

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

*CHARLESTON DIVISION*

IN RE: AMERICAN MEDICAL SYSTEMS, INC., MDL NO. 2325  
IN RE: BOSTON SCIENTIFIC CORP., MDL NO. 2326  
IN RE: ETHICON, INC., MDL NO. 2327

PELVIC REPAIR SYSTEMS  
PRODUCTS LIABILITY LITIGATION

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*INITIAL CASE MANAGEMENT CONFERENCE  
HELD ON APRIL 13, 2012  
BEFORE THE HONORABLE JOSEPH R. GOODWIN, CHIEF JUDGE  
AND THE HONORABLE MARY E. STANLEY, MAGISTRATE JUDGE*

Court Reporter: Teresa L. Harvey, RMR, RDR, CRR

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

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1 PROCEEDINGS had before Chief Judge Joseph R. Goodwin and  
2 Magistrate Judge Mary E. Stanley, United States District Court  
3 for the Southern District of West Virginia, in Charleston, West  
4 Virginia, on April 13, 2012:

5 *THE COURT:* Good morning.

6 *COURTROOM DEPUTY CLERK:* The matter before the court  
7 is In re American Medical Systems, Inc., MDL 2325; In re Boston  
8 Scientific Corp., MDL 2326; and In re: Ethicon, Inc., MDL 2327,  
9 Pelvic Repair System Products Liability Litigation.

10 *CHIEF JUDGE GOODWIN:* Good morning. I'm  
11 Judge Goodwin. Joining me on the bench is Judge Mary Stanley.  
12 This is quite a group. Impressive. Intimidating. Wealthy.  
13 Let me -- come use the jury box for places to sit. Any chairs  
14 you can find you're welcome to use. There are chairs over  
15 there behind that table as well.

16 Let me introduce the law clerks: My law clerk, Angie  
17 Volk, and Judge Stanley's law clerk, Kate Fife. You'll find  
18 that our staff, law clerks, and the people who work in the  
19 clerk's office are friendly and helpful. I hope you've already  
20 found that out, if you've had occasion to deal with them. If  
21 you have occasion to complain, let me know.

22 I want to thank you on behalf of the Charleston economy.  
23 The bartenders at the Embassy Suites and the Marriott are  
24 grateful.

25 I'm sure that most of you have done your homework and

1 gotten the book on me, and some of you have heard these remarks  
2 at least once before, and sometimes twice. For those who have  
3 not, let me give you my side of it. I graduated from law  
4 school in 1970. I tried lawsuits for 25 years, and that was  
5 back when trial lawyers tried lawsuits. I tried dog bite --  
6 for those of you who are joining us on the phone, be sure you  
7 put your phones on mute. As I started to say, I tried dog  
8 bites, drunk driving, murder cases, many car wrecks, products  
9 cases, securities cases, commercial cases, and to my  
10 everlasting regret, a few boundary disputes. Now, I'm here to  
11 tell you that I loved most of those years in the practice of  
12 law, but quite candidly, by 1995, some 17 years ago, I was  
13 growing tired of some of the trends in the practice of law. I  
14 was becoming exasperated with unpredictable schedules and an  
15 increasing deficit of common courtesy among members of the  
16 bar - even common decency. I'd begun to yearn for those  
17 long-ago days of handshake settlements, agreed-upon schedules,  
18 and just plain good humor. I'm sure deposition rooms filled  
19 with choking smoke and road trips where opposing counsel met  
20 for too many drinks and high fat dinners would not appeal to  
21 all of you, but we had a good time and I'd come to miss them.  
22 This is not just nostalgia. I was actually revolted -- I hear  
23 someone on the phone that needs to turn their phone on mute  
24 because I can hear the chatter in the background. I was  
25 revolted by the rise of -- I'm going to turn the phone off if

1 we can't make sure that your phones are on mute. I still hear  
2 somebody saying, "We have also. . ."

3 *(Laughter in courtroom.)*

4 **CHIEF JUDGE GOODWIN:** All right. It seems to have  
5 quieted down.

6 **MAGISTRATE JUDGE STANLEY:** No.

7 **UNIDENTIFIED TELEPHONIC SPEAKER:** Ma'am, I'm not sure  
8 if you realize, but you're dictating into the phone conference.

9 **UNIDENTIFIED FEMALE TELEPHONIC SPEAKER:** Oh, my gosh.  
10 Is that not on mute? I'm so sorry. *(Laughter in courtroom.)*

11 **CHIEF JUDGE GOODWIN:** The culprit has been  
12 identified, but not by name. *(Laughter.)*

13 **CHIEF JUDGE GOODWIN:** All right. I got to the point  
14 where I didn't want to open another letter from opposing  
15 counsel misconstruing a telephone conversation deliberately  
16 that we'd had the day before and sending a copy to the judge  
17 for their education. I dreaded the next time some lawyer was  
18 going to question my integrity in a statement to the court,  
19 usually in writing. Rarely did anybody have the guts to do it  
20 in person. So when Senator Byrd came to see me and suggested  
21 he might persuade the President to give me this job, it took me  
22 very little time to warm to the idea. Don't get me wrong, I  
23 love the law. I believed then -- I believed then as I do now  
24 that lawyers are the best company in the world. But this job  
25 seemed like a good idea 17 years ago, and it's proved to be

1 over those 17 years. I think it's the best job in the world.  
2 This introduction is only by way of explaining to you that you  
3 will find in this little corner - it's not so little today;  
4 it's pretty big -- corner of the legal world civility and good  
5 humor are not only encouraged, but they are required.

6 *(Telephone background noise.)*

7 Please put -- please put your -- it sounds like somebody  
8 was blowing their horn. Please put your phone on mute.

9 Let's just put it this way: I don't put up with meanness.  
10 I don't put up with meanness. I treasure a good legal  
11 argument. It's a lot of fun. But I have high hopes that you  
12 have no occasion to learn how low my tolerance is for petty  
13 disputes. By its nature, this litigation is complicated, it's  
14 difficult, and because of its size, it will make everybody's  
15 life a lot easier if we adopt a common commitment to courtesy  
16 and the highest professional standards. I expect both. I know  
17 you will pledge yourselves to cooperation and civility.

18 I have two more expectations. I almost want you to take  
19 notes on this because, believe it or not, it has become common  
20 for lawyers not to read the orders or not to read the rules. I  
21 expect you to invariably read carefully and follow the Civil  
22 Rules of Procedure, our local rules, and our orders. Orders  
23 are not suggestions. Failure to comply with a court order is  
24 a violation of law. I would say -- and I'll let Judge Stanley,  
25 when we get to her part here in a little bit, tell you what

1 percentage of the discovery disputes could be resolved by  
2 simply picking up the rule book and reading the rule.

3 All right. Three separate agendas for this meeting were  
4 submitted to the Court. I've combined the common issues into  
5 one agenda and have included issues raised by individual  
6 defendants or the plaintiffs in these cases as additional  
7 agenda items as necessary. I will give counsel and each of you  
8 adequate time as we move through the agenda and at the end of  
9 this hearing to discuss any matters that I miss or you feel  
10 need to be brought to my attention.

11 The first item on the agenda is the introduction of  
12 counsel. Some of you I'm familiar with; most of you I don't  
13 know. I look forward to getting to know you. For those of  
14 you who have taken the time in accordance with Pretrial Order  
15 No. 1 to appear for this hearing, either individually or as a  
16 representative of parties with similar interests, your  
17 appearance will be noted. I think there was a sign-up out  
18 front and that will be entered with the clerk as an appearance  
19 in the case. All of the names from the sign-in sheets that  
20 were available out there will be given to the court reporter.  
21 If you did not have a chance to sign in prior to the beginning  
22 of the hearing, please see my law clerk, Angie Volk, after the  
23 hearing and your name will be added.

24 After I select lead counsel I'm going to ask them to  
25 introduce themselves. Some counsel for the plaintiffs

1 submitted to the Court a proposed counsel organizational  
2 structure. It is my information that the proposal for that  
3 structure and the people proposed enjoys a broad consensus  
4 among the plaintiffs' lawyers across the country that  
5 participated in the efforts to organize, for want of a better  
6 word, this litigation. Each of the attorneys on the proposed  
7 slate - that's what we call it in West Virginia, a slate -  
8 except one submitted an individual application, in accordance  
9 with procedures outlined in Pretrial Orders No. 1 and No. 2.  
10 There were also applications by eight other individuals not  
11 included on the proposed slate. No objections were received by  
12 the Court as to the appointment of any person who applied. I  
13 have reviewed the proposed slate of attorneys, the applications  
14 submitted, the memorandum in support, looked at the individual  
15 applications, and I find it to be in the best interests of the  
16 litigation to appoint the attorneys recommended as the slate  
17 submitted to the Court, except for the one that didn't submit  
18 an application.

19 A coordinated and unified plaintiffs' leadership team that  
20 spans the four related pelvic repair mesh MDLs before this  
21 Court is essential to the efficient, effective prosecution and  
22 defense of this case. The names of the individuals appointed  
23 to the rather large PSC will be forthcoming in a pretrial  
24 order. Got your pencils? Coordinating co-lead counsel for the  
25 plaintiffs will be Bryan Aylstock, Henry Garrard and Fred

1 Thompson. The Plaintiffs' Executive Committee will be made up  
2 of these three lawyers, as well as Tom Cartmell, Clayton Clark,  
3 Amy Eskin, Derek Potts, and Aimee Wagstaff. Mr. Garrard will  
4 continue as lead counsel in the Bard MDL and Derek Potts will  
5 join him as co-lead counsel in that group of cases. Amy Eskin  
6 and Fidelma Fitzpatrick will be co-lead counsel in MDL 2325;  
7 Clayton Clark and Aimee Wagstaff will be co-lead counsel in MDL  
8 2326; and Renee Baggett and Tom Cartmell will be co-lead  
9 counsel in MDL 2327.

10 From this point forward it is my present intention to deal  
11 essentially through the coordinating co-lead counsel. I will  
12 hold them and the rest of the Executive Committee responsible  
13 for coordinating the efforts of the members of the PSC.

14 Plaintiffs' counsels, some of the group, have jointly  
15 recommended the following people as co-liaison counsel:  
16 Harry Bell, Paul Farrell and Carl Frankovitch. All of these  
17 individuals submitted the required applications. Based on my  
18 experience and my review of their applications, I accept the  
19 recommendation and appoint those three as co-liaison counsel  
20 for the plaintiffs. Normally I would have one person I could  
21 go to as liaison counsel, but this is a pretty good-sized group  
22 to liaison with, so I think I'll always be able to get my hands  
23 on one of those three and they will be able, theoretically, to  
24 get their hands on all of you.

25 Barbara Binis of Reed Smith was recommended as lead

1 counsel for defendant American Medical Systems in MDL 2325.

2 Having read the requested application, I appoint her as lead  
3 defense counsel in MDL 2325.

4 Mr. Robert Adams of Shook, Hardy & Bacon was recommended  
5 as lead counsel for the defendant Boston Scientific in  
6 MDL 2326. Having read and reviewed the requested application  
7 materials, Mr. Adams is hereby appointed as lead defense  
8 counsel in MDL 2326.

9 Ms. Christy Jones of Butler Snow was recommended as lead  
10 counsel for defendants Ethicon and Johnson & Johnson in  
11 MDL 2327. It is my understanding that she could not be present  
12 today because she is actually in trial in front of Judge Higbee  
13 in New Jersey. I had that verified by my law clerk calling to  
14 be sure that that was in fact the case. She notified the Court  
15 of this conflict. Her partner, Mr. William Gage, is present on  
16 her behalf. Having read the requested application materials,  
17 Ms. Jones is appointed as lead defense counsel in MDL 2327. I  
18 would note that actually being in trial or in intensive care  
19 are the only good excuses for lead counsel to fail to appear.

20 Recommendations were also received by defense counsel for  
21 the position of defendants' liaison counsel. Boston Scientific  
22 recommended Michael Bonasso of the law firm of Flaherty,  
23 Sensabaugh & Bonasso. Ethicon recommended Mr. David Thomas of  
24 the local firm of Guthrie & Thomas, and American Medical  
25 System -- Systems recommended Mr. Michael Farrell of Farrell,



1 White & Legg. The Court received no other nominations.  
2 Mr. Marc Williams of Nelson Mullins was previously appointed as  
3 liaison counsel in the Bard MDL and he will continue in that  
4 role. I propose these three gentlemen as nominated be  
5 appointed. I accept my own proposal, and they are.

6 Although an organized counsel structure is now in place, I  
7 want to emphasize that all lawyers representing plaintiffs in  
8 this litigation, regardless of their role or lack thereof in  
9 the management structure, and regardless of my designation of  
10 lawyers as lead counsel, members of the executive committee,  
11 liaison counsel, et cetera, or members of the PSC, the  
12 individual lawyers continue to bear full responsibility to  
13 represent their individual client or clients. It seems like  
14 an unnecessary reminder, but I've had enough MDL experience to  
15 know that it's worth a reminder.

16 The third and fourth items on the agenda include an  
17 overview of the separate MDL litigations, including the  
18 products of each defendant, the federal cases in current  
19 MDL transfer status, the court coordinated proceedings for each  
20 in state courts, the discovery pending to date, and pending  
21 motions. I have received and reviewed the requested position  
22 statements and multiple attachments received from each of the  
23 defendants, as well as the plaintiffs. I feel I have enough  
24 information on the status of those matters at this time.

25 Judge Stanley is going to be asking you for much more

1 information at a later time, and as we'll discuss in a few  
2 minutes, we'll have another meeting before long with counsel.  
3 I did note the coordinated proceedings of state cases involving  
4 Ethicon and American Medical Systems in New Jersey before  
5 Judge Higbee, as well as the centralization of Boston  
6 Scientific cases in Massachusetts before Judge Kottmyer. I  
7 have already communicated with Judge Higbee about the  
8 possibility of coordinating the MDLs with the state litigation.  
9 She's open to doing so and I think that will be a process that  
10 develops. I will, but have not yet, made similar efforts with  
11 Judge Kottmyer and other state court judges with consolidated  
12 cases. And if I can, I'll even find the individual state cases  
13 out there where there is no coordination in trial to get the  
14 state judges involved in a cooperative endeavor.

15 Let me say to you that my experience with state judges has  
16 been a very good one. No matter what the Judicial Conference  
17 of the United States posts on its website, the truth is state  
18 judges are much busier than we are and they have proved to be  
19 very -- and they have limited resources. Sometimes they don't  
20 have travel budgets. They can't -- they're not as flexible in  
21 what they can do. So we will work with the individual state  
22 judges in coordinated cases, and to the extent possible, the  
23 others to make the entire process efficient. It is much too  
24 early to decide what efficiencies can be gained through the  
25 cooperation with the state cases. As all of you as experienced

1 MDL lawyers and plaintiffs' lawyers and defense lawyers know,  
2 it has not been uncommon in some of the MDLs to have *Daubert*  
3 hearings conducted with a state judge on the bench and a  
4 federal judge. They reach separate decisions, maybe opposite  
5 decisions, but it's only one day, or two days, or whatever it  
6 takes, and only happens once. We're going to try to cut down  
7 on duplicative proceedings to the extent that it's possible and  
8 can be done without interfering with every party's legitimate  
9 gripe to pursue their claims in the forum of their choice.

10 The fifth and sixth agenda items included a number of  
11 procedural and discovery issues. While Judge Stanley will  
12 address certain discovery issues with counsel in a few minutes,  
13 a number of these items I expect that counsel for the parties  
14 will confer upon now that I have determined a counsel  
15 structure. While they are important foundational issues, it  
16 simply doesn't make sense at this point to address them  
17 individually in the context of today's hearing. It's my hope  
18 to resolve and have proposals pertaining to these issues from  
19 counsel by the time we have our next status conference. That  
20 would include a proposed order, hopefully an agreed proposed  
21 order, to cover the following topics:

22 Master complaints, short form complaints, and defendants'  
23 answers thereto, factsheets, preliminary motions, production of  
24 documents, medical records, privilege log protocols, protective  
25 orders, preservation of evidence, redaction protocols, ESI

1 protocols, amendments of proceedings, issues as to the proper  
2 party defendant, and service of process issues.

3 I'm going to ask Angie to post those on the website, as I  
4 notice some of you just gave up in the middle and decided you  
5 couldn't possibly get them all written down.

6 One item that the parties have exchanged ideas on and are  
7 specifically working on is a proposed order for the Court on  
8 the issue of direct filing of additional actions, and that's  
9 happening every day. While venue is not proper, certain  
10 plaintiffs have been and will continue to file cases directly  
11 into these MDLs or into this district. In an effort to  
12 simplify the process for filing cases, while preserving all  
13 rights and defenses which the parties might otherwise possess,  
14 the Court is ready, willing and may be able to entertain a  
15 direct filing order. I will simply ask does counsel have a  
16 proposed order for the Court on that yet?

17 **MR. GARRARD:** Your Honor, we have exchanged ideas; we  
18 have exchanged some orders. We have not come to a consensus  
19 yet. We hope we will be able to do so within the next week or  
20 so. We are all diligently working at it with some converging  
21 ideas, but I think we all have the same purpose, and we will  
22 get it to the Court.

23 **CHIEF JUDGE GOODWIN:** All right. Is that correct,  
24 Mr. Thomas?

25 **MR. GAGE:** Yes, sir. William Gage. Yes, sir.

1           **CHIEF JUDGE GOODWIN:** All right. The seventh general  
2 item on the agenda is a scheduling status conference. We have  
3 held the status conference in the Bard MDL -- have held those  
4 about every 45 to 60 days, depending on what is going on. That  
5 schedule has worked well thus far. The complications ensuing  
6 from having four MDLs may require more frequent meetings. I  
7 won't know that until we get into this. I would like to have  
8 a status conference with coordinating co-lead counsel for the  
9 plaintiffs and defendants' lead counsel in all four cases in  
10 one month to follow up on the issues that I've raised with you  
11 today, the ones we've postponed that you suggested for today.  
12 Any attorney representing any party, or any unrepresented  
13 party, may attend any status conference, of course, but only  
14 the -- I forget what it's called now, the lead counsel --  
15 co-lead --

16           **LAW CLERK VOLK:** Coordinating.

17           **CHIEF JUDGE GOODWIN:** The coordinating lead counsel,  
18 and the lead counsel for the defendants, and liaison counsel  
19 may actively participate in the conference. Lead counsel is  
20 expected to attend each status conference in person. My law  
21 clerk will communicate with you concerning proposed dates and  
22 times. Judge Stanley and I have tried, with considerable  
23 success in the past, to accommodate the schedules of counsel  
24 to the extent possible, but surprisingly, this is sometimes  
25 difficult to do, but we'll do our best to work with you.

1 Does anyone have anything at this point on future status  
2 conferences, other than the rather nebulous statement that  
3 Angie will be in touch with lead counsel concerning a date?

4 Okay. The last thing I want to address before turning  
5 things over to Judge Stanley are the pro hac vice motions and  
6 so forth. Before I do that, let me simply kind of call the  
7 roll again of lead counsel and ask them to stand, because those  
8 of you who didn't find them in the bar last night may not know  
9 all of them.

10 Page 2: Coordinating co-lead counsel for the plaintiffs:  
11 Bryan Aylstock.

12 *MR. AYLSTOCK:* Good morning, Your Honor.

13 *CHIEF JUDGE GOODWIN:* Henry Garrard.

14 *MR. GARRARD:* Your Honor.

15 *CHIEF JUDGE GOODWIN:* Fred Thompson.

16 *MR. THOMPSON:* Good morning.

17 *CHIEF JUDGE GOODWIN:* Plaintiffs' Executive Committee  
18 includes these three gentlemen, as well as Tom Cartmell,  
19 Clayton Clark, Amy Eskin, Derek Potts, Aimee Wagstaff.

20 Co-liaison counsel for the plaintiffs: Harry Bell, Paul  
21 Farrell, Carl Frankovitch.

22 The lead counsel on each MDL are as follows: Mr. Garrard  
23 in the Bard MDL will be joined by Derek Potts, Amy Eskin and  
24 Fidelma Fitzpatrick --

25 *MR. GARRARD:* Your Honor, Ms. Fitzpatrick is out of

1 the country and I don't know whether she notified the Court or  
2 not, but she's not here.

3 *CHIEF JUDGE GOODWIN:* She did not and if she misses  
4 the opportunity in the future I'll send her to intensive care.

5 *(Laughter.)*

6 *CHIEF JUDGE GOODWIN:* Clayton Clark and Aimee  
7 Wagstaff will be co-lead counsel in MDL 2326. Renee Baggett  
8 and Tom Cartmell will be co-lead counsel for MDL 2327. Barbara  
9 Binis of Reed Smith will be lead counsel in MDL 2325. Robert  
10 Adams of Shook, Hardy & Bacon will be the lead defense counsel  
11 in MDL 2326.

12 Did I leave anybody out?

13 *MAGISTRATE JUDGE STANLEY:* Of course, Mr. Gage.

14 *CHIEF JUDGE GOODWIN:* Mr. Gage is also with Ethicon's  
15 MDL.

16 *MR. GAGE:* Yes, sir.

17 *MAGISTRATE JUDGE STANLEY:* And Mike Bonasso and Dave  
18 Thomas.

19 *CHIEF JUDGE GOODWIN:* And Mike Bonasso and Dave  
20 Thomas are with which MDL? Boston Scientific? Is that right?

21 *MR. THOMAS:* That's correct.

22 *MR. BONASSO:* Yes, Your Honor. And Ethicon.

23 *CHIEF JUDGE GOODWIN:* And Ethicon. All right. Thank  
24 you. You can see why I didn't name any more people.

25 The last thing, as I said, I will address before

1 Judge Stanley are pro hac vice motions and the necessity of  
2 local counsel, which is a proposed agenda item. PTO No. 1,  
3 paragraph 12, clearly states that attorneys admitted to  
4 practice and in good standing in any United States district  
5 court are admitted pro hac vice in this litigation and the  
6 requirements of Local Rules of Civil Procedure 83.6 are waived.  
7 Association of local counsel is not required. Counsel in each  
8 newly filed or transferred action will be required - and all  
9 of you all are if you haven't done it yet - to complete the  
10 ECF Registration Form, the Notice of Attorney Appearance, and  
11 Counsel Contact Form. These forms are available on the court's  
12 website. Anything further on that matter?

13 Let me -- since I mentioned the website, I will note that  
14 there is a link for every individual MDL on that site. There  
15 is what I believe to be a lot of useful information on those  
16 sites, including every pretrial order that is entered, contact  
17 information for counsel and the court, necessary forms, and  
18 notices and information regarding any upcoming court  
19 proceedings. I encourage you to review the information on the  
20 MDL websites frequently. The question that you attempted to  
21 call the Court and ask may very well have been answered by  
22 information on the website. If you will please look at that  
23 first before calling, I would appreciate it.

24 We're faced with a unique situation, one that I think  
25 looking at the fine faces before me will prove to be rewarding,



1 of having four MDLs -- similar MDLs in this court. In its  
2 most simplistic form, we have similar pelvic mesh products  
3 manufactured by different defendants that allegedly caused a  
4 variety of injuries to women. We suspect and we hope that  
5 there are commonalities among the four MDLs, and Judge Stanley  
6 and I believe that the most efficient way to handle the four  
7 MDLs, particularly for discovery purposes, is to coordinate  
8 them as much as possible.

9 *UNIDENTIFIED TELEPHONIC SPEAKER:* Good morning.

10 *TELEPHONIC RECORDED MESSAGE:* Your call is being  
11 recorded.

12 *CHIEF JUDGE GOODWIN:* All right. Welcome to the  
13 call. You're 37 -- 38 minutes late.

14 I believe that the most efficient way to handle the four  
15 MDLs is to consolidate as much as possible. To that end, we  
16 need to understand the issues -- we need to understand the  
17 issues in a global way and be educated by the parties about  
18 what factual and legal issues that the four MDLs have in  
19 common. We need to know if there are common witnesses that  
20 are likely to be deposed. We need to know if there are common  
21 documents. We understand that there will be case specific  
22 and/or manufacturer specific discovery that won't be taken  
23 care of by this common discovery, but we do anticipate a  
24 procedure --

25 *UNIDENTIFIED TELEPHONIC SPEAKER:* Apparently the

1 hearing did start at nine, but for some reason we haven't been  
2 hooked in yet, so hopefully they're working on it.

3 *CHIEF JUDGE GOODWIN:* You are in. Can you hear me?

4 *UNIDENTIFIED FEMALE TELEPHONIC SPEAKER:* Thank you.

5 *UNIDENTIFIED FEMALE TELEPHONIC SPEAKER:* Thank you.

6 *CHIEF JUDGE GOODWIN:* We anticipate a procedure  
7 whereby the parties engage in common discovery and then revisit  
8 the case in manufacturer specific discovery which is to be  
9 completed. I would ask for the parties to work together to  
10 identify common issues of fact, law, witnesses, documents,  
11 et cetera, and to educate the Court about these and work to  
12 devise a discovery plan which first implements common discovery  
13 and then is followed by manufacturer or case specific  
14 discovery. Our goal - and we are flexible - is to help the  
15 parties accomplish discovery in the most economical and  
16 efficient way. Both Judge Stanley and I have a number of  
17 questions that will help us better understand where  
18 commonalities can be found. Judge Stanley will talk about some  
19 of those. Some of the questions on her list we have talked  
20 about before, but we anticipate that you may identify areas  
21 that we've not thought of and we encourage you to do so. Till  
22 we understand the full picture, we can't maximize the  
23 efficiencies and make this as easy on the parties and clients  
24 as we can. We want to arrive at a workable, efficient and  
25 logical approach to discovery in these cases. Now, I've never

1 done this before, but I need to tell you Judge Mary Stanley is  
2 one of the best magistrate judges in the United States. She is  
3 now long-serving, as witnessed by her gray hair and youthful  
4 demeanor, but she is very experienced in dealing with  
5 complicated cases and complicated discovery. She only has one  
6 flaw, she's going to retire in about a year, which I do not  
7 approve of and have tried to dissuade her from doing, but you  
8 will find her and her staff to be most helpful. As I'm sure  
9 you will learn, she doesn't want to wait until after you've  
10 blacked each other's eyes and broken ribs that there's a  
11 dispute. If you have a dispute, you will usually be able to  
12 get her on the phone and she will resolve the dispute. Unlike  
13 me, she'll get it right. I'm often in error, but never in  
14 doubt. We'll keep -- we'll keep the ball rolling and I think  
15 you will enjoy dealing with Judge Stanley.

16 Let me say this, and this is really fair, and I don't say  
17 it to create an in terrorem situation, but you don't want me  
18 for a discovery judge.

19 Judge Stanley.

20 **MAGISTRATE JUDGE STANLEY:** Before I really get into  
21 my remarks perhaps you-all will squeeze together a little bit  
22 and let these folks who have been standing up for a while have  
23 a seat. Also, you can use these chairs over here against this  
24 wall. This is a lesson to all of you, we start hearings on  
25 time and you can expect that if a status conference starts at

1 9:00 it's going to start at 9:00, and you'd better be there in  
2 advance, because sometimes it starts early.

3 Just to give you a little bit of information about myself,  
4 I've been on the bench for almost 20 years. Before that I was  
5 an assistant United States attorney for 15 years. I tended to  
6 enjoy trying and prosecuting complicated cases, the ones that  
7 were document heavy and put the jury to sleep, but for some  
8 reason it was such a challenge to figure out ways to make it  
9 interesting and present the case. I enjoyed that very much.

10 I have three children, two of whom are lawyers and one of  
11 whom -- the other one who is not a lawyer is way more  
12 successful, and two granddaughters, and I need granddaughter  
13 fixes, so let me just say that in West Virginia family is  
14 important. And getting along with each other and helping each  
15 other out are important values, and you can start putting that  
16 to work right now. And one of the things that I tell lawyers  
17 in difficult cases, particularly those where we are going to  
18 have periodic status conferences, is that I am very much in  
19 favor of scheduling them out well in advance, and I believe  
20 that lawyers should share their family issues with each other  
21 to the extent that co-lead counsel may want to seriously  
22 consider scheduling family vacations for the same weeks. I'm  
23 serious. Talk to each other. If all of a sudden somebody's  
24 sick and has to have surgery, tell each other. This is no time  
25 to be macho. This is no time to neglect your family; however,

1 this case has got to move and the discovery process has to move  
2 for the benefit of the clients, the patients, the doctors, the  
3 corporations, who are people too, and that means you really are  
4 going to have to work together. Judge Goodwin's vacations are  
5 going to be honored, my vacations are going to be honored, and  
6 so it would be wise for you to honor each other's and to  
7 schedule them in such a way that nobody has to cancel.

8 Now, Judge Goodwin asked about how many of my discovery  
9 disputes can be resolved by reading the rules, and the answer  
10 is: A lot. I have a friend who used to read to his child at  
11 night and the book that he chose to read to his child was the  
12 Federal Rules of Civil Procedure. It's a guaranteed soporific.  
13 If you start with Rule 1, which is probably only as far as he  
14 ever got, I'll remind you that the rules are to be construed  
15 and administered to secure the just, speedy and inexpensive  
16 determination of every action and proceeding. Well, we're  
17 going to try to do this with all deliberate speed. It is not  
18 going to be inexpensive, but we are going to do our very best  
19 to make it just. So I have spent time during the past week  
20 studying your documents and other materials, such as before  
21 the FDA, trying to devise approaches to discovery that will  
22 accomplish our purpose without undue burden and expense. And  
23 this is a unique and challenging series of cases, so I  
24 encourage you to contemplate the big picture portrayed by the  
25 plaintiffs' allegations, to be creative, starting now, and to

1 propose discovery procedures which are not necessarily focused  
2 on your client. Given the underlying theory of the plaintiffs'  
3 case that pelvic mesh and its incorporation into the body's  
4 tissues is problematic, that seems to me a fair place to start.

5 I do have a series of questions, and I'm not expecting  
6 answers now, but I hope that these questions will start you  
7 thinking. So if the issue about pelvic mesh is the beginning  
8 point, does it make sense to investigate that theory by  
9 category rather than product -- than by product by product or  
10 manufacturer by manufacturer? In other words, to develop an  
11 overarching discovery of pelvic mesh treatment of stress  
12 urinary incontinence and pelvic organ prolapse? I wonder  
13 whether we should possibly break that down as to the affected  
14 organ, whether it be bladder, uterus, vagina, rectum or  
15 combinations of them. I wonder whether the main division  
16 should be as between polypropylene mesh versus porcine dermis.  
17 We don't know whether there are differences among the coatings  
18 on the mesh. We don't know whether there are differences in  
19 how the mesh is woven. We don't know whether differences in  
20 patients' bodies that can be categorized have an important  
21 effect. Such an approach would not focus primarily on the  
22 size or shape of the product or the method of implantation, but  
23 those may be important considerations. We don't know enough  
24 yet. But back in September when the FDA had its hearings,  
25 they chose not to focus on a particular project, and I'm

1 wondering -- product, and I'm wondering whether we should.

2 Now, of course, you lawyers know more about this --

3 *(Unintelligible telephonic comment.)*

4 **MAGISTRATE JUDGE STANLEY:** . . . these facts that I  
5 do, but I hope you'll consider these matters very seriously and  
6 propose some creative approaches, particularly --

7 **UNIDENTIFIED MALE TELEPHONIC SPEAKER:** Hello. Can  
8 you hear this?

9 **MAGISTRATE JUDGE STANLEY:** We can hear you.

10 *(More unintelligible telephonic comments.)*

11 **MAGISTRATE JUDGE STANLEY:** Mute your phones, please.

12 It makes little sense for an expert witness --

13 **UNIDENTIFIED FEMALE TELEPHONIC SPEAKER:** Should  
14 someone else call the port, also?

15 **TELEPHONIC SPEAKER:** This is Regina *(unintelligible*  
16 *comments.)* Do you want me to call the Court's -- the judge's  
17 chambers? The gentleman at *(unintelligible)* acted like it was  
18 the first time he has heard that this call is not being  
19 connected. He said if we heard the text we should have been  
20 connected.

21 **CHIEF JUDGE GOODWIN:** Well, the judge that's got this  
22 case is speaking to you now --

23 **TELEPHONIC SPEAKER:** -- and we're not.

24 **CHIEF JUDGE GOODWIN:** -- and it has been connected,  
25 at least I've heard many of you join the call, and I assume

1 some of you can hear me. Could I maybe hear a "hoorah" from  
2 anybody that can hear me?

3 *MAGISTRATE JUDGE STANLEY:* Well, if their phones are  
4 muted they won't be speaking up.

5 *CHIEF JUDGE GOODWIN:* Maybe there is a problem with  
6 the connection. Well, deregulation of the phone companies has  
7 been the bane of my existence.

8 Since it's not working, turn it off.

9 And, Judge Stanley, go ahead.

10 *MAGISTRATE JUDGE STANLEY:* What I was saying is that  
11 it makes little sense for an expert witness or a Rule 30(b)(6)  
12 witness to be subjected to endless and repetitive questions  
13 about one product after another which differ only in their size  
14 or their shape when those facts may not be material to the  
15 issues. We don't know to what extent trade secrets or  
16 proprietary information are going to interfere with a unified  
17 approach to discovery, but aren't these products patented?  
18 Isn't that sufficient protection? Aren't these designs on the  
19 public record, perhaps at the FDA?

20 We have a lot of issues to address and for you-all to  
21 educate us. We had an excellent education session in the Bard  
22 case and they provided examples of some of their products. I  
23 expect the other manufacturers to do the same. We may or may  
24 not need a full educational session, but we've looked at the  
25 products, we've touched them, we've examined them, and I think



1 it will be educational for us to be able to compare them one to  
2 another.

3 Please know that in all of the MDLs that Judge Goodwin and  
4 I have worked on we keep the case on the top of the stack of  
5 virtual files on our desks. We try very hard to assist the  
6 parties in achieving agreement as issues arise so that the case  
7 moves forward. If that doesn't work, we've got the briefing  
8 that we need and we'll issue rulings promptly.

9 Now, on the website you will see that there are already a  
10 lot of agreed orders that have been entered in the Bard MDL.  
11 We cannot have conflicting ESI protocols, protective orders,  
12 and other similar documents. Please do not spend a lot of time  
13 and energy renegotiating such matters. We need to have a  
14 unified series of orders. I'm not smart enough to be able to  
15 keep them all straight and that will just be unworkable.  
16 Similarly, I would expect the plaintiffs' factsheets to be the  
17 same in each of the MDLs.

18 Now, let me mention a couple of matters that have the  
19 potential for causing problems. One is the marking of  
20 documents as confidential. If a document is available on the  
21 public record, it's not confidential, even if your client  
22 thinks it is. Do not over mark documents as confidential.  
23 Please review the protective order on the court's website and  
24 the local rule on sealing documents. We, of course, are  
25 dealing with women's most private body areas and it will

1 have -- we will be dealing with a lot of private medical  
2 records, but you can devise ways of addressing such medical  
3 records in ways that they don't have to be sealed from public  
4 view, unless, of course, a particular case goes to trial. So,  
5 for example, if you -- just keep these kinds of things in the  
6 back of your head and think of them as ways to creatively deal  
7 with the problems presented by this case. If, for example, on  
8 the five cases that are in the first discovery group, if those  
9 people are named as Plaintiff A, B, C and D, or by their  
10 initials, then you can take depositions talking about the  
11 initials or the letter of the alphabet or whatever without  
12 using the person's name, and that means the deposition doesn't  
13 have to be sealed. These MDLs are of national importance and  
14 the public has a right to understand and know about these  
15 products. And the judges of this district have made it very  
16 clear that they are resistant to sealing documents from the  
17 public record.

18 I'm looking forward to getting to know those of you who I  
19 don't know already and in assisting you in achieving justice in  
20 these MDLs. Thank you.

21 *CHIEF JUDGE GOODWIN:* Thank you, Judge Stanley.  
22 Echoing one part of her remarks, we don't shove MDLs aside and  
23 treat them as second-class cases only to be picked up  
24 occasionally and looked at. The fact that there are hundreds  
25 of similar cases doesn't mean that each case isn't considered

1 by us as an important matter. I offer as evidence of  
2 Judge Stanley's statement that we keep it on top of the virtual  
3 file -- or stack on our desk the fact that we have closed, or  
4 shortly will close, three MDLs. You can look through the other  
5 MDLs around the country and see how many judges have closed  
6 three MDLs within a reasonable span of time.

7 It will be the case that individual lawyers with a lot of  
8 cases will need the attentions of lead counsel and the steering  
9 committee members. Based on what information I had before I  
10 made these appointments, I'm confident that I've done a good  
11 job in selecting lead counsel. I am confident they will be  
12 responsive to you, but I do invite you that if you have a  
13 complaint about lead counsel not being responsive, let me know.  
14 And it's a matter we will discuss at our meetings, which will  
15 be frequent.

16 I don't know what time the first flight is out of  
17 Charleston, but that might determine how long this next part  
18 goes. Any other matters counsel want to discuss at this time?

19 *(Laughter.)*

20 **CHIEF JUDGE GOODWIN:** Mr. Garrard?

21 **MR. GARRARD:** Your Honor, I do have one clarification  
22 question. When the defendants presented their position papers  
23 they listed pending motions, and my interpretation of the rules  
24 is that that starts dates running for responses and action on  
25 those motions and I would ask of the Court if in fact that's a

1 correct interpretation, and if it is, may we have some  
2 direction from the Court that changes that and delays that  
3 timing as we get this organization going?

4 *CHIEF JUDGE GOODWIN:* Is there objection?

5 *MR. GAGE:* No objection, Your Honor.

6 *CHIEF JUDGE GOODWIN:* Work it out.

7 *MR. GAGE:* We will do that.

8 *UNIDENTIFIED SPEAKER:* Yes, sir.

9 *MR. GARRARD:* Thank you.

10 *CHIEF JUDGE GOODWIN:* Anything else?

11 *MS. BINIS:* Your Honor.

12 *CHIEF JUDGE GOODWIN:* Yes, ma'am.

13 *MS. BINIS:* Barbara Binis for AMS.

14 *CHIEF JUDGE GOODWIN:* Yes, ma'am.

15 *MS. BINIS:* How are you, Your Honor? Just a point of  
16 clarification, Your Honor. You had said earlier that AMS was  
17 consolidated in New Jersey under Judge Higbee. In fact, we  
18 are in two or three cases there, but we are consolidated in  
19 Delaware before Judge Mary Johnson --

20 *CHIEF JUDGE GOODWIN:* I stand corrected.

21 *MS. BINIS:* -- and in Minnesota before Judge Ronald  
22 Abrams, just so you know that.

23 *CHIEF JUDGE GOODWIN:* Thank you. Keeping track of  
24 the state cases is going to require each of you, and not just  
25 lead counsel, but each of you through your liaison counsel to

1 Let me know what's going on in the state cases.

2 I didn't, you know, just get off the pickle boat. I have  
3 been doing this business of practicing law for a while, so I  
4 know there are advantages to having two bites at the apple, one  
5 in federal court, one in state court, and maybe three bites in  
6 another state court. I'm going to try to cut down the amount  
7 of apple munching, insofar as I can without impinging upon  
8 anybody's fundamental interests in a case. All of the clients  
9 deserve a reasonably speedy resolution. Defendants,  
10 plaintiffs, each deserve a reasonably speedy resolution. The  
11 size of the litigation and the number of courts that these kind  
12 of cases are in should not slow things down. In fact, it's  
13 supposed to be -- you're supposed to get some kind of economies  
14 at scale here and I'm hoping we can do that, because that's in  
15 the best interests of each of your clients.

16 I really look forward to working with the counsel I have  
17 appointed. I look forward and encourage each lawyer to stay up  
18 to date with this litigation. Just because you're not on the  
19 Plaintiffs' Steering Committee, or you're not on the Lead  
20 Counsel Executive Committee, or whatever all the other names  
21 were that I said, doesn't mean that you don't have an  
22 obligation to stay abreast of the case at all times. You can  
23 get in duth, you can get malpractice -- I didn't -- I hate to  
24 say that word. You can get malpractice claims filed against  
25 you in these cases, because the individual lawyer remains

1 responsible. And I can tell you, just so you know in advance,  
2 that once you bring a case it is not easy in my court to get  
3 out of it. If your client doesn't have another lawyer, you're  
4 going to find it difficult with hearings and so forth to get  
5 out, so be careful what cases you bring.

6 Welcome to Charleston, and I hope you come back often.  
7 I'll look forward to seeing many of you in the future. Any  
8 questions should go through the structure. Let me make a  
9 recommendation that you stay here for a few moments and talk  
10 to the people I've appointed and let them address whatever  
11 matters. We won't get all of you together again. That's not  
12 going to likely happen.

13 I hope each of you got the 20 percent discount on motels  
14 that I arranged. *(Laughter.)*

15 Again, thank you very much. Court is adjourned.

16 *(Proceeding adjourned at 10:02 a.m., April 13, 2012.)*

17  
18 ***CERTIFICATION:***

19 I, Teresa L. Harvey, Registered Diplomate Reporter, hereby  
20 certify that the foregoing is a correct transcript from the  
21 record of proceedings in the matters of In re American Medical  
22 Systems, Inc., MDL No. 2325; In re Boston Scientific Corp.,  
23 MDL No. 2326; and in re Ethicon, Inc., MDL No. 2327, as  
24 reported on April 13, 2012.

25 s/Teresa L. Harvey, RDR, CRR

April 23, 2012