

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. 11

November 14, 2019 Status Conference

On November 14, 2019, the Court held an in-person status conference with counsel for the Plaintiffs' Steering Committee (the "PSC") and counsel for Defendants. This Pretrial Order memorializes the conference as follows:

Case Filings Update: The parties provided the Court with an update regarding filings. The PSC stated that as of November 13, 2019, there were 4,533 cases filed. The PSC estimates the current pace of filing at between 250 to 400 cases per month, and estimates around 6,000 total cases filed by the start of the first bellwether trial.

Discovery Update: The parties provided the Court with an update regarding a number of discovery issues, including: document productions, deposition scheduling and status of company witness depositions, third party discovery, privilege logs, and bellwether discovery.

Document Productions: The PSC raised an issue with access to histology slides for animal studies for review. The parties are scheduling a time and location for review of slides for one of the studies. The parties agreed to meet and confer regarding the availability of slides and other pathology materials for DB300. The PSC also stated that it had requested Defendants produce copies of discs

that contain photographic images from each study. Defense counsel stated that the discs would be transferred for processing for production on November 15, 2019. The PSC also stated that there are ongoing issues with Defendants' document productions as discussed during a prior teleconference with the Court. Defense counsel stated that they believed that as of that morning, the issues had been almost completely addressed, but agreed to follow-up with co-counsel and their vendor to address any ongoing issues. The PSC also raised an issue relating to Defendants' responses to master discovery relating to their financials. Defense counsel explained Defendants' position on the PSC's requests. The parties agreed to meet and confer regarding the requests. If the parties are unable to resolve this issue before the next in-person status conference, they are **DIRECTED** to list the issue on the agenda and send a copy of the requests and responses to the Court by email.

Deposition Scheduling: The parties provided their positions regarding scheduling depositions after the December 2, 2019 deadline for general fact discovery for the bellwether trial cases. The PSC estimates needing to conduct ten or fewer depositions through January and February 2020, and stated that these witnesses have already been identified. Defense counsel stated that Defendants have agreed to conduct some depositions after the December 2 deadline, but that they opposed an open-ended extension of the deadline and provided their position on specific witnesses. The Court instructed the parties to work together to schedule depositions for the list of witnesses the PSC identified at the conference and prioritize those most important for the bellwether trials.

Defense counsel also raised an issue relating to the conduct at and around some of the depositions, and provided examples from the deposition of Mr. LaFever. The PSC provided its position regarding the conduct at Mr. LaFever's and other's depositions. The Court requested a copy of the videotape of Mr. LaFever's deposition for review. Defense counsel also raised an issue

that had been discussed at the previous conference regarding time limitations of depositions. The Court requested an updated regarding the timing of Mr. LaFever's deposition. The PSC stated that its questioning took the full seven hours and estimated needing an additional two hours. Defense counsel provided Defendants' position regarding additional time for the PSC's questioning beyond the seven hours and time for questioning by Defendants. The parties are **DIRECTED** to meet and confer regarding these issues relating to Mr. LaFever's deposition, and to notify the Court by November 25, 2019 by email whether they have resolved these issues. If they have not resolved these issues, the parties are **DIRECTED** to submit an expedited briefing schedule for the PSC to move for additional time for Mr. LaFever's deposition and to provide a copy of the videotape of Mr. LaFever's deposition to the Court identifying the relevant portions of the deposition to be reviewed.

Third Party Discovery: The PSC provided an update regarding third party discovery received to date. The PSC stated that AHS/AHSQCF have refused to produce documents responsive to the majority of the PSC's requests. The PSC stated it will file a motion to compel and requested a briefing schedule. The Court advised the PSC that once the motion is filed, it will set a briefing schedule, or alternatively, set a telephonic status conference with counsel. Defense counsel also stated that Defendants have sought third party discovery and anticipate five or fewer depositions occurring pursuant to third party subpoenas in December.

Privilege Logs: The parties provided an update regarding privilege logs in accordance with CMO 17 and indicated they are continuing to review privilege log challenges pertaining to upcoming deponents. The parties also provided an update regarding the MDL 1842 privilege log. The PSC raised an issue with Defendants' privilege claims over a set of documents relating to Quintiles Consulting Company. The parties agreed to meet and confer regarding this issue, and are

DIRECTED to notify the Court by November 21, 2019 by email whether they have reached an agreement. If they have not reached an agreement, the parties are **DIRECTED** to submit an expedited briefing schedule for the PSC to move to compel.

Bellwether Case Discovery Update: The parties provided the Court with an update regarding the status of discovery for the Bellwether Trial Pool cases.

Bellwether Selection Process and Timing: The parties raised concerns regarding the deadlines for expert discovery, dispositive motions, and Daubert motions established in CMO 20 Finalizing Selection of and Schedule for Bellwether Trial Cases. The parties stated they have agreed to a schedule extending the time for both parties to serve expert reports: Plaintiffs' November 20, 2019 deadline would move to December 4, 2019, and Defendants' December 18, 2019 deadline would move to January 10, 2020. The parties discussed extending the deadlines for dispositive motions, Daubert motions, and expert depositions set forth in CMO 20 by two weeks: dispositive and Daubert motions would be due January 31, 2020, responses due February 21, 2020, and replies due February 28, 2020. The expert deposition deadline would be extended to January 29, 2020. The Court will consider an extension of the deadlines for the Court's selection of the initial bellwether trial cases if the parties so agree. The parties are **DIRECTED** to submit to the Court by email by November 25, 2019 a proposed CMO modifying those deadlines as discussed at the conference.

Plaintiff Profile Forms: The PSC stated it would prepare a proposed CMO that would provide the PSC with access to all of the plaintiff profile forms Defendants have received to date and will receive until the bellwether trial cases are selected. Defense counsel stated it would inquire with their vendor regarding the feasibility and cost of providing that access to the PSC.

Scheduling: The next status conference is scheduled for January 10, 2020 at 9:30 A.M. If necessary, the parties may request a status conference to be held in December.

IT IS SO ORDERED.

11-21-2019
DATE


EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

11/21/19
DATE


KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE