

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

NATALIE JOHNSON,

Plaintiff,

ORDER

v.

19-cv-760-wmc

C.R. BARD INC. and  
BARD PERIPHERAL VASCULAR INC.,

Defendants.

Before the court is the parties' request for ruling on objections to certain deposition designations as to Bill Altonaga.

DEPONENT	PL AFFIRM	DEF OBJECTIONS	PL RESPONSE TO OBJECTIONS	COURT RULING
		Bard objects to Plaintiff's references to "Admitted in the Peterson case" as a basis for allowing a designation to played, or overruling an objection, and submits that the testimony should be consider based on the facts and applicable law and rulings in this case. The Peterson case involved a different filter, different claims, and was decided under different state law.		
Altonaga, Bill 10/22/2013	6:18-6:22			
Altonaga, Bill 10/22/2013	7:06-8:04			
Altonaga, Bill 10/22/2013	8:11-8:16			

Altonaga, Bill 10/22/2013	9:11-9:13 Start at "CETEC"			
Altonaga, Bill 10/22/2013	10:08-10:13 Start at "I guess".			
Altonaga, Bill 10/22/2013	14:04-14:09			
Altonaga, Bill 10/22/2013	33:17-34:10			
Altonaga, Bill 10/22/2013	71:24-72:10	There is no allegation of misbranding in this case. Rules 401, 402 And 403. Further to the extent the designation is allowed the counters are necessary for completeness	Admitted in the Peterson Case The testimony is relev[a]nt to the Plaintiff's failure to warn and negligence claims. The allegation of misbranding appears in MDL ECF Doc. 364 - Master Complaint for Damages at ¶ 231(a). All allegations plead in the Master Complaint were deemed plead in any Second Amended Short Form Complaint by MDL ECF Doc. 1485 -Second Amended Case Management Order at pp. 2-3.	OVERRULED
Altonaga, Bill 10/22/2013	72:08-72:10		No objection - we will add to Plaintiff's submission as indicated.	
Altonaga, Bill 10/22/2013	72:11-73:23	(73:9-73:24) Rules 401, 402, 403 – Testimony does not involve filter at issue and/or failure mode at issue; Irrelevant and any probative value outweighed by prejudicial effect. This case does not involve the Recovery filter. There is no allegation of misbranding in this case. Rules 401, 402 And 403. Further to the extent the designation is	Admitted in the Peterson Case Bard chose to market the Eclipse filter using the 510(k) process which relied upon the Recovery filter as the predicate. All G2 filter platform filters, including the Meridian trace their design history to the Recovery filter and the defects in the Meridian design only can be understood	SUSTAIN

		allowed the counters are necessary for completeness.	only in the context of the entire filter-line development. Testimony regarding the Recovery filter's complications, testing and design is relevant and is not outweighed by any prejudicial effect. Judge Campbell agreed with this position in Jones v. Bard. [MDL Order No. 10819]. The failure modes are relevant to the assessment of the defects in the design of the filter whether a particular failure mode has occurred; however, Ms. Johnson has experienced perforation, migration, tilt, and fracture.	
Altonaga, Bill 10/22/2013	87:02-87:04	Nonsensical designation. Vague and ambiguous	Admitted in the Peterson Case The testi[mo]ny is far from "Nonsensical" vague or ambiguous[s] and is to be considered in context with 71:24 - 73:23.	SUSTAIN
Altonaga, Bill 10/22/2013	87:06		Admitted in the Peterson Case	SUSTAIN
Altonaga, Bill 10/22/2013	87:18-87:22	Rule 403 – there is no failure to recall claim in this case	Admitted in the Peterson Case The issue of recall is disc[u]ssed ex[te]nsively in the Master Complaint. MDL ECF Doc. 364 - The Master Complaint for Damages discusses recall in multiple para[graphs] such as ¶¶ 77, 132, 135, 143, 146 (Meridian specific), and 202-209. All allegations plead in the Master Complaint were deemed plead in any	OVERRULED

			Second Amended Short Form Complaint by MDL ECF Doc. 1485 - Second Amended Case Management Order at pp. 2-3. Placed in context this testimony does not relate specifically to the need to recall the Mer[i]dian but is a more generally discussion of the options open to Bard once it learned its retr[ie]vable filters were experiencing serious complications. [I]t is directly relevant to the design defect claims as well as Bard's negligence and its failure to warn.	
Altonaga, Bill 10/22/2013	90:23-91:06		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	92:18-92:24		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	96:17-96:23		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	99:11-99:19		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	103:06-103:19		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	103:22-104:20		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	105:05-105:10		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	107:06-107:10		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	109:19-110:05	Cumulative of prior testimony	Admitted in the Peterson Case	OVERRULED
Altonaga, Bill 10/22/2013	113:02-113:06		Admitted in the Peterson Case	

Altonaga, Bill 10/22/2013	116:20- 116:23 Starting at "We talked"	-	Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	117:08- 117:13	-	Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	118:17- 118:22	-	Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	124:18- 125:18		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	125:22- 126:03	Rules 401, 402, 403 – Testimony does not involve filter at issue and/or failure mode at issue; Irrelevant and any probative value outweighed by prejudicial effect. This case does not involve perforation of the filter into the aorta, nor does it involve a fatal event. This testimony is overly prejudicial and has no bearing on the facts of this case.	Admitted in the Peterson Case Bard chose to market the Eclipse filter using the 510(k) process which relied upon the Recovery filter as the predicate. All G2 filter platform filters, including the Meridian trace their design history to the Recovery filter and the defects in the Meridian design only can be understood only in the context of the entire filter-line development. Testimony regarding the Recovery filter’s complications, testing and design is relevant and is not outweighed by any prejudicial effect. Judge Campbell agreed with this position in Jones v. Bard. [MDL Order No. 10819]. The failure modes are relevant to the assessment of the defects in the design of the filter whether a particular failure mode has occurred; however, Ms. Johnson has experienced perforation, migration, tilt, and fracture.	SUSTAIN

Altonaga, Bill 10/22/2013	135:20- 136:18	-	Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	137:02- 137:22	Rules 401, 402, 403 (137:12-137:22) – Testimony does not involve filter at issue and/or failure mode at issue; Irrelevant and any probative value outweighed by prejudicial effect. There is no evidence (or claim) of perforation of the filter into other organs in this case.	Admitted in the Peterson Case Bard chose to market the Eclipse filter using the 510(k) process which relied upon the Recovery filter as the predicate. All G2 filter platform filters, including the Meridian trace their design history to the Recovery filter and the defects in the Meridian design only can be understood only in the context of the entire filter-line development. Testimony regarding the Recovery filter’s complications, testing and design is relevant and is not outweighed by any prejudicial effect. Judge Campbell agreed with this position in Jones v. Bard. [MDL Order No. 10819]. The failure modes are relevant to the assessment of the defects in the design of the filter whether a particular failure mode has occurred; however, Ms. Johnson has experienced perforation, migration, tilt, and fracture.	OVERRULED

Altonaga, Bill 10/22/2013	138:04- 138:21	Rules 401, 402 & 403. Irrelevant and Unfairly prejudicial. There is no evidence of caval penetration into other organs in this case.	Admitted in the Peterson Case Bard chose to market the Eclipse filter using the 510(k) process which relied upon the Recovery filter as the predicate. All G2 filter platform filters, including the Meridian trace their design history to the Recovery filter and the defects in the Meridian design only can be understood only in the context of the entire filter-line development. Testimony regarding the Recovery filter's complications, testing and design is relevant and is not outweighed by any prejudicial effect. Judge Campbell agreed with this position in Jones v. Bard. [MDL Order No. 10819]. The failure modes are relevant to the assessment of the defects in the design of the filter whether a particular failure mode has occurred; however, Ms. Johnson has experienced perforation, migration, tilt, and fracture.	OVERRULED
Altonaga, Bill 10/22/2013	142:10- 142:17		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	149:08- 150:11	-	Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	152:06- 152:14		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	152:16- 152:20		Admitted in the Peterson Case	

Altonaga, Bill 10/22/2013	152:24- 153:07	Designation ends in a question.	Admitted in the Peterson Case 153:03 -153:07 is an answer.	OVERRULED
Altonaga, Bill 10/22/2013	153:08- 153:11	Answer to a question that is not designated. Vague and ambiguous.	Admitted in the Peterson Case Transcription error by Plaintiff's counsel - as indicated herein the question and 153:08-153:11 should be included. The testimony is relevant to Plaintiff's claims of design defect, negligence and failure to warn and is not unfairly prejudicial.	SUSTAIN AS TO QUESTION AND ANSWER AT 153:17-20
Altonaga, Bill 10/22/2013	153:17- 153:20	Answer to a question that is not designated. Vague and ambiguous.	Admitted in the Peterson Case Transcription error by Plaintiff's counsel - as indicated herein the question and 153:08-153:11 should be included. The testimony is relevant to Plaintiff's claims of design defect, negligence and failure to warn and is not unfairly prejudicial.	SUSTAIN
Altonaga, Bill 10/22/2013	157:19- 158:06		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	158:10- 158:21		Admitted in the Peterson Case	REMOVE 158:16
Altonaga, Bill 10/22/2013	158:23- 159:03		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	160:23- 161:06 Start at "I never"		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	168:05- 168:09 starting at "you're a"		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	168:12- 168:13		Admitted in the Peterson Case	

Altonaga, Bill 10/22/2013	169:21- 170:04	Rules 401, 402 and 403. Recovery "bad acts" were excluded by Motion in Limine.	Admitted in the Peterson Case	OVERRULED
Altonaga, Bill 10/22/2013	170:07- 170:10	Rules 401, 402 and 403. Recovery "bad acts" were excluded by Motion in Limine.	Admitted in the Peterson Case	OVERRULED
Altonaga, Bill 10/22/2013	170:12- 170:13	Rules 401, 402 and 403. Recovery "bad acts" were excluded by Motion in Limine.	Admitted in the Peterson Case	OVERRULED
Altonaga, Bill 10/22/2013	179:07- 179:13	Rules 401, 402 and 403. Recovery "bad acts" were excluded by Motion in Limine.	Admitted in the Peterson Case	OVERRULED
Altonaga, Bill 10/22/2013	179:20- 180:07	Rules 401, 402 and 403. Recovery "bad acts" were excluded by Motion in Limine.	Admitted in the Peterson Case	OVERRULED
Altonaga, Bill 10/22/2013	243:16- 243:18	Improper question. Further question related to Recovery filter. See, 243:11-13. Rules 401, 402 and 403	Admitted in the Peterson Case	OVERRULED
Altonaga, Bill 10/22/2013	243:20- 244:01		Admitted in the Peterson Case	
Altonaga, Bill 10/22/2013	251:03- 251:06		Admitted in the Peterson Case	
<b>DEPON- ENT</b>	<b>DEF COUNTER</b>	<b>PL OBJECTIONS</b>	<b>DEF RESPONSE TO OBJECTIONS</b>	<b>COURT RULING</b>
Altonaga, Bill 10/22/2013	90:15-90:22			
Altonaga, Bill 10/22/2013	91:13-91:16			
Altonaga, Bill 10/22/2013	124:18- 125:14	FRE 403: testimony is already contained in Plaintiff's affirmatives so results in undue delay, waste of time and needless presentation of cumulative evidence	If Plaintiff does not withdraw this designation, Bard will withdraw it.	MOOT
Altonaga, Bill 10/22/2013	126:01- 126:03	FRE 403: testimony is already contained in Plaintiff's affirmatives so results in undue delay, waste of time and	If Plaintiff does not withdraw this designation, Bard will withdraw it.	MOOT

		needless presentation of cumulative evidence		
Altonaga, Bill 10/22/2013	154:05-154:12	FRE 403: The answer to the question posed is not designated. Accor[ding]ly, the question is not rel[ev]ant and is misleading.	Plaintiff's counsel repeated the same question, and the witness is responding to it, and explaining why he cannot answer it the way Plaintiff's counsel wants.	OVERRULED
Altonaga, Bill 10/22/2013	155:04-155:10	FRE 403: The question answered by the witness is not designated. Accor[ding]ly, the question is not rel[ev]ant and is misleading.	Plaintiff's counsel repeated the same question, and the witness is responding to it, and explaining why he cannot answer it the way Plaintiff's counsel wants.	OVERRULED
Altonaga, Bill 10/22/2013	180:21-180:22			STRIKE
Altonaga, Bill 10/22/2013	182:04-182:06			STRIKE
<b>DEPON-ENT</b>	<b>PL COUNTERS TO COUNTERS</b>	<b>DEF OBJECTIONS</b>	<b>PL RESPONSE TO OBJECTIONS</b>	<b>COURT RULING</b>
Altonaga, Bill 10/22/2013	180:23-181:06	Rule 602, Witness does not have personal knowledge of the document. See 180:21-22.		STRIKE

Accordingly, IT IS ORDERED that the parties' request for rulings on objections to certain designations is GRANTED, and the objections are sustained in part and overruled in part as provided above.

Entered this 4th day of June, 2021.

BY THE COURT:  
/s/  
WILLIAM M. CONLEY  
District Judge