

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

**IN RE: KUGEL MESH HERNIA PATCH
PRODUCTS LIABILITY LITIGATION**

THIS DOCUMENT RELATES TO:
John Whitfield v. Davol, Inc. et al., CA
No. 1:07-cv-01918-ML-LDA

*Christopher Thorpe et al. v. C.R. Bard,,
Inc. et al.*, CA No. 1:08-cv-0463-ML-
LDA

Vivian Bruce v. Davol, Inc. et al., CA No.
1:08-cv-0257-ML-LDA

Bridget McElhatton v. Davol, Inc. et al.,
CA No. 1:08-cv-0541-ML-LDA

§
§
§
§
§
§
§
§
§
§
§
§
§

MDL Docket No. 07-1842-ML

Chief Judge Mary M. Lisi

PRETRIAL CASE MANAGEMENT ORDER FOR BELLWETHER CASES

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, it is hereby ORDERED that the trials of the actions selected for bellwether treatment as set forth in Practice and Procedure Order Number 21 in the above-captioned litigation shall commence in March 2010, April 2010, July 2010, and September 2010. To accomplish this, the parties are to take fact discovery in all of the cases selected for bellwether treatment according to the schedule below.

Every effort should be made to settle cases before jurors are summoned for empanelment. Where possible, counsel are to advise the clerk of any such settlement and file a stipulation of dismissal no later than 7 days before the scheduled empanelment date. Jury costs and/or counsel fees may be assessed against one or more of the parties and/or their counsel if the court determines that lateness of settlement was due to unreasonable or vexatious conduct or neglect.

The following discovery and trial schedule is established in the bellwether actions:

I. SCHEDULE FOR JOHN WHITFIELD AND CHRISTOPHER THORPE

A. Fact Discovery

The schedule for fact discovery shall be as follows:

August 17, 2009	Defendants to complete outstanding document production.
October 15, 2009	Parties to serve 'may call' fact witness disclosures.
November 23, 2009	Completion of independent medical examinations ("IME"), should IMEs be ordered by the Court or agreed upon by the parties. Plaintiffs do not waive their rights to object to IMEs.
December 15, 2009	Completion of all fact witness depositions and close of fact discovery.

B. Expert Discovery

The schedule for expert discovery shall be as follows:

November 3, 2009	Parties to serve expert reports.
December 8, 2009	Parties to serve amended and/or rebuttal expert reports.
January 22, 2010	Completion of all liability expert depositions and case specific expert discovery.
February 1, 2010	Deadline for the filing of any <i>Daubert</i> or other motions concerning any expert.

C. Dispositive Motions

The dispositive motion schedule shall be as follows:

February 1, 2010	Dispositive motions to be filed.
February 22, 2010	Opposition papers to dispositive and <i>Daubert</i> motions to be filed.
March 1, 2010	Reply papers to such motions to be filed.
TBD	Oral argument, if necessary.

D. Pre-Trial Proceedings

Pre-trial proceedings shall be governed by the following schedule:

March 1, 2010	Last day for motions <i>in limine</i> to be filed.
March 8, 2010	Parties to serve fact and expert witness lists for trial, including a brief summary of each witness's testimony and a statement as to whether each witness will testify as an expert. (Do not file with Court.)
March 8, 2010	Parties to serve list of all trial exhibits, along with statements of the purpose for which the exhibit is offered. All exhibits shall be pre-marked by the plaintiff in numerical order and by the defendants in alphabetical order. (Do not file with Court.)
March 8, 2010	Parties to file electronically proposed jury instructions.
March 8, 2010	Parties to file electronically proposed <i>voir dire</i> questions.
March 8, 2010	Parties to file pre-trial briefs, setting forth what is expected to be proven in support of their claims or defenses. These briefs shall cite to all supporting law and authorities applicable to the case.
March 8, 2010	Parties to file statements as to probable length of trial.
March 8, 2010	Parties to file oppositions to motions <i>in limine</i> .
TBD	Pre-trial conference to sign a pre-trial order.

E. Trial Proceedings

The trial of John Whitfield (C.A. 07-1918) shall commence in March 2010, and the trial of Christopher Thorpe (C.A. 08-0463) shall commence in April 2010.

II. SCHEDULE FOR VIVIAN BRUCE AND BRIDGET MCELHATTON

A. Fact Discovery

The schedule for fact discovery shall be as follows:

March 18, 2010	Parties to serve 'may call' fact witness disclosures.
----------------	---

April 16, 2010	Completion of IMEs should IMEs be ordered by the Court or agreed upon by the parties. Plaintiffs do not waive their rights to object to IMEs.
May 24, 2010	Completion of all fact witness depositions and close of fact discovery.

B. Expert Discovery

The schedule for expert discovery shall be as follows:

April 23, 2010	Parties to serve expert reports.
May 26, 2010	Parties to serve amended and/or rebuttal expert reports.
June 15, 2010	Completion of all liability expert depositions and case specific expert discovery.
June 25, 2010	Deadline for the filing of any <i>Daubert</i> or other motions concerning any expert.

C. Dispositive Motions

The dispositive motion schedule shall be as follows:

June 25, 2010	Dispositive motions to be filed.
July 16, 2010	Opposition papers to dispositive and <i>Daubert</i> motions to be filed.
July 23, 2010	Reply papers to such motions to be filed.
TBD	Oral argument, if necessary.

D. Pre-Trial Proceedings

Pre-trial proceedings shall be governed by the following schedule:

July 16, 2010	Last day for motions <i>in limine</i> to be filed.
July 23, 2010	Parties to serve fact and expert witness lists for trial, including a brief summary of each witness's testimony and a statement as to whether each witness will testify as an expert. (Do not file with Court.)

July 23, 2010	Parties to serve list of all trial exhibits, along with statements of the purpose for which the exhibit is offered. All exhibits shall be pre-marked by the plaintiff in numerical order and by the defendants in alphabetical order. (Do not file with Court.)
July 23, 2010	Parties to file electronically proposed jury instructions.
July 23, 2010	Parties to file electronically proposed <i>voir dire</i> questions.
July 23, 2010	Parties to file pre-trial briefs, setting forth what is expected to be proven in support of their claims or defenses. These briefs are to cite to all supporting law and authorities applicable to the case.
July 23, 2010	Parties to file statements as to probable length of trial.
July 23, 2010	Parties to file oppositions to motions <i>in limine</i> .
TBD	Pre-trial conference to sign a pre-trial order.

E. Trial Proceedings

The trial of Vivian Bruce (C.A. 08-0257) shall commence in July 2010, and the trial of Bridget McElhatton (C.A. 08-0541) shall commence in September 2010.

Agreed as to Form:

On Behalf of Plaintiffs:

/s/ Donald A. Migliori
Donald A. Migliori (#4936)
MOTLEY RICE LLC
321 S. Main Street, Suite 200
Providence, RI 02903
Tel. (401) 457-7700
Fax: (401) 457-7708

MDL -1842 Plaintiffs' Liaison
and Co-Lead Counsel

On Behalf of Defendants:

/s/ John P. Hooper
John P. Hooper
REED SMITH LLP
599 Lexington Avenue, 22nd Floor
New York, NY 10022
Tel. (212) 521-5400

Michael K. Brown
REED SMITH LLP
355 South Grand Avenue
Suite 2900
Los Angeles, CA 90071
Tel. (213) 457-8000

MDL -1842 Defendant Liaison Counsel

SO ORDERED:

Mary M. Lisi 7/24/09
Mary M. Lisi
Chief United States District Judge

Entered