

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: ABBOTT LABORATORIES, ET
AL., PRETERM INFANT NUTRITION
PRODUCTS LIABILITY LITIGATION**

This Document Relates to:

ALL ACTIONS

MDL No. 3026

Master Docket No. 22 C 71

Judge Rebecca R. Pallmeyer

**Joint Motion for Entry of Protocol for Selection of
Initial Bellwether Discovery Cases and Initial Bellwether Trial Cases,
and Authorization of Plaintiff Profile Forms**

Co-Lead Counsel on behalf of the Plaintiffs in MDL No. 3026 (“Plaintiffs”) and Defendants Mead Johnson & Company, LLC, Mead Johnson Nutrition Company (together “Mead”), and Abbott Laboratories, Inc. and Abbott Laboratories (together, “Abbott”) (Mead and Abbott together, “Defendants”), have conferred and hereby submit this Joint Motion for Entry of Protocol for Selection of Initial Bellwether Discovery Cases and Initial Bellwether Trial Cases, and Authorization of Plaintiff Profile Forms (“Bellwether Selection Protocol”) for consideration by the Court. The parties respectfully request that the Court enter this Bellwether Selection Protocol in the form attached hereto. Word versions are being provided to the Court.

Respectfully submitted on August 12, 2022 by:

/s/ Timothy J. Becker

Timothy J. Becker
JOHNSON BECKER, PLLC
444 Cedar Street
Suite 1800
St. Paul, MN 55101
Telephone: 612.436.1800
tbecker@johnsonbecker.com
CO-LEAD COUNSEL

/s/ Stephanie E. Parker

Stephanie E. Parker
JONES DAY
1221 Peachtree Street NE
Suite 400
Atlanta, GA 30361
404.581.8552
404.581.8330 (fax)
Email: separker@jonesday.com

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/s/ C. Andrew Childers

C. Andrew Childers
LEVIN, PAPANTONIO, RAFFERTY,
PROCTOR, BUCHANAN, O'BRIEN, BARR
& MOUGEY, P.A.
316 S. Baylen Street, Sixth Floor
Pensacola, FL 32502
Telephone: 850.435.7000
achilders@levinlaw.com
CO-LEAD COUNSEL

/s/ Wendy R. Fleishman

Wendy R. Fleishman
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Telephone: 212.355.9500
wfleishman@lchb.com
CO-LEAD COUNSEL

/s/ José M. Rojas

José M. Rojas
LEVIN, ROJAS, CAMASSAR & RECK,
LLC
40 Russ Street
Hartford, Connecticut 06106
Telephone: 860.232.3476
rojas@ctlawyer.net
CO-LEAD COUNSEL

/s/ Diandra S. Debrosse Zimmermann

Diandra S. Debrosse Zimmermann
Dicello Levitt Gutzler, LLC
420 20th St. N. Ste. 2525
Birmingham, AL 35203
Tel: 205.453.6415
Fax: 205.718.7688
fu@dicellolevitt.com
CO-LEAD COUNSEL

/s/ Elizabeth A. Kaveny

Elizabeth A. Kaveny
KAVENY + KROLL, LLC
130 E. Randolph Street, Suite 2800
Chicago, Illinois 60601
Phone: 312.761.5585
elizabeth@kavenykroll.com
PLAINTIFFS' LIAISON COUNSEL

Meir Feder
JONES DAY
250 Vesey Street, Floor 34
New York, NY 10281
212.326.7870
212.755.7306 (fax)
Email mfeder@jonesday.com

Bridget K. O'Connor
JONES DAY
51 Louisiana Avenue NW
Washington, DC 20001
202.879.3869
202.626.1700 (fax)
Email: boconnor@jonesday.com

*Attorneys for Defendants Abbott Laboratories
and Abbott Laboratories, Inc.*

- and -

/s/ Rachel M. Cannon

Anthony J. Anscombe
Rachel M. Cannon
Darlene K. Alt
William R. Andrichik
STEPTOE & JOHNSON LLP
227 West Monroe, Suite 4700
Chicago, IL 60606
312.577.1270
312.577.1370 (fax)
Email: rcannon@steptoe.com
312.577.1262
Email: dalt@steptoe.com
312.577.1273
Email: wandrichik@steptoe.com

*Attorneys for Defendants Mead Johnson, LLC
and Mead Johnson Nutrition Company*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: ABBOTT LABORATORIES, ET
AL., PRETERM INFANT NUTRITION
PRODUCTS LIABILITY LITIGATION**

MDL 3026

Master Docket No. 1:22-cv-00071

Judge Rebecca R. Pallmeyer

This Document Relates to:

ALL CASES

**[PROPOSED] CASE MANAGEMENT ORDER NO. ____
(Protocol for Selection of Initial Bellwether Discovery Cases and Initial
Bellwether Trial Cases, and Authorization of Plaintiff Profile Forms)**

I. SCOPE OF ORDER

1. In furtherance of the effective and efficient case management of complex litigation, this Case Management Order (“CMO”) will govern the guidelines and procedures for selecting a first wave of 12 cases for which individual case-specific discovery will be conducted (the “Initial Bellwether Discovery Cases”), and then for selecting a smaller subset of four cases thereafter to be designated to be tried as bellwether cases in this MDL Proceeding (the “Initial Bellwether Trial Cases”). It will also authorize the form of the Plaintiff Profile Form and medical record authorizations to be provided by each Plaintiff.

**II. DETERMINATION OF CASES ELIGIBLE FOR INITIAL BELLWETHER
DISCOVERY CASES**

2. Cases filed on or before September 16, 2022, shall be eligible to be selected as an Initial Bellwether Discovery Case. All Plaintiffs with a case filed in this MDL are to provide the Defendants a substantially completed Plaintiff Profile Form (“PPF”) and medical record authorizations, in the form attached hereto as Exhibits A-D, on or before September 16, 2022. A

Plaintiff is only required to execute Exhibit D (psychotherapy authorization) to the extent the Plaintiff intends to assert a claim for psychiatric and/or psychological conditions. However, this is without prejudice to Defendants subsequently seeking such information in discovery. For a PPF to be complete, it must provide responses to all fields in the form, and must include fully executed authorizations for medical records of the Infant alleged to have been injured, any twin or other sibling of the Infant carried in the same pregnancy, and the Infant's mother. In addition, each Plaintiff shall provide at the same time all medical records in the Plaintiff's or counsel's possession related to the case, including those of the Infant, any twin or other sibling carried in the same pregnancy, and the mother. PPFs may be electronically signed to comply with this provision; however, medical record authorizations must be hand-signed.

3. Without regard to whether a case shall be included in the bellwether process, all Plaintiffs must complete the PPF and medical record authorizations and provide the records in Plaintiff's or counsel's possession. Plaintiffs who file a case in this MDL after September 16, 2022, shall provide their PPF, medical record authorizations, and the medical records in Plaintiff's or counsel's possession, within 30 days of filing.

III. SELECTION OF INITIAL BELLWETHER DISCOVERY CASES

4. From among the cases eligible to be selected as Initial Bellwether Discovery Cases, 12 cases shall be selected through the following process:

(a) Plaintiffs' Selections – Four Cases. On or before September 30, 2022, at Noon CST, Plaintiffs' Co-Lead Counsel shall provide to Defendants their selections of four Initial Bellwether Discovery Cases from among the eligible cases. No more than three of the four cases selected by Plaintiffs shall include Mead Johnson as a Defendant. The parties shall

jointly submit a proposed order to the Court identifying the four selected cases as Initial Bellwether Discovery Cases and discovery on those cases shall commence promptly.

(b) Random Selections By the Court – Four Cases. On or before September 30, 2022, at Noon CST, the parties shall submit to the Court: 1) a list of the cases in which Abbott is the sole defendant (List 1), and 2) a list of the cases in which Mead Johnson is a defendant (either together with Abbott or as the sole defendant) (List 2). Defendants shall be entitled, but not required, to exclude from these lists any case in which a completed PPF was not submitted on or before September 16, 2022. The Parties shall thereafter employ a computer-generated application to randomly select three cases from List 1 and one case from List 2. Upon selection of the random cases, the Parties shall supply the Court with a Stipulation and proposed order identifying those four cases as Initial Bellwether Discovery Cases, and discovery on those cases shall commence promptly.

(c) Defendants' Selections – Four Cases. On or before November 23, 2022, at Noon CST, Defendants shall provide to Plaintiffs' Co-Lead Counsel their selections of four Initial Bellwether Discovery Cases from among the eligible cases. In selecting such cases, Defendants shall ensure that, when combined with the other Initial Bellwether Discovery Cases, no more than five of the 12 Initial Bellwether Discovery Cases include Mead Johnson as a defendant, unless Mead Johnson consents to the inclusion of such additional cases. The parties shall jointly submit a proposed order to the Court identifying each case so selected by Defendants as an Initial Bellwether Discovery Case, and discovery in such case shall commence promptly.

5. In selecting their respective Initial Bellwether Discovery Cases, the parties shall select cases that they have a good faith belief are representative of the body of then-filed cases as a whole, and that should be subject to discovery and then taken to trial.

6. In the event that a case selected as one of the Initial Bellwether Discovery Cases is dismissed by Plaintiffs before the selection of Initial Bellwether Trial Cases (addressed in Section IV below), 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 of the terms of this CMO to ensure the integrity of the bellwether process.

7. Following entry of an Order identifying any case as an Initial Bellwether Discovery Case:

- (i) The plaintiff in such case shall upload a completed Plaintiff Fact Sheet (“PFS”) within 30 days of the Order.
- (ii) Each defendant in such case shall upload a completed Defendant Fact Sheet (“DFS”) within 30 days of the deadline for the PFS.

IV. SELECTION OF INITIAL BELLWETHER TRIAL CASES

8. Within 14 days after Fact Discovery has been completed for the 12 Initial Bellwether Discovery Cases, the Plaintiffs’ Co-Lead Counsel and Defendants’ Counsel, shall each simultaneously identify two cases as Initial Bellwether Trial Cases, for a total of four Initial Bellwether Trial Cases. The parties shall jointly notify the Court of their four Initial Bellwether Trial Cases by 5 PM Central time on that same date, and shall each also file at that time three-page submissions explaining which of the cases they submit should be tried first, and on what basis.

9. The Court will determine which of the four Initial Bellwether Trial Cases will be tried first, based on the parties’ filed submissions. Each of the Initial Bellwether Trial Cases shall

be set for trial (with pretrial deadlines to be set on a staggered basis accordingly) every 12 weeks thereafter, alternating between cases selected by Plaintiffs and Defendants.

10. In the event that a case selected as one of the Initial Bellwether Trial Cases is voluntarily dismissed by Plaintiffs after the selection of the four Initial Bellwether Trial Cases, Defendants shall have the option (but shall not be required) to select a new trial case to replace it from among the Initial Bellwether Discovery Cases.

11. In the event that a case selected as one of the Initial Bellwether Trial Cases is resolved on summary judgment or otherwise resolved on the merits after the selection of the four Initial Bellwether Trial Cases, that case shall not be replaced.

12. In the event that a case selected as one of the Initial Bellwether Trial Cases is resolved via settlement after selection of the four Initial Bellwether Trial Cases, that case may, but is not required, to be replaced by the party who initially selected the settling case for the Bellwether pool.

13. The parties will confer to address additional details regarding the venue, logistical and other jurisdictional considerations for the Initial Bellwether Trials, and will endeavor to provide an agreed proposed Initial Bellwether Trial Protocol to the MDL Court. In the event the parties are unable to reach agreement on any aspect of that proposed protocol, they will submit simultaneous ten-page briefs to the Court 14 days before the CMC at which the issue is to be heard, and five-page reply briefs seven days before the CMC at which the issue is to be heard, together with the proposed protocol insofar as it is agreed.

14. 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.

IT IS SO ORDERED.

Dated: _____, 2022

Hon. Rebecca R. Pallmeyer
Chief Judge

MDL 3026: CMO [#] – EXHIBIT A

PLAINTIFF PROFILE FORM

Background Information:

1. Plaintiff name:

If minor, name and address of parents:

Parent address:	Child address (if different):

2. Date of Birth:

Date of Death (if applicable):

3. State of Residence:

State of Death (if applicable):

4. Gestational age of infant at birth:

5. Weight of infant at birth:

Diagnosis, Treatment

All information in this section is provided on information and belief. Plaintiffs reserve the right to supplement and amend.

1. Was infant diagnosed with NEC:

2. Name and address of facility where born:

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3. Name and address of facility where diagnosed with NEC, if different:

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4. Type(s) of Injuries:

--

5. Type(s) of treatment:**Dates (Start, End):**

--

6. Name and address of all healthcare providers who diagnosed and treated NEC:

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7. Describe any ongoing medical problems or treatments related to NEC and identify any healthcare providers providing treatment for such medical problems.

Medical Problems
Treating Providers

8. Please indicate whether you are aware of the Infant having been diagnosed with any of the following conditions or procedures or receiving any of the following medications during the Infant's hospitalization for his/her birth or in the NICU (if transferred), whichever is later.

Condition, Procedure, or Medication:	Yes	No	Don't Know/ Recall	Healthcare Provider
Prematurity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Low birth weight	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sepsis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Congenital heart disease	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Assisted ventilation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Patent ductus arteriosus	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Anemia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Administration of Indomethacin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Administration of glucocorticoids	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Gastroschisis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Red blood cell transfusion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Hypoxia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Hypotension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Hypoalbuminemia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Family history of necrotizing enterocolitis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Please produce with this completed form the medical records of the Healthcare Providers and institutions identified above and any other of the Infant's medical records, including those of any twin or multiple birth, collected by or provided to your attorneys that are in counsel's possession as of the date this form is executed. In addition, please provide with this completed form fully executed medical records authorization forms for the hospital records of the Infant and of any twin or multiple birth, including from the NICU and/or any other hospitalization records.

9. Please indicate whether Mother's medical history includes any of the following conditions, procedures, or medications during any pregnancy with the Infant.

Condition, Procedure, or Medication:	Yes	No	I don't recall/ know	Date(s) of Condition, Procedure, or Medication	Treating Physician(s)
Chorioamnionitis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Pre-eclampsia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
In utero growth restriction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Placental abruption	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Prenatal antibiotics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Prenatal corticosteroids	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Intrahepatic cholestasis during pregnancy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Premature rupture of membranes (water breaking early)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Smoking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Cocaine use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Methamphetamine use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Amphetamine use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Alcohol use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
HIV	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Please produce with this completed form the medical records of the Healthcare Providers and institutions identified in Item 9 above and any other of the Mother's medical records collected by or provided to your attorneys that are in counsel's possession as of the date this form is executed. In addition, please provide with this completed form fully executed medical records authorization forms for the Mother's prenatal and birthing records.

Product Use

All information in this section is provided on information and belief. Plaintiffs reserve the right to supplement and amend.

- 1. Was cow-milk based formula given to infant:**
- 2. Was cow-milk based fortifier given to infant:**
- 3. Name of facility where cow-milk based formula or fortifier was given to infant:**

- 4. Was infant given breast milk:**
- 5. Was infant given donor breast milk: Please list all brands and specific names of formula/fortifier administered to the infant, if known at this time:**

Date

Signature of Plaintiff / Representative

Printed Name of Signing Plaintiff /
Representative

MDL 3026: CMO [#] – EXHIBIT B

AUTHORIZATION TO DISCLOSE MEDICAL INFORMATION

TO:

PATIENT: [Infant name]

DATE OF BIRTH: [Infant DOB]

SSN: _____

PURPOSE OF DISCLOSURE: Litigation

For informational purposes pertaining to civil litigation, and pursuant to the Health Insurance Portability and Accountability Act (HIPAA), I, [Plaintiff Name], as Parent and/or Administrator of the Estate of [Infant name], authorize and request the Custodian of Records at the above-named entity to disclose, release, and furnish to the agents or designees of the law firms of Jones Day, 110 North Wacker Drive, Suite 4800, Chicago, Illinois, 60606; and Steptoe & Johnson LLP, 227 W. Monroe Avenue, Suite 4700, Chicago, Illinois 60606; and/or their duly assigned agents, including Marker Group, Inc., 13105 Northwest Freeway, Suite 300, Houston, Texas 77040; and Medical Research Consultants (MRC), 10550 Richmond Avenue, Suite 310, Houston, Texas 77042, any and all medical records, including those that may contain protected health information (PHI) regarding [Infant name] whether created before or after the date of signature. This authorization should also be construed to permit agents or designees of Jones Day, Steptoe & Johnson LLP, Marker Group, Inc., and/or Medical Research Consultants (MRC) to copy, inspect, and review any and all such records. Records requested may include, but are not limited to:

all medical records, feeding schedules and records, dieticians' records, physicians' records, surgeons' records, pathology/cytology reports, physicals and histories, laboratory reports, operating room records, records from inpatient/outpatient and emergency room treatment, discharge summaries, progress notes, office, dieticians' and doctors' handwritten or other notes, patient intake and registration forms, questionnaires, clinical charts and documents, test results and consultations, autopsy reports, prescriptions, nurses' notes, birth certificate and other vital statistic records, communicable disease testing and treatment records including but not limited to information regarding AIDS and HIV status, correspondence, pharmacy and prescription records including NDC numbers and drug information handouts/monographs, medication records, orders for medications, therapists' notes, social workers' records, insurance records, consent for treatment, statements of account, itemized bills, any and all remittance advices (RAs), including but not limited to Electronic Remittance Advice [ERA], Standard Paper Remittance Advice [SPR], 835 format, any and all explanations of benefits (EOBs), any and all billing claim forms, including but not limited to 837, Form CMS-1450, UB-92, UB-04, CMS 1500 Form, invoices and any other papers relating to any examination, diagnosis, treatment, periods of hospitalization, or stays of confinement, or documents containing information regarding amendment of protected health information (PHI) in the medical records. Copies, NOT originals, of all x-rays, CT scans, MRI films, photographs, and any other radiological, nuclear medicine, or radiation therapy films and of any corresponding reports. I expressly request that all covered entities under HIPAA identified above disclose full and complete protected medical information

spanning the time period of [Infant DOB] to present.

Because this litigation is ongoing, it is imperative that you preserve the original medical records, radiology, pathology/cytology slides, tissue/cell blocks, and any recut slides that are in your possession, as an expert may need to examine these slides and blocks in the future. Please take all steps that are necessary to preserve the medical records, radiology films, slides and blocks, and any recut slides that remain in your possession.

Unless revoked in writing, this authorization shall be valid for the period of litigation in [Case name], Case No. [XXX]; [XXX] Court of [XXX], including any and all transfers and the exhaustion of all appeals. In addition, a copy of this authorization may be used in place of and with the same force and effect as the original. A notarized signature is not required.

This authorization is being forwarded by, or on behalf of, attorneys for the defendant(s) for the purpose of litigation. You are not authorized to discuss any aspect of the above-named person's medical history, care, treatment, diagnosis, prognosis, information revealed by or in the medical records, or any other matter bearing on his or her medical or physical condition, unless you receive an additional authorization permitting such discussion. Subject to all applicable legal objections, this restriction does not apply to discussing the above-named person's medical history, care, treatment, diagnosis, prognosis, information revealed by or in the medical records, or any other matter bearing on the above-named person's medical or physical condition at a deposition or trial.

NOTICE

- **The individual signing this authorization has the right to revoke this authorization at any time, provided the revocation is in writing and provided to counsel of record from Jones Day, Steptoe & Johnson LLP, Marker Group, Inc., and/or Medical Research Consultants (MRC), in the above-referenced case, except to the extent that the covered entity has already relied upon this authorization to disclose protected health information (PHI). The revocation will not apply to the individual's insurance company when the law provides the individual's insurer with the right to contest a claim under the individual's policy.**
- **The individual signing this authorization understands that authorizing the disclosure of this health information is voluntary and may be refused, and that the covered entity to whom this authorization is directed may not condition treatment, payment, enrollment, or eligibility benefits on whether or not the individual signs the authorization.**
- **The individual signing this authorization understands that protected health information (PHI) disclosed pursuant to this authorization may be subject to redisclosure by the recipients and that, in such case, the disclosed PHI will no longer be protected by 45 CFR Section 164, Subpart E. The individual can contact the covered entity regarding any questions about the disclosure of this health information. The individual may inspect or copy the information to be used or disclosed as provided in 45 CFR Section 164, Subpart E.**
- **The individual signing this authorization understands that the information in the health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment for alcohol and drug abuse.**

I have read this authorization and understand that it will permit the entity identified above to disclose, release, and furnish PHI to Jones Day, Steptoe & Johnson LLP, Marker Group, Inc., and/or Medical Research Consultants (MRC).

<div>[Plaintiff name]</div> <div>Estate Administrator/Parent</div>	<div>[Infant name]</div> <div>Name</div>
	<div>Former/Alias/Maiden Name</div>
	<div>[Infant DOB]</div> <div>Date of Birth</div>
	<div>[Infant DOD or n/a]</div> <div>Date of Death</div>
<div>Date</div>	<div>Social Security Number</div>
	<div>Address</div>

MDL 3026: CMO [#] – EXHIBIT C

AUTHORIZATION TO DISCLOSE MEDICAL INFORMATION

TO:

PATIENT: [Plaintiff name]

DATE OF BIRTH: [Plaintiff DOB]

SSN: [Plaintiff SSN]

PURPOSE OF DISCLOSURE: Litigation

For informational purposes pertaining to civil litigation, and pursuant to the Health Insurance Portability and Accountability Act (HIPAA), I, [Plaintiff name], authorize and request the Custodian of Records at the above-named entity to disclose, release, and furnish to the agents or designees of the law firms of Jones Day, 110 North Wacker Drive, Suite 4800, Chicago, Illinois, 60606; and Steptoe & Johnson LLP, 227 W. Monroe Avenue, Suite 4700, Chicago, Illinois 60606; and/or their duly assigned agents, including Marker Group, Inc., 13105 Northwest Freeway, Suite 300, Houston, Texas 77040; and Medical Research Consultants (MRC), 10550 Richmond Avenue, Suite 310, Houston, Texas 77042, any and all medical records, including those that may contain protected health information (PHI) whether created before or after the date of signature. This authorization should also be construed to permit agents or designees of Jones Day, Steptoe & Johnson LLP, Marker Group, Inc., and/or Medical Research Consultants (MRC) to copy, inspect, and review any and all such records. Records requested may include, but are not limited to:

all medical records, feeding schedules and records, dieticians' records, physicians' records, surgeons' records, pathology/cytology reports, physicals and histories, laboratory reports, operating room records, records from inpatient/outpatient and emergency room treatment, discharge summaries, progress notes, office, dieticians' and doctors' handwritten or other notes, patient intake and registration forms, questionnaires, clinical charts and documents, test results and consultations, autopsy reports, prescriptions, nurses' notes, birth certificate and other vital statistic records, communicable disease testing and treatment records including but not limited to information regarding AIDS and HIV status, correspondence, pharmacy and prescription records including NDC numbers and drug information handouts/monographs, medication records, orders for medications, therapists' notes, social workers' records, insurance records, consent for treatment, statements of account, itemized bills, any and all remittance advices (RAs), including but not limited to Electronic Remittance Advice [ERA], Standard Paper Remittance Advice [SPR], 835 format, any and all explanations of benefits (EOBs), any and all billing claim forms, including but not limited to 837, Form CMS-1450, UB-92, UB-04, CMS 1500 Form, invoices and any other papers relating to any examination, diagnosis, treatment, periods of hospitalization, or stays of confinement, or documents containing information regarding amendment of protected health information (PHI) in the medical records. Copies, NOT originals, of all x-rays, CT

scans, MRI films, photographs, and any other radiological, nuclear medicine, or radiation therapy films and of any corresponding reports. I expressly request that all covered entities under HIPAA identified above disclose full and complete protected medical information spanning the time period from [insert date 12 months preceding Infant DOB] to [insert date Mother discharged from hospital after Infant's birth].

Because this litigation is ongoing, it is imperative that you preserve the original medical records, radiology, pathology/cytology slides, tissue/cell blocks, and any recut slides that are in your possession, as an expert may need to examine these slides and blocks in the future. Please take all steps that are necessary to preserve the medical records, radiology films, slides and blocks, and any recut slides that remain in your possession.

Unless revoked in writing, this authorization shall be valid for the period of litigation in [Case name], Case No. [XXX]; [XXX] Court of [XXX], including any and all transfers and the exhaustion of all appeals. In addition, a copy of this authorization may be used in place of and with the same force and effect as the original. A notarized signature is not required.

This authorization is being forwarded by, or on behalf of, attorneys for the defendant(s) for the purpose of litigation. You are not authorized to discuss any aspect of the above-named person's medical history, care, treatment, diagnosis, prognosis, information revealed by or in the medical records, or any other matter bearing on his or her medical or physical condition, unless you receive an additional authorization permitting such discussion. Subject to all applicable legal objections, this restriction does not apply to discussing the above-named person's medical history, care, treatment, diagnosis, prognosis, information revealed by or in the medical records, or any other matter bearing on the above-named person's medical or physical condition at a deposition or trial.

NOTICE

- **The individual signing this authorization has the right to revoke this authorization at anytime, provided the revocation is in writing and provided to counsel of record from Jones Day, Steptoe & Johnson LLP, Marker Group, Inc., and/or Medical Research Consultants (MRC), in the above-referenced case, except to the extent that the covered entity has already relied upon this authorization to disclose protected health information (PHI). The revocation will not apply to the individual's insurance company when the law provides the individual's insurer with the right to contest a claim under the individual's policy.**
- **The individual signing this authorization understands that authorizing the disclosure of this health information is voluntary and may be refused, and that the covered entity to whom this authorization is directed may not condition treatment, payment, enrollment, or eligibility benefits on whether or not the individual signs the authorization.**
- **The individual signing this authorization understands that protected health information (PHI) disclosed pursuant to this authorization may be subject to redisclosure by the recipients and that, in such case, the disclosed PHI will no longer be protected by 45 CFR Section 164, Subpart E. The individual can contact the covered entity regarding any questions about the disclosure of this health information. The**

individual may inspect or copy the information to be used or disclosed as provided in 45 CFR Section 164, Subpart E.

- **The individual signing this authorization understands that the information in the health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment for alcohol and drug abuse.**

I have read this authorization and understand that it will permit the entity identified above to disclose, release, and furnish PHI to Jones Day, Steptoe & Johnson LLP, Marker Group, Inc., and/or Medical Research Consultants (MRC).

[Plaintiff signature]

[Plaintiff name]

[Date of Plaintiff signature]

Date

[Insert if applicable]

Former/Alias/Maiden Name

[Plaintiff DOB]

Date of Birth

[Plaintiff SSN]

Social Security Number

[Plaintiff Address]

Address

MDL 3026: CMO [#] – EXHIBIT D

**AUTHORIZATION TO DISCLOSE PSYCHIATRIC RECORDS
AND PSYCHOTHERAPY NOTES INFORMATION**

TO: PATIENT: [Plaintiff name]
DATE OF BIRTH: [Plaintiff DOB]
SSN: [Plaintiff SSN]
PURPOSE OF DISCLOSURE: Litigation

For informational purposes pertaining to civil litigation, and pursuant to the Health Insurance Portability and Accountability Act (HIPAA), I, [Plaintiff name], authorize and request the Custodian of Records at the above-named entity to disclose, release, and furnish to the agents or designees of the law firms of Jones Day, 110 North Wacker Drive, Suite 4800, Chicago, Illinois, 60606; and Steptoe & Johnson LLP, 227 W. Monroe Avenue, Suite 4700, Chicago, Illinois 60606; and/or their duly assigned agents, including Marker Group, Inc., 13105 Northwest Freeway, Suite 300, Houston, Texas 77040; and Medical Research Consultants (MRC), 10550 Richmond Avenue, Suite 310, Houston, Texas 77042, any and all medical records, including those that may contain protected health information (PHI) whether created before or after the date of signature. This authorization should also be construed to permit agents or designees of Jones Day, Steptoe & Johnson LLP, Marker Group, Inc., and/or Medical Research Consultants (MRC) to copy, inspect, and review any and all such records. Records requested may include, but are not limited to:

complete copies of all psychiatric records and psychotherapy notes/reports, therapists' notes, social workers' records, all medical records, physicians' records, surgeons' records, pathology/cytology reports, laboratory reports, discharge summaries, progress notes, consultations, prescriptions, records of drug abuse and alcohol abuse, physicals and histories, nurses' notes, correspondence, insurance records, consent for treatment, statements of account, itemized bills, invoices, or any other papers concerning any treatment, examination, periods or stays of hospitalization, confinement, diagnosis, or other information pertaining to and concerning the psychiatric or mental condition of this patient, or documents containing information regarding amendment of protected health information (PHI) in the medical records. Copies, NOT originals, of all x-rays, CT scans, MRI films, photographs, and any other radiological, nuclear medicine, or radiation therapy films and of any corresponding reports. I expressly request that all covered entities under HIPAA identified above disclose full and complete protected medical information spanning the time period from [insert date 5 years preceding Infant DOB] to the present.

Because this litigation is ongoing, it is imperative that you preserve the original medical records, radiology, pathology/cytology slides, tissue/cell blocks, and any recut slides that are in your possession, as an expert may need to examine these slides and blocks in the future. Please take all

steps that are necessary to preserve the medical records, radiology films, slides and blocks, and any recut slides that remain in your possession.

Unless revoked in writing, this authorization shall be valid for the period of litigation in [Case name], Case No. [XXX]; [XXX] Court of [XXX], including any and all transfers and the exhaustion of all appeals. In addition, a copy of this authorization may be used in place of and with the same force and effect as the original. A notarized signature is not required.

This authorization is being forwarded by, or on behalf of, attorneys for the defendant(s) for the purpose of litigation. You are not authorized to discuss any aspect of the above-named person's medical history, care, treatment, diagnosis, prognosis, information revealed by or in the medical records, or any other matter bearing on his or her medical or physical condition, unless you receive an additional authorization permitting such discussion. Subject to all applicable legal objections, this restriction does not apply to discussing the above-named person's medical history, care, treatment, diagnosis, prognosis, information revealed by or in the medical records, or any other matter bearing on the above-named person's medical or physical condition at a deposition or trial.

NOTICE

- **The individual signing this authorization has the right to revoke this authorization at anytime, provided the revocation is in writing and provided to counsel of record from Jones Day, Steptoe & Johnson LLP, Marker Group, Inc., and/or Medical Research Consultants (MRC), in the above-referenced case, except to the extent that the covered entity has already relied upon this authorization to disclose protected health information (PHI). The revocation will not apply to the individual's insurance company when the law provides the individual's insurer with the right to contest a claim under the individual's policy.**
- **The individual signing this authorization understands that authorizing the disclosure of this health information is voluntary and may be refused, and that the covered entity to whom this authorization is directed may not condition treatment, payment, enrollment, or eligibility benefits on whether or not the individual signs the authorization.**
- **The individual signing this authorization understands that protected health information (PHI) disclosed pursuant to this authorization may be subject to redisclosure by the recipients and that, in such case, the disclosed PHI will no longer be protected by 45 CFR Section 164, Subpart E. The individual can contact the covered entity regarding any questions about the disclosure of this health information. The individual may inspect or copy the information to be used or disclosed as provided in 45 CFR Section 164, Subpart E.**
- **The individual signing this authorization understands that the information in the health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment for alcohol and drug abuse.**

I have read this authorization and understand that it will permit the entity identified above to

disclose, release, and furnish PHI to Jones Day, Steptoe & Johnson LLP, Marker Group, Inc., and/or Medical Research Consultants (MRC).

[Plaintiff signature]

[Plaintiff name]

[Date of Plaintiff signature]

Date

[Insert if applicable]

Former/Alias/Maiden Name

[Plaintiff DOB]

Date of Birth

[Plaintiff SSN]

Social Security Number

[Plaintiff Address]

Address