

**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 # 31
(AUXILIUM BELLWETHER TRIALS)

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

I. PROTOCOL FOR SELECTING AUXILIUM BELLWETHER CASES

1. The Parties shall each select 4 Bellwether Cases (no more than 3 MIs/Strokes or 3 VTE cases, and no less than 1 MI/Stroke and 1 VTE) that will be subject to the schedule set in this Order.

2. The 8 Bellwether Cases shall be set from a random pool of 60 cases where the Auxilium Defendants are the only defendants and the Auxilium product used, as defined by the PFS, was Testim. In order to be eligible for the random pool of 60 cases, the case must have been filed on or before September 5, 2016 and the PFS must have been completed and served on or before September 5, 2016.

3. The random pool shall be established on or before September 23, 2016. By no later than October 21, 2016, Auxilium shall provide a completed abbreviated Defense Fact Sheet (in a form to be entered by the Court as Exhibit 1) for the 60 cases in the random pool, and on October 31, 2016 the Parties shall identify their 4 Bellwether Cases.

II. AUXILIUM BELLWETHER FACT DISCOVERY SCHEDULE

4. Core discovery (as defined by CMO 14) shall be conducted from November 1, 2016, through May 1, 2017.

5. The parties agree that of the up to 8 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 8 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 May 8, 2017, 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 May 12, 2017. If the parties agree on which cases will be the Bellwether Trial Cases, they are to file a joint report on May 8, 2017 explaining why the cases they have selected are appropriate Bellwether Trial Cases.

6. Discovery will continue in the two Bellwether Trial Cases from May 15, 2016, until June 16, 2017.

III. AUXILIUM BELLWETHER EXPERT DISCOVERY SCHEDULE

7. On or before June 23, 2017, 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 10 on which the disclosed expert can give a deposition.

8. On or before July 21, 2017, Auxilium 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 10 on which the disclosed expert can give a deposition.

9. Disclosure of rebuttal expert witness testimony must be made by July 31, 2017. The disclosure shall include two dates prior to the deadline set forth in paragraph 10 on which the disclosed expert can give a deposition.

10. Depositions of expert witnesses shall be completed by August 31, 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 Auxilium expert.

11. 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 AND DAUBERT MOTIONS IN AUXILIUM
BELLWEHTER CASES**


11. Summary judgment motions and *Daubert* motions, if any, to be filed by September 8, 2017.
12. Opposition to summary judgment motions and *Daubert* motions to be filed by September 29, 2017.
13. Replies, if any, to summary judgment motions and *Daubert* motions by October 6, 2017.
14. Court will endeavor to rule on summary judgment motions and *Daubert* motions by October 23, 2017.

V. INITIAL AUXILIUM BELLWETHER TRIAL SCHEDULE

15. Trial Dates:
 - (a) Auxilium Trial 1: Jury selection shall commence on November 1, 2017.
 - (b) Auxilium Trial 2: Jury selection shall commence on a date to be determined, which will be after November 1, 2017.

IT IS SO ORDERED.

September 16, 2016


MATTHEW F. KENNELLY
UNITED STATES DISTRICT JUDGE