

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 John DeFord.

June 2, 2016, Deposition:

DEPON- ENT	DEF AFFIRM	PL OBJECTIONS	DEF RESPONSE TO OBJECTIONS	COURT RULING
	If Plaintiff is allowed to present testimony about the Recovery and the earlier generation filters, Bard should be able to present testimony to put it in context. Dr. DeFord was disclosed on a non-retained expert on the issues about			RESERVE as to defendants' use of affirmative designation from June 2, 2016, deposition.

	which he testifies.			
DeFord, John 06/02/2016	10:04-10:05			
DeFord, John 06/02/2016	13:06-13:15			
DeFord, John 06/02/2016	14:21-15:20			
DeFord, John 06/02/2016	16:06-18:18			
DeFord, John 06/02/2016	20:22-21:05			
DeFord, John 06/02/2016	21:13-21:17	Objection Relevance 402/403: The clinical research and results of another product are not relevant, are a waste of time, and will be confusing or mislead the jury.	Plaintiff objects to testimony regarding filters other than the Meridian Filter at issue in this case, but yet designates testimony from various Bard employees and former employees, including Mr. DeFord, regarding Bard IVC filters such as the Recovery and the G2 Filter, which preceded the Meridian Filter by several designs, and in the case of the Recovery, preceded the timeline of this case by a decade. If	OVERRULED except add 21:18-21:24

			Plaintiff is permitted to designate such irrelevant testimony, Bard must be permitted to do so as well.	
DeFord, John 06/02/2016	22:01-23:18	Objection Relevance 402/403: The clinical research and results of another product are not relevant, are a waste of time, and will be confusing or mislead the jury.	Plaintiff objects to testimony regarding filters other than the Meridian Filter at issue in this case, but yet designates testimony from various Bard employees and former employees, including Mr. DeFord, regarding Bard IVC filters such as the Recovery and the G2 Filter, which preceded the Meridian Filter by several designs, and in the case of the Recovery, preceded the timeline of this case by a decade. If Plaintiff is permitted to designate such irrelevant testimony, Bard must be permitted to do so as well	OVERRULED
DeFord, John 06/02/2016	24:19-24:22			
DeFord, John 06/02/2016	78:12-78:16			
DeFord, John 06/02/2016	78:19-79:18			

DEPONENT	PL COUNTERS	DEF OBJECTIONS	PL RESPONSE TO OBJECTIONS	COURT RULING
DeFord, John 06/02/2016	288:14-288:20		<p>Bard chose to market the Meridian 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. The Bard's conduct with regard to the design of its IVC filters from the Recovery filter to the Meridian is relevant to the negligence claims</p>	

<p>DeFord, John 06/02/2016</p>	<p>288:23-289:12</p>		<p>Bard chose to market the Meridian 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. The Bard's conduct with regard to the design of its IVC filters from the Recovery filter to the Meridian is relevant to the negligence claims</p>	
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August 15, 2019, Deposition:

DEPONENT	DEF AFFIRM	PL OBJECTIONS	DEF RESPONSE TO OBJECTIONS	COURT RULING
		<p>Running Objection to FRE 701 & Relevance: Plaintiff objects to this deposition on the grounds that this witness has not been designated as an expert witness and any testimony in violation of FRE 701, attempting to elicit expert opinions from a lay witness, should be stricken. Additionally, Plaintiff objects to any testimony regarding the Bard Denali filters as they have no relevance to Plaintiff's case. Plaintiff makes his counter-designations in the event the court overrules his objections.</p>	<p>Plaintiff has designated much testimony from other of Bard's witnesses regarding the testing, development, marketing, and clearance of various of Bard's filters not involved in Plaintiff's case. If Plaintiff is able to designate this irrelevant testimony regarding Bard's other filters, Bard must be permitted to do so as well. Moreover, the witness is not offering expert testimony. He has extensive personal experience in the medical device industry, with IVC filters generally, and specifically with Bard's IVC filters, and his testimony is based on personal knowledge of events in which he was involved. Further, Dr. DeFord was designated as a non-retained expert in this case.</p>	OVERRULED
DeFord, John 08/15/2019	7:16-16:09	(11:17-16:09) FRE 401: not relevant (16:07-16:09) Lack of foundation; FRE 602	<p>The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a</p>	OVERRULED

			witness with extensive background and experience with these matters.	
DeFord, John 08/15/2019	16:12-21:11	(16:12-16:24) Lack of foundation; FRE 602 (16:25-17:07) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. Through the course of his career, the witness has had reason to keep abreast of medical literature and the medical community's experience as a whole with IVC filters in general and providing testimony regarding that experience and knowledge is directly relevant.	SUSTAIN as to 17:23-18:1 (beginning with "And so"), 18:19-19:25. Otherwise OVERRULED
DeFord, John 08/15/2019	21:14-22:16			
DeFord, John 08/15/2019	22:19-24:01			
DeFord, John 08/15/2019	24:04-24:07			
DeFord, John 08/15/2019	24:09-24:18			
DeFord, John 08/15/2019	24:21-26:01			

DeFord, John 08/15/2019	26:04-26:12			
DeFord, John 08/15/2019	26:14-27:09			
DeFord, John 08/15/2019	27:12-28:18	(28:16-28:18) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The witness is entitled to explain his answer. The witness has previously testified to his lengthy experience in the medical device industry and with IVC filters in general. He is speaking from personal knowledge of events that he was involved in.	OVERRULED
DeFord, John 08/15/2019	28:21-30:18	(28:21-29:21) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The testimony is directly responsive to the question asked. The witness is entitled to explain his answer. The witness has previously testified to his lengthy experience in the medical device industry and with IVC filters in general. He is speaking from personal knowledge of events that he was involved in. The witness is discussing facts that are well-established within the medical community and to which Plaintiff's own expert witnesses agree.	OVERRULED
DeFord, John 08/15/2019	30:20-30:25			OVERRULED

DeFord, John 08/15/2019	31:23-32:10	(31:23-32:05) Lack of personal knowledge; FRE 602. speculation. Opinion testimony by a lay witness; FRE 701. (32:06-32:10) Lack of personal knowledge; FRE 602. speculation. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in.	OVERRULED
DeFord, John 08/15/2019	32:13-32:20	(32:13-32:18) Lack of personal knowledge; FRE 602. speculation. Opinion testimony by a lay witness; FRE 701. (32:19-32:20) vague: unclear as to what "evolved over time" means.	Dr. DeFord was disclosed as a non-retained expert. The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The question is not vague.	OVERRULED
DeFord, John 08/15/2019	32:22-33:06	(32:22-32:24) vague: unclear as to what "evolved over time" means.	Dr. DeFord was disclosed as a non-retained expert. The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The question is not vague.	OVERRULED
DeFord, John 08/15/2019	33:11-33:25	(33:24-33:08) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in, as well as the medical literature that he is aware of on the topic of central venous	OVERRULED

			pressure, which the Plaintiffs put directly at issue in this litigation.	
DeFord, John 08/15/2019	34:02-34:08	(34:02-34:08) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in.	OVERRULED
DeFord, John 08/15/2019	37:03-37:14	(37:03-37:14) Lack of foundation; Lack of personal knowledge; FRE 602. Speculation. Opinion testimony by a lay witness; FRE 701. No scientific proof that filters including the Recovery filters save lives.	Dr. DeFord was disclosed as a non-retained expert.	OVERRULED
DeFord, John 08/15/2019	38:14-39:17	(38:14-39:17) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert.	OVERRULED
DeFord, John 08/15/2019	39:19-40:20	(39:19-40:16) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701. Speculation. Narrative. (40:17-40:20) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert.	OVERRULED
DeFord, John 08/15/2019	40:23-42:16	(40:23-41:19) Lack of foundation; FRE 602. Speculation. Opinion testimony by a lay witness; FRE 701. (42:14-42:16) Leading.	Dr. DeFord was disclosed as a non-retained expert.	OVERRULED

		Lack of foundation; Opinion testimony by a lay witness; FRE 701.		
DeFord, John 08/15/2019	42:19-43:18	(42:19-42:21) Leading. Lack of foundation; Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert.	OVERRULED
DeFord, John 08/15/2019	50:08-50:12	50:08-50:25) Lack of foundation; Lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. Speculation.	Dr. DeFord was disclosed as a non-retained expert. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	50:15-50:25	50:08-50:25) Lack of foundation; Lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. Speculation.	Dr. DeFord was disclosed as a non-retained expert. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	51:01-51:05	50:08-50:25) Lack of foundation; Lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. Speculation.	Dr. DeFord was disclosed as a non-retained expert. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED

DeFord, John 08/15/2019	51:08-51:16	(51:01-51:12) Lack of foundation; Lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. Speculation.	Dr. DeFord was disclosed as a non-retained expert. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	51:18-52:19	(51:18-51:20) Lack of foundation; Lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. Speculation.	Dr. DeFord was disclosed as a non-retained expert. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	54:11-54:16	(54:11-54:16) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	54:19-55:06	(54:19-55:06) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this	OVERRULED

			litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	
DeFord, John 08/15/2019	71:08-71:14	(71:08-71:14) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	71:16-72:02	(71:16-71:21) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701. (71:25-72:02) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED

DeFord, John 08/15/2019	72:04-72:22	(71:04-72:22) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	72:25-74:08	(72:25-73:10) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701. (73:18-73:24) Object to FDA testimony based on Plaintiff's 510k MIL. FRE 403- & 401 (74:06-74:08) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	Dr. DeFord was disclosed as a non-retained expert. The Court denied Plaintiff's MIL on this issue.	OVERRULED
DeFord, John 08/15/2019	74:11-75:09	(74:11-74:16) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701. (75:06-75:09) Object to FDA testimony based on Plaintiff's 510k MIL. FRE 403- & 401	Dr. DeFord was disclosed as a non-retained expert. The Court denied Plaintiff's MIL on this issue.	OVERRULED
DeFord, John 08/15/2019	75:11-75:12	(75:11-75:12) Object to FDA testimony based on Plaintiff's 510k MIL. FRE 403- & 401	The Court denied Plaintiff's MIL on this issue.	OVERRULED

DeFord, John 08/15/2019	75:14-81:10	(75:14) Object to FDA testimony based on Plaintiff's 510k MIL FRE 403- & 401 (77:10-77:15) Lack of foundation; lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. speculation (77:16-77:24) Lack of foundation; lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. speculation (77:25-78:06) Lack of foundation; lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. speculation (80:20-80:25) Lack of foundation; lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. speculation	Dr. DeFord was disclosed as a non-retained expert. The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters. Defendants incorporate by reference their response to Plaintiff's 510k motion in limine.	SUSTAIN as to 77:10-78:12 and 80:17-80:25. Otherwise OVERRULED
DeFord, John 08/15/2019	81:13-82:02	(81:13-82:02) Lack of foundation; lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. speculation	Dr. DeFord was disclosed as a non-retained expert.	OVERRULED
DeFord, John 08/15/2019	82:05-82:06			
DeFord, John 08/15/2019	82:10-82:25			

DeFord, John 08/15/2019	83:03-83:14			
DeFord, John 08/15/2019	83:19-84:21			
DeFord, John 08/15/2019	84:24-86:01	(87:10-87:11) Lack of foundation; lack of personal knowledge; FRE 602. speculation.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	SUSTAIN as to 84:17-84:21. Otherwise OVERRULED
DeFord, John 08/15/2019	91:03-92:08	(91:02) Lack of foundation; FRE 602.		OVERRULED
DeFord, John 08/15/2019	92:10-92:13	(92:12-92:13) Lack of foundation; FRE 602.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED

DeFord, John 08/15/2019	92:15-93:15	(92:15-92:25) Lack of foundation; (93) FRE 401/403, testimony regarding the Denali filter, which is not at issue is not relevant. (94:01-94:25) Object to FDA testimony based on Plaintiff's 510k MIL FRE 403- & 401, FRE 401/403, testimony regarding the Denali filter, which is not at issue is not relevant. (95:11-95:13) Lack of foundation; lack of personal knowledge; FRE 602. Opinion testimony by a lay witness; FRE 701. speculation. Misleading as the study had not concluded. FRE 403 FRE 401/403, testimony regarding the Denali filter, which is not at issue is not relevant.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	97:18-97:23	(97:21-97:23) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	98:01-98:07	(98:01-98:04) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	The witness has previously testified to his lengthy experience in the medical device industry.	OVERRULED

		(98:05-98:07) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	
DeFord, John 08/15/2019	98:10-99:01	(98:10-98:16) Lack of foundation; FRE 602. (98:24-99:01) Lack of foundation; FRE 602.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	99:04-99:07	(99:04-99:07) Lack of foundation; FRE 602.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED

DeFord, John 08/15/2019	99:09-99:13	(99:09-99:13) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DeFord, John 08/15/2019	99:15-100:06	(99:15-99:17) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701. (100:05-100:06) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	SUSTAIN as to 100:05-100:07. Otherwise OVERRULED
DeFord, John 08/15/2019	100:08-100:14	(100:08-100:09) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701. (100:10-100:14) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive	SUSTAIN as to 100:08-100:09. Otherwise OVERRULED

			background and experience with these matters.	
DeFord, John 08/15/2019	100:16- 101:02	(100:16) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701. (100:17-100:23) Leading. Counsel in testifying. (100:24-101:02) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED as to 100:16. Otherwise SUSTAIN
DeFord, John 08/15/2019	101:04- 101:08	(101:04) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701. (101:05-101:08) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701.	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	SUSTAIN as to 101:04. Otherwise OVERRULED
DeFord, John 08/15/2019	101:10- 101:16	(101:10-101:16) Lack of foundation; FRE 602. Opinion testimony by a lay witness; FRE 701. (101:11-101:25) Relevance. FRE 401	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters	OVERRULED

			directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	
DeFord, John 08/15/2019	101:18- 101:25	(101:18-101:25) Relevance. FRE 401	The witness has previously testified to his lengthy experience in the medical device industry. He is speaking from personal knowledge of events that he was involved in. The Plaintiff has put these matters directly at issue in this litigation. Defendants are entitled to respond with a witness with extensive background and experience with these matters.	OVERRULED
DEPON- ENT	PL COUNTERS	DEF OBJECTIONS	PL RESPONSE TO OBJECTIONS	COURT RULING
DeFord, John 08/15/2019	102:20- 103:23			
DeFord, John 08/15/2019	104:20- 105:17			
DeFord, John 08/15/2019	106:04- 106:07			
DeFord, John 08/15/2019	106:09- 106:15			

DeFord, John 08/15/2019	106:17- 107:14			
DeFord, John 08/15/2019	108:05- 108:21 stopping at Correct	Object to the introduction of the article on the grounds that it is hearsay. Also – not a counter to any testimony designated by Defendants.	Use of the article is appropriate under FRE 803(18), The article is used a demonstrative aide and Plaintiff's will not ask for admission as an exhibit.	OVERRULED
DeFord, John 08/15/2019	109:02- 109:21	Object to the introduction of the article on the grounds that it is hearsay. Also – not a counter to any testimony designated by Defendants.	Use of the article is appropriate under FRE 803(18), The article is used a demonstrative aide and Plaintiff's will not ask for admission as an exhibit.	SUSTAIN
DeFord, John 08/15/2019	109:23	Object to the introduction of the article on the grounds that it is hearsay. Also – not a counter to any testimony designated by Defendants.	Use of the article is appropriate under FRE 803(18), The article is used a demonstrative aide and Plaintiff's will not ask for admission as an exhibit.	SUSTAIN
DeFord, John 08/15/2019	110:04- 110:13	Object to the introduction of the article on the grounds that it is hearsay. Also – not a counter to any testimony designated by Defendants.	Use of the article is appropriate under FRE 803(18), The article is used a demonstrative aide and Plaintiff's will not ask for admission as an exhibit.	OVERRULED
DeFord, John 08/15/2019	110:15 "Yes"	Not a counter to any testimony designated by Defendants		OVERRULED
DeFord, John 08/15/2019	110:21- 111:25	Not a counter to any testimony designated by Defendants		OVERRULED
DeFord, John 08/15/2019	112:08- 115:21			

DeFord, John 08/15/2019	116:13- 117:19 stopping at correctly	Counsel is testifying – he is reading from an article and the only question is “did I read it correctly?”		OVERRULED except add the rest of 117:19-117:25.
DeFord, John 08/15/2019	127:02- 127:23	Rules 401, 402, 403 – This violates the Court’s Order on Recovery migration deaths. This testimony is overly prejudicial and has no bearing on the facts of this case. The Court has ruled this testimony is not substantially similar to the facts in this case and, therefore, should be excluded. (See ECF No. 204, p. 3-5.)	Bard is presenting the testimony of this witness and he discusses the Recovery filter extensively. Plaintiff’s cross is within the scope of the direct. In addition, Bard chose to market the Meridian 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	OVERRULED

			fracture. The Bard's conduct with regard to the design of its IVC filters from the Recovery filter to the Meridian is relevant to the negligence claims	
DeFord, John 08/15/2019	135:19- 136:08	Rules 601/602 & 612. Witness does not have personal knowledge of document. Witness was shown a document, was not familiar with it and testified that he/she does not have personal knowledge about it or the circumstances. Rules 601/602 & 612. Lacks foundation, witness does not have personal knowledge of subject matter, calls for speculation by the witness. Rules 401, 402, 403 – Testimony relates to irrelevant and prejudicial evidence regarding Bard’s conduct related to the Recovery Filter. Irrelevant and any probative value outweighed by prejudicial effect. The witness testified that he has never seen the document before. See 135:8-135:15.	The Federal Rules of Evidence do not prohibit a party from questioning witnesses about admissible documents the witness does not recall having seen before. “Personal knowledge of a fact ‘is not an absolute’ to Rule 602's foundational requirement”, United States v. Cuti, 702 F.3d. 453, 459 (2nd Cir. 2013). . “What if you had known “ questions are acceptable. Id., 459 (2nd Cir. 2013). The witness has been called by Bard as its Executive VP and Chief Technology officer with over 15 and years of experience with the company and its IVC filters. The information discussed is or should be within the scope of his	SUSTAIN

			<p>employment and knowledge. 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. The Bard's conduct with regard to the design of its IVC filters from the Recovery filter to the Meridian is relevant to the negligence claims. The testimony is relevant and not unfairly prejudicial.</p>	
<p>DeFord, John 08/15/2019</p>	<p>155:12- 155:22</p>	<p>Rules 401, 402, 403 – This violates the Court's ruling on the MIL on Recovery migration deaths. This case does not involve a fatal migration or a Recovery Filter. This testimony is overly prejudicial and has no bearing on the facts of this case. The Court has ruled this testimony is not substantially similar to the facts in this case and, therefore, should be</p>	<p>The witness has been called by Bard as its Executive VP and Chief Technology officer with over 15 and years of experience with the company and its IVC filters. The information discussed is or should be within the scope of his employment and knowledge. Testimony regarding the Recovery filter's complications, testing and design is relevant and is not</p>	<p>SUSTAIN</p>

		excluded. (See ECF No. 204, p. 3-5.)	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. The Bard's conduct with regard to the design of its IVC filters from the Recovery filter to the Meridian is relevant to the negligence claims. The testimony is relevant and not unfairly prejudicial.	
DeFord, John 08/15/2019	156:04-156:09 End at "to be serious."	Rules 401, 402, 403 – This violates the Court's ruling on the MIL on Recovery migration deaths. This case does not involve a fatal migration or a Recovery Filter. This testimony is overly prejudicial and has no bearing on the facts of this case. The Court has ruled this testimony is not substantially similar to the facts in this case and, therefore, should be excluded. (See ECF No. 204, p. 3-5.)	The witness has been called by Bard as its Executive VP and Chief Technology officer with over 15 and years of experience with the company and its IVC filters. The information discussed is or should be within the scope of his employment and knowledge. 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	OVERRULED

			<p>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. The Bard's conduct with regard to the design of its IVC filters from the Recovery filter to the Meridian is relevant to the negligence claims. The testimony is relevant and not unfairly prejudicial.</p>	
<p>DeFord, John 08/15/2019</p>	<p>156:11- 156:16 end at "That's Fair"</p>	<p>Rules 401, 402, 403 – This violates the Court's ruling on the MIL on Recovery migration deaths. This case does not involve a fatal migration or a Recovery Filter. This testimony is overly prejudicial and has no bearing on the facts of this case. The Court has ruled this testimony is not substantially similar to the facts in this case and, therefore, should be excluded. (See ECF No. 204, p. 3-5.)</p>	<p>The witness has been called by Bard as its Executive VP and Chief Technology officer with over 15 and years of experience with the company and its IVC filters. The information discussed is or should be within the scope of his employment and knowledge. 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.</p>	<p>OVERRULED</p>

			Johnson has experienced perforation, migration, tilt, and fracture. The Bard's conduct with regard to the design of its IVC filters from the Recovery filter to the Meridian is relevant to the negligence claims. The testimony is relevant and not unfairly prejudicial.	
DeFord, John 08/15/2019	160:07- 160:08 Stopping at "G2"			
DeFord, John 08/15/2019	160:17- 161:01			
DeFord, John 08/15/2019	162:17- 162:19	Rule 602 –this witness does not have personal knowledge of the document. See, 162:20-21		SUSTAIN
DeFord, John 08/15/2019	163:04- 163:07	Rule 602 –this witness does not have personal knowledge of the document. See, 162:20-21		SUSTAIN
DeFord, John 08/15/2019	164:07- 164:09	Rule 602 –this witness does not have personal knowledge of the document. See, 162:20-21		SUSTAIN
DeFord, John 08/15/2019	167:07- 167:10			
DeFord, John 08/15/2019	167:19- 168:04	Rule 602 –this witness does not have personal knowledge of the document. See, 162:20-21		SUSTAIN

DeFord, John 08/15/2019	168:08 Stopping at correctly	Rule 602 –this witness does not have personal knowledge of the document. See, 162:20-21		SUSTAIN
DeFord, John 08/15/2019	168:13- 168:17 Starting at He	Rule 602 –this witness does not have personal knowledge of the document. See, 162:20-21. Also cumulative of Dr. Ciavarella’s testimony.		SUSTAIN
DeFord, John 08/15/2019	168:19- 168:25	Rule 602 –this witness does not have personal knowledge of the document. See, 162:20-21		SUSTAIN
DeFord, John 08/15/2019	169:02- 169:04			
DeFord, John 08/15/2019	169:12- 169:19			
DeFord, John 08/15/2019	170:21- 172:05			
DeFord, John 08/15/2019	173:19- 174:06	Rule 602 – the witness is being asked about a document he has never seen before. See, 172:25- 173:3 and 173:9-11		OVERRULED
DeFord, John 08/15/2019	175:04- 176:03	Rule 602 – the witness is being asked about a document he has never seen before. See, 172:25- 173:3 and 173:9-11		OVERRULED
DeFord, John 08/15/2019	177:01- 177:23	Rule 602 – the witness is being asked about a document he has never seen before. See, 172:25- 173:3 and 173:9-11		OVERRULED

DeFord, John 08/15/2019	178:11- 178:15	Rule 602 – the witness is being asked about a document he has never seen before. See, 172:25-173:3 and 173:9-11		OVERRULED
DeFord, John 08/15/2019	178:22- 179:11	Rule 602 – the witness is being asked about a document he has never seen before. See, 172:25-173:3 and 173:9-11		OVERRULED
DeFord, John 08/15/2019	179:14- 180:02	Rule 602 – the witness is being asked about a document he has never seen before. See, 172:25-173:3 and 173:9-11		OVERRULED
DeFord, John 08/15/2019	180:06- 180:18	Rule 602 – the witness is being asked about a document he has never seen before. See, 172:25-173:3 and 173:9-11		OVERRULED
DeFord, John 08/15/2019	181:02- 181:05			
DeFord, John 08/15/2019	181:07- 181:20	Rule 602 – the witness is being asked about a document he has never seen. See, 182:2-3		OVERRULED
DeFord, John 08/15/2019	182:09- 183:12	Rule 602 – the witness is being asked about a document he has never seen. See, 182:2-3		OVERRULED
DeFord, John 08/15/2019	183:16- 183:17	Rule 602 – the witness is being asked about a document he has never seen. See, 182:2-3		OVERRULED
DeFord, John 08/15/2019	183:19- 183:20	Rule 602 – the witness is being asked about a document he has never seen. See, 182:2-3		OVERRULED

DeFord, John 08/15/2019	202:19- 203:03			
DEPONENT	DEF COUNTERS TO COUNTERS	PL OBJECTIONS	DEF RESPONSE TO OBJECTIONS	COURT RULING
DeFord, John 08/15/2019	105:18- 105:24			
DeFord, John 08/15/2019	107:13- 107:14	Plaintiff agrees to include these lines in her cross.		MOOT
DeFord, John 08/15/2019	119:01- 119:03	FRE 401,402 & 403. The testimony identifies and references an exhibit that is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		OVERRULED
DeFord, John 08/15/2019	129:02- 129:07	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 127:24 to 134:21 The testimony designated here is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		SUSTAIN
DeFord, John 08/15/2019	130:21- 130:24	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 127:24 to 134:21 The testimony designated here is not discussed in the Plaintiff's		SUSTAIN

		cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		
DeFord, John 08/15/2019	133:23- 134:10	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 127:24 to 134:21 The testimony designated here is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		SUSTAIN
DeFord, John 08/15/2019	134:16- 134:17	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 127:24 to 134:21 The testimony designated here is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		SUSTAIN
DeFord, John 08/15/2019	134:24	FRE 403. The Plaintiff includes this line of testimony in her cross and so this is unnecessarily cumulative and an undue delay.		SUSTAIN
DeFord, John 08/15/2019	135:10- 135:12	FRE 401, 402 & 403. The testimony is of no or very limited relevance and results in undue delay.		SUSTAIN
DeFord, John 08/15/2019	135:14- 135:15	FRE 401, 402 & 403. The testimony is of no or very limited relevance and results in undue delay.		SUSTAIN

DeFord, John 08/15/2019	136:09- 136:13			STRIKE
DeFord, John 08/15/2019	138:09- 139:04	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 136:10 to 155:11. The testimony designated here is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		SUSTAIN
DeFord, John 08/15/2019	140:10- 140:15	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 136:10 to 155:11. The testimony designated here is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		SUSTAIN
DeFord, John 08/15/2019	151:05- 152:15	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 136:10 to 155:11. The testimony designated here is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		SUSTAIN
DeFord, John 08/15/2019	152:19- 152:21	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 136:10 to 155:11. The testimony designated here is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and		SUSTAIN

		confusion. The testimony is outside the scope of the cross examination.		
DeFord, John 08/15/2019	154:10- 154:16	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 136:10 to 155:11. The testimony designated here is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		SUSTAIN
DeFord, John 08/15/2019	156:16- 156:20	FRE 401,402 & 403. The added testimony is not responsive to the question asked and will require the addition under FRCP 32(6) and FRE 106 of 156:21-157:23.		OVERRULED
DeFord, John 08/15/2019	158:04- 158:13	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 157:24-158:10 The testimony designated here is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		SUSTAIN
DeFord, John 08/15/2019	201:23- 202:18	FRE 401,402, 403 & 602 – the Plaintiff objects to 202:11-202:18 as the witness specially states :I am speculating here” therefore he lacks the proper foundation for his testimony, speculations are not relevant testimony, they are unfairly prejudicial		SUSTAIN

		and likely to confuse or mislead the jury.		
DeFord, John 08/15/2019	203:25– 204:05	FRE 401,402 & 403. The Plaintiff has withdrawn testimony from 203:03-203:25. The testimony designated here is not discussed in the Plaintiff's cross. It is not relevant and will cause undue delay and confusion. The testimony is outside the scope of the cross examination.		OVERRULED

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 5th day of June, 2021.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge