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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

IN RE: Bard Implanted Port Catheter
Products Liability Litigation

MDL No. 3081

**JOINT MEMORANDUM RE
ISSUES TO BE ADDRESSED AT
THE JUNE 3, 2025 CASE
MANAGEMENT CONFERENCE**

(Applies to All Actions)

Pursuant to Case Management Order No. 34 (“CMO 34”), the Parties submit this Joint Memorandum in advance of the Case Management Conference (“CMC”) scheduled for June 3, 2025. *See* Doc. 3466, at 1.

I. Case Statistics

There are 1,606 cases pending in the MDL. 61 cases have been dismissed from the MDL.

II. State-Court Litigation

There are 96 cases pending in New Jersey MCL centralized before the Honorable Gregg A. Padovano. The Court held an initial Case Management

1 Conference on May 19, 2025. Michael Galpern, the New Jersey liaison in this MDL
2 was named as one of the leads in that litigation, along with Jennifer Elwell of
3 Berger Montague and Chris Geddis of Mazie Slater. The parties are currently
4 working on protective and preservation orders.

5 There are 15 cases pending in the Superior Court of Maricopa County.
6 Thirteen of the pending cases have been consolidated before the Honorable Timothy
7 J. Ryan for purposes of case administration and discovery only. While scheduling
8 orders have been entered for ten of the consolidated cases, initial disclosures have
9 been exchanged and discovery has begun in all thirteen consolidated cases.

10 **III. Expert Disclosures**

11 Pursuant to Case Management Order Nos. 29 and 32, on May 23, 2025,
12 Defendants served their expert disclosure for experts whose opinions rely on
13 physical testing of two MDL Plaintiffs' explanted catheters, and Plaintiffs served
14 rebuttal reports. *See* Docs. 1891, 2897. There are no issues regarding expert
15 disclosures to be addressed with the Court at this time.

16 **IV. Order of Bellwether Trials**

17 **A. Plaintiffs' Position**

18 Pursuant to CMO 35, Plaintiffs propose that the bellwether trials move
19 forward in the following order:

- 20 1. Cook – infection;
- 21 2. Miller – thrombosis;
- 22 3. Divelbliss – fracture;
- 23 4. Lattanzio – infection;
- 24 5. Hicks – thrombosis;
- 25 6. Sorensen – infection.

26 With the exception of Divelbliss, Defendants originally proposed this order
27 to Plaintiffs.

1 Plaintiffs moved Divelbliss from Defendants' originally proposed sixth and
2 final slot to the third slot for a critical reason: If the parties are to resolve the case
3 as efficiently as possible, they need to try at least one of each injury—infection,
4 thrombosis, and fracture. To the extent there is a chance for the parties to resolve
5 the cases early, the only chance of that happening will require the trial of a fracture
6 case so that the parties have complete information. Divelbiss is the only fracture
7 case in the group.

8 Additionally, Plaintiffs believe that Divelbliss is the case that Defendants are
9 most likely to attempt to settle before trial. Should that occur, the parties will need
10 additional time to work up the James case, which they would have while Lattanzio,
11 Hicks, and Sorensen are being tried.

12 To the extent that additional discovery needs to be performed on Divelbliss,
13 that is not material to the ordering of the cases, since all cases are currently
14 scheduled to be worked up and briefed before the end of this year. Even if that was
15 not the case, the parties managed to do the majority of the case workup over a short
16 timeframe of—roughly three months, January to April—and they have longer to
17 complete any lingering depositions—roughly four months, mid-May to mid-
18 September. The most critical depositions have already been taken. And
19 Defendants' argument that they cannot complete discovery before mid-September
20 is mere speculation.

21 Further, to the extent that Divelbliss discovery is for some reason not able to
22 be completed before the September 19 deadline, both the Cook and Miller trials
23 would move forward first, providing cushion that is surely sufficient to complete
24 any lingering discovery. During meet and confer, Defendants posited that they
25 would need 90 extra days to complete discovery in Divelbliss; Plaintiffs dispute
26 that, but even accepting it as true, that would place case-specific briefing completion
27 in March at the latest.

1 Additionally, it is not currently apparent to Plaintiffs that any depositions
2 Defendants contemplate are necessary for either summary judgment or expert
3 briefing, meaning that the parties could continue to take depositions in the case after
4 briefing and before trial.

5 Lest there be any doubt in the Court's mind, on June 16, the parties are due
6 to exchange lists of fact witnesses who they intend to depose during discovery. The
7 parties can include the Court, and Plaintiffs are happy to re-address this issue in
8 more detail at that time, with more information.

9 Finally, positioning Divelbliss third is simply equitable. If the order above
10 is chosen, it is Defendants' chosen order, save a fracture case that they seem to want
11 to avoid. A Defendants' pick will come first, followed immediately by a mutual
12 pick by both Plaintiffs and Defendants (that Defendants must believe is strong for
13 them, given the ordering), followed by Plaintiffs' pick.

14 For all of these reasons, Plaintiffs urge the Court to adopt Plaintiffs' proposed
15 ordering of bellwether trials.

16 Because of the timing of joint memo exchanges, Plaintiffs have not had the
17 opportunity to respond to Defendants' updated position on bellwether ordering and
18 will cover any additional arguments at the hearing.

19 **B. Defendants' Position**

20 Pursuant to Case Management Order No. 35 regarding Bellwether Group 1
21 Cases, the parties were to meet and confer regarding the order in which the
22 Bellwether Group 1 cases are to be tried. Doc. 3513, at 4. The parties met and
23 conferred on May 23, 2025. Defendants' propose the following order for the trials
24 of Bellwether Group 1 cases: (1) Cook; (2) Miller; (3) Lattanzio; (4) Hicks; (5)
25 Sorensen; and (6) Divelbliss.

26 The only point of disagreement among the parties is the position of
27 Divelbliss. Plaintiffs maintain that the case should be the third Bellwether Group 1
28 case tried, while Defendants propose that the case be the sixth case tried. In pressing

1 for the order they advocate, Plaintiffs suggest that an early trial of a Groshong
2 fracture case is necessary to promote resolution of the MDL inventory as a whole.
3 Respectfully, however, Defendants believe Plaintiffs overstate the significance of
4 the case. At least from Defendants' perspective, data obtained from the trial of
5 Divelbliss will have only a marginal impact on Defendants' valuation of the MDL
6 inventory, since fracture cases make up only 16% of the MDL cases, and Groshong
7 catheters are at issue in only 10% of the cases.¹ By contrast, making Divelbliss "one
8 of the later-tried bellwether cases" (Doc. 3513) will ensure that the discovery
9 remaining to be accomplished can be completed.

10 In that regard, Defendants respectfully request a 90-day extension of the
11 discovery period for Divelbliss. Through no fault of Defendants, a large amount of
12 work remains to be accomplished. In the last few weeks alone, Defendants have
13 received more than 10,000 additional pages of medical records that they are in the
14 process of reviewing. During her deposition, Ms. Divelbliss identified a number of
15 health care providers that she had never identified in her Fact Sheet (as the
16 applicable case management order required her to do). Defendants are in the process
17 of collecting records from those providers. Further, despite 30-plus separate
18 contacts from Marker Group (the vendor that collects medical records for the
19 parties), Ms. Divelbliss' primary cardiologist Dr. Dim still has not produced all of
20 his medical records. Defendants have, therefore, had to resort to serving a formal
21 subpoena and are awaiting receipt of those records. Dr. Dim's deposition was held
22 open in part because of missing records, and that deposition cannot be resumed until
23 his missing records are obtained. Perhaps the clearest indication of the amount of
24 work that still remains to be accomplished is that the Plaintiffs' recent supplemental
25
26

27
28 ¹ In fact, only 4% of the MDL cases involve a fracture of a catheter made of
Groshong (as opposed to another material).

list of physicians and providers that may testify at trial in this case included 51 providers that had not been named in their previous disclosure.

Accordingly, Defendants respectfully request a 90-day extension of the Bellwether Group 1 case deadlines in Divelbliss, which would result in the following schedule for that case:

DIVELBLISS SCHEDULE

<u>Action</u>	<u>Former Deadline</u>	<u>New Deadline</u>
Plaintiffs' case-specific expert disclosures	July 2, 2025	September 30, 2025
Defendants' case-specific expert disclosures	July 30, 2025	October 28, 2025
Case-specific rebuttal expert disclosures	August 22, 2025	November 20, 2025
Case-specific expert depositions begin	August 25, 2025	November 24, 2025
Completion of case-specific fact witness depositions	September 19, 2025	December 18, 2025
Completion of case-specific expert depositions	October 3, 2025	January 2, 2026
Case-specific motions to exclude and for judgment	October 28, 2025	January 27, 2026
Responses to case-specific motions	November 25, 2025	February 23, 2026
Replies to case-specific motions	December 9, 2025	March 9, 2026

Plaintiffs downplay the remaining discovery to be accomplished in the Divelbliss case, suggesting that the principal depositions have already been taken. In reality, however, neither side knows at this juncture whether that is truly the case. Ms. Divelbliss' primary claim of injury is a heart arrhythmia she (and her present cardiologist) blames on the fractured catheter. But some of the belatedly identified

1 health care providers appear to have possibly treated Ms. Divelbliss for cardiac
2 issues prior to the fracture of the catheter. The parties simply will not know if that
3 is the case until they obtain and review the records from these providers.

4 Lastly, Plaintiffs will not be prejudiced by an extension of discovery in this
5 single case. The proposed schedule will provide ample time for the case to be tried
6 as a part of the Bellwether Group 1 pool.

7 **V. Discovery**

8 The parties provide the Court with updates on: (A) common-issue fact
9 witness depositions; (B) common-issue expert witness depositions; and (C) case-
10 specific depositions.

11 **A. Common-Issue Fact Witness Depositions**

12 As reported during the March and May Case Management Conferences,
13 common-issue depositions have been completed with the exception of Defendants'
14 non-party subpoenas for Rule 30(b)(6) depositions of representatives of: (1) Dow,
15 Inc., Dow Chemical Company, Inc., Dow Corning Corp., and/or Dow Silicones
16 Corporation ("Dow"); and (2) DuPont de Nemours, Inc., and E.I. du Pont de
17 Nemours & Co. ("DuPont"). A hearing on DuPont's Motion to Quash has been set
18 for June 3, 2025, at 3:00 P.M., to follow the Case Management Conference. Dow's
19 Motion to Quash and Defendants' Motion to Transfer remain pending before the
20 Eastern District of Michigan, Northern Division (Case 1:25-mc-50209-TLL-PTM).

21 **B. Common-Issue Expert Witness Depositions**

22 **1. Plaintiffs' Position**

23 Although Defendants express concern about the time that Plaintiffs have
24 taken to offer deposition dates, Plaintiffs communicated to Defendants that
25 Plaintiffs would be prioritizing proposed dates for those of Plaintiffs' experts who
26 were not anticipated to be offering opinions in rebuttal to Defendants' biomaterials
27 and Research & Development experts – whose reports were only served on May 23,
28 2025. Plaintiffs have proposed dates for all experts in that category as well as one

1 or more experts who may be offering the aforementioned rebuttal opinions.
2 Defendants accepted the proposed dates for four out of these seven experts and
3 indicated on May 23, 2025 that they would be responding further with respect to the
4 other three proposed dates. Following this exchange, Defendants circulated their
5 draft language for this Joint Memorandum, expressing for the first time the position
6 that Defendants are concerned about having adequate time to conduct the
7 depositions of Plaintiffs' experts.

8 **2. Defendants' Position**

9 Pursuant to Case Management Order No. 28, July 25, 2025 is the deadline to
10 complete depositions of common-issue experts (except for Defendants' experts who
11 rely on physical testing of explanted catheters and Plaintiffs' experts who file
12 rebuttals to these experts). Doc. 1891, at 2; Doc. 2897, at 2. On May 6, 2025, counsel
13 for Defendants requested that Plaintiffs' counsel provide dates for the depositions
14 of Plaintiffs' common-issue experts. On May 14, 2025, counsel for Defendants
15 followed-up on the request for deposition dates. Plaintiffs' counsel responded on
16 May 17, 2025, to advise that they expected to provide dates on a rolling basis "early
17 next week." By May 21, 2025, Defendants still had not heard back from Plaintiffs'
18 counsel, and inquired again. As of the date of this submission, Plaintiffs' counsel
19 has provided proposed dates for seven of twelve common-issue experts.

20 With the July 25th deadline less than two months away, it is going to be
21 challenging to complete all of the necessary depositions. That challenge is
22 magnified by Plaintiffs' counsel's delayed response to Defendants' requests for
23 dates.

24 **C. Case-Specific Depositions**

25 **1. Fact Witness Depositions**

26 The parties are to exchange lists of potential fact witnesses they intend to
27 depose by June 16, 2025, and to complete depositions by September 19, 2025. *Id.*,
28

at 2, 5. The parties have no issues regarding Bellwether Group 1 fact witness depositions to address with the Court at this time.

2. Treating Physician Depositions

Pursuant to Case Management Order No. 33, the parties have supplemented the list of treating health care providers they have a good faith belief that they will call as witnesses in their case-in-chief for each Bellwether Group 1 case. Doc. 2937, at 2-3; Doc. 3513, at 4. Depositions of treating health care providers are to be completed by September 19, 2025. Doc. 2937, at 5. The parties have no issues regarding Bellwether Group 1 treating physician depositions to address with the Court at this time.

VI. Plaintiff Profile Forms

A. Plaintiffs' Position

Consistent with the Second Amended CMO 8, the Plaintiffs listed below have either served a complete Plaintiff Profile Form or are still within the 15-day cure period. Two Plaintiffs did not respond within the 15-day cure period, and it is unclear whether they were granted an extension. Leadership is in the process of communicating with Counsel for Astra Venus Peterson (2:25-cv-01015-DGC) and Dianne Brooks (2:25-cv-01010-DGC) to obtain a status update.

Plaintiff	Civil No.	Action	Response to Alleged Deficiency Due	Status
Bouchee, Norma	2:25-cv-00728-DGC		5/2/2025	All alleged deficiencies were cured on 05/28/2025.
Baker, Bilinda	2:25-cv-00576-DGC		5/22/2025	All alleged deficiencies were cured on 05/23/2025.
Swanson, Madeline Vannajean	2:25-cv-00696-DGC		5/27/2025	On 05/21/2025, Plaintiff served a letter via MDL-C indicating that the missing records have been requested and will be supplemented accordingly.

1	Newnham, Vickii	2:25-cv-00918- DGC	5/27/2025	On 05/27/2025, Plaintiff served a letter via MDL-C indicating that she was implanted with a Groshong port and is awaiting medical records.
2				
3	Detrick, Brittany Ann	2:25-cv-00924- DGC	5/27/2025	On 05/27/2025, Plaintiff served a letter via MDL-C indicating that all relevant records in her possession have been produced, and any newly obtained records will be supplemented accordingly.
4				
5				
6				
7	Norris, Tammy	2:25-cv-01058- DGC	5/27/2025	All alleged deficiencies were cured on 05/29/2025.
8				
9	Jenkins, Thomas	2:25-cv-00777- DGC	5/28/2025	On 05/27/2025, Plaintiff served a letter via MDL-C indicating that all relevant records have been provided, that removal records do not exist, and that a 'No Records' response has been produced.
10	Archie (rep. by Miranda Niemic)			
11				
12				
13	Smith, Cathy Jean	2:25-cv-00620- DGC	5/28/2025	On 5/28/2025, Plaintiff served a letter via MDL-C indicating that all responsive records in her possession have been served, and any newly obtained records will be supplemented accordingly.
14				
15				
16				
17	Peterson, Astra Venus	2:25-cv-01015- DGC	5/28/2025	Reached out to Counsel to obtain a status update.
18	Brooks, Dianne	2:25-cv-01010- DGC	5/28/2025	Reached out to Counsel to obtain a status update.
19	Crystal			
20	Pinson, Kathy Ann	2:25-cv-01022- DGC	5/28/2025	On 05/27/2025, Plaintiff served a letter via MDL-C indicating that she disagrees with some of the deficiencies, has provided all relevant records, and has corrected certain medical records.
21				
22				
23				
24	Dick, Teresa (deceased)	2:25-cv-01082- DGC	5/28/2025	All alleged deficiencies were cured on 05/29/2025.
25	(rep. by Christina Neel			
26				
27				
28				

1	Karr, Renee	2:25-cv-00916-DGC	5/28/2025	On 05/27/2025, Plaintiff served a letter via MDL-C indicating that the missing records are not available and has produced a 'No Records' response.
2				
3				
4	Brooks, Cheryl	2:25-cv-01137-DGC	5/28/2025	On 05/26/2025, Plaintiff produced medical records via MDL-C.
5	Sooth, Rhonda Day	2:25-cv-01149-DGC	5/28/2025	On 5/29/2025, Plaintiff served a letter via MDL-C indicating that all responsive records in her possession have been served, and that she has requested additional records which will be supplemented.
6				
7				
8				
9				
10	Gruber, Kristin Karla Eyer	2:25-cv-01050-DGC	5/29/2025	On 05/27/2025, Plaintiff produced medical records via MDL-C.
11				
12	Effiong, Zenobia	2:25-cv-01080-DGC	5/29/2025	On 05/29/2025, Plaintiff produced medical records via MDL-C and filed a First Amended PPF.
13				
14	Yates, Courtney Nicole (rep. Matthew)	2:25-cv-00305-DGC	5/30/2025	On 5/29/2025, Plaintiff served a letter via MDL-C indicating that all responsive records in his possession have been served, and that he has requested additional records which will be supplemented. Additionally, Plaintiff served a First Amended PPF.
15				
16				
17				
18				
19	Arkansas, Terrence	2:25-cv-00790-DGC	5/30/2025	Plaintiff is still within the 15-day cure period.
20	Perdue, Melissa Renee	2:25-cv-00993-DGC	6/2/2025	Plaintiff is still within the 15-day cure period.
21				
22	Zriny, Kathleen	2:25-cv-00994-DGC	6/2/2025	Plaintiff is still within the 15-day cure period.
23				
24	Jones, Serena Nicole	2:25-cv-01031-DGC	6/2/2025	On 5/29/2025, Plaintiff served a letter via MDL-C indicating that all responsive records in her possession have been served, and that she has requested additional records which will be supplemented. Additionally,
25				
26				
27				
28				

1				Plaintiff served a First Amended PPF.
2	Mays,	2:25-cv-01088-	6/2/2025	Plaintiff is still within the 15-day
3	Jospeh Lee	DGC		cure period.
4	(deceased)			
5	(rep. by			
6	Brandon)			
7	Smith,	2:25-cv-01099-	6/2/2025	On 5/28/2025, Plaintiff served a
8	Octavia	DGC		letter via MDL-C indicating that all
9				responsive records in her
10				possession have been served and
11				that she considers the PPF
12				complete.
13	Byrd,	2:25-cv-01105-	6/2/2025	On 5/29/2025, Plaintiff served a
14	Shirley Lee	DGC		letter via MDL-C indicating that all
15	Riley			responsive records in her
16				possession have been served, and
17				that she has requested additional
18				records which will be
19				supplemented. Additionally,
20				Plaintiff served a First Amended
21				PPF.

B. Defendants' Position

The Plaintiffs in the chart below served incomplete PPFs and did not respond to Defendants' deficiency letters within the time allowed. Some Plaintiffs requested extensions (which were granted) but then did not respond, and others simply did not respond at all.² The chart below identifies the Plaintiff, case number, and date the letter identifying the deficiencies was sent. Pursuant to Second Amended CMO 8, Defendants seek an order compelling each of the Plaintiffs to respond to the

² Defendants note that Defendants provided Plaintiffs' Leadership with the list of all Plaintiffs who had not responded as of the first exchange of this Joint Submission (along with the due date). Several Plaintiffs responded (many well past the date set by CMO 8), but many did not cure the deficiency. They simply responded and said they "will produce" records or have produced all the records in their possession. Others produced records, but did not complete the PPF.

1 deficiency letter and fully comply with Second Amended CMO 8 by June 17, 2025.
 2 *See* Doc 2369, at 5 (“If Plaintiff fails to resolve the deficiencies and serve a complete
 3 PPF within the time allowed or fails to contact Defendants’ counsel to explain why
 4 further time is needed to complete the PPF, Defendants may raise a request to
 5 compel a fully complete PPF during a regular CMC. Defendants may apply for their
 6 reasonable attorneys’ fees and expenses incurred in seeking to compel a fully
 7 complete PPF.”).

8	9	10	11
Plaintiff	Civil Action No.	Deficiency Letter Sent	Response to Deficiency Due
Peterson, Astra Venus	2:25-cv-01015-DGC	05/13/2025	5/28/2025
Brooks, Dianne Crystal	2:25-cv-01010-DGC	05/13/2025	5/28/2025
Arkansas, Terrence	2:25-cv-00790-DGC	05/15/2025	5/30/2025
Perdue, Melissa Renee	2:25-cv-00993-DGC	05/16/2025	6/2/2025
Zriny, Kathleen	2:25-cv-00994-DGC	05/16/2025	6/2/2025
Mays, Jospeh Lee (deceased) (rep. by Brandon)	2:25-cv-01088-DGC	05/16/2025	6/2/2025

20 VII. Defendants’ Profile Forms

21 A. Plaintiffs’ Position

22 Defendants have continued to produce Complaint Files and responsive
 23 information to Defendant Profile Form (“DPF”) Section V(2) late. Plaintiffs bring
 24 to the Court’s attention additional cases where Defendants have failed to supplement
 25 this required information for at least 60 days following the original DPF due date.
 26 Those cases are as follows:

Plaintiff Name	Case Number	Original Date Due
1. Blackston, Kimberly	2:24-cv-03548	02/28/2025
2. Claussen, Kelly	2:24-cv-03179	01/26/2025
3. Cortes, Lisandra	2:24-cv-03563	03/28/25
4. Cowell, Tina	2:24-cv-03511	02/28/2025
5. Davis, Tawana	2:24-cv-03549	02/28/2025
6. Hall, Cecilia, on behalf of Cecil Ward	2:24-cv-03130	01/24/2025
7. Hall, Courtney	2:25-cv-00046	03/23/2025
8. Johnson, Anthony	2:24-cv-03658	03/10/2025
9. Otzenberger, Ann	2:25-cv-00149	03/31/2025
10. Palmer-Essex, Linda	2:24-cv-03660	03/08/2025
11. Ruark, Anthony	2:24-cv-03512	02/24/2025
12. Schmits, Theodore	2:24-cv-03551	02/28/2025
13. Terrell, Brandy	2:24-cv-03513	02/21/2025

Additionally, DPF Section V(2) production on the following case will be 60 days late as of the case management conference hearing:

Plaintiff Name	Case Number	Original Date Due
14. Wenzlick, Jodi	2:25-cv-00095	04/03/2025 (will be 60 days late as of 06/01/2025)

This late production has continued despite Defendants' assurances to the Court in the last Joint Status Report that it had taken steps, including hiring additional staff and assigning additional personnel, to cure the admitted "present backlog" associated with producing DPF Section V(2) responsive information. Dkt. 3292, p. 24-25 (04/28/2025). Plaintiffs reiterate that Defendants are fully capable of

1 producing this information on time and, at the very latest, within 60 days of the due
2 date for DPF production, particularly given these previous assurances.

3 Plaintiffs request the Court order Defendants to produce the Complaint Files
4 and complete responsive information to DPF Section V(2) for the above-listed cases
5 within 30 days, or by the time of the next CMC, whichever is sooner. Plaintiffs will
6 continue to request such supplementation within the same timeframe going forward
7 on additional cases.

8 **B. Defendants' Position**

9 Plaintiffs – again without citing any prejudice – reiterate their previous
10 complaints about the delay in producing complaint files with the Defense Profile
11 Forms. As Defendants have explained in previous reports to the Court, the pace of
12 new filings in this MDL has made the investigation and completion of complaint
13 files challenging for Defendants. In response to Plaintiffs' criticisms, and in an
14 effort to comply with the Court's previous direction to "accelerate the pace of
15 producing complaint files", Defendants have hired/assigned additional personnel to
16 assist in handling the complaint investigation process.

17 Plaintiffs complain that, "despite Defendants' assurances", delays continue.
18 However, Defendants have never indicated that their continuing efforts would
19 instantaneously eliminate the backlog. Instead, as Defendants explained in the last
20 submission (Doc. 3292), the new personnel had to undergo training due to the
21 extensive federal regulatory requirements. Once their training is completed, the new
22 personnel should be able to assist the existing team to accelerate the complaint
23 investigation process.

24 Defendants remain committed to expediting the process.
25
26
27
28

1 Dated: May 30, 2025

Respectfully submitted,

2
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