

**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 # 150
(SECOND AMENDED DOCKET CONTROL ORDER RE:
THIRD ROUND OF BELLWETHERS – NAJOR & PATTISON)**

By parties submitted this PTO amending PTO # 115. It is **ORDERED** as follows:

1. This order shall govern the Pelvic Organ Prolapse (“POP”) cases identified in PTO # 110: *Najor v. AMS, Inc.* 2:12-cv-06722 and *Pattison v. AMS, Inc.* 2:12-cv-07154.

2. Expert Reports

- a. Plaintiffs shall serve expert reports by **March 7, 2014** for all the *Najor* and *Pattison* cases.
- b. AMS shall serve expert reports by **March 28, 2014** for the *Najor* and *Pattison* cases.
- c. Plaintiffs shall serve rebuttal expert reports by **May 9, 2014** for the *Najor* and *Pattison* cases.

3. On or before **May 5, 2014**, Plaintiffs and Defendants will identify three (3) dates between **May 12, 2014** and **June 9, 2014** on which each 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. Absent agreement of the parties, depositions shall not be taken outside of this time frame and expert witnesses who are not

available to be deposed in that time frame will not be eligible to testify at the August 19, 2014 trial.

4. Written Discovery. Parties shall serve any and all final, non-duplicative written discovery in POP Bellwether cases no later than **May 12, 2014**.

5. Discovery. All discovery in the two POP Bellwether trials, including depositions of all company witnesses and third parties, shall be completed by **June 12, 2014**. AMS shall make every effort possible to present all company witnesses by June 12, 2014 and will commence scheduling of those depositions immediately. The parties may agree to take company witness and/or third party depositions outside of this designated period. No deposition, including those of company witnesses and third parties, shall take place between March 10, 2014 and May 5, 2014 absent agreement of the parties.

6. Expert Discovery for the POP Bellwether cases shall commence on May 12, 2014 and be completed by June 9, 2014. Plaintiffs and Defendants can supplement those reports within three weeks of receiving new information obtained through discovery (including pathology) after the dates set forth in Paragraph 2. Any supplement must be strictly tied to the new information obtained through discovery in these cases only. In the event that fact witness depositions occur within two weeks before or at any time after the expert deposition, experts shall be permitted to supplement their reports out of time to account for information obtained through those depositions, and supplemental expert depositions will be allowed on the newly added opinions.

7. Motion Practice – POP Bellwether Cases.

a. *Daubert* Motions and Dispositive Motions.

i. *Daubert* Motions and non-*Daubert*-dependent Dispositive Motions shall be filed and served by **June 30, 2014**.

- ii. All Responses to *Daubert* Motions and non-*Daubert*-dependent Dispositive Motions shall be filed and served by **July 15, 2014**.
 - iii. All Replies to *Daubert* Motions and non-*Daubert*-dependent Dispositive Motions shall be filed and served by **July 22, 2014**.
- b. Motions in Limine.
- i. Motions in Limine shall be filed and served by **July 15, 2014**.
 - ii. Responses to Motions in Limine shall be filed and served by **July 25, 2014**.
 - iii. All Replies to Motions in Limine shall be filed and served by **July 31, 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.
8. Dates for summary judgment and *Daubert* hearings, if any, will be set at an upcoming status conference.
9. 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 30, 2014**. The Court requests that the parties email the proposed jury instructions to the court's law clerk in Word format.
10. Deposition designations. Deposition designations shall be exchanged by **July 21, 2014**. Any objections to an opposing party's designations and any counter-designations shall be exchanged by **July 30, 2014**. Any objections to the counter-designations and any counter-designations to an opposing party's counter-designations shall be exchanged by **August 8, 2014**.

Any objections not resolved through the meet and confer process shall be submitted to the Court by August 8, 2014, along with all the deposition designations that have been agreed to.

11. Exhibit and Witness Lists. The parties will exchange exhibit and witness lists by **August 8, 2014.**

12. 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).

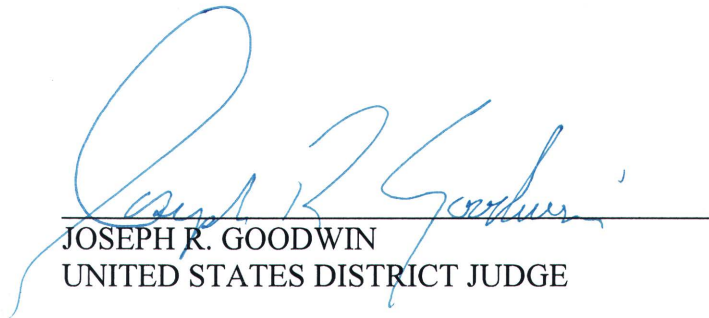
13. Pretrial and Final Settlement Conferences. The Court shall conduct pretrial and final settlement conferences at dates to be determined at an upcoming status conference. The Court will issue future orders related to conduct of the pretrial conference and submission of a Proposed Pretrial Order.

14. Trial. The *Najor* case shall be set for trial on **August 19, 2014.** If the *Najor* case settles or is otherwise disposed of prior to that date, the *Pattison* case shall commence trial on **August 19, 2014.**

The Court **DIRECTS** the Clerk to file a copy of this Order in 2:12-md-2325 and in *Najor v. AMS, Inc. 2:12-cv-06722* and *Pattison v. AMS, Inc. 2:12-cv-07154* 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 2:14-cv-12763. 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.wvwd.uscourts.gov.

ENTER: March 20, 2014



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE