

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: WRIGHT MEDICAL
TECHNOLOGY, INC. CONSERVE HIP
IMPLANT PRODUCTS LIABILITY
LITIGATION

CIVIL ACTION NO.
1:12-md-02329-WSD

This document relates to:
ALL CASES

**SCHEDULING ORDER:
BELLWETHER TRIAL PROGRAM**

This Court having considered the scope of these proceedings, the number of plaintiffs, the amount of discovery that will be required, and the time necessary to complete pre-trial preparations, hereby establishes a Bellwether Trial Program (“BTP”). This abbreviated schedule is imposed so as to serve the very important goal of moving these proceedings toward completion of this Court’s responsibilities in a reasonable timeframe.

Trial Date (1st Bellwether Trial): March 9, 2015
Pre-Trial Conference: February 26, 2015

BELLWETHER TRIAL POOL

The Bellwether Trial Pool Nominees will consist of the ten (10) cases previously identified and developed for mediation in this consolidated action. The parties were ordered by the Court to identify ten (10) MDL plaintiffs based on

various design configurations and failure modes. After inventory and review of the filed MDL cases, the parties identified the most common types of device configurations and injury/failure modes. Both parties each selected one case per ten (10) categories, and ultimately selected the ten (10) CONSERVE® cases that became part of the Mediation. Those 10 cases include:

1. Case filed in MDL 2329 where Plaintiff was implanted with a WMT CONSERVE® Total A-Class BFH with a thin, thick, spiked or HA cup and Plaintiff required a revision surgery due at least in part from aseptic cup loosening (**Plaintiff Terry Borg – AZ, 1:13-cv-01565-WSD**);
2. Case filed in MDL 2329 where Plaintiff was implanted with a WMT CONSERVE® Total A-Class BFH with a thin, thick, spiked or HA cup and Plaintiff required a revision surgery due at least in part from generalized pain (**Plaintiff Betty Hall – GA, 1:13-cv-00165-WSD**);
3. Case filed in MDL 2329 where Plaintiff was implanted with a WMT CONSERVE® Total A-Class BFH with a thin, thick, spiked or HA cup and Plaintiff required a revision surgery due at least in part from pseudotumor(s) (**Plaintiff Michael Glassco – CO, 1:13-cv-01354-WSD**);

4. Case filed in MDL 2329 where Plaintiff was implanted with a WMT CONSERVE® Total A-Class BFH with a thin, thick, spiked or HA cup and Plaintiff required a revision surgery due at least in part from ALTR (Adverse Local Tissue Reaction) (**Plaintiff Kaylene Smith – GA, 1:12-cv-02992-WSD**);
5. Case filed in MDL 2329 where Plaintiff was implanted with a WMT CONSERVE® Total A-Class BFH with a thin, thick, spiked or HA cup and Plaintiff required a revision surgery due at least in part from dislocation (**Plaintiff Robyn Christiansen – UT, 1:13-cv-00297-WSD**);
6. Case filed in MDL 2329 where Plaintiff was implanted with a WMT CONSERVE® Total A-Class BFH with a thin, thick, spiked or HA cup and Plaintiff required a revision surgery due at least in part from metallosis and/or elevated cobalt and/or chromium blood, urine or serum levels (**Plaintiff Dorothea “Dolly” McCormick – UT, 1:13-cv-02390-WSD**);
7. Case filed in MDL 2329 where Plaintiff was implanted with a WMT CONSERVE® Total Hip Replacement device incorporating a PROFEMUR® stem system and Plaintiff required revision surgery

due at least in part from aseptic cup loosening; generalized pain; pseudotumor(s); ALTR (Adverse Local Tissue Reaction); and/or metallosis and/or elevated cobalt and/or chromium blood, urine or serum levels (**Plaintiff George Fry – GA, 1:13-cv-03639-WSD**);

8. Case filed in MDL 2329 where Plaintiff was implanted with a WMT CONSERVE® Total Non-A-Class BFH with a thin, thick, spiked or HA cup and Plaintiff required revision surgery due at least in part from aseptic cup loosening; generalized pain; pseudotumor(s); ALTR (Adverse Local Tissue Reaction); and/or metallosis and/or elevated cobalt and/or chromium blood, urine or serum levels (**Plaintiff William Kenneth Duvall – GA, 1:13-cv-02389-WSD**);
9. Case filed in MDL 2329 where Plaintiff was implanted with a CONSERVE® Plus Resurfacing Femoral Component with a thin or spiked cup (which was not part of Wright's IDE Study) and Plaintiff required revision surgery due in part to aseptic cup loosening; generalized pain; pseudotumor(s); ALTR (Adverse Local Tissue Reaction); and/or metallosis and/or elevated cobalt and/or chromium blood, urine or serum levels (**Plaintiff Valerie Hasely – CA, 1:13-CV-3587-WSD**); and

10. Case filed in MDL 2329 where Plaintiff was implanted with a WMT CONSERVE® Total hip replacement device (A-Class or Non-A-Class) in each hip (bilateral) and Plaintiff required revision surgery on each hip at least in part from aseptic cup loosening; generalized pain; pseudotumor(s); ALTR (Adverse Local Tissue Reaction); and/or metallosis and/or elevated cobalt and/or chromium blood, urine or serum levels (**Plaintiff Norma Sanders – OR, 1:14-cv-00175-WSD**).

DEADLINES

- September 16, 2014: With regard to the Bellwether Pool Nominees, Defendants shall notify this Court and Co-Lead Counsel whether or not they waive their right, as applicable, to venue or to have non-Georgia cases remanded to transferor courts for trial (**the Lexecon issue**).
- September 30, 2014: Parties to agree on the two Bellwether cases to proceed to trial and the order in which the two cases will proceed to trial and submit selected cases and order to the Court. In the event the parties cannot reach an agreement on case selection and/or trial order by this date, the parties will notify the Court and request its guidance.
- October 3, 2014: Full fact discovery on the first Bellwether Trial Plaintiff reopens.¹

¹ The parties have completed limited discovery of the ten Plaintiff cases which included informal Plaintiff interviews and depositions of the original and revising surgeons. Moreover, Plaintiffs have completed discovery on Wright Medical regarding general liability. Therefore, the discovery conducted by any party

- October 3, 2014: Last day for Bellwether Trial Plaintiffs to amend their complaints. Wright Medical's response shall be due 14 days after filing of an Amended Complaint.²
- October 7, 2014: The parties shall submit a schedule for anticipated motions and briefing of legal issues for the first Bellwether trial. (This shall include scheduling for dispositive, Daubert and limine motions and the briefing and hearings associated therewith.)
- October 7, 2014 Plaintiff to provide **witness and exhibit lists** for the first Bellwether trial.
- November 4, 2014 Defendants to provide witness and exhibit lists for the first Bellwether trial.
- “Witness”, as referred to in the above-two deadlines, shall include factual witnesses as well as experts, identified by area of expertise (deadline for identifying experts by name is separate). No witness or exhibit may be added without leave of Court after January 23, 2014. Counsel are cautioned that, in creating witness and exhibit lists, good faith is expected at all times.
- November 7, 2014: **Expert-Related Deadlines** for the First Bellwether Trial Begin

pursuant to this Order is limited to issues unique and specific to the individual Bellwether Plaintiff's individual case.

² All dates listed below, falling after the October 3, 2014 deadline for amending complaints and Wright Medical's responses thereto, apply only to the first Bellwether trial. A separate Scheduling Order, providing deadlines for the second Bellwether trial, will be issued hereafter.


Plaintiffs' Deadlines	Defendants' Deadlines
November 7, 2014: Plaintiffs to identify experts and produce background information (<i>See</i> Fed. R. Civ. Proc. 26(a)(1)(B)(iv-vi))	November 28, 2014: Defendants to identify experts and produce background information (<i>See</i> Fed. R. Civ. Proc. 26(a)(1)(B)(iv-vi))
November 21, 2014: Plaintiffs to produce expert reports	December 22, 2014: Defendants to produce expert reports ³
December 27, 2014 through February 20, 2015: Plaintiffs' expert depositions ⁴	December 27, 2014 through February 20, 2015: Defendants' expert depositions

February 20, 2015: **Discovery** (fact and expert) of the first Bellwether Trial Deadline

February 26, 2015: **Pre-trial conference**

March 9, 2015: **Trial** of the first Bellwether case.

SO ORDERED this 19th day of August, 2014.


 WILLIAM S. DUFFEY, JR.
 UNITED STATES DISTRICT JUDGE

³ To the extent experts have been previously identified and information or reports provided, the submissions contemplated by this section may be accomplished by supplement or amendment to prior submissions. Further, these additional expert disclosures and reports are limited to issues unique to the Plaintiffs selected for the Bellwether process. Both parties have already exchanged expert disclosures and reports as to general liability.

⁴ Depositions of Plaintiffs' experts shall occur before depositions of Defendants' experts within the same discipline.