

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. 14

April 21, 2020 Status Conference

On April 21, 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:

Update on COVID-19 Impact on the Court: The Court provided an update on the impact of the COVID-19 pandemic on the Court's proceedings. The parties jointly requested that the current trial dates of July 13, 2020 for the *Johns* trial and September 29, 2020 for the *Milanesi* trial be continued until 2021. The parties raised several concerns regarding the ability to hold a jury trial in July, including the impact of financial and medical concerns on the jury pool, the ability of lawyers and witnesses to travel from out-of-state to Ohio, and the safety of conducting proceedings with 30 to 40 people in the courtroom every day. The Court is very sensitive to and shares the parties' concerns, but also explained its own concerns with delaying all trials in this MDL until 2021, including the Court's limited staffing for this MDL and other pressing matters on the Court's docket. The Court will therefore vacate the July 13, 2020 trial date for the *Johns* trial, and will move the *Johns* trial to the September 29, 2020 date currently reserved for the *Milansi* trial. The

Court will continue to monitor the situation closely and be in touch with the parties about the September 29, 2020 trial date, and may reconsider the decision to hold the *Johns* trial on that date if the situation does not improve. The Court will also update the parties at the next status conference regarding dates for the *Milanesi* and *Stinson* trials.

The parties are **DIRECTED** to meet and confer and jointly submit via email **by May 6, 2020** a proposed CMO setting forth a pretrial and trial schedule for the *Johns* case based on the September 29, 2020 trial date, similar to the schedule the Court adopted for the *Milanesi* case in CMO 29.

Case Filings Update: The parties provided the Court with an update regarding filings. The PSC stated that as of April 20, 2020, there were 6,813 cases filed. The PSC estimates the current pace of filing at approximately 500 cases per month and that the total cases filed may near 10,000 by the end of the year.

Oral Argument Update on *Johns* MSJ and selected *Daubert* motions: The Court asked the parties whether they would be amenable to holding oral argument by videoconference due to the ongoing COVID-19 pandemic. Both sides expressed the preference to hold oral argument in-person, if possible. The Court and the parties noted several outstanding depositions and motions that could impact summary judgment and *Daubert* briefing, and agreed to reconsider scheduling oral argument, either in-person or by videoconference, until a later date.

Update on Scheduling Hearings on Other *Johns* Motions: Defendants raised an issue with several potential motions that may be forthcoming, and how the Court's rulings on pending motions will impact subsequent motions and deadlines. The parties agreed to meet and confer and propose a schedule for such motions and hearings. The Court requested that the parties inform the Court if there are unresolved issues impacting the parties' progress with respect to their pretrial

submissions. The Court also requested the parties inform the Court whether they will request a hearing, during which they would call witnesses, as opposed to requesting oral argument.

Discovery Update: The parties provided the Court with an update regarding a number of discovery issues, including: document productions, deposition scheduling, third party discovery, and privilege logs.

Document Productions: The PSC raised an issue with Defendants' supplementation of select custodial and non-custodial files related to on-going studies by Defendants. The parties provided their positions regarding the scope of the PSC's requests and Defendants' duty to supplement their productions at this point in time pursuant to the Court's CMOs and based on the current trial schedule. As discussed during the conference, the parties are **ORDERED** to meet and confer regarding this issue and both parties' ongoing duties and abilities to supplement discovery in light of the ongoing COVID-19 pandemic and trial schedule. The parties are further **ORDERED** to provide an update at the next status conference on this issue and their approach for discovery going forward in this MDL, including what discovery can be conducted during this time.

Medical Records Pertaining to Stephanie Baker's Personal Use of Mesh: The parties provided an update regarding the status of Plaintiffs' request that Defendants produce Ms. Baker's medical records related to her hernia surgery and present condition. The PSC narrowed the scope of its requested medical records, but rejected two stipulations proposed by Defendants related to those records. Defendants represented that they have agreed to produce certain records, and are attempting to collect those records from Ms. Baker's physicians. As discussed during the conference, Defendants are **ORDERED** to produce the records they have agreed to produce as soon as possible with appropriate redactions. Defendants are also **ORDERED** to request all of the records from Ms. Baker's physicians, as limited by the PSC. The parties are **DIRECTED** to

provide the Court with an update on the status of this issue at the next status conference. If Defendants continue to withhold records sought by the PSC, the Court will set a briefing schedule regarding this dispute.

Deposition Scheduling and Remaining *Daubert* briefing: The parties provided the Court with an update regarding outstanding depositions to be scheduled, including depositions that will result in additional *Daubert* briefing. Pursuant to EMOS 1, 2 and 3, the parties have been permitted to prepare some additional expert reports, conduct additional expert depositions, and submit supplemental *Daubert* motion briefing based on those reports and depositions. Because of the ongoing COVID-19 pandemic, the parties have not conducted any additional depositions or submitted supplemental briefing.

The parties are **DIRECTED** to meet and confer regarding a schedule for the additional expert reports the parties have been permitted to prepare pursuant to EMOs 1 and 3 and to provide the Court with an update on the status of those reports at the next status conference.

The parties are further **DIRECTED** to meet and confer regarding a plan for conducting the outstanding depositions and schedule for submitting supplemental *Daubert* briefing pursuant to EMOS 1, 2, and 3. While the parties have expressed their preferences to conduct these depositions in-person, the parties are encouraged to consider whether any of the depositions that will result in supplemental *Daubert* briefing could be conducted safely by videoconference. If depositions cannot be conducted by videoconference, the parties are to propose a plan for conducting in-person depositions as soon as it is safe and possible to do so. The parties shall also propose a schedule for submitting supplemental *Daubert* briefing to the Court based on the outstanding depositions. The parties are **DIRECTED** to provide the Court with an update on the status of these outstanding depositions and *Daubert* briefing at the next status conference.

Defendants raised an issue with the scope of Dr. El-Ghannam's rebuttal report pursuant to EMO 2, and the parties agreed to discuss this issue and inform the Court at the next status conference if it requires the Court's attention.

Third Party Discovery: The parties provided the Court with an update regarding third party discovery, including the productions received from AHS/AHSQCF. The parties agreed to discuss a schedule for motions in *limine* related to the use of documents produced by AHS/AHSQCF at trial and to include counsel for AHS/AHSQCF in those discussions. The parties are **DIRECTED** to provide the Court with an update on the status of this issue at the next status conference.

Privilege Log: The parties provided an update regarding privilege logs, and indicated they will continue to meet and confer regarding the PSC's remaining challenges to the privilege logs.

Milanesi Daubert Briefing Process with Regarding to Issues Previously Decided by the Court in Johns: The PSC requested a procedure be established for preservation motions in the *Milanesi* case based on the same issues previously decided in the *Johns* case, and requested that future CMOs regarding the pretrial and trial schedule for *Milanesi* include such a procedure. Defendants cautioned that there may be fewer of the same issues between the *Milanesi* and *Johns* cases because they involve different injuries and different products. The Court agreed that such a procedure would be prudent, where a party may file a preservation motion raising an issue on which it was previously ruled against, and indicate if anything has changed since the Court's previous ruling or bring any additional authority to the Court's attention that may persuade the Court to revisit its previous rulings.

Scheduling: During the conference, the Court scheduled the next status conference for May 20, 2020 at 11:00am EST. Due to a scheduling conflict, the next status conference will instead be scheduled for May 21, 2020 at 11:00am EST to be held by telephone unless otherwise instructed.

IT IS SO ORDERED.

4/24/2020
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

4/24/2020
DATE

s/Kimberly A. Jolson
KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE