

**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

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THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER # 61  
(NON-WAIVER ORDER PURSUANT TO  
RULE 502(d) OF THE FEDERAL RULES OF EVIDENCE)**

WHEREAS:

(a) The parties seek to resolve existing disputes related to documents originally withheld pursuant to the attorney-client privilege, the work product doctrine, or the joint defense/common interest privilege and to avoid further disputes of this nature; and

(b) In furtherance of this goal, defendant American Medical Systems, Inc. (“AMS”) has agreed to re-review all of the documents described on privilege logs already produced to Plaintiffs and, where appropriate, to produce certain documents previously withheld; and

(c) For purposes of current and future document review, AMS agrees, to the degree consistent with maintaining protection for its privileged or work product documents, to adopt guidelines that minimize the number of documents withheld on claims of privilege or work product;

The parties have agreed, and it is hereby **ORDERED**, that:

1. AMS's disclosure or production of any document or group or category of documents (the "produced documents") shall not constitute a waiver of any privilege or protection, including but not limited to privilege or work product protection with respect to: (a) any other communications or documents relating or referring to the same or similar subject matter ("subject matter waiver"); and (b) any other communications or documents referring or relating to the parties who sent or received or are named in any such document or documents. Plaintiffs thus may not challenge AMS's claims of privilege for documents remaining on its privilege logs on grounds of waiver of any privilege or protection.

2. Plaintiffs are not precluded from challenging, on any grounds other than those set forth above, the application of any privilege or protection to any document remaining on AMS' privilege logs.

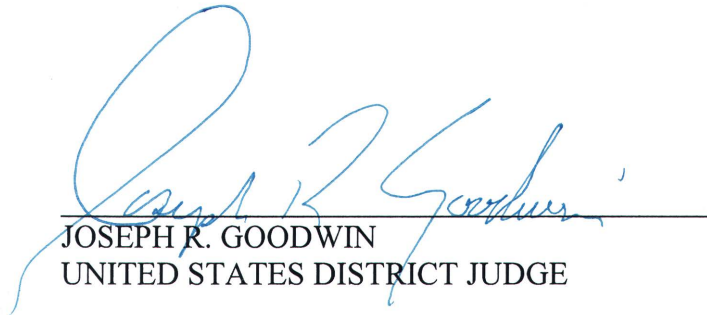
3. The existence of this Order shall not affect or in any way impair AMS's legal right to assert privilege claims for the produced documents in any other actions, shall not effect a waiver as to the produced documents, and shall not be used to argue that any waiver of privilege or protection for the produced documents has occurred by virtue of the production or disclosure of these documents.

4. This Order is, and shall be construed as, an Order under Rule 502(d) of the Federal Rules of Evidence. Accordingly, as is explicitly set forth in Rule 502(d), AMS's production of documents is not a waiver of any privilege or protection "in any other federal or state proceeding." Fed. R. Evid. 502(d).

5. This Order does not alter or amend Section II. B, Paragraph 12 of Pretrial Order No. 13, entitled “Inadvertent Disclosure of Privileged Documents, ‘Clawback’ Procedure” or Section III.Q. Paragraph 4 of Pretrial Order No. 15, entitled “Clawback Procedure.”

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-08890. 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.wvsd.uscourts.gov](http://www.wvsd.uscourts.gov).

ENTER: April 29, 2013



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE