

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**IN RE: ZANTAC (RANITIDINE)
PRODUCTS LIABILITY
LITIGATION**

**MDL NO. 2924
20-MD-2924**

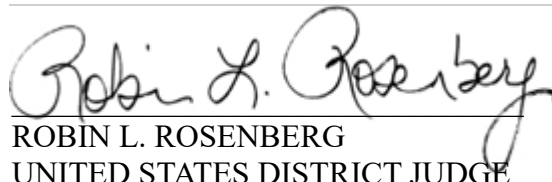
**JUDGE ROBIN L. ROSENBERG
MAGISTRATE JUDGE BRUCE E. REINHART**

ORDER SETTING CONFERENCE ON BELLWETHER SELECTION PLAN

On October 5, 2021, the parties submitted to the Court by email a joint proposed pretrial order setting forth a process for selecting personal injury bellwether Plaintiffs. The Court attaches a copy of the parties' proposed pretrial order to this Order.

The Court will hold a conference on the parties' bellwether proposal on **October 25, 2021**, beginning at **2:00 p.m. EST**. The conference will be conducted by Zoom teleconference. No counsel is permitted to appear in person. Any plaintiffs' counsel seeking to attend shall contact plaintiffs' liaison Frank Maderal. Any defense counsel seeking to attend shall contact defense liaison Joanne O'Connor. Counsel who have not yet made an appearance and do not want to identify their clients or potential clients to the liaisons, and any individuals not affiliated with a party to the litigation, may instead contact Special Master Jaime Dodge, Director of the Emory Institute for Complex Litigation, to be added to the attendee list. In advance of the hearings, liaison counsel and the Special Master will provide the log-in credentials and instructions to all attendees. Only those who have been given advance notice of their desire to attend will be admitted to the hearings absent special circumstances.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 15th day of October, 2021.


ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

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**JUDGE ROBIN L. ROSENBERG
MAGISTRATE JUDGE BRUCE E. REINHART**

**PRETRIAL ORDER
(Bellwether Selection)**

This Order shall govern the process and plan for selecting personal injury bellwether Plaintiffs from those cases currently filed in MDL 2924 and Unfiled Claimants in the Registry as of September 30, 2021.

I. BELLWETHER POOL

- A. Pursuant to PTO 15, and applicable orders entered thereafter, the Court ordered and the parties have maintained a Census Registry database of MDL filed Plaintiffs and Unfiled Claimants (collectively “Plaintiffs”), containing information about the Plaintiffs and their claims and documents submitted and/or collected through a Census Plus Form (“CPF”) process.
- B. On January 8, 2021, Plaintiffs’ Leadership Counsel (“PLC”) disclosed to the Court ten (10) alleged cancers that, as of that date, they intended to pursue in this MDL: Bladder Cancer; Breast Cancer; Colorectal Cancer; Esophageal Cancer; Gastric (Stomach/Intestinal) Cancer; Kidney Cancer; Liver Cancer; Lung Cancer; Pancreatic Cancer; and Prostate Cancer.
- C. The Court intends to use Plaintiffs residing in the state of Florida (hereinafter “Florida Plaintiffs”) as bellwether Plaintiffs in this MDL for two reasons: first, no Lexecon

waivers are needed for any trials of these Plaintiffs' actions; and second, this Court has subpoena power over witnesses with case-specific information regarding these Plaintiffs.

- D. As of September 30, 2021, the numbers of Florida Plaintiffs (excluding generic use only cases/claims, and those where the Census Registry data as of that date shows Apotex generic use) alleging the ten (10) cancers disclosed by Plaintiffs' Leadership Counsel, are as follows:

<u>Type of Cancer Alleged</u>	<u># of Florida Plaintiffs</u>
Bladder	805
Breast	1,408
Colorectal	971
Esophageal	395
Gastric (Stomach/Intestinal)	421
Kidney	768
Liver	305
Lung	368
Pancreatic Cancer	316
Prostate	1,550

- E. 75% or more of the above-referenced Florida Plaintiffs will certify before November 15, 2021 that they will not bring claims against non-diverse defendants and thus will file their complaints in the MDL if selected to be in the Bellwether Trial Pool. All Florida Plaintiffs who so certify by November 15, 2021 are deemed eligible for the bellwether pool and bound by the MDL Court's orders.
- F. On December 20, 2021, pursuant to PTO 65, PLC will designate experts on general causation and will identify the alleged cancers they intend to continue pursuing in the MDL (the "Alleged Cancers").

II. INITIAL DISCOVERY POOL

- A. By October 13, 2021, the parties shall agree upon the form of signed medical authorizations and other required authorizations.
- B. On November 16, 2021, the parties will use the Microsoft Randomizer to randomly select six percent (6%) of the Florida Plaintiffs in each Alleged Cancer category, or 25 Plaintiffs per category in any Alleged Cancer category in which 6% of the certified Plaintiffs does not exceed 25. The Plaintiffs selected under this paragraph will form the initial discovery pool (hereinafter, “Initial Discovery Pool”). If at any time the Initial Discovery Pool for any of the Alleged Cancer categories drops below twenty-five (25), the Court will use the Microsoft Randomizer to select additional cases from the Bellwether Pool to replenish the bellwether discovery pool to twenty-five (25) cases per Alleged Cancer category.
- C. By November 28, 2021, any Plaintiff selected for the Initial Discovery Pool who does not intend to proceed with his or her case or claim and be subject to the discovery and deadlines set forth in this Order will (i) for filed actions, voluntarily dismiss his or her action with prejudice, with each party to bear their own costs; (ii) for Unfiled Claimants, file an action using the Short Form Complaint process set forth in PTO 31 and immediately voluntarily dismiss his or her action with prejudice, with each party to bear their own costs. For each Plaintiff in the Initial Discovery Pool who voluntarily dismisses his or her case or claim, Defendants may at their option substitute another Plaintiff from the Bellwether Pool asserting the same Alleged Cancer to be included in the Initial Discovery Pool, by December 8, 2021. Any replacement who does not intend to proceed with his or her case or claim and be subject to the discovery deadlines set

forth in this order will, by December 3, 2021, (i) for filed actions, voluntarily dismiss his or her action with prejudice, with each party to bear their own costs; (ii) for Unfiled Claimants, file an action using the Short Form Complaint process set forth in PTO 31 and immediately voluntarily dismiss his or her action with prejudice, with each party to bear their own costs. For each replacement Plaintiff in the Initial Discovery Pool who voluntarily dismisses his or her case or claim, Defendants may at their option, by December 20, 2021, cause the Microsoft Randomizer to select a substitute another Plaintiff from the Bellwether Pool asserting the same Alleged Cancer to be included in the Initial Discovery Pool.

III. INITIAL DISCOVERY POOL AUTHORIZATIONS AND PROVIDERS

As to each of the Plaintiffs in the Initial Discovery Pool:

- A. Starting November 25, 2021, 10 days after the first selection of the Initial Discovery Pool described in II(B) and continuing on a rolling basis for the next 20 days until December 15, 2021, Plaintiffs will serve electronically via LMI signed medical authorizations and complete a list of the following medical providers for each Plaintiff (1) Primary Healthcare Physician(s); (2) gastroenterologist(s); (3) Ranitidine-prescribing physician(s), if applicable; (4) physician diagnosing the Alleged Cancer; and (5) treating oncologist(s). Plaintiffs who are added to the Initial Discovery Pool as replacements must provide the authorizations and list of medical records providers required by this paragraph by December 22, 2021.
- B. If there are deficiencies in any signed medical authorizations or list of medical providers served under this paragraph II(B), Defendants will notify PLC and Plaintiffs'

counsel (as identified in the signed medical authorizations) within five (5) days of receiving them, and Plaintiffs will correct the deficiencies by January 7, 2022.

- C. Any Plaintiff or Claimant who has not timely served substantially complete, non-deficient signed medical authorizations and a complete list of medical providers or who has not timely corrected deficiencies identified by Defendants will be dismissed with prejudice with each party to bear its own costs, and Defendants may at their option substitute another Plaintiff from the Bellwether Pool asserting the same Alleged Cancer to be included in the Initial Discovery Pool.
- D. To the extent there are disputes over the completeness or sufficiency of the signed medical authorizations or list of medical providers, such disputes will be presented to and decided by the Court.

IV. BELLWETHER DISCOVERY POOL

A. CPF Bellwether Supplements

1. By December 3, 2021, the parties shall agree upon the form of a CPF Bellwether Supplement.
2. Between February 1, 2022 and April 30, 2022, and on a rolling basis between therein to the extent possible, Plaintiffs in the Initial Discovery Pool will serve electronically via LMI a completed CPF Bellwether Supplement executed under oath by the Plaintiff. If there are deficiencies in any CPF Bellwether Supplement served under this paragraph, Defendants will notify PLC and Plaintiffs' counsel (as identified in the CPF Bellwether Supplement) and Plaintiffs will correct the deficiencies within 14 days and no later than May 14, 2022.

3. Any Plaintiff who has not timely served a substantially complete, non-deficient CPF Bellwether Supplement or timely corrected deficiencies identified by Defendants will be dismissed with prejudice with each party to bear its own costs, and Defendants may at their option substitute another Plaintiff from the Bellwether Pool asserting the same Alleged Cancer to be included in the Initial Discovery Pool by May 16, 2022. In addition to serving medical authorizations and a list of providers pursuant to Section III, any such replacement Plaintiff shall serve a CPF Bellwether Supplement by June 3, 2022.
4. To the extent there are disputes over the completeness or sufficiency of a CPF Bellwether Supplement, such disputes will be presented to and decided by the Court.

B. Vetting for Eligibility Criteria

1. The parties will use medical records and CPF Bellwether Supplements to begin the process of records collection and to vet the Initial Discovery Pool for compliance with eligibility criteria to be agreed by the parties by March 1, 2022.
2. By August 1, 2022, the parties will provide to the Court a list of Plaintiffs in the Initial Discovery Pool whose claims do not satisfy the eligibility criteria. The parties shall meet and confer and attempt to submit a joint list, but will submit competing lists on August 1, 2022 if they cannot. If competing lists are submitted, the parties will highlight the disputed Plaintiffs for the Court, and by August 15, 2022 the Court will issue a list of any Plaintiffs whose claims do not satisfy the eligibility criteria and thus are removed from the Initial Discovery Pool.

3. Plaintiffs in the Initial Discovery Pool whose claims satisfy the eligibility criteria and who have served non-deficient medical authorizations, provider lists, and CPF Bellwether Supplements by the required deadlines, shall constitute the “Final Discovery Pool.”
4. The Defendants and Counsel for each Plaintiff in the Final Discovery Pool shall evenly split the cost of procuring medical records obtained via the signed medical authorizations provided by Plaintiffs, and such records shall promptly make available to the other side via LMI all such records obtained. Plaintiffs will provide LMI the disclosed cancers on December 20, 2021 and terminate the records collection process in cases involving Plaintiffs alleging those cancers. Costs for records collection incurred after December 20, 2021 in such cases involving Plaintiffs alleging non-disclosed cancers will be borne by Plaintiffs, not split evenly among the parties.

V. SELECTION OF BELLWETHER TRIAL POOL

The Court anticipates ruling on the parties’ general causation *Daubert* motions in the summer or fall of 2022. As to those Alleged Cancers where the Court finds that claims are permitted to proceed in the MDL (“Permitted Cancers”), the Court orders as follows:

A. Setting the Order of Permitted Cancers

1. On the first Monday following the date of the last of the Court’s general causation *Daubert* decisions, the parties will use the Microsoft Randomizer to set the order of the Permitted Cancers that remain after *Daubert* for purposes of proceeding into bellwether discovery. The first two Permitted Cancers as selected by the Microsoft Randomizer will be “Phase One Cancers” [Cancers 1 and 2, respectively] and the second two

Permitted Cancers selected by the Microsoft Randomizer will be “Phase Two” cancers” [Cancers 3 and 4, respectively]. On the same day, the parties will use the Microsoft Randomizer to select from the Final Discovery Pool eight (8) bellwether cases per cancer for each of the Phase One Cancers, forming the “Initial Bellwether Trial Pool.”

B. Phase One Cancers

1. Two days after the Initial Bellwether Trial Pool is selected, each side may strike one (1) Plaintiff from each of the Phase One Cancers, creating a “Bellwether Trial Pool” that includes six (6) Plaintiffs per cancer for each Phase One Cancer. Case-specific written discovery for the Plaintiffs in the Bellwether Trial Pool will open on the same date, and all other case-specific discovery will open the following Monday. For any Plaintiff in the Bellwether Trial Pool who voluntarily dismisses his or her case or claim on or after the date on which case-specific discovery opens, Defendants may strike an additional case in the same Permitted Cancer category from the Bellwether Trial Pool.
2. 14 days after the Bellwether Trial Pool is established, each of the twelve (12) Plaintiffs in the Bellwether Trial Pool will file an individual Complaint, if not already done, using the Short Form Complaint process in PTO 31. The allegations in such Plaintiffs’ individual Complaints shall not differ from the information provided in the CPF Bellwether Supplement produced pursuant to IV(A). Any Plaintiff in the Bellwether Trial Pool who has not filed an individual Complaint by the deadline set by this paragraph, or who has filed a Complaint containing allegations inconsistent with the information in his or her verified CPF Bellwether Supplement, will be dismissed with prejudice with each party to bear its own costs. Defendants may at their option substitute another Plaintiff from the Final Discovery Pool of the same alleged cancer

type to be included in the Bellwether Trial Pool. Defendants will have three weeks to respond to Plaintiffs' Complaints.

3. Within 70 days of case-specific discovery opening in the Bellwether Trial Pool, each party may strike one (1) case per cancer for each of the Phase One Cancers, leaving four remaining Plaintiffs per Phase One Cancer, and Defendants may strike any additional cases permitted pursuant to V(B)(1). The remaining cases in each of the Phase One Cancers will constitute the "Final Bellwether Trial Pool."
4. 95 days after the case-specific discovery opens on the date set by V(B)(1), case-specific discovery will close in the Final Bellwether Trial Pool. Only for good cause shown may the parties take a deposition after the close of case-specific discovery.

C. Phase Two Cancers

1. Five days after case-specific discovery closes for the Phase One Cancers on the date determined in V(B)(4), the parties will submit joint or competing proposals regarding a schedule for selecting and conducting discovery in Phase Two bellwether cases and setting them for trial.
2. The Parties' proposals will provide for selection of Phase Two cases within 14 days of the close of Phase One case-specific discovery.

VI. PRETRIAL SCHEDULE

A. Pretrial Motions Practice

As to the cases in the Final Bellwether Trial Pool established in V(B)(3), the Court orders as follows:

Deadline	Event
10 days after close of case specific discovery	Plaintiffs' expert disclosures served and two non-consecutive deposition dates per expert provided
30 days after Plaintiffs' expert disclosures served	Defendants' expert disclosures served and two non-consecutive deposition dates per expert provided
30 days after Plaintiffs' expert disclosures served	Omnibus motions for summary judgment, cross-cutting dispositive motions,
25 days after Defendants' expert disclosures served	Completion of depositions of Plaintiffs' experts
25 days after completion of depositions of Plaintiffs' experts	Completion of depositions of Defendants' experts
21 days after the completion of depositions of Defendants' experts	Case-specific dispositive and <i>Daubert</i> motions
14 days after case specific dispositive and <i>Daubert</i> motions filed	Oppositions to case-specific dispositive and <i>Daubert</i> motions
7 days after oppositions to case-specific dispositive and <i>Daubert</i> motions are filed	Replies on case-specific dispositive and <i>Daubert</i> motions

B. Selection of Bellwether Trial Cases

1. Assuming the Court rules on the parties' case-specific dispositive and *Daubert* motions by May 19, 2023, on May 21, 2023, the parties will nominate to the Court and rank in order of preference the four cases in the first Phase One cancer category to be tried as the first bellwether trial, and the four cases in the second Phase One cancer category to be tried as the second bellwether trial, with the order of the Phase One cancer categories set as described in V(A). If, however, the Court has not ruled on the parties' case-

specific dispositive and *Daubert* motions by May 19, 2023, the parties will meet and confer on proposed modifications to this Order.

2. On May 23, 2023, the Court will decide which Plaintiff(s) in the first Phase One cancer category shall be tried in the first bellwether trial, and which Plaintiff(s) in the second Phase One cancer category shall be tried in the second bellwether trial.¹
3. By May 30, 2023, the parties will meet and confer and submit a proposed schedule for pretrial evidentiary motions and procedural filings in the first trial case.
4. The first bellwether trial is hereby set for July 17, 2023, unless subsequently modified by order of this Court.

C. Pretrial Hearing on Motions in Limine and Other Pretrial Motions

By May 21, 2023, the Court intends to enter a subsequent order setting a Pretrial Hearing with respect to its first bellwether trial.

VII. SUBSEQUENT BELLWETHER TRIAL CASE SETTINGS

The Court intends to issue subsequent Orders setting a date for the second through fourth bellwether trials, and addressing bellwether selection with respect to any Permitted Cancers remaining.

SO ORDERED, on this ____ day of October, 2021.

ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

¹ The parties have informed the Court that Plaintiffs will ask for multi-plaintiff bellwether trials and that the Defendants will oppose the same. That issue is hereby deferred for another day after motion practice thereon.