

**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. 12

January 13, 2020 Status Conference

On January 13, 2020, 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 January 6, 2020, there were 5,182 cases filed. The PSC estimates the current pace of filing at between 300 to 400 cases per month, and estimates around 7,500 by the conclusion of the third bellwether trial in October 2020.

Naming of Other Defendants: As requested by the Court, the parties discussed the naming of other defendants, such as Becton-Dickinson, Johnson & Johnson, Ethicon, etc., in individual cases filed in this MDL, and recommended deferring any action related to the naming of those defendants unless and until one of those cases is scheduled for trial.

Naming of Becton-Dickinson: Defendants raised an issue regarding the naming of Becton-Dickinson in the Master Complaint, and suggested that if and when it becomes an issue, the parties brief whether Becton-Dickinson should be named as a defendant in the Master Complaint. The

parties also provided an update regarding the statute of financial discovery and the role of Becton-Dickinson. The parties agreed to further meet and confer about what issues relating to Becton-Dickinson are in dispute and the process to address those issues.

Proposed Amendment to CMO 23: The PSC originally proposed an amendment to CMO 23 regarding deposition designation deadlines but upon further review withdrew their request.

Defendants' Deposition Notice of Non-Party Secant and Status of Third-Party Discovery:

The PSC raised an objection regarding the timing of the Rule 30(B)(6) deposition of a non-party, Secant Medical, and scope of its production in advance of that deposition. The parties have since informed the Court that they have conferred and agreed to reschedule the deposition to allow the Court to consider any forthcoming motions to compel or for protective orders.

Proposed Amendment to CMO 3: The PSC proposed an amendment to CMO 3 Appointing Plaintiffs' Steering Committee, requesting that Lauren E. Godshall of Morris Bart, LLC be replaced by Bert Greenwell of Morris Bart, LLC. The Court grants the PSC's request.

Status Update on Contention Discovery: The parties provided an update regarding the status of contention discovery. The PSC stated that Defendants have not responded to the case specific interrogatories served on behalf of several individual plaintiffs, and that for the individual plaintiffs to whom Defendants did respond, Defendants did not respond beyond interrogatory number twenty-five. Defendants responded that they believed they had responded to interrogatories for the other individual plaintiffs, but that they did apply the twenty-five limitation as set forth in the Federal Rules of Civil Procedure for their responses and for the interrogatories they served on the plaintiffs. As stated during the conference, Defendants are **DIRECTED** to respond to the remaining interrogatories served by the individual plaintiffs to which Defendants did not respond beyond interrogatory number twenty-five by January 21, 2020. The PSC is **DIRECTED** to

withdraw the interrogatories served on behalf of individual plaintiffs to which Defendants have not yet responded, and re-serve a narrowed set of interrogatories on Defendants by January 17, 2020. Defendants are **DIRECTED** to respond to the re-served interrogatories by January 24, 2020.

Status of Motions to Compel PPFs: Defendants provided the Court with a list of Motions to Compel PPFs granted by the Court and status of those cases.

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 Defendants' failure to produce an October 2007 report relating to an audit by Quintiles and expressed concerns of spoliation if the report cannot be located. Defense counsel explained their efforts to locate the report, and stated that they have been unsuccessful thus far and would be contacting Quintiles and another third-party in further attempts to locate the report. As requested by the Court during the conference, Defense counsel updated the PSC and the Court of their efforts on January 17, 2020, and indicated they believed the report had been located and would be produced. The PSC also stated that there are ongoing issues with password protections in some of Defendants' document productions, and requested Defendants reproduce the design history files or provide a list of passwords to remedy these issues. Defense counsel stated that they have addressed the issues as they arise, but that reproducing the entire production would be fairly costly and burdensome. Defense counsel stated that they were determining if they could identify the documents affected by this issue or reproduce a subset of files. The parties are **DIRECTED** to submit to the Court via email a status report on this issue by January 21, 2020.

Deposition Scheduling: The parties provided an update regarding deposition scheduling.

Third Party Discovery: The PSC provided an update regarding third party discovery received to date. The PSC has prepared a motion to compel the production of documents from AHS/AHSQCF, but has moved for leave to file that motion under seal because it includes documents designated by other parties as “Confidential” and “Highly Confidential.” As set forth in the Court’s January 13, 2020 Order (ECF No. 297), any interested party that wishes the PSC’s forthcoming motion to compel and accompanying exhibits be filed under seal shall file a written response by January 21, 2020 setting forth the reasons for the sealing and the specific portion(s) of the forthcoming motion to compel and accompanying exhibits that should be filed under seal. Once the motion to compel is filed, the Court will set an expedited briefing schedule.

Filing Under Seal: The parties raised concerns regarding the process for filing upcoming motions under seal. As discussed during the conference, the parties are **DIRECTED** to submit a proposed case management order to the Court via email by January 24, 2020 setting forth procedures for filing under seal that includes procedures for parties filing their own “Confidential” or “Highly Confidential” information under seal and for filing another party’s “Confidential” or “Highly Confidential” information under seal.

Privilege Logs: The parties provided an update regarding privilege logs in accordance with CMO 17. The parties also provided an update regarding the MDL 1842 privilege log. The PSC requested Defendants clarify some of entries on the privilege log so that they may evaluate the privilege assertions, and Defendants agreed to do so if the PSC provides the specific entries to be clarified. The PSC also stated that there are several hundred entries in four categories of documents for which they challenge Defendants’ privilege assertions. The PSC was directed to file any motions to compel by January 17, 2020, if not sooner, and to submit to the Court via email a sample of five documents from each of the four categories being challenged. On January 17, 2020, the PSC filed

a motion for leave to file under seal its notice of petition for *in camera* review of challenges to Defendants' privilege log, which was submitted *in camera* along with accompanying exhibits. The Court will issue a separate order addressing the PSC's motion for leave to file under seal and petition for *in camera* review.

Bellwether Case Discovery Update: The parties provided the Court with an update regarding the status of discovery for the Bellwether Trial Pool cases. The parties also raised an issue with the timing of expert depositions and potential need for supplementations of upcoming *Daubert* motions. The parties are **DIRECTED** to submit to the Court via email by January 27, 2020 a proposed case management order governing the procedure and timing for any necessary supplementation based on expert depositions taken after the motions deadline.

Bellwether Selection Process and Timing: The Court asked the parties for their positions on selecting a fourth bellwether trial case. The parties explained their positions, and the Court agreed to review the parties' submissions on selection of the first three bellwether trial cases before reaching a final decision on the number of cases to be selected.

Proposed CMO 24 on PSC's Review of Animal Study Slides: On January 7, 2020, the Court entered CMO 24 PSC's Access to Certain Animal Study Slides (ECF No. 292).

Mediation Discussions: As requested by the Court, the parties provided their positions on establishing the process, structure, and timeline of a mediation. The parties agreed to identify their principals who would participate in a future mediation. The Court will hold a conference on March 3, 2020 at 10:00am, in conjunction with the next status conference, to be attended by Defendants' settlement counsel and representative(s) identified by the PSC to discuss the process, structure, and timeline of mediation.

Scheduling: The next status conference is scheduled for March 3, 2020 at 10:00am. As discussed, this will also be a conference attended by representative(s) identified by the PSC and Defendants' settlement counsel to discuss the process, structure, and timeline of mediation.

IT IS SO ORDERED.

1-21-2020
DATE



EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

1/22/2020
DATE



KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE