

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

CHARLESTON DIVISION

IN RE: C. R. BARD, INC., MDL NO. 2:10-MD-02187
IN RE: AMERICAN MEDICAL SYSTEMS, INC., MDL NO. 2:12-MD-02325
IN RE: BOSTON SCIENTIFIC CORP., MDL NO. 2:12-MD-02326
IN RE: ETHICON, INC., MDL NO. 2:12-MD-02327

PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION

*STATUS CONFERENCE
HELD ON JULY 26, 2012
BEFORE THE HONORABLE JOSEPH R. GOODWIN, CHIEF JUDGE
AND THE HONORABLE MARY E. STANLEY, MAGISTRATE JUDGE*

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1 Proceedings had before the Honorable Joseph R. Goodwin,
2 Chief Judge, and the Honorable Mary E. Stanley, Magistrate
3 Judge, for the Southern District of West Virginia, in
4 Charleston, West Virginia, on July 26, 2012, as follows:

5 *CHIEF JUDGE GOODWIN:* First, on behalf of
6 Judge Stanley and myself and Kate, I want to express to all of
7 you our appreciation for the cooperative effort that is an
8 ongoing process in these MDLs, which apparently there may be
9 another one coming that I just read about in the newspaper. In
10 any event, while I think we've done a good job of moving
11 forward in an orderly manner and planning where we're headed,
12 we have left a little debris behind us that we're going to need
13 to clean up, and we'd better do it now rather than later.
14 Lexicon has reared its ugly head when I just started thinking
15 about where we are and what we're doing in the context of the
16 master complaint, the short form complaint, and the direct
17 filing of cases in this district by many people. Right now
18 we've got about 3,400 cases. They're coming in at an
19 increasing rate. I suppose all of you know that. I think we
20 have time and I think it's essential that we take the time to
21 do some of the remedial work that I'm talking about, and this
22 is where I think liaison counsel should play a significant
23 role, as well as lead counsel, in the individual MDLs. Not
24 three lawyers are meant in these MDLs to do all the work, so
25 I'm hopeful and expect leadership across-the-board from the

1 structure, particularly on the plaintiffs' side, that we set
2 up.

3 I reviewed the direct filing orders submitted in the three
4 newer MDLs and compared them with the existing direct filing
5 order that I entered in Bard. Now, you have, I think, passed
6 out to you a definition-of-terms sheet. It's a pitiful attempt
7 to differentiate the different kinds of situations with cases
8 that we have in the court, but I'm going to use these terms as
9 we go through the discussion. And this discussion is meant to
10 lead to an effort by all of us to solve the problems that I'm
11 going to outline for you and not to a direction by me as to how
12 to solve them, except to say that they have to be solved. The
13 problems have to be dealt with.

14 I said MDL defendants are those manufacturing or marketing
15 defendants like Bard, Sofradim, TSL, AMS, Boston Scientific,
16 Ethicon and J & J-related entities. There are other defendants
17 in individual suits filed directly here, transferred here, like
18 medical providers, other pelvic mesh manufacturers, hospitals,
19 et cetera, and I'm going to refer to them, the ones that were
20 transferred here by the MDL Panel, as transferred non-MDL
21 defendants. The MDL defendants, I'm kind of sticking with
22 manufacturers and so forth. Other kinds of defendants that
23 were transferred here by the MDL Panel I'm calling transferred
24 non-MDL defendants. And the final category are directly-filed
25 non-MDL defendants. These are the other kinds of defendants,

1 medical providers, other pelvic mesh manufacturers, hospitals,
2 and so forth, named in lawsuits right now that are filed in the
3 Southern District.

4 In reviewing the proposed direct filing order and the
5 short form complaints, I've reflected on and considered issues
6 of fairness and efficiency and efficacy for all of us as we're
7 going through this litigation and thought about matters of
8 personal jurisdiction, venue, service of process, and that's
9 led me to conclude that entry of the direct filing order and
10 short form complaints in their current form is not feasible,
11 so we have to figure out how to make it feasible. Nor is
12 continued direct filing as we permitted it up to this point,
13 specifically in Bard, appropriate in certain circumstances, as
14 I'll outline. Currently plaintiffs have directly filed many
15 cases here in the Southern District naming only the MDL --
16 naming not only the MDL defendants but also a number of
17 directly-filed non-MDL defendants. Refer to your definition
18 sheet. In many cases, the naming of additional directly-filed
19 non-MDL defendants was done to avoid what I'm sure counsel
20 thought were statute of limitations issues. These direct
21 filings are only -- are only appropriate in this court, in most
22 instances, if issues of personal jurisdiction and venue are
23 waived by the directly-filed non-MDL defendants or any
24 transferred non-MDL defendant that might be named. Obviously,
25 the directly-filed non-MDL defendants have not been involved in

1 this litigation, for the most part. They've not been before
2 the MDL Panel and they've not waived personal jurisdiction or
3 venue. As a result, I don't see how we can -- and I'm willing
4 to listen -- how we can allow direct filing of complaints
5 against defendants other than the consenting MDL defendants
6 involved in each of the four MDLs. The direct filing orders
7 and short form complaints will have to be somehow limited to
8 the MDL defendants. The direct filing orders, I don't see how
9 they can contain language related to selection of venue;
10 rather, the MDL defendants must waive venue in order to direct
11 file.

12 *Lexicon. Lexicon v. Weiss* in 1998 was the thing that
13 drives MDL judges crazy. We talk about it every single year at
14 the MDL conference about what a barrier the Supreme Court
15 created to dealing with these matters efficiently. There the
16 Supreme Court found that a transferee judge cannot self
17 transfer an MDL action to his or her district under 1404 for
18 the purpose of conducting a trial, et cetera.

19 If additional defendants are to be named, it seems to me
20 the plaintiffs must follow the ordinary procedure. There's two
21 things -- two ways to go. Plaintiffs either have to follow the
22 ordinary procedure of filing the lawsuit in the district where
23 it's appropriately filed -- where it should be appropriately,
24 serving all of the defendants, and then the case must be
25 transferred, and will be readily, to this district by the MDL

1 Panel. That's, of course, unless they can persuade the
2 directly-filed non-MDL defendants, and, of course, the MDL
3 defendants -- or the not transferred non-MDL defendants to
4 agree to a waiver of venue and personal jurisdiction. If they
5 don't do that, the only other thing that we have to deal with
6 - and this is particularly true on the cases that are already
7 behind us and need to be cleaned up - is either we've got to
8 get the waivers or they've got to be transferred back to an
9 appropriate district under the transfer statutes. Now, I can't
10 transfer a case I don't have jurisdiction over, but there is
11 Fourth Circuit precedent which allows me to transfer a case
12 where I have jurisdiction over one of the defendants but not
13 all of them, so that would cover most of the cases, not
14 necessarily all.

15 Have I sufficiently, even with all this garbled language,
16 conveyed to you what I see as a problem that we as the court
17 and the leadership of these MDLs need to straighten out as we
18 move forward? I don't want to slow us down. I'm very proud of
19 the work that's being done, but we'll just get in worse shape
20 fast if we don't solve this now.

21 Anybody have something you want to say? Mr. Garrard?

22 **MR. GARRARD:** Henry Garrard. Can the Court tell us
23 the magnitude or the numbers of cases that this impacts where
24 there are non-MDL defendants that have been named and filed in
25 this case before the court?

1 **CHIEF JUDGE GOODWIN:** As to the current problem,
2 yeah, I think I can identify that for you, and Kate may even
3 have a rough idea, I don't know. It's not huge, but as to the
4 future, it can get big in a hurry, if we -- if we enter -- I
5 can't enter these orders the way they're written, so we have to
6 figure out how to solve the problem on a going-forward basis.
7 On the basis of the cases that are already here, I don't think
8 that's going to be a huge issue. I think your liaison counsel
9 is going to be able to go back, figure out if transferring is
10 easier or no -- that doesn't require -- if there is a
11 jurisdiction, it doesn't require a new filing fee, it swings
12 back, goes through that clerk's office, back up through the MDL
13 and back here.

14 **MR. GARRARD:** Obviously, we have --

15 **CHIEF JUDGE GOODWIN:** Or we get waivers.

16 **MR. GARRARD:** I suspect getting waivers may be quite
17 difficult.

18 **THE COURT:** Very possibly. If I were a doctor in
19 Nebraska I don't see why I would waive.

20 **MR. GARRARD:** Frankly, I'm not sure why I would
21 either. It would seem to me, and obviously we haven't
22 discussed this, that in terms of the MDLs that are here, my
23 thought process would be that the cases that belong here are
24 those of the MDL defendants, and that we probably would concur
25 with the court that those that have been filed should be

1 severed away in some fashion and we should work towards doing
2 that. In the proposed orders, I think there has been
3 expression about, quote, other defendants, and I understand
4 where the court is in terms of --

5 *CHIEF JUDGE GOODWIN:* And they are actually named
6 other defendants.

7 *MR. GARRARD:* Yes, sir.

8 *CHIEF JUDGE GOODWIN:* There are people who I think
9 thought the statute of limitations was running, and I'm not
10 going to accuse them of violating Rule 11, but they certainly
11 didn't give it a lot of thought. They just threw the kitchen
12 sink at everybody they could think of.

13 *MR. GARRARD:* I think we can go back and revisit that
14 and probably clean that up, having heard the Court's concern
15 about that. I know that J & J -- the J & J Ethicon MDL had a
16 concern, and I think still has a concern, with some foreign
17 defendants that has to be dealt with in some way.

18 *CHIEF JUDGE GOODWIN:* I have -- I don't mean to
19 interrupt you.

20 *MR. GARRARD:* No, sir.

21 *CHIEF JUDGE GOODWIN:* -- but with -- with those
22 defendants, or potential defendants, there is a lot more reason
23 for us to get our hands on them because of the very real
24 relationship they have to this litigation. The only concern I
25 have about all of the other extran -- not extraneous, more

1 remote defendants, is that I expect the defendants -- the MDL
2 defendants, while not paying a great deal of attention to these
3 people right now, will, if we go to trial, be pointing their
4 finger at the doctors, so it will affect bellwether cases and
5 how we select bellwether cases. It could affect a lot of
6 things. But you think -- you think that -- from a plaintiffs'
7 standpoint, you think you-all can figure out a way?

8 *MR. GARRARD:* I think we can. I think the J & J
9 issue is different because our position will be there is a
10 connection there and that perhaps they can be added to the
11 complaint. I think we just have to work through what works
12 with the court, and I don't know what J & J's position will be
13 in regard to that, but if the Court would remember, with
14 regard -- we had some foreign defendants initially. We
15 negotiated a -- deal may not be the right word, but I think it
16 is. We negotiated a deal in relation to that and dealt with
17 that problem. Whether that can be done with J & J, I don't
18 know.

19 *MR. AYLSTOCK:* Your Honor, Brian Aylstock. Just to
20 clarify one thing.

21 *CHIEF JUDGE GOODWIN:* Yes.

22 *MR. AYLSTOCK:* In the master complaint we filed, and
23 has actually been answered by AMS and these related Ethicon
24 defendants, we did, in fact, name those foreign defendants; and
25 as Your Honor pointed out, there are -- there are issues with

1 blocking statutes and the Hague Convention that I think are
2 most appropriate in this court to deal with. With regard to
3 the fundamental issue of the personal jurisdiction and waiver,
4 I think what Your Honors are referring to are medical providers
5 and doctors and hospitals.

6 *CHIEF JUDGE GOODWIN:* And products manufacturers that
7 haven't been sued and transferred here.

8 *MR. AYLSTOCK:* And just without totally conferring
9 with my colleagues, I think the best way to deal with that
10 would simply be to take those out of the master -- they're not
11 in the master complaint. We only added them because there are
12 a number of combo cases and we wanted a mechanism so that those
13 combo cases could be dealt with, but I understand Your Honors'
14 concern. I think the way to deal with it is on simply the
15 short form complaints to take all the non -- all the entities
16 that aren't named in the long form complaints of one of the
17 MDLs and only list those, and then those folks who have a combo
18 product involving a manufacturer that's not in the MDL, or who
19 choose to sue their physician or hospital, would do exactly
20 what you said, they would need to find the appropriate venue,
21 file it first, and then come here in the ordinary course of
22 that district filing. So I think that would hopefully solve
23 problem one and problem two.

24 The cleanup problem I think largely would be solved by
25 Your Honor's analysis in the Fourth Circuit case, because I

1 would be surprised if anybody tried to direct file a case here
2 only involving a physician or a hospital without a manufacturer
3 that you clearly have jurisdiction over, so we could help the
4 court identify those, notify those counsel and get them
5 transferred back, and then they could -- so I think that would
6 be my off-the-cuff reaction.

7 *CHIEF JUDGE GOODWIN:* Well, I think while the
8 laboring oar is going to be on the plaintiffs, defendants have
9 interest in this, too. Let me hear from your side of the
10 table.

11 *MS. JONES:* Well, I think we clearly have interest in
12 it, but -- but my impression from our side, Your Honor, is
13 that -- that based upon my memory, we're dealing with a handful
14 of cases, at least as to us, that that currently applies to
15 that we could probably reasonably look at, and I'm sure that we
16 can work it out in terms of what the best and easiest way is to
17 deal with those medical providers and others that have been in
18 those suits where they're named. You know, obviously the
19 defendants generally prefer -- if we've got these lawsuits and
20 we've got an MDL, we'd rather have them all in the MDL, so I
21 will be candid with the court that we're going to try and
22 figure out a way to get them all right back here, even if we
23 have to do something there.

24 *THE COURT:* Well, that's my preference, too. I mean,
25 one of the main purposes of an MDL is to have it as the center

1 of gravity and, frankly, it works out better for the plaintiffs
2 as well as the defendants if you have it that way. Now, I'm --
3 I didn't just fall off the turnip truck, but I recognize there
4 are some times that plaintiffs would like to take four or five
5 bites at the apple and for as many jurisdictions as they can,
6 but I've found in the past that I can discourage that, and I
7 will appropriately act to discourage it in this case -- in
8 these cases. But in any event, I would appreciate you-all
9 working together to solve the cleanup and to modify the orders
10 you've presented to me to solve the problem with regard to
11 direct filing going forward, and also the venue language as it
12 appears. I certainly don't think that anybody wants --
13 everybody wants to have cases that can go back to a forum
14 state, the original forum state, and they don't want to consent
15 that I should try every case, although I will warn you in
16 advance that I've been known to follow these cases simply by
17 asking to be assigned, and it helps a little bit. I don't want
18 to get into the weeds on this, but if you-all can work together
19 on straightening out those orders, maybe I can go ahead, and
20 Judge Stanley can go ahead, and address some of our other
21 issues, keeping these issues in mind that we've got to clean
22 up first.

23 *MR. GARRARD:* Your Honor, may I ask a clarification
24 point?

25 *CHIEF JUDGE GOODWIN:* Sure.

1 **MR. GARRARD:** As to existing venue issues, are the
2 existing venue issues on the Courts' minds, those are cases
3 that have already been direct filed that are not pursuant, for
4 example, to the Bard order? But I know that there have been
5 many counsel who have directly filed in this court and in the
6 other three MDLs.

7 **CHIEF JUDGE GOODWIN:** Yeah, and there may be some
8 Bard ones where we've got a problem too that just didn't occur
9 to me at the time I entered the order permitting the direct
10 filing. It's also true that the minute we start with the
11 master complaint and the short form complaint, the problem is
12 going to grow exponentially, I think.

13 Did I answer your question?

14 **MR. GARRARD:** I think you -- I perceive that the main
15 problem on venue would be those cases that have been direct
16 filed into this court where there is no apparent venue existent
17 now, and that while -- directly into this court absent a direct
18 filing order.

19 **THE COURT:** Let me talk to Kate.

20 *(The Court and the law clerk confer off the record.)*

21 **CHIEF JUDGE GOODWIN:** That's the main aspect of the
22 problem that needs to be cleaned up, but the proposed direct
23 filing order that I have been given also provides that these
24 people who direct filed here can, after it's over, just go
25 anywhere they want, even though they've never been anywhere

1 before, and that won't work.

2 **MR. GARRARD:** I don't think that was the intent of
3 the parties, so I think that is something that hopefully we can
4 work together to clarify and resubmit to the court.

5 **CHIEF JUDGE GOODWIN:** You've been standing up a long
6 time.

7 **MR. PRATT:** Judge, Bryan Pratt for Boston Scientific
8 standing in for Bob Adams. In Boston Scientific's short form
9 proposed it named Proxy Company, and Proxy Limited, a foreign
10 company. They are a supplier of ours, and I hear from you.
11 They called me. They hired counsel this week and called me and
12 said -- I can't agree to support them in any case and I don't
13 represent them, but that's the concern that they have. They
14 were concerned that plaintiffs could check a box and all of a
15 sudden they're here in West Virginia, so we're going to fix
16 that. It's my goal to keep these cases here in West Virginia.
17 I think it's best for the administration of cases. So I heard
18 what you said. We'll work with Mr. Garrard and our team to get
19 that accomplished for you.

20 **CHIEF JUDGE GOODWIN:** We just need to solve the
21 Ethicon problem.

22 **MAGISTRATE JUDGE STANLEY:** Not the Ethicon.

23 **CHIEF JUDGE GOODWIN:** Not the Ethicon problem.

24 Sorry, guys.

25 **MR. GARRARD:** We want to solve that, too, Judge.

1 **MS. JONES:** I think we've got it solved. *(Laughter.)*

2 **CHIEF JUDGE GOODWIN:** Let me just start down through
3 some of the orders you've submitted to me, and we'll keep in
4 mind the problems that you're going to work out, but there are
5 some other things. AMS, we have PTO long form master
6 complaint, short form complaint, master responsive pleading.
7 Beyond the general issues and the ones I've talked about, as
8 far as I could tell, we have no issues specific to AMS as to
9 any of these pleadings. Is that right?

10 **MS. BINIS:** To the extent that the complaints named
11 Endo Pharmaceutical, Your Honor, they are not an MDL defendant.
12 There will be a motion filed next week to dismiss the Endo
13 defendants that you know is coming, so that issue will be
14 adjudicated then.

15 **THE COURT:** Okay. Yes, ma'am?

16 **MS. FITZPATRICK:** That's correct; there are no other
17 issues beyond that.

18 **CHIEF JUDGE GOODWIN:** Boston Scientific. Do we have
19 a PTO, long form master complaint, a short form complaint?
20 Boston Scientific wants ninety days to file a master responsive
21 pleading. How about I give you thirty? Where are you?

22 **MR. PRATT:** I'll take thirty. The other defendants
23 have agreed to sixty; we agreed with the plaintiffs to do
24 ninety. I'll take whatever you give me, Judge. I'll get it
25 done in thirty. We negotiated for this to be ninety, but I'll

1 do what you want me to do.

2 *CHIEF JUDGE GOODWIN:* Well, I appreciate that, and I
3 just think the closer we can keep these things to running
4 parallel, the better off we are. And if you can't get it done
5 in thirty, make a motion.

6 *MR. PRATT:* And then now can we discuss the issue
7 also on my question about including injuries or damages, or did
8 you want to talk about that later on, Judge?

9 *CHIEF JUDGE GOODWIN:* Well, let me just go through
10 what I've got for Boston Scientific. You disagree with the
11 plaintiffs on paragraph 13, which asks the plaintiff to
12 identify the injuries and categories of damages claimed as a
13 result of your product. Plaintiffs don't want that paragraph.
14 None of the other short form complaints contain this paragraph.

15 *MR. PRATT:* That's true, Judge, and if you can give
16 me two minutes --

17 *CHIEF JUDGE GOODWIN:* Absolutely.

18 *MR. PRATT:* Your Honor, in every complaint that I've
19 ever seen in the country, except the short form complaints we
20 have here, a plaintiff is always required to identify injuries
21 or damages. Now, I get it, and I talked to the other -- my
22 co-defendants. They've got great lawyers, and in the process
23 of their negotiations they say, hey, listen, we agreed not to
24 have this. You know, we don't disagree with you, but in our
25 negotiations, they felt something else was different. They're

1 in a different stage of the litigation than we are. For us,
2 that was important, and we're not willing to waive what we
3 think is very clear law requiring that in every complaint. We
4 think it's important. We have AMS mass litigation and the
5 plaintiffs there, Judge, are doing it, so we don't think that
6 should change right here. We think as part of any pre-suit
7 investigation, don't you think the plaintiff should have some
8 basic information on injuries or damages? I think so, and I
9 think it ought to be included. And that's going to define the
10 whole rest of the cases as to what's going to be set forth in
11 the pleadings. And for us, we felt that's important, and we're
12 not willing to waive it.

13 *MR. GARRARD:* Your Honor, we have a master complaint.
14 We refer to the master complaint in the short form complaint.
15 The master complaint sets out that the plaintiff -- as I
16 understand the law, it does not require us in a complaint -- or
17 a short form complaint to set out all the specifics of damages.
18 We have a second thing that we have worked out just today, and
19 that is we have reached an agreement between the AMS, the
20 Boston Scientific, and the J & J Ethicon MDLs to utilize a
21 Plaintiff Profile Sheet, which will set out the damages, and
22 we have reached an agreement that we would serve that upon the
23 other side within sixty days.

24 *THE COURT:* Say that again. Start at the beginning
25 of that sentence.

1 **MR. GARRARD:** I can't say Plaintiff Profile Sheet
2 very quickly, but as the court will recall, we had some
3 discussion about this, I think at the last status conference,
4 and the court said, "If you folks can work it out, then the
5 court will entertain it." Well, we have been working on it
6 diligently with both sides, and just this morning we have
7 reached an agreement, both on the form that will be used and on
8 an enabling order to present to the court for the court's
9 consideration. In the context of that Plaintiff Profile Sheet
10 we are required to set out what we claim as the damages. We
11 are required to say who the implanting physicians are, who the
12 explanting physicians are, attach whatever medical we have.
13 And while I understand Mr. Pratt's desire, we're going to have
14 it to him in sixty days anyway, so we think, number one, it's
15 not required under the law; and number two, he's going to have
16 the information anyway within sixty days.

17 **MR. PRATT:** And, Judge, I know in every case I always
18 get injuries or damages in discovery. It ought to be in
19 pleadings. The rules are very clear on that. I think I'm
20 entitled to it.

21 **THE COURT:** Well, since this is your first time here
22 I hate to do this, but I think within the context of the MDL
23 the master complaint as proposed, and the short form complaint
24 as proposed, the absence of paragraph 13 would not make the
25 pleading inconsistent with *Twombly* or *Iqbal*, and I particularly

1 believe that all of the pleadings are to be construed in light
2 of the purpose of the rules, particularly Rule 1 of the Rules
3 of Civil Procedure, and I think in this case it's essential
4 that I have that sort of uniformity. Now, here's what you get
5 for being the new guy that you can take back to your clients
6 and say, "I lost my first motion": If they don't come through
7 with these profiles as promised, with the detail that they
8 promise, then I will sanction them. Okay.

9 Turning to Ethicon, we have the direct filing order, the
10 long form master complaint, the short form complaint, and the
11 master responsive pleading, and that brings us to international
12 defendants. The plaintiffs want to name international
13 defendants in their long and short form complaint. Ethicon
14 Sarl, S-a-r-l, is a wholly-owned subsidiary of Johnson &
15 Johnson, or J & J, that's located in Switzerland. If I
16 understand it, it's charged by J & J with manufacturing
17 Ethicon's pelvic floor repair products. Is that right?

18 *MR. AYLSTOCK:* That is correct, Your Honor.

19 *CHIEF JUDGE GOODWIN:* Let me ask the other -- the
20 defendant --

21 *MS. JONES:* It is correct, Your Honor, there are
22 other defendants that are also listed, which may be where Your
23 Honor is going. I think I may be able -- well, I won't
24 anticipate. I was going to short circuit things.

25 *CHIEF JUDGE GOODWIN:* No, go ahead; I like shortcuts.

1 *MS. JONES:* Well, the issue is, and what we've
2 discussed with Mr. Aylstock and counsel primarily is that the
3 reason that they thought it was necessary to bring in the
4 non-U.S. defendants, I think, is to ensure that they would have
5 access to some discovery. The problem arose when we had some
6 depositions scheduled in France, and including depositions of
7 J & J subsidiary employees.

8 *THE COURT:* And there was some blocking --

9 *MS. JONES:* I learned about this blocking statute and
10 the fact that at least there was a risk that they would be --
11 that they were being exposed to criminal penalties, and so what
12 we went to the plaintiffs and said was we will do whatever --
13 we're not trying to avoid this discovery. We'll do whatever is
14 necessary to help you comply with the Hague Convention so that
15 these people are protected against the potential of criminal
16 sanctions. And, in fact, ultimately that's what Judge Higbee
17 has done with respect to that. The plaintiffs, I think,
18 thought that if they brought these foreign entities in that it
19 would remove that problem, and it does not remove that problem.
20 The only way that we are ever going to completely avoid having
21 those European entities subject to the European laws and
22 blocking statutes and whatever is essentially to go through the
23 Hague Convention. So what I have suggested and asked, and I'm
24 not sure which we're discussing, is that we at least discussed
25 the possibility of agreeing that we will do whatever we can to

1 facilitate them getting through the Hague Convention so that
2 we're not back here having to argue, one, about in the first
3 instance the jurisdiction, and other motions that will come as
4 a result of having to bring in the non-U.S. entities; but
5 secondly, so that we can get the discovery without them, or me,
6 or anybody else being subject to the potential for criminal
7 sanctions, either in Europe or in this court if I'm ordered to
8 produce something that somebody else has got. So that's what
9 the issue is. I don't know whether we can completely resolve
10 it, but I think that counsel -- I think we're closer to being
11 able to resolve it now than perhaps we were a week ago.

12 *CHIEF JUDGE GOODWIN:* I know Mr. Aylstock wants to
13 say something, but let me just interpose something. As of yet,
14 we don't have the plaintiff who's named one of these defendants
15 in a court that has then gone to the MDL and been transferred
16 here, so I've got right now the same problem with naming those
17 defendants as I do with naming the doctors and everybody else,
18 so should that issue be raised, you're blocked. It generally
19 has been my experience, especially with the attitude that I've
20 seen so far in these cases, that it's at least worth a try to
21 work it out, and if you run into a roadblock, then we'll try to
22 figure it out at the time. I'm not -- as some of the lawyers
23 that have appeared before me before well know, I'm not adverse
24 to making rulings. I have no problem doing that; it's just
25 that I don't always understand everything that is a problem for

1 your business, your client, your legal team, so if you can
2 work it out on your own, chances are you'll work it out better
3 than I will.

4 So I just recommend you take her up on her offer and see
5 if before our next meeting this can all be smoothed out.

6 *MR. AYLSTOCK:* And we have -- we've been going back
7 and forth with various issues. I would say, Your Honor, that
8 although I understand the concern about complicating matters,
9 in Judge Katz' MDL, which is also another company, J & J
10 International or DePuy, that was a short form complaint and
11 that worked out, and now I think there is some waiver of
12 process. But there is some unique things to Johnson & Johnson
13 in its interrelationship with all of these subsidiaries that
14 gives us a concern beyond just getting the depositions. The
15 Hague is an exception to all of these blocking statutes, and
16 the blocking statutes generally cover the giving of evidence,
17 so while serving a witness under the Hague might actually
18 compel a witness to testify, getting the documents because of
19 potential evidence might require service under the Hague there,
20 and particularly given the facts of these cases where these
21 interrelated web of companies is manufacturing, developing,
22 designing. We heard about the French scientist. Well, that
23 was Ethicon France that developed the entire program --
24 product.

25 *THE COURT:* Let me say this: I can -- if I have to,

1 I can figure out a way to take the domestic part of J & J and
2 manipulate them and make them get the stuff you need. So why
3 don't we just try to do it --

4 *MR. AYLSTOCK:* I hear you loud and clear, Your Honor.

5 *MS. JONES:* Then I would be subject to the criminal
6 prosecution. *(Laughter.)*

7 *CHIEF JUDGE GOODWIN:* I mean, I think we can work it
8 out.

9 *MR. AYLSTOCK:* And we certainly have been trying, and
10 we will continue to try.

11 *CHIEF JUDGE GOODWIN:* Okay. And right now you don't
12 have a case upon which I could act.

13 *MR. AYLSTOCK:* Well, under the Hague it requires
14 translation and a lot of money, so we were hoping to get this
15 finalized and the translation of the master complaint and short
16 form complaint --

17 *CHIEF JUDGE GOODWIN:* You just use Google.

18 *MR. AYLSTOCK:* The Hague doesn't allow Google.

19 *(Laughter.)*

20 *MAGISTRATE JUDGE STANLEY:* Ms. Jones, in your
21 suggestion that you wish to cooperate on discovery and to
22 produce certain documents, and perhaps some witnesses, do I
23 understand that you would not be raising issues about whether
24 these documents were within the care, custody and control of
25 J & J?

1 **MS. JONES:** I think that that is, for the most part,
2 correct, Your Honor. The problem is -- and my partner here is
3 more of an expert than I am, but the problem is that the
4 European -- the French and the German, they are all a little
5 bit different, so I'm going to generalize, but it's the privacy
6 aspect of it that sometimes the witnesses, or even the
7 e-mails -- even the company e-mails are subject to the right --
8 you know, to their -- either you have to go through the Hague
9 Convention or whatever. What I have said to Mr. Aylstock is
10 I'll facilitate the letters rogatory or whatever it needs to
11 do. Now, that's not to say I might not object, just as I would
12 object if it were Ethicon in the U.S., because of a legitimate
13 objection to production for something. But in terms of saying
14 that they're not under my control, no, I'm not. It is a
15 separate entity, but I can facilitate that so long as I'm
16 not -- I don't want to be in a position where I expose my
17 client in Europe to criminal penalties for doing what I ask
18 them to do here; and all I'm trying to do is to facilitate the
19 procedures that would protect them against that.

20 **MAGISTRATE JUDGE STANLEY:** Okay.

21 **MR. AYLSTOCK:** And as we understand it, the Hague is
22 the exception, so we're going to have to serve under the Hague
23 anyway, so we might as well serve the complaint.

24 There is just one other issue I'd put on the table, and
25 maybe we can work this out some way, but that risk of jury

1 confusion if they see a bunch of Ethicon France or European
2 documents. Some of them may not have Ethicon on them.

3 *THE COURT:* We can take care of that.

4 *MR. AYLSTOCK:* Okay.

5 *THE COURT:* I've always kind of figured it was my
6 job, because lawyers, by the time they get to trial and they've
7 got their computer thumb drives full of all their stuff, and
8 they've talked about this stuff for two or three years, it's
9 going to be a hard job for me anyway to be sure you-all tell a
10 story to the jury that they can understand. In the -- I'm
11 aware of in the Prempro cases, one that was tried here in front
12 of Judge Copenhaver, I don't have any idea how the jury
13 understood it from either side, but, you know, that's just
14 because I was listening. Anyway --

15 *MR. AYLSTOCK:* Thank you, Your Honor.

16 *THE COURT:* -- we'll deal with that problem, if we
17 can.

18 Profile sheets. I'm hearing that you've got that worked
19 out in a way that doesn't cause me the trouble I had in
20 Serzone?

21 *MR. GARRARD:* Yes, sir.

22 *THE COURT:* Okay. All right. Now, that's good,
23 because this leads me to Judge Stanley.

24 *MAGISTRATE JUDGE STANLEY:* All right. ESI protocols.
25 I have in front of me proposed stipulation, plaintiff version

1 and defense version; is that right?

2 *MR. AYLSTOCK:* It is, Your Honor. That's my poor
3 handwriting at the top.

4 *MAGISTRATE JUDGE STANLEY:* So this is Ethicon. And
5 so is this predictive coding sampling?

6 *MR. AYLSTOCK:* Yes, Your Honor. And as I understand
7 it, the ESI orders on the other defendants have been agreed to,
8 and they followed largely the Bard one, and I have heard you
9 loud and clear and I'll certainly sit down if you want me to
10 sit down now, but what we were thinking would be a good idea
11 specific to the Ethicon production, because there have been
12 four million pages or so already produced, would be to take
13 four, maybe three, custodians in medical affairs, regulatory,
14 what have you -- and I know Your Honors have been to the Sedona
15 conference and know more of what I'm talking about than I do,
16 but take a sample and procedure where we can run some
17 predictive coding across the unproduced custodial files and see
18 if -- compare that, because as I understand it, each document
19 has a unique identifier on the defendant's system, compare that
20 to what was actually produced with the lists on the search
21 terms and see if there were relevant documents that were
22 missed. From that it would be a computer comparison of those
23 unique identifiers. They would spit out, maybe it's a hundred
24 documents, and we can say, well, gosh, we did do a good job; or
25 maybe it's ten thousand documents and maybe we didn't do a good

1 job figuring out the search terms to produce all the documents
2 for both sides. We could then take whatever pot that is and
3 cull it down and do one-tenth or one-fiftieth of the documents
4 just to see if, in fact, relevant documents are being missed
5 under the current system that's taking place. And the reason
6 why Ethicon makes sense to maybe try this is because we do have
7 these documents and custodial files that have already been
8 produced and it would allow us to run this test and see if we
9 are, on a going-forward basis -- I'm not asking Ethicon to redo
10 what they have already done through the New Jersey litigation,
11 but maybe do it better or cheaper than a search term and then
12 a relevancy attorney review by their attorney. And so that
13 was a thought I had. There is certainly resistance - heavy
14 resistance - on the other side, and I think it can be done
15 cheaply, quickly, and with your supervision, just a way to
16 assure that both sides are getting relevant documents in this
17 case.

18 *MAGISTRATE JUDGE STANLEY:* Ms. Jones?

19 *MS. JONES:* May I respond? As Mr. Aylstock noted,
20 this is not a provision in any of the other existing orders.
21 It's not appropriate in this order, I suggest to Your Honor,
22 because it ignores the purpose of predictive coding.
23 Predictive coding, which is, at least as I understand it,
24 pretty much a cutting edge issue, was developed initially so
25 that you could automate your review and attorney -- you know,

1 at the beginning of the litigation, and eliminate attorney
2 time, so that the hope was that the ESI document production
3 could be accomplished cheaper, more reasonably, and moving
4 forward. It's not appropriate, I suggest, here because we have
5 already produced and are ready to hand to plaintiffs' counsel,
6 with this protective order having been entered, millions of
7 documents already. We've already been through that process.
8 There have been no complaints about missing great categories of
9 documents. And, in fact, I asked -- I said you know, "Is this
10 being prompted, frankly, by some legitimate concern that there
11 are batches of documents and all?" And I think it's fair to
12 say that, like in every case, there have been some, you know,
13 an attachment that's not on this document or whatever, but
14 there have been no overriding concerns. It certainly hasn't
15 been asked for in the context of the New Jersey litigation.
16 We think it is exposing us to an additional expense that's an
17 inappropriate use of predictive coding and it's just not
18 warranted at this point.

19 **MAGISTRATE JUDGE STANLEY:** Mr. Aylstock, is there any
20 provision in the rules that suggests that this is something
21 that I should order?

22 **MR. AYLSTOCK:** Well, there is the case that's cited
23 in the order for proposed stipulation. This is cutting edge
24 technology, and I recognize that, and I think that the
25 overarching purpose of the rules would certainly support you

1 doing this, as other courts have done, but given the
2 cutting-edge nature of it, I can't point you to a specific rule
3 that says predictive coding would be allowed. I would say
4 while certainly there have been some issues in the New Jersey
5 production, us finding the documents that we think we need --
6 and I'm not trying to cast any stones, but it's very difficult
7 when you're going through all these documents to know -- you
8 don't know what you don't know, and so if we could do this
9 little experiment on a very limited basis I think it would be
10 instructive to the court and to the parties to see if we're on
11 the right track on a going-forward basis, because I do
12 anticipate millions and millions of more pages. In most MDLs
13 that I've been involved with it's up to 12, 13 million pages.
14 We might be able to do it cheaper and more efficiently going
15 forward, and that was my only thought.

16 *MAGISTRATE JUDGE STANLEY:* But basically what you're
17 saying is that Ethicon should have another server and run all
18 the previously-produced documents through it again?

19 *MR. AYLSTOCK:* Only selected custodial files.
20 Certainly not foreign documents. Certainly some of the
21 custodian files, I think there have been thirty or forty
22 thousand pages for some of the key ones. And only do it on
23 those.

24 *MAGISTRATE JUDGE STANLEY:* But just -- but basically
25 do it again, because they've already done it once.

1 **MR. AYLSTOCK:** Well, they've done it once, not with
2 predictive coding but with their own search terms, and there
3 have been some problems.

4 **MAGISTRATE JUDGE STANLEY:** Well, now, didn't -- part
5 of the problem is that it's hard to know what was done in New
6 Jersey and what's being done here and, I mean, surely the
7 plaintiffs in New Jersey must have cooperated in developing the
8 search terms --

9 **MR. AYLSTOCK:** They did --

10 **MAGISTRATE JUDGE STANLEY:** -- for that litigation.

11 **MS. JONES:** That's correct.

12 **MR. AYLSTOCK:** And certainly that's how it's
13 typically done.

14 **MAGISTRATE JUDGE STANLEY:** Right.

15 **MR. AYLSTOCK:** Certainly the search terms, there is
16 cooperation, but I think as we move forward this predictive
17 coding -- in the Actose MDL, for example, it's my understanding
18 predictive coding is going to be used. I think it's something
19 we will see more and more. And I'm not suggesting that they
20 run it over four million pages; I'm suggesting we do a limited
21 sampling on those limited custodial files and see what we find.
22 That's all.

23 **MAGISTRATE JUDGE STANLEY:** Anything further,
24 Ms. Jones?

25 **MS. JONES:** I can't think of any other arguments.

1 **MAGISTRATE JUDGE STANLEY:** I'm sorry?

2 **MS. JONES:** No, Your Honor.

3 **MAGISTRATE JUDGE STANLEY:** I'm not at this point
4 inclined to require that. I'll take a double look at this and
5 see what I can find, but at this point I think no production is
6 going to be perfect, and they're pretty far down the line; I'm
7 not going to make them back up at this point.

8 **MR. AYLSTOCK:** Thank you, Your Honor.

9 **MAGISTRATE JUDGE STANLEY:** So that's Ethicon.

10 **MS. JONES:** Your Honor, I think that that's the
11 only --

12 **MR. AYLSTOCK:** Yes, we were going to say the same
13 thing, that's the only disagreement we have.

14 **MAGISTRATE JUDGE STANLEY:** That was my understanding.

15 **MR. AYLSTOCK:** I presented two orders, one the
16 defense version. The defense version is the exact same, except
17 it doesn't have the predictive coding, so that would be the one
18 we're using.

19 **THE COURT:** I'll read them carefully and make sure
20 everything else is satisfactory.

21 **MS. JONES:** Thank you, Your Honor.

22 **MAGISTRATE JUDGE STANLEY:** On AMS, the indication is
23 that you've worked out most of it, but not absolutely
24 everything.

25 **MS. BINIS:** There is just one issue that's

1 outstanding as to AMS, Your Honor, and that is the number of
2 custodians to which plaintiffs want us to commit at this point.
3 They want us to commit to this number of thirty, and when I
4 heard that number I said, "I don't know that there are thirty
5 people. I think that's a high number. Can you tell me who
6 you're thinking about so that we can talk about whether that is
7 the right list of people or not?"

8 And they said, "We don't want to tell you who the thirty
9 are; we just want you to commit to thirty. Every other
10 manufacturer defendant has committed to thirty." Which I don't
11 know, that might be true, but the fact is that AMS is much
12 smaller a company than any of these defendants. We have only
13 a tenth of the employees that the next largest company here
14 has, so I'm just not willing to commit in the abstract to a
15 number that I'm just not sure later won't come back to bite me
16 because it wouldn't be appropriate. I suggested twenty. I
17 suggested we pick ten, they pick ten, but they're firm on the
18 thirty number.

19 **MAGISTRATE JUDGE STANLEY:** Who is going to respond
20 to this? Mr. Thompson?

21 **MR. THOMPSON:** I am the coordinating co-lead for the
22 litigation. Ms. Fitzpatrick and Ms. Eskin have negotiated
23 that. I guess this is the first time I've heard that Ms. Binis
24 has agreed to go to twenty, because my understanding was that
25 she had indicated that she wanted to commit to ten or only if

1 we would actually tell her the names of thirty.

2 This reminds me of a major league arbitration, a high-low
3 arbitration, and it certainly -- as we all know, Bard has
4 agreed to 22. I think we can see where the resolution of this
5 should be and --

6 **MAGISTRATE JUDGE STANLEY:** Why are you not doing it
7 on the basis of the organizational chart and the identity of
8 the people? I don't understand why you don't want to list your
9 names or why they would be hung up on a particular number. I
10 mean, it seems to me that what you want is figuring out who the
11 custodians are of the best documents. What am I missing?

12 **MR. THOMPSON:** Well, AMS -- and here again, I don't
13 want to -- matter of fact, I see one of my cohorts standing,
14 but the 30(b)(6) organizational information is all going to be
15 made manifest. This is actually just the ES protocol, which
16 contemplates that we're going to go through a negotiation
17 period.

18 **MAGISTRATE JUDGE STANLEY:** Right.

19 **MR. THOMPSON:** Certainly since nobody else has any
20 trouble just assigning a certain number of depositions, if
21 Ms. Binis is correct and there are only like four people over
22 there who do anything, then four will be all it is. But
23 certainly some number between ten and thirty seems to me to be
24 the easy response.

25 **MAGISTRATE JUDGE STANLEY:** Ms. Fitzpatrick?

1 **MS. FITZPATRICK:** I was actually going to echo
2 Mr. Thompson's issues. We have just actually started to
3 receive documents from AMS, and in addition to a corporate
4 structure deposition, which we have agreed will happen before
5 the end of September, but we don't have a definite date, and my
6 concern, what Ms. Binis proposed to me was I can't plant my
7 flag today and say these are the thirty that I want, because I
8 don't know who else is out there, but I have a good idea from
9 previous litigation who we might want, and we don't -- but I
10 couldn't be constrained by these thirty only to discover maybe
11 six months from now, gee, there are seven other people that I
12 wish I had asked for instead.

13 And so Ms. Binis, one of her colleagues had suggested at
14 one point tell us ten and we can renegotiate if we need to go
15 beyond ten, if we should agree to it. We didn't want to get
16 into a process whereby we were agreeing to ten and then we'd
17 have to jump through additional hoops, which would mean perhaps
18 coming back to the court if we're going beyond that, and so we
19 had asked for the same amount that others were getting. Now,
20 certainly if Ms. Binis says there aren't thirty people over
21 there that could possibly have information, then we're not
22 going to ask for it, but we needed to have the flexibility to
23 know that we could keep working on this as it goes forward.

24 **MAGISTRATE JUDGE STANLEY:** And so Boston has thirty
25 and Bard had twenty-two?

1 **MR. GARRARD:** They had twenty-two, Your Honor, but we
2 have had some add-ons that we have worked together with. We
3 haven't really had a problem with Bard. Bard we have expanded
4 beyond that number, but in negotiations with the plaintiffs.

5 **MAGISTRATE JUDGE STANLEY:** And Ethicon is thirty or
6 so?

7 **MS. JONES:** We have way too many, Your Honor.

8 *(Laughter.)*

9 **MR. AYLSTOCK:** Ethicon is a huge corporation.

10 **THE COURT:** You-all are making me glad I don't
11 practice law.

12 **MAGISTRATE JUDGE STANLEY:** Ms. Jones, you are always
13 funny, and the poor reporter can't figure out what's being said
14 because everybody is laughing. Yes, Ms. Binis?

15 **MS. BINIS:** I'm not saying -- I don't know what
16 number we're going to get to. We're going to be reasonable; I
17 just don't want to agree in the abstract to a number.

18 **THE COURT:** Well, too bad. Why don't we just say up
19 to thirty and after that you have to do it by motion. I mean,
20 let's face it, if it's up to thirty, it might be six and that
21 will be it.

22 **MS. BINIS:** Up to thirty is fine with us, Your Honor.

23 **MS. FITZPATRICK:** Thank you, Your Honor.

24 **MR. PRATT:** Judge Stanley, I apologize for
25 interrupting. I'm not sure -- I'm going back through -- we

1 negotiated ours with the plaintiffs, and I didn't do that so I
2 don't want to stand up and say we agreed to thirty. I think
3 it's going to be much smaller than that for my company, but I
4 don't want to stand up and say it's thirty when I don't know
5 the exact number.

6 *MAGISTRATE JUDGE STANLEY:* Okay. I can't imagine
7 that they want a whole bunch of stuff from a whole bunch of
8 irrelevant people, but I may be wrong.

9 All right. Protective orders. Is that our next item?
10 All right. I understand AMS --

11 *MR. GARRARD:* Your Honor, I think we've agreed
12 across-the-board on protective orders.

13 *MAGISTRATE JUDGE STANLEY:* We're all done?

14 *MR. GARRARD:* Yes, ma'am.

15 *MAGISTRATE JUDGE STANLEY:* Excellent. Preservation
16 orders. Where are we on preservation orders?

17 *MR. THOMPSON:* With regard to the privilege order and
18 the preservation order that we had indicated to the court that
19 we were going to seek, we have been instructed by your e-mail
20 of last week that gave us instructions and gave us some insight
21 into how you were viewing things, and it appears to us that the
22 better course here is to wait until we have a concrete dispute
23 over those issues to bring before you, and so we -- our
24 suggestion would be that we simply hold those issues in
25 abeyance until we have a co-auctorial dispute so that you can

1 have something in front of you to rule on.

2 **MAGISTRATE JUDGE STANLEY:** As I reviewed these, it's
3 fine to put it off for a while. And one thing the parties may
4 want to consider is that I think when you have a roadmap and
5 specific rules or guidelines, it's somewhat easier for junior
6 lawyers and others who are involved in this, and non-lawyers,
7 to follow more specific guidelines so that, for example, in the
8 preservation order it listed a whole lot of things whereas --
9 of things to be done, whereas in Pretrial Order Number One, it
10 was just a general obligation to preserve. And I'm not saying
11 that I think it's the right thing to do, but I thought that it
12 certainly was one way to provide a roadmap to non-lawyers who
13 may not understand the depth and the significance of a
14 preservation order. So I just kind of float that out there
15 that whether or not you get into a fight about it, the defense
16 may want to say, well, here are samples of what you really need
17 to do to your non-lawyer clients so that they have a better
18 understanding, rather than just handing them the one paragraph
19 from Pretrial Order Number One.

20 And on the privilege matter, I didn't see anything wrong
21 with the recitation of the law. And it occurred to me that
22 young lawyers who are doing privilege review may find the law
23 as stated in that proposed order to be helpful, so I didn't see
24 anything wrong that you did there; it's just that I certainly
25 don't want to have disputes over things that you're not arguing

1 about.

2 *CHIEF JUDGE GOODWIN:* Okay. No, this is still you.

3 *MAGISTRATE JUDGE STANLEY:* I've lost track.

4 *CHIEF JUDGE GOODWIN:* ES protocol for Ethicon. Have
5 you done that?

6 *MS. JONES:* We just did that.

7 *THE COURT:* Okay. The motions to dismiss and remand.

8 *MAGISTRATE JUDGE STANLEY:* Did you want to ask about
9 30(b)(6) depositions on Ethicon?

10 *CHIEF JUDGE GOODWIN:* You go ahead.

11 *MAGISTRATE JUDGE STANLEY:* Is there any issue about
12 the 30(b)(6) depositions in Ethicon?

13 *MS. JONES:* I don't think so, Your Honor.

14 *MR. AYLSTOCK:* No, Your Honor. We just wanted --
15 there was an agenda item, we wanted to report that notice had
16 been served. We're working cooperatively to schedule those
17 depositions and moving forward with discovery generally.

18 *CHIEF JUDGE GOODWIN:* Anything you want to tell us
19 about what's going on in New Jersey?

20 *MAGISTRATE JUDGE STANLEY:* Do you have a trial date?

21 *MS. JONES:* We will have an official trial date
22 tomorrow. I think I can represent to the court that it looks
23 like that we have jury selection on January the 4th and start
24 on the 7th, if my dates are right.

25 *CHIEF JUDGE GOODWIN:* And when do I start the

1 February trial?

2 *MR. GARRARD:* February 5th, Your Honor.

3 *MS. JONES:* There have been discussions about
4 November. I think we've now pretty much gotten an agreement.
5 We're waiting for a call tomorrow from Judge Higbee that will
6 officially set that date.

7 *MAGISTRATE JUDGE STANLEY:* Is that an SUI or POP or
8 both?

9 *MS. JONES:* It's a POP. Well, it will be POP with a
10 Prolift case only. There are two plaintiffs that are still in
11 the mix, one of whom will be chosen for the trial plaintiff.
12 And that decision may be made tomorrow, but I think that's
13 likely to be postponed for a while, but it will be a Prolift
14 case.

15 *MR. AYLSTOCK:* That's my understanding, Your Honor.
16 It's down to two cases, and I believe Judge Higbee left it up
17 to the defense as to whether November 4th or January 7th,
18 and we're fine with either one, in New Jersey.

19 *MS. JONES:* The only thing I'd advise Mr. Aylstock
20 and I'd like to advise the court, we have been ordered in New
21 Jersey to produce the CEO and basically some Apex depositions.
22 They will take place between now and September the 15th.
23 Those depositions are of -- one may be the general counsel of
24 Johnson & Johnson. Obviously, this is the set of depositions
25 we'd like to do one time, because they aren't people that have

1 direct day-to-day responsibility of things. I talked to
2 Mr. Aylstock. We are going to file notice of those
3 depositions. We probably -- we're going to try to work it out,
4 and see if we can work it out between us and New Jersey and see
5 if we can come together on some kind of deposition protocol,
6 but we may be coming back to the court and asking for some
7 assistance there. Mr. Aylstock and I can work things out, I
8 think. It's occasionally the other people want to have a say
9 in it, and so. . . .

10 *MR. AYLSTOCK:* It's John and Jacobs. *(Laughter.)*

11 *MS. JONES:* I think that's the extent of the update.

12 *MR. AYLSTOCK:* That's correct, Your Honor. And with
13 regard to that, I'm confident we'll be able to work that out.
14 The only thing I might say, lest the record be unclear, the
15 discovery that's gone forth in New Jersey has been directed at
16 those Prolift cases and so to the -- I don't -- we have not
17 been focusing in New Jersey at all on the TVT cases and, in
18 fact, Judge Higbee said discovery will start in the fall. I
19 have no idea whether these individuals have involvement with
20 TVT that would require some additional coming back, but I just
21 don't want to waive -- well, while in total agreement we want
22 to do it one time, and maybe Judge Higbee ordered it for
23 everything - and I wasn't at the hearing - I just wanted to
24 make that point to the court.

25 *MS. JONES:* I don't think it's specifically ordered

1 as to these people, but I think there is a general
2 understanding, and we'll work it out.

3 *MR. AYLSTOCK:* Thank you, Judge.

4 *MR. THOMPSON:* Judge, the Bard state cases in New
5 Jersey, the CMO was ordered -- that set a first trial date, I
6 believe, in the first of April, which is firmly in a trial
7 position.

8 *MR. GARRARD:* April 15th, Your Honor.

9 *CHIEF JUDGE GOODWIN:* Pending motions. Apparently
10 there is about a baker's dozen motions to dismiss, motion to
11 reconsider, a motion to remand. Just write this down: If I
12 grant a motion to reconsider, it's the first time I've ever
13 done it, so. . . . But I'll take a careful look at it.

14 There haven't been timely responses filed to some of the
15 motions. On the Notice of Pending Motions list that I got on
16 April 6, Ethicon identified five motions to dismiss and counsel
17 indicated by e-mail that the filing of the master complaint
18 would probably moot those motions.

19 *MS. JONES:* I think that's correct.

20 *MR. AYLSTOCK:* And they may also moot some motions to
21 remand as well.

22 *THE COURT:* All right. And there's also five motions
23 to dismiss Caldera, Boston Scientific and AMS. And Regional
24 Health Systems filed a motion to dismiss, but it's not ripe
25 yet. Just put those on your radar and let me know if you want

1 to respond to them, you want a ruling on them, or you're going
2 to get rid of them. We have so few rules that anybody in the
3 hierarchy of the federal judiciary seems to care about, but one
4 of them is if you have motions pending for more than six months
5 or you have cases pending for more than three years, and that's
6 the only reason I really care, so if you take a look at it to
7 keep me off of the bad list. *(Laughter.)*

8 There are 21 remand motions pending in Boston Scientific.
9 There is about 600 cases. I don't think there is going to be
10 many remaining after the master complaint. Is that right?

11 **MR. PRATT:** That's my understanding, Judge.

12 **CHIEF JUDGE GOODWIN:** Again, just take a look, and
13 whether these motions are moot or they're going to get me a
14 piece of paper that takes care of it --

15 **MR. PRATT:** We'll do that.

16 **CHIEF JUDGE GOODWIN:** If I don't hear from you on any
17 pending motion in the near future by filing a motion to dismiss
18 as moot or whatever, then I'll set a briefing schedule.

19 **CHIEF JUDGE GOODWIN:** Did you want to talk any more
20 about the *Ambroff* and *Boatman*?

21 **MAGISTRATE JUDGE STANLEY:** I did not set a deadline
22 for production of the *Ambroff* documents and the *Ambroff* and
23 *Boatman* depositions.

24 **MS. BINIS:** Your Honor, the *Ambroff* documents were
25 delivered already. The *Boatman* are going to be delivered next

1 week. We've worked that out with the plaintiffs.

2 *MAGISTRATE JUDGE STANLEY:* Well, good.

3 *CHIEF JUDGE GOODWIN:* There are 41 motions to dismiss
4 in AMS, 18 motions to remand.

5 *MS. BINIS:* We will get a list together, Your Honor,
6 and let you know which ones of those are going to be moot by
7 the master complaint and which ones are still pending.

8 *CHIEF JUDGE GOODWIN:* Thank you.

9 *MAGISTRATE JUDGE STANLEY:* You said you were going to
10 file a motion to dismiss about Endo next week?

11 *MS. BINIS:* Yeah, we're going to file it next week,
12 Your Honor. And that will be pursuant to the master complaint,
13 so that will be a motion that may moot some of those other
14 motions.

15 *CHIEF JUDGE GOODWIN:* Let me remind everybody, and
16 pass the word through the liaison counsel and lead counsel, not
17 to file cases with unrelated plaintiffs in one action, and I
18 need to enter a severance order to address this issue after we
19 get around to entering the direct filing order. We had that
20 problem before in Digi tek.

21 *MAGISTRATE JUDGE STANLEY:* And Serzone.

22 *CHIEF JUDGE GOODWIN:* And Serzone. What else do I
23 need, except to do the Bard stuff?

24 *(The Court and the law clerk confer off the record.)*

25 *CHIEF JUDGE GOODWIN:* All right. Bard and TSL have

1 entered orders waiving service. I would encourage the
2 remaining manufacturer defendants to consider submitting such
3 orders. Just take a look. And Sandra Bresnick hadn't entered
4 a motion to withdraw yet. Will whoever --

5 *MS. MOELLER:* We'll take care of that, Judge.

6 *CHIEF JUDGE GOODWIN:* All right. Thank you.

7 September 13th at 1 p.m. -- September 13th at 1 p.m., the
8 Boston Scientific show-and-tell and the extra 15 minutes for
9 the others.

10 And now I need -- what else do we have besides Bard?
11 Anybody have anything else? Mr. Garrard?

12 *MR. GARRARD:* Yes, sir. The plaintiffs have worked
13 together in terms of certain administrative matters pertaining
14 to counsel and we would seek permission to meet with the court
15 about that. It's nothing about that that pertains to the
16 defendants or any merits or anything in relationship to the
17 defendants. It's purely an administrative issue.

18 *CHIEF JUDGE GOODWIN:* I'll be glad to do so, unless
19 the defendants don't object to me doing it.

20 *MS. JONES:* I have already advised Mr. Aylstock that
21 I didn't have any objection to it.

22 *THE COURT:* I didn't figure --

23 *MS. JONES:* We may want our own one of these days.

24 *(Laughter.)*

25 *THE COURT:* That's been my experience. So we'll do

1 that. And it will be handled properly. I've been in this
2 business too long to start playing games, so. . . . Okay. So
3 let's go -- let's take the Bard people and go to the conference
4 room. And I'll see all of you on the -- and Ms. Eskin.

5 **MAGISTRATE JUDGE STANLEY:** Would you join us in the
6 Bard meeting?

7 *(Proceeding adjourned at 1:55 p.m., July 26, 2012.)*

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10 **CERTIFICATION:**

11 I, Teresa L. Harvey, Registered Diplomate Reporter, hereby
12 certify that the foregoing is a correct transcript from the
13 record of proceedings in the matters of In Re C. R. Bard, Inc.,
14 MDL NO. 2:10-MD-02187, In Re American Medical Systems, Inc.,
MDL No. 2325; In Re Boston Scientific Corp., MDL No. 2326; and
In Re Ethicon, Inc., MDL No. 2327, as reported on July 26,
2012.

15 s/Teresa L. Harvey, RDR, CRR

August 11, 2012

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