

**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 ALL CASES

PRETRIAL ORDER # 2

(Initial Hearing Summary, Counsel Structure, Plan for Proceeding Forward,
Future Status Conferences)

The court conducted an initial case management conference on September 13, 2012.¹ Chief Judge Joseph R. Goodwin and Magistrate Judge Mary E. Stanley addressed a variety of issues summarized below.

- A. Co-Lead Plaintiffs' Counsel. In compliance with PTO # 1, the plaintiffs submitted three applications for appointment as co-lead counsel in this MDL. The court has considered the plaintiffs' submission and supporting documentation and, finding no objection, **APPOINTS** the following attorneys as co-lead plaintiffs' counsel for this MDL:

Riley L. Burnett, Jr.
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Houston, TX 77007
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832-900-2120 (fax)
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¹ This MDL is one of 5 pelvic mesh MDLs assigned to the court; MDL 2187, MDL 2325, MDL 2326, MDL 2327 and MDL 2387.

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Austin, TX 78701
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The Plaintiffs' Co-Lead Counsel shall have the following responsibilities in this MDL:

1. Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the court, subject to the right of any plaintiff's counsel to present non-repetitive individual or different positions as long as the presentation does not unduly delay the proceedings.
2. Submit and argue any verbal or written motions presented to the presiding district judge or magistrate judge on behalf of the plaintiffs as well as oppose, when necessary, any motions submitted by the defendants which involve matters within the sphere of the responsibilities of Lead Counsel.
3. Examine witnesses and introduce evidence at hearings on behalf of plaintiffs.
4. Negotiate and enter into stipulations with defendants regarding this litigation. All stipulations entered into by Lead Counsel, except for strictly administrative details such as scheduling, must be submitted for court approval and will not be binding until the court has ratified the stipulation. Any attorney not in agreement

with a non-administrative stipulation shall file with the court a written objection thereto within ten (10) days after service by counsel of the stipulation. Failure to object within the term allowed shall be deemed a waiver and the stipulation will automatically be binding on that party.

5. Explore, develop and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation.
6. Attend status conferences and have video conferencing capability.
7. Perform such other functions as may be expressly authorized by further orders of this court.

B. Co-Lead Defendants' Counsel. In compliance with PTO # 1, Lana K. Varney and Ronn B. Kreps applied to serve as co-lead counsel for Coloplast Corp. ("Coloplast") and Dustin B. Rawlin applied to serve as co-lead counsel for Mentor Worldwide LLC ("Mentor"). Although there are other defendants named in this MDL, the court finds it unnecessary to appoint additional lead counsel at this time. The court has considered the submissions of the above counsel and supporting documentation and, finding no objection, **APPOINTS** the following attorneys as co-lead defendants' counsel for this MDL:

For Coloplast Corp.:

Lana K. Varney
Fulbright & Jaworski LLP
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Austin, TX 78746
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Ronn B. Kreps
Fulbright & Jaworski LLP
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80 South Eight Street
Minneapolis, MN 55402
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612-321-2288 (fax)
rkreps@fulbright.com

For Mentor Worldwide LLC:
Dustin B. Rawlin
Tucker Ellis LLP
925 Euclid Avenue
Suite 1150
Cleveland, OH 44115-1414
216-592-5000 (phone)
216-592-5009 (fax)
dustin.rawlin@tuckerellis.com

Lead Counsel for the defendant shall have the following responsibilities:

1. Determine (after consultation with the defendant) and present (in brief, oral argument or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of the defendant(s) on all matters arising during these pretrial proceedings.
2. Delegate the specific tasks in a manner to ensure pretrial preparation for the Defendant(s) is conducted effectively, efficiently and economically.
3. Negotiate and enter into stipulations with the plaintiffs on behalf of the defendant(s).
4. Act as the spokesperson to explore and develop settlement options pertaining to the cases filed against the defendant(s).
5. Attend status conferences and have video conferencing capability.
6. Perform such other duties as may be incidental to proper coordination of the defendants' pretrial activities or authorized by further order of the court.

- C. Defendants' Co-Liaison Counsel. The court will take recommendations for the appointment of one local attorney to defendants' co-liaison counsel from this MDL. The parties should submit to the court in writing, the recommendation along with the nominee's resume or curriculum vitae, educational background, licensing status, a short list of relevant experience with cases in similar areas and a certificate of good standing from the highest court by **Friday, October 26, 2012**.

The responsibilities of Defendants' Co-Liaison Counsel shall be the following:

1. Serve as the recipient for all court orders for and on behalf of all defendants;
2. Coordinate service and filings for all defendants whether presently included or subsequently added;
3. Attend status conferences and have video conferencing capability
4. Receive and distribute pleadings, orders, and motions by overnight courier service and telecopier within two days after receipt, unless such service has been waived, in writing, by a receiving counsel **or is otherwise achieved through CM/ECF**; and
5. Carry out such other duties as the court may order.

- D. Remaining Leadership Structure. At this time, the court will not make additional appointments to the plaintiffs' executive committee, co-coordinating co-lead counsel, plaintiffs' co-liaison counsel or the Plaintiffs' Steering Committee. The court refers the reader to those orders entered in the related MDLs 2187, 2325, 2326 and 2327 for further information regarding leadership structure in these MDLs.

- E. Representation of Clients. All attorneys representing parties to this litigation, regardless of their role in the management structure of the litigation and regardless of this court's designation of Lead and Liaison Counsel, a Plaintiffs' Executive Committee and a Plaintiffs' Steering Committee, continue to bear the responsibility to represent their individual client or clients. Going forward, the court reiterates its expectation that the lawyers in this complex civil action will devote their best efforts toward cooperation and positive interaction, a course of action that will doubtless lead to the service of their clients' best interests and the fair and orderly disposition of this litigation. In addition, the court expects counsel to regularly visit the court's website, review order and keep abreast of developments in the MDL.
- F. Coordination with State Pelvic Mesh Cases. The court advised counsel of its intention to coordinate to the extent possible with the judges and counsel involved in state pelvic mesh cases, especially cases where a majority of the state cases have been filed and coordinated to date.
- G. Phone Participation. The court does not permit phone participation in status conferences. Counsel is welcome to attend any status conference in person.
- H. Discovery and Plan Moving Forward. The parties advised the court informally and at the status conference that they are working on an early assessment plan, and Coloplast Corp. has entered into tolling agreements with a number of plaintiffs. The parties have informally agreed to the completion of plaintiff profile sheets and are working to identify proper party defendants. The court encouraged this practice and noted that the parties in the other MDLs had a period of time within which discovery was stayed. While the court indicated a willingness to do so in this MDL as well, the court intends to move the MDL


forward so that it does not fall too far behind the others. Until further notice, the parties may engage in informal agreed upon discovery, and no orders will be entered before the next status conference requiring discovery of either party.

- I. Short Form Complaint/Master Pleadings. The Short Form Complaints in the other four MDLs do not permit the naming of parties against whom there is no master complaint. As a result, plaintiffs cannot currently name Coloplast or Mentor Worldwide LLC using a Short Form or Amended Short Form Complaint. When a Master Long Form Complaint and Answer are filed in this MDL, use of a Short Form and Amended Short Form Complaint will be permitted (both in this MDL and the other 4 MDLs). In the meantime, plaintiffs who wish to name Coloplast or Mentor must do so via long form complaint in the district where filing would be appropriate with transfer through the MDL Panel to this District.
- J. Extension and Stay. The extension of time for responding by motion or answer to the complaint(s) until a date to be set by this court, as set forth in PTO # 1, paragraph 6 remains in force.
- K. Protective Order. Within 10 days, the parties will submit a stipulated protective order similar to those entered in the other MDLs.
- L. Uniform Certificates of Service. The court will enter an order stating that the parties may use uniform certificates of service.
- M. Waiver of Service Orders. The court encouraged the parties to enter into waiver of service orders similar to those entered in Bard.
- N. Future Status Conferences. The next status conferences are presently scheduled for November 1, 2012, and December 6, 2012, at 1:00 p.m. The parties requested that the

court reschedule the November 1st status conference, and the court agreed to work with the parties to that end. The court scheduled future status conferences on January 10, 2013, and February 7, 2013, at 1:00 p.m. The court will enter a separate order setting these future status conferences.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2387 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 2:12-cv-5511. 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: September 21, 2012


Joseph R. Goodwin, Chief Judge