

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

**CHARLESTON DIVISION**

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

MDL No. 2325

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THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER #53**  
(Cook Defendants' Motion Regarding the Use of Depositions)

Pending is the Emergency Motion of the Cook Defendants seeking an order limiting the use of depositions against them. (ECF No. 491). Plaintiffs have filed a response in opposition of the motion, (ECF No. 510), and the Cook Defendants have replied. (ECF No. 541). Therefore, the matter is fully briefed.

Having considered the respective positions of the parties, the court **DENIES** the Motion. On June 14, 2012, the court entered Pretrial Order #10, (ECF No. 188), lifting the stay and granting all parties the right to engage in discovery. Subsequently, the court entered Pretrial Order #41, which outlined the deposition protocol to be followed in this multidistrict litigation. (ECF No. 469). In Section J, Pretrial Order #41 expressly addresses the use of depositions. According to that section, in relevant part, a deposition may be used against any party who received reasonable notice of the deposition. Consequently, Plaintiffs may use the twenty-two scheduled depositions against the Cook Defendants, who have admittedly received reasonable notice of them. Thus, the issue raised by the Cook Defendants has already been resolved by the agreed protocol, and the

undersigned sees no reason to modify it.

Moreover, Pretrial Order #41 includes another section specifically designed to relieve parties, including the Cook Defendants, from attending depositions in which they have only a peripheral interest. *See Annotated Manual for Complex Litigation, Fourth*, (MCL 4th), § 11.453 (2004). Section L of the Order provides that “[e]ach party not represented at a deposition (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this Court) may, within thirty (30) days after the filing of the deposition (or within sixty (60) days after becoming a party in this Court in any action that is part of this litigation), request permission from the Court to conduct a supplemental deposition of the deponent.” (ECF No. 469 at 5). Therefore, even if the Cook Defendants choose not to attend the depositions, they retain the right to seek an order allowing them to resume the proceedings and conduct supplemental interrogation.<sup>1</sup>

In their reply memorandum, the Cook Defendants ask the court to allow them the right to review the deposition transcripts and to conduct supplemental depositions as they deem fit without requiring additional permission from the court. Certainly, the Cook Defendants are entitled to have access to the deposition testimony, subject to any restrictions related to confidential information, and, as Defendants herein, do not require an order from the court to obtain copies of the transcripts. To that end, Plaintiffs are hereby **ORDERED** to supply to the Cook Defendants, prior to the taking of each deposition, the names and contact information of the court reporter(s) retained to record the depositions; thus, allowing the Cook Defendants a reasonable opportunity to

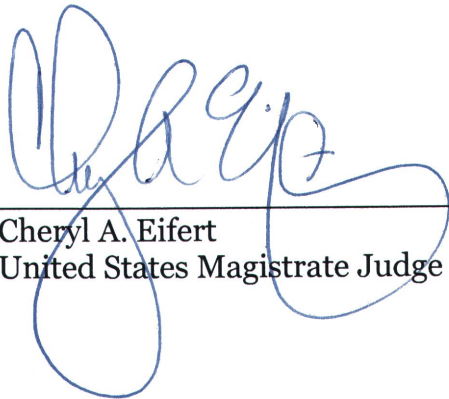
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<sup>1</sup> The parties are admonished that this provision should not be used “as a tactical device to harass witnesses or to inconvenience other parties ... [c]ounsel for litigants with a substantial interest in a deposition should attend or be represented by counsel.” MCL 4th § 11.453 (2004).

order copies of the deposition transcripts. The undersigned declines to grant the Cook Defendants' request for a blanket order allowing them permission to take supplemental depositions. Instead, Defendants shall follow the procedure set out in Pretrial Order #41 for each pertinent deposition and provide the court with good reason for resuming the deposition testimony.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2325 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 2:13-cv-06062. 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 <http://www.wvsc.uscourts.gov>.

**ENTERED:** March 25, 2013.



Cheryl A. Eifert  
United States Magistrate Judge