

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

CHIEF JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Kimberly A. Jolson

This document relates to:  
ALL ACTIONS.

CASE MANAGEMENT ORDER NO. 10

Bellwether Scheduling Order

In furtherance of the effective and efficient case management of complex litigation, the following procedures set forth the identification and selection of the pool of Bellwether Discovery Cases and the Bellwether Trial Cases from which the initial cases to be tried in this MDL will be selected, and to establish guidelines and a schedule for discovery for these Bellwether Discovery Cases, some of which will be proposed and designated as the initial Bellwether Trial Cases.

In order to facilitate the selection of cases to be selected as Bellwether Discovery Cases and Bellwether Trial Cases, the procedures below shall apply to all actions transferred to *In Re: Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Products Liability Litigation* (MDL No. 2846) by the Judicial Panel on Multidistrict Litigation (“JPML”), all related actions originally filed pursuant to CMO 2 (DIRECT FILING), and/or CMO 9 (MASTER PLEADING), or removed to this Court, and any “tag-along” actions transferred to this Court by the JPML.

As described in Section III below, on or before January 31, 2019, the Parties shall simultaneously identify six Representative Plaintiff candidates for the Bellwether Discovery Cases,

for a total of twelve cases to be worked up for case-specific discovery (“Bellwether Discovery Pool Plaintiffs”). The parties will identify these twelve cases to the Court in one filing. The Court will review the twelve Discovery Pool Plaintiffs selected by the Parties to ensure that they represent a sample of the cases currently pending in this MDL and are consistent with the guidelines set by the Court. The Court may in its sole discretion substitute any case on a Party’s list with another case of its choosing and may request input from the Parties in doing so. The Court will issue an order identifying the twelve Bellwether Discovery Pool Plaintiffs. The deadlines in Sections III to IV will only apply to the Bellwether Discovery Pool Plaintiffs. In the event that a case selected for the Bellwether Discovery Pool is dismissed before July 12, 2019, the Court may at its discretion allow the selection of a replacement case by the 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.

As described in Section V below, after Core Discovery occurs for the twelve Bellwether Discovery Pool Plaintiffs, the Parties shall each simultaneously identify a list of three cases for trial consideration, for a total of six cases. The six cases selected will be referred to as the “Bellwether Trial Pool Plaintiffs.” The deadlines in Sections VI to IX will only apply to the Bellwether Trial Pool Plaintiffs. The parties shall make these selections on July 12, 2019, and shall jointly notify the Court of the six cases on that day.

The Court will select three of the Bellwether Trial Pool cases for bellwether trials. The cases shall be selected following briefing by the parties and shall be selected by the Court by February 14, 2020, and shall proceed to final pretrial and trial as set forth below in Sections X to XII. 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 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 in Section X to XII.

Additional cases may be selected for trial, and future Case Management Orders will detail those cases and schedules, and any criteria for pretrial workup.

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.

#### **I. PLAINTIFF PROFILE FORMS (“PPF”)**

<u>Date</u>	<u>Event</u>
December 19, 2018	Deadline for Plaintiffs to submit a completed PPF, including all executed authorizations, for all cases filed and served as of November 21, 2018. Plaintiffs shall endeavor to submit the PPFs on a rolling basis. For any Plaintiff in a case filed and served after November 21, 2018, Plaintiff shall submit a completed PPF within 60 days after Defendants serve a Short Form Answer. The scope and parameters of the PPF will be governed by a separate CMO.

## II. GENERAL FACT DISCOVERY DEADLINES AS TO BELLWETHER TRIAL CASES<sup>1</sup>

<u>Date</u>	<u>Event</u>
October 28, 2019	Deadline for completion of General Fact Discovery for the Bellwether Trial Cases.

## III. SELECTION OF DISCOVERY POOL PLAINTIFFS FOR INITIAL CASE SPECIFIC DISCOVERY

<u>Date</u>	<u>Event</u>
January 31, 2019	The Parties shall simultaneously identify six Representative Plaintiff candidates for the Bellwether Discovery Cases, for a total of twelve cases to be worked up for case-specific discovery. The Parties will identify these twelve cases to the Court in one filing.

## IV. CORE FACT DISCOVERY FOR BELLWETHER DISCOVERY POOL PLAINTIFFS

<u>Date</u>	<u>Event</u>
March 25, 2019	For the twelve Discovery Pool Plaintiffs selected, Plaintiffs shall serve a completed Plaintiff Fact Sheet ("PFS"), including all authorizations. The scope and parameters of the PFS will be governed by a separate CMO.
April 25, 2019	Defendants will serve a Defendant Fact Sheet ("DFS"). The scope and parameters of the DFS will be governed by a separate CMO.
May 3, 2019	Completion of independent medical examinations ("IME"), should IMEs be ordered by the Court or agreed

<sup>1</sup> 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 this CMO. 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 this CMO 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.

	upon by the Parties.
June 14, 2019	Deadline for any motions to compel related to case specific fact discovery; later-filed motions will be considered upon a showing of good cause.
June 28, 2019	Completion of all Core Fact Discovery, which may include up to four case-specific fact depositions noticed by each party in interest in each case.

#### **V. SELECTION OF BELLWETHER TRIAL POOL PLAINTIFFS**

<u>Date</u>	<u>Event</u>
July 12, 2019	The Parties shall simultaneously each identify a list of three Bellwether Trial Pool Plaintiffs from the Discovery Pool Plaintiffs for trial consideration and shall jointly notify the Court of the six Bellwether Trial Pool Cases that day.

#### **VI. ADDITIONAL FACT DISCOVERY FOR BELLWETHER TRIAL POOL PLAINTIFFS**

<u>Date</u>	<u>Event</u>
August 1, 2019	Deadline to serve interrogatories and requests for production related to case specific fact discovery in the Bellwether Trial Cases.
September 6, 2019	Completion of all Additional Fact Discovery, which may include up to three additional case-specific fact depositions noticed by each party in interest in each case.

#### **VII. EXPERT DISCOVERY FOR BELLWETHER TRIAL POOL PLAINTIFFS**

<u>Date</u>	<u>Event</u>
September 30, 2019	Plaintiff to serve expert reports.
October 28, 2019	Defendants to serve expert reports.
December 6, 2019	Deadline for expert depositions.

**VIII. DISPOSITIVE MOTIONS FOR BELLWETHER TRIAL POOL PLAINTIFFS**

<u>Date</u>	<u>Event</u>
December 21, 2019	Dispositive motions to be filed.
January 21, 2020	Opposition papers to dispositive motions to be filed.
February 4, 2020	Reply papers to dispositive motions to be filed.
TBD	Oral argument on dispositive motions, at the discretion of the Court.

**IX. DAUBERT MOTIONS FOR BELLWETHER TRIAL POOL PLAINTIFFS**

<u>Date</u>	<u>Event</u>
December 21, 2019	Deadline for filing of any <i>Daubert</i> or other motions concerning any expert (hereafter “expert motions”).
January 21, 2020	Opposition papers to expert motions to be filed.
February 4, 2020	Reply papers to expert motions to be filed.
TBD	Oral argument on expert motions, at the discretion of the Court.

**X. FINAL PRE-TRIAL ACTIVITIES FOR FINAL THREE BELLWETHER TRIAL CASES**

<u>Date</u>	<u>Event</u>
February 14, 2020	Selection by Court of the first Trial Case out of the list submitted by the parties of three cases each that have went through case specific discovery.
May 8, 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 final three 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.**

11-20-2018  
**DATE**

  
**EDMUND A. SARGUS, JR.**  
**CHIEF UNITED STATES DISTRICT JUDGE**

11/20/2018  
**DATE**

  
**KIMBERLY A. JOLSON**  
**UNITED STATES MAGISTRATE JUDGE**