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

#### **CHARLESTON DIVISION**

IN RE: BOSTON SCIENTIFIC CORP.,
PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL No. 2326

THIS DOCUMENT RELATES TO BOSTON SCIENTIFIC WAVE 3 CASES

## PRETRIAL ORDER # 165 (Docket Control Order – Wave 3 Cases)

At my request, the parties recently submitted a joint list of the next oldest 500 and the newest 500 cases not already in Waves (or properly omitted from those waves), dismissed or on an Inactive Docket Order where Boston Scientific Corp. ("BSC") is the only defendant named. I have identified 255 of those cases on Exhibit A attached hereto, and they will be known as the "Boston Scientific Wave 3 cases." It is **ORDERED** that the following deadlines apply to the Boston Scientific Wave 3 cases:

# **A. SCHEDULING DEADLINES**. The following deadlines shall apply in the Boston Scientific Wave 3 cases:

Plaintiff Fact Sheets.	07/21/2017
Defendant Fact Sheets.	08/21/2017
Deadline for written discovery requests.	10/02/2017
Expert disclosure by plaintiffs.	09/18/2017
Expert disclosure by defendant.	10/16/2017
Expert disclosure for rebuttal purposes.	11/01/2017
Deposition deadline and close of discovery.	11/15/2017
Filing of Dispositive Motions.	12/05/2017
Response to Dispositive Motions.	12/19/2017
Reply to response to dispositive motions.	12/26/2017
Filing of <i>Daubert</i> motions.	12/12/2017
Responses to <i>Daubert</i> motions.	12/26/2017

1. **Discovery Completion Date.** The last date to complete depositions shall be the "discovery completion date" by which all discovery, including disclosures required by Federal Rule of Civil Procedure 26(a)(1), and (2), but not disclosures required by Federal Rule of Civil Procedure 26(a)(3), shall be completed.

# 2. Limitations on Interrogatories, Requests for Admissions and **Depositions**. The following limitations apply:

- a. Boston Scientific is limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission per plaintiff.
- Each plaintiff is limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission to Boston Scientific.
- In each individual member case, no more than 4 treating physicians may be deposed.<sup>1</sup>
- d. Depositions of plaintiff's friends and family members may be taken at any time prior to trial provided the deposition is requested before the discovery completion date.
- e. Depositions of any witness are limited to 3 hours absent agreement of the parties.
- f. The court will consider modifications to the above limitations upon good cause shown.
- 3. **Limitations on Experts.** The following limitations related to experts apply:

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<sup>&</sup>lt;sup>1</sup> To the extent disputes arise regarding the division of time between the parties for the deposition of treating physicians (three hours total absent agreement), I will address those disputes, rather than the assigned Magistrate Judge, Judge Eifert.

- a. The parties may conduct general and specific expert discovery on the products at issue in Boston Scientific Wave 3. In light of the bellwether trials, Waves 1 and 2, and the substantial discovery conducted to date on Boston Scientific's products, the parties are cautioned not to engage in duplicative general expert discovery, but instead, to tailor their discovery to the remaining products at issue (to the extent such discovery is necessary), supplementing any discovery already completed and conducting specific causation discovery for the Boston Scientific Wave 3 plaintiffs. In light of the common products involved in Boston Scientific Wave 3, the likelihood of overlap in expert opinion from one case to another (except as to specific causation) and the need to streamline discovery in these cases, each side is limited to no more than five (5) experts per case (exclusive of treating physicians). It is the court's expectation that these experts will overlap for plaintiffs who have the same product(s), to some extent, if not entirely.
- b. The parties shall coordinate the depositions of general causation experts.
  Insofar as multiple plaintiffs utilize the same general causation expert or experts, those experts shall be deposed only once on the issue of general causation. As to Boston Scientific's experts, plaintiffs are instructed to choose a lead questioner.
- c. The court encourages the coordination of depositions of specific causation experts to the extent there is overlap in the parties' use of specific causation experts for multiple plaintiffs.

d. The court will consider modifications to the above limitations upon good cause shown.

#### **B.** MOTION PRACTICE.

- 1. **Daubert Motions.** For the filing of *Daubert* motions on general causation issues only, the parties are instructed to file one *Daubert* motion per expert in the main MDL (MDL 2327) instead of the individual member case. Each side may file one response and one reply in the main MDL to each *Daubert* motion.<sup>2</sup> This limitation does not apply to specific causation *Daubert* motions, responses and replies. Specific causation *Daubert* motions, responses and replies must be filed in the individual member cases. To the extent an expert is both a general and specific causation expert, the parties must file a general causation motion in the main MDL 2327 and an individual specific causation motion in an individual member case.
- 2. **Hearings.** Hearing dates for dispositive and *Daubert* motions, if any, will be set at a future status conference.
- 3. **Page Limitations.** The page limitations provided in Local Rule of Civil Procedure 7.1(a)(2) apply to memoranda in support of all dispositive and *Daubert* motions, oppositions, and replies, and the court will not be inclined to grant motions to exceed the page limit.
- 4. **Confidential Documents.** In the past, the court has permitted parties to file placeholder exhibits in support of *Daubert*, dispositive and other motions, responses and replies in the place of confidential documents that may be sealed and then, within five days, redact/dedesignate the documents or file a motion to seal. *Moving forward, the court will no longer permit this practice. Parties may no longer file placeholder exhibits.* The court expects leadership

<sup>&</sup>lt;sup>2</sup> If parties wish to adopt previous *Daubert* motions and the court's ruling on a previous *Daubert* motion on general causation experts, they may so indicate in a filing in the main MDL 2326.

counsel for plaintiffs and Boston Scientific to resolve issues related to confidential designations well before the filing of motions. Filings containing placeholder exhibits will be struck. In the event there are issues related to sealing of confidential documents that the parties are unable to resolve, they must be brought to the court's attention in a consolidated manner as follows: A consolidated motion to seal is due on or before **October 25, 2017,** any response is due **November 8, 2017** and any reply is due **November 15, 2017**.

5. **Locations of Filings.** With the exception of the general causation *Daubert* motions as outlined above, the parties are reminded that they must file dispositive and *Daubert* motions on specific causation, responses and replies in the applicable member cases only, not in the Boston Scientific MDL.

### C. CASES READY FOR TRANSFER, REMAND OR TRIAL

- 1. **Venue Recommendations.** By no later than **October 18, 2017**, the parties shall meet and confer concerning the appropriate venue for each of the cases, and the parties shall file joint venue recommendations to the court by **November 1, 2017**. The parties' joint recommendation(s) shall identify the cases about which the recommended venue is in dispute. The court may then request briefing concerning the venue for those cases about which the parties disagree. Each party reserves the right to object to the venue selected by its adversary or the court.
- 2. **Transfer and Remand.** At the conclusion of pre-trial proceedings, the court, pursuant to PTO # 14 and 28 U.S.C. § 1404(a), will transfer each directly-filed case to a federal district court of proper venue as defined in 28 U.S.C. § 1391. In the alternative, pursuant to PTO # 14 and 28 U.S.C. § 1407, cases that were transferred to this court by the MDL panel shall

be remanded for further proceedings to the federal district court from which each such case was initially transferred.<sup>3</sup>

- 3. **Trial Settings.** If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed and the court rules on the parties' pretrial motions. The trial date for cases transferred or remanded to other federal district courts shall be set by the judge to whom the transferred or remanded case is assigned (including the undersigned through intercircuit assignment).
- D. COMMON BENEFIT TIME. I have entered a number of Pretrial Orders related to the eventual recovery of the cost of special services performed and expenses incurred by participating counsel in this and the other MDLs assigned to me. While I have not yet expressed an opinion regarding whether payment of common benefit fees is appropriate, nor will I here, I direct the parties' attention to PTO # 17, and its warning that "[n]o time spent on developing or processing purely individual issues in any case for an individual client (claimant) will be considered or should be submitted, nor will time spent on any unauthorized work." Pretrial Order No. 17, ECF No. 212, ¶ C. The nature of this litigation persuades me that I should inform counsel that at this point in the litigation, where most if not all of the general causation discovery has been completed, it is difficult to envision that any work performed by counsel on individual wave cases would rise to the level of common benefit work.

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<sup>&</sup>lt;sup>3</sup> As expressly contemplated by PTO # 14, Boston Scientific does not waive its right to seek transfer–pursuant to 28 U.S.C. § 1406(a) or any other available ground–of any case to a court of proper venue, regardless of whether that case was transferred to or directly-filed in the Southern District of West Virginia.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2326 and in the

Boston Scientific Wave 3 cases identified in Exhibit A and it shall apply to each member related

case previously transferred to, removed to, or filed in this district where applicable, which includes

counsel in all member cases up to and including civil action number 2:17-03305. 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.

ENTER: June 21, 2017

JOSEPH R. GOODWIN

UNITED STATES DISTRICT JUDGE

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	Case #	Case Name
1	17-cv-01862	FASO, Susan and Carmen Faso vs. Boston Scientific Corporation
2	17-cv-00832	MORELLI, Betty vs. Boston Scientific Corporation
3	17-cv-01852	SMITH, Joy A. vs. Boston Scientific Corporation
4	17-cv-02270	MAY, Corrie vs. Boston Scientific Corporation
5	17-cv-02202	ATWOOD, Jennifer vs. Boston Scientific Corporation
6	17-cv-01093	HARRIS, Cheryl and James Harris vs. Boston Scientific Corporation
7	17-cv-01900	HAUFF, Anita Lynne and Frederick J. Hauff vs. Boston Scientific Corporation
8	17-cv-01149	WHITE, Arline and Richard White vs. Boston Scientific Corporation
9	17-cv-01150	HOWLAND, Linda and Steve Howland vs. Boston Scientific Corporation
10	17-cv-01151	HAYES, Linda vs. Boston Scientific Corporation
11	17-cv-01152	HANSON, Darchelle vs. Boston Scientific Corporation
12	17-cv-02621	KELLY, Robin vs. Boston Scientific Corporation
13	17-cv-01155	LOPEZ, Deann vs. Boston Scientific Corporation
14	17-cv-01134	CONNERS, Teresa vs. Boston Scientific Corporation
15	17-cv-01138	SMITH, Wendei vs. Boston Scientific Corporation
16	17-cv-01139	CLARK, Jill vs. Boston Scientific Corporation
17	17-cv-01141	ROBINSON-PEAKE, Patricia vs. Boston Scientific Corporation
18	16-cv-12734	ZANE, Mary vs. Boston Scientific Corporation
19	16-cv-12784	VIGIL, Lourdes vs. Boston Scientific Corporation
20	17-cv-01261	LYTLE, Casondra vs. Boston Scientific Corporation
21	17-cv-01306	HOLCOMB, Cheryl vs. Boston Scientific Corporation
22	17-cv-01401	HENSLEY, Carrie vs. Boston Scientific Corporation
23	17-cv-02752	ROWLAND, Aimee vs. Boston Scientific Corporation
24	17-cv-00047	LONG, Shelia vs. Boston Scientific Corporation
25	17-cv-01521	VALENTINO, Roselle vs. Boston Scientific Corporation
26	17-cv-01928	MOORE-HAMBLIN, Janette vs. Boston Scientific Corporation
27	17-cv-01979	DUNFORD, Glenda and Delbert Dunford vs. Boston Scientific Corporation
28	17-cv-01996	BENSON, Angela vs. Boston Scientific Corporation
29	17-cv-02365	SCHIRATO, Elodia vs. Boston Scientific Corporation
30	17-cv-02638	BUTTKE, Louise vs. Boston Scientific Corporation
31	17-cv-02505	CUTLIP, Lisa G. vs. Boston Scientific Corporation
32	17-cv-02034	ORLOWSKI, Kimberly and Rickie Orlowski vs. Boston Scientific Corporation
33	17-cv-01109	HERBERT, Stephanie and Ryan O. Herbert vs. Boston Scientific Corporation
34	17-cv-01932	PEACH, Laura K. vs. Boston Scientific Corporation
35	17-cv-01990	HILL-SOBER, Colleen and Scott D. Sober vs. Boston Scientific Corporation
36	17-cv-02392	KELLY, Dorothy F. (Estate of), Roseanne J. Rangel (Co-Executor) and Cheyenne Escalante (Co-Executor) vs.
37	17-cv-01410	DURFEE, Vietta vs. Boston Scientific Corporation
38	17-cv-02052	RENFRO, Cindy vs. Boston Scientific Corporation
39	17-cv-00449	DAUGHERTY, Connie vs. Boston Scientific Corporation

40	17-cv-00455	RICARD, LaDonna vs. Boston Scientific Corporation
41	17-cv-01197	GARNER, Barbara vs. Boston Scientific Corporation
42	17-cv-01216	COMBS, Margaret Kathleen vs. Boston Scientific
43	17-cv-01218	HARRIS, Sally vs. Boston Scientific Corporation
44	17-cv-01229	BUSH, Migdalia vs. Boston Scientific Corporation
45	17-cv-01409	CHAN, Shui B. vs. Boston Scientific Corporation
46	17-cv-01409	ESCOBAR, Shalatta vs. Boston Scientific Corporation
47	17-cv-01786	QUINN, Alice vs. Boston Scientific Corporation
48	17-cv-01780	BUNTIN, Lora vs. Boston Scientific Corporation
49	17-cv-01917	HENDRICKS, Marlo vs. Boston Scientific Corporation
50	17-cv-01940	DEEN, Jacqueline vs. Boston Scientific Corporation
51	17-cv-01973	MOSES, Shannah vs. Boston Scientific Corporation
52	17-cv-02025	BINGHAM, Julie vs. Boston Scientific Corporation
53	17-cv-02205	GARNS, Jill vs. Boston Scientific Corporation
54	17-cv-02358	BOYD, Betty vs. Boston Scientific Corporation
55	17-cv-02361	MASTON, June vs. Boston Scientific Corporation
56	17-cv-02362	DILLON, Renee vs. Boston Scientific Corporation
57	17-cv-02393	GUIDRY, Ashley K. vs. Boston Scientific Corporation
58	17-cv-02396	BENNETT, Jody vs. Boston Scientific Corporation
59	17-cv-02397	RAETZ, Phoeba Bennett vs. Boston Scientific Corporation
60	17-cv-02398	BREITENBACH, Linda vs. Boston Scientific Corporation
61	17-cv-02399	BRINEY, Renae vs. Boston Scientific Corporation
62	17-cv-02422	BUTLER, Chamelon vs. Boston Scientific Corporation
63	17-cv-02423	DE PLANCHE, Kelli vs. Boston Scientific Corporation
64	17-cv-02458	ESTLINBAUM, Lavonne vs. Boston Scientific Corporation
65	17-cv-02473	FAVORS, Jennifer vs. Boston Scientific Corporation
66	17-cv-02625	TAYLOR, Barbara vs. Boston Scientific Corporation
67	17-cv-02443	ALLEX, Dominique vs. Boston Scientific Corporation
68	17-cv-02446	BLALOCK, Laceta vs. Boston Scientific Corporation
69	17-cv-02447	CASALE, Claire vs. Boston Scientific Corporation
70	17-cv-02448	CLARK, June vs. Boston Scientific Corporation
71	17-cv-02449	COLE, Bonnie vs. Boston Scientific Corporation
72	17-cv-02450	WALLACE, Margaret vs. Boston Scientific Corporation
73	17-cv-02453	JOHNSON, Shelly vs. Boston Scientific Corporation
74	17-cv-02459	MALLORY, Sandra vs. Boston Scientific Corporation
75	17-cv-02461	MARTIN, Joyce vs. Boston Scientific Corporation
76	17-cv-02462	MCSWEEN, Belinda vs. Boston Scientific Corporation
77	17-cv-02467	MELROSE, Mary vs. Boston Scientific Corporation
78	17-cv-02470	PORTER, Annie vs. Boston Scientific Corporation
79	17-cv-02477	POUNCY, Angel vs. Boston Scientific Corporation
80	17-cv-02481	SHEPARD, Anne Marie vs. Boston Scientific Corporation

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