

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:
ALL ACTIONS.

CASE MANAGEMENT ORDER NO. 20-A

Amended Order Finalizing Selection of and Schedule for Bellwether Trial Cases

In furtherance of the effective and efficient case management of complex litigation, the following procedures are set for the selection of and schedule for the three initial Bellwether Trial Cases to be tried in this MDL.

Pursuant to Case Management Order No. 10 (ECF No. 62), the parties each selected three cases from the twelve Bellwether Discovery Pool Plaintiffs (see ECF No. 125) on July 12, 2019. These six cases make up the “Bellwether Trial Pool Plaintiffs.” This CMO shall apply to all Plaintiffs, Defendants, and their counsel in the cases selected as the Bellwether Trial Pool Plaintiffs:

Plaintiff Selections:

Case Caption	Civil Action Number	Plaintiff's Counsel
McCourt v. CR Bard et al	2:18-cv-01011-EAS-KAJ	Hollis Law Firm
Milanesi et al v. C.R. Bard, Inc. et al	2:18-cv-01320-EAS-KAJ	Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A
Stinson v. Davol, Inc. et al	2:18-cv-01022-EAS-KAJ	Fleming, Nolen & Jez, L.L.P.

Defense Selections:

Case Caption	Civil Action Number	Plaintiff's Counsel
Campos v. C.R. Bard, Inc., et al	2:18-cv-00915- EAS-KAJ	Mcdonald Worley, P.C.; Krause & Kinsman LLC
Johns v. CR Bard, Inc., et al	2:18-cv-01509- EAS-KAJ	Robert J. DeBry & Associates
Miller v. C.R. Bard, Inc. et al	2:18-cv-01443- EAS-KAJ	Hollis Law Firm

The Court will select three of the Bellwether Trial Pool Plaintiffs to be the three initial Bellwether Trial Cases. The cases shall be selected following briefing by the parties in accordance with PTO 10 dated October 1, 2019, but with some modifications. On January 13, 2020 at 5:00pm EST, the parties shall simultaneously file their respective briefs (under seal as necessary)¹ of no more than 10 pages setting forth which three cases they submit the Court should select as the three initial Bellwether Trial Cases. Thereafter, the parties shall be permitted to respond to the other's proposed cases via a simultaneous filing of no more than 5 pages that shall be filed by January 20, 2020 at 5:00pm EST. No further reply briefs will be permitted. The Court will select the three initial Bellwether Trial Cases by January 24, 2020.² The three initial Bellwether Trial Cases shall proceed to final pretrial and trial as set forth below. The presumptive sequence of trials shall be alternating picks, such that no side has two selections tried consecutively. However, the parties and/or the Court reserve the right to amend this procedure. In the event that a case selected for the Bellwether Trial Pool or for trial is dismissed before trial, the Court may

¹ The parties shall follow the procedures for filing under seal set forth in Section VII of CMO 7 and in any future Order the Court may issue.

² Due to a previously scheduled trial set to begin January 21, 2020 in another large MDL, the Court will not hold an in-person status conference to discuss selection of the three initial Bellwether Trial Cases. The in-person status conference currently scheduled for January 10, 2020 at 9:30am to discuss selection of the Bellwether Trial Cases will instead be held as a regular case management conference.

at its discretion allow the selection of a replacement case by Defendants or Plaintiffs, depending upon the circumstances of the dismissal, or otherwise adjust the balance of selections or the terms of this CMO to ensure the integrity of the bellwether process. For each case set for trial, the Court will set the deadlines for the Pre-trial submissions listed below in Section VI by separate order. Additional cases may be selected for trial, and future CMOs will detail those cases and schedules, and any criteria for Pre-trial workup.

The deadlines set below supersede the deadlines set forth in Sections VII, VIII, IX, and X of CMO 10-B for the Bellwether Trial Pool Plaintiffs. This Order may be modified or amended for good cause shown, after appropriate notice and opportunity to be heard is provided to the affected parties, when the Court believes the interest of justice requires modification. The parties may, by agreement and without Court approval, modify the dates within this CMO that only affect the parties. All deadlines established for submissions to the Court may only be modified for good cause and with permission of the Court.

I. GENERAL FACT DISCOVERY DEADLINES AS TO BELLWETHER TRIAL CASES³

<u>Date</u>	<u>Event</u>
December 2, 2019	Deadline for completion of General Fact Discovery for the Bellwether Trial Cases.

³ To aid in an effective and meaningful Bellwether trial process, the parties have agreed to set deadlines for general fact and expert discovery applicable to the Bellwether Trial Cases and Bellwether Trial cases subject to the Court's CMOs. Consistent with the purpose of this MDL, however, it is understood that additional general fact and expert discovery may be conducted in connection with any further cases selected for discovery, trial, remand, or future bellwether process as authorized by Court order or as otherwise identified in Court orders. The conclusion of the general fact and expert discovery authorized by the Court's CMOs should not be construed as grounds for termination of this MDL under 28 U.S.C. § 1407 or as any other bar to discovery that might be sought or needed in this MDL.

II. EXPERT DISCOVERY FOR BELLWETHER TRIAL POOL⁴

<u>Date</u>	<u>Event</u>
December 4, 2019	Plaintiff to serve expert reports.
October 25, 2019	Deadline for requesting an IME of a Plaintiff, the terms of which may be ordered by the Court or agreed upon by the Parties. Plaintiff may oppose an IME request or its terms.
January 10, 2020	Defendants to serve expert reports.
January 31, 2020	Deadline for expert depositions.

III. COURT SELECTION OF THREE INITIAL BELLWETHER TRIAL CASES

<u>Date</u>	<u>Event</u>
January 13, 2020	Simultaneous filing of briefing on selection of Bellwether Trial Cases by 5:00pm EST.
January 20, 2020	Responses due to briefing on selection of Bellwether Trial Cases by 5:00pm EST.
January 24, 2020	The Court selects three cases for Bellwether Trial Cases.

IV. DISPOSITIVE MOTIONS FOR THREE INITIAL BELLWETHER TRIAL CASES SELECTED BY THE COURT

<u>Date</u>	<u>Event</u>
February 3, 2020	Dispositive motions to be filed.
February 21, 2020	Opposition papers to dispositive motions to be filed.
February 28, 2020	Reply papers to dispositive motions to be filed.
TBD	Oral argument on dispositive motions, at the discretion of the Court.

V. DAUBERT MOTIONS FOR THREE INITIAL BELLWETHER TRIAL CASES SELECTED BY THE COURT

<u>Date</u>	<u>Event</u>
February 3, 2020	Deadline for filing of any <i>Daubert</i> or other motions concerning any expert (hereafter 'expert motions').

⁴ Each expert witness disclosure shall include at least two available dates when each expert is available for a deposition.

February 21, 2020	Opposition papers to expert motions to be filed.
February 28, 2020	Reply papers to expert motions to be filed.
TBD	Oral argument on expert motions, at the discretion of the Court.

VI. FINAL PRE-TRIAL ACTIVITIES FOR THREE INITIAL BELLWETHER TRIAL CASES SELECTED BY THE COURT

<u>Date</u>	<u>Event</u>
May 11, 2020	Bellwether Trial Case No. 1 Commences
July 13, 2020	Bellwether Trial Case No. 2 Commences
September 14, 2020	Bellwether Trial Case No. 3 Commences

The Court will set all final Pre-trial schedules and deadlines for the three initial Bellwether Trial Cases, which shall include schedules and deadlines for the following: (1) motions in limine, oppositions, replies, and argument(s), if so determined by the Court; (2) deposition designations, counter designations and objections, and objections to counter designations and reply designations; (3) fact witness and expert witness lists; (4) exhibit lists designations and objections; (5) proposed jury instructions; (6) proposed *voir dire* questions; (7) a date for a final pre-trial conference; and (8) other deadlines and hearings as the Court requires.

IT IS SO ORDERED.

11-27-2019
DATE


EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

11/27/2019
DATE


KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE