

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 v. C.R. Bard,
Case No. 2:18-cv-1320

ORDER

On February 11, 2022, the parties indicated to the Court that they were unable to reach an agreement on whether Plaintiffs may supplement their damages expert's prior report regarding Defendants' financial information. (ECF No. 343-1 at PageID #18811.) On February 12, 2022, the Court ordered the parties to submit briefs arguing their positions (ECF No. 340.), which the parties have since submitted (ECF Nos. 343, 344, & 345).

In both this case and in the first bellwether case, *Johns v. C. R. Bard, Inc., et al.*, Case No. 2:18-cv-01509, the Court excluded Plaintiffs' expert Robert W. Johnson's opinions regarding the financial condition of Defendants' parent company, Becton Dickinson. (Evidentiary Motions Order ("EMO") No. 20, ECF No. 220; EMO No. 12, Case No. 2:18-cv-01509, ECF No. 460.) The Court excluded Mr. Johnson's opinions regarding Becton Dickinson on the grounds that the financial condition of the non-party parent company was irrelevant. (*Id.*) Plaintiffs now seek to supplement Mr. Johnson's expert report with information regarding Defendants' own financial condition, the last of which was turned over by Defendants on or around January 28, 2022. (ECF No. 343-1 at PageID #18812.) Defendants oppose Plaintiff's request to supplement Mr. Johnson's

report, arguing that these are new and undisclosed opinions, and that Mr. Johnson's opinions have already been excluded in this case pursuant to EMO 20. (ECF No. 343.) Defendants also claim that because it is so close to the start of trial, allowing Plaintiffs to supplement Mr. Johnson's report will prejudice and burden Defendants. (ECF No. 343 at PageID #18806.)

Defendants are correct in pointing out that Mr. Johnson's opinions were previously excluded in this case. However, the Court only excluded for lack of relevance Mr. Johnson's opinions related to Becton Dickinson's financial condition. Defendants' financial information is relevant to this case and has been a topic of discussion at numerous Case Management Conferences, and has been discussed between the parties since at least January 29, 2020, over two years ago. (ECF No. 344-1 at PageID #18831.) Thus, Defendants' contention that supplementation with financial information is prejudicial or burdensome is not well taken and is merely a function of Plaintiff not receiving the needed information until recently.

That being said, the Court has not seen the supplement that Mr. Johnson seeks to present at trial and cannot rule on its admissibility in the abstract. Therefore, Plaintiffs are ordered to submit Mr. Johnson's proposed supplement to the Court and to Defendants by **Friday, March 11, 2022**.

IT IS SO ORDERED.

3/8/2022
DATE

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