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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**



IN RE: Bard Implanted Port Catheter
Products Liability Litigation,

MDL No. 3081

CASE MANAGEMENT ORDER NO. 18

(Fifth Case Management Conference)

(Applies to All Actions)

The Court held a fifth Case Management Conference on March 29, 2024. This order reflects matters discussed and decided during the conference.

I. Joint Motion to Seal.

The Court granted the parties’ joint motion to seal (Doc. 511) as stated on the record (*see* Doc. 516). The lodged joint memorandum and exhibits (Doc. 512) have been filed under seal. By **April 12, 2024**, counsel shall refile on the public docket the joint memorandum, redacted where necessary, with single sheets indicating “filed under seal” for Exhibits A through D, and full copies of Exhibits E through I.

II. Proposed Case Management Orders (CMOs).

A. Second Amended CMO 7.

Pursuant to CMO 15 (Doc. 465 at 2), Plaintiffs filed an Amended Master Complaint that adds the port reservoir claims (Doc. 494) and Defendants filed an Amended Master Answer (Doc. 517-1). The parties agreed to revise Amended CMO 7 (Doc. 145) and the Master Short-Form Complaint (Doc. 121-1) to reflect the updated docket numbers.

1 The parties have submitted the proposed Second Amended CMO 7. Doc. 499. The
2 Court has reviewed the order and will adopt it with one change. The Court will delete this
3 sentence at the end of page one: “The approved Short-Form Complaint is attached to this
4 Order.” Doc. 499 at 1. The Court will attach the revised Short Form-Complaint to a
5 separate order. *See, e.g.*, Doc. 121.

6 **B. Privilege Log Protocol.**

7 The parties have proposed a CMO on the privilege log protocol. Doc. 512-8. The
8 Court has reviewed the order and will adopt it with the changes discussed during the
9 conference.

10 **C. Preservation Protocol.**

11 The parties have submitted a revised CMO on the evidence preservation protocol.
12 Docs. 512-9 – 512-13; *see* Doc. 465 at 2. The Court has reviewed the order and will adopt
13 it with two changes to the last paragraph on page 10 – removing the language directing the
14 Clerk to file the order and correcting the Court’s website address. *See* Doc. 512-9 at 10.

15 **D. Deposition Protocol.**

16 The parties previously submitted a proposed CMO on the deposition protocol.
17 Doc. 457. At the fourth Case Management Conference, the Court and parties discussed a
18 number of issues in the proposed protocol, including whether the seven-hour time limit for
19 depositions should include all parties’ questioning. *See* Doc. 457 ¶¶ 13, 21; Doc. 465
20 at 1-2. The Court remains convinced that, absent mutual agreement of the parties, all
21 depositions should be limited to seven hours.

22 The parties have submitted a revised CMO on the deposition protocol. Doc. 512-6.
23 The parties agree that: (1) for former employees, agents, and consultants of a Defendant
24 who are not represented at the deposition by counsel for a Defendant, five hours of the
25 deposition time shall be allocated to the noticing parties and two hours shall be allocated
26 to the defending parties (¶ 21(a)); (2) for treating physicians being deposed in case-specific
27 discovery, the seven-hour deposition time shall be divided evenly between the parties
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1 (¶ 21(b)); and (3) for all other third-party depositions, the parties shall meet and confer to
2 agree upon the appropriate division of the seven-hour deposition time (¶ 21(c)).

3 The parties disagree on the appropriate amount and division of deposition time for
4 current and former employees, agents, and consultants of a Defendant who are represented
5 at the deposition by counsel for a Defendant. *See* Doc. 512-6 at 6-8, ¶ 13. Plaintiffs
6 contend that the seven-hour limit for such depositions should be applied only to the
7 noticing parties' direct examination of the witness and not the defending parties'
8 questioning or any follow-up questions by the noticing parties. Docs. 512 at 22-23, 512-6
9 at 6. Defendants counter that the seven-hour limit should include all parties' questioning
10 and that five hours should be allocated to the noticing parties and two hours to the
11 defending parties. Docs. 512 at 23-24, 512-6 at 7-8. Having considered the arguments
12 made in the parties' joint memorandum and during the conference, the Court concludes
13 that these depositions should be limited to seven hours total, with six hours allocated to the
14 noticing parties and one hour to the defending parties. The noticing parties may reserve
15 some of their allotted six hours for follow-up questions after defendants' one hour of
16 questioning.

17 The parties shall revise the proposed CMO accordingly and resubmit it to the Court
18 by **April 12, 2024**.

19 **III. Bellwether Selection Process.**

20 The schedule for the bellwether selection process set forth in CMO 10 (Doc. 115)
21 shall remain in place. If Defendants conclude that the number of new case filings in the
22 next several weeks requires an adjustment of the April 1, 2024 deadline for the Initial
23 Plaintiff Pool, they should raise the issue with the Court as soon as possible.

24 **IV. Common-Issue Discovery.**

25 The parties have agreed on a search methodology for documents (technology
26 assisted review), and on the identities of nearly all proposed custodians. Defendants have
27 agreed to produce documents from 60 custodial files on a rolling basis and according to
28 the schedule set forth below. By **July 15, 2024**, the parties shall meet and confer to

1 determine whether an additional 16 custodial files should be produced. *See* Doc. 512 at
2 3-4. If the parties cannot agree on this issue, they should raise the dispute with the Court
3 promptly.

4 The schedule for production of custodial files is as follows: (1) productions from
5 the first group of 30 custodial files shall be substantially complete by **July 1, 2024** and the
6 custodians will be deposed in **August and September, 2024**; (2) productions from a
7 second group of 30 custodial files shall be substantially complete by **August 15, 2024** and
8 the custodians will be deposed in **October and November 2024**; and (3) productions from
9 any additional custodial files shall be substantially complete by **October 15, 2024** and the
10 custodians will be deposed in **December 2024 and January 2025**. *See* Doc. 512 at 4.

11 The parties shall meet and confer regarding successor liability custodians and
12 non-custodial sources by **April 26, 2024**. If the parties cannot agree on either of these
13 issues, they should raise the dispute with the Court promptly.

14 The parties disagree on whether Defendants should be required to produce
15 documents from the custodial file of Timothy Ring, a former Bard CEO and a current
16 director of Becton, Dickinson and Company. *See* Doc. 512 at 4-13. After considering the
17 parties' positions presented in the joint memorandum and at the conference, the Court will
18 not require the production of documents from Mr. Ring's custodial file at this time. The
19 relevancy and uniqueness of his file will be better evaluated after other clearly relevant
20 custodial files have been produced. As a result, if Plaintiffs still believe that production of
21 documents from Mr. Ring's custodial file should be required after reviewing the first group
22 of 30 custodial files, they may raise the issue with the Court.

23 **V. Plaintiff Profile Forms (PPFs).**

24 The issue of incomplete PPFs was addressed at the fourth Case Management
25 Conference on March 1, 2024 and in CMO 15. *See* Doc. 465 at 6-7. Following the
26 conference, Plaintiffs' Leadership Counsel began working directly with counsel for
27 individual Plaintiffs on whom Defendants have served PPF deficiency notices to help
28 resolve the various deficiencies. Despite these efforts, incomplete PPFs continue to be a

1 problem. *See* Doc. 512 at 13-16. The Court reiterates that full compliance with CMO 8
2 (Doc. 113) is important to ensure the fairness and efficiency of these proceedings. *See*
3 Doc. 465 at 7.

4 The **May 1, 2024** deadline for Plaintiffs identified in CMO 15 to complete their
5 production of full PPFs remains in place. *See id.* at 7, 10-17. Defendants may raise any
6 concerns or request leave to file motions to dismiss at the sixth Case Management
7 Conference on May 10, 2024.

8 **VI. Defendant Profile Forms (DPFs).**

9 The approved DPF requires Defendants to provide information regarding each sales
10 representative, territory manager, and district manager who was assigned to the territory
11 where the healthcare providers identified in a PPF are located. Doc. 113-2 at 1-2. Plaintiffs
12 assert that Defendants have failed to provide information about “sales representatives” in
13 certain DPFs. Doc. 512 at 16-18.

14 This issue was discussed and resolved at the conference. Defendants are required
15 to disclose in each DPF the name of any Defendant representative who marketed products
16 at issue in this case to any relevant healthcare provider or healthcare facility, and
17 Defendants shall state in the DPF that to the best of their knowledge they have disclosed
18 all such individuals.

19 **VII. Future Joint Submissions.**

20 As the parties prepare joint reports for case management conferences, they shall
21 exchange drafts of the joint reports at least **four business days** before the filing deadline
22 and responses to each side’s proposed submissions **two days** before the deadline.
23 Additional matters may be included in the joint report if exceptional circumstances arise.

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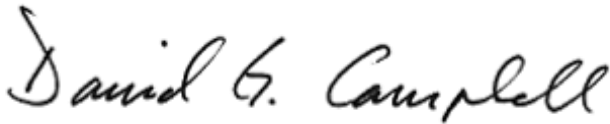
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1 **VIII. Next Case Management Conference.**

2 The next Case Management Conference will be held via Zoom video conference on
3 **May 10, 2024 at 10:00 a.m.** (Arizona time). By **May 7, 2024**, the parties shall jointly file
4 a report addressing issues to be discussed during the conference.

5 Dated this 4th day of April, 2024.

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David G. Campbell
10 Senior United States District Judge
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