

**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 # 76**  
(Joint Motion for Entry of Agreed Order and Stipulation  
Regarding Third-Party Subpoenas)

Plaintiffs and Defendant American Medical Systems, Inc. (“AMS”), desiring to enter into a stipulation concerning subpoenas requiring the production of documents by third parties, have filed a joint motion for entry of an Agreed Order and Stipulation Regarding Third-Party Subpoenas. (ECF No. 764). For good cause shown, the court **GRANTS** the joint motion. Therefore, this Pretrial Order shall memorialize the following stipulations and agreements of the parties.

The parties stipulate and agree as follows:

1. Plaintiffs have caused subpoenas requiring the production of documents to be issued to numerous third parties.
2. The parties recognize that documents that may be responsive to the subpoenas may contain confidential and/or proprietary information that is subject to the Stipulated Protective Order entered in this matter (Pretrial Order No. 13).
3. Upon receipt of documents responsive to any subpoenas, counsel for Plaintiffs shall transmit one copy of the received documents to counsel for AMS as soon

as practicable. AMS shall have 20 days from the receipt of the documents to make its confidentiality designations. Once the confidentiality designations are completed, counsel for AMS shall transmit to counsel for Plaintiffs a set of the documents with unique Bates numbers (but also including the original bates numbers, if any) and the appropriate confidentiality designation in conformance with Pretrial Order No. 13. Those documents specifically designated as confidential by AMS shall be protected under the provisions of Pretrial Order No. 13.

4. Any documents received pursuant to any subpoenas in this action shall be immediately treated as confidential under Pretrial Order No. 13 and remain so for a period of 20 days from AMS's receipt of the documents. During that time period, the documents may be used in depositions, but shall not be disseminated beyond counsel for Plaintiffs in this litigation, and their expert witnesses as necessary.

5. After AMS has made its confidentiality designations, the original documents received by counsel for Plaintiffs (without the confidentiality designations) shall be maintained by lead counsel for Plaintiffs. To the extent that these documents have been loaded into any database or review platform without confidentiality designations, those designations shall be added to these documents. These original documents shall be destroyed or returned at the conclusion of this litigation.

6. To the extent that documents were produced before the entry of this Order, Plaintiffs will transmit one copy of all such documents to AMS upon entry of this Order. AMS shall have 20 days from the receipt of the documents to make its confidentiality designations, and counsel shall follow the procedures set forth in paragraphs 3 and 5 once the confidentiality designations for these documents are completed.

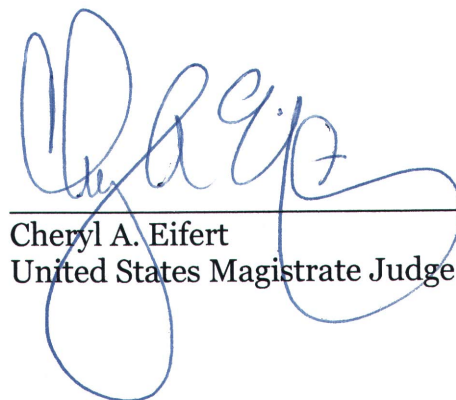
7. Inadvertent failure to designate a document as confidential will not be deemed to waive AMS's claim to its confidential nature or to stop AMS from designating such a document as confidential at a later date.

8. Nothing in this Agreed Order is a waiver of any right of Plaintiffs to challenge any confidentiality designation under the provisions of Pretrial Order No. 13.

9. Furthermore, nothing in this Order is intended to conflict with any other agreement concerning third party subpoenas, except that the requirement of this Order will be the minimum requirements for the protection of confidential information.

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-21041. 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.wvsd.uscourts.gov>.

**ENTERED:** July 29, 2013.



Cheryl A. Eifert  
United States Magistrate Judge