

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: COVIDIEN HERNIA MESH
PRODUCTS LIABILITY LITIGATION
NO. II,

This Document Relates To:

All Cases

MDL No. 1:22-md-03029-PBS

PARTIES' POSITION STATEMENTS ON PROPOSED SCHEDULING ORDER

At the status conference on August 10, 2023, the Court advised that the parties should meet and confer about mediation and dispositive/*Daubert* motion deadlines, and submit one or more proposals by Friday, September 8. The parties met and conferred several times but have been unable to reach agreement and so provide separate proposals, which are attached hereto as Exhibit A (Plaintiffs' Proposed Scheduling Order) and Exhibit B (Defendants' Proposed Scheduling Order). Below are the parties' position statements on those proposals for the Court's consideration.

PLAINTIFFS' POSITION

The fundamental difference between Plaintiffs' proposed scheduling order (attached as Exhibit A) and Defendants' proposal (attached as Exhibit B) is that Plaintiffs' proposal contemplates selection and briefing of the first two trials only, whereas Defendants propose briefing for all six cases in the Discovery Pool at the same time. Put simply, Defendants' proposal will overburden this Court. In a complex case like this, there almost certainly will be over 30 expert witnesses disclosed and even more reports served.¹ Historically, in surgical mesh

¹ For example, in the Bard Hernia Mesh MDL (MDL 2846), there were a total of 36 experts disclosed and 45 reports served for 6 Bellwether cases with 4 products at issue. In the Proceed Hernia Mesh New Jersey Consolidation (MCL 630), there were a total of 27 experts disclosed with 55 reports served for 9 Bellwether cases and only 2 products at issue.

9/18/23
In light of the court's resources, I find the plaintiff's proposed order is preferable. Either of the first two trials being, the parties shall be prepared for an expedited briefing schedule on the next case(s) up at bar. Paul & Sans