



December 3, 2018

VIA ECF

Hon. Claire C. Cecchi, U.S.D.J.
United States District Court for the District of New Jersey
Martin Luther King, Jr. Bldg. & U.S. Courthouse
Courtroom MLK 5B
50 Walnut Street
Newark, New Jersey 07101

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**Re: Proton-Pump Inhibitor Products Liability Litigation
2:17-md-2789 (CCC)(MF) (MDL 2789)
Proposed Case Management Orders Regarding Bellwether Discovery Cases**

Dear Judge Cecchi:

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Pursuant to CMO Nos. 21 and 29, the parties' respective proposed Case Management Orders regarding Bellwether Discovery Cases are herewith submitted as Exhibits A (Plaintiffs) and B (Defendants). The parties respectfully suggest that it is more productive for us to submit the proposals now, without briefing, to facilitate further discussion and evaluation of these proposals. We therefore seek the Court's permission to submit the parties' respective supporting briefs on Tuesday, December 11 at 5 pm EST -- eight days prior to the December 19 conference -- if we are unable to reach agreement. We thank the Court for its consideration.

BOSTON

HARTFORD

STAMFORD

NEW YORK

NEWARK

EAST BRUNSWICK

PHILADELPHIA

WILMINGTON

WASHINGTON, DC

Respectfully submitted,
/s/ Gregory J. Hindy
Gregory J. Hindy

GJH:bcs
Enclosures
cc: All Counsel of Record (Via ECF)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: PROTON-PUMP INHIBITOR
PRODUCTS LIABILITY LITIGATION
(No. II)**

**2:17-MD-2789 (CCC)(MF)
(MDL 2789)**

Judge Claire C. Cecchi

This Document Relates to: ALL ACTIONS

**[PROPOSED]
CASE MANAGEMENT ORDER #__**

**CASE MANAGEMENT ORDER NO. [REDACTED]
(Bellwether Scheduling Order)**

In accordance with Case Management Order No. 21, this Order shall govern the process and timeline for selection of Bellwether Plaintiffs. The following procedures set forth the identification and selection protocol for the pool of Bellwether Discovery Cases and the Bellwether Trial Cases from which the initial cases to be tried in this MDL will be selected. Further, this Order establishes guidelines and a schedule for discovery for these Bellwether Discovery Cases, some of which will be proposed and designated as the initial Bellwether Trial Cases. Early identification and a schedule for these Bellwether Discovery Cases and Bellwether Trial Cases is imperative to the effective and efficient case management of this complex litigation, which involves multiple Defendants and thousands of Plaintiffs; as of the date of entry of this Order, each of the aforesaid Defendants have refused to waive *Lexecon*. This Order also addresses the selection and process for Early Evaluation Cases, as set forth in Section IV below, and as previously addressed with the Court.

I. SCOPE AND APPLICABILITY

This Order is intended to conserve judicial and party resources, eliminate duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this complex litigation.

In order to facilitate the selection of cases as Bellwether Discovery Cases and as Bellwether Trial Cases, the procedures below shall apply to all actions in MDL-2789 that are filed, served and have a PFS served on or before January 28, 2018.

II. BELLWETHER TRIAL PROCESS

As described in Section III(A) below, on February 28, 2019, the Plaintiffs' Steering Committee ("PSC") shall identify eight (8) to twelve (12) Plaintiff candidates for the Bellwether Discovery Cases to be worked up for case-specific discovery ("Bellwether Discovery Pool Plaintiffs"). The PSC shall endeavor to select cases that would be able to proceed to trial such that numerous issues can be addressed by the Court and by the jury. The PSC will identify these eight (8) to twelve (12) cases by filing a status report with the Court identifying the cases.

The deadlines for Core Discovery, as set forth in Section III(B), will apply to the Bellwether Discovery Pool Plaintiffs. In the event that a case selected for the Bellwether Discovery Pool is dismissed before June 28, 2019, the Court may at its discretion allow the selection of a replacement case by the PSC.

As described in Section III(B) below, after Core Discovery occurs for the eight (8) to twelve (12) Bellwether Discovery Pool Plaintiffs, the PSC shall file a status report with the Court on July 9, 2019, in which the PSC shall have the presumptive right to select six (6) of the Bellwether Discovery Pool Plaintiffs to undergo heightened discovery in anticipation of trial. The Defendants shall have the right to either agree with or challenge any of the PSC's six (6) selected cases; should the Defendants challenge any of the PSC's six (6) selected cases, they must file a status report on or before July 12, 2019, explaining their reasons for said challenge(s) and the PSC shall have the right to file a Reply brief on or before July 16, 2019. As set forth in Section III(C), following briefing by the Parties, the Court will select six (6) of Bellwether Discovery Pool cases for heightened discovery, which will be referred to as the "Bellwether Trial

Pool Plaintiffs.” The six (6) Bellwether Trial Pool Plaintiffs shall be selected by the Court in a separate CMO by July 23, 2019.

As described in Section III(D), the Bellwether Trial Pool Plaintiffs will undergo a period of heightened discovery. After the close of this heightened discovery, the Parties shall submit a joint status report to the Court on October 16, 2019, in which the Parties shall include briefing as to which of the Bellwether Trial Pool Plaintiffs should progress to trial and their respective reasons why and/or why not. As set forth in Section III(E), following briefing by the Parties the Court will select three (3) of the six (6) Bellwether Trial Pool cases for bellwether trials, which will be referred to as the “Bellwether Trial Finalists.” The Bellwether Trial Finalists shall be selected by the Court in a separate CMO by October 25, 2019. The deadlines in Sections III(F)-(I) will only apply to the Bellwether Trial Finalists.

In the event that a case selected for the Bellwether Trial Pool or as a Bellwether Trial Finalist is dismissed or settled before trial, the Court may at its discretion allow the selection of a replacement case by the PSC.

Additional cases may be selected for trial, and future Case Management Orders will detail those cases and schedules, and any criteria for pretrial workup.

This Order may be modified or amended for good cause shown, after appropriate notice and opportunity to be heard is provided to the affected parties, when the Court believes the interest of justice requires modification.

III. BELLWETHER CASE DEADLINES

A. SELECTION OF BELLWETHER DISCOVERY POOL PLAINTIFFS

<u>Date</u>	<u>Event</u>
February 28, 2019	The PSC shall identify eight (8) to twelve (12) Plaintiff candidates for the Bellwether Discovery Pool Cases to go through Core Discovery and be worked up for case-specific discovery. The PSC will identify these eight (8)

	to twelve (12) cases by filing a status report with the Court.
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B. CORE FACT DISCOVERY DEADLINES AS TO BELLWETHER DISCOVERY POOL PLAINTIFFS

<u>Date</u>	<u>Event</u>
March 28, 2019	For the eight (8) to twelve (12) Discovery Pool Plaintiffs selected, Plaintiffs shall serve a completed Plaintiff Fact Sheet (“PFS”), including all authorizations. If a Plaintiff’s PFS has already been served by this date, then a supplemental PFS shall be served. The scope and parameters of the PFS are governed by CMO 9.
April 25, 2019	Defendants will serve a Defendant Fact Sheet ¹ (“DFS”). If a Defendant’s DFS has already been served by this date, then a supplemental DFS shall be served. The scope and parameters of the DFS are governed by CMO 22.
June 28, 2019	Completion of all Core Fact Discovery, which may include up to three case-specific fact depositions noticed by each party in interest in each case.
July 9, 2019	The PSC shall file a status report with the Court, in which the PSC shall have the presumptive right to select six (6) of the eight (8) to twelve (12) Bellwether Discovery Pool Plaintiffs to undergo heightened discovery. The Defendants shall have the right to either agree with or challenge any of the PSC’s six (6) selected cases.
July 12, 2019	Should the Defendants challenge any of the PSC’s six (6) selected cases, they must file a status report briefing their reasons for said challenge(s).
July 16, 2019	The PSC shall have the right to File a status report in Reply to Defendants’ challenge(s), should Defendants have any.

C. SELECTION OF BELLWETHER TRIAL POOL PLAINTIFFS

<u>Date</u>	<u>Event</u>
July 23, 2019	The Court will select six (6) Bellwether Trial Pool Plaintiffs from the eight (8) to twelve (12) Bellwether Discovery Pool Plaintiffs. The Court will identify its

¹ The custodial and personnel files of the sales representative(s) and/or sales manager(s) identified in a DFS shall be produced within seven (7) days from the date the DFS is served.

	selection in a Case Management Order.
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D. ADDITIONAL FACT DISCOVERY DEADLINES FOR BELLWETHER TRIAL POOL PLAINTIFFS

<u>Date</u>	<u>Event</u>
September 6, 2019	Deadline to serve interrogatories and requests for production related to case specific fact discovery in the Bellwether Trial Cases.
October 12, 2019	Completion of Additional Fact Discovery, which may include up to three additional case-specific fact depositions noticed by each party in interest in each Bellwether Trial Pool case.
October 16, 2019	The Parties shall submit a joint status report to the Court, in which the Parties shall include briefing as to which of the Bellwether Trial Pool Plaintiffs should progress to trial and their respective reasons why and/or why not.

E. SELECTION OF BELLWETHER TRIAL FINALISTS

<u>Date</u>	<u>Event</u>
October 25, 2019	The Court will select three (3) Bellwether Trial Finalists from the six (6) Bellwether Trial Pool Plaintiffs., The Court will identify its selection in a Case Management Order.

F. GENERAL FACT DISCOVERY DEADLINE FOR BELLWETHER TRIAL FINALISTS²

<u>Date</u>	<u>Event</u>
November 22, 2019	The parties shall complete all fact discovery.

G. EXPERT DISCOVERY FOR BELLWETHER TRIAL FINALISTS

² Pursuant to Section 3(D) of CMO 21, the parties shall meet and confer regarding additional general/generic corporate discovery if they believe such discovery is needed beyond this date, including but not limited to supplemental productions of select Custodial files and Non-Custodial data sources, and discovery related to events that occur after the cut-off and/or the most recent collection of documents. The parties will raise any disputed issues with the Court as the need may arise.

<u>Date</u>	<u>Event</u>
December 9, 2019	Plaintiff shall disclose general and case-specific expert reports for the three Bellwether Trial Finalist cases.
January 15, 2020	Defendants shall disclose general and case-specific expert reports for the three Bellwether Trial Finalist cases.
February 5, 2020	Plaintiffs shall disclose rebuttal expert witness reports, if any, for the three Bellwether Trial Finalist cases.
March 12, 2020	Deadline for expert depositions.

H. DISPOSITIVE & DAUBERT MOTIONS FOR BELLWETHER TRIAL FINALISTS

<u>Date</u>	<u>Event</u>
April 2, 2020	Deadline to file motions for summary judgment and/or partial summary judgment.
April 2, 2020	Deadline for filing of any <i>Daubert</i> or other motions concerning any expert (hereafter “expert motions”).
May 5, 2020	Deadline to Respond to summary judgment motions.
May 14, 2020	Deadline to Respond to expert motions.
May 19, 2020	Deadline to Reply in further support of any filed summary judgement and/or partial summary judgment motions.
May 28, 2020	Deadline to Reply in further support of any filed expert motions.
TBD	Oral argument on summary judgment, partial summary judgement and/or expert motions, at the discretion of the Court.

I. FINAL PRE-TRIAL ACTIVITIES FOR BELLWETHER TRIAL FINALISTS

<u>Date</u>	<u>Event</u>
September 21, 2020	Bellwether Trial Case No. 1 Commences
TBD	Bellwether Trial Case No. 2 Commences
TBD	Bellwether Trial Case No. 3 Commences

The Court will set all final Pre-trial schedules and deadlines in a subsequent CMO for the three (3) Bellwether Trial Cases, which shall include schedules and deadlines for the following:

1. Motions in *limine*, oppositions, replies, and argument(s), if so determined by the Court;
2. Deposition designations, counter designations and objections, and objections to counter designations and reply designations;
3. Fact witness and expert witness lists;
4. Exhibit lists designations and objections;
5. Proposed jury instructions;
6. Proposed *voir dire* questions;
7. A date for a final pre-trial conference;
8. Other deadlines and/or hearings as the Court requires; and,
9. Nothing in this Order shall be read to preclude the use of multi-Plaintiff trials in this litigation.

IV. EARLY CASE EVALUATION PROCESS

The Parties are to undergo an Early Case Evaluation Process on a similar track with that of the Bellwether Trial Process. However, while the Bellwether Trial Process is designed to produce trial cases that allow the Court and jury to decide numerous issues, in contrast the Early Case Evaluation Process is designed to produce cases that allow the Parties to determine how potential settlement negotiations may progress and case valuations for various injuries and damages at issue.

As described in Section IV(A) below, on April 4, 2019, the Parties shall simultaneously identify four (4) Plaintiff candidates for the Early Case Evaluation Process, for a total of eight (8) cases to be worked up for case-specific discovery (“Early Case Evaluation Pool”). The Parties shall endeavor to select cases that would be able to proceed to potential, meaningful, discussions on case value. The parties will identify these eight (8) cases to the Court in one filing.

The deadlines for Core Fact Discovery, as set forth in Section IV(B), will apply to Early Case Evaluation Pool Plaintiffs. In the event that a case selected for the Early Case Evaluation Pool is dismissed before July 14, 2019, the Court may at its discretion allow the selection of a replacement case by the Defendants or Plaintiffs depending upon the circumstances of the

dismissal or otherwise adjust the balance of selections or the terms of this CMO to ensure the integrity of the Early Case Evaluation process.

As described in Section IV(C) below, after Core Discovery concludes for the eight (8) Early Case Evaluation Pool Plaintiffs, the Parties shall engage in a 60-day mediation period with a mediator to be agreed upon by the parties.

A. SELECTION OF EARLY CASE EVALUATION POOL PLAINTIFFS

<u>Date</u>	<u>Event</u>
April 4, 2019	The Parties shall simultaneously identify four (4) Plaintiff candidates for the Early Case Evaluation Pool Cases for a total of eight (8) cases to go through core discovery and be worked up for case-specific discovery. The Parties will identify these eight (8) cases to the Court in one filing.

B. CORE FACT DISCOVERY DEADLINES AS TO EARLY CASE EVALUATION POOL PLAINTIFFS

<u>Date</u>	<u>Event</u>
May 4, 2019	For the eight (8) Early Case Evaluation Plaintiffs selected, Plaintiffs shall serve a completed Plaintiff Fact Sheet (“PFS”), including all authorizations. If a Plaintiff’s PFS has already been served by this date, then a supplemental PFS shall be served. The scope and parameters of the PFS are governed by CMO 9.
June 4, 2019	Defendants will serve a Defendant Fact Sheet ³ (“DFS”). If a Defendant’s DFS has already been served by this date, then a supplemental DFS shall be served. The scope and parameters of the DFS are governed by CMO 22.
July 14, 2019	Completion of all Core Fact Discovery, which may include up to four case-specific fact depositions noticed by each party in interest in each case.

C. EARLY CASE EVALUATION POOL PLAINTIFFS INFORMAL MEDIATION AND/OR CASE VALUATION PERIOD

³ The custodial and personnel files of the sales representative(s) and/or sales manager(s) identified in a DFS shall be produced within seven (7) days from the date the DFS is served.

<u>Date</u>	<u>Event</u>
July 15, 2019	The Parties shall begin to engage in a 60-day mediation period with a mediator to be agreed upon by the parties. The 60-days may be extended by the Court and/or at the discretion of the Parties.

The Court will set schedules and deadlines in a subsequent CMO for updating the Court on the progress and of the eight (8) Early Case Evaluation Pool Plaintiffs.

IT IS SO ORDERED, this _____ day of _____ 2018.

 CLAIRE C. CECCHI
 United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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IN RE: PROTON-PUMP INHIBITOR	:	MDL NO. 2789
PRODUCTS LIABILITY LITIGATION	:	Civil Action No. 2:17-MD-2789
	:	
This Document Relates to:	:	JUDGE CLAIRE C. CECCHI
ALL ACTIONS	:	
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CASE MANAGEMENT ORDER NO. __
(Selection of Bellwether Discovery Cases and Core Discovery Protocol)

The Court hereby issues the following Case Management Order to govern the selection of, and discovery in, Bellwether Discovery Cases.

I. Bellwether Core Discovery

Pursuant to CMO 21, the parties are required to present the Court with a plan to select representative cases to serve as Bellwether Discovery Cases that will undergo additional discovery (beyond the PFS and DFS), which shall be referred to as “Core Discovery.” This plan, detailed below, shall set forth how the bellwether cases (“Bellwether Discovery Cases”) will be selected and what Core Discovery will be conducted in those cases.

II. Selection of Bellwether Discovery Cases

The Plaintiffs whose cases are eligible for selection for bellwether discovery are Plaintiffs: (a) who have complaints pending in this MDL proceeding that have been served upon all named Defendants as of November 1, 2018; (b) whose complaints assert claims on behalf of a PPI User who is/was a resident of New Jersey; and (c) who have served a substantially complete Plaintiff Fact Sheet, authorizations, responsive documents, and Proof of Use as to all named Defendants by December 1, 2018. Any cases who meet all these requirements will become part of the Bellwether Discovery Pool.

III. Core Discovery Protocol for Bellwether Discovery Pool

A. In each case in the Bellwether Discovery Pool, Core Discovery shall include depositions of the following individuals: (1) the PPI User, if still alive; (2) the PPI User's spouse, or other Plaintiffs (if the PPI user is deceased); (3) other family member(s) or friends with relevant information identified in the PFS; (4) the PPI User's prescribing physician(s); and (5) the PPI User's treating and/or diagnosing physician(s).

B. As set forth in CMO 21, Core Discovery of cases in the Bellwether Discovery Pool shall be completed by June 28, 2019.

C. The protocol for depositions shall be governed by a separate CMO.

IT IS SO ORDERED, this ___ th day of _____ 2018.

HON. CLAIRE C. CECCHI
UNITED STATES DISTRICT JUDGE