

UNITED STATES DISTRICT COURT
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:
Johns v. CR Bard et al,
Case No. 2:18-cv-01509

MOTIONS *IN LIMINE* ORDER NO. 1-A

Opinion and Order regarding August 27, 2020 Motions *in Limine* Conference

This matter came before the Court for a status conference on August 27, 2020. This Order clarifies the Court's rulings on the motions *in limine* considered at the conference as set forth in Motions *in Limine* Order No. 1 (ECF No. 306). Upon consideration of the parties' briefs and their arguments presented, the Court in accordance with the conclusions made on the record at the hearing held as follows:

The Court reserved ruling on and ordered supplemental briefing regarding Americas Hernia Society Quality Collaborative Foundation's ("AHSQCF") Motion *in Limine* (ECF No. 180). The Court addressed AHSQCF's motion, in conjunction with Plaintiff's Motion *in Limine* No. 7, at the September 10, 2020 conference.

Plaintiff's Motion *in Limine* No. 1 to Exclude Certain Subjects from Evidence at Trial (ECF No. 235) is **GRANTED IN PART**. The Court also reserved ruling on and ordered supplemental briefing regarding parts 13, 18, and 19 of Plaintiff's motion. The Court will rule on these issues at a later date.

Plaintiff's Motion *in Limine* No. 6 to Exclude All Evidence Related to Plaintiff's

Irrelevant Prior Conduct and Irrelevant Medical History (ECF No. 236) is **GRANTED IN PART AND DENIED IN PART**. Bard may not present evidence of Plaintiff's alcohol or marijuana use or most other medical conditions, but Bard may present evidence of Plaintiff's history of smoking as it relates to poor wound healing and coughing if the proper foundation is established at trial. If there is no basis to support a finding that Plaintiff coughs, evidence of smoking is excluded.

Plaintiff's Motion *in Limine* No. 10 to Exclude Evidence or Argument Regarding Adhesions Occurring in All Abdominal Surgeries, Adhesions Occurring in Unrelated Abdominal Surgeries, Irrelevant & Prejudicial Statements Regarding Certain Unsubstantiated Causes of Adhesion Formation and Hindrance to Reperitonealization (ECF No. 241) is **GRANTED IN PART**. Bard may present evidence of adhesions occurring in hernia surgeries, but not in other non-hernia surgeries. The Court reserved ruling on issues related to diabetes and obesity until the record is further developed.

Plaintiff's Motion *in Limine* No. 19 to Prohibit Defendants, Their Counsel, or Witnesses from Stating that "All Doctors" Know of the Risks of Injuries Suffered by Mr. Johns (ECF No. 240) is **GRANTED**.

Defendants' Motion *in Limine* No. 19 to Exclude Evidence and Argument Concerning Any Impact of Plaintiff's Alleged Injuries on Family and Friends (ECF No. 223) is **GRANTED**. Plaintiff may, however, present evidence of photos including Plaintiffs' family, but the Court may provide an instruction to the jury that there is not to be any consideration of any injury to any people not in this case, including Plaintiff's family members.

Plaintiff's Motion *in Limine* No. 13 to Exclude All Evidence Related to Alleged Inconsistencies in the Plaintiff Fact Sheets (ECF No. 229) is **DENIED**.

The Court reserved ruling on Defendants' Motion *in Limine* No. 20 to Exclude Reference to C-8 and the *In Re: Du Pont De Nemours and Company C-8 Personal Injury Litigation* (ECF No. 224) until the record is further developed.

Regarding Defendants' Motion *in Limine* No. 16 to Exclude Evidence and Argument Concerning Bard's Financial Condition Until the Court Determines that Grounds for Punitive Damages Exist (ECF No. 219), the Court held that the trial will be bifurcated into two separate phases, and that Bard's financial condition will be admissible if there is a second phase pertaining to punitive damages.

The Court reserved ruling on Defendants' Motion *in Limine* No. 10 to Exclude Evidence or Argument Concerning Possible Future Complications or Complications Related to Plaintiff's Second Ventralight ST (ECF No. 211) and Plaintiff's Motion *in Limine* No. 20 to Exclude Certain Evidence and Arguments Related to Plaintiff's Diastasis Recti (ECF No. 242). For the reasons set forth in this Court's DMO 1 regarding Bard's Motion for Summary Judgment (ECF No. 309), and EMO 5 regarding Bard's Motion to Exclude Dr. Grischkan (ECF No. 310), Defendants' Motion *in Limine* No. 10 is **GRANTED**. For the reasons set forth in this Court's EMO 7 regarding Plaintiff's Motions to Exclude Dr. Novitsky and Dr. Renton, Plaintiff's Motion *in Limine* No. 20 is **GRANTED IN PART**. Evidence of Plaintiff's diagnoses and surgical history is admissible, but evidence of diastasis risk factors will be excluded.

IT IS SO ORDERED.

9-11-2020

DATE



EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE