

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

CHARLESTON DIVISION

IN RE: AVAULTA PELVIC SUPPORT SYSTEMS
PRODUCTS LIABILITY LITIGATION

MDL NO. 2187

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #3

(Appointment of Lead Counsel and Plaintiffs' Steering Committee; Status Conference)

A. Plaintiffs' Steering Committee ("PSC")

Applications for the PSC have been filed in accordance with the procedures set forth in Pretrial Order # 2. The court, after having reviewed the applications and carefully considering the matter, hereby appoints the following members to the PSC:

Henry G. Garrard, III
Blasingame, Burch, Garrard & Ashley, P.C.
Street Address: 440 College Avenue, Suite 320, Athens, Georgia 30601
Mailing Address: P.O. Box 832, Athens, Georgia 30603
Phone: 706-354-4000
Fax: 706-549-3545
Email: hgg@bbgbalaw.com

Paul T. Farrell, Jr.
Greene, Ketchum, Bailey, Walker, Farrell & Tweel
419 Eleventh Street/ P.O. Box 2389
Huntington, WV 25724
Phone: 304-525-9115
Fax: 304-529-3284
Email: paul@greeneketchum.com

Norwood S. Wilner
Wilner Hartley & Metcalf, P.A.
444 E. Duval Street
Jacksonville, FL 32202
Phone: 904-446-9817
Fax: 904-446-9825
Email: nwilner@whmlegal.com

J. Robert Rogers
Law Offices of J. Robert Rogers
3972 Teays Valley Road
Hurricane, WV 25526
Phone: 304-757-3809
Fax: 304-757-2694
Email: jrobertrogers@hotmail.com

The PSC will have the responsibilities enumerated in PTO #2. Reimbursement for costs and fees for services of the PSC will be set at a time and in a manner established by the court after due notice to all counsel.

The appointment of the PSC is of a personal nature. Accordingly, the above appointees cannot be substituted by other attorneys, including members of the appointee's law firm, to perform the PSC's exclusive functions, such as committee meetings and court appearances, except with prior approval of the court.

B. Plaintiffs' Lead Counsel

In accordance with PTO #2, appointment of Lead Counsel for the plaintiffs was considered from among the members of the PSC. Mr. Henry Garrard is hereby appointed as Lead Counsel for the plaintiffs.

Mr. Garrard, Mr. Fred Thompson and Mr. Lawrence Tweel shall continue their appointments as Co-Liaison Counsel for the plaintiffs.

C. Duties and Responsibilities of Plaintiffs' Lead Counsel

The Plaintiffs' Lead Counsel shall have the following responsibilities:

(1) Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the court, subject to the right of any plaintiff's counsel to present non-repetitive individual or different positions as long as the presentation does not unduly delay the proceedings.

(2) Submit and argue any verbal or written motions presented to the court or magistrate judge on behalf of the plaintiffs as well as oppose, when necessary, any motions submitted by the defendants which involve matters within the sphere of the responsibilities of Lead Counsel.

(3) Examine witnesses and introduce evidence at hearings on behalf of plaintiffs.

(4) Negotiate and enter into stipulations with defendants regarding this litigation. All stipulations entered into by Lead Counsel, except for strictly administrative details such as scheduling, must be submitted for court approval and will not be binding until the court has ratified the stipulation. Any attorney not in agreement with a non-administrative stipulation shall file with the court a written objection thereto within ten (10) days after service by liaison counsel of the stipulation. Failure to object within the term allowed shall be deemed a waiver and the stipulation will automatically be binding on that party.

(5) Explore, develop and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation.

(6) Perform such other functions as may be expressly authorized by further orders of this court.

Plaintiffs' Lead and Co-Liaison Counsel shall be entitled to seek reimbursement for costs expended at the time and in a manner approved by the court.

D. Defendants' Lead Counsel

Having previously received recommendations for defendants' Lead Counsel and discussed the same at the initial conference, the following are hereby appointed as Lead Counsel for defendants:

C.R. Bard, Inc.

Richard B. North, Jr.
Nelson Mullins Riley & Scarborough LLP
Atlantic Station
201 17th Street, NW Suite 1700
Atlanta, GA 30363
Phone: 404-322-6155
Fax: 404-322-6050
Email: richard.north@nelsonmullins.com

Sofradim Production,
Covidien, Inc. and Covidien LLC

Sandra A. Bresnick
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Phone: 212-849-7324
Fax: 212-849-7100
Email: sandrabresnick@quinnemanuel.com

Mitchell E. Nutt, M.D.

Don R. Sensabaugh, Jr.
Flaherty Sensabaugh & Bonasso
P.O. Box 3843
Charleston, WV 25338-3843
Phone: 304-345-0200
Fax: 304-345-0260
Email: dsensabaugh@fsblaw.com

Lead Counsel for each defendant shall have the following responsibilities:

(1) To determine (after consultation with the defendant) and present (in brief, oral argument or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of that defendant on all matters arising during these pretrial proceedings;

(2) To delegate the specific tasks in a manner to ensure pretrial preparation for that defendant is conducted effectively, efficiently and economically;

(3) To negotiate and enter into stipulations with the plaintiffs on behalf of that defendant;

(4) To act as the spokesperson to explore and develop settlement options pertaining to the cases filed against that defendant
and

(5) To perform such other duties as may be incidental to proper coordination of that defendant's pretrial activities or authorized by further order of the court.

E. Status Conferences

The initial status conference will be held on **February 14, 2011 at 10:00 a.m.** in Judge Goodwin's chambers.

As discussed at the initial hearing, Lead and Liaison Counsel will be required to attend status conferences and hearings in person. Counsel may not appear by phone.

Videoconferencing may be used for status conferences at the discretion of the court.

Any attorney representing any party, or any party unrepresented by counsel, may attend status conferences, but only Liaison, Lead Counsel, or such other counsel as the court may permit, may actively participate in the status conferences. The PSC may actively participate in the status conferences to the extent directed by the court.

Matters relating to pretrial and discovery proceedings previously delayed for development until after the appointment of Lead Counsel will be addressed. Lead Counsel for the parties shall confer and submit proposed agenda items for the conference directly to the court via fax or to Avaulta@wvsd.uscourts.gov no later than February 9, 2011.

Dates for future status conferences will be determined at the initial conference. These dates will not be changed except by unanimous consent of all parties and by leave of court. In the event that this court determines that a scheduled status conference is not needed, the court will cancel that conference and notify Liaison Counsel of the cancellation. Additional conferences may be ordered from time to time by the court. Status conferences may be held before Judge Goodwin, Judge Stanley, or both.

F. Representation of Clients

All attorneys representing parties to this litigation, regardless of their role in the management structure of the litigation and regardless of this court's designation of Lead and

Liaison Counsel and a Plaintiffs' Steering Committee, continue to bear the responsibility to represent their individual client or clients.

Going forward, the court reiterates its expectation that the lawyers in this complex civil action will devote their best efforts toward cooperation and positive interaction, a course of action that will doubtless lead to the service of their clients' best interests and the fair and orderly disposition of this litigation.

ENTER: February 1, 2011



Joseph R. Goodwin
Joseph R. Goodwin, Chief Judge