

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

CHARLESTON DIVISION

IN RE: C.R. BARD, INC., PELVIC REPAIR
SYSTEMS PRODUCTS LIABILITY LITIGATION

MDL NO. 2187

THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER # 49
(Discovery Scheduling Order for Group 2 Cases)**

With the substantial agreement of the parties, the court adopts the following proposed schedule for discovery and trial in Group 2 cases, and **ORDERS** as follows:

1. General Provisions.

- a. *Applicability of rules.* Except as otherwise stated herein, the Federal Rules of Civil Procedure and Local Rules of this court shall apply.
- b. *Applicability of pretrial orders.* Unless modified by the terms of this Order, all previously entered pretrial orders shall remain in effect, including but not limited to, PTO # 7 (Stipulated Protective Order) and PTO # 8 (Proposed Discovery, Scheduling, and Case Management Order – Initial Discovery Group).

2. Discovery for Group 2 cases.

- a. *Identity of cases.* Group 2 will consist of five (5) bellwether cases to be selected by the court as follows:
 - i. *Plaintiff Fact Sheets.* By **September 1, 2012**, each plaintiff in any non-Avaulta cases filed in MDL 2187 as of **May 25, 2012**, must serve a full and complete Plaintiff Fact Sheet (PFS) (including

signed authorizations to Marker Group as medical records vendor) as well as all medical records in plaintiff's or plaintiff's counsel's possession.

ii. Defendant Fact Sheets. For the cases referred to in paragraph 2.a.i. above, in all cases where the PFSs were served by August 14, 2012, a Defendant Fact Sheet (DFS) must be served by **September 1, 2012**. For any of those cases where a PFS was not served by August 14, 2012, defendants shall have **15 days from service of a PFS to serve a DFS**.

iii. Bellwether Cases. By **September 21, 2012**, the parties shall each submit a list of six (6) cases for inclusion into Group 2. Cases that include only an Avaulta product or any product that was not distributed by Bard may **NOT** be submitted, except that **ANY** cases chosen by the court for the Group 1 bellwether group may be submitted. The court shall identify five (5) of the submitted cases for inclusion into Group 2 as bellwethers.

b. *Discovery initiation date*. Discovery for Group 2 cases commences on **October 8, 2012**.

c. *Discovery Schedule*. Discovery in Group 2 cases shall be conducted in accordance with the following schedule:

i. Depositions of plaintiffs and/or their spouses shall be completed by **November 7, 2012**.

- ii. Depositions of implanting physicians and any additional medical treatment providers shall be completed by **January 1, 2013**.
- iii. Depositions of any additional fact witnesses shall be completed by **April 15, 2013**.
- iv. No written discovery requests may be served after **March 15, 2013**.
- v. Plaintiffs shall serve expert reports by **January 1, 2013**, and provide proposed dates for depositions to be conducted by **February 15, 2013**.
- vi. Defendants shall serve expert reports by **February 15, 2013**, and provide proposed dates for depositions to be conducted by **March 30, 2013**.
- vii. Plaintiffs shall serve rebuttal expert reports, if any, by **February 28, 2013**.
- viii. The parties shall submit their proposals to the court for the first case or cases to be tried from Group 2 by **April 15, 2013**. Plaintiffs reserve the option to move the court to consolidate cases for trial.

3. Motion Practice.

- a. Dispositive motions and motions pertaining to the application of a specific state's laws to a case or the appropriate venue for trial of Group 2 shall be filed by **May 7, 2013**. Response briefs are due by **May 21, 2013**, and any reply briefs shall be due by **May 28, 2013**.
- b. *Daubert* motions shall be filed by **April 30, 2013**. Response briefs are due by **May 15, 2013**. Reply briefs are due by **May 21, 2013**.

4. Pretrial. The court shall conduct pretrial and final settlement conferences at dates to be determined at an upcoming status conference. The court will issue future orders related to conduct of the pretrial and submission of a Proposed Pretrial Order.
5. Trial Date. The court shall begin trial on the Group 2 cases on **June 24, 2013**.

The Court **DIRECTS** the Clerk to file a copy of this order in 2-10-md-2187 and it shall apply to each 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 2:12-cv-04617. 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.wvsc.uscourts.gov.

ENTER: August 23, 2012


Joseph R. Goodwin, Chief Judge