

**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. 17

July 20, 2020 Status Conference

On July 20, 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 trial in *Johns v. C.R. Bard et al.*, Case No. 2:18-cv-01509 be vacated. The Court will tentatively schedule the *Johns* trial to begin on January 11, 2021, and will update the parties during the next status conference on another trial scheduled to begin in February 2021 that may impact its ability to the *Johns* trial in January 2021. The Court and the parties also discussed the possibility of scheduling the *Johns* trial for the end of 2020 depending on the Court's schedule and ongoing COVID-19 pandemic, with the Court providing the parties with a minimum of sixty (60) days notice before the trial would begin.

The Court hereby vacates the September 29, 2020 date for the *Johns* trial set forth in Section I.A. of CMO 23-B, as well as the dates for the final pretrial conferences in Section I.B. of

CMO 23-B. All other deadlines set forth in CMO 23-B remain in place, including deadlines for motions *in limine*. As discussed during the conference, the parties may file **by November 11, 2020** additional motions *in limine* for the *Johns* trial limited only to evidence discovered or depositions taken after the current motions *in limine* deadlines in CMO 23-B. Additionally, the parties may supplement their exhibit lists for the *Johns* trial **by November 11, 2020**.

MDL Case Filings Update: The parties provided the Court with an update regarding filings. The PSC stated that as of July 20, 2020, there were 8,008 cases filed and estimated the total cases filed may near 10,000 by the end of the year.

Oral Argument Update on Johns MSJ and Selected Daubert Motions: The Court proposed and the parties agreed to hold oral argument on Defendants' summary judgment motion and the parties' selected *Daubert* motions on the same day by videoconference within the next few weeks, with the exception of Plaintiff's Motion to Exclude Dr. Badylak.¹ The Court will therefore hold oral argument on Defendants' Motion for Summary Judgment, Plaintiff's Motion to Exclude Dr. Fedoruk, Defendants' Motion to Exclude Dr. Grischkan, and Defendants' Motion to Exclude Dr. Babensee on **August 13, 2020 at 10:30am EST via GoToMeeting**. The parties will have thirty (30) minutes per side for Defendants' motion for summary judgment, and twenty (20) minutes per side for each of the three *Daubert* motions. The Court will send the PSC and Defendants instructions for participating in oral argument by GoToMeeting. Due to technical limitations, only counsel arguing the motions will be permitted to participate by video. All other counsel must participate by phone (audio conference only). In order to limit the number of individual phone lines joining the GoToMeeting, the Court requests counsel participating by phone coordinate to

¹ Pursuant to PTO No. 16, the PSC also selected Plaintiff's Motion to Exclude Dr. Badylak for oral argument. However, the PSC has been granted leave to re-depose Dr. Badylak. (*See* EMO 4, ECF No. 372.) Because that deposition has not yet taken place, oral argument on Plaintiff's Motion to Exclude Dr. Badylak will be held at a later date.

join the GoToMeeting from one phone line per side. Finally, the Court requests all counsel participating either by phone or by video mute themselves when not addressing the Court. The Court may restrict participants' access to the GoToMeeting for failure to abide by this request.

Status of PPF compliance and motions: Defendants provided the Court with the status of Motions to Compel PPFs granted by the Court.

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 acknowledged the parties' continued communication and cooperation on these discovery issues and noted the progress being made despite the ongoing COVID-19 pandemic. The parties confirmed that they are continuing to work together to resolve issues as they arise and that currently there are no issues requiring the Court's intervention. Additionally, the PSC informed the Court it had reviewed Defendants' responses to the PSC's privilege log challenges and that the PSC does not intend to further assert those challenges.

As discussed during the conference, the Court **DIRECTS** the parties to meet and confer regarding a schedule for discovery going forward in light of the changes to the Court's bellwether trial schedule, and to include this issue on the agenda for the next status conference.

Scheduling: The next status conference will be held in conjunction with oral argument scheduled for **August 13, 2020** as set forth above.

IT IS SO ORDERED.

7/22/2020
DATE

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

7/22/2020
DATE

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