

**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. 62  
(Order Selecting Two Lilly Bellwether Trial Cases)**

1. Pursuant to CMO 19-C, by agreement of the parties, the Court selects the following two cases as the Lilly Bellwether Trial Cases (listed below in filing order):

<b>Plaintiff</b>	<b>Case No.</b>	<b>Alleged Injury</b>
Tracy Garner	1:15-cv-02045	MI
John Debroka, Jr.	1:15-cv-09246	DVT

2. After the completion of expert discovery in the Lilly Bellwether Trial Cases pursuant to CMO 19-C, the parties shall submit a proposal to the Court recommending a process for selecting the sequence of the two Lilly Bellwether Trial Cases (i.e., the order of the trial settings).

3. Within 21 days of the entry of this order, amended affirmative defenses are to be filed that plead, with particularity, any previously-asserted affirmative defenses that the Lilly defendants contend, with reasonable care and due diligence, still apply and are actually still being asserted in the Lilly Bellwether Trial Cases.

4. With respect to the following bellwether discovery cases that were not selected for trial, the parties have agreed to meet and confer with regard to a protocol for non-expert dispositive motion practice in those cases<sup>1</sup>:

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<sup>1</sup>In agreeing to confer on this matter, Plaintiffs do not concede that such a protocol should be implemented.

Plaintiff	Case No.	Alleged Injury
John Huntington	1:15-cv-04428	MI
Daniel A. Malinowski	1:15-cv-09637	MI
Marvin Musgrove	1:16-cv-02767	MI

If no agreement can be reached, competing proposals will be submitted to the Court for resolution.

The Court reserves the right to defer dispositive motion practice in these cases after getting the parties proposal(s). In the interim, discovery in these three cases is stayed until further order of the Court.

5. The Court has advised counsel of its concern regarding the extremely short interval set by CMO 19-C between the completion of briefing of summary judgment and *Daubert* motions in the Lilly bellwether trial cases and the trial date, at least for the first case. Counsel are directed to confer and are to make a proposal to the Court on the following two points: (a) moving up and/or compressing the briefing schedule so that there is a significantly greater interval between the date briefing is completed and the first trial date; and (b) setting overall page limits for each side's briefs. The parties' proposal(s) should be included in the status report submitted in advance of the August 24, 2017 case management conference.

6. The Court has also advised counsel of its concern regarding the fact that there appear to be only 2 representative cases left from the 16 originally designated as bellwether discovery cases. If one or both of these cases is disposed of before or during trial by some means other than a jury verdict, the parties should expect the Court to impose an extremely expedited schedule for identifying, conducting discovery in, and trying replacement cases.

IT IS SO ORDERED.

DATED: June 22, 2017

  
 MATTHEW F. KENNELLY  
 UNITED STATES DISTRICT JUDGE