

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

CASE MANAGEMENT ORDER NO. 47
(Amended Bellwether Scheduling Order)

1. 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 litigation. The following shall apply to all cases in MDL-2789. This Order supersedes Case Management Orders (“CMO”) Nos. 21, 36, and 46, and is entered upon the recommendation of Special Master Ellen Reisman.

2. COMPLETION OF CORE DISCOVERY IN THE BELLWETHER DISCOVERY CASES

CMO No. 46, Section II.B set the deadline for completion of Core Discovery in the Bellwether Discovery Cases as **January 21, 2021**. That deadline is hereby extended until **February 11, 2021**.

3. SELECTION OF BELLWETHER TRIAL CASES

CMO No. 46, Section II.C. provides that on or before **January 29, 2021**, the parties and Special Master Ellen Reisman will inform the Court of their six (6) Bellwether Trial Case selections, which selection shall be subject to the approval of the Court. That deadline

is hereby extended to **February 12, 2021**. Fact discovery in the six Bellwether Trial Cases shall be completed by **March 23, 2021**.

4. BELLWETHER TRIAL CASE EXPERT SCHEDULE¹

A. On or before **April 23, 2021**, Plaintiffs shall disclose general and case-specific expert witness reports for the Bellwether Trial Cases pursuant to Fed. R. Civ. P. 26(a)(2).

B. On or before **June 4, 2021**, Defendants shall disclose general and case-specific expert witness reports for the Bellwether Trial Cases pursuant to Fed. R. Civ. P. 26(a)(2).

C. Plaintiffs to disclose rebuttal expert witness reports, if any, by **June 25, 2021**. Should an expert submit a rebuttal expert report, Defendants will be permitted two extra weeks beyond **August 6, 2021** to complete the deposition of that expert.

D. Each expert witness disclosure shall include at least two dates when each expert is available for a deposition. Depositions can only commence after both sides' expert reports have been served.

E. Depositions of Plaintiffs' experts will be completed before depositions of Defendants' experts in the same discipline, absent agreement of the parties or leave of Court, with all depositions of expert witnesses to be completed by **August 6, 2021**. To the extent a Plaintiffs' expert is not serving a rebuttal report, the parties may attempt to schedule that expert's deposition sooner than **June 25, 2021**.

F. The parties intend that the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provisions of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply.

¹ These dates were previously memorialized in CMO 36.

5. SUMMARY JUDGMENT AND *DAUBERT* MOTIONS

A. Any motions for summary judgment or for partial summary judgment shall be filed on or before **September 3, 2021**.

B. Any motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before **September 10, 2021**.

C. Responses to summary judgment motions shall be filed on or before **October 4, 2021**.

D. Responses to motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before **October 14, 2021**.

E. Reply briefs in further support of summary judgment motions shall be filed on or before **October 26, 2021**.

F. Reply briefs in further support of motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before **November 5, 2021**.

G. To aid in an effective and meaningful bellwether trial process, a deadline shall be set for general/generic corporate fact discovery applicable to the first two (2) bellwether cases to be tried. Consistent with the purpose of this MDL, however, it is understood that additional general/generic corporate fact discovery may be conducted in connection with the remaining four (4) bellwether cases to be tried as well as any further cases selected for discovery, trial, remand, or future bellwether process as authorized by Court order or as otherwise identified in Court orders. For the first two (2) bellwether cases to be tried, the general/generic corporate fact discovery deadline shall be May 1, 2021 (“Bellwether Discovery Deadline”), provided that this Bellwether Discovery Deadline may be extended by the Court if the second bellwether trial shall begin more than six (6) months following the

date the first bellwether trial shall begin. Notwithstanding the Bellwether Discovery Deadline, the plaintiffs may seek to move or adjust the Bellwether Discovery Deadline or otherwise move the Court to permit the use of subsequently discovered information, for good cause shown with respect to the first or second bellwether trial case. However, Defendants preserve their rights to object to the use of any evidence discovered after the Bellwether Discovery Deadline at the first and second bellwether trials, and/or seek an extension of the balance of the schedule, including the trial dates. The conclusion of the general/generic corporate fact discovery authorized by this CMO should not be construed as grounds for termination of this MDL under 28 U.S.C. § 1407 or as any other bar to discovery that might be sought or needed in this MDL.

H. If the Court determines that a hearing or oral argument on summary judgment and/or *Daubert* motions, or limited/certain parts thereof, is necessary, such a hearing may be scheduled by the Court for a date to be determined by the Court.

I. A more robust and detailed pretrial schedule for final pretrial matters, exhibit lists, motions *in limine*, and deposition designations will be the subject of a subsequent CMO. The parties will meet and confer with Special Master Ellen Reisman and submit a joint proposed CMO to the Court on or before **August 6, 2021**.

6. TRIAL SCHEDULE

The first trial in this MDL will be held on **January 24, 2022** (or 30 days after the Court decides summary judgment and *Daubert* motions, whichever is later), with subsequent bellwether trials to follow.

IT IS SO ORDERED.

DATE: February 17, 2021



CLAIRE C. CECCHI, U.S.D.J.