

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

IN RE: 3M COMBAT ARMS  
EARPLUG PRODUCTS  
LIABILITY LITIGATION

Case No. 3:19md2885

This Document Relates to All Cases

Judge M. Casey Rodgers  
Magistrate Judge Gary R. Jones

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**CASE MANAGEMENT ORDER NO. 18**

The Eighteenth Case Management Conference (CMC) in this matter was held on November 20, 2020. This Order serves as a non-exhaustive recitation of the key points of discussion during the conference.

**I. Government Discovery**

**a. Pending motions**

Defendants updated the Court on three pending motions related to Government discovery.

First, Defendants continue to meet and confer with the Government on Defendants' Motion to Compel the Department of Defense (DOD) to produce certain data and documents (ECF No. 1433), and will advise the Court this week whether they are able to resolve any of the disputes that are the subject of the motion.

Second, Defendants will file their response to the Government's Objections to Magistrate Judge Jones' Order granting in part and denying in part the

Government's Motion to Quash the deposition of Dr. William Murphy on or before November 30, 2020.

Third, the Government had filed a Motion to Quash the deposition of another employee, Theresa Schulz, in the Western District of Texas, where the subpoena was served. *See* Case No. 3:20mc63. Defendants moved to transfer the case to this Court, and the Western District of Texas subsequently granted the transfer but denied as moot the Government's Motion to Quash, subject to the Government refiling in this Court. *See id.*, ECF No. 6. Because the Government has not refiled their Motion to Quash the subpoena, the subpoena remains a live subpoena. Accordingly, Defendants will amend their deposition notice with a new date for Ms. Schulz's deposition, unless Defendants and the Government reach an agreement on how to proceed with the deposition.

#### **b. Stipulations**

The parties and the Government are currently negotiating stipulations regarding the supplemental productions of records from the Department of Veterans Affairs (VA) for the bellwether plaintiffs, as well as the depositions of the bellwether plaintiffs' healthcare providers and hearing conservation program managers who are currently employed by the Government. The stipulations may resolve some of the pending motions described above, and would apply to Groups B, C, and D.

### **c. Disputes at Deposition**

Defendants informed the Court that during the recent deposition of Jodee Donaldson, the Government raised several objections and instructed the witness not to answer certain questions. Defendants will meet and confer with the Government, and if necessary, brief the issue before the Court. The Government and Plaintiffs will have an opportunity to respond.

### **d. Records Production**

Plaintiffs' Leadership will provide the Court with a spreadsheet tracking the plaintiffs who have submitted *Touhy* requests, and specifying whether those plaintiffs are included in or beyond the 1%. This information will assist the Court as the parties contemplate records collection for the next round of Plaintiffs.

## **II. Group A Schedule**

### **a. Consolidation Briefing Schedule for Group A**

The Court adopts the parties' following briefing proposal on the issue of consolidated trials among the Group A cases:

<b>Date</b>	<b>Description</b>
December 7, 2020	Plaintiffs' Opening Brief, limited to 20 pages is due.
December 15, 2020	Defendants' Opening Brief, limited to 25 pages, is due.
December 22, 2020	Plaintiffs' Reply Brief is due and will be limited to 12 pages. However, if Plaintiffs' Opening Brief is less than 20 pages, Plaintiffs are allowed to add the number of allotted pages they did not use in their Opening Brief to the Reply, up to three pages.

The briefing should be specific to the Group A cases at issue. The Court will decide whether to hear oral argument after reviewing the parties' initial briefs.

**b. Expert Deposition Schedule for Group A**

The Court will extend the parties' expert deposition deadline in Group A to December 31, 2020. The Court will contemplate an additional extension until January 4, 2021 only for the one expert identified with remaining scheduling issues, if needed.

Additionally, the parties are drafting an expert deposition protocol and will submit the proposed protocol, along with any disputes unresolved in the protocol, to the Court. The Court expects that the protocol will also apply to Trial Groups B, C, and D.

**c. Supplemental ESI Disclosure/Production**

Plaintiffs will supplement their ESI productions or otherwise certify there are not any further responsive documents by January 19, 2021.

The parties are working on an agreement for supplemental ESI production for Groups B, C, and D. If the parties cannot reach an agreement, they will raise the issue with Magistrate Judge Jones.

**III. Defense Medical Exams**

The parties have assured the Court that they are working cooperatively on scheduling Defendants' medical examinations of the Group B Plaintiffs.

For Groups C and D, the parties will meet and confer on the sequencing of Defendants' medical examinations as it relates to the close of fact discovery and expert disclosure deadlines. Should the parties fail to reach an agreement, the parties will submit simultaneous five-page briefs for the Court's consideration by November 30, 2020.

#### **IV. Upcoming Case Management Conferences**

Case management conferences are scheduled on the following upcoming dates at 10 AM central:

December 17, 2020

January 22, 2021

February 19, 2021

March 19, 2021

**SO ORDERED**, on this 24th day of November 2020.

*M. Casey Rodgers*

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**M. CASEY RODGERS**  
**UNITED STATES DISTRICT JUDGE**