BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

**In re Coloplast Corp.'s Pelvic Support Systems Products Liability Litigation** **MDL No. ___**

**MOTION OF COLOPLAST CORP. FOR TRANSFER TO THE SOUTHERN DISTRICT OF WEST VIRGINIA PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Defendant Coloplast Corp. ("Coloplast"), a common defendant in the pending constituent civil actions, *Alvonia B. Fisher and Horace Fisher v. Mentor Worldwide, LLC, et al.*, No. 4:12-cv-00467, (W.D. Mo.); *Martha Gustafson and Scott Gustafson v. Coloplast Corp., et al.*, No. 1:12-cv-03292, (N.D. Ill.); *June C. Hess v. Mentor Worldwide, LLC, et al.*, No. 2:12-cv-01919, (E.D. Pa.); *Denise Jacobs and John Jacobs v. Mentor Corporation, et al.*, No. 8:10-cv-02429, (M.D. Fla.); *Rhonda Lariscy and Grady Lariscy v. Mentor Worldwide, LLC, et al.,* No. 8:11-cv-02377, (M.D. Fla.); *Gladys Marrero and Guillermo Marrero v. Mentor Worldwide, LLC, et al.,* No. 1:12-cv-01829, (N.D. Ill.); *Patricia Purvis v. Mentor Worldwide, LLC, et al.,* No. 2:12-cv-02212, (D. Kan.); *Melissa M. Renaud and Ronald Renaud v. Mentor Worldwide, LLC, et al.*, No. 4:12-cv-00465, (W.D. Mo.); *Connie Waldrop and James Waldrop v. Mentor Worldwide, LLC, et al.,* No. 5:12-cv-00532, (W.D. Okla.); *Mildred C. Watts and Wade Watts v. Mentor Worldwide, LLC, et al.*, No. 4:12-cv-00466, (W.D. Mo.); *Mary Joe White and Drew Izso v. Coloplast Corporation, et al.*, No. 8:12-cv-00061, (M.D. Fla.); *Ann M. Williams and Donald Williams v. Mentor Worldwide, LLC, et al.,* No. 4:12-cv-00321, (S.D. Ill.); *Lois Wolz and Robert Wolz v. Mentor Worldwide, LLC, et al.*, No. 4:12-cv-00698, (E.D. Mo.), respectfully moves the Panel pursuant to 28 U.S.C. § 1407, for an Order transferring a group of thirteen product liability actions, involving 24 plaintiffs, pending in eight federal district courts, to Chief Justice Joseph R. Goodwin in the Southern District of West Virginia, for coordinated and/or consolidated pretrial

proceedings. The accompanying Schedule of Actions lists the thirteen actions subject to this Motion.

In support of this Motion, Movant states the following as more fully set forth in the accompanying Brief in Support of this Motion:

1. On May 9, 2012, certain Plaintiffs' counsel filed Plaintiffs' Motion to Expand the Scope of *In re Mentor Corp. ObTape MDL* (MDL 2004) and For Transfer to the Middle District of Georgia Pursuant to 28 U.S.C. § 1407 ("Plaintiffs' Motion"). MDL No. 2004, Dkt. No. 204. In its Response in Opposition to Plaintiffs' Motion and Coloplast Corp.'s Request to Centralize Pelvic Mesh Cases in a Separate Proceeding in the Southern District of West Virginia Pursuant to 28 U.S.C. § 1407 and Brief in Support of same ("Response in Opposition"), Coloplast objected to Plaintiffs' request to expand the scope of MDL No. 2004 and for transfer of the cases at issue, which involved some of the cases included on the Schedule of Actions filed herewith, to the Middle District of Georgia for several reasons. MDL No. 2004, Dkt. No. 245. First and foremost, recent Panel rulings support creation of separate proceedings for each pelvic mesh manufacturer. Second, centralization in the Middle District of Georgia is neither just nor efficient, as MDL No. 2004 is a very mature proceeding, the Middle District of Georgia is not convenient for all parties, and such a transfer would result in certain pelvic mesh manufacturer defendants facing two sets of MDL case management procedures and deadlines. Third, the cases at issue do not allege use of ObTape, and therefore, do not involve questions or facts that are common to the actions already pending in MDL No. 2004. Instead, Coloplast requested that the Panel transfer the Coloplast cases at issue that were not already pending in a MDL proceeding in the Southern District of West Virginia, to a Coloplast MDL proceeding in the Southern District of West Virginia separate, but alongside the other four MDL proceedings, and separate and apart

from MDL No. 2004. Coloplast incorporates and adopts, all arguments included in its Response in Opposition, as if fully set forth herein. *See* Exhibit A, without the exhibits and attachments.

2. The actions for which transfer and consolidation and/or coordination are proposed allege similar product liability claims arising out of the use of certain devices manufactured and/or sold by a common defendant, Coloplast. Each action alleges that Coloplast defectively designed and manufactured various pelvic mesh medical devices, including Aris Transobturator Sling® ("Aris®") and Novasilk®, which are devices used to surgically to treat either Pelvic Organ Prolapse or Stress Urinary Incontinence, and failed to provide appropriate warnings and instructions regarding the risks and dangers posed by these devices.

3. Movant is not aware of any actions, other than the thirteen actions proposed for transfer herein, which are on file in a federal district court alleging similar claims, and have not otherwise been transferred to an active pelvic mesh MDL proceeding. These thirteen actions are listed on the Schedule of Actions filed herewith.

4. Movant proposes that the actions listed on the Schedule of Actions filed outside the Southern District of West Virginia be transferred to that District. Further, Movant proposes that any additional federal actions filed outside the Southern District of West Virginia should be transferred to the Southern District of West Virginia consistent with the Panel's previous ruling.

5. The actions listed on the Schedule of Actions involve one or more issues of fact that are common relating to Movant's research, development, design, testing, manufacturing, selling, marketing and/or labeling of Coloplast's pelvic mesh devices, including Aris® and Novasilk®.

6. The centralization of these actions in a single judicial district for coordinated and/or consolidated pretrial proceedings will promote the just and efficient conduct of these

actions, will serve the convenience of the parties, and will promote the interests of justice. The transfer of these cases will conserve judicial resources, reduce litigation costs, avoid potentially inconsistent pretrial scheduling orders and substantive rulings, and will eliminate unnecessary duplicative discovery.

7. None of the related actions are sufficiently advanced toward trial that the parties would be unduly prejudiced by transfer to another federal district court for coordinated and/or consolidated pretrial proceedings.

8. The Southern District of West Virginia is the appropriate transferee forum because seven multiple defendant cases involving Coloplast's pelvic mesh devices are already pending, in three of the four pelvic mesh manufacturer MDL proceedings before Chief Justice Goodwin. This is almost one-third of the total actions filed against Coloplast in federal district courts. Additionally, Chief Justice Goodwin has already exercised jurisdiction over Coloplast. He is familiar with the legal and factual issues, arising from pelvic mesh product liability claims, and has already begun learning about Coloplast, its counsel, and a few of its pelvic mesh devices through these seven co-device actions, including Aris®, Novasilk®, Restorelle®, and Supris Suprapubic Sling®. Moreover, this request is consistent with this Panel's recent decision to create separate MDL proceedings for individual pelvic mesh manufacturers, before Chief Justice Goodwin.[1]

9. This motion is based on the accompanying Brief and Schedule of Actions, as well as Coloplast's Response in Opposition.

[1] *See In re: American Medical Systems, Inc., Pelvic Repair System Prods. Liab. Litig.* --- F. Supp. 2d ----, 2012 WL 432533, at *3 (J.P.M.L. Feb. 7, 2012).

WHEREFORE, Movant respectfully moves the Panel to order that the actions currently pending in any federal district court outside the Southern District of West Virginia, which are listed on the Schedule of Actions filed herewith, as well as any cases that may be subsequently filed in any United States District Court asserting related or similar claims, be transferred to the Southern District of West Virginia for coordinated and/or consolidated pretrial proceedings before the Hon. Joseph R. Goodwin, consistent with the Panel's previous ruling.

THIS, the 5th day of June, 2012.

Respectfully submitted,

s/ Lana K. Varney

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BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

**In re Coloplast Corp.'s Pelvic Support Systems Products Liability Litigation** **MDL No. _____**

**BRIEF IN SUPPORT OF MOTION OF COLOPLAST CORP. FOR TRANSFER TO THE SOUTHERN DISTRICT OF WEST VIRGINIA PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Coloplast Corp. ("Coloplast") is a common Defendant in thirteen pending federal actions, *Alvonia B. Fisher and Horace Fisher v. Mentor Worldwide, LLC, et al.*, No. 4:12-cv-00467, (W.D. Mo.); *Martha Gustafson and Scott Gustafson v. Coloplast Corp., et al.*, No. 1:12-cv-03292, (N.D. Ill.); *June C. Hess v. Mentor Worldwide, LLC, et al.*, No. 2:12-cv-01919, (E.D. Pa.); *Denise Jacobs and John Jacobs v. Mentor Corporation, et al.*, No. 8:10-cv-02429, (M.D. Fla.); *Rhonda Lariscy and Grady Lariscy v. Mentor Worldwide, LLC, et al.* No. 8:11-cv-02377, (M.D. Fla.); *Gladys Marrero and Guillermo Marrero v. Mentor Worldwide, LLC, et al.,* No. 1:12-cv-01829, (N.D. Ill.); *Patricia Purvis v. Mentor Worldwide, LLC, et al.,* No. 2:12-cv-02212, (D. Kan.); *Melissa M. Renaud and Ronald Renaud v. Mentor Worldwide, LLC, et al.*, No. 4:12-cv-00465, (W.D. Mo.); *Connie Waldrop and James Waldrop v. Mentor Worldwide, LLC, et al.,* No. 5:12-cv-00532, (W.D. Okla.); *Mildred C. Watts and Wade Watts v. Mentor Worldwide, LLC, et al.*, No. 4:12-cv-00466, (W.D. Mo.); *Mary Joe White and Drew Izso v. Coloplast Corporation, et al.*, No. 8:12-cv-00061, (M.D. Fla.); *Ann M. Williams and Donald Williams v. Mentor Worldwide, LLC, et al.,* No. 4:12-cv-00321, (S.D. Ill.); *Lois Wolz and Robert Wolz v. Mentor Worldwide, LLC, et al.*, No. 4:12-cv-00698, (E.D. Mo.), and files its Motion for Transfer to the Southern District of West Virginia Pursuant to 28 U.S.C. § 1407 For Coordinated or Consolidated Pretrial Proceedings and Brief in Support as follows:

## I. BACKGROUND

Plaintiffs in the above-referenced cases all assert claims involving one or more of Coloplast's pelvic mesh devices. Pelvic mesh is a medical device physicians may determine to surgically implant in patients to treat either Pelvic Organ Prolapse ("POP")[1] or Stress Urinary Incontinence ("SUI")[2]. Coloplast manufactures and/or markets, distributes and sells separate, distinctive lines of medical devices for use in treating both of these conditions. Coloplast markets three mesh devices for treatment of POP: Exair®, Novasilk®, and Restorelle®, and five mesh devices for treatment of SUI: Aris Transobturator Sling® ("Aris®"), Minitape®, Omnisure®, Supris Suprapubic Sling® ("Supris®"), and T-sling®. Plaintiffs in the current actions have alleged use of Aris® and Novasilk®. Each of the female Plaintiffs claims that one of Coloplast's devices was defectively designed, manufactured, and/or marketed resulting in serious physical injuries, and that Coloplast failed to provide adequate and appropriate warnings and instructions for use regarding the risks and dangers posed by Coloplast's devices.

The individual Plaintiffs named in the thirteen cases at issue reside in seven different states. Counsel representing these Plaintiffs are also spread out across the country (in alphabetical order): Aylstock, Kreis, Witkin & Overholtz PLLC (Florida), Blizzard McCarthy & Nabers (Texas); Clark, Love, & Hutson G.P. (Texas); Clifford Law Offices (Illinois); Morgan & Morgan P.A. (Florida); Mueller Law Offices (Texas); Paul Episcope L.L.P. (Illinois); The Potts

[1] POP is a medical condition, resulting from pregnancy and/or vaginal childbirth, in which stretched and weakened pelvic muscles cause pelvic organs, e.g., uterus or bladder, to fall from their normal position, and bulge or prolapse into the vagina. Prolapse may occur in the anterior (bladder, vaginal walls, uterus, and bowel), posterior (rectum), and apical (uterus, cervix, and vaginal vault) regions. Within each region, multiple organs can prolapse, sometimes concomitantly.

[2] SUI is a medical condition in which weakened pelvic muscles are unable to withstand abdominal pressure and therefore allow the urethra to involuntarily leak urine during physical activity. Specifically, SUI causes urine leakage while laughing, coughing, sneezing, lifting heavy objects, exercising, and/or engaging in other strenuous activities.

Law Firm (Missouri); The Whittemore Law Group (Florida); Valenzuela & Stern (Florida); and Zevan & Davidson (Illinois).

Coloplast is a company based in Minneapolis, Minnesota and is represented nationally by Fulbright & Jaworski L.L.P.

## II. LOCATION AND STATUS OF ACTIONS

Coloplast is currently named in 20 cases pending in federal district courts across the country. The current distribution of federal court actions is as follows:

| District | Number of Cases |
|---|---|
| Florida, Middle District | 3 |
| Illinois, Northern District | 2 |
| Illinois, Southern District | 1 |
| Kansas, District of | 1 |
| Missouri, Eastern District | 1 |
| Missouri, Western District | 3 |
| Oklahoma, Western District | 1 |
| Pennsylvania, Eastern District | 1 |
| West Virginia, Southern District | 7 |
| | 20[3] |

The first federal action involving Coloplast's pelvic mesh devices, *Denise Jacobs, et al. v. Mentor Corp., et al.*, No. 8:10-cv-02429 (M.D. Fla.), was filed on October 11, 2011 and is currently pending before Judge Mary S. Scriven. The first federal action transferred to the Southern District of West Virginia was *Barbara Lucas v. Ethicon, Inc., et al.*, No. 2:12-cv-00515 (S.D.W.Va.) and is currently pending in front of Chief Justice Joseph R. Goodwin in *In re Ethicon, Inc. Pelvic Repair System Prods. Liab. Litig.*, MDL 2327 (J.P.M.L. 2012) (the "Ethicon

[3] Coloplast Corp. has not yet appeared in eight of the 20 cases at issue, including the cases in the Southern District of Illinois, District of Kansas, and Western District of Oklahoma, and five cases in the Southern District of West Virginia. Coloplast Corp. reserves the right to enter a proper appearance and responsive pleading in each of these cases outside the context of this briefing.

MDL"). In addition to *Lucas*, there are six other cases pending in the Southern District of West Virginia, with three cases in *In re Bard Pelvic Support System Prods. Liab. Litig.*, MDL 2187 (J.P.M.L. 2010) (the "Bard MDL"), two others in the Ethicon MDL, and one case pending in *In re Boston Scientific Corp. Pelvic Repair System Prods. Liab. Litig.*, MDL 2326 (J.P.M.L. 2012) (the "Boston Scientific MDL"). These seven actions involve claims regarding Coloplast's Aris®, Novasilk®, Restorelle®, and Supris® devices. Coloplast is not requesting that these seven cases be moved from the MDLs in which they are currently pending. Rather, Coloplast is asking that only the cases on the attached Schedule of Actions be consolidated in a separate MDL in the Southern District of West Virginia and that these actions should remain in their respective MDLs in the Southern District of West Virginia.

## III. ARGUMENT

### *A. These Actions are Appropriate for Centralization and Transfer for Coordinated Pretrial Treatment Under 28 U.S.C. § 1407.*

Coloplast's pelvic mesh product liability cases should be transferred to the Southern District of West Virginia before Chief Justice Goodwin because these actions meet the requirements for transfer for coordinated and/or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. Specifically, the Panel should centralize these actions for the following reasons: (1) the Coloplast pelvic mesh cases are pending in multiple districts and involve common questions of fact and common issues; and (2) transfer would advance the just and efficient conduct of the cases. 28 U.S.C. § 1407. Centralization of the cases at issue in an individual Coloplast MDL will also serve the "convenience of the parties and witnesses and will promote the just and efficient conduct of such actions." *Id.*

This Panel has previously held that centralization was appropriate for product liability claims involving other individual manufacturers of pelvic mesh.[4] Significantly, this Panel has also recognized that it is suitable to create separate MDL proceedings for various pelvic mesh manufacturers in the Southern District of West Virginia. In the past, this Panel has refrained from centralizing actions involving claims against multiple, independent manufacturers of similar products. *See, e.g., In re Yellow Brass Plumbing Component Prods. Liab. Litig.*, 2012 U.S. Dist. LEXIS 16237, at *5 (J.P.M.L. Feb. 9, 2012) (noting that the Panel is "typically hesitant to centralize litigation against multiple, competing defendants which marketed, manufactured and sold similar products."); *In re Ambulatory Pain Pump-Chondrolysis Prods. Liab. Litig.,* 709 F. Supp. 2d 1375, 1377 (J.P.M.L. 2010) (denying transfer where different products and different manufacturers were at issue); *In re Table Saw Prods. Liab. Litig.*, 641 F. Supp. 2d 1384, 1384 (J.P.M.L. 2009) (denying transfer motion where multiple products made by different manufacturers were involved in individual incidents). There is no reason to depart from this precedent now.

In sum, Coloplast requests that the Panel, as it recently did with other pelvic mesh manufacturers, transfer the Coloplast cases listed on the Schedule of Actions to a Coloplast MDL proceeding in the Southern District of West Virginia, separate, but alongside the other four MDL proceedings, and separate and apart from MDL No. 2004.

[4] *See, e.g., In re American Medical Systems, Inc., Pelvic Repair System Prods. Liab. Litig.*, MDL 2325 (J.P.M.L. 2012) (the "AMS MDL"); *In re Boston Scientific Corp. Pelvic Repair System Prods. Liab. Litig.*, MDL 2326 (J.P.M.L. 2012); *In re Ethicon , Inc., Pelvic Repair System Prods. Liab. Litig.*, MDL 2327 (J.P.M.L. 2012); *In re Bard Pelvic Support System Prods. Liab. Litig.*, MDL 2187 (J.P.M.L. 2010); *In re Mentor Corp. ObTape Transobturator Sling Prods. Liab. Litig.*, MDL No. 2004.

*1. The Coloplast Pelvic Mesh Cases Include Common Questions of Fact and Will Involve Common Discovery.*

The existence of common questions of fact among civil actions pending in different districts is the "initial criteria" that must be satisfied before any such actions may be transferred under Section 1407. *In re Photocopy Paper*, 305 F. Supp. 60, 61 (J.P.M.L. 1969); *In re Air Crash Disaster at Greater Cincinnati Airport*, 298 F. Supp. 353 (J.P.M.L. 1968). The cases on the Schedule of Actions involve one or more issues of fact that are common relating to Coloplast's research, development, design, testing, manufacturing, selling, marketing and/or labeling of Coloplast's pelvic mesh devices, including Aris® and Novasilk®, and common discovery will be necessary in these actions. Plaintiffs in these cases are alleging similar claims and theories of liability. The devices at issue are all surgical mesh devices that are implanted in patients to treat the same two conditions and have allegedly resulted in similar types of injuries. As such, Coloplast will likely assert similar defenses in each case. Additionally, Plaintiffs in the cases at issue will seek the same type of discovery from Coloplast. Indeed, Coloplast will most likely be served with and respond to similar discovery requests in each case, and the same Coloplast fact witnesses will have relevant information applicable to each case. It is also likely that both parties will name the same experts in each individual case and that these experts will rely on the same discovery and information to develop their opinions.

*2. Transfer Would Advance the Just and Efficient Conduct of the Cases at Issue and Would Serve the Convenience of the Parties Pursuant to 28 U.S.C. § 1407.*

Multidistrict consolidation is only appropriate when transfer would "be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." 28 U.S.C. § 1407; *see also In re G.D. Searle*, 483 F. Supp. 1343, 1344 (J.P.M.L. 1980). Moreover, in order for a transfer to be considered convenient, just, and efficient, the

benefits of that transfer must outweigh the "inherent disadvantages." *In re G.D. Searle*, 483 F. Supp. at 1345.

a) A Centralized Proceeding Would Advance the Just and Efficient Conduct of the Coloplast Pelvic Mesh Cases

From an efficiency perspective, consolidation of Coloplast's cases with Chief Justice Goodwin in the Southern District of West Virginia simply makes sense. First, there are currently seven co-device cases naming Coloplast pending in three of the pelvic mesh MDL proceedings before Chief Justice Goodwin in the Southern District of West Virginia.[5] This is almost one-third of the total actions filed against Coloplast in federal district courts. In fact, there are more cases currently pending against Coloplast in the Southern District of West Virginia than in any other federal district court.[6] Although these cases would not be included in the requested MDL, it would still be judicially economical and efficient for all parties if the additional Coloplast cases were consolidated in an MDL in this same forum.

For instance, because of its seven cases pending in three of the pelvic mesh MDLs in the Southern District of West Virginia, Coloplast is already subject to Chief Justice Goodwin's procedures and orders. Coloplast has been and will be participating in Chief Justice Goodwin's status conferences, will be subject to discovery deadlines in the Bard, Boston Scientific, and Ethicon MDLs, and will taking part in all other pre-trial activities in that Court. If the Panel were to decline to consolidate the cases at issue or if the Panel centralized the cases in another

[5] *Laurie Forbes v. Boston Scientific Corp., et al.*, No. 2:12-cv-00792; *Dolores Garcia v. C.R. Bard, Inc., et al.*, No. 4:12-cv-00964; *Theresa Hamilton v. Ethicon, Inc., et al.*, No. 2:12-cv-01491; *Barbara Lucas v. Ethicon, Inc., et al.*, No. 2:12-cv-00515; *Yvonne Lynne Parker, et al. v. Analytical Biosurgical Solutions, et al.*, No. 2:12-cv-01744; *Janice Sherfield, et al. v. C.R. Bard, Inc., et al.*, No. 2:12-cv-01726; and *Christine Wheeler, et al. v. C.R. Bard, Inc., et al.*, No. 2:12-cv-01339.

[6] This Panel previously recognized that this factor weighs in favor of coordinating and/or consolidating all Coloplast actions in this district. *See In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 398 F. Supp. 2d 1371, 1372 (J.P.M.L. 2005) (selecting as the transferee forum a district where ten cases were already pending before one judge); *In re Franklin Nat'l Bank Sec. Litig.*, 393 F. Supp. 1093, 1096 (J.P.M.L. 1975) (selecting a transferee forum where most of the actions were already pending).

transferee forum, it would place Coloplast in the unjust and inefficient position of being subject to multiple sets of case management procedures and deadlines, and Coloplast would be at a distinct disadvantage. Conversely, if the Panel were to create a consolidated litigation for the cases on the Schedule of Actions in the Southern District of West Virginia, Chief Justice Goodwin would be in a position to coordinate the status conferences, case management orders, procedures, deadlines, and discovery for all five pelvic mesh MDL proceedings.[7]

Second, Chief Justice Goodwin, is familiar with the parties, their counsel, many of the devices at issue, and generally, the legal and factual issues arising from the various pelvic mesh MDL proceedings. Significantly, the Court has already exercised its jurisdiction over Coloplast. Indeed, Coloplast has already served the Court with initial position statements discussing Coloplast's Aris® and Novasilk® pelvic mesh devices, respectively, as well as the issues presented by Coloplast's pelvic mesh cases and the potential defenses to same. Consequently, Chief Justice Goodwin has already begun learning about Coloplast, its counsel, and a few of its pelvic mesh devices, through the seven cases naming Coloplast pending before him. To consolidate the cases anywhere but the Southern District of West Virginia would be unjust and inefficient and would present numerous disadvantages to Coloplast.

b) Coordination Would Serve Judicial Economy

Coordination and/or consolidation of the Coloplast cases on the Schedule of Actions is appropriate in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, counsel and the judiciary. *In re Kugel Mesh Hernia Patch Prods. Liab. Litig.*, 493 F. Supp. 2d 1371, 1372 (J.P.M.L. 2007); *In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.,* 398 F. Supp. 2d at 1372. Without consolidation

[7] Some of the deadlines in the Bard MDL may differ slightly, as that proceeding is a little further advanced than the other three MDL proceedings in front of Chief Justice Goodwin.

and coordination of these actions, Coloplast will face multiple cases pending before different judges in courts across the country, each with their own scheduling orders, pleadings requirements, discovery rulings, and other pretrial deadlines. In fact, Coloplast and Plaintiffs are already subject to separate case management orders in two cases pending in the Middle District of Florida. *Jacobs, et al. v. Mentor Corp., et al.*, No. 8:10-cv-02429-MSS-MAP (M.D. Fla.); *Mary Joe White, et al. v. Coloplast Corp., et al.*, No. 8:12-cv-00061 (M.D. Fla.). These two cases are pending in front of the same judge, thus the current set of deadlines in these cases has been informally coordinated. However, the eleven other cases on the Schedule of Actions are pending against ten other federal judges throughout the country. It is likely that each of these ten judges would enter case management and scheduling orders for the case(s) pending in their courts and that the deadlines for and rulings from each of these judges would vary widely. Duplication of case management tasks in multiple courts across the country is not only an uneconomical use of judicial resources, but also could lead to inconsistent rulings by different courts considering identical issues.

c) Transfer Would be Convenient for the Parties

Consolidation in the Southern District of West Virginia is convenient for counsel and the parties involved in these cases. First, a number of the attorneys representing Plaintiffs in the cases at issue play significant roles in the MDLs already pending in West Virginia. For example, attorney Derek Potts is Plaintiffs' Co-Lead Counsel for the Bard MDL and is on the Plaintiffs' Executive Committee for all four of the pelvic mesh MDLs in Chief Justice Goodwin's Court. Additionally, several other attorneys representing Plaintiffs on the attached Schedule of Actions are on the Plaintiffs' Steering Committee for the AMS, Boston Scientific, and Ethicon MDLs, including Mark Mueller, Riley Burnett, Scott Love, Michael Goetz, Clayton Clark, and Fidelma Fitzpatrick.

Second, failing to centralize these cases in Chief Justice Goodwin's Court would be inconvenient for other potential parties to Coloplast's cases. In its Order initially transferring cases to the AMS, Boston Scientific, and Ethicon MDLs, the Panel noted that it would "transfer actions involving multiple manufacturer defendants to the MDL involving the first named defendant in that action." *See In re: American Medical Systems, Inc., Pelvic Repair System Prods. Liab. Litig.* --- F. Supp. 2d ----, 2012 WL 432533, at *3 (J.P.M.L. Feb. 7, 2012). Again, if the Panel decides not to consolidate the cases on the Schedule of Actions or if the Panel consolidates them in another transferee forum, the parties could face a situation where Coloplast was the first-named defendant and the action would remain in or be transferred to a forum other than the Southern District of West Virginia. This result would potentially subject AMS, Bard, Boston Scientific, and Ethicon to different sets of deadlines, conferences, procedures, and rulings in different cases.

Accordingly, centralization of all cases on the Schedule of Actions in the Southern District of West Virginia before Chief Justice Goodwin is appropriate and necessary to advance the just and efficient conduct of these cases. *In re American Investors Life Ins. Co. Annuity Marketing and Sales Practices Litig.,* 398 F. Supp. 2d 1361, 1362 (J.P.M.L. 2005) (selecting a transferee forum where five MDL constituent actions were already proceeding and the judge was familiar with the issues present "as a result of presiding over motion practice and other pretrial proceedings in the actions pending before her for the past year.").

***B. These Actions Should Not Be Centralized in MDL No. 2004.***

On May 9, 2012, certain Plaintiffs moved the Panel for an order transferring 15 product liability actions to the Middle District of Georgia for coordinated and/or consolidated pretrial proceedings, and to expand the scope of *In re Mentor Corp. ObTape Transobturator Sling Products Liability Litigation* ("MDL No. 2004"), to encompass those 15 claims. *See* Motion to

Expand the Scope of *In re Mentor Corp. ObTape MDL* (MDL 2004) and For Transfer to the Middle District of Georgia Pursuant to 28 U.S.C. § 1407 ("Plaintiffs' Motion"). MDL No. 2004, Dkt. No. 204. Coloplast denies that the Coloplast pelvic mesh cases should be centralized in the MDL No. 2004 proceedings in the Middle District of Georgia. It is Coloplast's position that consolidation of cases involving Coloplast pelvic mesh is proper in the Southern District of West Virginia, pursuant to 28 U.S.C. § 1407.

On June 1, 2012, Coloplast filed a Response in Opposition to Plaintiffs' Motion and Coloplast Corp.'s Request to Centralize Coloplast Pelvic Mesh Cases in a Separate Proceeding in the Southern District of West Virginia Pursuant to 28 U.S.C. § 1407 and Brief in Support of same (hereinafter "Response in Opposition"). MDL No. 2004, Dkt. No. 245, attached herein as Exhibit A, without the exhibits and attachments. In the brief accompanying the Response in Opposition, Coloplast objected to Plaintiffs' request to expand the scope of MDL No. 2004 and for transfer of the cases at issue, which involved some of the cases included on the Schedule of Actions filed herewith, to the Middle District of Georgia for several reasons:

- Recent Panel rulings support creation of separate proceedings for each pelvic mesh manufacturer. Specifically, this Panel has already ruled that cases involving Coloplast's Aris® devices are not properly included in MDL No. 2004. *See, e.g., Jacobs, et al. v. Mentor Worldwide LLC*, No. 10-cv-5061 (M.D. Ga.), Dkt. No. 89 (July 14, 2011); *Lariscy, et al. v. Mentor Worldwide LLC*, No. 11-cv-5077 (M.D. Ga.), Dkt. No. 176 (Feb. 2, 2012).
- Second, centralization in the Middle District of Georgia is neither just nor efficient, as MDL No. 2004 is a very mature proceeding,[8] the Middle District of

[8] *Sava v. C.R. Bard, Inc., et al.*, No. 1:11-cv-3361 (N.D. Ga.) (holding that the inclusion of cases involving any medical device other than ObTape in MDL No. 2004 would not serve the purposes of 28 U.S.C. § 1407, due to its

Georgia is not convenient for all parties, and such a transfer would result in certain pelvic mesh manufacturer defendants facing two sets of MDL case management procedures and deadlines.

- Third, the cases at issue do not allege use of ObTape, and therefore, do not involve questions of fact that are common to the actions already pending in MDL No. 2004. For example, Coloplast's pelvic mesh cases are markedly different from the cases pending in MDL No. 2004, with each involving, for example, different defendants; different devices used to treat different medical conditions; different mesh design, weave and material, i.e., porosity and density; and different advertising, marketing and packaging.

Instead, as part of its Response in Opposition, and as urged in the instant Motion for Transfer, Coloplast requested that the Panel transfer the Coloplast cases at issue that were not already pending in a MDL proceeding in the Southern District of West Virginia, to a Coloplast MDL proceeding in the Southern District of West Virginia separate, but alongside the other four MDL proceedings, and separate and apart from MDL No. 2004. Coloplast therefore incorporates and adopts, all arguments included in its Response in Opposition, as if fully set forth herein.

## IV. CONCLUSION

For all of the reasons stated herein, Coloplast respectfully requests that that the Panel order that the actions currently pending in any federal district court outside the Southern District of West Virginia, which are listed on the Schedule of Actions filed herewith, as well as any cases that may be subsequently filed in any United States District Court asserting related or similar claims, be transferred to the Southern District of West Virginia for coordinated and/or

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procedural maturity). *See* Order Vacating Conditional Transfer Order in MDL No. 2004 and Transferring Entire Action to MDL No. 2187, Dkt No. 159 in MDL No. 2187 (Feb. 3, 2012).

consolidated pretrial proceedings before the Hon. Joseph R. Goodwin, consistent with the Panel's previous ruling.

THIS, the 5th day of June, 2012.

Respectfully submitted,

s/ Lana K. Varney

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*Counsel for Defendant Coloplast Corp.*

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**In re Coloplast Corp.'s Pelvic Support Systems Products Liability Litigation** **MDL No. _____**

**Schedule of Actions**

| CASE PARTIES | COURT | CIVIL ACTION NO. | JUDGE |
|---|---|---|---|
| Plaintiffs:<br>Denise D'Agaro Jacobs and John Jacobs<br><br>Defendants:<br>Mentor Corporation, a Minnesota corporation<br>Coloplast<br>John Does 1-50 | Middle District of Florida, Tampa Division | 8:10-cv-02429 | Mary S. Scriven |
| Plaintiffs:<br>Rhonda Lariscy and Grady Lariscy<br><br>Defendants:<br>Mentor Worldwide, LLC<br>Coloplast A/S<br>Coloplast Corp.<br>Coloplast Manufacturing, US LLC<br>Analytic Biosurgical Solutions | Middle District of Florida, Tampa Division | 8:11-cv-02377 | Susan C. Bucklew |
| Plaintiffs:<br>Mary Joe White and Drew Izso<br><br>Defendants:<br>Coloplast Corporation<br>TEI Biosciences, Inc. | Middle District of Florida, Tampa Division | 8:12-cv-00061 | Mary S. Scriven |
| Plaintiffs:<br>Martha Gustafson and Scott Gustafson<br><br>Defendants:<br>Coloplast Corp.<br>Coloplast Manufacturing US, LLC<br>RTI Biologics, Inc. | Northern District of Illinois, Eastern Division | 1:12-cv-03292 | Matthew F. Kennelly |

| CASE PARTIES | COURT | CIVIL ACTION NO. | JUDGE |
|---|---|---|---|
| Plaintiffs:<br>Gladys Marrero and Guillermo Marrero<br><br>Defendants:<br>Mentor Worldwide, LLC<br>Coloplast A/S<br>Coloplast Corp.<br>Analytic Biosurgical Solutions | Northern District of Illinois, Eastern Division | 1:12-cv-01829 | Charles R. Norgle, Sr. |
| Plaintiffs:<br>Ann M. Williams and Donald Williams<br><br>Defendants:<br>Mentor Worldwide, LLC<br>Coloplast A/S<br>Coloplast Corp.<br>Analytic Biosurgical Solutions | Southern District of Illinois, East Saint Louis Division | 3:12-cv-00321 | Michael J. Reagan |
| Plaintiff:<br>Patricia Purvis<br><br>Defendants:<br>Mentor Worldwide, LLC<br>Coloplast A/S<br>Coloplast Corp.<br>Analytic Biosurgical Solutions | District of Kansas, Kansas City Division | 2:12-cv-02212 | K. Gary Sebelius |
| Plaintiffs:<br>Lois Wolz and Robert Wolz<br><br>Defendants:<br>Mentor Worldwide, LLC<br>Coloplast A/S<br>Coloplast Corp.<br>Analytic Biosurgical Solutions | Eastern District of Missouri, St. Louis Division | 4:12-cv-00698 | Stephen N. Limbaugh, Jr. |
| Plaintiffs:<br>Alvonia B. Fisher and Horace Fisher<br><br>Defendants:<br>Mentor Worldwide, LLC<br>Coloplast A/S<br>Coloplast Corp.<br>Analytic Biosurgical Solutions | Western District of Missouri, Kansas City Division | 4:12-cv-00467 | Greg Kays |

| CASE PARTIES | COURT | CIVIL ACTION NO. | JUDGE |
|---|---|---|---|
| Plaintiffs:<br>Melissa M. Renaud and Ronald Renaud<br><br>Defendants:<br>Mentor Worldwide, LLC<br>Coloplast A/S<br>Coloplast Corp.<br>Analytic Biosurgical Solutions | Western District of Missouri, Kansas City Division | 4:12-cv-00465 | Scott O. Wright |
| Plaintiffs:<br>Mildred C. Watts and Wade Watts<br><br>Defendants:<br>Mentor Worldwide, LLC<br>Coloplast A/S<br>Coloplast Corp.<br>Analytic Biosurgical Solutions | Western District of Missouri, Kansas City Division | 4:12-cv-00466 | Scott O. Wright |
| Plaintiffs:<br>Connie Waldrop and James Waldrop<br><br>Defendants:<br>Mentor Worldwide, LLC<br>Analytic Biosurgical Solutions<br>Coloplast A/S<br>Coloplast Corporation<br>Coloplast Manufacturing, US LLC | Western District of Oklahoma, Woodward Division | 5:12-cv-00532 | Joe Heaton |
| Plaintiff:<br>June C. Hess<br><br>Defendants:<br>Mentor Worldwide, LLC<br>Coloplast A/S<br>Coloplast Corp. | Eastern District of Pennsylvania, Philadelphia Division | 2:12-cv-01919 | C. Darnell Jones, II |