

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

CHARLESTON DIVISION

IN RE: AMERICAN MEDICAL SYSTEMS, INC.
PELVIC REPAIR SYSTEM PRODUCTS LIABILITY
LITIGATION

MDL No. 2325

THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER # 115
(FIRST AMENDED DOCKET CONTROL ORDER RE: THIRD ROUND OF
BELLWETHERS)**

The parties jointly submitted this proposed Docket Control Order amending PTO # 93 (entered on November 13, 2013) related to the Pelvic Organ Prolapse (“POP”) trial pool.¹ This PTO only amends paragraphs 5, 6, 9, 10, and 11 of the original Docket Control Order (PTO # 93) and leaves the remaining paragraphs unchanged. It is **ORDERED** that the following deadlines that have not already passed apply to the two POP Bellwether plaintiffs’ cases, *Najor* and *Pattison*:

1. Identity of Cases. The POP discovery pool shall consist of cases filed on or before **January 1, 2013**.
2. Discovery Pool Cases: Case-Specific Discovery. Case-Specific Discovery for Discovery Pool Cases commences on **September 3, 2013**. Case-Specific Depositions shall be limited to: (1) Plaintiff(s); (2) one additional fact witness, which may include an additional physician, if the case involves a single Plaintiff; (3) implanting physicians; (4) explanting physicians; (5) sales representative or distributor directly associated with the sale of the product

¹ After the entry of PTO # 93, I entered PTO # 110, choosing the two bellwether cases to which the deadlines in PTO # 93 apply, *Stephanie Najor v. American Medical Systems, Inc.*, 2:12-cv-6722, and *Bonnie Pattison v. American Medical Systems, Inc.*, 2:12-cv-7154, referred to herein as the “POP Bellwether plaintiffs.”

to the implanting physician; and (6) any representative or any Defendant who was present in the operating room during the implantation or explantation surgeries.

3. On or before **January 3, 2014**, the parties shall meet and confer about selecting two (2) cases from the Discovery Pool for inclusion in the POP Bellwether Pool. If the parties are unable to come to an agreement about the manner in which those cases should be selected and/or identity of those two cases, the parties shall each make a presentation to the Court on **January 13, 2014**. Based on that presentation, the Court shall choose the appropriate number of cases to include in the trial pool (not to exceed 4 cases) and the identity of the individual cases that shall comprise the POP Bellwether Pool.

4. Expert Reports

- a. Plaintiffs shall serve expert reports by **March 7, 2014** for all POP Bellwether plaintiffs.
- b. AMS shall serve expert reports by **March 21, 2014** for all POP Bellwether plaintiffs.
- c. Plaintiffs shall serve rebuttal expert reports by **March 28, 2014** for all POP Bellwether plaintiffs.

5. On or before **March 21, 2014**, Plaintiffs and Defendants will identify three (3) dates before **May 23, 2014** on which each expert witness is available for deposition. On or before **March 28, 2014**, Plaintiffs and Defendants will identify three (3) dates before **May 23, 2014** on which each rebuttal expert witness is available for deposition. Plaintiffs and defendants shall have five (5) days to confirm dates of deposition for each expert witness they intend to depose in this litigation. The parties shall make their best efforts to depose Plaintiffs' expert witnesses prior to the time that Defendants' Expert witnesses are deposed.

6. Written Discovery. Parties shall serve any and all final, non-duplicative written discovery in POP Bellwether cases no later than **March 18, 2014**.

7. Discovery. All discovery in the two POP Bellwether trials, including depositions of all company witnesses and third parties, shall be completed by **April 18, 2014**.

8. Expert Discovery for the POP Bellwether cases shall be completed by **May 23, 2014**. Expert depositions shall not begin until after AMS has disclosed its experts.

9. Trial Order of Bellwether Cases: On or before **June 5, 2014**, the parties shall submit to the Court a ranking of the bellwether cases in preferred order for trial. The Court shall pick the order of the bellwether trial cases for the August 19, 2014 trial as soon as practicable thereafter.

10. Motion Practice – POP Bellwether Cases.

a. *Daubert* Motions and non-*Daubert* –dependent Dispositive Motions.

i. *Daubert* Motions and non-*Daubert*-dependent Dispositive Motions shall be filed and served by **June 10, 2014**.

ii. All Responses to *Daubert* Motions and non-*Daubert*-dependent Dispositive Motions shall be filed and served by **June 24, 2014**.

iii. All Replies to *Daubert* Motions and non-*Daubert*-dependent Dispositive Motions shall be filed and served by **June 30, 2014**.

b. *Daubert*-dependent Dispositive Motions and Motions in Limine.

i. *Daubert*-dependent Dispositive Motions and Motions shall be filed and served by **July 15, 2014**.

ii. All Responses to *Daubert*-dependent Dispositive Motions and Motions in Limine shall be filed and served by **July 29, 2014**.

iii. All Replies to *Daubert*-dependent Dispositive Motions and Motions in Limine shall be filed and served by **August 5, 2014**.

iv. Motions in Limine are limited to 3 pages each, responses are limited to 2 pages each.

v. Local Rule of Civil Procedure 7.1(a)(2) applies regarding the page limits on memoranda in support of dispositive motions as well as responses and replies. The court will not be inclined to grant motions

to exceed the page limit. The court requests that the parties abide by Local Civil Rule 7.1(a)(5) regarding courtesy copies.

11. Dates for summary judgment and Daubert hearings, if any, will be set at an upcoming status conference.

12. The parties shall file proposed jury instructions in charge form on substantive theories of recovery or defense, on damages and on evidentiary matters peculiar to the case, and special interrogatories, if any be appropriate to the case, along with a proposed verdict form on **July 14, 2014**. The Court requests that the parties email the proposed jury instructions to the court's law clerk in Word format.

13. Deposition designations. Deposition designations shall be filed by **July 14, 2014**. Any objections to an opposing party's designations, and any counter-designations shall be filed by **July 28, 2014**. Any objections to the counter-designations and any counter-designations to an opposing party's counter-designations, shall be filed by **August 4, 2014**.

14. Exhibit and Witness Lists. The parties will exchange exhibits and witness lists by **July 28, 2014**.

15. The parties shall file a proposed integrated pretrial order pursuant to Fed. R. Civ. P. 16 3-days prior to the pretrial conference. The proposed integrated pretrial order, signed by all counsel and unrepresented parties, shall set forth the matters listed in Local Civil Rule 16.7(b).

16. Pretrial and Final Settlement Conferences. 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 conference and submission of a Proposed Pretrial Order.

17. Trial. One POP case will be tried in the third round of trials, which begins on **August 19, 2014, at 8:30 a.m.**

The court **DIRECTS** the Clerk to file a copy of this Order in 2:12-md-2325 and **2:12-cv-6722 and 2:12-cv-7154** 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 2:14-cv-06099. 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: January 31, 2014



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE