Greger et al v. C.R. Bard, Inc et al

2021 | Cited 0 times | E.D. Texas | August 30, 2021

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION MISTY GREGER, ET AL. v. C.R. BARD, INC., ET AL.

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CIVIL NO. 4:19-CV-675-SDJ

MEMORANDUM OPINION AND ORDER Before the Court are sixteen motions filed by Defendants C.R. Bard, Inc. and Bard Peripheral Vascular, Inc. including six motions to strike or limit particular expert testimony and ten notices adopting motions made in multidistrict litigation to exclude expert testimony or to disqualify certain experts (collectively, . another with respect to factual background, legal standard, and relief sought, the Court will address all sixteen motions in this order. The motions are resolved in each individual section below as described and for the reasons provided therein.

I. BACKGROUND The inferior vena cava through which blood passes to the heart from the lower body. Blood clots may develop in the IVC and travel to the heart and lungs. T is a medical device that can be implanted in the abdomen and is designed to prevent such blood clots from reaching the heart and lungs.

In November 2004, Plaintiff Misty Greger underwent a medical procedure involving the implantation of Case 4:19-cv-00675-SDJ Document 167 Filed 08/30/21 Page 1 of 44 PageID #: 6539 . The Recovery Filter was designed, manufactured, marketed, distributed, and sold by Bard. In August 2019, Misty Greger visited a physician and underwent imaging of her torso. Upon doing so, Greger learned that the Recovery Filter System Believing that the displaced Filter had already caused and would cause additional serious injury, Greger elected to undergo an emergency filter-removal procedure. As a result of the displaced Filter and the procedure required to remove it, Greger alleges, Greger has experienced significant pain and suffering and loss of quality of life and has incurred substantial medical expenses. Greger further alleges that her earning capacity is diminished.

Consequently, on September 18, 2019, Plaintiffs Misty Greger and Joey filed this products-liability action for damages against Bard. 1

Greger et al v. C.R. Bard, Inc et al

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In this action, sounding in negligence and strict products liability, Greger alleges that Bard misrepresented the safety of the Filter and, inter alia, negligently designed, developed, marketed, distributed, and sold the device as safe and effective. In support of her claims, Greger alleges that the Filter is susceptible to various phenomena that pose unreasonable health risks, including fracturing, migrating, excessive tilting, and perforation of the caval wall. These phenomena, Greger alleges, can result in life-threatening injuries, such as death, hemorrhage, cardiac/pericardial

1 et ux. on January 8, 2021, the parties filed a proper stipulation of dismissal as to Plaintiff Joey Greger pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). Consequently, Joey Greger has been terminated as a party and only Misty Greger remains as Plaintiff. Henceforth, when .

tamponade, cardiac arrhythmia, and other systems similar to myocardial infarction, severe and persistent pain, perforation of tissue, vessels, and organs, and inability to remove the device.

Greger has designated numerous expert witnesses to opine on medical, engineering, and economic questions relevant to this litigation. Significantly, several such experts have already produced opinions in an MDL against Bard, proceeding in the District of Arizona. See In re Bard IVC Filters Prods. Liab. Litig., No. MDL-15- 02641-PHX-DGC (D. Ariz. 2015) Bard MDL . That MDL was formed to conduct pre-trial discovery regarding common factual and legal issues in thousands of cases, including hundreds of cases involving counsel of record in this case, as quickly and efficiently as practicable. However, before Greger learned of her injury, the MDL had stopped accepting new cases. Thus, Greger filed a separate action directly in this Court. part of the MDL,Order directed the parties to conduct only -specific expert , except as needed to supplement general expert discovery under Federal Rule of Civil Procedure 26(e). (Dkt. #136 at 4).

II. LEGAL STANDARD In Daubert v. Merrell Dow Pharms., 509 U.S. 579, 589, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), the Supreme Court held that trial judges must ensure that any scientific testimony or evidence admitted is not only relevant but reliable. The Daubert test, which examines the underlying theory on which an expert opinion is based, thus clarified that the admissibility of expert testimony turns not on whether

the testimony is correct but instead on whether it is reliably reached. E.g., Moore v. Ashland Chem. Inc., 151 F.3d 269, 276 (5th Cir. 1998). Subsequent to Daubert, Congress amended Federal Rule of Evidence 702 to provide that a witness qualified as an expert . . . may testify . . . in the form of an opinion . . . if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. Guy v. Crown Equip. Corp., 394 F.3d 320, 325 (5th Cir. 2004) (quoting FED. R. EVID. 702). The Rule 702 and Daubert analysis applies to al analysis and other specialized Kumho Tire Co. v. Carmichael, 526 U.S. 137, 141, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999) (quoting FED. R. EVID. 702). Further, [t]he proponent of expert testimony bears the burden of establishing the reliability of the expert s Sims v. Kia Motors of Am., Inc., 839 F.3d 393, 400 (5th Cir. 2016).

Daubert sets forth four specific factors that the trial court should ordinarily apply when considering the reliability of scientific evidence: (1) whether the technique can be or has been tested; (2) whether it has been subjected to peer review or publication; (3) whether there is a known or potential rate of error; and (4) whether the relevant scientific community generally accepts the technique. Id. This test of exclusively appl[y] Kumho Tire, 526 U.S. at 141.

e law grants a district court the same broad latitude when it decides how

to determine reliability as it enjoys in respect to its ultimate reliability Id. at 142.

In conducting Daubert analysis FED. R. EVID. 702 2000

amendment -examination, presentation of contrary evidence, and careful instruction on burden of proof are the traditional and appropriate means of Daubert, 509 U.S. at 596.

III. DISCUSSION A. Motions to Strike

1. Motion to Exclude or Limit Opinions and Testimony of Darren R. Hurst, M.D. Greger has designated Dr. Darren R. Hurst, M.D., as a general and specific witness in the field of interventional radiology. Dr. Hurst is a full-time physician and has served as Chief of Vascular & Interventional Radiology at St. Elizabeth Health System in Northern Kentucky for nearly twenty years. (Dkt. #47-1 at 34). Dr. Hurst completed his fellowship in interventional radiology at the University of Michigan Medical Center and is board-certified in both vascular and interventional radiology. (Dkt. #47-1 at 34, 36). Dr. Hurst further attests that he has personal experience with the use and implementation of IVC filters and is familiar with medical literature concerning IVC filters and the various risks and complications associated therewith. (Dkt. #47-1 at 3). Dr. Hurst has previously been qualified as a general expert on these matters in the MDL. Bard MDL, (Dkt. #9772) (Jan. 22, 2018).

Bard argues that: (i be excluded here; (ii) Dr. Hurst is not qualified to offer certain opinions and testimony

in this litigation; (iii regarding specific causation as unsupported and unreliable; and (iv) this Court should exclude unreliable. The Court grants in part and denies in part .

i. MDL Exclusions Bard requests that this Court exclude opinions that were excluded by the MDL court. See Bard MDL, (Dkt. #9772) (Jan. 22, 2018). While Bard and Greger concur that this Court should follow the MDL order, there is disagreement as to what precisely that order held. Bard argues that expert report present the same or substantially similar opinions to those struck in the MDL order and should therefore be excluded in this case. Specifically, Bard highlights the following two statements from the Hurst report: (a) Bard failed to notify the operating physicians and the implanted patients of the much higher complication rates of fracture, embolization of fractured components,

penetration, migration, including the known risk of death associated with [Bard filters] in comparison to [the (Dkt. #47-1 at 10); and (b not to perform additional studies to further evaluate the safety, effectiveness, and

durability of their filters, #47-1 at 13).

a. Higher Complication Rates As to the first statement, Bard contends

much higher complication rates associated [with it Bard MDL, (Dkt. #9772) (Jan. 22, 2018). In that order, the MDL court held that Dr. Hurst could not testify that Bard filters in fact have higher complication rates than similar filters because er complication rates . . . [n]or has Id. at *4 5 (quoting FED. R. EVID. 702(c)). Further, as the MDL court found, Dr. Hurst

clinical data from his personal cases that reveal IVC filter complication rates, nor that his education and training revealed anything Id. at *4. repeat the opinions of others as his own when he has done nothing to verify the

Id. (quoting In re Matter of Complaint of Ingram Barge Co., 2016 WL 4366509, at *4 (N.D. Ill. Aug. 16, 2016)). interventional radiologist with years of practice, Dr. Hurst clearly is qualified to opine

about the information physicians and patients need and expect when making Id. at *4.

This Court agrees with the MDL court. Under Daubert and Rule 702, Dr. Hurst may not testify that Bard IVC filters do in fact have higher complication rates than similar filters. Id. at *4 5. However, Dr. Hurst may testify that, if Bard IVC filters

did, in fact, have higher complication rates than other IVC filters, then, in Dr. expert opinion as a practicing interventional radiologist, a physician would reasonably expect such information to be disclosed, i.e., for physicians to be notified. Id. at *3 4.

b. ecision-making As to the second statement, Bard argues that this Court should exclude as the MDL court did #46 at ard

elected to not perform additional studies to further evaluate the safety, effectiveness, #47-1 at 13). In response, Greger asks that this in any #108 at 7).

Bard MDL,

(Dkt. #9772 at 7) (Jan. 22, 2018). Consistent with the MDL court , this Court finds that Greger opinions about what happened internally at Bard what it knew, what it did, or

Id. Thus, Dr. Hurst may not testify -making.

ii. Filter IFU, Reasonable Expectations of Physicians and Patients, and Design Bard next argues that Dr. Hurst is not qualified to offer his opinion about: (a) Instructions for Use (IFU); (b) the reasonable

expectations of physicians and patients; and (c first two opinions, Greger responds that the MDL court has already found Dr. Hurst

qualified to render such opinions 2

and that Bard may not presently challenge general opinions offered in the MDL. (Dkt. #108 at 7 10). As to the third opinion, Greger argues that Dr. Hurst is not opining on the filter design but rather its performance, i.e., [ure] to perform as a reasonable physician and/or patient would expect (Dkt. #108 at 11). The Court concludes that Dr. Hurst is qualified to testify on all three issues.

a. the Court holds that Dr. Hurst may testify about the adequacy of the IFU from the

perspective of a treating physician. Bard argues that Dr. Hurst is not qualified to established that he has sufficient knowledge as to what the FDA [(Federal Drug

Administration)] #46 at 9). Further, Bard contends

(Dkt. #46 at IFU failed to meet FDA standards and regulations. Nor does Dr. Hurst hold himself

2 Specifically, Greger argues that Dr. Dr. found Dr. Hurst qualified to provide. (Dkt. #108 at 7); see also supra Part III.A.1.a. at the MDL trials. Bard MDL, (Dkt. #11598 at 6) (June 19, 2018). The Court concurs but, in

any event, -related objection.

out as a regulatory expert. Rather, Dr. Hurst makes clear that he is opining on the adequacy of the IFU from the perspective of a physician making medical decisions. So long as Dr. Hurst limits his testimony regarding the IFU to opinions derived from training and experience as a treating physician, Dr. Hurst may opine on the adequacy of the IFU.

b. Reasonable Expectations of Physicians as to Medical

Devices Second, Bard objects to Dr. (Dkt. #46 at 10). Specifically, Dr. Hurst opines that he

ons of medical device companies . . . when [such companies] design, test, manufacture, market, and sell medical devices . . . [that] allow[] physicians to select the appropriate IVC filter and make

appropriate therapeutic decisions on behalf of their patients as to whether . . . to use or not use a (Dkt. #47-1 at 8). As qualified to opine about the information physicians and patients need and expect

Bard MDL, (Dkt. #9772 at 4) (Jan. 22, 2018). Thus, the Court concurs with the MDL court that Dr. Case 4:19-cv-00675-SDJ Document 167 Filed 08/30/21 Page 10 of 44 PageID #: 6548 medical device 3

Id. at 8. c. Design Versus Performance Third, Bard objects to what it characterizes as an impermissible design opinion of Dr. Hurst. (Dkt. #46 at 11). Both parties agree that Dr. Hurst is neither a design expert nor an engineering expert and thus that any opinion about the specific design or construction of the IVC filter would exceed #46 at 11); (Dkt. #108 at 11 12). The parties disagree, however, about whether Dr. Hurst has in fact stated an opinion as to Filter. Filter failed to perform as a reasonable physician and/or patient would expect in that the filter tilted significantly, and caudally migrated, which resulted in multiple penetrations of the IVC by the arms and legs of the filter with eventual fracture and embolization of an #47-1 at 15 16). 4

objections to the contrary, Filter; rather, Dr. Hurst opines on the performance of the Filter and what he believes happened to

3 At the time of the MDL opinion on this issue, Bard had not yet made such an However, because the plaintiff raised the issue in its responsive briefing before the MDL court, the MDL court addressed the question. Now that Bard has made a issues a ruling consistent with that reasoning.

4 In this and other testimony, Dr. Hurst appears to offer opinions on the specific cause Below, the Court concludes that Dr. Hurst may not testify as to specific medical causation. Here, though above-listed testimony is not inadmissible on the

the IVC Filter inside of Greger. Bard has failed to explain why Dr. Hurst should be barred from testifying as to what a reasonable physician, applying his or her medical training and experience, might expect happened to the Filter. As Greger notes, Dr. Hurst has placed at least 400 IVC filters in his lifetime and has reviewed numerous data and studies on IVC filters impact and efficacy; Dr. Hurst is thus qualified to offer his opinion regarding how the Filter performed inside of Greger. See (Dkt. #108 at 11); (Dkt. #47-1 at 3). Yet, while Dr. Hurst may opine on the function and performance of the Filter, he may not testify as explained below as to specific medical causation. Thus, Dr. Hurst may opine that the Filter, e.g., migrated or fractured, but not for the reasons provided below that the Filter is responsible for

iii. Specific Causation opinions regarding the specific cause of Dr. Hurst opines that the likely er back pain was the penetration by two of the Filter legs of the es and edema in the vertebral body (Dkt. #47-1 at 16).

(Dkt. #47-1 at 16).

Bard argues that Dr. Hurst failed to properly perform a differential diagnosis by failing Bard argues that Dr. Hurst failed to consider , such

as May-Thurner Syndrome, lengthy and complex medical history, and failed to explain why certain health issues persisted even after Filter was removed. (Dkt. #46 at 12).

a standard scientific technique of identifying the cause of a medical problem by eliminating the likely causes until the most probable Westberry v. Gislaved Gummi AB, 178 F.3d 257, 262 (4th Cir. 1999). While a medical expert s causation conclusion should not be excluded because he or she has failed to rule out every possible alternative cause of a plaintiff s illness, id. at 265 (quotation omitted), the expert to validly conduct differential diagnosis must at least provide some explanation for ruling out alternative causes at trial.

Chrastecky v. C.R. Bard, Inc., No. A-19-CV-1240-LY-SH, 2020 WL 748182, at *6 (W.D. Tex. Feb. 14, 2020) merely ruling out other possible explanations is not enough to establish reliability; experts must also have some scientific basis for ruling in the phenomenon they allege. Sims, 839 F.3d at 401 02 (citations omitted).

Moreover, Dr. Hurst purports to have reached his conclusion via differential diagnosis. Thus, the Court concludes that Dr. Hurst, and any other experts opining on the specific cause of , 5

must engage at least to some degree with alternative causes beyond .

5 The Court concludes that Dr. Hurst has satisfied the initial hurdle of proving general causation, i.e., that it is medically plausible that a fragmented IVC filter arm could cause appearance on a CT or MRI, that that back pain is going to be caused at least some of her back pain, is going to be caused by the -4 at 95:2 5). In this sense, Dr. Hurst

Greger contends differential diagnosis, his experience, and his review of Greger medical records and

and various depositions, including those of Greger (Dkt. #108 at 12). Greger adds rnative causes

of Greger filter failures (other than the filter itself) that Dr. Hurst failed to (Dkt. #108 at 12). For his part, -morbidities, medical history, and preexisting

problems, and ruled these out as the cause of her [F] (Dkt. #108

at 12 n.9); (Dkt. #47-1 at 17).

However, this statement providing only that Dr. Hurst considered the above- listed factors in reaching his determination is conclusory because it fails to explain why these or other were

unavailing. And even if Dr. Hurst did consider prior medical history and co-morbidities when determining the cause of the Filter failure, Dr. Hurst makes no mention that he considered other possible causes of besides Filter failure. Dr. thus conflates causation of the Filter failure with causation of

In rebuttal, testimony that allegedly illustrate the must still consider and rule out alternative explanations through a differential diagnosis to

prove sp

instance, Dr. Hurst has explained that May- and opined Deep Vein T DVT

central venous obstruction from May- #108 at 13); (Dkt. #109-4 at 30:20 25). Based on this deposition testimony, Greger argues that (May-Thurner Syndrome)] into account, but it did not cause Greger #108 at 13). The Court -Thurner Syndrome, nothing from the cited deposition statement or from the Expert Report reflects that or explains how or why Dr. Hurst used analysis to rule out May-Thurner Syndrome, or any other co-morbidity, as a possible cause of pain.

Finally, Greger Dr. Hurst was specifically asked about considering alternative explanations in his differential diagnosis:

Q. Okay. And you -- in coming to your differential diagnosis, did you consider whether Greger had other conditions such as degenerative changes in her lumbar spine? A. Well, in reviewing her images, she does not have significant degenerative changes in her lumbar spine. (Dkt. #109-4 at 94:6 12).

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the above exchange is the only instance where Dr. Hurst has

6 the parties have provided the Court with only a few, self- deposition. See (Dkt. #109-4). Thus, the Court has only a limited view of Dr. Hurst Case 4:19-cv-00675-SDJ Document 167 Filed 08/30/21 Page 15 of 44 PageID #: 6553 his differential diagnosis. Other than ruling out degenerative changes in the lumbar spine which Dr. Hurst purports to have done simply Dr. Hurst has not provided any explanation for how or why he ruled out

other potential causes . While Dr. Hurst need not rule out every possible alternative explanation , he must do more than rule out one specific alternative cause conclusion. And mere conclusory statements that an expert considered and ruled out

alternative explanations is likewise insufficient. For the foregoing reasons, Dr.

iv. Future Risks and Complications

and complications that the fractured Filter arm allegedly poses to Greger as overly

hemorrhage, infection, pulmonary artery pseudoaneurysm, pleurisy, chronic cough, 7 (Dkt. #47-1 at speculative, Bard points to deposition testimony statements from his deposition. To the extent Greger is able to present testimony that rebuts

7 ery filter and the subsequent surgery has put her at increased risk of chronic abdominal pain, DVT, and #47-1 at 16). Although Bard does not specify whether it objects to this particular opinion regarding future risks and complications, the Court will statement as well.

we can call it whatever we want . . . [n] #46 at 13); (Dkt. #47-4 at 112:18 24).

Neither of these statements by Dr. Hurst renders his opinion about potential future risks inadmissible. Dr. Hurst opines only that, based on his extensive because of the apparently fractured Filter arm inside Greger. (Dkt. #47-1 at 16). That

the future effects of a medical condition are unknown is axiomatic and does not bar a physician from opining on such effects. See, e.g., Miller v. Gorski Wladyslaw Estate, No. 04-1250 c/w 05-189, 2006 WL 3436230, at *1 2 (W.D. La. Nov. 27, 2006) (a physician with extensive experience treating burn patients was permitted under Daubert to opine on the likelihood of complications for burn patients, including the risk of future amputation).

Dr. Hurst is therefore not speculating about causation; rather, he is offering his expert medical opinion about the future risks associated with a physical condition and clarifying that certain complications may, but are not guaranteed to, manifest. So long as Dr. Hurst makes clear that he is opining only on potential future risks that the Filter poses to Greger, he may testify.

For the foregoing reasons, and Testimony of Darren R. Hurst, M.D., (Dkt. #46), is GRANTED in part and

DENIED in part.

2. Motion to Exclude or Limit the Opinions and Testimony of Dr. Robert O. Ritchie Dr. Robert O. Ritchie, Ph.D., is a materials scientist and Professor of Materials Science and Mechanical Engineering at the University of California, Berkeley. Dr. Ritchie was also, inter alia, Chairman of the Berkeley Materials Science & Engineering Department from 2005 to 2011. Greger has designated Dr. Ritchie as an expert in the fields of materials science, fracture mechanics, and fatigue fracture, particularly the latter, Especially

pertinent here, Dr. Ritchie has fifty years of experience analyzing medical-device structure and failure, including testifying before the FDA on the fatigue, fracture, and endurance of medical devices and conducting over thirty-five years of active research on the fatigue and failure of Nitinol, the particular alloy from which Bard IVC filters are made. (Dkt. #106 at 2 3) (citation omitted).

Dr. Ritchie was qualified as a general expert on these topics in the MDL court, opinions namely, that Bard filters have Simon Nitinol Filter (SNF) is a safer alternative filter than the Bard Recovery and G2 filters. Bard MDL, 2018 WL 775295, at *2 3, 5 (Feb. 8, 2018).

Here, implicating medical causation should be excluded because he is unqualified to give

medical opinions, and (4) that Dr. Ritchie should not be allowed to offer as testimony impermissible conclusions of law. (Dkt. #48).

i. Opinions Excluded by the MDL Court The Court concludes as to rates fail to satisfy Rule 702 and Daubert and that the MDL court properly excluded

court explained:

materials science. He is not a medical doctor, biostatistician, or epidemiologist experienced in interpreting medical studies and data about device failure rates. And he has identified no other expertise or specialized knowledge that enables him to opine that Bard filters have unacceptably high complication rates. Bard MDL, 2018 WL 775295, at *2. For the reasons provided in the holding, Dr. Ritchie will not be allowed to testify concerning the Bard filters

ii. The

testing of its filters. (Dkt. #48 at 8 holding that Dr. Ritchie may opine on Ba #106 at 5). The MDL court

his methodology was sufficiently reliable. Bard MDL, 2018 WL 775295, at *4. The

elitigate this issue unpersuasive. For instance, Dr. . #49-1 at 28),

is admissible because it involves Dr. Ritchie applying his expertise in mechanical engineering, materials science, and medical devices protocols. 8

Bard counters that its instant different issues than what the MDL court addressed. (Dkt. #121 at 3); (Dkt. #48

at 8 10). Specifically, - #121 at 3). For

(Dkt. #49-2 at 7), as an example

of an opinion regarding subjective motive, belief, or intent of a corporate entity.

t or motive of parties or others lie In re Rezulin Prods. Liab. Litig., 309 on corporate ethics and morality are not expert opini In re Baycol Prods. Liab.

Litig., 532 F.Supp.2d 1029, 1053 (D. Minn. 2007). The Court has already established that Dr. Ritchie may opine on the sufficiency of testing. Thus, to the extent, Dr. Ritchie opines that objectively failed to account for fatigue failure, such testimony is admissible. However, to the extent Dr. Ritchie is opining that Bard actually or likely held a particular intent or motive in undertaking its IVC

8 See (Dkt. #106 at 7) (enumerating the sources and methods that Dr. Ritchie employed in his analysis).

testing, e.g., that Bard deliberately disregarded the potential for fatigue failures, such testimony is inadmissible.

In sum, Dr. Ritchie may opine on objective actions or inactions with respect to IVC filter testing, and the sufficiency thereof, subjective intent, motives, or internal decision-making involved in such testing.

iii. Medical Opinions Bard next objects to what it alleges are medical opinions, including medical-causation opinions, made by Dr. Ritchie. (Dkt. #48 at 11 12). Both parties agree that Dr. Ritchie is not a medical expert, and Greger implicitly acknowledges that Dr. Ritchie cannot give medical opinions. (Dkt. #48 at 11); see (Dkt. #106 at 9). However, the parties disagree as to whether Dr. Ritchie has, in fact, offered medical opinions.

Bard points to several instances where Dr. Ritchie makes medical-related statements. For example, Dr. Ritchie opines that IVC filter defects can:

lead[] to malfunction of the filter and the often severe medical complications of the potential migration of wire fragments to other parts of the body. When failures such as fracture, migration and/or perforation of the vena cava occur, this places unnecessary risks on the patient in having the device and fragments of the device removed; moreover, if such failures render the device unable to be removed, it creates the unacceptable situation of having a device that is unusually prone to fracture remaining in the body permanently. (Dkt. #49-1 at 20). While Bard has failed to identify specific-causation opinions made by Dr. Ritchie about Greger, supra, contains general-causation opinions about the effect of IVC filters on body generally. These are

impermissible. Dr. Ritchie is not qualified to testify that IVC filters can that IVC filter

fragments of the device removed -evidently statements of medical

causation, recommendation, or diagnosis, which must derive from medical expertise to be valid. Similarly, Dr. Ritchie may not opine that, if the device is unremovable, this cons opinion fracturing or other alleged malperformance inherent to the design. 9

Because Dr. Ritchie cannot offer medical opinions, the Court grants motion to exclude Dr. Ritchie about any medical complications arising

from IVC filters. iv. Legal Conclusions Finally, Bard argues that Dr. Ritchie should not be allowed to provide any legal

#48 at 12 14). Greger responds that has not offered a single legal conclusion. (Dkt. #106 at 11). Greger adds that Bard has not cited to any than 9

-related opinions may be, as Greger argues, at the #106 at 9), an impermissible expert opinion is not

(Dkt. #106 at 12). Federal Rule of Evidence 704 makes clear that experts may opine on an FED. R. EVID. United States v. Oti, 872 F.3d 678, 691 (5th Cir.

Id. (quoting Salas v. Carpenter, 980 F.2d 299, 305 n.4 (5th Cir. 1992) impermissible legal conclusion because such language has a distinct legal meaning

and is a legal term of art. 10

See Warren v. C.R. Bard, Inc., No: 8:19-cv-2657-T-60JSS, 2020 WL 1899838, at *3 (M.D. Fla. Apr. 17, 2020) (granting the Sutphin v. Ethicon, Inc., No. 2:14-cv-01379, 2020 WL 2517235, at *2

(S.D. W. Va. May 15, 2020) (holding that an expert was not permitted to testify that the medical device in question Dr. Ritchie is not allowed to offer legal conclusions, language will be excluded. on to Exclude or Limit the Opinions and Testimony of Dr. Robert O. Ritchie, (Dkt. #48), is GRANTED in part and DENIED in part.

10 Indeed, Dr. Ritchie himself seemingly acknowledges that such language embraces legal conclusions. (Dkt. #48-4 at 40:20

3. Motion to Exclude or Limit Opinions and Testimony of Krishna Kandarpa, M.D. Dr. Krishna Kandarpa is an interventional radiologist and a director at the National Institute of Biomedical Imaging and Bioengineering. In 2006 and 2007, he was hired to conduct and monitor the EVEREST Study, which examined whether after implantation. (Dkt. #50-1). The MDL drew from his role as medical monitor in the EVEREST study but sustained objections where his opinion was based on his

general expertise. In its motion, Bard argues that: (i opinions and testimony should be struck for failing to comply with Federal Rule of Civil Procedure 26(a); (ii) medical-monitoring testimony is not relevant; and (iii) Dr.

i. Rule 26(a) failure to comply with Federal Rule of Civil Procedure 26(a). 11

disclosures, Dr. Kandarpa was designated as a retained expert witness. Under Rule

11 Bard filed two similar motions to exclude the opinions of Dr. Kandarpa in the Western District of Missouri. Both were denied. Lampton v. C.R. Bard, Inc., No. 4:19-cv- 00736-NKL, (Dkt. #159) (W.D. Mo. Nov. 23, 2020); Lampton v. C.R. Bard, Inc., No. 4:19-cv- 00734-NKL, (Dkt. #180), (W.D. Mo. Nov. 27, 2020). Additionally, in the MDL court b Bard MDL, (Dkt. #12590 at 2 5). By contrast, where d from his general expertise, the MDL Id. This Court agrees with that conclusion for the reasons provided herein.

26(a)(2)(B), a retained expert witness must provide a written expert report, specifying in detail the opinions to be offered and the factual basis for such opinions.

Here, Greger did not provide an expert report. However, Greger claims that initial designation was inadvertent, that Dr. Kandarpa is in fact not retained, and that, accordingly, Greger did not need to provide a detailed expert report . However, under Rule 26(a)(2)(C), a party still has disclosure obligations with respect to a non-retained expert. Specifically, the party must disclose (1) the subject matter on which the witness is expected to present evidence and (2) a summary of the facts and opinions to which the witness is expected to testify. Greger argues that the summary provided in her initial disclosures satisfies Rule 26(a)(2)(C).

In its designation of experts and opinion testimony, Greger disclosed that Dr. Kandarpa the design and function of the Bard G2 IVC filter, the EVEREST study, the performance of the Bard G2 filter in the human body, the observations he made and opinions he developed regarding the EVEREST study and the G2 IVC filter. (Dkt. #50 at 5). Greger further disclosed that regarding the observations and opinions he has developed regarding the safety, efficacy and performance of the G2 IVC filter offer observations and opinions as to what reasonable physicians knew about the G2 IVC filter, what information reasonable physicians would like to know about the G2 IVC filter, what information was and was not made available to physicians about the G2 IVC filter. (Dkt. #50 at 5). Finally, Gre he facts and opinions to

which Dr. Kandarpa is expected to testify are those set forth in his deposition of July 19, 2018, in Austin v. C.R. Bard. Inc., Circuit Court of The Seventeenth Judicial Circuit, Broward County, Florida and the exhibits thereto. #50-1 at 9).

Bard argues that reference to deposition testimony is not sufficient to the subject matter on which

the witness is expected to present evidence and (2) a summary of the facts and opinions to which the witness is expected to testify, Rule 26(a)(2)(C).

The Court disagrees. The core purpose of Rule 26(a) is to require disclose information regarding expert testimony sufficiently in advance of trial that opposing parties have a reasonable opportunity to prepare for effective cross examination and perhaps arrange for expert testimony from other witnesses. FED. R. CIV. P. 26(a) to 1993 amendment. Here, Greger timely designated Dr. Kandarpa as an expert, non-retained witness. Moreover, Dr. Kandarpa has already testified in at least two other cases against Bard and Greger has disclosed that Dr. testimony in this case will be consistent with that given in a specific prior deposition, which Greger has likewise disclosed to Bard. Thus, Greger has at least satisfied, if not exceeded, the degree of detail and notice about Dr. required under Rule 26(a)(2)(C).

ii. Relevance

and thus that as to medical monitoring should be excluded. Federal Rules of Evidence 401 and 402 govern the relevance of evidence. Rule 401

generally states , and Rule 402 provides the test for relevant evidence. Under Rule 402, tendency to make a fact more or less probable than it would be without the evidence;

The Fifth Circuit has interpreted Rules 401 and 402 to reflect that Hicks-Fields v. Harris County, 860 F.3d 803, 809 (5th Cir. 2017).

EVEREST study of the G2 IVC filter and therefore do not relate to the issues pleaded

s complaint. However, Bard fails to explain why these opinions which concern the filter at the core of this products-liability action do not meet the low relevance bar -liability action raises several issues that will need to be proven to determine opinions could help illuminate, such as whether Bard acted reasonably in marketing

its G2 filter, whether the filter was defective, and if the filter was defective whether Bard knew it was defective before releasing it. The Court therefore concludes

that imony as to the EVEREST study of the G2 IVC filter contains relevant information, a holding consistent with the conclusion in Lampton, (Dkt. #180 at 5 6) (Nov. 27, 2020). iii. Reliability Finally, Bard argues that Greger testimony was already addressed by the MDL court and Bard has not alleged any

case-specific circumstances that would justify relitigating that issue. Therefore, the Court adopts the MDL court

For the foregoing reasons, and Testimony of Krishna Kandarpa, M.D., (Dkt. #50), is DENIED.

4. Motion to Limit or Exclude Certain Opinions and Testimony of Leigh Anne Levy, RN Leigh Anne Levy is a registered nurse and life care planner. Greger has designated Levy as an expert witness to offer opinions on a life care plan for Greger Bard seeks to exclude life care plan as unreliable. Specifically, Bard argues that: (i) Levy is not a medical doctor and is therefore unqualified to render the opinions she provides; (ii) ; and (iii) based on unreliable facts, data, and methodology as well as the report of a consultant not disclosed as an expert.

i. Qualifications ons, she has a bachelor of science in nursing, a master of science in nursing, and has completed doctoral coursework. Regarding clinical experience, Levy is a trauma nurse with over twenty- e as a registered nurse certified life care planner. Levy became certified by completing a university-taught life care program, including authoring a peer-reviewed life care plan, completing a one-year residency with a life care planner, and successfully passing a certification examination. As Levy observes in her life care plan for Greger Case 4:19-cv-00675-SDJ Document 167 Filed 08/30/21 Page 28 of 44 PageID #: 6566 analysis of a disability with a cost assessment of medical goods and services over a

qualify her to opine on the cost of medical goods and services associated with a particular disability over the course of an Bard has not established that courts require a medical license for a designated expert to opine on life care plans. And, in fact, Levy has developed numerous life care plans for patients with IVC filters and related injuries or disabilities both within and outside of the litigation context, see, e.g., (Dkt. #99 at 8), and care plans reliable, see, e.g., Blintz v. Cont l Airlines, Inc., No. 4:13-CV-0566, 2016 WL 2909394 (S.D. Tex. Mar. 3, 2016); Campbell v. Tex. Health Harris Methodist Hosp., SW Fort Worth (348th Dist. Ct., Tarrant County, Tex., Aug. 18, 2017). In view of the foregoing, the Court concludes that Levy is qualified to opine on life care plans.

ii. Speculation Second, as to the alleged speculation in the Court observes that life care plans, like any estimate of future costs, rely on projections. Based on the information before the Court care plan here and testimony related thereto are no more speculative than any projection of future costs, e.g., those based on estimated income and life expectancy, and no more speculative than any other such plan written by Levy and approved by other courts.

care plan relies on specific causation assumptions that are unreliable. Specifically, Bard argues

assumptions as to future medical costs do not withstand Daubert scrutiny. But Levy bases her opinions as to future medical costs on the medical reports of undisputedly expert doctors with personal knowledge that is, those who have completed medical consultations of Greger. These reports have been submitted and can be verified.

The practice of life care estimates of future costs is widely accepted. See supra Part III.A.4.i; Snider v.

N.H. Ins. Co., No. 14-2132, 2016 WL 3193473, at *2 (E.D. La. June 9, 2016) (life care planners upon the testimony of treating physicians as to the reasonable need for such care, and

up Thomas v. T.K. Stanley, Inc., No. 9-12-

CV-158, medical records and opinions of treating physicians and other medical providers are the sort of evidence that would be reasonably relied upon to create a life care plan). And Bard fails to offer a persuasive reason for this Court to deviate from that practice here. Levy is therefore permitted to rely on the reports of physicians with personal knowledge in rendering life care plan. 12

12 On April 30, 2021, Greger underwent an upper lobectomy a major surgery involving the removal of the upper counsel failed to apprise either the Court or Bard of the surgery until approximately six weeks after the operation. April 30, 2021 surgery concerned issues at the heart of this litigation, and because the delayed disclosure concededly resulted from counsel, the Court issued an order, on motion: continuing the trial setting from September 2021 until January 2022, and; (Dkt. #162). Now, after , and other

iii. Reliability Third, and finally, particular analysis and conclusions in the instant action. For a life care plan analysis to be probability (1) medical expenses will be incurred in the future, and (2) what the

Rodriguez v. Larson x 607, 609 (5th Cir. 2007) (per curiam). 13

The medical opinions on which Levy relies, including those by Dr. Richard Weiner, relate to the first prong, while relates to the second.

Specifically, Levy relies substantially on the opinions of Dr. Hurst, whose pertinent testimony the Court has already deemed reliable. See supra Part III.A.1. 14 Additionally, Levy relies in part on reports by Drs. Ritchie and Weiner, neither of

expert witnesses including Dr. Allyn Needham and others upon whom Levy relies have likewise revised their testimony to reflect factual developments lobectomy. In turn, Bard has Reports, (Dkt. #154). However, that motion, which has not yet been fully briefed, concerns

only the timeliness -witness disclosures and therefore does not alter the analysis or conclusion of this memorandum opinion and order.

13 Both parties, at times, confuse the relevant legal standard and source of law here. The applicable standard, as illustrated above, is preponderance of the evidence and arises out of federal rather than state law.

14 While the Court excluded certain testimony of Dr. Hurst, upon whom Levy relies in devising the

life care plan, no such excluded testimony affects opinion. For example, the Court struck Dr. specific-causation testimony. To formulate a life care plan, Levy need only rely on specific injuries that Greger has incurred, as well as the severity and projected duration thereof, all of which fall within the s and remain admissible. , among other topics, does not impact life care plans.

whom Bard challenges as unqualified. 15

In fact, Bard appears only to challenge that Dr. W Dr. Weiner treated Greger too cursorily to have rendered an informed opinion, and that Dr. methodology and conclusions have not been adequately substantiated. Dr. Weiner is a neurosurgeon who treated Greger in September 2020. After examining Greger, Dr. Dr. Weiner concluded that Greger suffers from Complex Regional Pain Syndrome

(CPRS) of lumbar sympathetic chain injury from a migrated IVC filter and possible further nerve damage as a consequence

Dr. Weiner is a qualified neurosurgeon who personally examined Greger and timely produced a report as to his conclusions, and Bard has not challenged Dr. beyond appearing to suggest that thirty-five-to-forty-minute phone consultation with Dr. Weiner is insufficient to reach a valid medical opinion. Levy is entitled to rely on Dr. -consultation report; Dr. Weiner plainly has the credentials and personal knowledge to produce an opinion here. Finally, as for the reasonable cost of needed healthcare, as established above, Levy is qualified to opine on life care plans and the costs associated with various medical conditions.

15 Bard contends that Greger failed to properly designate Dr. Weiner as an expert witness. However, Greger has not retained Dr. Weiner and does not intend to call Dr. Weiner as an expert witness. Further, Greger properly disclosed Dr. Weiner in her September 25, 2020, expert disclosures medical report to Bard.

For the foregoing reasons, Opinions and Testimony of Leigh Anne Levy, RN, (Dkt. #51), is DENIED.

5. Motion to Exclude or Limit the Opinions and Testimony of Allyn Needham, Ph.D., CEA Allyn Needham, Ph.D., CEA, is an economic analyst designated by Greger to offer case- life care plan costs. In his expert report and deposition testimony, Dr. Needham

#53-2). Bard now moves such estimates are unreliable because they: (1) are based on earnings that lack

evidentiary support; and (2) fail to consider several relevant factors, including tax returns, fluctuating income, and business expenses. Dr. Needham further opines in his updated supplemental report and corresponding deposition testimony that life care costs are $1,343,795.79, with a present value of $1,487,835.54. (Dkt. #53-3). 16

D life care cost valuation relies solely on the life care plan developed by Leigh Ann Levy, RN. Bard contends unreliable. Bard further contends that Dr. e to consider

medical condition before or after her alleged injury renders his valuation unreliable.

16 As noted above, see supra Part III.A.4.ii n.12, Dr. Needham has revised his April 30, 2021, lobectomy. However, nothing about Dr. of admissible testimony.

report -draft depositions; W- 2015 2019;

K- 2019; various other letters and depositions; and data from the Social arket Rates data, and the National Center for Health Statistics. Using that information, Dr. Needham calculated lost earnings as follows. (Dkt. #100-1). First, Dr. Needham i.e., projected future earnings assuming that Greger had not been injured by averaging prior income from 2015 to 2018, before Greger was injured. Dr. year in which Greger was injured, to estimate -injury earning capacity.

Dr. Needham applied an annual rate of inflation of 2.03% 17

to both figures and , up to Dr. Needham also reduced the income for both figures consistent with applicable tax deductions. Bard argues For instance, Bard asserts that

Dr. reliable because he -2 and K- earning potential. However, courts routinely conclude that similar or less robust lost-

earnings calculations are reliable. See, e.g., Glasscock v. Armstrong Cork Co., 946 F.2d

17 Dr. Needham procured this inflation rate from the Survey of Professional Forecasters published by the Federal Reserve Bank of Philadelphia.

1085, 1091 (5th Cir. 1991) -earnings calculation based on wages and work history was reliable); Stewart v. Hankins, No. 4:15-cv-586, (Dkt. #37 at 7 9) (E.D. Tex. Sept. 2, 2016) (-earning -2 form, age, race, and sex was reliable). Next, Bard contends life care plan costs are unreliable and therefore should be excluded. As both parties concede, the reliability and, consequently, admissibility of Dr. life care plan cost in producing his estimate. As the Court has already established, see supra Part

III.A.4.iii.

For the foregoing reasons, D Opinions and Testimony of Allyn Needham, Ph.D., CEA, (Dkt. #53), is DENIED.

6. Motion to Strike New Post-MDL General Opinions of Expert David Garcia, M.D. Relating to Clot

Formation

i. Rule 26 Dr. David Garcia, M.D., is an expert witness who has offered opinions on IVC design, function, efficacy, and risks, in numerous forums. One such forum is the MDL court, in which Dr. Garcia authored a report on IVC filters in March 2017. On June 5, 2020, new report from Dr. Garcia, which purported to supplement Dr. analyzed clot .

, Martin Baughman, served the June 2020 report on Bard in another suit in which Baughman is counsel of record: Wright v. C.R. Bard, Inc., No.

3:19-CV-2176-S (N.D. Tex.). 18

On August 3, 2020, Dr. Garcia gave a deposition in Wright, in which Bard deposed Dr. Garcia about the IVC filters and clot formation, among other topics. And, on September 25, 2020, Greger timely designated Dr. Garcia as an expert witness for the purposes of offering his opinion on the contents of the June 2020 report. (Dkt. #55-5 at 4). In particular, Greger disclosed that Dr. Garcia formation.

Now, Bard argues that the Court should strike Dr. on clot formation under Federal Rule of Civil Procedure 37(c) because this testimony and because the new opinions on clot formation in Dr. supplemental opinions under . Bard further argues that Dr. in the proceedings and that the opinions contained therein are irrelevant to the instant case.

a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially just FED. R. CIV. P. 37(c)(1). Here, the Court need not address whether Dr. 2020 report was properly or timely disclosed or whether the report constitutes a

18 on Bard in other proceedings as well. See (Dkt. #55-5).

proper supplemental opinion under Rule 26(e) because the Court concludes that, in any event, e was harmless. 19

In several cases that are nearly factually identical to this one, 20

courts have concluded that any alleged failure by the plaintiff(s) to disclose Dr. 2020 testimony to Bard is harmless. Compton v. C.R. Bard, No. 4:19-cv-00729-NKL, (Dkt. #130) (W.D. Mo. Mar. 1, 2021); Mattle v. C.R. Bard, No. 2:19-cv-07795-SAB, (Dkt. #47) (C.D. Cal. Mar. 22, 2021); Wolfe v. C.R. Bard; No. 2:19-cv-07768-SAB, (Dkt. #143) (C.D. Cal. Mar. 24, 2021); Michaleczko v. C.R. Bard, No. 2:19-cv-07736- SAB, (Dkt. #146) (C.D. Cal. March 24, 2021); Taylor v. C.R. Bard, No. 2:19-cv-01172-MJH, (Dkt. #65) (W.D. Pa. Apr. 15, 2021); Nolen v. C.R. Bard, Inc., et al., No. 3:19-cv-

19 In evaluating whether a violation of Rule 26 is harmless, the Fifth Circuit has enunciated a four- to the opposing party of including the evidence; (3) the possibility of curing such prejudice by granting a continuance; and (4) the explanation for the part Tex. A&M Rsch. Found. v. Magna Transp., Inc., 338 F.3d 394, 402 (5th Cir. 2003) (citation omitted); accord Cinemark Holdings, Inc. v. Factory Mut. Ins. Co., No. 4:21-CV-00011, 2021 WL 2662178, at *2 (E.D. Tex. June 29, 2021) (citing Primrose Op. Co. v. Nat Am. Ins. Co., 382 F.3d 546, 563 64 (5th Cir. 2004)). Here as in most cases, and as the partie briefing reflects s the most important factor for several reasons. First, it is difficult to assess the relative the litigation. Second, Bard has not sought, and the Court is not inclined to grant sua sponte, a trial continuance on the basis of this alleged failure to disclose (though the Court recently granted a Bard trial-continuance motion on the basis of a separate failure to disclose, see (Dkt. #162)). And finally, factor four either weighs in Greger s favor, or is, at best, neutral the MDL because she was not a party to the MDL. Therefore, factor three prejudice to the opposing party

20 Bard is a defendant both in the MDL and in numerous actions remanded from and filed independently of the MDL pertaining to its IVC filters and alleged complications sus report should be struck for the same reasons enumerated here. And, in at least a substantial s June 2020 testimony regarding Bard IVC filters.

0799, (Dkt. #196) (M.D. Tenn. May 28, 2021); Pratt v. C.R. Bard, Inc. et al., No. 3:19-cv-02618-CEH-SPF, (Dkt. #44) (N.D. Fla. June 11, 2021).

In Compton, for instance, the court held that can cause clot formations on the filter surface was well-known to Bard since at least 2017, and Bard has had opportunity to depose Garcia on this opinion. Bard will not Compton, (Dkt. #130 at 8) (Mar. 1, 2021). Therefore, the court concluded that the error was harmless and denied Bard Motion to Strike -MDL General Opinions Regarding Clot Formation and Preclude Dr. Garcia From Offering any Such Undisclosed or Improperly Disclosed Opinions in this Case. Id. Similarly, in Mattle June 2020 report was harmless because Bard had notice of and testimony. Mattle, (Dkt. #47 at 8 9) (Mar. 22, 2021).

The Court agrees. Any alleged failure by Greger identity or testimony is harmless and, thus, denied. Here, as established in, e.g., Compton and Mattle, Bard has clearly been

testifying on Bard IVC products, and specific potential risks, including blood-clot-related testimony, since at least 2017. Bard has had the opportunity to depose Dr. Garcia and has done so, specifically as it pertains to blood clots, in this and other, similar proceedings. Thus, Bard suffers no prejudice by any non- or late disclosure of Dr. Garcia by Greger. Nor

does undue delay result from any such failure to disclose; Greger designated Dr. Garcia as an expert witness some five months before the expert designation deadline, and Bard promptly deposed Dr. Garcia forty-six days thereafter.

ii. Relevance Finally, Dr Federal : (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. -liability actions is whether a product is more dangerous than a reasonable consumer would susceptible to producing blood clots, tends to influence the reasonable-expectation-of-

dangerousness analysis. Moreover, products-liability suits involve the question of and the negative consequences associated therewith clearly shed light on the question

of whether the product works as expected.

- MDL General Opinions of Expert David Garcia, M.D. Relating to Clot Formation, (Dkt. #55), is DENIED. B. Notices Adopting Motions to Exclude or Disqualify Made in the MDL

When an MDL court has already ruled on particular Daubert issues, a district court may adopt such rulings in full if it agrees with the analysis and conclusions. See, e.g., McBroom v. Ethicon, Inc., No. CV-20-02127-PHX-DGC, 2021 WL 2709292,

at *1 n.1 (D. Ariz. July 1, 2021); 21

In re Ethicon, Inc. Pelvic Repair Sys. Prod. Liab. Litig., MDL No. 2327, 2017 WL 1534199, at *1 (S.D.W.V. Apr. 27, 2017) (seven individual cases within a 28,000-case MDL were transferred to a new judge, who, after reviewing the briefing and prior order, agreed with the analysis and conclusions reached therein and, ci adopted the prior j

ed 59 68, Bard styled its motion as a or disqualify made before the MDL court. Each such motion has been fully briefed before and adjudicated by the MDL court. Specifically, Bard has filed notices adopting the following motions made in the MDL court: Motion to Exclude the Opinions of Rebecca Betensky, Ph.D., (Dkt. #59), Motion to Exclude the Opinions of Mark J. Eisenberg, M.D., (Dkt. #60), 22 Motion to Exclude the Opinions of David Garcia, M.D., and Michael Streiff, M.D., (Dkt. #61), Motion to Exclude the Opinions of Darren R. Hurst, M.D., (Dkt. #62), Motion to Exclude the Opinions of David Kessler, M.D., (Dkt. #63), Motion to Exclude the Opinions of Thomas Kinney, M.D., Anne Christine Roberts, M.D., and Sanjeeva

21 Granted, McBroom because McBroom was transferred to the district court directly from the MDL. Here, by contrast, although Bard was part of the MDL, Greger was not. This procedural distinction could conceivably be significant if Greger argued that she lacked the opportunity to litigate her case before the MDL court; however, Greger has adopted in full and incorporated by 59 68 and asks that this Court adopt the MDL court Greger suffers no prejudice if the Court rules on motions 59 68 on the basis of the adopted briefing and persuasiveness of the MDL court

22 Greger has agreed to withdraw her designation of Mark J. Eisenberg as an expert DENIED as

moot.

Kalva, M.D., (Dkt. #64); Motion to Exclude the Opinions of Robert M. McMeeking, Ph.D., (Dkt. #65); Motion to Exclude the Opinions of Suzanne Parisian, M.D., (Dkt. #66); Motion to Exclude the Opinions of Robert O. Ritchie, Ph.D., (Dkt. #67); and Motion to Disqualify Robert Vogelzang, M.D., and Kush Desai, M.D., as Testifying Experts, (Dkt. #68). Because these notices adopting motions previously filed with the MDL court are, in effect, motions, the Court will treat them as such.

The Court, having reviewed all of the briefing submitted by the parties and carefully evaluated the MDL court concludes that it agrees with the analysis and conclusion of the MDL court. The Court therefore ADOPTS the MDL court orders as to the expert witnesses and testimony described and relief sought in docket entries 59 68. 23

V. CONCLUSION For the foregoing reasons: Darren R. Hurst, M.D., (Dkt. #46), is GRANTED in part and DENIED in part. See supra Part III.A.1.

23 The Court understands this memorandum opinion and order to be fully consistent as to the above-listed experts. However, to the extent either party understands the two to be incongruous, the holding in this memorandum opinion and order governs. Additionally, to the extent either party understands this memorandum opinion and order to not address an issue raised in briefing, the Court will entertain objection and argument at trial or by appropriate motion. Finally, some requests contained in the MDL court briefing are inapplicable here; to the expert witnesses described in the titles of docket entries 59 68 and the relief sought therein.

Dr. Robert O. Ritchie, (Dkt. #48), is GRANTED in part and DENIED in part. See

supra Part III.A.2.

Kandarpa, M.D., (Dkt. #50), is DENIED. See supra Part III.A.3.

Leigh Anne Levy, RN, (Dkt. #51), is DENIED. See supra Part III.A.4.

D Needham, Ph.D., CEA, (Dkt. #53), is DENIED. See supra Part III.A.5.

-MDL General Opinions of Expert David Garcia, M.D. Relating to Clot Formation, (Dkt. #55), is DENIED. See supra Part III.A.6.

It is further ORDERED that the Court resolves docket entries 59 68 by ADOPTING in full the MDL court orders as to the general expert testimony of:

Rebecca Betensky, Ph.D., Bard MDL, (Dkt. #9773) (Jan. 22, 2018) (denying

to exclude); Drs. David Garcia and Michael Streiff, Bard MDL, (Dkt. #10072) (Feb. 12,

exclude); Dr. David Hurst, Bard MDL motion to exclude);

Drs. Thomas Kinney, Anne Christine Roberts, and Sanjeeva Kalva, Bard MDL,

Dr. Robert McMeeking, Ph.D., Bard MDL, (Dkt. #10051) (Feb. 8, 2018)

Drs. Suzanne Parisian and David Kessler, Bard MDL, (Dkt. #9433) (Dec. 21,

Dr. Robert

motion to exclude); and Drs. Scott Resnick, Robert Vogelzang, Kush Desai, and Robert Lewandowski,

Bard MDL disqualify Drs. Vogelzang and motion to exclude as to Dr. Resnick). In view of the foregoing, the Court hereby ORDERS that notice adopting its MDL-court motion to exclude the opinions of and/or disqualify:

Rebecca Betensky, Ph.D., (Dkt. #59), is DENIED; Mark J. Eisenberg, M.D., (Dkt. #60), is DENIED as moot; David Garcia, M.D. and Michael Streiff, M.D., (Dkt. #61), is GRANTED in

part; Darren R. Hurst, M.D., (Dkt. #62), is DENIED; David Kessler, M.D., (Dkt. #63), is GRANTED in part; Thomas Kinney, M.D., Anne Christine Roberts, M.D., and Sanjeeva Kalva,

M.D., (Dkt. #64), is GRANTED in part; Robert M. McMeeking, Ph.D., (Dkt. #65), is GRANTED in part; Suzanne Parisian, M.D., (Dkt. #66), is GRANTED in part;

Robert O. Ritchie, (Dkt. #67), is GRANTED in part; and Robert Vogelzang, M.D., and Kush Desai, M.D., (Dkt. #68), is DENIED in

part and DENIED as moot in part.