200 cases identified by the parties. On or before **October 26, 2015**, the parties are directed to notify the court by filing a “Notice Complying with PTO # 195,” which identifies by name and case number, any cases on Exhibit A: (1) that include defendants in addition to the Coloplast defendant(s); or (2) that are otherwise not appropriate for inclusion in the Coloplast Wave 1 because, for example, the case has been or will be dismissed. On or before **October 28, 2015**, the court will enter a PTO confirming the cases to be included in the “Coloplast Wave 1.” The parties may begin discovery upon the entry of this PTO, unless they agree otherwise.

B. SCHEDULING DEADLINES. The following deadlines shall apply in the Coloplast Wave 1 cases:

Plaintiff Fact Sheets.	11/12/2015
Defendant Fact Sheets.	12/14/2015

Deadline for written discovery requests.	08/08/2016
Expert disclosure by plaintiffs.	07/25/2016
Expert disclosure by defendants.	08/22/2016
Expert disclosure for rebuttal purposes.	09/07/2016
Deposition deadline and close of discovery.	09/21/2016
Filing of dispositive and <i>Daubert</i> motions.	10/11/2016
Responses to dispositive and <i>Daubert</i> motions.	10/25/2016
Reply to response to dispositive and <i>Daubert</i> motions.	11/01/2016

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. Coloplast is limited to 10 interrogatories and 10 requests for admission per plaintiff.
- b. Plaintiffs are limited to 10 interrogatories and 10 requests for admission to Coloplast.
- 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.

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.

- 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 the products at issue in Coloplast Wave 1. In light of the common products involved in Coloplast Wave 1, 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, **each side is limited to no more than five (5) 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.
- 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 Coloplast's 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 for multiple plaintiffs.

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

C. MOTION PRACTICE.

1. **Early Dispositive Motions.** If discovery (e.g., the deposition of plaintiff and her implanting physician) reveals facts that could support a motion that would be dispositive of the *entirety* of a plaintiff's claims (e.g., causation, the statute of limitations), either party may seek the court's leave *in the individual member case* to file an early dispositive motion on that issue. If such leave is granted, the court shall set a briefing schedule at that time.

2. **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 an expert is both a general and specific causation expert, the parties may file a general causation motion in the main MDL 2387 and an individual specific causation motion in an individual member case.

3. **Hearings.** Hearing dates for dispositive and *Daubert* motions, if any, will be set at a future status conference.

4. **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.

5. **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 Coloplast 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 1, 2016**, any response is due **September 15, 2016** and any reply is due **September 22, 2016**.

6. **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.

D. CASES READY FOR TRANSFER, REMAND OR TRIAL

1. **Venue Recommendations.** By no later than **January 11, 2016**, 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 **January 19, 2016**.

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

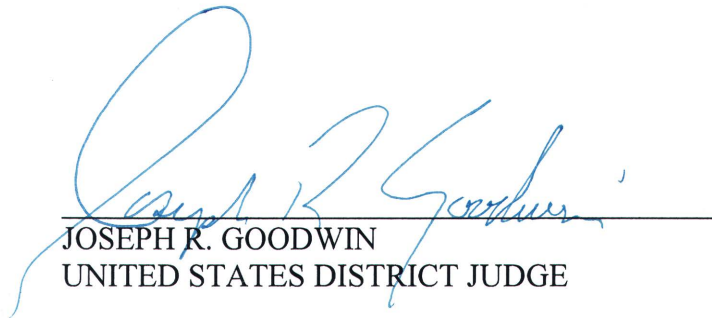
3. **Trial Settings.** If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed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

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2387. In cases subsequently filed in this district after 2:15-cv-13089, a copy of the most recent pretrial order

²As 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.

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: September 14, 2015



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE