

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

CHARLESTON DIVISION

IN RE: BOSTON SCIENTIFIC CORP.,
PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL No. 2326

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 51
(Order re: Bellwether Case Selection)

On August 1, 2013, I heard bellwether presentations from the parties in this MDL. I am not satisfied with most of the proposed selections I received from the parties. From the plaintiffs there were multi-product picks, while defendants offered several picks with potential statute of limitations issues (plaintiffs offered one pick that defendants assert may be subject to a statute of limitations issue). Both parties offered selections that were not representative based on age and other factors or because they had conditions that made the cases outliers (Alzheimer's disease, vaginal obliteration, participation in drug studies, active runner with infertility issues, etc.). I find it necessary for the parties to resubmit their bellwether selections with more representative cases. Because the parties seem unwilling or unable to do this on their own, I find it necessary to set the following parameters for what is representative:

- (1) No more than eight (8) nominations per side, including only the Obtryx, Advantage/Fit, Pinnacle and Uphold products;
- (2) Single product cases only;
- (3) Age range of plaintiff: 40-60 years old at implant;
- (4) Number of revision surgeries; i.e., surgery under general anesthesia: 0-3;

(5) No statute of limitations issues; and

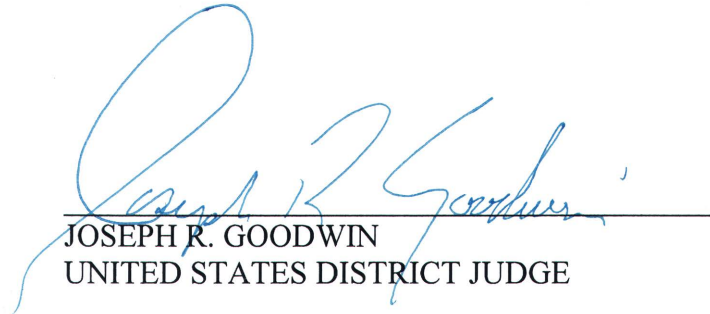
(6) No comorbidities or other circumstances that make the plaintiff an outlier or otherwise not representative of the majority of plaintiffs such that the case is not a true bellwether case.

It is **ORDERED** that the parties file their amended bellwether selections simultaneously on **Monday, August 12, 2013, at noon. The parties may agree to an earlier time if they wish.** The submissions may be accompanied by a three-page brief in support of the selections. Each side may file a two-page response to the opposing parties' selections on or before **Wednesday, August 14, 2013, at noon.** Thereafter, I will choose six (6) bellwether cases (rather than five (5)) for the three rounds of trials scheduled for February 11, June 17, and September 9, 2014.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2326 and it shall apply to each member related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:13-cv-18645. In cases subsequently filed in this district, 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: August 7, 2013



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE