

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: TESTOSTERONE)	
REPLACEMENT THERAPY)	
PRODUCTS LIABILITY LITIGATION)	MDL No. 2545
)	
This document relates to all cases)	Honorable Matthew F. Kennelly

CASE MANAGEMENT ORDER # 33
(ENDO FACT DISCOVERY & BELLWETHER TRIALS)

In furtherance of the advancement of this MDL, the Court hereby Orders:

I. NON-EXPERT FACT DISCOVERY

1. The non-expert fact discovery against Endo shall be extended until July 14, 2017.

II. PROTOCOL FOR SELECTING ENDO BELLWETHER CASES

2. The Parties shall each select 3 Bellwether Cases (no more than 2 MIs/Strokes or 2 VTE cases, and no less than 1 MI/Stroke and 1 VTE) that will be subject to the schedule set in this Order.

3. The 6 Bellwether Cases shall be set from a random pool of 50 cases where Endo is the only defendant and the Endo product used, as defined by the PFS, was Fortesta. By the June 2017 Case Management Conference the parties will reach agreement on any other limitations to the random pool. In order to be eligible for the random pool of 50 cases, the case must have been filed on or before July 7, 2017 and the PFS must have been completed and served on or before July 7, 2017.

4. The random pool shall be established on or before July 14, 2017. By no later than August 4, 2017, Endo shall provide a completed abbreviated Defense Fact Sheet (in a form to be entered by the Court as Exhibit 1) for the 50 cases in the random pool, and on August 18, 2017 the Parties shall identify their 3 Bellwether Cases.

III. ENDO BELLWETHER FACT DISCOVERY SCHEDULE

5. Core discovery (as defined by CMO 14) shall be conducted from August 18, 2017, through Feb 16, 2018.

6. The parties agree that of the up to 6 Bellwether Cases that underwent core discovery, 2 cases will be eligible for selection as the Bellwether Trial Cases. It is the expectation of the Court and the Parties that both parties in the 6 Bellwether Cases will agree to voluntarily waive the trial venue restrictions of *Lexecon v. Milberg Weiss, et. al.*. The Bellwether Trial Cases shall either be selected by the Court or by agreement of the parties subject to the Court's approval. If the Parties cannot agree to which two trial cases to select as the Bellwether Trial Cases, the parties shall submit simultaneous briefing on February 23, 2018, not to exceed 5 pages, advocating which two cases should be selected for additional discovery and trial. Should the Court have to decide which cases will be the two Bellwether Trial Cases, the Court will endeavor to issue its ruling by February 28, 2018. If the parties agree on which cases will be the Bellwether Trial Cases, they are to file a joint report on February 23, 2018 explaining why the cases they have selected are appropriate Bellwether Trial Cases.

7. Discovery will continue in the two Bellwether Trial Cases from March 1, 2018, until March 30, 2018.

IV. ENDO BELLWETHER EXPERT DISCOVERY SCHEDULE

8. On or before April 6, 2018, Plaintiffs shall disclose expert witness testimony for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2). The disclosure shall include two dates prior to the deadline set forth in paragraph 11 on which the disclosed expert can give a deposition.

9. On or before May 4, 2018, Endo shall disclose expert witness testimony for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2). The disclosure shall include two dates prior to the deadline set forth in paragraph 11 on which the disclosed expert can give a deposition.

10. Disclosure of rebuttal expert witness testimony must be made by May 14, 2018. The disclosure shall include two dates prior to the deadline set forth in paragraph 11 on which the disclosed expert can give a deposition.

11. Depositions of expert witnesses shall be completed by June 15, 2018. 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 Endo expert.

12. 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.

V. SUMMARY JUDGMENT AND DAUBERT MOTIONS IN ENDO BELLWEHTER CASES

13. Summary judgment motions and *Daubert* motions, if any, to be filed by June 22, 2018.

14. Opposition to summary judgment motions and *Daubert* motions to be filed by July 13, 2018.

15. Replies, if any, to summary judgment motions and *Daubert* motions by July 20, 2018.

16. Court will endeavor to rule on summary judgment motions and *Daubert* motions by August 16, 2018.

VI. INITIAL ENDO BELLWETHER TRIAL SCHEDULE

17. Trial Dates:

(a) Endo Trial 1: Jury selection shall commence on September 10, 2018.

(b) Endo Trial 2: Jury selection shall commence on a date to be determined, which will be after September 10, 2018..

IT IS SO ORDERED.

September 16, 2016


MATTHEW F. KENNELLY
UNITED STATES DISTRICT JUDGE

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
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In re: TESTOSTERONE)	
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DEFENDANT FACT SHEET FOR ENDO'S RANDOM CASE POOL

DEFINITIONS AND INSTRUCTIONS

As used herein, the phrase "prescribing healthcare provider" means the individual physicians or medical providers identified by Plaintiff in their Plaintiff Fact Sheet ("PFS") as a prescriber of Fortesta and for whom a complete address has been provided. Endo will rely on the prescribing healthcare provider information contained in the PFS in responding to the requests for information herein and will provide information by reviewing the PFS-provided information against Endo's records. Endo will advise Plaintiff if Endo finds no match or if Endo is unable to confirm a match.

For purposes of this DFS, Endo will provide information based upon reasonable review of certain documents and data including Endo sales representative call and sample detail tracking, payment information, and key opinion and thought leader datasources. Endo is not endeavoring to search for requested information in additional databases or document repositories including individual custodial files or email records. Endo is not interviewing any individuals in preparing this Fact Sheet.

I. Case Information

This DFS pertains to the following Plaintiff: _____

II. Number Of Contacts With Prescribing Healthcare Provider

State the total number of reported contacts between any Endo sales representative or detail person and the healthcare provider(s) who prescribed Fortesta to Plaintiff (as identified in the Plaintiff's Fact Sheet) regarding Fortesta prior to the alleged date of injury as set forth in Plaintiff's Fact Sheet.

III. Payments By Endo To Plaintiff's Prescribing Healthcare Provider

With respect to the healthcare provider(s) who prescribed Fortesta to Plaintiff (as identified in the Plaintiff's Fact Sheet), state whether Endo's financial payment records reflect any monetary payment to such provider(s).

Yes ☐ No ☐

IV. Relationship Between Endo and Plaintiff's Prescribing Healthcare Provider

With respect to the healthcare provider(s) who prescribed Fortesta to Plaintiff (as identified in the Plaintiff's Fact Sheet), state whether Endo has ever retained or contracted with such healthcare provider(s).

Yes ☐ No ☐

V. Dear Doctor Letters

Please state whether a "Dear Doctor" or "Dear Health Care Provider" letter (if any) was actually sent to the Plaintiff's Prescribing Health Care Provider concerning prescription of Fortesta:

Yes ☐ No ☐

CERTIFICATION

I am authorized to sign this Certification to Endo's Responses to this Defendant Fact Sheet and state that the matters inquired above are not necessarily within my personal knowledge; that the facts stated therein have been assembled by authorized employees, designates and/or counsel for Endo and I am informed that the facts stated therein are true. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true to the best of my knowledge, information and belief at the present time.

Date:

Signature

Print Name