

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: TESTOSTERONE REPLACEMENT
THERAPY PRODUCTS LIABILITY
LITIGATION**

**Case No. 1:14-CV-01748
MDL 2545**

JUDGE MATTHEW F. KENNELLY

This document relates to: ALL ACTIONS

**THIRD AMENDED CASE MANAGEMENT ORDER NO. 14
CASE MANAGEMENT PLAN – Part 2
(AbbVie bellwether cases – selection and pretrial / trial schedule)**

The Court hereby issues the following Third Amended Case Management Order No. 14 in accordance with the Case Management Order No. 29. For ease of reference to all counsel and litigants, all amendments to Third Amended Case Management Order No. 14 are indicated by being underlined.

The Court has considered the parties' proposals and revised proposals for a case management plan relating to the selection and trial of AbbVie-only bellwether cases. The Court is unpersuaded that the revised proposal by the AbbVie defendants to bifurcate expert discovery and summary judgment (as between general causation and other matters) represents a fair, efficient, and reasonable way to manage the pretrial proceedings in this case. One factor in this regard, but certainly not the only one, is the fact that this MDL proceeding involves six other manufacturer defendants. The Court is unconvinced that there is a fair, efficient, and reasonable way to adopt AbbVie's proposal in a way that makes the overall MDL proceeding manageable.

The Court has, however, elongated to some extent the overall process as proposed by plaintiffs for selecting AbbVie-only bellwether cases. The Court has done so to ensure fairness to all parties and to maximize the likelihood that the bellwether selection and trial process will be both representative and productive. The Court has also established a fact discovery cutoff date

for the AbbVie-only bellwether cases, subject to modification upon a showing of good cause and due diligence.

The Court enters this schedule based on the express understanding, as discussed at the most recent case management conference, that counsel will promptly negotiate and present a proposed case management plan or plans for the non-AbbVie-only cases.

The Court orders the following:

I. PROTOCOL FOR SELECTION OF ABBVIE BELLWETHER CASES

A. On or before August 10, 2015, the parties shall submit to the Court a proposed Case Management Order ("CMO") identifying the process and parameters for selecting AbbVie-only bellwether plaintiffs for two tiers of cases: (1) Thromboembolism ("TE") clotting injury cases (e.g., deep vein thrombosis ("DVT"), Pulmonary Embolism ("PE"), or other clotting cases; and (2) cardiovascular cases (e.g., heart attack). The Court will endeavor to enter a CMO in this regard by August 31, 2015. Only cases that have been filed and for which plaintiff's fact sheets have been completed in accordance with Amended CMO 9 on or before June 15, 2015 will be eligible to be selected as a bellwether plaintiff.

B. By October 31, 2015, the Plaintiffs and Defendants shall identify the following AbbVie-only cases:

1. Eight (8) TE injury bellwether candidates per side that shall serve as bellwether discovery plaintiffs. The process and mechanisms of designations and selections of bellwethers shall be done in accordance with a separate CMO that will be submitted to the Court on or before August 10, 2015, as set forth in paragraph I.A, above.

2. Eight (8) cardiovascular injury bellwether candidates per side that shall serve as bellwether discovery plaintiffs. The process and mechanisms of designations and selections of bellwethers shall be done in accordance with a CMO that will be submitted to the Court on or before August 10, 2015, as set forth in paragraph I.A, above.

C. Following multiple and various challenges, the 26 remaining bellwether discovery cases are identified on the attached Appendix A.

II. **ABBYIE BELLWETHER FACT DISCOVERY SCHEDULE**

A. Between December 1, 2015 and July 6, 2016, core bellwether discovery shall take place, with a maximum of four (4) depositions per side for each case. This shall be designed to provide information to enable the parties to assess the larger pool of cases and, consistent with paragraph II.B, below, to provide information to the Court to enable the Court to select which cases shall serve as the first bellwether trials consistent with paragraph II.C, below.

B. On or before July 20, 2016, the parties will submit proposals for the Court's selection of the initial bellwether trial cases.

C. By August 5, 2016, the Court will select up to eight (8) bellwether cases to serve as the first bellwether trials and shall designate the order of these bellwether trials.

D. The bellwether cases that are initially selected and those that are ultimately picked as the initial trials are to be representative cases.

E. Additional fact discovery regarding the bellwether trial cases is to be completed by September 19, 2016. This does not relieve a party of its duty to supplement its disclosures as provided under the Federal Rules of Civil Procedure, CMOs entered in this case, or other

applicable law and rules. Any request to extend or reopen fact discovery after September 19, 2016 must be supported by a showing of good cause and due diligence.

III. ABBVIE BELLWETHER EXPERT DISCOVERY SCHEDULE

A. On or before October 24, 2016, Plaintiffs shall make expert witness disclosures for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

B. On or before November 29, 2016, Defendants shall make expert witness disclosures for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

C. Any request by Plaintiffs to disclose rebuttal expert witness testimony must be made by December 9, 2016. Any rebuttal disclosures allowed by the Court are to be completed by December 21, 2016.

D. Each expert witness disclosure shall include at least two available dates when each expert is being tendered for deposition.

E. Depositions of expert witnesses are to be completed by January 20, 2017. The parties may propose a more extended schedule for case-specific expert depositions concerning bellwether trials after the first set trial.

F. The parties intend that the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply to all cases, whether pending in state or federal court.

Accordingly, in order to foster cooperation between the MDL and state court litigations, counsel for the parties shall jointly seek to enter in all state court proceedings, whether already filed or hereafter filed, an order expressly agreeing that the limitations on expert discovery set forth in Rule 26(b)(4)(A)-(D) shall apply in all such state court proceedings.

**IV. SUMMARY JUDGMENT & DAUBERT
MOTIONS IN ABBVIE BELLWETHER CASES**

A. Any motion for summary judgment or for partial summary judgment shall be filed on or before February 17, 2017.

B. Any motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before February 17, 2017.

C. Responses to summary judgment motions and *Daubert* motions shall be filed on or before March 20, 2017.

D. Replies in support of summary judgment motions and *Daubert* motions shall be filed on or before April 10, 2017.

E. The Court will endeavor to rule on any summary judgment and *Daubert* motions relating to the earlier bellwether trials by May 8, 2017 and on the remaining motions at reasonable intervals after that.

V. INITIAL ABBVIE BELLWETHER TRIAL SCHEDULE

The first AbbVie-only initial bellwether trials shall begin on the following dates:

1. June 5, 2017
2. July 17, 2017
3. August 28, 2017
4. October 9, 2017
5. November 20, 2017
6. January 8, 2018

This trial schedule is subject to modification if, among other reasons, summary judgment is granted for defendants in some but not all of the selected bellwether trials.

IT IS SO ORDERED.

Date: May 3, 2016


United States District Judge
Matthew F. Kennelly

Exhibit A

#	Case Name	TRT User	MDL NDIL Case No.	Primary Counsel
1	Adkins, John v. AbbVie Inc. et al.	Adkins, John	14-cv-09753	The Levensten Law Firm
2	Blanck, Lance v. AbbVie Inc. et al.	Blanck, Lance	15-cv-01077	Ross Feller Casey
3	Cannon, Sr. Richard v. AbbVie Inc. et al.	Cannon, Sr., Richard	15-cv-01835	Onder, Shelton, O'Leary & Peterson
4	Cribbs, Edward v. AbbVie Inc. et al.	Cribbs, Edward	15-cv-01056	Weitz & Luxenberg
5	Cripe, Robert v. AbbVie Inc. et al.	Cripe, Robert	14-cv-00843	Schachter Hendy & Johnson
6	Deel, David v. AbbVie Inc. et al.	Deel, David	14-cv-10435	Morgan & Morgan
7	Dial, Corliss v. AbbVie Inc. et al.	Dial, Gene	15-cv-02190	Anapol Schwartz
8	Diesslin, Theodor v. AbbVie Inc. et al.	Diesslin, Theodor	14-cv-06770	Burg Simpson Eldredge Hersh & Jardine
9	Ennis, Michael v. AbbVie Inc. et al.	Ennis, Michael	15-cv-00624	Seeger Weiss LLP
10	Frost, Cecile v. AbbVie Inc. et al.	Frost, Cecile	15-cv-01484	Pogust Braslow & Millrood, LLC
11	Garcia, Froylan v. AbbVie Inc. et al.	Garcia, Froylan	15-cv-01086	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
12	Hession, Kevin v. AbbVie Inc. et al.	Hession, Kevin	14-cv-08222	Douglas & London
13	Konrad, Jeffrey v. AbbVie Inc. et al.	Konrad, Jeffrey	15-cv-00966	Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
14	LaForest, Kenneth v. AbbVie Inc. et al.	LaForest, Kenneth	15-cv-00692	Seeger Weiss LLP
15	Long, Anthony v. AbbVie Inc. et al.	Long, Anthony	14-cv-06996	The Levensten Law Firm
16	Martina, Randy v. AbbVie Inc. et al.	Martina, Randy	14-cv-08598	Weitz & Luxenberg
17	Mitchell, Jesse v. AbbVie Inc. et al.	Mitchell, Jesse	14-cv-09178	Goldberg & Osborne
18	Myers, Arthur v. AbbVie Inc. et al.	Myers, Arthur	15-cv-01085	Ross Feller Casey
19	Nolte, Robert v. AbbVie Inc. et al.	Nolte, Robert	14-cv-08135	Goldberg & Osborne
20	Patridge, Jesse v. AbbVie Inc. et al.	Patridge, Jesse	14-cv-07960	Simmons Hanly Conroy LLC
21	Romanik, Michael v. AbbVie Inc. et al.	Romanik, Michael	14-cv-08202	Ross Feller Casey
22	Rowley, Robert v. AbbVie Inc. et al.	Rowley, Robert	15-cv-02760	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
23	Shepherd, Dale v. AbbVie Inc. et al.	Shepherd, Dale	15-cv-00404	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
24	Truax, Roccie v. AbbVie Inc. et al.	Truax, Roccie	14-cv-02935	Levin Simes LLP
25	Trusty, Joe v. AbbVie Inc. et al.	Trusty, Joe	15-cv-01015	Levin Simes LLP
26	White, Peggy v. AbbVie Inc. et al.	White, Dave	14-cv-03818	Janet Jenner & Suggs