

**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:
ALL ACTIONS.**

**CASE MANAGEMENT ORDER NO. 55
(Appointment of Special Masters and Implementation of the Intensive Settlement Process)**

Upon the joint agreement of Plaintiffs' Lead Counsel and Bard, the Court hereby appoints Ellen K. Reisman and John Jackson as Special Masters in this MDL. The Special Masters will perform duties as agreed to by Plaintiffs' Lead Counsel and Bard, including assisting in the supervision, oversight, mediation, and/or resolution of any case in this MDL. It is further ordered that the Special Masters will organize and manage a Court-supervised Intensive Settlement Process ("ISP"), which is described in Exhibit A attached to this Order. By this Order, the Court fully adopts and implements the ISP. The Special Masters shall provide quarterly reports to this Court on the status of resolution, including information about the ISP once it has commenced. The Special Master duties are summarized below:

1. All duties should be carried out with reasonable diligence. The Special Masters shall have the authority to carry out the duties described herein, including the authority to require a party and/or its counsel to appear in person for settlement conferences and mediations and otherwise effectuate the ISP. The Special Masters do not have the authority to compel any party to make or accept any specific offer of compromise.

2. The Court is satisfied that no grounds for disqualification exist under 28 U.S.C. §455 as to either Special Master. The Court is familiar with Mr. Jackson¹ and Ms. Reisman² from prior proceedings in this MDL. To the extent the Special Masters wish to withdraw from their roles as Special Masters, the Special Masters will provide written notice to the Court and the parties at least 30 days before they seek to withdraw from their role(s). Any successor(s) to the Special Masters shall be proposed by mutual written agreement of the parties and confirmed by the Court at its discretion.
3. The Special Masters are authorized to communicate with parties or the Court *ex parte* to the extent required, in the exercise of their individual or collective judgment, to carry out their duties pursuant to this Order.
4. Except as requested by the Court or as set forth herein, the Special Masters are not required to preserve or file records related to their activities.
5. Except as set forth below, the reasonable compensation for the Special Masters and reimbursement for expenses reasonably incurred in connection with administration of general duties pursuant to the Order shall be payable as agreed to by Plaintiffs' Lead Counsel and Bard, or as ordered by the Court. The costs of the applicable Special Master in connection with a settlement conference or mediation pursuant to the ISP will be split evenly between Defendants and the group of participating plaintiffs in the particular settlement conference or mediation. The Special Masters shall have the authority to petition the Court in connection with unpaid invoices related to settlement conferences and mediations pursuant to the ISP. Any disputes as to the reasonableness of compensation, reimbursement, or fees requested by the Special

¹ Pursuant to Fed. R. Civ. P. 53(b)(3), Mr. Jackson's Affidavit is attached as Exhibit B to this Order.

² Pursuant to Fed. R. Civ. P. 53(b)(3), Ms. Reisman's Affidavit is attached as Exhibit C to this Order.

Masters shall be addressed by the Court with input from the parties and the Special Masters as the Court may request at its discretion.

6. Any requests for the Special Masters to prepare reports and recommendations or orders on any matter will be the subject of separate Orders.

SO ORDERED this 21st day of November 2024.

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
United States District Judge

EXHIBIT A

Intensive Settlement Process (“ISP”)

1. Beginning on or about January 4, 2027, the Special Masters will schedule conference sessions on a monthly basis, over a two-day period (“Conference Sessions”), to address the (i) cases of Opt-Out Claimants; (ii) Potentially Eligible Substitution Cases that were selected as substitute cases, received an offer of settlement and rejected said offer of settlement; (iii) Potentially Eligible Substitution Cases that were not selected to be a substitute case (“Unsubstituted Cases”);¹ and (iv) cases of Claimants who did not otherwise become Settling Claimants (together, the “Unresolved Claimants”).
2. So long as Administering Counsel and Bard have agreed to their inclusion in the Conference Sessions, cases filed after the entry of the Docket Control Orders may also participate in the ISP. To the extent any case filed after entry of the Docket Control Orders is admitted to participate in the ISP, it shall be bound to the requirements under paragraphs 3-11.
3. Counsel for the Unresolved Claimants may select the Special Master for their clients’ respective Mediations from: Ellen Reisman; Adriane Theis; and John Jackson. The costs for the Special Master will be split as follows: 50% to be paid by Bard and 50% to be paid by the group of Unresolved Claimants in that particular Mediation.
4. The Conference Sessions, including Settlement Conferences and Mediations, will take place in Rhode Island (for cases pending in the R.I. Coordinated Proceeding), Ohio (for cases pending in the Ohio MDL), or any other location designated by the Special Masters.
5. Bard’s Counsel and lawyers representing the Unresolved Claimants (or if an Unresolved Claimant is proceeding *pro se*, the Unresolved Claimant) will be required to appear in-person at the Conference Sessions, with full settlement authority to resolve the case, in an attempt to discuss and resolve their cases (“Settlement Conference”). The Special Master will not appear at the Settlement Conference.
6. The dates of the Conference Sessions will be determined by the chosen Special Master (in conjunction with Administering Counsel and Bard) and will each involve a group of Unresolved Claimants and firms selected by the Special Masters and agreed to by Administering Counsel and Bard.
7. Four (4) weeks before each Settlement Conference, the lawyers representing the Unresolved Claimants (or if an Unresolved Claimant is proceeding *pro se*, the Unresolved Claimant) must provide Bard with a settlement package pertaining to each Unresolved Claimant’s case that is scheduled to be discussed at the Settlement Conference. The settlement packages must include: (i) key medical records relating to the Hernia Repair Product at issue, including product identification, implant records,

¹ Nothing in this ISP Exhibit or the underlying Agreement prevents Bard from including a Potentially Eligible Substitution Case in the ISP if it so chooses.

operative reports relating to revision procedures and/or explant procedures, pathology reports, and doctors' notes; (ii) summary of medical specials and supporting documentation; (iii) medical lien information; and (iv) a settlement demand.

8. If an Unresolved Claimant's case does not settle during the Settlement Conference, Bard's Counsel, the lawyers representing the Unresolved Claimant, and Unresolved Claimant will be required to appear in-person at the next Conference Session for a formal mediation before the chosen Special Master ("Mediation") with full settlement authority to resolve the case. Unresolved Claimant may seek leave from the chosen Special Master to participate remotely or to be excused from participation.
9. One (1) week before the Mediation, the parties will provide *ex parte* to the selected Special Master a confidential Mediation submission that includes a brief factual synopsis of each of the Unresolved Claimants' cases that are set for mediation that month as well as the parties' key arguments in each of the cases. For Unsubstituted Cases, the plaintiff should also submit to the Special Master the Medical Claims Review value for that particular Unresolved Claimant. The parties will not exchange the materials being submitted to the Special Master.
10. For any case that has settled pursuant to the ISP, payment will be made within 30 days of the later of the acceptance of the signed Release by Bard and receipt of confirmation that any Medicare, Medicare Part C, TriCare, Veterans Affairs, and/or Medicaid liens or subrogation interests relating to the Claims alleged by Plaintiff in this Action do not exist or have been properly resolved with Medicare/Medicaid and the Centers for Medicare and Medicaid Services ("CMS") or, alternatively, that a sufficient lien holdback has been established by the Lien Administrator or another lien resolution company.²
11. The ISP shall continue until the Special Masters certify to the Courts that, in their opinion, the ISP has concluded and there are no additional Unresolved Claimants needing to participate in the process.
12. Subject to the exceptions below, during the pendency of the ISP, no Unresolved Claimant will file individual motions for remand or for scheduling orders until a case has both gone through a Settlement Conference, and, as necessary, Mediation, and met the requirements of the applicable Docket Control Order.
 - a) Should any Unsubstituted Cases remain unresolved and have not had an opportunity to participate in the ISP by June 1, 2029, the Plaintiff in that case may elect to opt out of the ISP, at which time they will be required to comply with the applicable DCO, if still in effect, prior to their case getting remanded or being set for trial by the applicable Court.

² To the extent a lien holdback is established by a lien resolution company, Bard will fund the settlement amount of the case that settled pursuant to the ISP (once the conditions set forth in this paragraph are met), minus the lien holdback amount. Once the liens have been fully resolved, the remainder of the settlement funds will be transferred by Bard.

- b) After the ISP has been in operation for a reasonable amount of time, any Claimant who has already complied with the applicable DCO, may seek remand or trial based on either (1) the contention that their case has been unduly delayed in the ISP, or (2) the ISP has not been successful in resolving the Claimant's case. In support of a motion under this provision, Claimant reserves their right to argue undue delay based upon the age of the case, the injuries claimed, the current health of the plaintiff and any other factors mandated in the interest of justice. Bard may oppose any such effort to seek remand or trial.

EXHIBIT B

**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:
ALL ACTIONS.**

DECLARATION OF JOHN JACKSON

JOHN JACKSON deposes and states, pursuant to 28 U.S.C. § 1746:

I am an attorney at law, duly licensed in the State of Kansas and the State of Missouri. I am in good standing in both jurisdictions.

I have thoroughly familiarized myself with the issues and parties involved in the currently pending cases arising from Davol Inc./C.R. Bard Inc.'s manufacture and sale of hernia mesh products. As a result of my knowledge of the proceedings, I attest and affirm that I know of no grounds for disqualification under 28 U.S.C. § 455 that would prevent me from serving as the special master in the matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20 day of November, 2024.



JOHN JACKSON

EXHIBIT C

**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:
ALL ACTIONS.**

DECLARATION OF ELLEN K. REISMAN

ELLEN K. REISMAN deposes and states, pursuant to 28 U.S.C. § 1746:

I am an attorney at law, duly licensed in the State of California and the District of Columbia. I am in good standing in both jurisdictions.

I have thoroughly familiarized myself with the issues and parties involved in the currently pending cases arising from Davol Inc./C.R. Bard Inc.'s manufacture and sale of hernia mesh products. As a result of my knowledge of the proceedings, I attest and affirm that I know of no grounds for disqualification under 28 U.S.C. § 455 that would prevent me from serving as the special master in the matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of November, 2024.

ELLEN K. REISMAN