

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. 16

June 18, 2020 Status Conference

On June 18, 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 Court proposed, and the parties agreed, that the September 29, 2020 date for the *Johns* trial be maintained for another month, and that the Court and the parties reevaluate that date at the next status conference. The Court also informed the parties that it would provide them with any formal juror instructions and/or questionnaires finalized by the Court specific to the impact of COVID-19 on juror service and selection.

Secant Document Production: Per the Court's request, counsel for third party Secant Medical, Inc., participated in the conference regarding Secant's response to the PSC's document subpoena. The PSC has agreed to pay Secant's vendor costs for producing documents in response to the subpoena, but has refused to pay Secant's attorneys' fees for reviewing the documents for relevance and for privilege. For the reasons stated on the record during the conference, the PSC

and Secant are **ORDERED** to simultaneously file briefing of no more than 10 pages **by 5:00 p.m. EST on June 26, 2020** regarding whether the PSC shall pay all or part of Secant's attorneys' fees.

Secant is instructed to include in its briefing a detailed description of the review Secant believes it needs to conduct prior to producing documents and the costs associated with that review.

Defendants may, but are not required to, also file briefing on this issue under the same parameters.

Case Filings Update: The parties provided the Court with an update regarding filings. The PSC stated that as of June 15, 2020, there were 7,534 cases filed and estimated the pace of filing at roughly 400 cases per month.

Oral Argument Update on Johns MSJ and Selected Daubert Motions: The Court discussed with the parties their preferences for holding oral argument on summary judgment and *Daubert* motions in-person or by videoconference. The Court also informed the parties it would hold oral argument on not more than two of each side's *Daubert* motions, and encouraged the parties to consider submitting argument on fewer than two per side. The parties are **DIRECTED** to inform the Court **by 5:00 p.m. EST on July 2, 2020** by email which of their *Daubert* motion(s) each side selects for oral argument. Unless otherwise requested by the parties, the Court will at a later date schedule oral argument on summary judgment and the selected *Daubert* motions to be held on the same date by either videoconference or in-person.

Early Filing of Certain Motions in Limine: Defendants filed six motions *in limine* on June 17, 2020 in *Johns*, and the parties have agreed that the PSC will respond within 14 days by July 1, 2020.

Defendants' request for a Supplemental Deposition of Dr. Joseph Jensen: In light of the Court's ruling in EMO 4, Defendants have requested a supplemental deposition of Dr. Joseph Jensen. The PSC believes the Court already ruled on Defendants' request, but do not oppose a

supplemental deposition as long as that deposition is limited. As stated during the conference, the parties will be permitted to conduct a supplemental deposition of Dr. Jensen regarding his February 19, 2020 declaration. The parties agreed to meet and confer to schedule Dr. Jensen's deposition and estimated it could be completed within the next month.

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. The Court informed the parties that it had reviewed the unredacted medical records of Stephanie Baker submitted to the Court for *in camera* review and found Defendants' redactions were appropriate. Defendants provided an update on the status of their efforts to collect the other categories of records requested by the PSC. Once Defendants have produced the remaining records to the PSC, Defendants are **DIRECTED** to submit the unredacted records to the Court for *in camera* review and the PSC is **DIRECTED** to timely notify the Court if it has any concerns with Defendants' redactions so that the Court may review the records accordingly.

The Court also informed the parties that it reviewed the two documents from the MDL 1842 Privilege Log challenged by the PSC and submitted by Defendants for *in camera* review. The Court found the documents were privileged and need not be produced. The parties informed the Court that they are still meeting and conferring regarding the PSC's remaining challenges to Defendants' Privilege Log No. 6 pursuant to CMO 17. As discussed during the conference, the Court expects the PSC to be guided by the Court's prior privilege log rulings when asserting any additional challenges to Defendants' privilege log.

The parties are furthered **ORDERED** to submit to the Court **by July 2, 2020** an interim joint discovery update with sufficient detail and dates certain for each of the outstanding discovery

issues for the Court's consideration. This update shall be in addition to the parties' discovery update for the next status conference, due **by July 9, 2020** pursuant to PTO No. 5.

Trial Schedule and Length: At the May 21, 2020 conference, the Court instructed the parties to meet and confer regarding a schedule for the *Johns* trial based on a four week maximum, setting forth the number of hours each side anticipates it will need to present its case in addition to a day each for voir dire, opening statements, and closing arguments. The parties did not include this topic on the agenda for the June conference, and are therefore **DIRECTED** to meet and confer regarding the trial schedule and to submit their agreed proposal to the Court seven days before the July conference along with their agenda and discovery update, and that if the parties cannot agree, to submit competing proposals.

Scheduling: The next status conference is scheduled for **July 16, 2020 at 1:30 p.m. EST** to be held by telephone unless otherwise instructed.

IT IS SO ORDERED.

6/19/2020
DATE

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

6/19/2020
DATE

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