

**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**

Case No. 1:22-cv-02016

Judge Rebecca R. Pallmeyer

This Document Relates to:

ALL ACTIONS

THE PLC's PROPOSED SCHEDULE

The Plaintiffs' Leadership Committee ("PLC") files their Proposed Schedule following the Court's request at the November 4, 2022 Case Management Conference. In addition, the PLC submits for the Court's review, the PLC's Memorandum in Support of Proposed Schedule along with the Declaration of Timothy J. Becker. As set forth in more detail in the PLC's accompanying memorandum, the Proposed Schedule does several things:

1. First, it is consistent with the Court's ruling at the November 4, 2022 CMC that deposition practice commence in January 2022 and that it is reasonable for fact discovery to be completed by April 28, 2022;
2. Second, assuming the PLC is able to resolve the outstanding discovery disputes with Abbott in an efficient manner, it creates a timetable that is both reasonable, and perhaps the most aggressive schedule to trial ever adopted by an MDL Court, with a proposed trial in March 2024 (a date that is less than 21 months from appointment of the PLC);
3. Third, it is consistent with preexisting deadlines the parties previously agreed to, and the Court adopted, in the Bellwether Protocol and Plan (CMO 7); and

4. It creates a schedule predicated on the demands *of this case*, as opposed to endeavoring to reach an artificial trial date that predates the first cases in state court—some of which were filed *a year before* formation of this MDL, merely to satisfy Defendants’ stated objective that the first MDL trial occur before the first state-court trial.

Nothing in the PLC’s proposed schedule is unreasonable. In fact, the PLC’s proposed trial date may be the most aggressive trial date ever in the history of product-liability MDLs. This case should proceed at a pace and in a way that affords the PLC adequate time to complete the massive amount of work required to prepare the case for *Daubert*, Rule 56 motion practice, and trial. It should not proceed at an unreasonable pace simply because there is parallel litigation pending in various state courts throughout the country. Accordingly, the PLC urges the Court adopt the proposed schedule set forth herein.¹

Based on the foregoing, the PLC proposes the following schedule:

- i. Close of fact discovery (subject to the need for additional trial depositions): **April 28, 2023**,²
- ii. Selection of the four Initial Bellwether Trial cases: **May 12, 2023**,³

¹ The parties met and conferred on November 9, 2022 in an effort to explore a potential consensus on a schedule. Multiple things occurred in that meeting, including: 1) Defendants could not articulate why a 21-month schedule to trial, in a case that may involve over two dozen experts, was unreasonable; 2) Defendants refused to accept the fact this Court agreed that it is reasonable for fact discovery in this case to proceed through April 28, 2022; and 3) Defendants failed to articulate why this case must be tried in 2023—versus early 2024—beyond their insistence the MDL supervise the first NEC trial. In doing so, Defendants refused to accept any limitations on the scope of their impending *Daubert* and summary-judgment motions, articulate those areas of the schedule where meaningful cuts in the allotted time could occur, or supply *any guidance* from *any product-liability MDL* that adopted a *15-month schedule* from appointment of the PLC to trial—because, of course, no such guidance exists.

² Approximately five months from today.

³ See ¶ 8 of CMO 7 (Bellwether Protocol).

- iii. Deadline for Plaintiffs to file general-causation and case-specific expert reports: **June 9, 2023**;⁴
- iv. Deadline for Defendants to file oppositions to Plaintiffs' general-causation and case-specific expert reports: **July 21, 2023**;⁵
- v. Deadline for Plaintiffs' rebuttal expert reports: **August 11, 2023**;⁶
- vi. Depositions of experts: **August 14–October 6, 2023**;⁷
- vii. Proposed timeframe to conduct Court-ordered mediation on the Bellwether selections: **October 16–27, 2023**;
- viii. Deadline to file motions for summary judgment and/or motions to exclude experts under Rule 702: **November 10, 2023**;⁸
- ix. Deadline to oppose motions for summary judgment and/or motions to exclude experts under Rule 702: **December 22, 2024**;⁹
- x. Deadline for replies on motions for summary judgment and/or motions to exclude experts under Rule 702: **January 12, 2024**;¹⁰
- xi. Proposed hearing dates on motions for summary judgment and/or to exclude experts under Rule 702 subject to the Court's availability—the PLC anticipates the need for one day of argument: **February 5–9, 2024**;¹¹

⁴ Just four weeks after selection of the four Initial Bellwether Trial cases.

⁵ Approximately six weeks following receipt of the PLC's expert reports.

⁶ Approximately three weeks following receipt of Defendants' expert reports, which the PLC anticipates Defendants will file separately.

⁷ Approximately eight weeks to conduct depositions of all Plaintiffs' general-causation and case-specific experts, Abbott's general-causation and case-specific experts, and Mead Johnson's general-causation and case-specific experts.

⁸ Approximately seven weeks following the close of expert discovery.

⁹ Approximately seven weeks following the receipt of the opposing counsels' *Daubert* and summary-judgment motions.

¹⁰ Approximately three weeks following the receipt the opposition briefs to *Daubert* and summary-judgment motions.

¹¹ Approximately 4 weeks following completion of *Daubert* and Summary Judgment briefing.

- xii. Proposed pre-trial conference date to discuss schedule for initial trials subject to the Court's availability: March 11–15, 2024.

Dated: November 10, 2022

Respectfully submitted,

/s/ Timothy J. Becker

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