

UNITED STATES DISTRICT COURT  
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:  
*Milanesi et al. v. C.R. Bard, et al.*  
Case No. 2:18-cv-01320

**CASE MANAGEMENT ORDER NO. 29-C**

**Pretrial and Trial Schedule for Second Bellwether Trial Case**

On January 24, 2020, the Court selected *Milanesi et al. v. C.R. Bard et al.*, Case No. 2:18-cv-01320 as the second Bellwether Trial Case that will be tried in this multidistrict litigation (“MDL”). This trial has been rescheduled to Monday, March 21, 2022. This amended CMO supersedes the deadlines in CMO No. 29-A as set forth below.

**I. TRIAL**

1. The second Bellwether Trial Case is scheduled for trial on **Monday, March 21, 2022**, at 9:00 a.m. in Courtroom 2.
2. Unless otherwise notified by the Court, trial counsel shall meet in the chambers of Judge Sargus at 8:30 a.m. on each day of the trial.
  - a. Attached to this CMO is the Court’s Final Pretrial Order (“CMO 29-D”). The parties shall jointly submit CMO 29-D on or before **Monday, March 14, 2022**.

**II. WITNESS LISTS**

Witnesses not included on a party’s witness list shall not be called at trial absent agreement by the parties or a showing of good cause as to why the witness was not included on the witness list. The parties will use good faith efforts to list persons whom they actually

intend to call at trial (live or by deposition) on a “will call” list, and persons whom they currently believe are unlikely to be called but may be called on a “may call” list. The parties shall also use good faith efforts to state whether each proposed witness will be called live, or by deposition.

### **III. EXHIBITS**

The Court strongly encourages the parties to utilize the electronic courtroom technology for presentation of evidence. The parties shall report to the Court, by joint submission, on or before the date of the first final pretrial conference, their intent to use the technology. If the parties are not utilizing the Court’s complete electronic technology, they shall present their exhibits by using the document cameras (ELMOs) located at counsel tables. The parties shall provide copies of the exhibits to the Court as used during trial.

No later than the day trial commences, the parties shall provide one paper courtesy set of the exhibits that they intend to use at trial to the Court. These copies should incorporate the Court’s rulings on objections.

The parties are directed to stipulate to the exhibits for which they have no objections in advance of trial to the furthest extent possible.

#### **A. Exhibits During Trial**

At trial, counsel may not approach a witness to tender an exhibit. Rather, the Courtroom Deputy will place each exhibit before each witness. In formulating a question to a witness, counsel shall clearly specify the exhibit number or designation involved to ensure a clear trial record.

Exhibits introduced for the first time must be displayed to opposing counsel. Counsel shall be prepared to provide copies of such exhibits to opposing counsel, the Court, and the

witness.

The parties shall also provide to the Courtroom Deputy each morning a list of exhibits that the witnesses plan to testify to during that day of trial.

#### **IV. MODIFICATION**

The parties may by agreement modify the dates within this CMO that affect only the parties. All deadlines established for submissions to the Court may only be modified for good cause and with the permission of the Court.

#### **V. ADDITIONAL GUIDELINES**

##### **A. Jury**

Any prospective juror may be challenged for cause. Each party shall be entitled to three (3) peremptory challenges. 28 U.S.C. § 1870. The parties will exercise their peremptory challenges alternately with the plaintiff exercising the first challenge. If either party "passes," that challenge will be counted as used.

In most civil cases the Court will seat a jury of eight (8) members. In accordance with Federal Rule of Civil Procedure 48, all jurors shall participate in the verdict unless excused pursuant to Rule 47(c). Unless the parties otherwise stipulate, the verdict shall be unanimous.

##### **B. Trial Procedure**

Trial will commence every day at 9:00am. The Court will take one mid-morning break, one lunch break, and one mid-afternoon break each day.

##### **C. Disclosure of Live Witnesses**

Unless the parties agree otherwise, given the nature of this trial, including the extraordinary amount of documents and preparation, disclosure of live witnesses to be called to testify, and expected order, shall be made 24 hours in advance of the witness testifying.

Any new witness for a Monday shall be disclosed on Friday before 9:00 p.m. (Eastern Standard Time). The parties shall use good faith efforts to notify opposing counsel of witnesses to be presented by deposition designations 24 hours in advance of their use at trial, but the intent of this is not to preclude a party from utilizing a deposition designation if time allows for such use during the natural progression of the trial.

**D. Other Matters**

This Order supersedes all previous orders in this case to the extent previous orders are inconsistent with this Order.

The parties shall address questions about this Order to the Court's Law Clerk, Ashlee Riner. When calling or emailing, please have counsel for all parties participating or with fewer than all counsel participating with express permission of non-participating counsel.

**IT IS SO ORDERED.**

1/11/2022  
DATE

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

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

\_\_\_\_\_ ,

**Plaintiff,**

**-V-**

**Case No.**  
**JUDGE EDMUND A. SARGUS, JR.**  
**Magistrate Judge**

\_\_\_\_\_ ,

**Defendants.**

**FINAL PRETRIAL ORDER (REQUIRED FORM)**

The Court held a final pretrial conference in this case on \_\_\_\_\_ at \_\_\_\_ a.m.,  
pursuant to Fed. R. Civ. P. 16.

**I. APPEARANCES:**

For Plaintiff:

For Defendant:

**II. NATURE OF ACTION**

A. This is an action for

B. The jurisdiction of the Court is invoked under Title \_\_\_\_\_, United States Code,  
Section \_\_\_\_\_.

C. The jurisdiction of the Court (is) (is not) disputed.

**III. TRIAL LENGTH:** The estimated length of trial is \_\_\_\_ days.

**IV. AGREED STATEMENTS AND LISTS:**

**A. General Nature of the Claims of the Parties**

1. Plaintiffs' Claims: Set out brief summary without detail; an itemized statement of special damages should be included.
2. Defendants' Claims: Set out brief summary without detail.

**B. Uncontroverted Facts**

Suggested language: The following facts are established by admissions in the pleadings or by stipulations of counsel. Set out uncontroverted or uncontested facts in chronological order.

**C. Contested Issues of Fact and Law**

1. Contested Issues of Fact.

Suggested language: The contested issues of fact remaining for decision are . . . Set out a brief statement of the remaining contested issues of fact.

2. Contested Issues of Law.

Suggested language: The contested issues of law in addition to those implicit in the foregoing issues of fact, are . . . Set out a brief statement of the remaining contested issues of law.

OR There are no special issues of law reserved other than those implicit in the foregoing issues of fact.

**D. Witnesses**

1. Suggested language: In the absence of reasonable notice to opposing counsel to the contrary, plaintiff will call, or will have available at the trial:

OR Plaintiff may call: Provide a brief synopsis of each witness' testimony.

2. Suggested language: In the absence of reasonable notice to opposing counsel to the contrary, defendant will call, or will have available at the trial:

OR Defendant may call: Provide a brief synopsis of each witness' testimony.

3. Suggested language: In the absence of reasonable notice to opposing counsel to the contrary, \_\_\_\_\_ will call:

OR \_\_\_\_\_ may call: (provide a brief synopsis of each witness' testimony; use for third parties).

4. In the event other witnesses are to be called at the trial, a statement of their names and addresses and the general subject matter of their testimony will be served upon opposing counsel and filed with the Court at least five (5) days prior to trial.

5. There is reserved to each of the parties the right to call such rebuttal witnesses as may be necessary, without prior notice to the other party. Questions frequently arise as to whether a witness will offer rebuttal testimony or is more appropriately designated as part of the case-in-chief. If questions arise as to the nature of a witness' testimony, the Court will err on the side of required disclosure five (5) days prior to trial of rebuttal witnesses. If no disclosure is made, the Court shall not permit such witness to testify.

*Note: Only witnesses listed in the Final Pretrial Order will be permitted to testify at the trial, except witnesses called solely for the purpose of impeachment or for good cause shown.*

#### **E. Expert Witnesses**

Suggested language: Parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed to the other side.

1. Plaintiff: List all expert witnesses plaintiff intends to call at trial.
2. Defendant: List all expert witnesses defendant intends to call at trial.

Counsel have attached a resume or curriculum vitae of each expert's qualifications as a part of Exhibit A herein.

#### **F. Depositions**

During trial, reading of depositions frequently presents problems that can be eliminated by advance discussion and preparation. The pretrial order shall list depositions to be read into evidence and any objections thereto identifying the objecting party, portions objected to, and the basis for the objections. All irrelevant and redundant matter and all colloquy between counsel in the deposition must be eliminated when the deposition is read. See also the requirements of Fed. R. Civ. P. 26(a)(3)(B).

Suggested language: Testimony of the following witnesses will be offered by deposition/videotape. List all witnesses whose testimony will be offered by deposition or videotape. If none, so state.

#### **G. Exhibits**

Needless Court time is taken up in the marking of exhibits during trial. Accordingly, the exhibit list should be prepared prior to trial and set forth in the pretrial order. Exhibits that are to be admitted without objection should be listed first, then followed by a listing of exhibits to which there may be objections, noting by whom the objection is made (if there are multiple adverse parties), the nature of the objection, and the authority

supporting the objection.

Exhibit markers should be attached to all exhibits at the time they are shown to opposing counsel during the preparation of the pretrial order. A supply of marking tags for exhibits may be obtained from the courtroom deputy clerk. They should be attached to the lower right-hand corner whenever possible. See also the requirements of Fed. R. Civ. P. 26(a)(3)(C).

Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in the pretrial order, with the exception of exhibits to be used solely for the purpose of impeachment.

Exhibit lists should be attached as appendices to the pretrial order as follows:

- Appendix B Joint Exhibits
- Appendix C Plaintiff Exhibits
- Appendix D Defendant Exhibits
- Appendix E Third-Party Exhibits

#### **H. Stipulations**

Counsel have fully complied with the **Stipulations** section of the Court's Order Setting Trial Date and Settlement Conference.

#### **I. Completion of Discovery**

Except for good cause, all discovery shall be completed before the Final Pretrial Order is signed by the Court. If discovery has not been completed, the proposed pretrial order shall state what discovery is yet to be done by each side, when it is scheduled, when it will be completed, and whether any problems (e.g., objections or motions) are likely with respect to the uncompleted discovery.

Suggested language:

- \* Discovery has been completed.
- \* Discovery is to be completed by \_\_\_\_\_, 20\_\_.
- \* Further discovery is limited to \_\_\_\_\_.
- \* The following provisions were made for discovery:  
*Specify all such provisions.*

#### **V. MODIFICATION**

The Final Pretrial Order may be modified at or prior to the trial of this action to prevent manifest injustice. Such modification may be made by application of counsel or on motion of the Court.

**VI. JURY INSTRUCTIONS**

Counsel have complied with the Jury Instructions section of the Court's Order Setting Trial Date and Settlement Conference.

**VII. REMAINING ISSUES AND OTHER MATTERS**

The following legal issues must be resolved before the beginning of trial:

Counsel bring the following additional matters to the Court's attention:

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**EDMUND A. SARGUS, JR.**  
**United States District Judge**

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Counsel for Plaintiff

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Counsel for Defendant