

DIANE OLIVER AND MICHAEL OLIVER,

Plaintiffs,

vs.

C. R. BARD, INC., BARD MEDICAL  
DIVISION, a Division of C. R.  
Bard, Inc., BARD UROLOGICAL  
DIVISION, a Division of Bard  
Medical Division and JOHN DOES  
1-20,

Defendants.

JANE GASPER AND MATTHEW GASPER,

Plaintiffs,

vs.

C. R. BARD, INC., BARD MEDICAL  
DIVISION, a Division of C. R.  
Bard, Inc., BARD UROLOGICAL  
DIVISION, a Division of Bard  
Medical Division, AND JOHN DOES  
1-20,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, BERGEN COUNTY  
DOCKET NO. BER-L-000880-15

Civil Action

BARD Litigation, Case No. 292

MASTER CASE NO. BER-L-17717-14

**SECOND AMENDED SCHEDULING AND  
PRE-TRIAL ORDER PERTAINING TO  
THE GASPER AND OLIVER MATTERS**

**FILED**

**AUG 13 2019**

**RACHELLE L. HARZ**

~~SUPERIOR COURT~~ **JSC** OF NEW JERSEY  
LAW DIVISION, BERGEN COUNTY  
DOCKET NO. BER-L-3159-15

Civil Action

BARD Litigation, Case No. 292

MASTER CASE NO. BER-L-17717-14

THIS MATTER having come before the Court after counsel met  
and conferred, and for good cause shown:

IT IS on this 13<sup>th</sup> day of August, 2019;

ORDERED as follows with respect to the above-  
captioned bellwether cases:

## DISCOVERY SCHEDULE

1. The parties shall work cooperatively and in good faith to complete case specific discovery **by April 19, 2019.**<sup>1</sup>

2. Plaintiffs shall serve Initial General and Case Specific Expert Reports on or before **April 19, 2019.** In the case of General Experts who have previously served reports, it will be sufficient to identify the experts and reports without the need to serve those General reports again.

3. Defendants shall serve General and Case Specific Expert Reports on or before **May 3, 2019.** Both parties shall provide dates for their experts to be deposed on May 3, 2019.

4. The parties shall complete expert depositions on or before July 12, 2019. The depositions of Plaintiffs' experts

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<sup>1</sup> The parties reserve the right to take the depositions of fact witnesses, including plaintiffs' family and friends, on a date closer to trial. Defendant has filed a motion to take the de bene esse deposition of the pathologist in the Gasper case, Dr. Pei Hui. At the time this scheduling order was entered, Plaintiff Oliver has not had any revision procedures. However, the parties contemplate that Ms. Oliver may have a revision procedure performed prior to the trial of this matter. Defendant reserves the right to take the deposition of any surgeon associated with any revision procedure performed prior to the trial of this case. The parties agree that the deposition of Dr. Bercik in the Oliver case may be taken outside the fact discovery deadline and closer to trial. Defendant also reserves the right to take the deposition of any pathologist associated with any revision procedure performed prior to the trial of this case, if necessary.

will take place prior to the depositions of defense experts. Furthermore, the parties shall not depose experts on general opinions previously covered in prior depositions either in the MDL or New Jersey State Court bellwether cases.

5. The parties shall serve supplemental expert reports addressing documents, information, and testimony obtained after the deadlines for the service of initial expert reports in compliance with R. 4:17-7.

**PRE-TRIAL SCHEDULE FOR SEPTEMBER 16, 2019 TRIAL**

6. This schedule is in accordance with the Court's prior entered Order, the Gasper and Oliver cases shall proceed to trial with opening statements commencing on September 16, 2019.

7. Bard shall advise Plaintiffs and the Court if it intends to assert the right to bifurcation of punitive damages by **June 28, 2019**.

8. The parties shall file and exchange all dispositive motions, motions in limine, and Kemp motions on or before **July 15, 2019**. Opposition papers shall be due on or before **July 31, 2019**. Bard's Trial Brief and Response to Plaintiffs' Trial Brief shall be due on or before **July 31, 2019**. Reply papers shall only be permitted by leave of Court, and in that event shall be due on or before **August 2, 2019**. Oral argument on these motions shall be heard by the Court on **August 8, 2019** and **August 9, 2019**. Due to the scheduling of Defendant's experts for deposition, Plaintiffs

will file case specific Kemp motions and motions in limine that relate to the opinions of Defendant's case specific experts on **July 31, 2019**. Opposition papers shall be due on or before **August 14, 2019**. Reply papers shall only be permitted by leave of Court, and in that event shall be due on or before **August 16, 2019**. Oral argument on these motions shall be heard by the Court on September 5, 6, 9 and 10, together with argument on the deposition designations, specific scheduling to be determined by the Court.

9. The parties shall file a statement of the cases by **August 14, 2019**.

10. The parties shall exchange affirmative deposition designations by **July 30, 2019**. The parties shall exchange any deposition counter designations and objections to affirmative deposition designations by **August 15, 2019**. The parties shall provide objections to counter designations and counter-counter designations by **August 27, 2019**. The parties shall utilize the previously agreed spreadsheets, with the same spreadsheet to be utilized at each phase of the exchange, to avoid confusion and redundant and conflicting spreadsheets. The parties shall meet and confer to ensure that the parties do not duplicate service of affirmative and counter designations, for example where one

or the other party intends to call a witness in their case in chief. The parties shall meet and confer to ensure that to the extent the Court has already heard argument and ruled with regard to designations in connection with the Rios case, that those rulings will not be revisited unless a party presents a good faith argument that the prior ruling should not apply based on the particular facts of the cases going to trial. For example, if the designated testimony relates solely to a product (i.e., Avaulta) other than the product at issue in these two cases, then that testimony may be reviewed specifically for relevance in these cases. The parties shall meet and confer to ensure to the extent possible that new spreadsheets of designations, counter-designations, and objections need not be exchanged for witnesses for whom this process has already proceeded. Plaintiff will advise by **July 19, 2019**, from which fact witnesses it will affirmatively designate testimony.

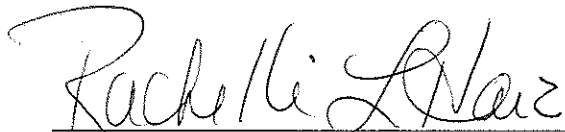
11. Oral argument on the parties' deposition designations shall be heard by this Court on **September 5, 2019** through **September 10, 2019**, together with argument on certain case specific Kemp motions and motions in limine (specific scheduling of argument to be determined by the Court as discussed in Paragraph 8).

12. The parties shall exchange lists of all exhibits and witnesses by **July 22, 2019**.

13. The parties shall submit jury questionnaire proposals by **August 14, 2019**. Juror questionnaires shall be completed by potential jurors on **September 3, 2019** and **September 4, 2019**. Jury selection shall take place on **September 11, 2019** through **September 13, 2019**.

14. The parties shall submit proposed jury charges and verdict forms by **September 9, 2019**.

15. Opening statements shall commence on **September 16, 2019**.



HONORABLE RACHELLE L. HARZ, J.S.C.