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:
Johns v. CR Bard et al.,
Case No. 2:18-cv-1509

ORDER REGARDING PRESERVATION OF OBJECTIONS

On July 19 and July 21, 2021, the Court held two final pretrial conferences for this case, the first bellwether trial of this multidistrict litigation. As was set forth in Case Management Order No. 23-F, the parties were to submit unresolved objections to video deposition designations and exhibits to the Court so that the objections could be resolved during these conferences. (ECF No. 447 at PageID #22718–19.) The Court issued seven reasoned opinions on June 28, 2021, which meant objections to deposition designations and exhibits were due to the Court on July 8, 2021. (*Id.*) To accommodate the parties, the Court extended this deadline to July 18 for objections to deposition designations and July 20 for objections to exhibits—less than one day before the conferences intended to address these objections.[1]

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[1] The Court has released over thirty reasoned opinions dealing with nearly fifty motions in limine and nearly twenty expert witnesses, which the parties received more than a month in advance of trial. The only pending motions are either not yet fully briefed or have been pending for less than five business days, which encompassed these two full-day pretrial conferences. The Court has been more than willing to resolve issues raised by the parties ahead of trial for the sake of efficient and organized trial management.

The thousands of objections presented by the parties spanned thousands of pages, making it impossible for the Court to adjudicate all of these objections during any final pretrial conference, but especially under the circumstances here, where the Court had mere hours to review the objections. Skilled trial counsel understands that this is a losing proposition. The objections to the deposition designations ranged from highly substantive to entirely trivial. For example, the first defense objection was to Plaintiff counsel's opening lines in Stephen Eldridge's deposition: "Good morning, Mr. Eldridge. My name is Tim O'Brien. I represent the plaintiff in this matter." Nevertheless, the Court and counsel engaged in what would become a line-by-line review of a deposition spanning more than four hundred pages, though only sixty percent, by Defense counsel's estimate, was completed at the end of a full day. The parties have twelve video deposition designations with objections. Unsurprisingly, the Court instructed the parties to meet and confer on their remaining objections and to develop a new approach for the resolution of these objections ahead of the day during trial when the deposition would be played for the jury.

To the parties' credit, the second final pretrial conference was more fruitful. The Court was able to adjudicate the objections presented to it by the end of the day. The parties presented a subset of objections to the exhibits they were most likely to offer at trial and that they believed would facilitate the resolution of other objections. However, the parties inquired whether other unpresented objections should be filed on the docket to preserve their objections. Objections that have not been presented to the Court cannot be preserved because there has been no adjudication of the objection. It is now necessary to clarify the presentation, resolution, and preservation of objections that the Court was

unable to address during these conferences.

The Court may have given the impression that it was disinclined to rule on the objections to deposition designations and exhibits, but this is not the case. The parties have the right to offer any relevant evidence and to object to evidence at trial, and the Court will rule on these objections. But the parties will not be permitted to file objections on the docket that the Court could not consider. This would lead to a nightmarishly unclear record that would impact these proceedings, as well as any proceeding on appeal. The Court has the prerogative, and obligation, to ensure an orderly trial, which has thus far been thwarted by the thousands of objections presented to the Court less than ten business days from trial. This will not be permitted to frustrate the timely commencement of trial.

With this in mind, the parties shall do the following. Objections must be timely raised so that the Court can resolve them in an efficient and orderly manner. The parties will develop a different system to achieve this, since the weight from to the sheer volume of objections buckled the Court's typical mode of operation, which has until now been successful—even in other multidistrict litigation. For instance, the Court is prepared to meet with the parties before trial proceedings start each day to address issues in advance of the evidence to which the parties object being offered. The parties will have to endeavor, to some extent, to resolve between themselves objections that may have nominal use at a deposition that have no conceivable utility at trial, such as an objection to the introduction of opposing counsel to a witness. The Court makes clear that it has never barred exhibits that have not been pre-reviewed during pretrial conferences. But the parties are reminded that they cannot publish exhibits to the jury via electronic display

system before the Court has resolved objections to the exhibits and admitted them. As

for the depositions, the video depositions will be presented at trial and objections dealt

with in real time if necessary.

Accordingly, the parties shall present to the Court a new system for dealing with

these objections at the time the Court schedules oral argument on the Composix Kugel

related objections next week.

IT IS SO ORDERED.

7/22/2021 _____   **s/ Edmund A Sargus, Jr.** _____
DATE   **EDMUND A. SARGUS, JR.**
                                                       UNITED STATES DISTRICT JUDGE