

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. 15

May 21, 2020 Status Conference

On May 21, 2020, the Court held a telephonic status conference with counsel for the Plaintiffs' Steering Committee (the "PSC") and counsel for Defendants. This Pretrial Order memorializes the conference as follows:

Update on COVID-19 Impact on the Court: The Court provided an update on the impact of the COVID-19 pandemic on the Court's proceedings. The Court proposed, and the parties agreed, that the September 29, 2020 date for the *Johns* trial be maintained for another month, and that the Court and the parties reevaluate that date at the next status conference.

Case Filings Update: The parties provided the Court with an update regarding filings. The PSC stated that as of May 18, 2020, there were 7,098 cases filed. The PSC estimates the total cases filed may near 9,000 to 10,000 by the end of the year.

Oral Argument Update on *Johns* MSJ and Selected *Daubert* Motions and Update on Scheduling Hearings on Other *Johns* Motions: The Court asked the parties whether there were any outstanding depositions or briefing that would impact Defendants' motion for summary judgment in the *Johns* case and scheduling oral argument. Defendants stated that the supplemental

deposition to be taken of Mr. Johns would not affect summary judgment, but that the Court's resolution of Defendants' pending motion to strike the declaration of Dr. Jensen could impact summary judgment and result in an additional deposition of Dr. Jensen. The parties also informed the Court that they do not require testimony for any of their pending *Daubert* motions. The Court will hold oral argument on Defendants' motion for summary judgment and on one to two of each side's *Daubert* motions to be scheduled at a later date. The Court granted the PSC's request for leave, which Defendants did not oppose, to file an amended brief in opposition to Defendants' motion for summary judgment to include a quote omitted from the previously filed brief.

Defendants also raised an issue with the scheduling order entered by the Court for the *Johns* trial and the timing of the Court's rulings on motions *in limine* that will impact rulings on deposition designations. The Court explained that, in accordance with the scheduling order, the Court will resolve motions *in limine* at the first final pretrial conference and deposition designations at the second final pretrial conference, and informed the parties that they could file their motions prior to the deadline if so desired.

Defendants' Request for Clarification on Order on Dr. Ahmed El-Ghannam Motion to Strike: The parties provided their positions on the scope of Dr. El-Ghannam's rebuttal report pursuant to EMO 2. As discussed during the conference, the parties are **ORDERED** to simultaneously file briefing of no more than 5 pages **by 5:00 p.m. EST on May 28, 2020** regarding their positions on Dr. El-Ghannam's rebuttal report.

Discovery Update: The parties provided the Court with an update regarding a number of discovery issues, including: document productions, deposition scheduling, third party discovery, and privilege logs. The Court requested that, going forward, the parties provide a more robust discovery update so that the Court has enough information to rule on any issues well in advance

of the first trial date. The parties are encouraged to supplement their discovery update and/or agenda if any issues arise or are resolved in between the submission of those materials and the status conference. As discussed during the conference, the parties are **ORDERED** to submit to the Court **by June 4, 2020** an additional status report with more detail and dates certain for each of the outstanding discovery issues.

Milanesi, Stinson, and Second Defense Pick Trial Settings: The Court informed the parties that setting dates for the second, third, and fourth bellwether trials would be premature and will be revisited at a later date.

PSC's Objections to Defendants' Notice of Videoconference Deposition: The parties informed the Court that these notices will be withdrawn based on scheduling issues, and that they hope these depositions can be conducted in person at a later date.

Badylak Supplemental Report Deadlines: The parties provided their positions regarding deadlines for Dr. Badylak's supplemental expert report and Dr. Nagy's report. Defendants represented that Dr. Badylak's report would be completed shortly after his laboratory reopens, which they anticipate will be on June 1, 2020. Pursuant to EMO 3, the PSC shall serve Dr. Nagy's report within 14 days of receiving Dr. Badylak's supplemental report.

Plaintiff's Expert in *Milanesi* Dr. Krpata/Cleveland Clinic: The PSC raised an issue with their specific causation expert in the *Milanesi* case, Dr. Krpata and his employer, the Cleveland Clinic. The PSC has learned that the Cleveland Clinic has a policy requiring their employees to receive the Cleveland Clinic's approval to serve as a retained expert in litigation and that Dr. Krpata is awaiting approval from the clinic. The parties provided their positions regarding counsel's communications with the Cleveland Clinic regarding Dr. Krpata. The PSC agreed to notify

Defendants as soon as they learn of the Cleveland Clinic's decision. The parties agreed to inform the Court if the Court's intervention is needed.

Trial Schedule and Length: The Court instructed the parties to meet and confer regarding a schedule for the *Johns* trial based on a four week maximum, setting forth the number of hours each side anticipates it will need to present its case in addition to a day each for voir dire, opening statements, and closing arguments. The parties are therefore **DIRECTED** to meet and confer regarding the trial schedule and to submit their agreed proposal to the Court in advance of the next conference along with their agenda and discovery update, and that if the parties cannot agree, to submit competing proposals.

Scheduling: The next status conference is scheduled for June 18, 2020 at 1:30 p.m. EST to be held by telephone unless otherwise instructed.

IT IS SO ORDERED.

5/27/2020
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

5/27/2020
DATE

s/Kimberly A. Jolson
KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE