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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 IN RE: Bard IVC Filters Products Liability
10 Litigation,
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No. MDL 15-02641-PHX DGC

CASE MANAGEMENT ORDER
NO. 35

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14 As set forth in Case Management Order No. 34, the bellwether cases are scheduled
15 for trial as follows: Kruse (September 2018), Hyde (November 2018), Mulkey (February
16 2019), and Tinlin (May 2019). Doc. 11659 at 1-4. The Court has determined that it must
17 grant summary judgment in favor of Defendants on the claims asserted by Plaintiff
18 Kruse. *See* Doc. 11839. The Court held a conference call with the parties today to
19 discuss scheduling issues and whether the Hyde case could be moved to the September
20 bellwether slot in lieu of the Kruse case. On the basis of the conference, the Court enters
21 the following order:

22 **I. September 2018 Bellwether: Hyde.**

23 The parties agreed that in lieu of Kruse, and with certain scheduling modifications,
24 the Hyde case can be tried in September. The dates and deadlines set forth in Case
25 Management Order No. 34 (Doc. 11659) are modified in part as follows for the Hyde
26 trial:

27 **A. Jury Questionnaire and Selection.**

28 1. By **July 18, 2018**, the parties shall provide the Court with proposed

1 changes to the jury questionnaire used in the Jones trial. The Court will consider these
2 proposals in finalizing the questionnaire for the Hyde trial.

3 2. The Clerk shall mail the questionnaire to 200 jurors no later than
4 **July 20, 2018**. The questionnaire will instruct the prospective jurors to return it to the
5 Court no later than **August 17, 2018**.

6 3. A thumb drive will be prepared for counsel (one for each side)
7 containing copies of the questionnaires and will be available for pickup at the jury office
8 on **August 24, 2018**. The thumb drive and any paper copies made by counsel must be
9 returned to the Court by counsel on the day of jury selection.

10 4. On **August 30, 2018**, the Court will provide the parties with a list of
11 prospective jurors the Court proposes to excuse for hardship on the basis of their
12 responses to the first question in the questionnaire.

13 5. The Court will hold a final pretrial conference in the Hyde case on
14 **September 6, 2018 at 10:00 a.m.** and will address with the parties juror excusals for
15 hardship and challenges for cause. *See* Doc. 11320 at 2, ¶ 2(e).

16 6. On **September 18, 2018, at 9:00 a.m.**, 50 prospective jurors will be
17 called to Court to appear for voir dire. Following voir dire, the Court will hear and rule
18 on challenges for cause. The Court will seat 9 jurors. Each side will have 3 pre-emptory
19 strikes. *See* Doc. 11320 at 2, ¶ 2(f).

20 **B. Motion for Summary Judgment.**

21 The Court will rule on the choice-of-law issue raised in the Hyde summary
22 judgment motion (Doc. 7359) by **July 25, 2017**. The Court will endeavor to rule on the
23 remaining summary judgment issues in Hyde as soon as possible.

24 **C. Motions in Limine.**

25 Motions in limine, limited to three pages each, shall be filed by **August 10, 2018**.
26 Responses to motions in limine, limited to three pages each, shall be filed by
27 **August 24, 2018**. No replies shall be filed.

28 Defendants may, if they so choose, re-urge their motion in limine regarding

Recovery death evidence (Doc. 9862) pursuant to the schedule set forth above. Memoranda on this issue may be up to 5 pages long. The parties shall not repeat arguments previously made. The issue was fully briefed for the Booker trial, and the Court has addressed Recovery death evidence in several orders. Docs. 10258, 10819, 10920, 11041.¹

D. Deposition Designations.

The parties shall provide deposition designations by **August 22, 2018**.

E. Proposed Final Pretrial Order.

The proposed final pretrial order for the Hyde bellwether shall be submitted by **4:00 p.m. on August 24, 2018**. The Court will enter a separate order governing the materials that should be submitted with the proposed final pretrial order.

F. Trial Days.

The trial dates for the Hyde bellwether will remain the same as those set for Kruse: **September 18-21 and 24-28, and October 1-5**. Plaintiff will be allotted **33 hours** of trial time and Defendants will be allotted **30 hours** of trial time. This schedule should allow the case to get to the jury by the morning of October 4, 2018. *See* Docs. 11320 at 3-4, 11659 at 3.

G. Dr. Kandarpa.

Hyde may use Dr. Kandarpa as a witness at trial. *See* Doc. 11320 at 4, ¶ 9.

II. November 2018 Bellwether.

Trial in this bellwether slot will be held on **November 5-9, 13-16, 19-20, and 26-28**. The parties should note that these dates have been modified (*see* Doc. 11659 at 2) to allow for 14 trial days and account for the federal holiday on November 12 (Veterans Day). The Plaintiff for the fourth bellwether (Mulkey or Tinlin) will be determined after

¹ The Court previously stated that it would propose a new schedule for Plaintiffs' *Cisson* motion if a new case were selected for the September 2018 bellwether slot. Doc. 11549. Plaintiffs have made clear, however, that they do not intend to re-urge the motion regardless of which case is chosen for the third bellwether. Doc. 11639 at 3.

1 the parties file memoranda concerning Mulkey's health condition and the feasibility of
2 Tinlin's case being tried in November.

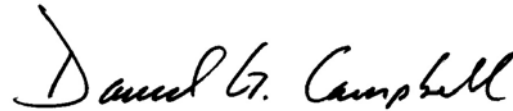
3 **III. February 2019 Bellwether.**

4 Trial in this bellwether slot will be held on **February 11-15, 19-22, 25-28**, and
5 **March 1, 2019**.

6 **IV. May 2019 Bellwether.**

7 The Court will determine whether a sixth bellwether trial should be held, and the
8 specific Plaintiff and dates for such bellwether, after the Hyde trial.

9 Dated this 13th day of July, 2018.

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David G. Campbell
United States District Judge