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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. 2**

(Applies to All Actions)

The Court held a case management conference with the parties on September 18, 2023. *See* Doc. 39. Before the conference, the parties submitted a joint memorandum setting forth positions of Plaintiffs and Defendants on various issues. Doc. 23. This order will reflect decisions made at the conference. The parties should note that the dates contained in section V below are different than those announced by the Court during the conference.

I. Plaintiffs' Leadership Counsel.

The Court has entered Case Management No. 1, which establishes Plaintiffs' Leadership Counsel for one year in this MDL. By **October 13, 2023**, Plaintiffs' Leadership Counsel shall submit to the Court a proposed case management order concerning: (a) the duties and authority of Plaintiffs' Leadership Counsel in coordinating pretrial practice in this MDL; (b) the establishment and operation of a common fund for eventual payment and reimbursement of attorneys and their firms for common benefit work; (c) a procedure for auditing the common benefit work of Plaintiffs' attorneys and their firms; (d) the requirements for attorneys and their client to access and pay for common benefit work

1 product;¹ (e) a procedure for making quarterly reports to the Court regarding the audits and
2 the common benefit work performed by attorneys and their firms; (f) guidelines for
3 eventual fee applications and cost reimbursement, including record-keeping requirements,
4 time-keeping requirements (*see, e.g.*, Local Rule of Civil Procedure 54.2(e)), staffing
5 limitations for various tasks, acceptable hourly rates, when travel time can be billed,
6 reimbursable expenses (what is and is not reimbursable), and acceptable levels of expense
7 reimbursement; and (g) periodic status reports on coordination with state cases and other
8 relevant matters.

9 **II. Protective and Rule 502 Orders.**

10 By **October 27, 2023**, the parties shall jointly submit to the Court a proposed
11 protective order for this MDL, including Rule 502 provisions if warranted. If the order
12 addresses the filing of confidential documents in court, it shall not say that such documents
13 may be filed under seal. Instead, it should say that any party seeking to file a confidential
14 document under seal shall comply with Local Rule of Civil Procedure 5.6.

15 **III. ESI Protocol.**

16 By **October 27, 2023**, the parties shall jointly present to the Court an ESI Protocol
17 addressing format of production, preservation, and other relevant ESI-discovery matters.
18 If the parties are unable to reach agreement on all aspects of the ESI Protocol, they shall
19 file a joint protocol setting forth language for areas of agreement and the parties’ respective
20 proposed language for areas of disagreement.

21 **IV. Preservation Order.**

22 By **October 27, 2023**, the parties shall jointly present to the Court a proposed
23 preservation order. If the parties are unable to reach agreement on all aspects of the
24 proposed order, they shall file a proposed order setting forth language for areas of
25 agreement and the parties’ respective proposed language for areas of disagreement.

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28 ¹ The parties should adopt procedures similar to those used in the Bard IVC Filter
Litigation, as described in *In re Bard IVC Filters Prods. Liab. Litig.*, 603 F. Supp. 3d 822
(D. Ariz. 2022), *aff’d*, No. 22-15872, 2023 WL 5441793 (9th Cir. Aug. 24, 2023).

1 **V. Pleading and Filing Procedures.**

2 By **October 27, 2023**, the parties shall provide to the Court a master complaint
3 drafted by Plaintiffs and the template of a short-form complaint agreed upon by the parties.
4 The parties shall also submit to the Court a proposed case management order which
5 provides that the master complaint and master answer (discussed below) will be filed in
6 the master docket in this MDL proceeding; that new cases may be filed directly in the
7 District of Arizona using the short-form complaint; that filing of a short-form complaint in
8 the District of Arizona will not mean that the trial in that case will be held in Arizona, but
9 instead will mean that the case will be transferred to the appropriate home district at the
10 conclusion of this MDL; that Defendants' notice of appearance in each case will be deemed
11 to incorporate the master answer and will constitute an answer in response to the short-
12 form complaint; and that service of process in cases filed in the District of Arizona using
13 the short-form complaint may be made by email on defense counsel.

14 By **November 9, 2023**, the parties shall provide to the Court a master answer drafted
15 by Defendants. At the case management conference, the Court extended Defendants'
16 deadline for responding to pending complaints until the master answer is filed in this MDL.

17 **VI. Motions to Dismiss.**

18 The Court has denied all pending motions to dismiss without prejudice. On
19 **November 9, 2023**, the parties shall file a joint memorandum (the "Joint Memorandum")
20 that describes the motions to dismiss, if any, Defendants propose to file in response to the
21 master complaint. Defendants and Plaintiffs should discuss these proposed motions to see
22 if agreement can be reached on which motions are warranted. If Plaintiffs oppose motions
23 proposed by Defendants, they shall explain their opposition in the Joint Memorandum.

24 **VII. Bellwether Selection, Discovery, and Trial.**

25 The Joint Memorandum shall set forth the parties' joint proposals on bellwether
26 selection, discovery, and trial. This discussion should include the proposed use of
27 affirmative disclosures, such as Plaintiff and Defendant fact sheets, as part of bellwether
28 discovery. It should also include a schedule for all events related to the bellwether

1 litigation. The parties are directed to the Court’s bellwether procedures in the Bard IVC
2 Filter MDL for guidance.

3 **VIII. Discovery.**

4 **A. Affirmative Disclosures.**

5 The Joint Memorandum shall include a joint proposal for Plaintiff profile forms and
6 Defendant profile forms to be filed in connection with each case in this litigation. Copies
7 of the proposed profile forms shall be attached. The parties shall also jointly propose the
8 schedule on which profile forms will be disclosed by Plaintiffs and Defendants going
9 forward in this litigation.

10 **B. Common Fact Discovery.**

11 The Joint Memorandum should include a joint proposed schedule for the completion
12 of common fact discovery. As noted at the case management conference, the Court intends
13 to complete fact and expert discovery in time to complete bellwether trials by September,
14 2026.

15 **C. Common Expert Discovery.**

16 The Joint Memorandum shall set forth a proposed schedule for the full and complete
17 disclosure of expert reports, as required by Federal Rule of Civil Procedure 26(a)(2)(A)-
18 (C), for Plaintiffs’ common experts, Defendants’ common experts, Plaintiffs’ common
19 rebuttal experts, and common expert depositions.

20 **D. Scope of Discovery.**

21 The Joint Memorandum should address the parties’ proposed scope of discovery,
22 including the extent of discovery to be conducted of defense witnesses.

23 **IX. Successor Liability.**

24 The Joint Memorandum should address the issue of successor liability. Specifically,
25 if Defendants assert that the potential liability of one or more Defendants is limited to a
26 particular period of time, a particular product, or a particular category of successor liability,
27 or is limited in some other way related to the concept of successor liability, the parties shall
28 discuss and describe their views on this issue and a procedure for resolving disagreements.

X. Common Document Depository.

Plaintiffs’ counsel suggested at the case management conference that a joint document depository may be beneficial to both sides of this litigation. The parties should discuss this idea and their views in the Joint Memorandum.

XI. Next Case Management Conference.

The Court will hold a second case management conference on **November 16, 2023 at 1:30 p.m.** The purpose of the conference will be to address matters raised in the Joint Memorandum and the various filings identified above. The Court will establish a discovery schedule on the basis of the parties’ submissions and discussions at the conference.

XII. Other Matters.

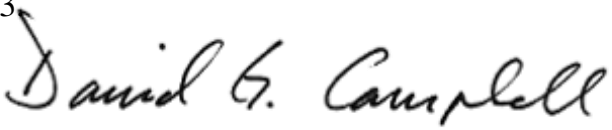
A. Discovery Disputes.

The parties shall not file written discovery motions without leave of Court. If a discovery dispute arises, the parties promptly shall contact the Court to request a telephone conference concerning the dispute. The Court will seek to resolve the dispute during the telephone conference, and may enter appropriate orders on the basis of the telephone conference. The Court may order written briefing if it does not resolve the dispute during the telephone conference.² Parties shall not contact the Court concerning a discovery dispute without first seeking to resolve the matter through personal consultation and sincere effort as required by Local Rule of Civil Procedure 7.2(j).

B. Briefing Requirements.

All memoranda filed with the Court shall comply with Local Rule of Civil Procedure 7.1(b) requiring 13-point font in text and footnotes. Citations in support of any assertion in the text shall be included in the text, not in footnotes.

Dated this 19th day of September, 2023



David G. Campbell
Senior United States District Judge

² The prohibition on “written discovery motions” includes any written materials delivered to the Court, including correspondence with attachments.