

**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

**THE PLC'S SUBMISSION IN
SUPPORT OF ITS PROPOSED
SCHEDULE¹**

Judge Rebecca R. Pallmeyer

The PLC submits this supplement to its proposed schedule to explain why the PLC's proposal is reasonable and Defendants' is not.

FACTS & ARGUMENT

The PLC worked closely with Defendants to attempt to reach consensus on a proposed schedule that allows the parties adequate time to prepare these cases for trial. *Declaration of Timothy Becker*, ¶¶ 3-5, 8 (attached as Ex. 1). The PLC's proposed schedule—first circulated to Defendants on June 28, 2022, and submitted to the Court on October 12, 2022 (ECF No. 250)—balances efficiency while also taking into consideration this MDL's complexity.² Ultimately, it contemplates a proposed trial date *less than 21 months* after this Court appointed the PLC. As

¹ During a meet and confer on November 9, 2022 the PLC informed Defendants that it intended to file a brief supporting their proposed schedule given the import of the issue. The PLC offered to negotiate a briefing schedule contemplating the parties would supply limited simultaneous briefs to the Court for its review. Defendants declined indicating they intended to simply supply the Court with their proposal.

² The PLC and Defendants provided proposed schedule to each other in late June of 2022. The PLC proposed supplying its schedule—which contemplates a 2024 trial date—to the Court. At the time, the *Jupiter* matter in Madison County, Illinois was set for trial in mid-2023. Following several meet-and-confers, and *at Abbott's urging* that the PLC refrain from filing the proposed schedule so that Abbott might endeavor to align the state and federal cases, the PLC agreed not to file its proposed schedule. *See Becker Decl.* at ¶¶ 5-6. In doing so, the PLC informed Abbott that while it was willing to allow Abbott the opportunity to align the two litigations, it did not believe trial was realistic in 2023. *Id.*

such, the PLC's proposed schedule offers realistic dates that are more likely to hold firm and avoid motion practice to modify the schedule than the schedule proposed by Defendants.³

"A schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4).⁴ While Rule 16 expects parties to exercise reasonable diligence, there is no indication parties are required to operate at warp speed. This is a complex case. CMO No. 1, ECF No. 34 at ¶ 8.a, PageID #: 805-06. And L.R. 16.1(3) contemplates additional time for complex or protracted discovery.

Defendants' proposed schedule⁵ suffers from several irreparable flaws, given it:

- Fails to allocate adequate time for fact discovery of defense witnesses, including 30(b)(6) representatives (proposing completion of fact discovery on March 1, 2023, less than four months from today, while significant discovery and ESI disputes are underway);⁶
- Allocates only *14 days* from selection of the Initial Bellwether Trials for submission of Plaintiffs' case-specific expert reports;
- Does not provide for submission of rebuttal expert reports;
- Does not allocate adequate time to conduct expert depositions (only 17 days from submission of defense expert reports—a timeline *even Defendants once conceded was unreasonable*);⁷

³ In the Seventh Circuit, whether to modify a schedule depends primarily on the diligence of the party seeking amendment. *Gravitt v. Mentor Worldwide LLC*, 342 F.R.D. 130, 134 (N.D. Ill. 2022) (citing *Alioto v. Town of Lisbon*, 651 F.3d 715, 720 (7th Cir. 2011)).

⁴ Good cause is considered an onerous burden. *Alight Sols. v. Thomson*, No. 20 C 3043, 2021 WL 5119111, at *1 (N.D. Ill. Nov. 3, 2021).

⁵ Defendants today submitted to the Court a schedule even more aggressive than that proposed in Abbott's counsel's email of October 27, which is attached to the Declaration of Timothy Becker as Ex. A. During a meet-and-confer session on November 9, when it was clear that consensus could not be reached on a proposed schedule, the PLC proposed creating an agreed plan for submission of proposed schedules and related briefing. Defendants declined to discuss it.

⁶ Additionally, Defendants' proposal ignores the fact this Court endorsed an April 28, 2023 close of fact discovery at the November 4, 2022 CMC.

⁷ As noted above, the parties exchanged preliminary schedules in June of 2022. At the time, Defendants proposed expert discovery close "[i.e., approximately] 120 days after completion of Fact Discovery"—a time frame that was unreasonably fast given the number of experts contemplated to be advanced in this case. See Email from B. O'Connor to the PLC dated June 27, 2022 attached to *Becker Decl.* at Ex. A. As of October 27, Defendants propose expert discovery be completed *in 86 days*. See Defendants' Proposed Schedule of October 27 attached to *Becker Decl.* at Ex. D. Today, Defendants proposed expert discovery be completed *in 63 days*—a departure of more than 75 days from their original proposal with only *17 days* for expert depositions. The PLC's proposal—which in-and-of-itself is extremely aggressive—contemplates expert discovery lasting 161 days (i.e., less than six months) from the completion

- Proposes an unrealistically fast timetable to complete briefing on *Daubert* and Summary Judgment, including requiring the initial briefs be filed *two weeks* after the close of expert discovery, and thirty days to respond to *both* Abbott's and Mead's *Daubert* challenges;
- Provides an extremely narrow window for the Court to consider *Daubert* and Rule 56 motions (proposing a trial date just *two weeks* after *Daubert* and Rule 56 replies are due on July 15 (a Saturday));
- Fails to propose a hearing date for *Daubert* and Rule 56 motions;
- Provides no schedule for filing, responding to, or arguing motions *in limine* to the Court (which cannot reasonably be filed prior to the Court's rulings on *Daubert* and Rule 56 motions); and
- Allocates no time for the parties to adjust their trial strategies based on the Court's rulings on *Daubert*, Rule 56 motions, and motions *in limine*.

In short, Defendants' proposed schedule prejudices the Plaintiffs—it is not possible to complete the work that must be done to prepare these cases for trial in the proposed time period advocated by Defendants—especially in light of pending discovery concerns. Such a truncated timetable is unprecedented in the history of multi-district litigation.

Perhaps the most unreasonable aspect of Defendants' proposed schedule is the expert disclosure and discovery process. Cases that will “rely heavily on expert testimony. . . should set a discovery and trial schedule that realistically provides both sides with an adequate opportunity to introduce necessary evidence.” *Smith v. Ford Motor Co.*, 215 F.3d 713, 722 (7th Cir. 2000). Here, the PLC currently anticipates that it will call five-to-seven general causation expert witnesses (depending on the case, most likely some combination of epidemiology, general medical causation, mechanism, regulatory, neonatology, and marketing/warnings), as well as case-specific expert testimony on each of the Bellwether cases selected for trial. Depending on whether the four initial bellwether selections are formula or fortifier cases, those experts may differ, and the information on which they will rely to form their opinions certainly will. Each of the two Defendants are likely

of fact discovery. See PLC Proposed Schedule attached to *Becker Decl.* at Ex. B (this date is reflected in the proposed schedule the PLC supplied to the Court).

to have their own competing experts, bringing the minimum total for *general cause* experts to 15–21 expert, and potentially eight additional case-specific experts (one per side) for the Bellwether trial selections. Expert discovery requires those experts’ reports be reviewed, analyzed, and rebutted, and contemplates each expert be deposed before *Daubert* briefing can commence.

The Bellwether Protocol provides:

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 the Initial Bellwether Trial Cases, for a total of four Initial Bellwether Trial Cases. Am. CMO No. 7, ECF No. 210 at ¶ 8, PageID #:2639.

Following the selection of the Initial Bellwether Trial Cases, the parties need adequate time to submit expert reports as to those cases. Yet, the Defendants’ proposed schedule allows a meager 14 days to complete these reports. The PLC cannot justify the expense of preparing expert reports for all 12 of the potential bellwether selections. Once the bellwethers are selected, the parties need reasonable time to submit their expert reports. The PLC’s schedule contemplates 28 days to complete these reports, which itself is an aggressive deadline, whereas Defendants propose just 14 days, which is unreasonable.

Considering the extensive discovery and trial preparation that lies ahead, Plaintiffs’ proposed schedule anticipates deadlines that can likely be maintained without amendment with the reasonable diligence of all parties. Defendants’ proposed schedule, in contrast, sets forth impossible milestones that cannot be reached even with reasonable diligence.

In repeated meet-and-confer sessions, Defendants offered no justification for the expedited nature of their proposed schedule other than their preference that the first NEC trial take place in this MDL rather than in state court. *Becker Decl.* at ¶¶ 5, 8. But Defendants’ preference is irrelevant in light of the time it will take to competently represent the interests of the MDL Plaintiffs. *Id.* at

¶ 8. And given the current status of ESI and other discovery issues as to Defendant Abbott, the PLC's proposed schedule will be a tight timetable as it stands.

Equally important, Defendants *know* their proposed schedule is unattainable. Specifically, their proposed schedule here is remarkably different from the current scheduled in the *In re: Recalled Abbott Infant Formula Prods. Liab. Litig.*, MDL 3037 consolidated before Judge Kennelly. In that case, Judge Kennelly appointed the Leadership Team in August of 2022. ECF No. 23. Rule 12 motion practice is anticipated to conclude in March of 2023 *at the earliest*—seven months after appointment of the PSC. ECF No. 50. There is no reference to *any* schedule on the docket regarding discovery, expert disclosures or trial. In other words, in that case, Abbott—the same Defendant here—is likely to propose a sane schedule contemplating trial *at least* two years after appointment of that MDL's leadership. What is the difference between these two cases? In this case, Abbott faces the pressure of state-court trials predating the MDL's first trial, whereas in Judge Kennelly's case it does not. Such a rationale is not a basis to artificially limit the time the PLC needs to properly prepare for trial, particularly in that *this case is markedly more complex* than a food-poisoning case. It reasonably requires more time to litigate.

CONCLUSION

In this MDL, the PLC submitted the proposed leadership structure to the Court on June 17, 2022. ECF No. 128. The PLC's proposed schedule contemplates a trial in March 2024—a mere *21 months after* this Court appointed the PLC. Given the complexities associated with this litigation (which now includes over 3,000,000 pages of documents with more to come, potentially two dozen experts, and what will likely be an exhaustive *Daubert* process) neither the Parties, nor this Court, can reasonably prepare for trial on the schedule proposed by Defendants. The PLC is obligated to represent the interests of *all* Plaintiffs in these consolidated cases and bears the burden of proof at trial. A schedule that fails to allow adequate time to prepare for trial is unreasonable—

the PLC cannot adequately represent the interests of all MDL Plaintiffs at the pace Defendants propose.

Dated: November 10, 2022

Respectfully submitted,

/s/ Timothy J. Becker

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**IN THE UNITED STATES DISTRICT COURT
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**IN RE: ABBOTT LABORATORIES, ET
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MDL No. 3026

Master Docket No. 22 C 71

**DECLARATION OF TIMOTHY
J.BECKER**

Judge Rebecca R. Pallmeyer

COMES NOW YOUR DECLARANT, Timothy J. Becker, who states and declares as follows:

1. I am a partner in the law firm of Johnson//Becker, PLLC duly authorized to practice law in the State of Minnesota and before this Court. I am in good standing before both Courts.
2. I have personal knowledge of the facts and assertions set forth below. I gained that information in connection with my role as Co-Lead Counsel and a member of the Plaintiffs' Leadership Committee ("PLC"). If called to testify I could report on the veracity of the facts and documents set forth below.
3. In June of 2022 the parties conducted several meet and confers regarding a proposed schedule. Proposed Schedules were exchanged between June 27–28, 2022. *See* Email from B. O'Connor to the PLC attached as Exhibit A; Email from T. Becker to Defendants attached as Exhibit B.
4. Defendants' Proposed Schedule did not include a proposed date for completion of fact discovery and contemplated an expert-discovery schedule of approximately 120 days from completion of fact discovery. *See* Ex. A. The PLC's schedule, in

turn, contemplated a close of fact discovery on April 28, 2023 and a close of expert discovery on October 6, 2023.

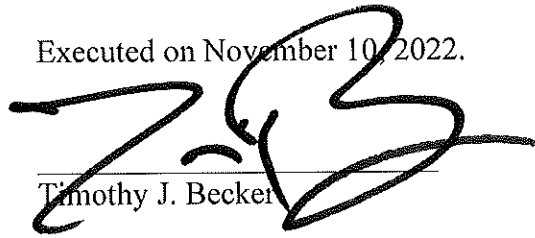
5. Ultimately, the parties were unable to reach a consensus on this issue in part because the PLC's Proposed Schedule contemplated the initial MDL trial occur in March 2024 (less than 21 months after this Court appointed the PLC). Abbott expressed concern that while the PLC's schedule was not unreasonable, a trial date in 2024 would frustrate its efforts to align the trial dates in the state courts with the MDL. *See* Email from B. O'Connor to the PLC dated June 30, 2022 (confirming, "We understood from our call yesterday afternoon that you were not planning to file the schedule exhibited") attached as Ex. C. Following that email, a second meet and confer occurred where Abbott's counsel requested that the PLC refrain from filing its Proposed Schedule with this Court so as to afford Defendants an opportunity to attempt to align the MDL's schedule with the state-court cases, whose then schedules contemplated trial dates in the late spring/early summer of 2023. As a good-faith accommodation to Defendants, the PLC agreed to refrain from filing its Proposed Schedule so as to allow Defendants the opportunity to convince the state courts to align the two litigations in an effort to foster cooperation between the MDL and state courts.
6. In making this concession, the PLC made clear to Defendants that a trial in the MDL in 2023 was not reasonable (or achievable), and that the parties needed to soon thereafter alert the Court of that fact.
7. Ultimately, Defendants were unsuccessful in convincing the state courts to align their schedule with the MDL. As a result, Defendants pivoted from seeking

alignment with the state courts, to an exceedingly aggressive MDL schedule contemplating the first bellwether trial occur on July 24, 2023—*15 months* after this Court appointed the PLC. *See* Email from B. O'Connor to the PLC dated October 27, 2022 attached as Exhibit D. That schedule contemplates 46 days to complete all expert discovery, sets no hearing on *Daubert* or Rule 56 motions, and anticipates the Court will rule on all *Daubert* and Rule 56 motions and the parties be prepared to try the case beginning as early as two weeks after filing replies on those motions—*less than nine months from today*.

8. In an effort to reach a more reasonable schedule the PLC met with defense counsel on November 9, 2022. The meet and confer was unsuccessful given Defendants would not deviate from their position that the first bellwether case must be tried in 2023 in the MDL. Defendants' principal stated rationale for their position was that this Court must try the first NEC case before any NEC case is tried in the state-court litigation.
9. My firm is Co-Lead Counsel in the *In re: Recalled Abbott Infant Formula Prods. Liab. Litig.*, MDL 3037 pending before Judge Kennelly. In that case, Judge Kennelly appointed the PSC in September of 2022. The initial schedule contemplates Rule 12 motion practice will last through March of 2023 (at the earliest). The parties in that case—which includes Abbott—*have yet to start* negotiations on the following: a discovery schedule, expert discovery deadline, or trial date. Unlike here, in that case, Abbott has not taken the position that a trial schedule be immediately set or that a trial must be scheduled within two years after appointment of the PSC.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND
CORRECT.

Executed on November 10, 2022.



Timothy J. Becker

GZJ O'CONNOR

EMAIL FROM
B. O'CONNOR
TO
PLC TEAM
DATED JUNE
27TH, 2022

Timothy Becker

From: O'Connor, Bridget <boconnor@jonesday.com>
Sent: Monday, June 27, 2022 9:39 AM
To: Timothy Becker; Feder, Meir; Parker, Stephanie E.; Cannon, Rachel; Andrichik, William
Cc: Andy Childers; Diandra Debrosse Zimmermann; Elizabeth Kaveny; WFLEISHMAN
 lchb.com; rojas@ctlawyer.net; Darlene K. Alt - Steptoe & Johnson LLP
 (dalt@steptoe.com)
Subject: RE: MDL 3026 - Draft Deposition Protocol
Attachments: 1531789726_5_DRAFT_MDL 3026_Bellwether Selection Protocol_Abbott Edits as of June
 26.DOCX; Change-Pro Redline - Draft Bellwether Protocol - 6.9.22 and 1531789726_5
 _DRAFT_MDL 3026_Bellwether Selection Protocol_Abbott Edits as of June 26.docx

Good morning PLC team: Defendants are providing here a proposed MDL schedule and we'd like to schedule a call to discuss whether the parties can agree on submitting this jointly to the Court in advance of the upcoming Status Hearing. Also attached here is our markup to the Bellwether Selection Protocol, in clean and redline. Please let us know your availability for a call on these and any other open items later today or tomorrow.

Thanks,
 Bridget

EVENT	DATE
Plaintiffs provide completed Plaintiff Profile Forms ("PPF") to Defendants	7/15/2022 NOON
Initial Bellwether Discovery Cases selected: parties shall file their list of ten Initial Bellwether Discovery Case selections, together with copies of the corresponding PPFs for each case on the list	8/15/2022 5 PM CT
Defendants and Plaintiffs engage in written fact discovery & depositions*	Beginning on the date Protective Order and Joint Coordination Order entered by the MDL Court
Defendants shall produce all documents produced in connection with any related state court action (<i>i.e.</i> , involving NEC allegations)	14 days after Protective Order and Joint Coordination Order entered by the MDL Court
Each plaintiff in the Initial Bellwether Discovery Cases shall upload to Defendants completed Plaintiff Fact Sheets ("PFS")	On or before 30 days after MDL Court order setting Initial Bellwether Discovery Cases
Each defendant in the Initial Bellwether Discovery Cases shall upload to Plaintiffs completed Defendant Fact Sheets ("DFS")	On or before 30 days after MDL Court order setting Initial Bellwether Discovery Cases
Fact Discovery Completed	TBD
Initial Bellwether Trial Cases selected: parties shall file their list of four total Bellwether Trial Cases with the Court, together with	14 days after the date for completion of Fact Discovery, at 5 PM CT

their three-page submissions explaining which of their cases they submit should be tried first, and on what basis.	
Expert Discovery Completed	~120 days after completion of Fact Discovery

Bridget K. O'Connor ([bio](#))

Partner, **JONES DAY®**

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From: Timothy Becker <tbecker@johnsonbecker.com>

Sent: Thursday, June 23, 2022 6:28 PM

To: O'Connor, Bridget K. <boconnor@jonesday.com>; Feder, Meir <mfeder@JonesDay.com>; Parker, Stephanie E. <separker@JonesDay.com>; Cannon, Rachel <rcannon@Steptoe.com>; Andrichik, William <wandrichik@Steptoe.com>

Cc: Andy Childers <achilders@levinlaw.com>; Diandra Debrosse Zimmermann <fu@dicellolevitt.com>; Elizabeth Kaveny <Elizabeth@kavenykroll.com>; WFLEISHMAN lchb.com <WFLEISHMAN@lchb.com>; rojas@ctlawyer.net; Darlene K. Alt - Steptoe & Johnson LLP (dalt@steptoe.com) <dalt@steptoe.com>

Subject: Re: MDL 3026 - Draft Deposition Protocol

** External mail **

I will discuss with the PLC. What date are you proposing we file. I assume it is not tomorrow given your co-counsel's statement regarding the timing to file the ESI protocol and that we would like to try and reach an agreement. Let me know. Tim

Get Outlook for iOS

From: O'Connor, Bridget K. <boconnor@jonesday.com>

Sent: Thursday, June 23, 2022 5:24:49 PM

To: Timothy Becker <tbecker@johnsonbecker.com>; Feder, Meir <mfeder@JonesDay.com>; Parker, Stephanie E. <separker@JonesDay.com>; Cannon, Rachel <rcannon@Steptoe.com>; Andrichik, William <wandrichik@Steptoe.com>

Cc: Andy Childers <achilders@levinlaw.com>; Diandra Debrosse Zimmermann <fu@dicellolevitt.com>; Elizabeth Kaveny <Elizabeth@kavenykroll.com>; WFLEISHMAN lchb.com <WFLEISHMAN@lchb.com>; rojas@ctlawyer.net <rojas@ctlawyer.net>; Darlene K. Alt - Steptoe & Johnson LLP (dalt@steptoe.com) <dalt@steptoe.com>

Subject: RE: MDL 3026 - Draft Deposition Protocol

Tim,

We don't think we should defer the remaining open items until after this hearing, and certainly not to the next CMC. We have been working to make progress on all of these issues, and believe that the parties should use the time between now and next week's hearing to continue to do so. As I mentioned in my earlier email, we are available to meet and confer on the remaining open issues. Addressing the status of the open topics in order:

1. The PLC has had our markup of the deposition protocol since June 10. On last Thursday's meet and confer you mentioned that a redline would be helpful, which we provided yesterday. Although our edits to the original version were substantial (and hence, why we sent them in a clean version), they are standard deposition protocol provisions that one would expect in a multi-district litigation so we do not expect there should be much of controversy that could not be addressed over the next week.
2. Regarding the Joint Coordination Order, references in the order to the deposition protocol or other yet-to-be entered discovery orders should not prevent submission of the agreed order to the Court. Nothing in the JCO turns on the ultimate content of those orders—it just incorporates whatever will ultimately be entered (and whatever that is will bind us as parties in the MDL. So there's no reason those details should delay the JCO.

EXHIBIT B

**EMAIL FROM
T. BECKER TO
DEFENSE COUNSEL
DATED JUNE 28TH, 2022**

Timothy Becker

From: Timothy Becker
Sent: Tuesday, June 28, 2022 2:02 PM
To: Parker, Stephanie E.; Feder, Meir; O'Connor, Bridget K.; Cannon, Rachel; Andrichik, William
Cc: 'Diandra Debrosse Zimmermann'; rojas@ctlawyer.net; Andy Childers; Elizabeth Kaveny; WFLEISHMAN Ichb.com
Subject: NEC CMC Topics for Discussion
Attachments: NEC PLC's Reviced Status Report v2.docx

All:

In anticipation of our meet and confer and the impending Case Management Conference, the PLC proposes the following agenda. Please note, we are attaching a revised proposed Discovery Schedule that incorporates many of the items set forth in your proposal. Additionally, if you could circulate your redlines to the Joint Coordination Order today so that we may review in advance of the meet and confer that would be helpful:

1. Discussion regarding formal approval of the PLC and entry of a Common Benefit Order;
2. Dispute regarding Master Complaint/Direct Filing Order;
2. Discussion regarding the Plaintiffs' Profile Form and Plaintiffs' Fact Sheet;
3. Discussion regarding Proposed Discovery Schedule (please note we intend to send you a revised schedule through trial that incorporates many of the topics outlined in your proposed schedule);
4. Disputed Issues to be heard that were not outlined in the Court's June 3, 2022 Minute Order (Dkt. No. 113):
 - a. Disputes involving the Protective Order;
 - b. Disputes involving the Privilege Order;

- c. Disputes involving the ESI Protocol;
-
- 5. Discussions regarding the Parties' proposed Discovery and Trial Schedule (attached);
 - 6. Discussion regarding the Bellwether Plan (we are contemplating the Parties will inform the Court of the broad strokes of the Plan);
 - 7. Topics/Agenda for the next CMC:
 - a. Entry and/or resolution of disputes related to the Joint Coordination Order;
 - b. Entry and/or resolution of disputes related to the Deposition Protocol;
 - c. Entry and/or resolution of disputes related to the Bellwether Plan;
 - d. Discussion regarding the appropriateness of Position Papers, and if appropriate the content of the Position Papers.

Look forward to talking to you tomorrow. Safe travels. Tim

**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 SUPPLEMENTAL STATUS REPORT

On June 17, 2022, the Plaintiffs' Leadership Committee ("PLC") filed a Status Report in anticipation of the Case Management Conference ("CMC") scheduled before this Court on June 30, 2022. Dkt. No. _____. In that Report, the PLC outlined a proposed discovery schedule to govern this MDL. Since that time, the PLC endeavored to negotiate with certain State Court lawyers the prospects for entering a Joint Coordination Order to govern, amongst other things, discovery and deposition practice. Those negotiations were unsuccessful due, in part, to the fact that certain State Court cases are currently poised to start deposition practice in July of 2022 and scheduled for trial in May of 2023. The schedule the PLC proposed was drafted with an eye toward closing the gap between the State Court cases and this MDL in an effort to foster coordination between the litigants. It now appears that will not occur. As such, and given the PLC has yet to receive a single document in this case, the PLC files this *Supplemental Status Report* revising the proposed schedule. The proposed schedule sets forth an aggressive twenty-month calendar to trial. Based on the scope of discovery in this case, the PLC contends the following schedule will reasonably and efficiently allow the Parties to prepare the case for trial.

The proposed schedule is as follows:

- i. All Plaintiffs with cases filed in this MDL to provide completed Plaintiff Profile Form (“PPF”) on or before August 12, 2022, Plaintiffs who file a case after entry of the Court’s entry of the initial schedule shall file their initial PPF within 30 days of filing;
- ii. Plaintiffs and Defendants to identify Bellwether selections on or before September 16, 2022;
- iii. Plaintiffs selected for inclusion in the Bellwether Pool shall file a completed Plaintiffs’ Fact Sheet on or before October 28, 2022;
- iv. April 28, 2023 – Close of Fact Discovery (subject to the need for additional trial depositions);
- v. June 9, 2023 – Deadline for Plaintiffs to file general causation and cases specific expert reports;
- vi. July 21, 2023 – Deadline for Defendants to file oppositions to Plaintiffs’ general causation and expert reports;
- vii. August 11, 2023 – Deadline for Plaintiffs Rebuttal expert reports
- viii. August 14 - October 6, 2023 – Deposition of Experts
- ix. October 16-27, 2023 -- Proposed timeframe to conduct Court Ordered mediation on the Bellwether selections;
- x. November 10, 2023 – Deadline to file Motions for Summary Judgment and/or Motions to Exclude Experts pursuant to Rule 702
- xi. December 22, 2024 – Deadline to file Oppositions to Motions for Summary Judgment and/or Motions to Exclude Experts pursuant to Rule 702
- xii. January 12, 2024 – Deadline to File Reply Briefs

- xiii. February 5-9, 2024, Proposed Hearing dates on Motions for Summary Judgment and/or to Exclude Experts pursuant to Rule 702 subject to the Court's availability—the PLC anticipates the need for one day of argument;
- xiv. March 11-15, 2024 – Proposed Pre-Trial Conference date to discuss schedule for initial trials subject to the Court's availability.

Dated: June 29, 2022,

Respectfully submitted,

/s/ Timothy J. Becker

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EXHIBIT C

EMAIL FROM
B. O'CONNOR
TO

PLC TEAM

DATED JUNE 30TH, 2022

Timothy Becker

From: O'Connor, Bridget <boconnor@jonesday.com>
Sent: Thursday, June 30, 2022 7:36 AM
To: Timothy Becker; Cannon, Rachel
Cc: Diandra Debrosse Zimmermann; Feder, Meir; Parker, Stephanie E.; Andrichik, William; Andy Childers; Elizabeth Kaveny; WFLEISHMAN lchb.com; rojas@ctlawyer.net; Darlene K. Alt - Steptoe & Johnson LLP (dalt@steptoe.com)
Subject: RE: MDL 3026 - Proposed Agenda
Attachments: DRAFT Proposed Agenda - NEC MDL_June 30 Defs Edits.docx

Here is an updated turn including Mead's edit and ours. We understood from our call yesterday afternoon that you were not planning to file the schedule exhibit. Also updated the status of a few of the items from disputed to updates etc based on the posture as discussed.

Thanks,
Bridget

Bridget K. O'Connor ([bio](#))
Partner, **JONES DAY®**
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EXHIBIT D

EMAIL FROM
B. O'CONNOR
TO

PLC TEAM
DATED OCTOBER 27TH,
2022

Timothy Becker

From: O'Connor, Bridget <boconnor@jonesday.com>
Sent: Thursday, October 27, 2022 5:17 PM
To: Andy Childers; WFLEISHMAN Ichb.com; 'Diandra Debrosse Zimmermann'; Timothy Becker; Elizabeth Kaveny; Jose Rojas
Cc: Parker, Stephanie E.; Feder, Meir; Cercone, Kristina Katz; Cannon, Rachel; Echtman, Elyse
Subject: MDL 3026 - Case Schedule

Dear PLC Team – Based on the parties' recent submissions, as well as the discussion at the most recent MDL Status Hearing, it seems plaintiffs and defendants are not currently in alignment as to the appropriate going forward schedule for the MDL. As we have made clear in our prior discussions with plaintiffs, Defendants believe that trials in the MDL should proceed in 2023, consistent with what has been discussed in the status hearings to date. Defendants' specific proposal for the MDL schedule is below. Please let us know if plaintiffs will agree to this schedule. If you would like to discuss, please let us know.

Sincerely,
 Bridget K. O'Connor

Event	Date
Bellwether Discovery Case Selection (per CMO 7)	<ul style="list-style-type: none"> • PPFs due: September 16, 2022 • Plifs pick 4: September 30, 2022 • Random 4: September 30, 2022 • Defs pick 4: November 23, 2022
Fact Discovery Complete	February 6, 2023 * Core fact discovery would consist of Plaintiff depositions + 4 treaters/fact witnesses selected by defendants
Bellwether Trial Case Selection (per CMO 7 – 14 days after end of fact discovery)	February 20, 2023
Plaintiff Expert Reports	March 6, 2023
Defense Expert Reports	April 3, 2023
Expert discovery cutoff date	May 1, 2023
Deadline to file Motions for Summary Judgment and/or Daubert Motions	May 15, 2023
Hearing on MSJ/Daubert Motions	June 19, 2023
Final Pretrial Conference	July 17, 2023
Jury Trial	July 24, 2023

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