

**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 # 171
(First Amended Docket Control Order – Wave 3 Cases)**

Pending before the court is a Joint Motion to Extend Scheduling Deadlines Under Pretrial Order No. 165 (Docket Control Order – Wave 3 Cases) filed on August 31, 2017 [ECF No. 4339]. In the Joint Motion, the parties request an extension of thirty (30) days for certain deadlines set forth in Pretrial Order #165 (“PTO #165”). The parties state they were unable to collect complete medical records for the majority of the Wave 3 cases, which has hindered the parties’ ability to formulate case-specific expert opinions, case specific reports’ and disclosures consistent with the deadlines set forth in PTO #165. Additionally, a number of plaintiffs’ counsel are from the Houston, Texas area, and the impact of Hurricane Harvey on these firms is unknown.

It is **ORDERED** that the Joint Motion to Extend Scheduling Deadlines Under Pretrial Order No. 165 (Docket Control Order – Wave 3 Cases) is **GRANTED**. It is further **ORDERED** that the deadlines set forth in PTO #165 are amended as set forth below.

A. SCHEDULING DEADLINES. The following deadlines shall apply in the Boston

Scientific Wave 3 cases:

| | |
|----------------------------------|------------|
| Expert disclosure by plaintiffs. | 10/18/2017 |
| Expert disclosure by defendant. | 11/15/2017 |

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| Expert disclosure for rebuttal purposes. | 12/01/2017 |
| Deposition deadline and close of discovery. | 12/15/2017 |
| Filing of Dispositive Motions. | 01/04/2018 |
| Response to Dispositive Motions. | 01/18/2018 |
| Reply to response to dispositive motions. | 01/22/2018 |
| Filing of <i>Daubert</i> motions. | 01/11/2018 |
| Responses to <i>Daubert</i> motions. | 01/25/2018 |
| Reply to response to <i>Daubert</i> motions. | 02/01/2018 |

Any other deadlines set forth in PTO # 165 not specifically listed above shall remain in effect.

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.
- b. Each plaintiff is limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission to Boston Scientific.
- c. In each individual member case, no more than 4 treating physicians may be deposed.¹
- 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.

¹ 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.

- 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:
- 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.² 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.

² 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.

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 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.³

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 intercourt assignment).

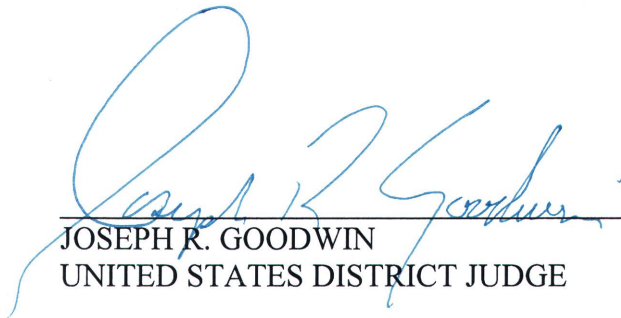
D. COMMON BENEFIT TIME. I have entered a number of Pretrial Orders related to the eventual recovery of the cost of special services performed and expenses incurred by participating counsel in this and the other MDLs assigned to me. While I have not yet expressed an opinion regarding whether payment of 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

³ 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.

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.

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 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 2:17-03918. 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: September 7, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE