

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT  
DOCKET NO.

THIS DOCUMENT RELATES  
TO ALL CASES

**IN RE: DAVOL/ C.R. BARD HERNIA MESH**

**[PROPOSED] PROCEDURAL ORDER NO. 1**

1. This Order shall govern all actions subject to Administrative Order No. 2017-02 and currently pending in the IN RE: DAVOL/ C.R. BARD HERNIA MESH docket and to all future cases filed and/or transferred into the docket. In 2007, this Court set up a multi-case management coordinated proceeding for cases primarily involving Davol/C.R. Bard Composix Kugel Hernia Patch. While the litigation focused on the Composix Kugel Hernia Patch, some cases involved other Bard hernia products such as the Composix E/X Mesh, Ventralex Hernia Patch, Composix Hernia Patch, Kugel Hernia Patch, CK Parastomal Patch and Modified Kugel Patch. See Administrative Order No. 2007-6. Significant discovery was done as part of that coordinated proceeding with a primary focus on the Composix Kugel products. Subsequently, on May 5, 2017, this Court set up a multi-case management coordinated proceeding for all subsequent filings alleging personal injuries from Davol/C.R. Bard hernia mesh products. Administrative Order No. 2017-02. The discovery conducted as part of the proceeding under Administrative Order No. 2007-6 may be used in this proceeding as if it had been conducted pursuant to Administrative Order No. 2017-02. Nothing about

the previously conducted discovery shall preclude Plaintiffs from seeking additional or new discovery in this Coordinated Proceeding nor shall Defendants be limited in any way in opposing or seeking limits on any newly served discovery based on the previous discovery done. The parties shall work in good faith on all discovery issues. The scope of this coordinated proceeding will be detailed in a future procedural order.

### **ELECTRONIC FILE-AND-SERVE**

2. The parties have agreed upon an electronic service (File & Serve Express) for the service of all papers in this litigation. All documents filed with the Court shall be filed in the manner specified by the Rhode Island Superior Court Rules.

### **LEAD AND LIAISON COUNSEL**

3. Liaison Counsel: There are matters common among all plaintiffs and all defendants that require the coordinated efforts of counsel, including discovery, communications with the Court, and motion practice, and the appointment of liaison counsel would aid in these efforts. Plaintiffs' liaison counsel shall (1) serve as the primary contact for communication between the Court and other plaintiffs' counsel; (2) ensure that all notices, orders and material communications are properly distributed (to the extent they are not otherwise served on plaintiffs' counsel); and (3) otherwise assist in the coordination of activities and positions of plaintiffs in this litigation.

4. Plaintiffs' Lead Counsel will be "[c]harged with formulating (in consultation with other counsel) and presenting positions on substantive and procedural issues during the litigation."<sup>1</sup> Importantly, Lead Counsel will provide a focal point of accountability for, *inter alia*, "working with opposing counsel in developing and implementing a litigation plan, initiating

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<sup>1</sup> See MANUAL FOR COMPLEX LITIGATION, FOURTH (2004), at §10.221.

and organizing discovery requests and responses... and seeing that schedules are met.”<sup>2</sup> Although it is expected that Lead Counsel will “act for the group” as contemplated by the *Manual for Complex Litigation*, it is the intention of the undersigned Plaintiffs’ Counsel to condition certain decisions and actions by Lead Counsel upon approval of the PEC as proposed – especially decisions and actions which entail significant investment of time and/or finances by Plaintiffs’ Counsel generally. Plaintiff’s Lead Counsel shall be empowered to form a Plaintiffs’ Steering Committee (PSC). The PSC will be needed in order to assist with preparing briefs, conducting discovery, and various other necessary tasks required in this litigation. Adopting a PSC will ensure there are a sufficient numbers of attorneys involved to litigate the cases effectively. Plaintiffs’ Lead Counsel shall file a notification with the Court of the appointment of any member(s) of the PSC.

5. Defendants’ liaison counsel and lead counsel shall serve the same function with respect to all defendants in this litigation.

6. Donald A. Migliori/ Jonathan D. Orent of Motley Rice LLC are hereby appointed Plaintiffs’ Liaison Counsel. Donald A. Migliori/ Jonathan D. Orent of Motley Rice LLC and Henry G. Garrard III/ James B. Matthews of Blasingame Burch Garrard Ashley P.C. are hereby appointed as Plaintiffs’ Co-Lead Counsel.

7. Michael Brown and Eric Alexander of Reed Smith LLP are hereby appointed as Defendants’ Liaison Counsel. Michael Brown and Eric Alexander of Reed Smith LLP are hereby appointed Defendants’ Lead Counsel.

## **PLEADINGS**

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<sup>2</sup> Id.

8. Defendants' obligation to answer or otherwise respond to complaints in this coordinated proceeding is hereby stayed. Defendants shall file responsive pleadings consistent with the schedule set out below.

9. Plaintiffs' Liaison Counsel shall submit a Master Long Form Complaint ("Master Complaint") to govern all matters pending in this coordinated proceeding before November 15, 2017. The Master Complaint shall identify all products that are part of this coordinated proceeding. The Master Complaint shall not constitute the inception of a new "case or controversy" in this jurisdiction. The filing and service of the Master Complaint does not toll any applicable statutes of limitations or statutes or repose as to any individual Plaintiff, and does not relieve any individual Plaintiff of the requirement to perfect service of process of his or her Short Form Complaint, as described below. All Complaints filed before the filing of the Master Complaint shall be deemed amended by the Master Complaint. To the extent that Defendants have moved to dismiss a Complaint, nothing herein deems that motion moot or obligates Defendants to refile such a motion.

10. Defendants shall then answer or otherwise respond to the Master Complaint within sixty (60) days of service.

11. Plaintiffs' Liaison Counsel shall file a Short Form Complaint by November 15, 2017. This Short Form Complaint shall refer to and adopt the Master Complaint as appropriate. Plaintiff's counsel for each individual plaintiff with a Complaint filed before November 15, 2017, shall file a Short Form Complaint for each case within 60 days of the entry of the Master Complaint.

12. All individual Complaints filed after November 15, 2017, shall be filed and served in the Short Form Complaint format. For these cases, the date of filing of the Short Form Complaint shall be deemed the filing date for all purposes, including any statute of limitations or statute of repose purposes.

13. Defendants are not required to file answers to Short Form Complaints. Defendants' Master Answer shall constitute a denial of all allegations in the Short Form Complaint and an assertion of all defenses that are included in the Defendant's Master Answer. Nothing herein waives the right of Defendants to raise defenses in response to any Short Form Complaint and file a motion pursuant to Rule 12(b) of the Superior Court of Civil Procedure. Such motion shall be filed within twenty (20) days of the filing of the Short-Form Complaint. As to defenses such as lack of capacity or other defenses which may not be known at the time of the filing of the Short Form Complaint, Defendants shall raise such issue within a reasonable time after learning of such defense.

14. When an individual case is selected for case-specific discovery, Plaintiff shall at that time file a full Long Form Complaint specific to that case that will govern the case moving forward. Defendants will file a response to the Long Form Complaint within the time allowed under the Rhode Island Superior Court Rules of Civil Procedure. The procedures for such Long Form Complaints will be set out in more detail in future procedural orders governing the case-selection process.

#### **PRO HAC VICE MOTIONS**

15. A *pro hac vice* motion may be filed in the master IN RE: DAVOL/ C.R. BARD HERNIA MESH docket and shall apply to all cases. An individual attorney need not file a *pro hac vice* motion in each individual case until such time as the case

is selected for trial. Any attorney already admitted *pro hac vice* in a particular case pending in the coordinated proceeding or was previously admitted *pro hac vice* in In re: Kugel Patch (PC-2008-9999) need not file a new motion, but shall be deemed admitted in the master docket for this coordinated proceeding.

**INITIAL CASE MANAGEMENT DEADLINES**

16. By November 20, 2017, the Parties shall submit orders on or be prepared to argue any differences related to each of the following:

- a. Scope of this coordinated proceeding, including necessary discovery parameters.
- b. A Plaintiff Profile Form, Plaintiff Fact Sheet, and Defendant Fact Sheet along with an enabling order.
- c. A process for the collection and exchange of Plaintiff medical records.
- d. A production format agreement for Electronically Stored Information (“ESI”) and a protocol for the collection, search, and production of materials relevant to these cases.
- e. A process for the production of materials that may be considered confidential.
- f. If electronic service of process (or waiver) is desired by the parties, such an order shall be submitted by this date.

**NEXT CASE MANAGEMENT CONFERENCE**

17. The next case management conference shall be held on November 28, 2017, at 9:00 a.m.

**IT IS SO ORDERED.**

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.Taft-Carter, J.

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Clerk

Dated: