



**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

**CHIEF JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson**

**This document relates to:
ALL ACTIONS.**

CASE MANAGEMENT ORDER NO. 5

Preservation of Records

On August 2, 2018, pursuant to 28 U.S.C. § 1407, the Judicial Panel on Multidistrict Litigation consolidated for pretrial purposes numerous cases before this Court. This Order governs the preservation of potentially relevant documents, data, and tangible things within the parties' possession, custody and/or control pertaining to claims and defenses in the cases that have been consolidated before this Court, and with respect to every action that may in the future be transferred to this Court that involve claims of personal injury from Defendants' polypropylene hernia mesh products.

In order to ensure the maintenance and preservation of potentially discoverable records and other evidence, this Court **ORDERS** the parties to preserve records and other evidence, as follows:

- (1) All parties, their employees, and their counsel shall take appropriate efforts to preserve evidence that may be relevant to this action. The duty extends to a party's documents, data, and tangible things in the possession, custody and/or control of the party.

Appropriate efforts include notifying agents or contractors who possess documents that are within a party's control that are reasonably anticipated to be subject to discovery in this action.

- (2) "Documents, data, and tangible things" is to be interpreted broadly, to include a party's: writings; records; files; correspondence; reports; memoranda; calendars; diaries; minutes; electronic messages; voicemail; email; telephone or tablet text messages; telephone message records or logs; computer and network activity logs; hard drives; backup data; removable computer storage media such as tapes, disks, and cards; printouts; document image files; web pages; social media; databases; spreadsheets; software; books; ledgers; journals; orders; invoices; bills; vouchers; checks; statements; worksheets; summaries; compilations; computations; charts; diagrams; photographs; videos; graphic presentations; drawings; films; charts; digital or chemical process photographs; video, phonographic, tape, or digital recordings or transcripts thereof; drafts; jottings; medical records and bills; and notes. Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, directories and metadata, is also included in this definition.
- (3) "Preservation" is to be interpreted broadly to accomplish the goal of maintaining the integrity of all documents, data, and tangible things reasonably anticipated to be subject to discovery in this action under applicable law(s) and FED. R. CIV. P. 26, 37(e), 45, and 56(e). Preservation includes taking all necessary steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of such material, as well as negligent or intentional handling that would make material incomplete or inaccessible.

(4) If the business practices of any party involve the routine destruction, recycling, relocation, or mutation of such materials, the party must either:

- a) Halt such business processes,
- b) sequester or remove such material from the business process, or
- c) arrange for the preservation of complete and accurate duplicates or copies of such material, suitable for later discovery if requested.

(5) This Order takes effect on the date below. Any controversy surrounding any alleged failure to comply with the applicable rules and/or law(s) pertaining to preservation that occurred prior to the date of this Order may also be brought before to this Court throughout the duration of this MDL if it pertains to discovery surrounding the products at issue in this MDL and/or the underlying facts, claims, or defenses arising therefrom. For any cases filed after the date of entry of this Order that are filed directly or transferred to this MDL, the duties described in this Order arises upon the reasonable anticipation of litigation or on the date a complaint/short form complaint is filed, whichever comes first. This Order will remain in effect until either this MDL is terminated or this Order is changed by another order of this Court.

Nothing in this Order shall be construed to eliminate or otherwise abrogate or expand or supplement any duties imposed under applicable law(s) pertaining to preservation of evidence and the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

10-25-2018
DATE


EDMUND A. SARGUS, JR.
CHIEF UNITED STATES DISTRICT JUDGE

10/26/2018
DATE


KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE