

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: DAVOL, INC./C.R. BARD,
INC., POLYPROPYLENE HERNIA
MESH PRODUCTS LIABILITY
LITIGATION

Case No. 2:18-md-2846

Judge Edmund A. Sargus, Jr.
Magistrate Judge Kimberly A. Jolson

This document relates to:
ALL CASES.

PRETRIAL ORDER NO. 13

March 16, 2020 Status Conference

On March 16, 2020, the Court held a telephonic status conference with counsel for the Plaintiffs' Steering Committee (the "PSC") and counsel for Defendants. This Pretrial Order memorializes the conference as follows:

Status of motion to compel AHS documents: Per the Court's request, counsel for third parties Americas Hernia Society and Americas Hernia Society Quality Collaborative Foundation ("AHS/AHSQCF") participated in the conference regarding the PSC's pending Motion to Compel the production of documents from AHS/AHSQCF. For the reasons stated on the record during the conference, the PSC's motion is **GRANTED IN PART**. AHS/AHSQCF must produce the reports sought by the PSC as identified in its motion to compel and narrowed through the parties' supplementations. AHS/AHSQCF may designate the reports as "Highly Confidential" under the parties' protective order. The PSC and Defendants must each identify three individuals, including any experts, who may review the reports, and provide those names *ex parte* to the Court. The PSC and Defendants must seek leave of Court in order to provide the reports to any additional individuals. Within 21 days of receiving the reports, the PSC must notify counsel for

AHS/AHSQCF how the PSC intends to use the reports at trial. AHS/AHSQCF and/or Defendants may file motions *in limine* regarding the use of those reports at trial in accordance with the deadlines in the amended pretrial and trial schedule to be issued in the *Johns* case as set forth below.

Case filings update: The parties provided the Court with an update regarding filings. The PSC stated that as of March 9, 2020, there were 6,133 cases filed. The PSC estimates the current pace of filing at between 400 to 500 cases per month.

Status of PPF compliance and motions: Defendants provided the Court with the status of Motions to Compel PPFs granted by the Court and currently pending.

Status of Johns hearing on motion for summary judgment and certain Daubert motions and setting hearings for pending motions to strike: The Court informed the parties that it would hold oral argument on Defendants' Motion for Summary Judgment in the *Johns* case, and requested that each side select two of its *Daubert* motions for oral argument. The Court has taken Defendants' Motion to Strike Dr. Jensen's Declaration under advisement.

Setting hearings on Johns Motions in limine and remaining Daubert motions: The Court does not intend to hold oral argument on the parties' remaining *Daubert* motions. The parties' motions *in limine* will be addressed at one of the final pretrial conferences.

Defendants' witness list: The PSC raised an issue with Defendants' witness list containing an unidentified representative of AHS. Defendants agreed to amend their witness list within 10 days to identify any representatives of AHS they intend to call at trial.

Trial logistics, further Johns pretrial proceedings including juror questionnaires, deposition designations for third-party deponents and other on-going depositions, and coronavirus impact on court proceedings and deadlines: The Court discussed logistics for the *Johns* trial,

originally scheduled to begin May 11, 2020. The parties estimated the trial would last 4 to 5 weeks, and the Court informed the parties it would hold trial Mondays through Thursdays. The Court also indicated, and the parties did not object, that it would seat a jury of 8 members, and would prefer not to seat alternates. The Court also informed the parties that voir dire would be conducted in Courtroom 1, with the remainder of trial to be conducted in Courtroom 2. Trial will commence every day at 9:00am. The Court will take one mid-morning break and one mid-afternoon break each day, lasting 15 minutes each, and a one-hour lunch break. Trial counsel will meet in the chambers of Judge Sargus at 8:30am on each day of trial.

The Court reviewed the parties' proposed additional juror questionnaire, and requested that the reference to the amount of the jurors' fee be removed from the first paragraph, and the first question be revised to ask "Is there a compelling reason that would prevent you from jury service?" The parties agreed to revisit their proposal and resubmit a proposed additional juror questionnaire in line with the Court's guidance.

The parties also raised an issue with the scheduling of certain third-party and other witness depositions, and the impact of the coronavirus (COVID-19) outbreak on court proceedings and deadlines. The parties agreed to meet and confer regarding the schedule for those depositions and deadlines for deposition designations for those witnesses. Defendants requested, and the PSC did not oppose, that the *Johns* trial be moved to the July 13, 2020 date currently reserved for the *Milanesi* trial, and that the *Milanesi* trial be moved to the September 14, 2020 date currently reserved for the *Stinson* trial. The Court agreed to continue the *Johns* trial to July 13, 2020 and the *Milanesi* trial to September 2020. As the Court indicated, however, the *Milanesi* trial will begin no earlier than September 29, 2020 due to other scheduling conflicts. The third and fourth bellwether trials will be rescheduled at a later date.

The parties are **DIRECTED** to meet and confer and submit to the Court via email **by March 25, 2020** a proposed Amended CMO 23 regarding the Pretrial and Trial Schedule for the *Johns* case based on a July 13, 2020 trial date that amends only the following dates and is consistent with the sequence and timing of previous deadlines¹ in CMO 23:

- I.B. Final Pretrial Conferences
- III. Deposition Designations
- IV. Exhibit Lists
- V. Motions *in Limine*
- VI. Voir Dire
- VII. Jury Instructions

The schedule for *Daubert* motions as set forth in CMO 27 will remain in place. The parties are also **DIRECTED** to meet and confer and to submit to the Court via email **by March 25, 2020** a date for oral argument in the *Johns* case on Defendants' Motion for Summary Judgment and four *Daubert* motions, two selected by each side. The parties shall also inform the Court of the *Daubert* motions selected by each party for oral argument.

The parties are also **DIRECTED** to meet and confer and submit to the Court **by March 30, 2020** via email:

- A proposed Amended CMO 28 regarding the Dispositive and *Daubert* Motion Schedule for the *Milanesi* case based on a September 29, 2020 trial date; and
- A proposed CMO 29 regarding the Pretrial and Trial Schedule for the *Milanesi* case based on a September 29, 2020 trial date.

¹ For example, it is the Court's preference that motions *in limine* are fully briefed at least six weeks in advance of trial.

Discovery Update: The parties provided the Court with an update regarding a number of discovery issues, including: document productions, third party discovery, and privilege logs. The parties indicated that Defendants had recently produced documents relating to the MDL 1842 privilege log, and Defendants confirmed it had re-reviewed documents subject to the PSC's motion to compel.

PSC Agenda Item: Stephanie Baker - personal use of mesh medical records/admissibility:

The PSC raised an issue regarding one of Defendants' witnesses, Stephanie Baker, and her testimony related to her medical history and implantation of a Ventralight ST device. The PSC requests Ms. Baker produce medical records related to her surgery and present condition, while Defendants believe any production of medical records should be limited. For the reasons stated on the record during the conference, Defendants are **ORDERED** to meet and confer with the PSC to determine what records Defendants are willing to produce and what records they will not produce, and to include the status of this issue in the discovery update for the next status conference.

PSC Agenda Item: Dr. Badylak undisclosed opinions - motion to strike briefing schedule:

The PSC raised an issue regarding undisclosed opinions of one of Defendants' experts, Dr. Badylak. The PSC represented that it would file a Motion to Strike related to Dr. Badylak by Friday, March 20, 2020. Defendants are **ORDERED** to file any response to the PSC's forthcoming Motion to Strike within 7 days of the filing of the PSC's Motion to Strike, and the PSC is **ORDERED** to file any reply within 7 days of Defendants' response.

Scheduling: The next status conference is scheduled for April 7, 2020 at 1:30pm EST to be held by telephone unless otherwise instructed. The conference attended by representative(s) identified by the PSC and Defendants' settlement counsel to discuss the process, structure, and timeline of mediation will be postponed until proceedings can be held in-person.

IT IS SO ORDERED.

3/18/2020

DATE

/s/ Edmund A. Sargus, Jr.

EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

3/18/2020

DATE

/s/ Kimberly A. Jolson

KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE