

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

IN RE: TESTOSTERONE REPLACEMENT THERAPY PRODUCTS LIABILITY LITIGATION	MDL No. 2545
This Document Relates to All Cases	Master Docket Case No. 1:14-cv-01748 Honorable Matthew F. Kennelly

**JOINT STATUS REPORT CONCERNING ESTABLISHING A NON-EXPERT
DISCOVERY CUT-OFF FOR THE AUXILIUM TESTIM BELLWETHER CASES**

At the February 16, 2017 Status Conference, the parties informed the Court that they were in agreement that they need additional time for non-expert generic fact discovery, however, the parties had not yet agreed on a non-expert generic fact discovery cutoff date. At that case management conference, the Court directed the parties to submit a joint status report addressing a discovery cut-off for the Auxilium bellwether trial cases.

As the Court is aware, the first Auxilium trial in the MDL is set for November 1, 2017 and the second trial does not yet have a date set. See CMO 31 § V. The two Auxilium bellwether cases involve plaintiffs who have used Testim (as opposed to a different Auxilium product called Testopel). The Court is also aware that the Philadelphia County, Pennsylvania litigation has cases set for trial, however, the first Philadelphia case is set for after the first MDL trial. The first trial date in Philadelphia is set for January 8, 2018.

Since the February 16th Status Conference, the parties have successfully met and conferred and earlier today reached a tentative agreement on the attached joint proposal for CMO 37 establishing a discovery cut-off for the Auxilium bellwether trial cases. Auxilium has also reached an agreement with Mark Hoffman (MDL Liaison to the Philadelphia County litigation and Counsel in the first two Philadelphia cases) to jointly ask Judge Rau to modify the Philadelphia County

pre-trial schedule in a fashion similar to what has been agreed to in the MDL. Auxilium would like the opportunity to formally seek to have a similar modification made to the Philadelphia County schedule now that these agreements have been reached. However, due to the time necessary to reach this tentative agreement, Auxilium has not yet been able to confirm with the Philadelphia Court or other state court counsel that this schedule will be compatible with the state court litigation in Philadelphia County, Pennsylvania. Additionally, the PSC has confirmed that Mark Hoffman, the MDL PSC liaison to the Philadelphia County, Pennsylvania litigation will be on an International flight on March 2nd during the time the Court requested a telephone conference to discuss this proposal. As such, Auxilium and the PSC jointly request that the Court postpone the telephone conference until the following Friday, March 10, to allow sufficient time for Auxilium to further coordinate with state court counsel in the Philadelphia County, Pennsylvania.

Dated: February 27, 2017

Respectfully submitted,

/s/ Trent B. Miracle

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2017, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

/s/ Brendan A. Smith

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Exhibit A

**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 # 37
(Auxilium Non-Expert Generic Fact Discovery
Deadline for Testim MDL Bellwether Trial Cases)

This Case Management Order will supplement the discovery and other pretrial timelines for Defendant Auxilium in this MDL.

1. On May 19, 2016, the Court entered CMO 19-A (Case Management Plan as to Auxilium) which states in paragraph I.D. that “The parties shall report back to this Court on February 17, 2017 about the status of non-expert generic fact discovery to determine whether or not additional time is needed for such discovery.”

2. On September 16, 2016, the Court entered CMO 31, which sets forth the protocol and fact discovery schedule for Auxilium bellwether cases. Pursuant to CMO 31, jury selection in the first MDL Auxilium Bellwether Trial in which Auxilium is the only defendant and the Auxilium product used was Testim, is scheduled to commence on November 1, 2017.

3. On February 16, 2017, the parties informed the Court at a case management conference that they were in agreement that they need additional time for non-expert generic fact discovery, however, the parties had not yet agreed on a non-expert generic fact discovery cutoff date.

4. On February 16, 2017, the Court ordered the parties to submit a joint status report with a proposed fact discovery cutoff for Auxilium cases to be filed by February 27, 2017.

5. On February 27, 2017, the parties submitted a joint status report informing the Court that the parties have agreed to deadlines for all non-expert generic fact discovery for Auxilium cases.

6. Based on the parties' agreement, the Court orders as follows:

- a. Non-expert party fact discovery related to Testim shall be completed by July 31, 2017. Non-expert party fact discovery related to all other Auxilium products shall be completed by July 1, 2018, unless a later date is agreed to by the parties.
- b. The PSC must identify any party witnesses that it wishes to depose for use in either of the two MDL Auxilium bellwether trials by June 9, 2017. Any such depositions are to be scheduled for completion by no later than July 31, 2017. This deadline may be modified only if such a modification will affect no other dates or deadlines set by the Court and (i) modification is necessary as a result of the need to schedule depositions of former employees; or (ii) both sides agree to do so.
- c. The PSC must identify any non-party witness that it wishes to depose for use in either of the two MDL Auxilium bellwether trials by June 1, 2017. Non-party discovery shall be completed by no later than August 17, 2017 if the PSC intends to use such discovery at the Auxilium MDL bellwether trials. This deadline may be modified only if and to the extent that both sides agree to do so, and only on the condition that such a modification will affect no

other dates or deadlines set by the Court. Any non-party discovery related to any of Auxilium's non-Testim products shall not be subject to this deadline.

- d. In the event that the parties are unable to resolve a discovery dispute after meeting and conferring, the parties are directed to bring the issue to the Court as promptly as possible so that the Court may rule on such dispute.
- e. In September 2016, Auxilium advised the PSC that certain of its data has been "lost" from a server that was migrated after the time of the acquisition by Endo. Since that time, Auxilium has been conducting an ongoing investigation involving an Auxilium server and has promised to provide the PSC with a report related to that investigation, which was provided to the PSC on the evening of February 24, 2017. The PSC shall be entitled to conduct discovery into the circumstances surrounding this issue in order to evaluate whether further court intervention is warranted. The PSC's discovery related to the Auxilium server, shall not be subject to the deadlines set herein.
- f. If a party lists for trial a witness whose deposition has not been taken, the party must provide a particularized disclosure of all subjects and contents of the witness's testimony. In an opposing party wishes to take that witness's deposition, the parties are to cooperate in arranging for this to be done promptly after the designation of the witness, subject to the disclosing party's right to promptly move the Court for a protective order precluding the deposition for good cause.
- g. Any supplementation of a party's Rule 26(a)(2) disclosures must be done in accordance with and by the time limitation specified in Rule 26(e). The

relevant trial date for purposes of calculating the ultimate deadline for such supplementation is November 1, 2017

- h. Any request to modify any of these deadlines (except as provided in paragraphs 6.b. and 6.c.) must be made by a motion noticed for presentment to the Court on no more than three business days' notice. Any such motion must include a particularized explanation of the good cause for the requested modification and a particularized showing of the requesting party's promptness in bringing the matter to the Court's attention as soon as the basis for the requested modification arose.
- i. The parties may, if they wish, negotiate later dates for the filing of summary judgment and/or *Daubert* motions and responses, but the previously set reply brief date (set in CMO 31) may not be modified.

IT IS SO ORDERED.

March __, 2017

MATTHEW F. KENNELLY
UNITED STATES DISTRICT JUDGE