

**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**

**CHIEF JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Kimberly A. Jolson**

**This document relates to:  
ALL ACTIONS.**

**CASE MANAGEMENT ORDER NO. 17**

**Regarding Privilege Log Protocol**

This Order is entered to set forth the protocol that shall govern the procedures going forward for withholding documents from discovery based on a claim of attorney client privilege, joint defense privilege, work product protection or any other privilege or claim of protection of responsive document that would otherwise be subject to discovery.

**I. PRIVILEGE LOG PROTOCOL**

To the extent that documents are henceforth withheld from production on the basis of privilege, the work-product doctrine or some other protection, the producing party shall produce a privilege log as set forth below within 30 days of the date by which the documents from the custodian or non-custodial source would otherwise have been produced if not for the claim of privilege or protection. Privilege logs shall be supplemented or amended under FED. R. CIV. P. 26(e)(1) in a timely manner to reflect any additional claims of privilege or protection, or other changes, including as they relate to any claims of privilege or protection for inadvertently produced documents as set forth in Case Management Order No. 7, paragraph 30. A party supplementing

or amending a privilege log shall identify, either in the supplemental or amended log or in accompanying correspondence, the nature of any supplementation or amendment, including any prior claims that have been withdrawn or the addition of claims as to documents not included on a previous log.

1. Privilege logs shall be produced in an electronic format, on an Excel spreadsheet, so that they are reasonably searchable and sortable.
2. The party asserting privilege or other protection shall provide a separate entry for each otherwise responsive and discoverable document the party asserts is privileged or protected.
3. All documents entered on a privilege log shall be listed in chronological order.
4. Privilege logs shall substantially follow the form set forth in Exhibit 1, which shall include the following information:
  - (a) The beginning and ending bates number for each logged document;
  - (b) the document date;
  - (c) the identity, including the position or title at the time, of the person(s) who prepared the document;
  - (d) the identity, including the position or title at the time, of the person(s) who sent the document;
  - (e) the identity, including the position or title at the time, of any person(s) identified as receiving the document, including any person listed on the "To," "CC," and "BCC" lines for emails;
  - (f) the subject and/or title of the document without revealing information that is privileged or protected;

- (g) information pertinent to the applicability of the privilege or protection sufficient to enable the other party to evaluate the applicability of the claimed privilege or protection without revealing information itself that is privileged or protected;
- (h) whether any identified sender or recipient of the document was acting in the capacity of attorney for the party;
- (i) for any identified sender or recipient of the document that was not a party or an employee of a party, the employer of the person at the time, to the extent reasonably knowable;
- (j) the specific privilege(s) or protection(s) claimed as a basis for withholding an otherwise discoverable document; and
- (k) each entry shall contain a cross-reference to the discovery request to which it is responsive.

## **II. CHALLENGES TO CLAIMS OF PRIVILEGE AND/OR WORK PRODUCT DOCTRINE**

1. A receiving party may challenge a claim of privilege within 75 days after receiving a privilege log identifying the document being withheld on the claim of privilege and/or protection or any supplemental or amended log specific to the document. Absent good cause shown, a receiving party that fails to challenge a claim of privilege in a timely fashion waives its right to challenge a claim of privilege and/or protection. A receiving party may freely request extensions of this deadline and consent to such extensions shall not be unreasonably withheld.

2. A receiving party may challenge a claim of privilege and/or protection as to one or more document by:

- (a) first notifying the producing party in writing (a letter to lead and liaison

counsel delivered by email shall be sufficient), of its good faith belief that the withholding of the document(s) on the basis of privilege and/or protection was not proper; and

(b) including a brief explanation of the basis of the dispute(s) with regard to each claim of privilege and/or protection and/or such alleged deficiency and/or insufficiency at issue.

3. Thereafter, the producing party shall have 14 days to meet-and-confer with the receiving party in an attempt to address the receiving party's concerns. Within 30 days of the receiving party's notice of challenge, if the producing party fails to meet-and-confer within the 14 day period and/or the meet-and-confer fails, the receiving party may file and serve a motion challenging the claim of privilege and/or protection as a basis for withholding the document(s). If a motion is filed in a timely fashion, then the producing party shall have 14 days to file a response, and the receiving party shall have 5 days after that to file any reply. A motion that is not filed in a timely fashion shall be considered a nullity and no response thereto shall be required. The producing party's response shall include a copy of any disputed document(s) to the Court for *in camera* review and may include supporting affidavits or declarations. The parties may mutually agree, in writing, to extend these deadlines.

4. If the document at issue relates to a deposition scheduled less than 45 days from the date of the challenge, then the challenging party may seek an expedited briefing schedule or *in camera* review by the Court to resolve the dispute in which the producing party is presumed to consent.

**IT IS SO ORDERED.**

4-3-2019  
DATE

  
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**EDMUND A. SARGUS, JR.**  
**CHIEF UNITED STATES DISTRICT JUDGE**

4/3/2019  
DATE

  
\_\_\_\_\_  
**KIMBERLY A. JOLSON**  
**UNITED STATES MAGISTRATE JUDGE**

