

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

**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.

**CASE MANAGEMENT ORDER NO. 19-C
(Case Management Plan as to the Lilly Defendants)**

This Case Management Order will supplement the discovery and other pretrial timelines for defendants Eli Lilly and Company, Lilly, USA, LLC, Acrux Commercial Pty Ltd., and Acrux DDS Pty Ltd. (collectively "Lilly") in this MDL. The dates and deadlines established in this Order may be altered with a showing of good cause.

I. DISCOVERY ON LILLY (BY PLAINTIFFS)

A. The parties have been working diligently to comply with the deadlines set forth in Section I.A of CMO 19 (Dkt. No. 523).

B. The parties will continue their efforts to move forward with discovery against Lilly, including document productions, depositions, custodial file requests and reviews.

C. The parties to this MDL have also worked cooperatively in conducting discovery against Lilly with state court litigants in Indiana and will continue those efforts going forward.

D. The dates and deadlines in Section I.A.7 (Non-Expert Fact Discovery) set forth in Section I.A of CMO 19 (Dkt. No. 523) are hereby extended as against defendants Eli Lilly and Company and Lilly, USA, LLC until March 31, 2017.

E. The deadline for completion of non-expert fact discovery as against Acrux Commercial Pty Ltd., and Acrux DDS Pty Ltd. is April 28, 2017.

II. DISCOVERY SCHEDULE

A. Lilly Corporate Depositions. The PSC has already provided Lilly with the names of witnesses for depositions and depositions began in January 2016.

B. Plaintiff Fact Sheets (“PFS”). Plaintiffs will continue to serve PFS and duly executed authorizations for the release of relevant medical records in accordance with CMO 9. Further Defendants reserve all rights to challenge deficiencies in any PFS under the parameters set forth in CMO 9.

C. It is the expectation that a MDL Lilly trial date will commence in accordance with the schedule set forth below with the first trial to commence on January 29, 2018.

III. BELLWETHER SELECTION, GENERAL SCHEDULE, AND TRIAL

DATES

A. On or before November 1, 2016, the parties shall each designate the following number and types of cases from the Lilly eligible pool of bellwether cases.

1. Four (4) TE injury bellwether candidates per side that shall serve as bellwether discovery plaintiffs.

2. Four (4) cardiovascular injury bellwether candidates per side that shall serve as bellwether discovery plaintiffs.

3. The injury categories described in paragraphs III. A. (1) and (2) can only be modified with a showing of good cause.

4. This process will yield a total bellwether pool of 16 cases. The 16 cases will be selected from a larger pool of randomly selected cases that allege use of Lilly’s TRT product and in which Lilly is the only named defendant.

5. The remaining aspects of the process and parameters of the Lilly bellwether pool will be the subject of a separate agreement to be jointly negotiated by the parties, the details of which will be submitted to the Court for approval on or before September 16, 2016.

B. The parties have also agreed that only plaintiffs who filed cases on or before July 25, 2016, and for which a Plaintiffs Fact Sheet has been substantially completed and served on or before August 10, 2016 shall be eligible for selection as a Lilly bellwether.

C. Following selection of the Lilly bellwether plaintiffs, core bellwether discovery may commence, 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, to provide information to the Court to enable the Court to select which cases shall serve as the first bellwether trials consistent with paragraph III.F, below. The deadline for completing core bellwether discovery shall be June 2, 2017.

D. On or before June 9, 2017, the parties will submit proposals for the Court's selection of the initial bellwether trial cases.

E. By June 23, 2017, the Court will select between two and four bellwether trial cases for trial, and shall designate the order of these bellwether trials.

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

G. Additional fact discovery regarding the bellwether trial cases is to be completed by July 18, 2017. 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.

H. On or before August 18, 2017, Plaintiffs shall disclose expert witness testimony for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

I. On or before September 15, 2017, Lilly shall disclose expert witness testimony for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

J. Any request by Plaintiffs to disclose rebuttal expert witness testimony must be made by September 25, 2017. Any rebuttal disclosures allowed by the Court are to be completed by October 4, 2017.

K. Depositions of expert witnesses shall be completed by November 11, 2017. The parties will work cooperatively and use all best efforts to schedule the deposition of Plaintiffs' expert on a particular subject matter to take place before the corresponding Lilly expert.

L. 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.

M. Any motion for summary judgment or for partial summary judgment and/or motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before November 21, 2017.

N. Responses to summary judgment motions and *Daubert* motions shall be filed on or before December 23, 2017.

O. Replies in support of summary judgment motions and *Daubert* motions shall be filed on or before January 6, 2018.

P. The first Lilly initial bellwether trials shall begin on the following dates:

1. January 29, 2018
2. March 7, 2018

IT IS SO ORDERED.

DATED: 8/14/2016



MATTHEW F. KENNELLY
UNITED STATES DISTRICT JUDGE