

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation,

No. MDL 15-02641-PHX DGC

**CASE MANAGEMENT ORDER
NO. 13**

The Court held a fourth Case Management Conference with the parties on June 21, 2016. The conference was scheduled to address ongoing matters and a number of issues identified in Case Management Order No. 10 (Doc. 1319).

A. ESI Discovery.

The Court addressed the discovery dispute identified in the parties' matrix regarding ESI discovery and custodians. Doc. 1756. The parties have made considerable progress in agreeing on custodians to be searched or revisited, and the development of search terms. After considering arguments from the parties about the matrix dispute, the Court concluded that Defendants' ESI searches should include the regional sales managers identified in the matrix. *See* Doc. 1756 at 5. The Court is persuaded that these regional sales managers had direct responsibility for Defendants' sales force throughout the nation and likely will possess relevant information.

B. FDA Warning Letter.

The Court addressed issues raised by the parties in a matrix of disputes related to the FDA warning letter. Doc. 1471. The first, second, and fourth issues raised in the matrix (Plaintiffs' deposition request no. 7, Plaintiffs' deposition request no. 8, and Plaintiffs' request for production no. 35) concern discovery of internal communications

1 related to the FDA warning letter and related actions. Counsel advised the Court that
2 Defendants have agreed to include in the ESI discovery search 11 of the 17 individuals
3 identified by Plaintiffs, and that the parties will continue discussing the remaining six
4 individuals Plaintiffs have identified. As a result, the parties agreed that the Court need
5 not rule on this issue.

6 The Court addressed the fourth dispute (Plaintiffs' request for production no. 26)
7 regarding Plaintiffs' request for the complete employment files of Messrs. Modra,
8 Uebelocker, Wheeler, and Ludwig. After listening to the parties' arguments, the Court
9 concluded that Defendants need not produce the entire employment files for these
10 individuals. But Defendants shall produce, under the protective order, documents from
11 the files relating to any internal discipline, reprimands, adverse consequences, negative
12 employment reviews, or comparable information, taken against any of these four
13 individuals on the basis of under-reporting or non-reporting addressed in the FDA
14 warning letter.

15 The final issue raised in the matrix concerned Plaintiffs' request for the "files" of
16 Messrs. Ring, Williamson, and Gaede related to the FDA investigation and warning
17 letter. Defense counsel have agreed to produce ESI from Messrs. Williamson and Gaede,
18 and the parties are discussing the production of ESI from Mr. Ring. The Court concluded
19 that Plaintiffs' request for the "files" of these individuals is vague and imprecise.
20 Plaintiffs should craft more specific requests for production. The Court agreed that ESI
21 to or from these individuals related to the FDA warning letter is relevant and should be
22 produced, but further production will depend on Plaintiffs' issuance of more precise
23 document requests.

24 **C. Deposition Protocol.**

25 The Court reviewed the deposition protocol submitted by the parties. Doc. 1472.
26 The Court will make some minor modifications and issue the protocol shortly.

27 **D. Confidentiality Designations.**

28 The parties' joint report for the status conference (Doc. 1756) noted that Plaintiffs

1 disagree with confidentiality designations Defendants have applied to some documents
2 under the Court's protective order. Plaintiffs have been identifying the designations with
3 which they disagree, pursuant to paragraph 22 of the protective order, and asked whether
4 the Court wishes to rule on these disagreements now or later in the litigation. The Court
5 directed the parties to raise these issues later in the litigation, when documents are to be
6 used in connection with dispositive motions. At that point in the case, a different
7 standard for protection of information will apply and the Court's decision will be
8 informed by the nature of the dispositive motions being filed by each side. In the
9 meantime, if a confidentiality designation creates problems in discovery, the parties
10 should call the Court immediately for a resolution.

11 **E. Discovery Schedule.**

12 The Court discussed the existing October 28, 2016 fact discovery deadline with
13 the parties. *See* CMO 8, Doc. 519. Both sides stated that discovery was proceeding well
14 and that the deadline does not present concerns.

15 **F. Mature Cases.**

16 The Court requested an update on the 10 mature cases that are likely to be
17 remanded before other cases in this MDL. *See* Doc. 1485 at 2. In the joint report to be
18 filed before the next Case Management Conference, the parties should address these
19 cases and identify projected dates by which they will be returned to their original
20 districts.

21 **G. Recently Filed Class Action.**

22 The parties advised the Court that Plaintiffs' counsel recently have filed a medical
23 monitoring class action, which was assigned to this Court. *See Barraza, et al. v. CR*
24 *Bard, Inc., et al.*, Case No. CV-16-1374-PHX-DGC (D. Ariz. May 5, 2016). The parties
25 stipulated on the record that the class action may be consolidated with this MDL. The
26 Court will enter a separate order consolidating the cases. The parties also agreed that the
27 fact discovery deadline of October 28, 2016, will apply to the class action. In the joint
28 report to be filed before the next Case Management Conference, the parties shall provide

1 the Court with a proposal regarding the remaining litigation schedule for the class action.
2 Specifically, the parties should address when a motion for class certification will be filed,
3 what expert discovery is needed before that motion is filed, and whether other deadlines
4 in the MDL, such as the deadlines for disclosure of merits-related expert reports, will
5 apply in the class action.

6 **H. Next Case Management Conference.**

7 The Court will hold the next Case Management Conference on **August 23, 2016**
8 **at 10:00 a.m.** The parties shall provide the Court with a joint status report on issues
9 mentioned in this Order and any issues they wish to address at the conference on or
10 before **August 17, 2016.**

11 Dated this 21st day of June, 2016.

12
13
14 

15 _____
16 David G. Campbell
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28