IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LIABILITY LITIGATION	Master Docket: Misc. No. 21-01230
This Document Relates To: *All Actions*	MDL No. 3014

JOINT REPORT ON DISCUSSIONS RE: DISCOVERY AND CASE MANAGEMENT SCHEDULE

The parties have engaged in extensive discussions in an effort to reach agreement on a discovery and case management schedule going forward, including discussions held with the assistance of Special Master Carole Katz. While the parties have been able to reach agreement on a number of the required elements to be addressed in a proposed discovery and case management order, as well as on issues that need not be addressed at this juncture of the MDL proceedings, there are some issues on which the parties fundamentally disagree which impact the case management schedule. For that reason, the parties submit their respective proposals and positions for the Court's consideration in establishing a discovery and case management scheduling order.

Plaintiffs' proposed schedule and supporting position statement are attached as Exhibits "A-1" and "A-2," respectively.

Defendants' proposed schedule and supporting position statement are attached as Exhibits "B-1" and "B-2," respectively.

Date: January 18, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed via the Court's CM/ECF system on this 18th day of January 2023 and is available for download by all counsel of record.

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A-1

Philips MDL: Supplemental Discovery Plan and Case Management Schedule[1]

Plaintiffs' Proposed Schedule

Date[2]	Individual Personal Injury Claims	Economic Loss Class Action	Medical Monitoring Class Action
1/31/23	Deadline to complete jurisdictional discovery	Deadline to complete jurisdictional discovery	Deadline to complete jurisdictional discovery
2/16/23	Last date for any tolling benefits under prior Tolling Agreement. Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction	Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction	Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction
2/28/23	Substantial completion of Defendants' document productions	Substantial completion of document productions	Substantial completion of Defendants' document productions
3/21/23		Briefing completed on all motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated) and Plaintiffs' sur-reply to the 12(b)(6) motion of KPNV, Philips Holding, Philips NA, and Philips RS Holding.	

[1] The parties reserve the right to seek amendment of this schedule, if necessary, based on the date of Court's ruling on the various motions to dismiss and/or whether there are any amendments to the operative master complaints.
[2] All dates to be adjusted to account for weekends and holidays in accordance with Fed. R. Civ. P. 6.

Date[2]	Individual Personal Injury Claims	Economic Loss Class Action	Medical Monitoring Class Action
4/3/23	Discovery/bellwether eligible case pool fixed (i.e., cases filed as of this date are eligible for selection in the discovery/bellwether pool) Deadline for parties to confer with SM Welsh regarding process and methodology for bellwether mediations		
4/21/23	Briefing completed on motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated) and Plaintiffs' sur-reply to the 12(b)(6) motion of KPNV, Philips Holding, Philips NA, and Philips RS Holding.	Parties to submit class bellwether selections	Briefing completed on motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated) and Plaintiffs' sur-reply to the 12(b)(6) motion of KPNV, Philips Holding, Philips NA, and Philips RS Holding.
4/23 or 5/23		*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's scheduling.)*	
4/28/23	Submit stipulated methodology, or disputes to the Court, regarding the selection of mediation and litigation discovery/bellwether cases (the		

Date[2]	**Individual Personal Injury Claims**	**Economic Loss Class Action**	**Medical Monitoring Class Action**
	Parties' agreement(s)/proposal(s) shall include methodology for how to select cases for bellwether mediations and bellwether trials)		
5/19/23	Selection of cases for discovery/potential bellwether mediation and trial tracks (per stipulated or Court-ordered method)		
5/23 or 6/23	*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's scheduling.)*		*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's scheduling.)*
Summer 2023	Parties to proceed with mediations of cases selected for bellwether mediation track before Special Mediator Welsh		
5/30/23			Parties to submit class bellwether selections
9/1/23	Parties' agreed selections for initial bellwether trial(s), or competing submissions to Court re: early trials and selections - *selected cases*		

Date[2]	**Individual Personal Injury Claims**	**Economic Loss Class Action**	**Medical Monitoring Class Action**
	proceed through further discovery and expert disclosures		
9/30/23		.	Deadline for parties to confer with SM Welsh regarding schedule and process for mediation of medical monitoring claims
10/30/23		Plaintiffs' 26(a)(2) expert disclosures for class certification.	
11/30/23	Close of discovery in case(s) selected for initial bellwether trial(s)	Defendants' 26(a)(2) expert disclosures for class certification Deadline to complete fact discovery related to class certification.	Deadline to complete fact discovery related to class certification.
12/15/23	Plaintiffs' 26(a)(2) disclosures for initial bellwether trial(s) (case specific and general)		
12/31/2023		Plaintiffs' rebuttal expert disclosures for class certification	
1/15/24	Defendants' 26(a)(2) disclosures for initial bellwether trial(s) (case specific and general)		Plaintiffs' 26(a)(2) expert disclosures on class certification

Date[2]	**Individual Personal Injury Claims**	**Economic Loss Class Action**	**Medical Monitoring Class Action**
2/15/24	Deadline to complete depositions of the Parties' experts. *Plaintiffs' experts on corresponding areas deposed before Defendants' experts; Plaintiffs' expert rebuttals, if any, disclosed in advance of such expert's deposition*	Deadline to complete expert depositions on class certification	Defendants' 26(a)(2) expert disclosures for class certification
3/8/24	Parties file dispositive/*Daubert* motions for initial trial case(s), as determined by the Court		
3/15/24			Plaintiffs' rebuttal expert disclosures for class certification
4/1/2024		Plaintiffs file motion for class certification	
4/15/24	Oppositions to dispositive/ *Daubert* motions for initial trial case(s)		
5/6/24	Replies in support of dispositive motions		
5/15/2024		Defendants file class certification opposition, any Rule 702/Daubert motions on class certification issues	
5/31/24			Deadline to complete expert depositions on class certification.

Date[2]	**Individual Personal Injury Claims**	**Economic Loss Class Action**	**Medical Monitoring Class Action**
Summer 2024	First bellwether trial case, trial-ready[3] *Trial date to be selected by Court*		
7/1/24		Plaintiffs file class certification reply, Rule 702/Daubert oppositions to defendants' motions, and Rule 702/Daubert motions	
7/30/24		Defendants file oppositions to Plaintiffs' Rule 702/*Daubert* motions	Plaintiffs file motion for class certification
8/30/24			Defendants file class certification opposition, any Rule 702/Daubert motions on class certification issues
Early Fall		*Potential hearing date on class certification and related Rule 702/Daubert issues*	
10/15/24			Plaintiffs file class certification reply, Rule 702/Daubert oppositions to defendants' motions, and Rule 702/Daubert motions

[3] Deadlines for motions in limine, pre-trial statements, exchange of witness and exhibit lists, and any other pretrial matters to be established by the Court consistent with the selected trial date.

Date[2]	**Individual Personal Injury Claims**	**Economic Loss Class Action**	**Medical Monitoring Class Action**
11/30/24			Defendants file oppositions to Plaintiffs' Rule 702/*Daubert* motions
12/24 or 1/25			*Potential hearing date on class certification and related Rule 702/Daubert issues*

The parties propose that the Court hold a pre-hearing conference at a time and date convenient to the Court to discuss the format with respect to the class certification hearing, the identification of witnesses, exhibits, objections, etc.

The parties have conferred regarding scheduling for proceedings beyond class certification in the economic loss and medical monitoring class actions and agree that the nature and scope of such proceedings will depend materially on the outcome of the motion for class certification. The parties therefore propose to meet and confer within 30 days of the decision on Plaintiffs' anticipated motions for class certification and report back to the Court on the schedule of any future proceedings, including with respect to additional expert activities, discovery, and summary judgment motions.

Side-By-Side Comparison of the Parties' Proposed Supplemental Discovery Plan and Case Management Order

Individual Personal Injury Cases

Date	Plaintiffs' Schedule for Individual Personal Injury Claims		Date	Philips's Schedule for Individual Personal Injury Claims
1/31/23	Deadline to complete jurisdictional discovery.		1/31/23	Deadline to complete jurisdictional discovery.
			1/31/23	Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction.
2/16/23	Last date for any tolling benefits under prior Tolling Agreement.		2/16/23	Last date for any tolling benefits under prior Tolling Agreement.
2/16/23	Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction			
2/28/23	Substantial completion of Defendants' document productions			
4/3/23	Discovery/bellwether eligible case pool fixed (i.e., cases filed as of this date are eligible for selection in the discovery/bellwether pool) Deadline for parties to confer with SM Welsh regarding process and methodology for bellwether mediations.			
4/21/23	Briefing completed on motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated)		4/21/23	Briefing completed on motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated)

Date	**Plaintiffs' Schedule for Individual Personal Injury Claims**		**Date**	**Philips's Schedule for Individual Personal Injury Claims**
4/28/23	Submit stipulated methodology, or disputes to the Court, regarding the selection of mediation and litigation discovery/bellwether cases (the Parties' agreement(s)/proposal(s) shall include methodology for how to select cases for bellwether mediations and bellwether trials)			
5/19/23	Selection of cases for discovery/potential bellwether mediation and trial tracks (per stipulated or Court-ordered method)			
5/23 or 6/23	*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's scheduling.)*		5/23 or 6/23	*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's scheduling.)*
Summer 2023	Parties to proceed with mediations of cases selected for bellwether mediation track before Special Mediator Welsh.			
8/31/23			8/31/23	Substantial completion of Ds' document productions. Deadline for completion of visual examination of devices of plaintiffs.
9/1/23	Parties' agreed selections for initial bellwether trial(s), or competing submissions to Court re: early trials and selections - *selected cases proceed through further discovery and expert disclosures.*			.
9/30/23				Ps to propose stratification of injuries (including identification of any abandoned injuries).

Date	Plaintiffs' Schedule for Individual Personal Injury Claims		Date	Philips's Schedule for Individual Personal Injury Claims
				Stipulated discovery/bellwether selection methodology, or disputes to Court (parties' proposal(s) to include methodology for how to select cases for bellwether mediations, bellwether trials, or both, depending on Court's preferences on bellwether mediations and bellwether trials).
11/30/23	Close of discovery in case(s) selected for initial bellwether trial(s)		11/30/23	Ps to disclose subject matter of expert witnesses on general causation issues.
12/15/23	Plaintiffs' 26(a)(2) disclosures for initial bellwether trial(s) (case specific and general).			
1/15/24	Defendants' 26(a)(2) disclosures for initial bellwether trial(s) (case specific and general).			
2/15/24	Deadline to complete depositions of the Parties' experts. *Plaintiffs' experts on corresponding areas deposed before Defendants' experts; Plaintiffs' expert rebuttals, if any, disclosed in advance of such expert's deposition.*			
			2/28/24	Conclusion of fact discovery (other than case-specific).
3/8/24	Parties file dispositive/*Daubert* motions for initial trial case(s), as determined by the Court.			
			3/15/24	Ps' expert disclosures on general causation.
4/15/24	Oppositions to dispositive/ *Daubert* motions for initial trial case(s).			
5/6/24	Replies in support of dispositive motions.			

Date	**Plaintiffs' Schedule for Individual Personal Injury Claims**		**Date**	**Philips's Schedule for Individual Personal Injury Claims**
			5/15/24	Ds' expert disclosures on general causation.
Summer 2024	First bellwether trial case, trial-ready *Trial date to be selected by Court*			
			6/15/24	Ps' rebuttal disclosures on general causation.
			8/15/24	Deadline to complete expert depositions on general causation.
			9/15/24	Deadline for Rule 702/Daubert motions on general causation experts, and for summary judgment motions on general causation.
			10/30/24	Oppositions to Rule 702/Daubert motions on general causation experts, and for summary judgment motions on general causation.
			11/30/24	Reply briefs on Rule 702/Daubert motions on general causation experts, and for summary judgment motions on general causation.
			1/25 or 2/25	*Potential hearing date for Rule 702/Daubert motions on general causation experts (subject to Court's scheduling).*
			30 days after Ruling on Rule	Case selection for discovery/potential bellwether pool begins.

Date	Plaintiffs' Schedule for Individual Personal Injury Claims		Date	Philips's Schedule for Individual Personal Injury Claims
			702/Daubert Motions	
			90 days before Bellwether Selection	Production of all materials for all cases eligible for bellwether pool.
			90 days after Bellwether Selection	Ps to disclose subject matter of expert witnesses on case-specific issues for bellwether(s).
			180 days after Bellwether Selection	Close of case-specific fact discovery for bellwether pool.
			210 days after Bellwether Selection	Ps' Rule 26(a)(2) expert disclosures for bellwether(s) (case-specific).
			240 days after Bellwether Selection	Ds' Rule 26(a)(2) expert disclosures for bellwether(s) (case-specific). Parties' agreed selections for bellwether, or competing submissions to Court.
			270 days after Bellwether Selection	All case-specific expert depositions complete (Ps' experts deposed before Ds' experts; Ps' expert rebuttals, if any, disclosed in advance of Ps' expert depositions.)
			300 days after	Deadline for Rule 702/Daubert motions on proposed case-specific experts, and for

Date	Plaintiffs' Schedule for Individual Personal Injury Claims		Date	Philips's Schedule for Individual Personal Injury Claims
			Bellwether Selection	summary judgment motions on specific causation or in specific bellwether cases.
			330 days after Bellwether Selection	Deadline for oppositions to Rule 702/Daubert motions on proposed case-specific experts, and for summary judgment motions on specific causation or in specific bellwether cases.
			360 days after Bellwether Selection	Deadline for reply briefs on Rule 702/Daubert motions on proposed case-specific experts, and for summary judgment motions on specific causation or in specific bellwether cases.

Side-By-Side Comparison of the Parties' Proposed Supplemental Discovery Plan and Case Management Order

Economic Loss Class Action

Date	**Plaintiffs' Schedule for Economic Loss Class Action**		**Date**	**Philips's Schedule for Economic Loss Class Action**
1/31/23	Deadline to complete jurisdictional discovery		1/31/23	Deadline to complete jurisdictional discovery
			1/31/23	Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction
2/16/23	Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction			
2/28/23	Substantial completion of document productions			
3/21/23	Briefing completed on all motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated) and Plaintiffs' sur-reply to the 12(b)(6) motion of KPNV, Philips Holding, Philips NA, and Philips RS Holding.		3/21/23	Briefing completed on all motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated).
4/23 or 5/23	*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's scheduling.)*		4/23 or 5/23	*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's scheduling.)*
4/21/23	Parties to submit class bellwether selections			
			7/31/23	Submit stipulation, competing proposals and/or disputes for discovery/bellwether selections for class certification Plaintiffs to identify whether they will be seeking to certify a national class of any state law claims

Date	Plaintiffs' Schedule for Economic Loss Class Action		Date	Philips's Schedule for Economic Loss Class Action
			8/31/23	Substantial completion of Ds' and Ps' document productions Deadline to provide dates for depositions of plaintiffs on class certification Deadline for completion of visual examination of devices of putative class reps
			9/30/23	Ps to disclose subject matter of expert witnesses on class cert issues
10/30/23	Plaintiffs' Rule 26(a)(2) expert disclosures for class certification. Defendants' Rule 26(a)(2) expert disclosures for class certification.			
11/30/23	Deadline to complete fact discovery for class certification Defendants' Rule 26(a)(2) expert disclosures for class certification.		11/30/23	Deadline for completion of depositions of class representatives
12/31/23	Plaintiffs' rebuttal expert disclosures for class certification			
			1/15/24	Ps' expert disclosures on class certification
2/15/24	Deadline to complete expert depositions on class certification.			
			2/28/24	Conclusion of fact discovery
			3/15/24	Ds' expert disclosures on class certification

Date	**Plaintiffs' Schedule for Economic Loss Class Action**		**Date**	**Philips's Schedule for Economic Loss Class Action**
4/1/24	Plaintiffs file motion for class certification			
			4/15/24	Ps' rebuttal disclosures on class certification
5/15/24	Defendants file class certification opposition, any Rule 702/Daubert motions on class certification issues			
			6/15/24	Deadline to complete expert depositions on class certification
			6/30/24	Plaintiffs file motion for class certification
7/1/24	Plaintiffs file class certification reply, Rule 702/Daubert oppositions to defendants' motions, and Rule 702/Daubert motions			
7/30/24	Defendants file oppositions to Plaintiffs' Rule 702/*Daubert* motions			
Early Fall 2024	*Potential hearing date on class certification and related Rule 702/Daubert issues*			
			9/15/24	Defendants file class certification opposition
			10/30/24	Plaintiffs file class certification reply Parties file Rule 702/Daubert motions on class certification issues
			12/15/24	Parties file oppositions to Rule 702/Daubert motions on class certification issues
			1/25 or 2/25	*Potential hearing date on class certification and related Rule 702/Daubert issues*

Side-By-Side Comparison of the Parties' Proposed Supplemental Discovery Plan and Case Management Order

Medical Monitoring Class Action

Date	Plaintiffs' Schedule for Medical Monitoring Class Action		Date	Philips's Schedule for Medical Monitoring Class Action
1/31/23	Deadline to complete jurisdictional discovery		1/31/23	Deadline to complete jurisdictional discovery.
			1/31/23	Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction
2/16/23	Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction			
2/28/23	Substantial completion of Defendants' document productions			
4/21/23	Briefing completed on motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated) and Plaintiffs' sur-reply to the 12(b)(6) motion of KPNV, Philips Holding, Philips NA, and Philips RS Holding.		4/21/23	Briefing completed on motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated).
5/23 or 6/23	*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's scheduling.)*		5/23 or 6/23	*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's scheduling.)*
5/30/23	Parties to submit class bellwether selections			

Date	Plaintiffs' Schedule for Medical Monitoring Class Action		Date	Philips's Schedule for Medical Monitoring Class Action
			8/31/23	Substantial completion of Defendants' and Plaintiffs' document productions Deadline for completion of visual examination of devices of putative class reps Submit stipulation, competing proposals and/or disputes for discovery/bellwether selections for class certification Plaintiffs to identify whether they will be seeking to certify a national class of any state law claims
9/30/23	Deadline for parties to confer with SM Welsh regarding schedule and process for mediation of medical monitoring claims		9/30/23	Deadline to provide dates for depositions of plaintiffs on class certification. Plaintiffs to propose stratification of injuries (including identification of any abandoned injuries)
11/30/23	Deadline to complete fact discovery related to class certification		11/30/23	Plaintiffs to disclose subject matter of expert witnesses on class cert issues Plaintiffs to disclose subject matter of expert witnesses on general causation issues
1/15/24	Plaintiffs' 26(a)(2) expert disclosures on class certification		1/15/24	Deadline for completion of depositions of class representatives
2/15/24	Defendants' 26(a)(2) expert disclosures for class certification		2/15/24	Plaintiffs' expert disclosures on class certification
			2/28/24	Conclusion of fact discovery

Date	Plaintiffs' Schedule for Medical Monitoring Class Action		Date	Philips's Schedule for Medical Monitoring Class Action
3/15/24	Plaintiffs' rebuttal expert disclosures for class certification		3/15/24	Plaintiffs' expert disclosures on general causation
			4/15/24	Defendants' expert disclosures on class certification
			5/15/24	Plaintiffs' rebuttal disclosures on class certification Defendants' expert disclosures on general causation
5/31/24	Deadline to complete expert depositions on class certification			
			6/15/24	Plaintiffs' rebuttal disclosures on general causation
7/30/24	Plaintiffs file motion for class certification			
			8/15/24	Deadline to complete expert depositions on class certification and general causation
8/30/24	Defendants file class certification opposition, any Rule 702/Daubert motions on class certification issues			
			9/15/24	Plaintiffs file motion for class certification Deadline for Rule 702/Daubert motions on general causation experts
10/15/24	Plaintiffs file class certification reply, Rule 702/Daubert oppositions to Defendants' motions, and Rule 702/Daubert motions			
			10/30/24	Oppositions to Rule 702/Daubert motions on general causation experts
11/30/24	Defendants file oppositions to Plaintiffs' Rule 702/Daubert motions		11/30/24	Defendants file class certification opposition Reply briefs on Rule 702/Daubert motions on general causation experts

Date	**Plaintiffs' Schedule for Medical Monitoring Class Action**		**Date**	**Philips's Schedule for Medical Monitoring Class Action**
12/24 or 1/25	*Potential hearing date on class certification and related Rule 702/Daubert issues.*			
			1/25 or 2/25	*Potential hearing date for Rule 702/Daubert motions on general causation experts (subject to Court's scheduling)*
			1/15/25	Plaintiffs file class certification reply Parties file 702/Daubert motions on class certification issues
			3/1/25	Parties file 702/Daubert oppositions on class certification issues
			4/25	*Potential hearing date on class certification and related Rule 702/Daubert issues*

A-2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LITIGATION **This Document Relates to:** ***All Actions***	**Master Docket: Misc. No. 21-mc-1230-JFC** **MDL No. 3014**

PLAINTIFFS' POSITION STATEMENT IN SUPPORT OF THEIR PROPOSED DISCOVERY AND CASE MANAGEMENT SCHEDULE

Despite knowing for many years that the PE-PUR foam used in its CPAP, BiPAP, and ventilator machines is susceptible to degradation resulting in emission of particulate matter and volatile organic compounds that may be inhaled or ingested by the user, it was not until June 14, 2021 that Philips announced a recall of more than 11 million devices that had been sold to and used by patients since at least 2008. *See, e.g.*, ECF No. 834, ¶¶ 3-9.[1] Since announcing the recall, Philips already has spent more than a billion dollars carrying out remediation efforts, and has collected and organized the centrally relevant documents and information in order to engage with dozens of third-party experts, the FDA, and the Department of Justice.

Claims filed on behalf of the millions of injured users of Philips's devices—including class actions for economic loss and medical monitoring, and personal injury claims—have been

[1] *See also* FDA "Safety Communication" and Updated information informing users to, if possible, stop using devices and warning of the potential risks for using the devices, including, irritation, asthma, "toxic or cancer-causing effects to organs, such as kidneys and liver," *available at:* https://www.fda.gov/medical-devices/safety-communications/update-certain-philips-respironics-ventilators-bipap-machines-and-cpap-machines-recalled-due#:~:text=CPAP%20Machine%20Recalls-,Recalled%20Devices,and%20vibration%20can%20break%20down (last visited Jan. 18, 2023). The FDA updated its "Safety Communication" on December 22, 2022, also warning of the existence of the toxic foam in reworked devices. *Id*.

consolidated in this MDL to promote "a just, speedy and effective resolution of the cases", ideally "within two to three years." Philips MDL 3014, Dec. 1, 2021 Tr. at 10:8-10:25. *See also* Philips MDL, PTO 1 ("this court must facilitate the just and expeditious resolution of the cases comprising this MDL").

Successful cases like this can and do move quickly to a global resolution. To that end, Plaintiffs' proposed discovery and case management schedule is modeled on schedules that have successfully promoted the efficient resolution of claims in cases of similar magnitude and importance, and seeks to move the parties expeditiously through discovery and towards bellwether mediations, trials, and, ultimately, remand. As other comparable litigations guide, bellwethers are essential to resolving large, complex personal injury cases, and delay is the enemy of success and the root of inefficiency. Defendants oppose Plaintiffs' approach, opting instead for a delayed and protracted process that would cause this MDL and affected individuals' claims to languish for years.

Plaintiffs' schedule is based on the following fundamental principles: (1) case-specific discovery in the personal injury cases selected for bellwether mediations/trials should proceed in parallel to general discovery; (2) a prompt substantial completion date for Philips's production of documents, which has already been protracted and risks further delaying progress of discovery and the pace of this MDL, should be established; (3) initial class certification motion practice should proceed on a limited set of bellwether state classes; and (4) the close of discovery should promote efficiency for both general discovery, the initial bellwethers, and the remaining cases and issues. Because these tenets best serve Rule 1, by promoting "the just, speedy, and inexpensive determination of every action and proceeding," Fed. R. Civ. P. 1, the Court should adopt Plaintiffs' schedule.

1. The Court Should Adopt Plaintiffs' Unified Personal Injury Schedule.

Consistent with the Court's goals to promote "a just, speedy and effective resolution of the cases" "within two to three years" expressed at the outset of this MDL[2] Plaintiffs' proposed personal injury schedule anticipates a process whereby bellwether mediations of injury claims could commence later this year, and a group of potential bellwether trial cases would be trial ready in less than 18 months. Plaintiffs' schedule for the injury claims follows a successful template that has been used over the last 25 years to fairly and efficiently develop and resolve injury claims in countless comparable MDLs, which allege different types of injuries.[3,4] In short, general discovery from Defendants (and third parties)—including document productions, depositions, and other written discovery—proceeds for the injury plaintiffs in coordination with related general discovery taken for the economic and medical monitoring class actions. At the same time, a group of plaintiffs is selected for bellwether mediations, and case-specific discovery, and/or bellwether trials. Following this successful template, Plaintiffs propose discovery proceed in parallel during 2023 with a subset of cases selected for expert disclosures

[2] Philips MDL 3014, Dec. 1, 2021, Tr. at 10:8-10:25. *See also id*. at 9:17-9:24; 11:2-11:11.
[3] *See infra* note 12 for a list of MDLs with multiple types of injuries that have used the same successful template (of a unified case schedule) Plaintiffs propose here. *See also In re Actos (Pioglitazone) Prod. Liab. Litig.* ("*Actos*"), 6:11-md-2299 (W.D. La.), Dkt. 1418 (Scheduling Order) (July 13, 2012), Dkt. 2197 (CMO: Discovery Protocol) (Dec. 21, 2012), Dkt. 2359 (Pilot Bellwether involving claims of bladder cancer) (Feb. 19, 2013), Dkt. 5303 (May Trial Order) (Feb. 23, 2015); *In re: Ethicon, Inc. Power Morcellator Prod. Liab. Litig.*, 2:15-md-02652 (D. Kan.), Dkt. 80 (Scheduling Order 1) (Dec. 24, 2015) (no bifurcated schedule).
[4] For the Court's convenience Plaintiffs have included all Case Management Orders referenced herein, in alphabetical order by case name, in the Appendix attached hereto as Exhibit "1."

(general and case-specific) and dispositive/expert motions on their path to early mediation this year, or to trial readiness in the summer of 2024.

Plaintiffs' schedule recognizes the importance of bellwethers in sharpening focus on the relevant general and case-specific issues, generating information for all parties, and driving resolution.[5] Countless MDL courts have recognized the bellwether process as essential for "information gathering that would facilitate valuation of cases to assist in global settlement."[6] While the bellwether process often focuses on bellwether trials as the end-game, the reality is that the broad understandings developed through bellwether discovery and expert development of *both* general and case-specific issues have often facilitated global resolution of analogous

[5] Although Plaintiffs are optimistic that a bellwether process will promote efficient resolution of this matter, it is important to recognize that the first bellwether trial (or group of trials) is by no means the end point of a litigation, with additional bellwether discovery, trials, and/or remands as potential future undertakings.

[6] *In re Nat'l Prescription Opiate Litig.* ("*Opioids*"), No. 1:17-md-2804, 2019 WL 3843082, at *1 (N.D. Ohio Aug. 15, 2019). *See In re Cox Enters., Inc. Set-top Cable Television Box Antitrust Litig.*, 835 F.3d 1195, 1208 (10th Cir. 2016) ("the whole purpose of bellwether litigation...is to enable other litigants to learn from the experience and reassess their tactics and strategy (and, hopefully, settle)") (citing Eldon E. Fallon, Jeremy T. Grabill and Robert Pitard Wynne, *Bellwether Trials in Multidistrict Litig.* ("*Bellwether Trials in MDLs*"), 82 Tul. L. Rev. 2323 (2008)); *In re E.I. du Pont de Nemours & Co. C-8 Pers. Injury Litig.* ("C-8"), 204 F.Supp.3d 962, 968 (S.D. Ohio 2016) (bellwether cases were specifically chosen for the purpose of "information gathering that would facilitate valuation of cases to assist in global settlement."); Eldon E. Fallon, *Bellwether Trials in MDLs* at 2332 ("The ultimate purpose of holding bellwether trials in [*In re Propulsid Prod. Liab. Litig.* (MDL 1355) and *In re Vioxx Prod. Liab. Litig.* (MDL 1657)] was not to resolve the thousands of related cases pending in either MDL in one 'representative' proceeding, but instead to provide meaningful information and experience to everyone involved in the litigations."); and Alexandra D. Lahav, *Bellwether Trials*, at 577-78, George Washington L. Rev. (2008) ("Judges currently use bellwether trials informally in mass tort litigation to assist in valuing cases and to encourage settlement"); The Manual for Complex Litigation Fourth, § 22.315 (bellwether trials are meant to "produce a sufficient number of representative verdicts and settlements to enable the parties and the court to determine the nature and strength of the claims . . . and what range of values the cases may have"). *See infra* note 6 (listing MDLs with a unified case schedule and bellwether process used to advance resolution).

MDLs without the necessity of a single bellwether trial.[7] Here, such information would support the Court-guided bellwether mediations,[8] which Plaintiffs fully endorse and have used to success with Settlement Mediator Welsh in other cases.[9]

In contrast, Defendants' proposed bifurcated schedule embeds delay in every phase, and, as a consequence, defers for years all meaningful development of the information gained through a bellwether process—information that MDL courts, commentators, and the Manual alike guide as essential to resolution of an MDL such as this. Other than Plaintiff and Defendant Fact Sheets, Defendants propose delaying all case-specific discovery, including fact depositions and expert discovery, for another two years—with 2025 as the earliest possible date for selection of bellwethers, and nearly a year of discovery to follow. Defendants' proposed schedule creates needless costs and inefficiencies attendant to new and supplemental reports of medical and scientific experts. And Defendants' proposal requires an additional year (early 2026) before the first case would have expert and dispositive motions fully briefed, and even longer before the first case could proceed to trial or remand. *See* Timeline attached hereto as Exhibit "2."

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[7] Many MDLs have had bellwether programs enter global resolutions without the need for any bellwether trials. *See, e.g.*, *In re Yasmin and YAZ (Drospirenone) Marketing, Sales Prac. and Prod. Liab. Litig.* ("*Yaz*"), 3:09-md-02100 (S.D. Ill.) (settling before bellwether trial) and *Invokana (Canagliflozin) Prod. Liab. Litig.* ("*Invokana*") (MDL 2750) (D.N.J.) (same). *See also*, *infra* note 9, *Stryker* (settling after bellwether mediation); *In re Juul Labs, Inc. Marketing, Sales Prac. & Prod. Liab. Litig.* ("*Juul*"), 3:19-md-2913 (N.D. Cal.), Dkt. 1, 3690.

[8] *See Philips* MDL 301, Dec. 15, 2021 Tr. at 9:17-9:24 ("My objective is to have these cases disposed of as quickly as possible. If it can be done in this court through settlement, mediations are going to be highly stressed.")

[9] *See In re Stryker Rejuvenate & ABG II Hip Implant Litig.* ("*Stryker*"), Master Dkt. No.: BER-L-936-13, CMO 10 (Super. Ct. N.J. Oct. 23, 2013) (J. Martinotti) (identifying bellwether cases for mediation to obtain a global resolution before trials). Settlement Mediator Welsh discusses her experience and the success of mediating personal injury bellwether trials such as in *Stryker*. *See* "Bellwether Mediations as An Alternative To Bellwether Trials," Hon. Diane M. Welsh (Sept. 28, 2021) *available at*: https://www.jamsadr.com/blog/2021/bellwether-mediations-as-an-alternative-to-bellwether-trials (last visited Jan. 17, 2023).

Plaintiffs respectfully request that this Court adopt a unified schedule that allows for case-specific discovery to proceed parallel to general discovery. Under Defendants' proposed bifurcated schedule—in which bellwether cases for case-specific discovery are not even selected until 2025 and bellwether trials and mediations will not commence until 2026 or later—it would be ***no less than 3 years from today*** before a single personal injury case is worked up and set for trial. Because a delayed bifurcated schedule is not a "fair, efficient, and reasonable… way that makes the overall MDL proceeding manageable,"[10] courts consistently reject proposals that bifurcate general causation and case-specific discovery in favor of a unified case schedule with expeditious discovery timetables.[11]

When Courts set a diligent timetable for discovery and personal injury trials (bellwether process), the litigation moves efficiently and resolves expeditiously. For example, in *Vioxx* the

[10] *See, e.g., In re Testoterone Replacement Therapy Prod. Liab. Litig.* ("*TRT*"), 1:14-CV-01748 (MDL 2545), Dkt. 467 (CMO No. 14) (Nov. 6, 2014) and Dkt. 1287 (Am. CMO No. 14) (May 3, 2016) (stating the "court has considered the parties' proposals and revised proposals for a case management plan" and "is unpersuaded that the revised proposal by []defendants to bifurcate ... general causation and other matters" represents a fair, efficient, and reasonable way to manage the pretrial proceedings in this case.").

[11] *In re Proton-Pump Inhibitor Prod. Liab. Litig.* ("*Proton-Pump*"), 2:17-md-2789 (MDL 2789), at the case management conference, "after reviewing the parties' submissions and having discussed various case management issues with the parties [in chambers]," "[t]he Court denied Defendants' motion for the Court to consider general causation and preemption before conducting case-specific fact discovery in individual cases." *Id.* at Dkt. 209 (CMO No. 15) (May 18, 2018). The court ordered the parties to "meet and confer on the Scheduling Order in the form proposed by Plaintiffs." *Id*. *See also Goodstein v. Astrazeneca Pharmaceuticals LP, et al.* ("*Astrazeneca*"), 16-cv-05143 (D.N.J.), Dkt. 29 (Joint Status Report and Proposed Initial Discovery Plan at 11-15) (Mar. 15, 2017); and Dkt. 30 (Joint Status Report and Proposed Agenda) (Apr. 21, 2017). Defendants' proposal was rejected by the Court. *See id.*, Dkt. 39 (Case Management Order No. 1 (Scheduling) (May 25, 2017). *Yaz*, Dkt. 1329 ("The Court considered the submissions, including the exhibits attached thereto, and arguments of the parties, District Judge Fallon's article regarding his experience in *Vioxx* and *Propulsid* (Eldon E. Fallon, *Bellwether Trials in MDLs*, at 2323), and a number of orders of other district judges handling MDL cases who have considered the same issue. The Court finds that this litigation will benefit substantially from the establishment of bellwether trials.").

MDL was formed on February 16, 2005 and discovery rapidly commenced. *In re Vioxx Prod. Liab. Litig*. (MDL 1657), 2012 WL 6045910, at *2 (E.D. La. Dec. 4, 2012) (containing summary of litigation). Counsel conducted all aspects of pre-trial preparation, including document discovery (millions of documents), the taking of depositions (thousands of depositions), preparation of experts, and motions practice (at least 1,000 discovery motions). *Id*. After a "reasonable period for discovery," the Court assisted the parties in selecting and preparing 6 bellwether cases, and the first trial concluded less than ***1 year*** after the MDL was formed. *Id*. The experience from these bellwether trials informed earnest settlement negotiations, and a $4.85 billion settlement was reached approximately 2.5 years after the MDL was formed. *Id*.

In addition, many other large, complex MDLs, have moved expeditiously to global resolution under unified schedules with diligent discovery timetables.[12] Plaintiffs' proposed

[12] *See also TRT* (MDL 2545), Dkt. 467, Dkt. 1588, Dkt. 2866 (MDL was formed on June 12, 2014, first bellwether trial occurred 3 years later on June 5, 2017, and 15 months after the first bellwether trial, on Sept. 10, 2018, the actions were stayed for global settlement); *C-8* (MDL 2433), Dkt. 1, Dkt. 5095 (MDL formed April 9, 2013 and first bellwether trial occurred 2 years and 7 months later in November 2015, with the first global settlement occurring 16 months later on March 31, 2017*)*; *Invokana,* Dkt. 1, Dkt. 218 (CMO No. 20) (July 27, 2017) (MDL was formed December 7, 2016, the case settled in April 2018 2 years and 3 months from the commencement and before the bellwether trials which were scheduled in January 2019); *In re Xarelto Prod. Liab. Litig.*, 2:14-md-02592-EEF-MBN (E.D. La.), Dkt. 2 (Dec. 17, 2014), Dkt. 13540 (MDL formed Dec. 17, 2014, first bellwether trial occurred 17 months later on April 24, 2016, and the case was resolved a little over 3 years after the MDL commenced on May 6, 2019); *Proton-Pump*, Dkt. 1, Dkt. 244 (Scheduling Order) (3 years and 6 months from creation of the MDL to global resolution); *In re Chinese-Manufactured Drywall Prod. Liab. Litig.* (MDL 2047) (E.D. La.), Dkt. 1, Dkt. 11880 (MDL formed on June 15, 2009, and the first bellwether trial was held 9 months later, with a global settlement of Knauf cases announced at the end of 2011, or just 2 ½ years after the MDL was formed); *Yaz,* Dkt. 1, Dkt. 83, Dkt. 2735 (MDL was formed October 23, 2009, bellwethers set for over 2 years from commencement but never commenced due to global resolution of claims 3 years and 7 months later); *Juul*, Dkt. 2 (Oct. 2, 2019); Dkt. 3690 (MDL formed October 2, 2019 and resolved before bellwether process in a little over 3 years on December 6, 2022); *Opioids*, Dkt.1, Dkt. 876, Dkt. 3794 (MDL formed on December 12, 2017 with first bellwether commencing after less than 2 years on October 21, 2019, with a global resolution under 4 years later on July 21, 2021).

schedule follows this well-trod path, recognizing that case-specific discovery, bellwether mediations, and bellwether trials/remands play a crucial role in identifying, developing, and resolving the issues in dispute.

2. Plaintiffs' Date for Substantial Completion of Defendants' Document Productions Is Reasonable and Necessary for Efficient Resolution.

Defendants' proposal places substantial completion of document production on August 31, 2023, and a "conclusion of fact discovery" date 6 months later in February 2024. Stated differently, Defendants seek to grant themselves approximately 14 months (from July 1, 2022 until August 31, 2023) to substantially complete their production of documents, while leaving Plaintiffs just 6 months (until Defendants' proposed February 28, 2024 "conclusion of fact discovery") to accomplish the far greater magnitude of discovery that follows the substantial completion date—*i.e.*, the review, analysis, and synthesis of those documents, as well as the necessary expert and third-party consultation, follow-up discovery, and depositions dependent on such productions. The delay imposed from the use of more than a year to complete the most basic and scalable aspect of discovery—through production of responsive documents at a stated rate of only 10,000-20,000 emails every 3 weeks—would leave Plaintiffs a mere 6 months to complete the vast majority of the work. Defendants' delayed and piecemeal production of custodial documents prejudices Plaintiffs and serves only to delay this litigation. Accordingly, this Court should adopt Plaintiffs' February 28, 2023 substantial completion date to ensure discovery is completed in a timely, fair, and efficient manner.[13]

Plaintiffs' proposed substantial completion date of February 28, 2023 is fully achievable.

[13] This issue has been raised with Special Master Katz and, after unsuccessful mediations, the parties remain at impasse as of the date of this report.

While document discovery has proceeded slowly, discovery formally opened on July 1, 2022.[14] To date, Philips has produced fewer than 100,000 emails from their employees' custodial files, but has reviewed more than 3 million documents. Defendants may argue that they will be unable to meet a substantial completion deadline at the end of February and have been burdened by their production obligations to date. However, the vast majority of Philips's document production to date is non-custodial files that should have been readily accessible.[15] That is, approximately 28,000 documents (about 1.2 million pages) are select versions of engineer reports ("ER") that make up the design history file ("DHF") of the Trilogy 100/200 and DreamStation devices[16] and the regulatory files of the recalled devices; approximately 317,830 documents (about 1 million pages) are complaint files related to foam degradation that Philips culled and manually reviewed at the request of the FDA;[17] and the remainder are miscellaneous items such as Philips RS marketing materials from 2018, organizational charts, insurance policies, and screenshots.

Moreover, discovery has been open for over 6 months, and Defendants have had the opportunity to interview custodians and collect and review their documents since before the recall was publicly announced in June 2021. Through Plaintiffs' efforts,[18] the review corpus has shrunk to approximately 5 million documents—more than 3 million of which have been

[14] Plaintiffs provided Philips Defendants with their First Set of Requests for Production of Documents on April 1, 2022—three months before discovery opened.
[15] FDA regulations require medical device manufacturers to maintain theses records (device specifications, device history records, quality system records, etc.) in a manner that are reasonably accessible and readily available for review. *See* 21 C.F.R. 820.
[16] Plaintiffs identified missing versions of the ERs and ERs from the other Recalled Devices and understand Philips has recently produced ERs for some of the other Recalled Devices.
[17] Philips RS has built an IT program that will condense each complaint file and its attachments into one zip file so that relevant complaint files can be produced in the litigation. Thus, production of additional complaint files is of a *de minimis* burden.
[18] Plaintiffs' efforts reduced the volume of custodial files for review by half (by virtue of the withdrawal or modification of hundreds previously agreed upon search terms).

reviewed by Philips (two-third of which were reviewed in the last 2 months) although not yet produced. Defendants have demonstrated that document production is the most scalable side of discovery (Philips scaled from a few dozen reviewers in November to approximately 150 in December). Between the shrinking review corpus and Defendants' scale-up of their review team (and the ability to scale up more), basic "review math" (rate of file review per reviewer, by days of review) confirms that Defendants could substantially complete document production before the end of February.

Expeditious "substantial completion" is also necessary for efficient discovery and resolution. The work that follows the substantial completion date is of a far greater magnitude than the work of first producing ESI responsive to discovery requests. Defendants' production of documents is only the beginning of general discovery, with the review, analysis, and synthesis of those documents, as well as the necessary expert and third-party consultation, follow-up discovery, and depositions dependent on such productions. It is crucial that most scalable aspect of discovery (production of responsive documents) not occupy the vast majority of the time allotted for all discovery as Defendants propose.

3. <u>Bellwether Classes Would Promote Efficient Resolution of the Class Action Cases.</u>

Consistent with Rules 1 and 23, Plaintiffs propose a bellwether/sequencing[19] approach to class certification. This Court has wide discretion in managing its MDL docket in a manner that promotes the just and efficient conduct of this action. *See In re Asbestos Prod. Liab. Litig. (No. VI)*, 718 F.3d 236, 247 (3d Cir. 2013) (citing 28 U.S.C. 1407(a)); *see also* Fed. R. Civ. P. 23(d).

[19] *See Abrams v. Nucor Steel Marion, Inc.*, 694 F. App'x 974, 977 n.2 (6th Cir. 2017) ("A bellwether trial is where a small number of class-action plaintiffs, who can adequately represent the class, test their claims and legal theories first, before proceeding with the rest of the class.")

Indeed, "administering cases in multidistrict litigation is different from administering cases on a routine docket." *Id.* Utilizing a bellwether process for complex class actions can "assist in the maturation of disputes by providing an opportunity for coordinating counsel to *organize* the products of pretrial common discovery, *evaluate* the strengths and weaknesses of their arguments and evidence, and *understand* the risks and costs associated with the litigation." Lance B. Williams, Anna F. Scardulla, *Tools for Managing Class Action Litigation*, American Bar Association, Brief, 46-WTR BRIEF 14, 18 (Winter 2017) (citing Eldon E. Fallon, *et. al.*, Bellwether Trials in Multidistrict Litigation, 82 Tul. L. Rev. 2323, 2325 (2008)).

In many MDLs and complex class actions, courts bellwether or prioritize a limited number of states or claims to serve as initial test cases for class certification and trial and to assist the parties in evaluating the class claims for purposes of grouping and settlement.[20]

[20] *See, e.g., In re Generic Pharms. Pricing Antitrust Litig.*, No. 16-MD-2724, 2019 WL 8106511, at *3 (E.D. Pa. Oct. 24, 2019) (ordering the parties to confer and identify "criteria for selecting bellwether claims or case(s) for class certification"); *In re Syngenta AG MIR 162 Corn Litig.*, MDL No. 2591, No. 2:14-md-2591, 2017 WL 2876767, at *2 (D. Kan. July 6, 2017) (parties selected eight bellwether states for class certification and then selected plaintiffs to represent each of those states; case settled on national basis after bellwether trial of Kansas state class); *In re Whirlpool Corp. Front-Loading Dishwasher*, MDL No. 2001, No. 1:08-WP-65000, 2016 WL 5338012, at*10-11 (N.D. Ohio Sep. 23, 2016) (court granted certification of Ohio class with remaining state class motions deferred for later adjudication; case settled after Ohio bellwether class trial and shortly before trial of Illinois state class; in approving national class settlement court noted that the bellwether approach to litigation gave each side a clear view of the strengths and weaknesses of their case, enhancing the fairness of the settlement); *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mkt., Sales Prac. and Prods. Liab. Litig.*, 1:15-md-2627 (E.D. Va.), Pretrial Order #5, Dkt. 528 (ordering Plaintiffs' Co-Lead Counsel to identify five representative states, including California); *In re General Motors LLC Ignition Switch Litig.*, 14-md-2543 (S.D.N.Y.), Order No. 130, Dkt. 4443 (directing the parties to select three bellwether states for class certification). *See also Sloan v. Gen. Motors LLC*, No. 16-CV-07244-EMC, 2020 WL 1955643, at *4 (N.D. Cal. Apr. 23, 2020) ("In order to address manageability concerns, the parties agreed to follow a bellwether process for class certification wherein Plaintiffs' initial motion for class certification would be limited to [five states]"); *In re Light Cigarettes Mktg. Sales Pracs. Litig.*, 271 F.R.D. 402, 405, n.2 (D. Me. 2010) (each party selected two exemplar states to proceed to class certification); *In re Apple Inc. Devices Performance Litig.*, 5:18-md-02827 (N.D. Cal.), Tr. of July 11, 2018 Proceedings, Dkt. 167 (Court asks Plaintiffs to identify

Here, Plaintiffs' Consolidated Third Amended Class Action Complaint for Economic Losses includes 122 named plaintiffs and asserts subclasses for 47 individual states/territories. Similarly, Plaintiffs' Consolidated Second Amended Class Action Complaint for Medical Monitoring includes 63 named plaintiffs and asserts subclasses for 40 individual states/territories. Plaintiffs submit that a selection of seven states—Pennsylvania as one, and each party selecting three others—for each of the operative class complaints as bellwethers[21] for class certification and trial provides the most just, speedy, and inexpensive manner to determine the issues presented in the two operative class complaints. Once the viability of class treatment of the various claims in these bellwether test cases is determined, that decision will inform the viability of class treatment of other states/claims based upon similarities in legal treatment. The outcome of any trials on the bellwether certified class claims, like the personal injury bellwether trials, will be demonstrative on how the remaining class claims may fare at trial. Bellwether certification and/or trial will also provide valuable information that may help push the class complaints to a global resolution or, at minimum, provide insight on methods to litigate the non-bellwether class claims in a more efficient manner, including grouping of states with similar claims or legal standards.[22] Absent a bellwether process, the Court will be inundated with an

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their five or six best claims to prioritize for class certification); *In re Anthem, Inc. Data Breach Litig.*, 15-md-02617 (N.D. Cal.) Case Management Order No. 315, Dkt. 326 (directing each side to select five claims to narrow issues on motions to dismiss and directing the initial motion for class certification shall be limited to the same ten claims); *In re Marriott Intn'l Customer Data Security Breach Litig.*, 19-md-2879 (D. Md.), Case Management Order #2, Dkt. 238 (ordering the parties to propose a selection process for the strongest five claims to be asserted in an amended consolidated complaint, and which ultimately served as bellwether claims for class certification).

[21] The named plaintiff representatives for each of the selected states would serve as the bellwether representatives for those states and the causes of action asserted on behalf of those plaintiffs would serve as the bellwether claims.

[22] *See, e.g., In re Syngenta AG MIR 162 Corn Litig.*, 2017 WL 2876767 at *2 ("There is no question that efficiency would best be served by combining classes' claims for trial in some

avalanche of single-state class motions along with various permutations of proposed groupings of the various state classes, thereby hampering the just, speedy, and efficient resolution of the various class claims.

For these reasons, Plaintiffs respectfully request that the Court order the selection of class bellwether states for each of the class complaints and establish a deadline, consistent with Plaintiffs' proposals, to make such selections.

4. <u>The Court Should Adopt Plaintiffs' Proposed Close of Case-Specific Fact Discovery for Initial Bellwether Trials in December 2023.</u>

Defendants propose a close of fact discovery in February 2024. However, it is necessary, and well-accepted, that fact discovery remains open in MDL litigation involving cases such as these where individual cases may not even begin discovery (not to mention resolve) for years after the initial bellwether cases.[23] An early closing of discovery would be inefficient because (1) regulatory and science changes/updates relevant to the future cases may continue to evolve; (2) new factual issues often arise as issues are developed in the initial bellwether trials; (3) bellwether trials may reveal other relevant areas and issues in need of further discovery that can eliminate disputed points and streamline future proceedings and cases selected for remand.

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manner. The class claims are asserted against the same defendants, they involve common questions of law and fact, and as the Kansas class trial recently demonstrated, the evidence particular to the state of residence is relatively limited.").

[23] *See, e.g.*, *Proton-Pump*, Dkt. 244 (CMO No. 21) (July 27, 2018) (setting presumptive cut-off for generic corporate discovery for bellwether cases going to trial); *In re Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Products Liability Litig*. ("Hernia Mesh"), 2:18-md-2846 (S.D. Ohio), Dkt. 62 (CMO No. 10), at p.4, fn.1 (Nov. 20, 2018) (closing discovery for bellwether trials, but expressly leaving open discovery for remainder of MDL); *TRT*, Dkt. 1588 (Oct. 26, 2016) (establishing discovery cutoff for bellwether cases only); *Actos*, Dkt. 1418 (Scheduling Order) (July 13, 2012), Dkt. 2197 (CMO: Discovery Protocol) (Dec. 21, 2012), Dkt. 2359 (Pilot Bellwether involving claims of bladder cancer) (Feb. 19, 2013), 5303 (May Trial Order) (Feb. 23, 2015); *In re Elmiron Prod. Liab. Litig.*, 2:20-md-02973 (D.N.J.), Dkt. 93 (CMO No. 17) (Oct. 6, 2021) (establishing discovery cutoff dates for bellwether cases only).

Moreover, Defendants' proposed bright-line cutoff of general discovery prior to the selection of even a single case for bellwether mediation or trial is counterproductive. The recognized benefits of moving the litigation forward through bellwethers (mediations/early trials)—developing case-specific records that assist with resolution—can easily be paralyzed if the parties believe that every document, witness, or discovery tool must be used beforehand or lost forever.

5. Briefing of Philips's Rule 12(b)(6) Motion to Dismiss Plaintiffs' Third Amended Complaint for Economic Losses.[24]

In connection with the December 14, 2022 Status Conference, the parties submitted detailed position statements (*see* ECF No. 950) regarding whether Plaintiffs' should file their opposition to the non-Respironics Philips Defendants' Rule 12(b)(6) Motion (ECF No. 913) before or after completion of the jurisdictional discovery that the parties agreed was necessary in connection with KPNV's Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. 918) given the overlapping issues in both Motions. After considering the parties' detailed position statements and argument by counsel, the Court issued the following "ruling" from the bench:

> THE COURT: This is what we'll do, okay, you are going to maintain the response to the 12(b)(6) motion. I'll give you [Plaintiffs] your -- there was an opportunity for a reply I believe. I'll give you [Plaintiffs'] a sur-reply that you can raise -- that you'll be able to file after the discovery ends, but for the most part, we'll be done because if there's facts that come out that are not in the complaint, you know, then you are going to have to amend the complaint or you could say this would have been -- you know, this is where that *Iqbal - Twombly* comes in.

See Philips MDL 3014, Dec. 14, 2022 Tr. at 28-30. Neither party raised any objection to that ruling at the Status Conference.

[24] This issue is not germane to the Discovery and Case Management Schedule, but Defendants informed Plaintiffs they intend to address it in their proposal, and for that reason only, Plaintiffs include a response thereto.

Much to Plaintiffs' surprise, the non-Respironics Philips Defendants now request informally that the Court vacate is prior decision and either (1) require Plaintiffs to include in their opposition to the 12(b)(6) motion all facts and arguments related to information gleaned from the jurisdictional discovery that is scheduled to conclude less than one week prior the due date for their response on February 6, 2023, or (2) allow the non-Respironics Philips Defendants a sur-sur-reply brief in support of their Rule 12(b)(6) motion. Plaintiffs see no reason for the Court to vacate its prior ruling in favor Defendants' new position (which is different from the position they took in connection with December Status Conference) simply because they are disappointed in the Court's ruling. Per the Court's Order at ECF No. 768, Plaintiffs' opposition to the Rule 12(b)(6) Motion is due on February 6, 2023, less than one week after jurisdictional discovery is scheduled to conclude with a 30(b)(6) deposition of KPNV in Amsterdam on February 1, 2023, leaving insufficient time for Plaintiffs to make any arguments regarding that discovery in their opposition. Nor does it make sense to do so. As the Court observed, those distinct arguments are best left to a separate sur-reply. Per the Court's instructions at the December Status Conference, Plaintiffs' opposition will make arguments based on the pleadings, and the non-Respironics Philips Defendants can respond in their reply, which is due on March 21, 2023. Plaintiffs propose that they file their sur-reply three weeks after the reply is filed. Plaintiffs submit it is premature for the Court and the parties to evaluate Defendants' alternative request that they be permitted leave to file a sur-sur-reply.

Respectfully Submitted,

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LITIGATION **This Document Relates to:** ***All Actions***	**Master Docket: Misc. No. 21-mc-1230-JFC** **MDL No. 3014**

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APPENDIX “1A”

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY
NEWARK DIVISION

VARIOUS PLAINTIFFS, v. ASTRAZENECA PHARMACEUTICALS LP; and ASTRAZENECA LP, Defendants.	**Civil Action No.: 16-5143(Steven Goodstein)** **Civil Action No.: 17-196 (Gary Savage)** **Civil Action No.: 17-201 (Cheryl Aubrey)** **Civil Action No.: 17-203 (Zenobia Toney)** **Civil Action No.: 17-206 (Susan Stewart)** **Civil Action No.: 17-208 (Dale Scott)** **Civil Action No.: 17-212 (Kimberly Lee)** **Civil Action No: 17-215 (Deborah Wilkerson)** **Civil Action No: 17-217 (Kelly Gutierrez)** **Civil Action No: 17-219 (John Hudson, as Anticipated Personal Representative for the Estate of Helena Hudson)** **Civil Action No: 17-761 (Naomi Massengill)** **Civil Action No: 17-194 (Jon Adkins)** **Civil Action No: 17-198 (Anita Pierre)** **Civil Action No: 17-202 (Diane Gilyard)** **Civil Action No: 17-204 (Vicky Watkins)** **Civil Action No: 17-207 (Clara Graves)** **Civil Action No: 17-211 (Tony Carruthers)** **Civil Action No: 17-213 (Joseph Wilburn)** **Civil Action No: 17-216 (Laura Layton)** **Civil Action No: 17-218 (Misty Hawkins)** **Civil Action No: 17-500 (Freddie Lloyd)**

JOINT STATUS REPORT AND PROPOSED INITIAL DISCOVERY PLAN

Pursuant to Fed. R. Civ. P. 26(f), initial conferences of the parties subject to the above-referenced cause numbers were held on February 22, 2017 and March 15, 2017 with counsel for all parties.

The following initial issues and alternative discovery plans were discussed:

1. Set forth the name of each attorney appearing, the firm name, address and telephone number and facsimile number of each, designating the party represented.

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2. Set forth a brief description of the case, including the causes of action and defenses asserted:

Plaintiffs' description of the cases and causes of action:

The actions before the Court allege that as a result of the ingestion of Nexium, plaintiffs suffered and were diagnosed with kidney injuries including acute interstitial nephritis ("AIN"), acute kidney injury ("AKI"), chronic kidney disease ("CKD"), and renal failure, also known as end-stage renal disease ("ESRD"). Plaintiffs claim that Defendants failed to adequately warn that the ingestion of these prescription and/or over-the- counter drugs could cause irreparable harm to the kidneys, defectively designed and formulated Nexium, and breached the express warranties made about the drugs' safety.

By way of background, Nexium is in a class of medications called Proton Pump Inhibitors ("PPIs"). PPIs are a group of drugs intended to act as hydrogen potassium ATPase ("H+/K+ ATPase") enzyme inhibitor to block the production of gastric acid. PPIs have been widely promoted by the Defendants as an effective drug to be used for the prevention and treatment of gastric acid related conditions including, but not limited to, the following:

- Gastroesophageal Reflux Disease ("GERD");
- NSAID-Associated Gastric Ulcers;
- Duodenal Ulcer Recurrence;
- Pathological Hypersecretory Conditions (i.e. Zollinger-Ellison Syndrome); and
- "Frequent" Heartburn (two or more days a week).

Since their introduction to market in 1989, there have been several scientific studies demonstrating an association between PPI use and the injuries described above, the most recent having been published as late as December of 2016.

In December of 2014, the FDA required that the labels of prescription PPIs be updated to read, in the relevant part:

> Acute interstitial nephritis has been observed in patients taking PPIs including [Brand]. Acute interstitial nephritis may occur at any point during PPI therapy and is generally attributed to an idiopathic hypersensitivity reaction. Discontinue [Brand] if acute interstitial nephritis develops. 1

PPI-induced AIN is difficult to diagnose with patients most commonly complaining of non-specific symptoms such as fatigue, nausea, and weakness. Recent findings published

1 While the term "interstitial nephritis" did appear in the Postmarketing Experience section of the October 2006 Nexium label, it was characterized as being "rarely" reported and was not added to the Warnings and Precautions section of the label until 2014.

in the *Journal of Nephrology* by Dennis Moledina and Mark Perazella of the Yale University School of Medicine suggest that the development of and failure to treat AIN could lead to CKD and ESRD, which requires dialysis or kidney transplant to manage. Evidence from these studies incriminates all commercially-available PPIs, thereby suggesting a class effect.

CKD describes a slow and progressive decline in kidney function where wastes can build to high levels in the blood resulting in numerous, serious complications ranging from nerve damage and heart disease to kidney failure and death. Prompt diagnosis and rapid withdrawal of the offending agent are vital in order to preserve kidney function. While AIN can be treated completely, once it has progressed to CKD it is incurable and can only be managed. This factor, combined with the lack of numerous early-onset symptoms, highlights the need for screening of at-risk individuals. In January of 2016, a study published in the *Journal of the American Medical Association* found that PPI use was independently associated with a 20-50% higher risk of CKD. To date, over-the-counter PPIs lack detailed risk information for AIN while prescription and over-the-counter PPIs lack detailed risk information for AKI, CKD, or ESRD.

Claims Asserted

Many of the complaints in the Nexium cases assert similar causes of action, including: design defect, failure to warn, breach of express warranty, punitive damages, and loss of consortium (as applicable). All of the complaints make very similar factual allegations and, thus, any necessary discovery will arise from common questions of fact.

Specifically, plaintiffs bring the following claims:

1. Product Liability – Defective Design

The design and formulation of Nexium was defective in that the drug was not safe for its intended purpose and that its risks exceeded its benefits. Sold in its defective condition, Nexium was unreasonably dangerous for its intended use as it subjected Plaintiffs to serious and permanent injuries. Nexium was more dangerous than an ordinary consumer would expect and more dangerous than other alternative treatments.

For example, such safer alternative treatments include but are not limited to the use of over-the-counter calcium carbonate remedies tablets that have been available since the 1930s, such as Maalox and Tums, and/or the use of histamine H2-receptor antagonists (also known as H2 blockers) that were developed in the late 1960s. H2 blockers act to prevent the production of stomach acid, and work more quickly than PPI. Examples of H2 blockers are Zantac, Pepcid, and Tagamet.

The design and formulation defects existed before it left the control of the manufacturers. The drug was inadequately tested before being released onto the market, and was then

inadequately labeled for the full extent of its risks and side effects. Feasible alternatives (such as that of H2 receptor antagonists) to the PPI's defective design and formulation could have prevented or reduced the risk of injuries without impairing the function of the product.

2. Product Liability – Failure to Warn

Nexium was defective and unreasonably dangerous before entering the consumer market. The drug's warnings were insufficient to alert physicians and consumers to its dangerous renal risk and side effects. As noted, it was not until December of 2014 that AIN was mentioned in Defendants' Nexium warnings. Even today, there is no warning for the more serious renal injuries of AKI, CKD, or ESRD.

In short, the Defendants failed to provide adequate post-marketing warnings and instructions to consumers, as the Defendants knew or should have known the serious risk of injury associated with the use of the drug, especially given the plethora of studies available supporting such causation.

The Defendants, as manufacturers and distributors, are held to the level of knowledge of experts. They failed to properly warn physicians of increased risks of injuries, and as such, the plaintiffs reasonably relied upon the skill, knowledge, and judgment of Defendants. Each of the plaintiffs used the drug as intended, and had they received adequate warnings regarding the associated risks, each plaintiff would not have used the drug and/or chosen a different treatment.

3. Breach of Express Warranty

The Defendants expressly represented Nexium as safe and fit for intended purposes, that I did not produce dangerous side effects related to renal injury, and was adequately tested. *See, e.g.,* "Heartburn Relief With NEXIUM® (esomeprazole magnesium)", *available at* https://www.purplepill.com/heartburn-relief.html (stating "1 NEXIUM pill a day provides 24-hour relief from persistent heartburn cause by acid reflux disease."). *See also* "NEXIUM Side Effects", archived March 5, 2013 version, *available at* https://web.archive.org/web/20130305232228/http://www.purplepill.com/taking-nexium/side-effects.aspx? (outlining diarrhea and bone fracture risks, but failing to outline any other significant side effects).

Nexium, however, did not conform to these express representations put forth by the Defendants because they carried significant additional renal side effects, as discussed above. At the time of making express warranties, the Defendants knew or reasonably should have known that these representations and warranties were false, misleading, and untrue.

4. Punitive Damages Allegations

The wrongs done by Defendants were aggravated by malice, fraud and negligent disregard for the rights of others, the public, and plaintiffs. Given the wealth of studies available, Defendants were subjectively aware of the risks involved but proceeded to disregard the rights, safety, and welfare of others despite the known renal risks.

Acting for the purpose of enhancing profits, Defendants knowingly failed to remedy the known defects and warn the public. The Defendants willfully proceeded to manufacture, sell, distribute and market Nexium despite the knowledge of safety risks to consumers. Their conduct warrants an award of exemplary and punitive damages to plaintiffs.

Defendants' description of the case and defenses:

Defendants deny all of Plaintiffs' allegations as set forth above and in Plaintiffs' Complaints and contend AstraZeneca is not responsible for the damages alleged.

By way of background, Nexium®, first approved as safe and effective by FDA in 2001, is a branded prescription product of esomeprazole magnesium and is marketed and sold in the United States by AstraZeneca. Nexium® is a proton pump inhibitor ("PPI"), which works by reducing acid in the stomach. Physicians prescribe PPIs like Nexium® as the gold-standard treatment to reduce the risk of stomach ulcers in patients taking non-steroidal anti-inflammatory drugs, to treat patients with helicobacter pylori stomach infections (along with antibiotics) and for the long-term treatment of certain hypersecretory conditions. Nexium® is also used to treat the symptoms of GERD (gastroesophageal reflux disease) and may be prescribed to heal acid-related damage to the lining of the esophagus.

As an initial matter, all but one[2] of the cases ("Resident Plaintiff/s") subject to the Initial Status Conference involve initial jurisdictional and other potentially dispositive issues ("Non-Resident Plaintiffs").[3] As set forth in AstraZeneca's March 9, 2017 letter to the Court and in the proposed schedule below, AstraZeneca intends to file initial motions related to lack of personal jurisdiction, venue and other dispositive pleading deficiencies.

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2 *Goodstein v. AstraZeneca et al.,* Civil Action No: 16-5143 (CCC).

3 The Non-Resident Plaintiffs all allege that they are residents and citizens of states other than New Jersey. The Non-Resident Plaintiffs' residency allegations, lack of allegations of injury in New Jersey, and lack of assertion that their injuries arise from any alleged activities of AstraZeneca in New Jersey do not subject AstraZeneca to specific personal jurisdiction in New Jersey. The Non-Resident Plaintiffs also cannot subject AstraZeneca to general personal jurisdiction in New Jersey because neither AstraZeneca Pharmaceuticals LP nor AstraZeneca LP, two separate Delaware entities, can reasonably be considered "at home" in New Jersey.

While dismissal of the Non-Resident Plaintiffs for lack of personal jurisdiction is appropriate, in the alternative, and at a minimum, the Non-Resident Plaintiffs' claims should be transferred to the appropriate home district under 28 U.S.C. § 1404(a). The Non-Resident Plaintiffs are residents and citizens of states other than New Jersey and indispensable, non-party trial witnesses such as the Non-Resident Plaintiffs' treating and prescribing physicians are presumably located outside of New Jersey and beyond this Court's subpoena power.

However, the parties have discussed, and Plaintiffs' March 10, 2017 letter to the Court advised the Court that they may be willing to voluntarily dismiss the cases lacking personal jurisdiction which would obviate the need for motion practice.

Defendants generally propose a case management and discovery plan in which the initial phase of the litigation is limited to jurisdictional and venue motions, if necessary, pleadings practice, product identification and proof of injury, causation discovery of Defendants, fact discovery of some of the Plaintiffs' claims, and motion practice regarding general causation. Defendants seek a case management mechanism that puts Plaintiffs to some level of proof early in the proceedings, prior to collecting *all* medical records, deposing plaintiffs and healthcare providers, and retaining and deposing extraneous experts for cases that may be meritless. Such an Order will be particularly necessary in this case where the evidence regarding the identity of the product at issue, the circumstances regarding each Plaintiff's alleged ingestion of that product, and evidence demonstrating a causal link between that ingestion and the injuries alleged are basic components of a plaintiff's *prima facie* case.

Defendants anticipate that many of the Plaintiffs will be unable to meet these benchmarks and early discovery of these basic issues will not only assist in reaching the issues as to whether any cases have merit, but in ensuring that the parties do not waste money and resources collecting medical records and litigating those cases which are meritless. Given the length of time PPIs have been on the market, product identification will be a key and potentially dispositive initial issue as AstraZeneca is the only named defendant in the captioned cases. Any Plaintiff surviving (or not subject to) jurisdictional/venue motion practice (if necessary) should be required to initially provide pharmacy record(s) demonstrating proof of ingestion, and medical record(s) demonstrating confirmed *subsequent* diagnosis of injury. Those unable to provide this basic *prima facie* proof should be subject to prompt dismissal before the parties embark upon collection of all medical records and the taking of depositions for that plaintiff. If, in fact, a plaintiff cannot come forward with the basic evidence linking his or her alleged injuries to a defendant's product, causation is not possible and litigation as to other issues of liability and damages would be unnecessary and a waste of the Court's and parties' resources.

Furthermore, each Plaintiff must show that AstraZeneca's alleged failure to warn of alleged adverse effects (generally, renal injuries) was the cause-in-fact of his or her alleged injuries. Plaintiffs here allege a series of different acute and chronic kidney conditions ranging from acute kidney injury ("AKI") to chronic kidney failure ("CKD"). Significantly, AstraZeneca has warned physicians of the possibility of acute interstitial nephritis ("AIN"), a type of AKI, as associated with Nexium® use, since 2006 when interstitial nephritis was added to the Nexium® physician prescribing information. However, as described by the Food and Drug Administration, AIN associated with PPI use is "thought to be an idiosyncratic, hypersensitivity reaction."[4] Moreover, nearly all

4 Letter from Janet Woodcock, M.D., Director, Center for Drug Evaluation and Research, Dep't of Health & Human Services to Sidney M. Wolfe, M.D., Public Citizen, et al. (Oct. 31, 2014).

medications can cause this rare effect.[5] The most common drug-induced causes of AIN are antibiotics and non-steroidal anti-inflammatory drugs (NSAIDs).[6] Accordingly, plaintiffs alleging AKI[7] associated with Nexium® use would need to overcome the adequacy of the 2006 warning, as well as the fact that AIN is an idiosyncratic reaction, and show that their particular AIN was caused by Nexium® use.[8]

To the extent plaintiffs claim that Nexium® use caused chronic kidney function decline, i.e. CKD, the science supporting such a claim is immature and unreliable. Regardless, CKD is a prevalent, multi-factorial disease which affects more than 10 percent of the U.S. population.[9] Its generally-accepted, known causes include hypertension and diabetes among many others.[10] Thus, plaintiffs alleging CKD must overcome the paucity of scientific evidence to establish a duty to warn, as well as to prove general causation. Moreover, each plaintiff will need to demonstrate that his or her disease was drug-induced rather than due to other chronic health condition(s).

Thus, AstraZeneca contends that Plaintiffs will not be able to demonstrate general causation, which would be dispositive of all the cases, or specific causation on an individual Plaintiff basis, regardless of the claimed renal injury. There are numerous known causes for increased risk of the renal injuries alleged, and each Plaintiff will have to rule out these other causes before they could ever demonstrate that Nexium® use was the cause-in-fact of Plaintiff's injury, a burden AstraZeneca contends they will be unable to meet. Summary judgment should be granted in favor of Defendants for any plaintiff unable to show an issue of fact with regard to whether PPIs can cause an injury of the type he or she alleges (general causation).

Additionally, AstraZeneca asserts that Plaintiffs will be unable to establish design defect, manufacturing defect, failure to warn, and/or breach of express warranty under the relevant Product Liability Acts because AstraZeneca's warnings were adequate and/or any lack of warning was not the proximate cause of each Plaintiff's alleged injury.

Defendant also contend that Plaintiffs' claims are insufficiently pled and barred by New Jersey statutory and other applicable law including, but not limited to, statute of

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5 Manuel Praga, et al. *Clinical manifestations and diagnosis of acute interstitial nephritis*, UpToDate, topic last updated Oct. 12, 2016, http://www.uptodate.com/contents/clinical-mainifestions-and-diagnosis-of-acute-interstitial-nephritis (last visited Feb. 23, 2017).

6 *Id.*

7 In addition, all plaintiffs allege that AIN "if left untreated" can lead to CKD. *See, e.g. Savage Compl.* at ¶34. Thus, Plaintiffs appear to concede that their initial alleged injury was AIN and, accordingly, the warning's accuracy and the idiosyncratic nature of AIN would serve as hurdles for this claim as well.

8 Significantly, AIN is not only caused by nearly all medications, but also by chronic autoimmune diseases and many types of infections. Praga, et al., *supra* n.3. Additionally, while AIN can by primary, it can also be secondary to other renal conditions. *Id.*

9 Centers for Disease Control and Prevention (CDC). National Chronic Kidney Disease Fact Sheet: General information and National Estimates of Chronic Kidney Disease in the United States, 2014. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention; 2014.

10 *Id.*

limitations, the learned intermediary doctrine, the doctrine of comparative fault, the relevant portions of the governing Products Liability Acts and the other defenses set forth in AstraZeneca's Answers, which will be raised at the appropriate time.

Because this action involves product liability claims involving prescription pharmaceutical products, extensive medical and scientific discovery will be needed. AstraZeneca's causation-related documents for Nexium® are voluminous; consisting of millions of pages of documents related to causation, medical, scientific, and regulatory issues alone. Consequently, given the particular circumstances of this case, Defendants request that the Court establish a case management plan that incorporates various stages and benchmarks to ensure the most efficient management and progression of the litigation.

Plaintiffs' proposed plan is neither realistic, nor efficient, for governance of these complex, pharmaceutical cases, particularly with respect to their suggestion of litigating the claims of only bellwether plaintiffs of their choosing. Defendants are prepared to discuss in more detail at the Initial Status Conference and respectfully request permission to brief the issues if the Court is inclined to adopt Plaintiffs' proposed plan.

3. No settlement discussions have taken place. No demand has been issued to date.

4. The parties have conferred pursuant to Fed. R. Civ. P. 26(f).

5. The parties have exchanged Initial Disclosures as required by Fed. R. Civ. P. 26(a)(1).

6. The parties have exchanged and are conferring on an electronic discovery order, preservation order, and a protective order to govern the captioned cases pursuant to L. Civ. R. 26.1(d). The parties will continue to confer after the initial Status Conference to ensure compliance with L. Civ. R. 26.1(d) and submit to the Court for entry at an appropriate time.

7. Proposed ALTERNATIVE discovery plans:

The parties anticipate both fact and expert discovery on the liability and damages issues described above. Thus far, the parties have been unable to agree on a discovery plan and schedule. While the parties will continue to confer in hopes of finding areas of agreement, their competing proposals are as follows:

Plaintiffs' Proposed Discovery Schedule

As the Court is aware, Defendants opposed Plaintiffs' petition for an MDL in connection with these cases. Plaintiffs therefore wish to move forward as expeditiously as possible on all issues in the cases before Your Honor, consistent with the discovery available to Plaintiffs under the federal rules. We believe it is necessary to move quickly for the benefit of our clients and that the discovery obtained in these initial cases will be of benefit to other NJ plaintiffs alleging similar claims against Defendants.

1. In each currently filed case, each Plaintiff shall serve Requests for Production and Interrogatories on or before March 24, 2017.

2. Defendants shall begin a rolling production of electronically stored information (ESI) and documents commencing on or before April 24, 2017.

3. Plaintiffs shall provide Defendants with topics for initial 30(b)(6) depositions (e.g., corporate organization, document preservation and retention) on or before March 10, 2017 and these initial depositions shall be completed on or before April 28, 2017.

4. In each currently filed case, Defendants shall serve Requests for Production and Interrogatories on Plaintiffs on or before May 24, 2017.

5. On or before August 3, 2017, two cases, in which Plaintiffs Responses to Interrogatories and Requests for Production have been served on or before July 10, 2017, will be selected by the Plaintiffs for the first two trials in this District. The cases selected shall only have AstraZeneca and/or Proctor and Gamble as the only defendants.

6. On or before December 15, 2017, Defendants must certify a good-faith belief that all ESI and documents requested on or before the Plaintiffs and/or ordered by this Court to be produced have in fact been produced.

7. Any depositions that the parties believe are necessary prior to expert reports being served shall be completed on or before February 28, 2018.

8. Plaintiffs' Rule 26(a)(2) expert reports for all experts for the first two trials shall be served on or before March 23, 2018.

9. Defendants' Rule 26(a)(2) expert reports for all experts for the first two trials shall be served on or before April 23, 2018.

10. On or before April 30, 2018, the Plaintiffs will advise the Defendants as to which of the two previously identified cases they will request that the Court set for the first trial setting and such request to the Court shall be made on May 7, 2018.

11. All expert depositions in both of the identified cases shall take place from April 16, 2018 through June 21, 2018.

12. *Daubert* and all dispositive motions shall be filed on or before June 30, 2018.

13. Oppositions to *Daubert* and any dispositive motions shall be filed on August 9, 2018.

Jury Selection in the first trial shall be November 3, 2018. An Order will be later issued with deadlines for pre-trial exchanges, motions in limine, arguments, pre-trial conferences and the second trial date.

AstraZeneca's Proposed Discovery Schedule

(a) Defendants propose that discovery is needed on the following subjects:

AstraZeneca anticipates both fact and expert discovery on the liability and damages issues in the captioned cases. AstraZeneca proposes initial discovery related to:

- AstraZeneca suggests meeting and conferring about categories for any production by AstraZeneca in lieu of formal discovery requests. Defendants will agree to commence production of documents and information related to product development, clinical/testing, labeling, regulatory history, safety, adverse event reporting, and medical literature ("causation-related documents") after execution and entry by the Court of a mutually agreeable Protective Order governing the confidentiality and production of Documents and an electronically stored information ("ESI") Agreement.

- AstraZeneca suggests that production of prima facie pharmacy records confirming use of Nexium and medical records confirming diagnosis of the injury alleged in the Complaint should occur at the outset of the litigation.

- AstraZeneca suggests use of a Plaintiff Fact Sheet for each Plaintiff and can meet and confer with counsel on the appropriate form.

(b) Discovery should be conducted in phases:

If needed, a proposed briefing schedule with respect to AstraZeneca's jurisdictional, venue and other pleadings practice initial motions is set forth below.

Any Plaintiff surviving (or not subject to) jurisdictional/venue motion practice should be required to provide, within the dates suggested below, pharmacy record(s) demonstrating proof of ingestion, and medical record(s) demonstrating confirmed *subsequent* diagnosis

of injury. Those unable to provide this basic *prima facie* proof should be subject to prompt dismissal.

Failure by Plaintiffs to prove medical causation would be dispositive of each entire action and litigation as to other issues of liability and damages would be unnecessary and a waste of resources. Early resolution of this basic issue promotes judicial economy in the litigation of complex products liability cases such as this. AstraZeneca suggests it would save substantial time and money of the parties and the Court to deviate from a standard scheduling order to front-load the issue of medical causation. Therefore, AstraZeneca proposes a case management plan in which the initial phase of the litigation is limited to causation-related discovery of AstraZeneca, certain fact discovery of Plaintiffs, designation and discovery of Plaintiffs' medical causation-related experts, and motion practice regarding cause-in-fact causation. At the conclusion of Phase One, summary judgment in favor of AstraZeneca is appropriate if Plaintiffs are unable to show an issue of fact with regard to cause-in-fact, *i.e.* whether (1) Nexium® can cause the types of injuries alleged by Plaintiffs (general causation) or (2) Nexium® caused each specific Plaintiff's alleged injuries (specific causation). Alternatively, if any Plaintiffs are able to demonstrate an issue of fact on causation, the parties will meet and confer regarding the timeliness of a settlement conference and/or propose to the Court a Phase Two Scheduling Order to govern the remaining issues through trial.

After execution by the parties and entry by the Court of a mutually agreeable Protective Order and ESI Agreement, AstraZeneca will begin a rolling production of millions of pages related to causation, medical, scientific and regulatory issues. Obviously, Plaintiffs will require sufficient time to review this large production. AstraZeneca recommends production of causation-related documents only during this phase because, in addition to the fact that AstraZeneca has already spent a substantial amount of money on document collection, it is AstraZeneca's position that non-causation sources (*e.g.* promotional/marketing/sales materials) are (1) wholly irrelevant to an analysis of medical causation; and (2) generally irrelevant to the issues in this litigation. In the interest of time and judicial economy, it is rational to postpone any such discovery until after the dispositive issue of causation is resolved. If Plaintiffs are able to establish general and specific causation, the parties and the Court can then discuss what, if any, non-causation documents should be produced. AstraZeneca will continue to meet and confer with Plaintiffs on these issues and the parties should agree to meet and confer in advance of any discovery-related motion practice in this case.

AstraZeneca will begin production of its causation-related documents within 30 days of entry of the Protective Order and ESI Agreement. AstraZeneca will continue to negotiate with Plaintiffs' counsel as to any reasonable request for additional documents and/or sources, and will update the production as needed within the deadlines proposed below.

Contemporaneous with AstraZeneca's document production, the parties will conduct discovery of Plaintiffs. This includes verified responses to an agreed or Court-ordered

Plaintiff Fact Sheet, production/collection of relevant records, and possible deposition discovery of Plaintiffs and any health care providers and/or witnesses deemed to possess information reasonably likely to lead to the discovery of admissible evidence related to medical causation issues. While it may be necessary to gain an understanding of Plaintiffs' alleged damages with an eye towards potential settlement discussions, issue is irrelevant to an analysis of medical causation and thus will be largely deferred until Phase Two. If Plaintiffs are able to establish general and specific causation, discovery of these issues will be addressed in a subsequent (Phase Two) scheduling order.

The deadlines proposed below govern Plaintiffs' designation of causation expert witness(es) and provision of each report, as well as discovery of the designated experts and timing of any summary judgment motion by AstraZeneca addressing causation (and/or any motions to limit or exclude causation experts). AstraZeneca proposes that after briefing is complete on these motions, the Court engage in Daubert and causation hearings as appropriate.

AstraZeneca believes this proposal to front-load causation allows ample time for completion of medical causation-related discovery, culminating in resolution of these issues without expending resources on issues irrelevant to Phase One. If upon motion practice, the Court determines that Plaintiffs are unable to show an issue of fact with regard to causation, judgment in favor of AstraZeneca would be appropriate. Alternatively, if AstraZeneca's motions are denied or AstraZeneca deems causation motion practice unwarranted, AstraZeneca proposes that the parties meet and confer regarding the timeliness of a settlement conference and propose to the Court a Phase Two Scheduling Order to govern the remaining issues through trial. AstraZeneca requests that any case management order recognize that, by filing a causation summary judgment motion in Phase One, Defendants do not waive the ability to file a separate summary judgment motion, in Phase Two, on other issues relating to liability and/or damages.

(c) Proposed schedule: [**Note to Court: AstraZeneca has intentionally not provided specific dates for some of the deadlines, desiring first to discuss the overall approach with the Court and counsel at the March 20, 2017 Status Conference to agree upon an acceptable timeframe.]**

1. Fed. R. Civ. P. 26 Disclosures: **March 24, 2017**

2. Briefing Schedule on AstraZeneca's initial dispositive, jurisdictional and venue motions for Non-Resident Plaintiffs (if necessary):

   AstraZeneca's opening briefs: _____

   Plaintiffs' Responses: _____

AstraZeneca's Replies: _____

3. Resident Plaintiffs to provide 1) pharmacy records demonstrating proof of AstraZeneca product alleged in Complaint and 2) medical record demonstrating diagnosis of injury alleged in Complaint *subsequent* to use of AstraZeneca product: _____

4. For any Resident Plaintiff who is unable to provide the initial prima facie records set forth in Section 7. (c) 3 above, AstraZeneca will advise Plaintiff's counsel in writing of any deficiencies within **10 days**. The parties will have **7 days** to meet/confer regarding the deficiencies. If Plaintiff is unable to cure the deficiencies, Plaintiff's counsel shall dismiss the case without prejudice. If Plaintiff does not dismiss the offending case, AstraZeneca can raise the matter with the Court for dismissal under this provision.

5. Deadline to file Agreed Plaintiff Fact Sheet (or, if the parties cannot agree, to submit competing proposals):_____

6. Resident Plaintiffs must serve a completed, signed Plaintiff Fact Sheet within **45 days** of the Court's entry of an approved Plaintiff Fact Sheet.

7. Should the Court deny AstraZeneca's initial dispositive, jurisdictional and venue motions with respect to the Non-Resident Plaintiffs (if such motion practice is necessary), Non-resident Plaintiffs must comply with the provisions of Section 7. (c) 3, 4 and 6 **within 45 days** of the Court's denial. If the Court has not yet entered an approved Plaintiff Fact Sheet, Plaintiffs must comply with Section 7. (c) 3 and 4, but shall otherwise have **45 days** after the Court's entry of an approved Plaintiff Fact Sheet to serve the completed, signed Plaintiff Fact Sheet upon counsel for AstraZeneca.

8. Within **30 days** of the entry of a Protective Order/ESI Agreement, AstraZeneca shall begin a rolling production of safety, regulatory and causation-related documents.

9. Deadline for Plaintiffs to meet/confer with AstraZeneca counsel on any supplemental causation-related productions:_____

10. Close of causation-related discovery of AstraZeneca:_____

11. Plaintiffs must designate cause-in-fact causation experts, if any, and provide expert reports for each as governed by FED.R.CIV.P. 26: _____

12. Deadline for AstraZeneca to file summary judgment motion addressing causation (and/or motions to limit or exclude Plaintiffs' causation experts, if any):_____

13. If AstraZeneca is unsuccessful on summary judgment with respect to any of the Plaintiffs, the parties will meet and confer and provide a phase two scheduling order within **30 days** of the Court's order(s) on summary judgment.

Report dated: March 15, 2017

Respectfully Submitted,

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APPENDIX “1B”

UNITED STATES DISTRICT COURT OF NEW JERSEY
NEWARK DIVISION

VARIOUS PLAINTIFFS, v. ASTRAZENECA PHARMACEUTICALS LP and ASTRAZENECA LP, Defendants	Civil Action No. 16-5143 (Goodstein) Civil Action No. 16-8121 (Boyd) Civil Action No. 16-8895 (Hunter) Civil Action No: 17-194 (Adkins) Civil Action No: 17-196 (Savage) Civil Action No: 17-198 (Pierre) Civil Action No: 17-201 (Aubrey) Civil Action No: 17-202 (Gilyard) Civil Action No: 17·203 (Toney) Civil Action No: 17-204 (Watkins) Civil Action No: 17-206 (Stewart) Civil Action No; 17-207 (Graves) Civil Action No: 17-208 (Scott) Civil Action No: 17-211 (Carruthers) Civil Action No: 17-212 (Lee) Civil Action No: 17-213 (Wilburn) Civil Action No: 17-215 (Wilkerson) Civil Action No: 17-216 (Layton) Civil Action No: 17-217 (Gutierrez) Civil Action No: 17-218 (Hawkins) Civil Action No; 17-219 (Hudson) Civil Action No: 17-500 (Lloyd) Civil Action No: 17-761 (Massengill) Civil Action No. 17-1207 (Garrison) Civil Action No. 17-1413 (Elliott) Civil Action No. 17-1606 (Jay) Civil Action No. 17-1870 (Muse) Civil Action No. 17-2098 (Jones) Civil Action No. 17-2465 (DeVito) Civil Action No. 17-2475 (Foster) Civil Action No. 17-2567 (Luzzo) Civil Action No. 17-2597 (Starks)

JOINT STATUS REPORT AND PROPOSED AGENDA

As instructed by the Court at our last meeting and in anticipation of the upcoming April 24, 2017 conference, the parties respectfully submit this Joint Status Report and Proposed Agenda. Since the last conference, the parties have met and conferred on numerous occasions,

both in-person and via telephone. While some progress has been made with respect to plaintiffs' informal discovery requests and a proposed confidentiality order, there remains significant disagreement on a pre-trial schedule/discovery plan. This dispute has in turn impacted our ability to reach consensus on the proper scope of discovery and a related ESI order.

The primary area of difference is Defendants' proposal to limit discovery to "causation related" documents and information, and consequently, to phase the pre-trial schedule to address causation issues first. By contrast, Plaintiffs seek discovery on all liability issues and are opposed to any phasing of the pre-trial schedule. While there are other differences in our proposals, we believe that resolution of this primary issue will make it easier for the parties to reach agreement on any remaining disagreements. The parties therefore, are seeking the Court's assistance in resolving this issue at the next status conference. To that end, the parties have annexed their proposed pre-trial schedules hereto as Exhibits A and B, and will be prepared to address our positions at the April 24, 2017 conference.

The parties continue to meet and confer on a proposed confidentiality order and expect we will be in a position to present an agreed-to order at the next conference or will have significantly narrowed any areas of disagreement at that time.

Accordingly, the parties propose the following Agenda for the next status conference:

Agenda

1. Update on case filings and activity in other jurisdictions
2. Briefing Schedule for Motions Related to Lack of Personal Jurisdiction
3. Pretrial Schedule/Discovery Plan
4. Status of other initial orders:
    a. Protective Order Relating to Confidential Information
    b. Preservation Order
    c. ESI Order

5. Status of Document Production.

The parties look forward to discussing these issues further with the Court at the upcoming conference.

Report dated: April 21, 2017

Respectfully submitted,

Attorneys for Various Plaintiffs

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EXHIBIT A

PLAINTIFFS' PROPOSED PRE-TRIAL SCHEDULE/DISCOVERY PLAN

As the Court is aware, Defendants opposed Plaintiffs' petition for an MDL in connection with these cases. Plaintiffs therefore wish to move forward as expeditiously as possible on all issues in the cases before Your Honor and consistent with the discovery afforded Plaintiffs under the federal rules. Plaintiffs believe that limiting discovery to "causation-only" evidence and phasing the schedule to address causation issues up front is inefficient and greatly prejudices Plaintiffs. Such a schedule seems particularly wasteful when there is a growing body of medical literature that supports causation and past regulatory action requiring Defendants to warn of one of injuries alleged by Plaintiffs.

Given the length of time that PPIs have been on the market, including Nexium and Prilosec (another PPI developed by Defendants), Plaintiffs anticipate there will be a voluminous number of relevant documents in possession of Defendants. Thus, Plaintiffs have proposed the use of technology-assisted review ("TAR") to identify those documents most relevant to the issues in these cases. The use of TAR will limit the scope of custodians and documents that will need to be produced.

Plaintiffs' proposed the following pre-trial schedule and will be prepared to discuss our position in detail at the April 24, 2017 conference:

1. Plaintiffs informally provided Defendants with an initial set of document requests on March 24, 2017. Since then, the parties have met and conferred on said requests, as well as materials already gathered by Defendants in a prior litigation. The parties shall continue to meet and confer on discovery and shall promptly bring any disagreements to the Court for resolution, if needed.

2. The parties have been negotiating initial orders, including a Protective Order, Preservation Order, and ESI Order. The parties shall continue to confer on these initial orders and present their joint proposals, or alternatively, any differences to be resolved, to the Court by **May 8, 2017**.

3. Defendants shall begin a rolling production of electronically stored information (ESI) and documents commencing on or before **May 15, 2017**.

4. Plaintiffs shall provide Defendants with topics for initial 30(b)(6) depositions (e.g., corporate organization, document preservation and retention) on or before **May 10, 2017** and these initial depositions shall be completed on or before **June 14, 2017**.

5. In each currently filed case, Defendants shall serve Requests for Production and Interrogatories on Plaintiffs on or before **June 28, 2017**.

6. By **October 1, 2017**, the parties shall make their recommendations to the Court, as to which of the cases should be included in the first trial setting. The parties shall confer on a separate order detailing discovery for those cases.

7. On or before **February 1, 2018**, Defendants must certify a good-faith belief that all ESI and documents requested on or before the Plaintiffs and/or ordered by this Court to be produced have in fact been produced.

8. Any depositions that the parties believe are necessary prior to expert reports being served shall be completed on or before **March 30, 2018**.

9. Plaintiffs' Rule 26(a)(2) expert reports for all experts for the first trial setting shall be served on or before **May 14, 2018**.

10. Defendants' Rule 26(a)(2) expert reports for all experts for the first trial setting shall be served on or before **June 14, 2018**.

11. On or before **June 28, 2018**, the parties shall advise the Court as to which of the trial pool cases they request be included in the first trial setting. The Court shall make its selection by and such request to the Court shall be made **July 6, 2018**.

12. All expert depositions in both of the identified cases shall take place from **July 9, 2018 through September 14, 2018**.

13. *Daubert* and all dispositive motions shall be filed on or before **September 28, 2018**.

14. Oppositions to *Daubert* and any dispositive motions shall be filed on **October 30, 2018**.

15. Jury Selection in the first trial shall be **January 7, 2019**. An Order will be later issued with deadlines for pre-trial exchanges, motions in limine, arguments, pre-trial conferences and the second trial date.

EXHIBIT B

ASTRAZENECA'S PROPOSED PRE-TRIAL SCHEDULE/DISCOVERY PLAN

AstraZeneca requests the opportunity to discuss these issues at the upcoming conference rather than brief and argue fully herein. [1]

Generally, in light of the limitations in the evidence on which Plaintiffs base their claims, Defendants propose a case management and discovery plan in which the initial phase of the litigation is focused on general and specific medical causation and production of certain regulatory information from Defendants. Defendants propose that the parties engage in: (1) case-specific plaintiff discovery pertaining to product identification, proof of injury, and medical causation; (2) jurisdictional/venue motion practice; (3) discovery of Defendants relating to general medical causation; (4) discovery of Defendants relating to certain regulatory information; and (5) motion practice regarding general causation, while deferring discovery regarding other aspects of liability. Early discovery of these basic issues, particularly causation, will not only assist in reaching the issues as to whether the case has merit, but in ensuring that the parties do not waste money and resources litigating extraneous issues.

Moreover, at the outset, each Plaintiff should be required to provide pharmacy record(s) demonstrating proof of ingestion and medical record(s) demonstrating confirmed *subsequent* diagnosis of the injury alleged. If a particular Plaintiff is unable to provide this basic *prima facie* showing, the Plaintiff's claims should be subject to prompt dismissal against the appropriate defendant(s) before the parties embark upon further discovery. If a *prima facie* showing of injury and ingestion is established, the Plaintiffs' other medical records will also be relevant, because, for example, (as is discussed above) there are numerous other known and common causes of kidney disease.

Finally, as set forth in AstraZeneca's March 9, 2017 letter to the Court, AstraZeneca intends to file initial motions related to lack of personal jurisdiction and other dispositive pleading deficiencies, as Defendants have only just learned that Plaintiffs are no longer willing to voluntarily dismiss the cases lacking personal jurisdiction.

1. Fed. R. Civ. P. 26 Disclosures: The parties agree to file Initial Disclosures within **30 days** of the Court's entry of a Scheduling Order.

2. The parties have been negotiating initial orders, including a Protective Order and ESI Order. The parties shall continue to confer on these initial orders and present their joint proposals, or alternatively, any differences to be resolved, to the Court by **May 8, 2017**.

3. Briefing Schedule on AstraZeneca's initial dispositive, jurisdictional and venue motions for Non-Resident Plaintiffs:

[1] If the Court is not inclined to grant bifurcated discovery, the proposed deadlines herein will need to be adjusted to allow sufficient time for Plaintiffs to serve Requests for Production of Documents on additional issues, for Defendants to object/respond to those Requests, and for Defendants to produce responsive documents and potentially for additional testimony to be taken from Defendants' witnesses.

AstraZeneca's opening briefs: May 22, 2017

Plaintiffs' Responses: June 1, 2017

AstraZeneca's Replies: June 8, 2017

4. **By May 19, 2017**, each Plaintiff will provide 1) pharmacy records demonstrating proof of use of prescription PPI(s) and/or other documents demonstrating proof of purchase of OTC PPI(s) alleged in Complaint and 2) medical records demonstrating diagnosis of injury alleged in Complaint *subsequent* to use of PPI(s) alleged in Complaint.

5. If a Plaintiff is unable to provide the initial prima facie records set forth in Section 2 above, Defendant(s) will advise Plaintiff's counsel in writing of any deficiencies within **10 days**. The parties will have **7 days** to meet/confer regarding the deficiencies. If Plaintiff is unable to cure the deficiencies, Plaintiff's counsel shall dismiss the case without prejudice. If Plaintiff does not dismiss the offending case, Defendants can raise the matter with the Court for dismissal under this provision.

6. Deadline to file Agreed Plaintiff Fact Sheet (or, if the parties cannot agree, to submit competing proposals): **July 17, 2017**.

7. Plaintiff must serve a completed, signed Plaintiff Fact Sheet within **45 days** of the Court's entry of an approved Plaintiff Fact Sheet.

8. Deadline to file any Rule 12 motion regarding the adequacy of a Complaint: later of July 10, 2017 or 90 days from date of Service.

9. Within **60 days** of the Court's entry of a Protective Order and ESI Order, Defendants will endeavor to begin a rolling production of certain regulatory and medical causation-related documents.[2]

10. Should Plaintiffs seek production of additional regulatory or medical causation–related documents beyond what has been produced, Plaintiffs shall meet/confer with Defendants' counsel regarding such reasonably requested supplemental regulatory or medical causation-related productions no later than: **January 29, 2018**.

11. Defendants shall complete such supplemental productions of documents for the first phase of discovery: **April 2, 2018**.

12. Close of discovery of Defendants related to the first phase: **May 31, 2018**.

13. Plaintiff must designate cause-in-fact causation experts, if any, and provide expert reports for each as governed by FED.R.CIV.P. 26 on or before **July 27, 2018**.

14. Depositions of Plaintiffs' experts shall be completed by **September 21, 2018**.

[2] Within 30 days of the Court's entry of a Protective Order and ESI Agreement, AstraZeneca will commence production of previously produced causation-related documents sought by Plaintiffs.

15. Defendants' causation expert reports, if any, shall be served on or before **October 12, 2018**.

16. Depositions of Defendants' experts shall be completed by **November 23, 2018**.

17. Deadline for Defendants to file summary judgment motion addressing causation (and/or motions to limit or exclude Plaintiffs' causation experts, if any): **January 25, 2019**.

18. If Defendants are unsuccessful on summary judgment, the parties will meet and confer and provide a phase two scheduling order within **30 days** of the Court's order(s) on summary judgment, including a proposed trial date.

APPENDIX “1C”

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION

VARIOUS PLAINTIFFS, *et al.*

Plaintiffs,

vs.

ASTRAZENECA PHARMACEUTICALS LP, *et al.*,

Defendants.

Civil Action No: 16-05143	Civil Action No: 17-02465
Civil Action No: 16-08121	Civil Action No: 17-02475
Civil Action No: 17-00194	Civil Action No: 17-02597
Civil Action No: 17-00196	Civil Action No: 17-02700
Civil Action No: 17-00198	Civil Action No: 17-02744
Civil Action No: 17-00201	Civil Action No: 17-02999
Civil Action No: 17-00202	Civil Action No: 17-03056
Civil Action No: 17-00203	Civil Action No: 17-03191
Civil Action No: 17-00204	Civil Action No: 17-03192
Civil Action No: 17-00206	Civil Action No: 17-03193
Civil Action No: 17-00207	Civil Action No: 17-03197
Civil Action No: 17-00208	Civil Action No: 17-03200
Civil Action No: 17-00211	Civil Action No: 17-03204
Civil Action No: 17-00212	Civil Action No: 17-03207
Civil Action No: 17-00213	Civil Action No: 17-03209
Civil Action No: 17-00215	Civil Action No: 17-03210
Civil Action No: 17-00216	Civil Action No: 17-03211
Civil Action No: 17-00217	Civil Action No: 17-03265
Civil Action No: 17-00218	Civil Action No: 17-03302
Civil Action No: 17-00219	Civil Action No: 17-03316
Civil Action No: 17-00500	Civil Action No: 17-03343
Civil Action No: 17-00761	Civil Action No: 17-03346
Civil Action No: 17-01207	Civil Action No: 17-03365
Civil Action No: 17-01413	Civil Action No: 17-03366
Civil Action No: 17-01606	Civil Action No: 17-03461
Civil Action No: 17-01870	Civil Action No: 17-03467
Civil Action No: 17-02098	

CASE MANAGEMENT ORDER NO. 1 (SCHEDULING)

1. Plaintiffs have informally provided Defendants with an initial set of document requests. The parties have met and conferred on said requests, as well as materials already gathered by Defendants in a prior litigation. The parties shall continue to meet and confer on discovery and shall promptly bring any disagreements to the Court for resolution, if needed.

2. The parties shall exchange proposals for a Plaintiff Fact Sheet, a Defense Fact Sheet, and a Privilege Log Order by May 26, 2017. The parties shall make a joint submission to the Court by June 15, 2017 of the agreed-to proposals or competing proposed documents if no agreement can be reached, as well as an agreed-to, or competing proposals for, an Enabling Order governing the Plaintiff and Defense Fact Sheets. To the extent the parties do not fully agree on any of the documents, the parties shall submit to the Court a joint letter explaining the parties' differences.

3. Defendants shall begin a rolling production of electronically stored information (ESI) and documents commencing within **30 days** of the entry of an ESI Order and Protective Order in this matter.

4. Plaintiffs shall provide Defendants with topics for initial 30(b)(6) depositions (corporate organization, document preservation and retention) on or before **June 1, 2017** and these initial depositions shall be completed on or before **September 1, 2017**.

5. By **October 1, 2017**, the parties shall make their recommendations to the Court as to the number and identity of the cases which should be included in the first trial pool ("first trial pool cases"). The parties shall confer on a separate order detailing additional discovery needed for those cases.

6. Plaintiffs' counsel shall meet and confer with Defendants' counsel regarding the status of any outstanding discovery requests and the need for any supplemental productions no later than **December 1, 2017**.

7. On or before **March 15, 2018**, Defendants must certify a good-faith belief that all ESI and documents requested by the Plaintiffs and/or ordered by this Court to be produced have in fact been produced consistent with their obligations under Federal Rules.

8. Any depositions that the parties believe are necessary for the first trial pool cases prior to expert reports being served shall be completed on or before **March 30, 2018**.

9. Plaintiffs' Rule 26(a)(2) expert reports for all experts for the first trial pool cases shall be served on or before **May 14, 2018**.

10. Defendants' Rule 26(a)(2) expert reports for all experts for the first trial pool cases shall be served on or before **June 14, 2018**.

11. On or before **June 18, 2018**, the parties shall advise the Court as to which of the first trial pool cases they request be included in the first trial setting. The Court shall make its selection by **July 6, 2018**.

12. All expert depositions in the first trial pool cases shall take place from **July 9, 2018 through September 14, 2018**.

13. *Daubert* and all dispositive motions relating to the first trial pool cases shall be filed on or before **September 28, 2018**.

14. Oppositions to *Daubert* and any dispositive motions shall be filed on **October 30, 2018**.

15. Replies in support of *Daubert* and any dispositive motions shall be filed on or before **November 20, 2018**.

16. Jury Selection in the first trial shall be **January 7, 2019**. An Order will be later issued with deadlines for pre-trial exchanges, motions in limine, arguments, pre-trial conferences and the second trial date.

Hon. Claire C. Cecchi, U.S.D.J.

Dated: May 25, 2017

APPENDIX “2A”

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TONY R. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

IN RE ACTOS (PIOGLITAZONE-PRODUCTS LIABILITY LITIGATION This Document Applies to All Cases	6-11-md-2299 JUDGE DOHERTY MAGISTRATE JUDGE HANNA

SCHEDULING ORDER

This Court, having considered the scope of these proceedings, the number of plaintiffs (both current and anticipated), the amount of discovery that will be required, and the time necessary to complete pre-trial preparations and commence bellwether trials, hereby establishes the following deadline targets.

NOTICE: All parties should be aware that, should any of this Court's assumptions be proven substantially in error, ***this Order is subject to amendment, with deadlines possibly being moved either earlier or later.***

1. In light of the discovery plans approved to date, and in anticipation of the entry of a discovery protocol, the parties in all cases in this proceeding are relieved from complying with the requirements of Federal Rule of Civil Procedure 26(a) and (f) at this time. However, once the discovery pool has been selected by the parties, Rule 26(f) Reports will be required for those cases selected for inclusion in the Discovery Pool.

2. **July 16, 2012** – Defendants shall provide to the Special Masters and PSC an ***estimate as to the number of documents they can produce by June 3, 2013*** assuming a diligent document review process.

3. **August 13, 2012** – The parties shall submit to the Court, through the Special Master(s), a joint draft ***Discovery Protocol***.

4. **October 31, 2012** – The Court shall issue an order describing the ***Bellwether Trial Protocol***.

5. **June 3, 2013** - Defendants' counsel shall ***certify*** that they have engaged in best efforts to identify, locate and supply all responsive Electronically Stored Information and document production discovery requested by the Plaintiffs' Steering Committee.[1]

6. **June 3, 2013** - The parties shall each select 20 cases ("***Discovery Pool***") from the eligible pool of cases.[2]

7. **June 10, 2013** – Defendants shall notify the PSC of any selected Discovery Pool case in which Defendants assert there is ***missing essential preliminary discovery*** in the PFS form and authorizations, that impairs the parties' ability to proceed with case-specific discovery in the particular case. ***The parties shall make a good faith effort to resolve any such issue or present any outstanding disputes to the Court within 14 days thereafter.***

8. **July 1, 2013** – The parties shall produce to the Court a ***Rule 26(f) Report*** on each Discovery Pool case, using the form that will be adapted for these proceedings.

9. **1st day of each month thereafter, until the Pre-Trial Order is filed** – The parties shall exchange updated ***witness and exhibit lists***. No witness or exhibit may be added without leave of Court once the fact discovery deadline has passed (except for experts identified, and reports produced, in accordance with this order); however, witnesses and exhibits may be removed up through submission of the Pre-Trial Order.

10. **September 30, 2013** - The parties shall complete ***core discovery***[3] in Discovery Pool cases.

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[1] All subsequent target pretrial deadlines in this Order presume that the Defendants can comply with this June 3, 2013 deadline. Defendants' ability to comply with this deadline will be reassessed by the Court, through the Special Master(s), periodically, including in approximately two months, following receipt of Defendants' estimate as to the number of documents they can produce by June 3, 2013, commencement of the "Search Methodology Proof of Concept" set forth in Section E of the Protocol Relating to the Production of Electronically Stored Information, and after resolution of any scope of discovery issues that remain outstanding.

[2] Cases shall be considered eligible for selection to the Discovery Pool if filed, served, and a Plaintiff's Fact Sheet and properly executed authorizations have been served upon Defendants by December 30, 2012. In determining the size of the Discovery Pool, the parties have agreed that any cases dismissed after selection to the Discovery Pool will not be replaced.

[3] Core Discovery by the parties shall include depositions of the plaintiff(s), the prescribing doctor(s) and treating doctor(s), and two additional depositions per side. In the event any party seeks depositions beyond these case-specific fact witnesses in an individual plaintiff's case, agreement (in writing) must be obtained or, if no agreement can be obtained after a good faith attempt, leave of Court may be sought.

11. **October 1, 2013** – The Court shall establish a ***schedule of deadlines*** for ***dispositive motions*** presenting legal challenges only, emanating from those cases selected for inclusion in the Discovery Pool.

12. **October 16, 2013** – The ***selection of bellwether trial cases*** and ***sequence of trials*** shall be ***set***.[4]

13. **October 30, 2013** – Deadline for filing ***amendments*** to pleadings in selected bellwether cases. This deadline is designed to permit the parties to clarify the pleadings; any attempt to add new parties to this action, or to introduce new issues, at this stage of the proceedings will bear the presumption of denial.

14. **December 2, 2013** – Plaintiffs shall complete ***Defendant depositions*** and Non-Case-Specific ***Third Party discovery*** and depositions in the first bellwether case in a manner consistent with the Discovery Protocol.

15. **December 18, 2013** – The parties shall complete ***case-specific fact discovery*** in the first bellwether trial case.

16. **January 31, 2014** - ***Plaintiffs*** shall designate and serve reports for ***generic experts*** and ***case-specific*** experts in the first bellwether trial case. Depositions of Plaintiffs' generic experts shall occur before depositions of Defendants' disclosed experts within the same discipline.[5]

17. **March 4, 2014** - ***Defendants*** shall designate and serve reports for ***generic experts*** and ***case-specific*** experts in the first bellwether trial case.[6]

18. **March 11, 2014** - Commencement of ***expert depositions in the first bellwether case***.

19. **April 1, 2014** - The parties shall exchange ***deposition excerpt designations***, to be used in lieu of live testimony, in the first bellwether trial case.[7]

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[4] The parties shall submit a proposed order setting forth their agreed-upon process for handling bellwether trial pool cases or, if they cannot agree, shall provide their competing submissions to the Court and Special Masters by a date to be subsequently determined.

[5] The parties in good faith will schedule depositions of their experts within a reasonable amount of time after serving the experts' reports.

[6] The Court will determine what, if any, process (in addition to motion practice) might be employed to evaluate the parties' experts and the opinions offered.

[7] New excerpt designations are allowed for any deposition that has not occurred as of this date. Supplementation of excerpt designations is allowed in response to information developed in connection with taking,

20. **May 15, 2014** – The parties shall exchange ***objections to deposition excerpt designations*** and exchange ***counter-deposition designations*** in the first bellwether trial case.

21. **May 22, 2014** - Completion of ***expert depositions in the first bellwether case***.

22. **June 5, 2014** – The parties shall exchange ***objections to counter-deposition designations*** in the first bellwether trial case.

23. **June 13, 2014** – The parties shall ***brief their objections to deposition excerpt designations***. Copies of all relevant excerpts – tabbed for the Court's ease of reference – shall be attached. The parties are expected to engage in good faith negotiations to resolve as many objections as possible prior to this filing.

24. **June 19, 2014** - The parties shall serve on opposing counsel, the Court, and the Special Master(s) ***Daubert motions*** and s***ummary judgment*** motions in the first bellwether trial case.[8] The parties are advised to review, and comply with, the Local Rules of the Western District of Louisiana as they apply to summary judgment motions and supporting documents.

25. **July 10, 2014** - The parties shall serve on opposing counsel, the Court, and the Special Master(s) ***motions in limine*** in the first bellwether trial case.[9]

26. **July 14 - 18, 2014** – ***Oral argument*** on deposition excerpt designations, if required by the Court.

27. **July 24, 2014** – The parties shall serve on opposing counsel, the Court, and the Special Master(s) ***oppositions*** to ***Daubert*** and s***ummary judgment*** motions, if any, in the first bellwether trial case.

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or preparing for, expert depositions. However, this excerpt designation process must be completed in a manner to allow the parties to reasonably comply with the June 13, 2014 deadline. noted in Paragraph 23.

[8] All motions containing confidential or privileged information shall **not** be filed with the Clerk of the Court until any confidentiality issues are resolved. However, opposing counsel, the Court, and the designated Deputy Special Master shall be provided courtesy copies of any such filings no later than the deadlines established herein.

[9] Should oral argument be requested as to any given motion, and should that request be granted as to any given motion, oral argument will take place in September 2014 at a time designated by the Court..

28. **August 5, 2014** – The parties shall serve on opposing counsel, the Court, and the Special Master(s) ***replies*** to ***Daubert*** and ***summary judgment*** motions, if any, in the first bellwether trial case.[10]

29. **August 11, 2014** - The parties shall serve on opposing counsel, the Court, and the Special Master(s) ***oppositions*** to ***motions in limine*** in the first bellwether trial case.

30. **August 18, 2014** - The parties shall serve on opposing counsel, the Court, and the Special Master(s) ***replies*** to ***motions in limine*** in the first bellwether trial case.

31. **September 24, 2014** – ***Plaintiffs*** shall submit to Defendants ***inserts*** for pre-trial order, voir dire, jury interrogatories, and jury instructions.

32. **October 1, 2014** – ***Defendants*** shall submit to Plaintiffs ***inserts*** for pre-trial order, voir dire, jury interrogatories, and jury instructions.

33. **October 2 – 7, 2014** – Counsel for the parties shall ***confer*** to create the Pre-Trial Order, joint jury instructions, joint jury instructions, and proposed voir dire requests.

34. **October 8, 2014** – The parties shall file the ***Pre-trial Order***, together with proposed ***voir dire*** requests, ***joint jury interrogatories***, and ***joint jury instructions***.

35. **October 22, 2014, 10:00 a.m.** – ***Pre-Trial Conference*** for the first bellwether case.[11]

36. **October 24, 2014** – ***Glossary*** of Real Time terms.

37. **October 24, 2014** – Final ***exchange of exhibits.***

38. **October 27, 2014** – Parties to produce ***bench books*** to the Court.

39. **November 3, 2014** - ***Trial*** of the first bellwether case.

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[10] The parties shall have 21 days following service of all reply briefs, referenced herein, to resolve any matters concerning privilege or confidentiality pursuant to paragraph 10 of the Protective Order (*i.e.*, Case Management Order: Protecting the Confidentiality of Discovery Materials).

[11] This Court's pre-trial conferences are extensive and address both substantive and procedural issues at length. Counsel should expect that the pre-trial conference will be lengthy, and make their plans accordingly.

40. **January 12, 2015** – ***Trial*** of the second bellwether case.

SO ORDERED, this 13 **day of** July, **2012.**

REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

APPENDIX “2B”

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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

IN RE ACTOS (PIOGLITAZONE) PRODUCTS LIABILITY LITIGATION	MDL No. 6:11-md-2299
	JUDGE DOHERTY
This Document Applies to: All Cases	MAGISTRATE JUDGE HANNA

CASE MANAGEMENT ORDER: DISCOVERY PROTOCOL

This Court and counsel have been working on crafting the instant order for several months. The evolution of these proceedings, including changes due to the filing of a substantial number of state court actions, discovery proceedings in those matters, and the fact that a number of trials have been set around the nation, have made it advisable for this Court to delay completion, signing, and implementation of this order. However, as these proceedings have now arrived at an appropriate point for full discovery to proceed, this Court enters the current discovery protocol. Should further evolution in these proceedings require amendment of this order, this Court will entertain requests for such amendments, and issue the appropriate changes as deemed appropriate.

I. SCOPE OF ORDER

A. Order Applicable to All Cases in MDL Proceedings.

This Order shall apply to all cases currently pending in MDL No. 2299 and to all related actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned hereto as "MDL" cases (collectively, "the MDL proceedings"). This Order is binding on all parties and their counsel in all cases currently pending or subsequently made part of these

proceedings and shall govern each case in these MDL proceedings. This Order shall apply to all discovery conducted by the Plaintiffs' Steering Committee ("PSC") on behalf of all Plaintiffs (including any committees or sub-committees specifically authorized by the PSC to conduct such discovery), as well as all discovery conducted by Defendants.

B. Parties.

For the purpose of this Order, the term "Plaintiffs' Counsel" or "the PSC" shall be used to refer to the Plaintiffs' Co-Lead Counsel or their designee. The term "State Plaintiffs' Counsel" shall refer to counsel representing plaintiffs in one or more state case actions involving Actos® related product liability claims. The term "Defendants' Counsel" shall be used to refer to the Defendants' Lead Counsel or her designee in the MDL. The term "Involved Counsel" shall refer to those attorneys participating in a particular discovery pursuit who may include Plaintiffs' Counsel or their designee; State Plaintiffs' Counsel or their designee; or Defendants' Counsel or her designee.

II. COORDINATION WITH OTHER LITIGATIONS

A. Coordination to Extent Practicable.

Plaintiffs' Counsel and Defendants' Counsel in these MDL proceedings, and all other counsel designated by the Court in prior or subsequent Case Management Orders, shall work to coordinate to the extent practicable the conduct of this litigation with other product liability actions involving Actos pending in any State Court. Such coordination is intended to conserve scarce judicial resources, eliminate duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. To the extent that any discovery generated in the MDL proceedings were to be used in any state court proceedings by agreement, this Court's Case Management Order: Protecting the Confidentiality of Discovery Materials entered by this Court on July 30, 2012 (hereinafter "Protective Order") shall apply.

B. Intent to Coordinate with State Courts.

In order to achieve the full benefits of this MDL proceeding, this Court has and will continue to encourage coordination with State Courts presiding over related cases, to the extent such State Courts so desire, up to and including issuance of any joint orders that might allow full cooperation as between and among the courts and the parties. As the Court indicated at the initial case management conference, and has been reiterated thereafter, this Court intends to work actively to reach out to any State Court that is interested in coordinating discovery activities. The Court expects counsel for parties in the MDL proceeding to help ensure that such coordination is achieved wherever it is practicable and desired by a given state court or courts.

III. WRITTEN FACT DISCOVERY

A. General Written Discovery

1. General Discovery Directed to Takeda Entities and Eli Lilly

All generic (non-case-specific) discovery propounded to the Takeda Entities, Eli Lilly, and non-party witnesses by plaintiffs – including deposition notices, interrogatories, and production requests – in this MDL proceeding shall be undertaken by, or under the direction of, the PSC on behalf of all Plaintiffs with cases in these MDL proceedings. Any discovery not limited to a specific plaintiff shall be assigned by the PSC. The PSC shall, where practicable, and if desired by the state courts, coordinate its discovery requests with State Plaintiffs' Counsel to reduce or eliminate duplicative discovery requests.

> **Specific deadlines and time lines for discovery are found within the Scheduling Order. Throughout the progression of the MDL litigation, the parties should refer to the most recent version of the Scheduling Order for specific deadlines.**

2. Document Production by Takeda Entities and Eli Lilly

The Takeda Entities and Eli Lilly shall produce documents to the PSC for the use of Plaintiffs in these proceedings. The format for such production shall be governed by the Case Management Order: Protocol Relating to the Production of Electronically Stored Information as entered on July 30, 2012 (hereinafter "ESI Protocol Order") and all other Orders of this Court. By agreement of the parties and pursuant to this Court's order, the Takeda Entities began producing documents to the PSC on April 6, 2012. The sequence in which the documents are produced need not conform to the requirements of Federal Rule of Civil Procedure 34(b) but must be produced pursuant to the Court's ESI Protocol Order, any further Order by this Court or Special Master, or agreement by the parties. This document production to the PSC shall serve as the document production by defendants in this MDL proceeding.

3. Plaintiffs' Document Repository

The PSC shall bear the cost of and administer its own document repository unless agreed otherwise by the parties and approved by this Court. All documents produced by Defendants in this proceeding shall be produced to the PSC's designee and in the manner agreed to by the parties and approved by this Court or upon Order of this Court.

All counsel shall be responsible for assuring and shall take all reasonable and necessary steps to assure the security of any confidential information produced pursuant to the Protective Order and shall act to assure the limitation of access to confidential information to only those persons covered by the Protective Order. In particular, if counsel for any party makes documents available *via* the Internet, such counsel shall be held responsible for assuring that all reasonable and necessary steps have been taken to ensure the Internet site is secure and may not be accessed by individuals who are not authorized to review confidential information. Should any party

supplying confidential information suspect that sufficient security is not in place, that party may request the assistance of the Court in obtaining certification that the Internet site is secure and may only be accessed pursuant to the Protective Order entered by this Court.

4. Additional General Discovery by Plaintiffs of Takeda Entities and Eli Lilly

The parties are encouraged to engage in informal discovery on generic issues where possible and appropriate. The PSC also may serve Master Set(s) of Requests for Production and Master Set(s) of Interrogatories (not to exceed fifty interrogatories each, including all discrete subparts, unless good cause is shown) on the Takeda Entities collectively (*i.e.*, the PSC may not serve master discovery on each Takeda entity individually) and on Eli Lilly (collective total of 100 interrogatories).

B. Case-Specific Written Discovery

1. Plaintiffs and Defendants

a. Plaintiff Fact Sheet, Authorizations, and Defendant Fact Sheet in All Cases

As set forth in greater detail and governed by the Court's orders on plaintiff and defendant fact sheets, every plaintiff (except those asserting only consortium claims) is required to serve defendants' counsel with a Plaintiff Fact Sheet (PFS) and executed Authorizations and the Takeda Entities and Eli Lilly are required to serve (collectively) a single Defendant Fact Sheet (DFS) on plaintiffs' counsel in each case.

b. Case-Specific Discovery in Designated Discovery Pool Cases

The Takeda Entities and Eli Lilly collectively may serve one Set of Requests for Production (not to exceed fifty requests total), a Master Set of Interrogatories (not to exceed twenty-five interrogatories, including all discrete subparts total), and Set(s) of Requests for

Admission on each individual plaintiff included within the designated discovery pool. Plaintiffs shall serve written responses, objections, and/or documents within thirty (30) days after receipt of such discovery requests, as detailed by Federal Rules of Civil Procedure. The process for designated discovery pool selections shall be the subject of a further order of this Court.

2. Case-Specific Fact Depositions in Designated Discovery Pool Cases

Case-specific discovery in any case included in the designated discovery pool will commence immediately after the cases are selected. In connection with any individual plaintiff's designated discovery pool case, the parties may take "core discovery," as described in the Scheduling Order. In the event any party seeks discovery depositions in designated discovery pool cases beyond core discovery, they may do so only with the written agreement of opposing counsel or by application to the Court for good cause.[1]

Specific deadlines and time lines for discovery are found within the Scheduling Order. The parties should refer to the most recent version of the Scheduling Order for specific deadlines.

IV. EXPERT DISCOVERY[2]

In an effort to streamline the process by which counsel, the parties, and the Court familiarize themselves with the scientific backdrop of these proceedings, as well as to facilitate the Court's rulings on Daubert issues, an evidentiary hearing on the Daubert motions will be combined with an Experts' Roundtable.

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[1] The limitation to core discovery in designated discovery pool cases absent agreement of counsel or leave of Court is not applicable to cases which might be selected as designated discovery cases. Additional case-specific fact depositions may be taken in cases selected for trial.

[2] Though a brief description of generic expert related discovery, the Experts' Roundtable process is included here, this Court intends to issue a separate order to provide full detail on these processes.

A. General Experts

With regard to general experts, the parties will, in sequence:

- Identify experts and produce reports in accordance with deadlines and instructions contained in the Scheduling Order and other orders of this Court.
- Conduct expert depositions in accordance with the deadlines and instructions contained in the Scheduling Order and other orders of this Court.
- File and brief expert-related motions in *limine* and Daubert motions in accordance with the deadline and instruction contained in the Scheduling Order and other orders of this Court.
- Participate in an evidentiary hearing to address issues raised in the motions in *limine* or Daubert motions, which will be conducted simultaneously with an Experts' Roundtable (described below).

Following the evidentiary hearing, this Court will rule on all outstanding *limine* and Daubert motions.

B. Experts' Roundtable/Evidentiary Hearing

As the evidentiary hearing is deigned to permit the parties to present evidence with regard to Daubert motions (in other words, experts' qualifications and methodology), any required evidentiary hearing will be consolidated with an Experts' Roundtable which may consist of a hearing in which both parties may present their experts' direct testimony, or a summary thereof, and qualifications to the Court or jury and the experts may be traversed as to qualifications, and cross-examined by the parties and/or the Court. Once all experts on a given subject have presented their qualifications and testimony, or summary of their testimony, both direct and cross, the experts will retire to the jury box and might be examined by the Court. The purpose of

the Court's examination will be to invite each expert to evaluate and respond, in real time, to his or her counterpart's testimony and opinions. It is expected and intended that this process will create an opportunity for all counsel to evaluate their own and their opponents' experts and testimony and to allow for Court guided interaction between and among the experts. However, all parties should be prepared for and aware that the Court might question a given expert while on the witness stand as to questions or issues upon which the Court must make an evidentiary or legal determination.

Upon request of the parties, the Court will consider permitting the Experts' Roundtable to be filmed, and will consider permitting the attendance of one or two shadow juries (and questioning of the jurors by the Court or participating counsel at the conclusion of the roundtable discussion). With regard to the Experts' Roundtable, the parties are encouraged to consider whether there might be other procedural mechanisms available to the Court that might assist the parties' efforts in evaluating their cases, grant additional information or insight, and move this matter toward resolution. The parties are welcome to submit any such suggestions to this Court through the Special Masters.

C. Case-Specific Experts in Designated Cases

Specific deadlines and timelines for discovery related to case-specific experts in designated cases are found within the Scheduling Order, the parties should refer to the most recent order, which shall govern with regard to specific deadlines.

V. DEPOSITION PROCEDURES

A. Scope of Section.

This section shall apply to the notices of depositions of any witnesses currently or formerly affiliated with the Takeda and Eli Lilly Entities (Takeda Pharmaceutical Company Limited, Takeda Pharmaceuticals U.S.A., Inc., formerly known as Takeda Pharmaceuticals

North America, Inc., Takeda Pharmaceuticals America, Inc., Takeda Global Research & Development Center, Inc., Takeda California, Inc., formerly known as Takeda San Diego, Inc., Takeda Pharmaceuticals International, Inc., Eli Lilly & Company, and any of their respective parent companies, subsidiaries, and affiliates). Notices of the depositions of expert witnesses or case-specific fact witnesses relating to individual Plaintiffs (*e.g.*, health care providers, individual Plaintiffs, Takeda and Eli Lilly sales representatives, or other case-specific witnesses) may be the subject of a further order of this Court.

B. Coordination.

The parties are reminded that deposition discovery in the context of MDL proceedings can be extraordinarily complex, demanding, and expensive. The process of scheduling and taking depositions, when such large numbers of cases and attorneys are involved, requires a large degree of coordination, cooperation, and effort. Counsel are expected, throughout this process, to meet and confer and to strive to reach agreement between and among all involved parties where possible. Where the conclusion is reached, mutually, that agreement is not possible despite good faith negotiations, the parties are encouraged to timely contact the Court, through the Special Masters, to seek informal guidance and assistance and a determination as to whether or not it will be necessary to conduct a formal process for resolution of the dispute.

This Court has established a weekly discovery telephone status conference to be held with the Special Masters in order to facilitate prompt, efficient, and effective discovery.

Except where otherwise specifically noted, this order applies to depositions noticed in these MDL proceedings ("MDL depositions") and is not intended to limit, or apply to, depositions taken in Actos®-related state court actions ("State Court depositions"), except to the extent that the parties (or one or more State Court(s)) agree(s) that such State Court depositions

will be bound by this Order or an agreement among all parties which has been approved by this Court.

C. Avoidance of Duplicative Depositions.

The parties shall avoid duplication of discovery effort where possible, and the PSC shall open a line of communication with State Plaintiffs' Counsel for the purpose of reaching this goal. The parties are encouraged to coordinate deposition discovery with State Plaintiffs' Counsel to the maximum extent possible so as to minimize the risk that any witness is unnecessarily deposed on the same subject multiple times.

Defendants' Counsel shall advise the PSC of all depositions that previously have been taken in State Court Actos-related actions, as of the date of entry of this order, and shall provide the transcripts of such depositions to the PSC. To the extent permitted by, and consistent with, federal law and procedure, those deposition transcripts may be requested to be used as if taken in these proceedings subject to any party's right to object.

D. Federal Rules of Civil Procedure.

With the entry of this order lifting the discovery stay for all purposes, all discovery, including depositions of Non-Takeda Fact Witnesses and Experts, are now permitted. Any and all such depositions shall be taken in accordance with the rules set forth in the Federal Rules of Civil Procedure, except as delineated in this Order. In any circumstance where either the PSC or the Defense feels that good cause exists for creating additional exceptions to these rules, they should meet and confer in an attempt to reach an agreement on such an exception. Failing such an agreement, the PSC and the Defense may request such an exception by contacting the Special Masters, who will convey the request to this Court.

E. Notices.

Coordination

Cross-Noticing of Future Depositions. In those instances where the depositions of fact witnesses are noticed in these proceedings and cross-noticed in any related State Court actions, or *vice versa*, it is this Court's intention that such cross-notices shall be encouraged, to the extent possible, in order to avoid such witnesses being deposed more than once. Any deposition taken in any State Court action of such witnesses may be cross-noticed in this MDL by agreement of Plaintiffs' Counsel and Defendants' Counsel and thereafter, may be used in these proceedings, as permitted by federal law, or by agreement of Involved Counsel. Without such agreement, the notice is subject to motion to quash and subject to strike. Once a deposition has been noticed and taken in the MDL proceedings, then the Plaintiffs in the MDL proceedings may not take a subsequent deposition of that witness in the MDL proceeding, except for good cause shown as determined by this Court and contemplated by the Federal Rules of Civil Procedure or upon consent of Plaintiffs' Counsel and Defendants' Counsel. In such instances, the subsequent deposition shall be restricted to such additional inquiry permitted by the Court or agreed upon by the Plaintiffs' Counsel and Defendants' Counsel.

F. Length and Scope

This Court establishes the following criteria to govern the length and scope of deposition within the MDL proceeding which shall govern in lieu of the Federal Rules of Civil Procedure as to length and scope.

Depositions scheduled after issuance of this Order shall be in accordance with the following protocol:

1. If there is no coordination with the state court litigants for a deposition originating from the state courts, any depositions noticed within the MDL by plaintiffs shall be governed by the Federal Rules of Civil Procedure and its length and scope requirements. (7 hours)

2. If there is coordination and agreement by the MDL plaintiffs with state court litigants within a deposition either noticed or originated in the state court, any depositions scheduled by the MDL plaintiffs in the MDL case thereafter shall be 12 hours and limited to new documents, obtained 30 days (or later), preceding the deposition date, new subjects, and follow up lines of inquiry. Counsel are cautioned Federal Rule of Civil Procedure 30 remains applicable to viable objections.

Participation by MDL plaintiffs in a deposition originating in the state court does not preclude the scheduling of a supplemental deposition within the MDL, however, said depositions shall be conducted pursuant to the Order of this Court.

Additionally, participation in deposition discovery as delineated within this Order does not preclude the taking of a trial deposition for those cases which might be remanded to the transferor court.

Questioning by Takeda and Eli Lilly, and off the record time, shall not count against any applicable limits. Sufficient time shall be reserved for all counsel designated pursuant to Paragraph VI.B.4.a of this Order to conduct examinations; no designated counsel shall be denied arbitrarily the opportunity to examine. Counsel designated pursuant to Paragraph VI.B.4.a of this Order need not cross-notice any deposition to be entitled to examination time.

Consequently, Involved Counsel shall coordinate when taking depositions in order to honor any applicable limitations.

G. Scheduling.

1. Number of Depositions.

No more than eight (8) depositions of common fact witnesses currently or formerly employed by any of the Takeda and Eli Lilly Entities shall be taken per month, absent agreement of the Parties or order of the Court. Such limitation shall include any depositions conducted pursuant to Federal Rule of Civil Procedure 30(b)(6). Depositions, commonly referred to as "30(b)(6) depositions," which seek to obtain information regarding general matters such as corporate structure, personnel in relevant departments, discoverable data bases and/or who might be discoverable witnesses and/or where and how discoverable information is located and maintained, may be noticed at any time following entry of this order.

2. Parties to Meet and Confer on Scheduling.

Absent extraordinary circumstances, Involved Counsel shall consult in advance with proposed deponents in an effort to schedule depositions at mutually convenient times and places. Notices of depositions to be conducted pursuant to Federal Rule of Civil Procedure 30(b)(6) may be served as of the entry of this Order. Involved Counsel shall work cooperatively to ensure a fair and orderly process for the scheduling of depositions.

3. Deposition Notices Must Be Served At Least Twenty-One Days in Advance.

Plaintiffs' Counsel shall notice depositions of witnesses currently or formerly affiliated with the Takeda and Eli Lilly Entities as soon as practicable after the Parties agree to dates and locations for the depositions, but in no event shall a notice be issued less than twenty-one days before the deposition is set to occur, except upon written agreement of all Involved

Counsel or order of this Court. Plaintiffs' Counsel may notice and serve such depositions via e-mail.

4. Postponements.

Once a deposition has been mutually scheduled by the Parties, it shall not be taken off the calendar, rescheduled, or relocated less than three calendar days in advance of the date it is scheduled to occur, except upon agreement among the examiner designated by the party noticing the deposition and Lead Counsel for the opposing party and counsel for the witness, or by leave of Court for good cause shown.

H. Attendance at Depositions.

1. Who May Attend. Unless otherwise agreed to by the parties, depositions may be attended only by the parties, the parties' counsel, the deponent, the deponent's attorney, in-house counsel for the parties, court reporters, videographers, and essential members and/or employees from the law firms of counsel of record. Unnecessary attendance in person or by telephone by non-examining counsel is discouraged and the presumption will operate that such attendance may not be compensated in any common benefit fee application to the Court without good cause shown to the Court prior to such duplicative attendance. Any such request shall be submitted to the Court (through Deputy Special Master DeJean) in a manner and in sufficient time to allow the Court reasonable opportunity to respond, but in no case shall a request be made later than 15 days prior to the scheduled start of the deposition.

2. Notice of Intent to Attend a Deposition. In order for Defendants' Lead Counsel to make arrangements for adequate deposition space and to notify building security, all counsel who intend to attend the deposition of a witness currently or formerly affiliated with the Takeda and Eli Lilly Entities shall advise Plaintiffs' Co-Lead Counsel no fewer than three

business days prior to the deposition. Counsel shall promptly pass this information along to Defendants' Lead Counsel.

I. **Treatment of Confidential Documents or Testimony.** While a deponent is being examined about any document that is confidential because (i) the parties have so agreed, (ii) a party has designated the document to be confidential pursuant to the

Protective Order associated with this litigation, or (iii) the Court has so ordered, attendance at that portion of the deposition by persons to whom disclosure is not authorized by agreement of the parties or by order of the Court shall be prohibited. Any portion of the deposition transcript containing confidential information shall be sealed pursuant to this Court's Protective Order. Sealed portions of deposition transcripts may be opened, read, and utilized for only those purposes permitted by the terms of this Court's Protective Order, or, if applicable and appropriate, also any protective order entered in a State Court action where the transcript is being used.

J. **Examiners.**

1. **Designation of Examiners for Plaintiffs.**

The PSC may designate no more than one attorney to examine a deponent. State Plaintiffs' Counsel, if participating in an MDL-noticed deposition, whether by agreement of all relevant parties or by Order of this Court, may designate only one examiner from each State in which any litigation might be pending, however, examination should not be duplicative. The PSC, shall meet and confer with the State Plaintiffs' Counsel, if participating, with respect to such designations and coordination as to the applicable limitations, where possible.

2. Notice of Examiners.

At least three business days prior to the deposition, Plaintiffs' Counsel shall notify Defendants' Counsel of the PSC plaintiffs' examiner(s) designated pursuant to ¶ VI.B.4.a. If unforeseen circumstances require a change of an examiner(s) after such notification, Plaintiffs' Counsel must notify Defendants' Counsel of the change immediately upon learning of the necessity for the change. Such a change alone shall not be cause for postponing the deposition.

3. Sharing of Time.

The examining attorneys designated by the PSC and the State Plaintiffs' Counsel, if any, shall meet and confer for the purpose of determining how time shall be shared, the order of questioning, and responsibility for objections; it is anticipated multiple objections on a given point or question by multiple plaintiffs' attorneys will be discouraged. Such coordination is intended to ensure all designated counsel have an appropriate amount of time to protect their clients' interests. If agreement cannot be reached, counsel are to notify the Court, through the Special Masters, for assistance in setting the terms of any particular deposition no later than five (5) days before commencement of the deposition.

4. Coordination of Examination Issues

The Plaintiffs' attorney designated to conduct the examination by the PSC and the State Plaintiffs' Counsel, if any, shall coordinate, where practicable, with each other so as to conduct as thorough and non-duplicative an examination as is possible. Any Plaintiffs' Counsel in any related federal or state action who is not so designated may suggest matters for inquiry in any deposition noticed in these actions by providing to the PSC, or the State Plaintiffs' Counsel, if any, or their designee, a written list and brief explanation of such matters. The examiner designated by the State Plaintiffs' Counsel, if any, may cover the same *topics or issues* covered

by the examiner designated by the PSC, and *vice versa*, but the later examining counsel may not ask duplicative questions unless agreed to by all Involved Counsel or by order of this Court.

5. Use of Depositions in MDL and State Court Proceedings.

Any examination conducted by any examiner may be used in the MDL proceedings, consistent with the law, Federal Rules of Civil Procedure and Evidence, agreement of all Involved Counsel, and order or order(s) of this Court.

K. Sequence of Examination.

In the absence of any alternative agreement by Involved Counsel, questioning at the depositions will be conducted in the following sequence for depositions noticed by the PSC in the MDL: (i) the examiners designated by the PSC and by the State Plaintiffs' Counsel, if any, in the order to which they agree in advance of the deposition ; (ii) counsel for the Takeda and Eli Lilly Entities; (iii) individual counsel for the deponent, if any; and (iv) any re-cross and/or redirect by such counsel, in the same order.

Questioning at the depositions will be conducted in the following sequence for depositions noticed by Defendants' Counsel: (i) counsel for the Takeda and Eli Lilly Entities; (ii) the examiners designated by the PSC and by the State Plaintiffs' Counsel, if any, in the order to which they agree in advance of the deposition; (iii) individual counsel for the deponent, if any; and (iv) any re-cross and/or redirect by such counsel, in the same order.

L. Objections.

1. How Objections Made.

Objections shall be made only by counsel designated pursuant to Paragraph VI.B.4.a of this Order, plus individual counsel for the deponent (if any), and shall be made by stating, "Objection" and the legal basis for the objection (limited to the legal bases described below) in a

concise manner. For the purposes of this Court, an objection by designated counsel shall be deemed to apply to all non-designated counsel for purposes of the deposition and future use of the deposition.

2. Bases for Objections.

No objection shall be made during the taking of a deposition except to assert the following grounds, as reflected in the Federal Rules of Evidence: (i) the form of a question including leading; (ii) responsiveness of the answer, (iii) a privilege; (iv) a right to confidentiality; (v) a limitation imposed pursuant to a previously entered court order; or (vi) a question is argumentative, harassing or abusive including "asked and answered." In connection with an objection to the form of the question, the examiner may inquire as to the grounds for the objection in order to allow the amendment of the question.

3. Objections Preserved.

All objections, except as to (i) the form of the question including leading, (ii) the responsiveness of an answer, or (iii) the assertion of a privilege shall be preserved for later ruling by the applicable court(s) in which the deposition testimony is offered and may be asserted in connection with the proffer of the deposition testimony at trial. Objections as to the admissibility of documents introduced during a deposition are not waived by failure to raise the objection during the deposition, but rather are preserved for later ruling upon timely assertion of the objection by this Court, or by the applicable trial judge.

M. Consultation with Witness.

A witness may consult with his or her counsel or counsel for either party during a deposition. When a question is pending, the witness must first answer the question before consulting with any counsel, except that the witness and counsel may consult at any time for the

purpose of determining whether a privilege exists or whether the information sought is subject to an applicable protective order.

N. **Videotaped Depositions.**

1. Right to Videotape Depositions.

Any party shall have the right to request that the deposition of any party or witness be recorded on videotape and such written request shall be provided with the deposition notice. Where the party wishing to videotape did not notice the deposition, a request for video tape recording shall be submitted to the PSC, no later than ten (10) days before the date on which the deposition is scheduled to occur. All videotaped depositions shall be accompanied by a simultaneous audio tape and stenographic transcript.

2. Videography Technicians.

The party giving notice that the deposition will be videotaped shall assure that all video technicians who record the deposition possess the skills, experience, and equipment necessary to understand and comply with this Order and any further Order relating to the equipment and techniques to be used. Counsel for that party shall provide a copy of this Order and any other applicable orders to the video technicians no later than five (5) days prior to the deposition.

3. Video Operator's Services Must Be Offered Equally.

Services and products offered or provided by the video operator or the entity providing the services of the video operator to any party or to any party's attorney or non-party who is financing all or part of the deposition shall be offered or provided to all parties or their attorneys attending the deposition in the same manner as offered to the party financing all or part of the deposition. No service or product may be offered or provided by the video operator or by the entity providing the services of the video operator to any party or any party's attorney or

nonparty who is financing all or part of the deposition unless the service or product is offered or provided to all parties or their attorneys attending the deposition in the same manner and fashion. All services and products offered or provided shall be made available at the same time and on the same terms to all parties or their attorneys.

4. Video Operator.

The operator(s) of the videotape recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the start of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

5. Video Operator Shall Not Comment on Demeanor.

The video operator and the organization providing the video and audio services shall not provide to any party or any other person or entity any service or product consisting of their notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The video operator and the organization providing the video and audio services shall not collect any personal identifying information about the witness as a service or product to be provided to any party or non-party in any way whatsoever.

6. No Distortion.

The camera operators shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques, or by zooming in or out, or manipulation of the sound or picture in any manner whatsoever.

7. Confidentiality.

Videographer and Court Reporter shall be bound by the Protective Order or any other order issued by this Court. Any party obtaining copies of exhibits or copies of the transcript or videotaped depositions must sign a written acknowledgement of the application of any Protective

Order that might apply to material within that deposition. It is anticipated this acknowledgement will mirror the verbal affirmation given by all present at the deposition. No person shall sell or provide any copy of any discovery to anyone without receiving express written permission of Plaintiffs' Counsel and Defendants' Counsel.

8. Attendance.

Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, absent further order of the Court, only the deponent (and any demonstrative materials and exhibits used during the deposition, which may be taped via split screen) will be videotaped.

9. Oath and Identification of Attendees.

The oath shall be administered to the deponent on camera and on the audio recording and all individuals, including the videographer and Court Reporter, shall affirmatively acknowledge the application of any protective order that might apply.

10. Standards.

The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a trial. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is required. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as might be necessary in order to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will

be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Eating and smoking by deponents or attendees during the deposition will not be permitted.

11. Interruptions.

Videotape recording will be suspended during all "off the record" discussions and shall note such suspension.

12. Conclusion of Deposition.

At the conclusion of a deposition, a statement shall be made on camera or on the audio recording that the deposition is ended where and when agreed to by the parties and shall set forth any stipulations made by counsel concerning the custody of the audio or video recording, the transcript, and the exhibits, as well as any other pertinent matters, in particular addressing any material subject to a protective order or privilege.

13. Preservation of Original Media.

The video operator shall preserve custody of the original video medium in its original condition until further order of the Court. No part of the video or audio record of a video deposition shall be edited in any fashion, or released or made available to any member of the public unless authorized by the Court or pursuant to the terms of the Protective Order or other Order of this Court.

14. Index.

The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends, objections are made and examination resumes, and at which exhibits are identified, as well as

any interruption of continuous tape recording, whether for recesses, "off the record" discussions, mechanical failure, or otherwise.

15. Use of Depositions at Trial.

Prior to any trial, Plaintiffs' Counsel and Defendants' Counsel shall meet and confer with respect to the use of any videotaped deposition testimony or deposition exhibits (including exhibits displayed through trial software such as Trial Director, Summation, or Concordance). The procedures for and manner of display of any such testimony or exhibits to the jury at trial shall be the subject of a further order by this Court or the applicable trial court.

O. Use of Exhibits.

1. Paper Copies of Exhibits at Deposition.

Extra paper copies of documents about which counsel plan to examine the deponent shall be provided to counsel for the deponent and counsel for the other party participants reasonably expected to attend, during the course of the deposition if not before. To the extent possible, all exhibits shall have printed bates numbers affixed, which shall remain constant throughout the litigation.

2. Marking of Deposition Exhibits.

All exhibits will be marked for identification by using the deponent's last name and a sequential number beginning with 1 (*e.g.*, Smith-1 and by reference to the Bates number of the first page of the exhibit being referenced). If a document is used in more than one deposition, it must be marked in each deposition in the manner noted with the original and consistent Bates stamp number; it is anticipated the Bates number shall remain constant throughout the litigation. All documents marked as exhibits will be attached to the original transcript and will be retained

with the original transcript. Copies of exhibits may be attached to copies of the transcript where the party ordering the transcript pays for the costs of copying those exhibits.

3. Exhibits without Bates Stamps.

Deposition exhibits that have not been previously produced in the litigation or previously assigned a bates stamp number, shall be assigned a bates stamp number from a range of numbers reserved for this purpose. The first time such a document is referenced as an exhibit at a deposition, it shall be marked with the assigned bates stamp number and shall be placed in the depository at the conclusion of the deposition and shall retain that bates stamp number throughout the litigation. Bates stamp numbers shall not be duplicated.

P. Time to Review Transcript.

Each deponent has the right to read and sign the deposition transcript within forty-five days after receipt of the transcript from the court reporter. This time period shall not be extended, absent good cause shown. Should the deponent fail to sign the transcript within forty-five days, all parties have the right to use a copy of the transcript in the manner provided by this Court as though the copy were the original transcript. Should the deponent fail to sign the errata sheet within forty-five days, the transcript will be deemed to have been read and approved by the deponent. In the event the original transcript is unsigned, lost, or inadvertently destroyed, a certified copy reflecting any changes made to the original transcript may be used in place of the original.

VI. MODIFICATION

This Order is subject to modification by agreement of the Plaintiffs' Counsel and Defendants' Counsel parties, subject to Court approval, or by further order of this Court.

VII. DISCOVERY STAY

Upon entry of this Order the Discovery Stay in these MDL proceedings is lifted for all purposes, allowing for discovery consistent with this and future orders.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 21st day of December, 2012.

REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

APPENDIX “2D”

RECEIVED
FEB 23 2015
TONY R. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

IN RE ACTOS® (PIOGLITAZONE PRODUCTS LIABILITY LITIGATION

6:11-md-02299

JUDGE DOHERTY

This Document Applies to
All Cases Listed in Attachment A[1]

MAGISTRATE JUDGE HANNA

SCHEDULING ORDER: MAY 2, 2016 TRIAL[2]

This Court hereby sets the following trial date and associated deadlines:

JURY TRIAL: **May 2, 2016** at 9:30 AM in Lafayette before Judge REBECCA F. DOHERTY. Counsel are to be present in Courtroom 2 at 9:00 AM.

PRETRIAL CONFERENCE: **April 11, 2016** at 10:00 AM in Lafayette before Judge REBECCA F. DOHERTY

DEADLINES

NOTICE: The parties are placed on notice this Court expects timely and full compliance with the following deadlines. This Court's previous approach of allowing the parties to grant each other informal extensions will not apply. No extension of any deadlines set forth in this scheduling order may be granted by counsel or the Special Masters without prior and informed consent of the Court.

February 20, 2015 **10 Status Reports Due**
Using the form previously provided by the Special Masters, the parties shall produce Status Reports on 10 of the 61 Louisiana, Western District, direct-filed cases identified in the verified, agreed-

[1] Attachment A reflects a list of the docket numbers of cases included in the agreed to verified list of direct-filed cases Louisiana Western District cases provided by the parties.

[2] Counsel are expected to schedule and sequence discovery so as to permit all deadlines to be met. This Court's Special Masters, as well as the Court, will be available to assist the parties in such scheduling should it prove necessary. Moreover, if a separate Discovery Order is necessary, counsel should notify this Court immediately, through the Special Masters.

to list produced on February 6, 2015 (hereafter the "Louisiana Western" cases).

No later than February 23, 2015, and each Monday thereafter

Identification of Anticipated Discovery

The parties shall identify the specific discovery they propose to propound, conduct, or schedule, in which Louisiana Western case or cases, within the next week(s), and request leave to do so. **These identifications are due February 23, 2015, and each subsequent Monday until discovery is complete.**

Discovery anticipated should be identified in the Status Reports as they are filed; however, the parties must obtain leave of Court by way of the Special Masters before engaging in any specific discovery. The parties shall submit specific requests to conduct specifically- identified discovery to the Special Masters, who will consider those requests and recommend approval or disapproval of them at this juncture as soon as possible. ***Within four calendar days of issuance of the Special Masters' recommendation***, a party aggrieved by the Special Masters' determination may request an immediate appeal to this Court.

March 6, 2015

20 Status Reports Due

Using the form previously provided by the Special Masters, the parties shall produce Status Reports on an additional 20 of the Louisiana Western cases.

March 9, 2015

Defendants' Nomination of Primary Case in First Trial Group

Deadline for the Defendants to nominate the primary case for the first trial grouping.

The Court intends to designate a group of approximately 5 Louisiana Western cases to be tried together beginning May 2, 2016. Defendants will nominate the primary case from among the Louisiana Western cases, with the sole limitation being that the **Plaintiff or decedent must have had significant exposure to Actos during the period from 2006 through 2011**.

Once this case has been nominated by the Defendants, the Plaintiffs' Steering Committee and the Defendants will each nominate 3 additional cases to be added to the trial nomination pool.

March 11, 2015

Parties' Nomination of Additional Cases for First Trial Group

Deadline for the Plaintiffs' Steering Committee and the Defendants to each nominate 3 additional cases for the first trial grouping.

The Court intends to designate a group of approximately 5 Louisiana Western Cases to be tried together beginning May 2, 2016.

The parties should consider several important factors in making their nominations:

- All Plaintiffs/decedents should have significant exposure to Actos in the period from 2006 through 2011.
- If possible, the selected grouping should include at least one smoker and one non-smoker.
- If possible, the selected grouping should include at least one person with a known genetic tendency toward bladder cancer and at least one person without such a known tendency.
- If possible, the selected grouping should include at least one person with industrial exposure known to increase the risk of bladder cancer and at least one person without such known exposure.

Should the trial nomination pool fail to reflect the desired factual dichotomy, or should any of the nominated cases be dismissed for any reason prior to final case designation, the Court may adjust the grouping as it deems advisable.

At the earliest opportunity, but ***no later than June 1, 2015***, this Court intends to select 5 cases from the pool to be tried together, beginning May 2, 2016. Thus, the parties are cautioned to keep their Status Reports current, as this Court will rely heavily on those Reports in making its selection. All deadlines falling after the date on which the cases are designated for trial shall apply to only those cases designated, unless noted otherwise, for the first trial fixing.

Discovery and pre-trial preparation on the remaining Louisiana Western cases shall proceed, however, on separate tracks, and will be addressed in separate orders of this Court.

After the parties have submitted their nominees for the first trial group

First Formal Settlement Negotiations

The parties are encouraged to begin, immediately, and to continue thereafter to explore and engage in ongoing settlement negotiations as to the Louisiana Western cases. ***After the parties have submitted their nominees for the first trial group***, Special Master Russo shall schedule a formal settlement conference and/or mediation regarding *the cases included in the first trial nomination pool.* Magistrate Judge Hanna will be available for mediation on any one case, or group of cases, where appropriate. Counsel will be required to make themselves, and their clients, available to participate, in person, in good faith negotiations as ordered by this Court.

Plaintiffs' and Defendants' counsel will be required to file into the record a formal certification of settlement efforts in a form that will be provided by the Court and in part reflective of this Court's standard certification. Such certification will be governed by the requirements of Fed.R.Civ.P. 11.

March 20, 2015 — **Remaining Status Reports Due**
Using the form previously provided by the Special Masters, the parties shall produce Status Reports on the remaining Louisiana Western cases.

March 26, 2015 — **Deadline to Seek Leave to Amend Pleadings**
Deadline for the parties to file motions for leave to file amendments adding claims to their pleadings in the Louisiana Western cases.[3]

April 15, 2015 — **Identification of General Causation Experts**
Plaintiffs and Defendants shall identify *general* causation experts, by name, address, and area of expertise, providing such identification to opposing counsel and to the Special Masters. Such designations shall not be changed without good cause being shown.

April 16, 2015 — **Deadline for Requests to File Defense/Threshold Motions**
Deadline for submitting formal requests for leave to file defense/threshold motions for the first trial grouping. For any motion permitted to be filed at this juncture, the Court will set a filing and/or briefing schedule, after conferring with the Special Masters.

Two separate and staggered motion deadlines shall apply. No motion shall be filed without first requesting leave to file from this Court. As to defense/threshold motions, the defendants may seek leave to file pleadings-based motions or other threshold motions challenging the Louisiana Western plaintiffs' right to proceed to trial, by submitting descriptions of their proposed motions (each no longer than 1 page in length) to the Special Masters. The Special Masters will make a recommendation of approval or disapproval on the request as soon as possible. ***Within 4 calendar days of issuance of the Special Masters' recommendation***, any party aggrieved by the Special Masters' recommendation will be permitted an immediate appeal to this Court.

After defense/threshold motion requests have been submitted — **First Formal Settlement Negotiations**
The parties are encouraged to begin, immediately, and to continue thereafter to explore and engage in ongoing settlement negotiations as to the Louisiana Western cases. ***After the parties have submitted***

[3] In filing any motion for leave to amend, counsel are cautioned to comply with Local Rule 7.6.

their nominees for the first trial group, Special Master Russo shall schedule a formal settlement conference and/or mediation regarding *the cases included in the first trial nomination pool*. Magistrate Judge Hanna will be available for mediation on any one case, or group of cases, where appropriate. Counsel will be required to make themselves, and their clients, available to participate, in person, in good faith negotiations as ordered by this Court.

Plaintiffs' and Defendants' counsel will be required to file into the record a formal certification of settlement efforts in a form that will be provided by the Court and in part reflective of this Court's standard certification. Such certification will be governed by the requirements of Fed.R.Civ.P. 11.

No later than June 1, 2015

Final Designation of Cases for Trial
Final designation by the Court of cases for trial beginning May 2, 2016.

July 1, 2015

Defendants' Certification of Identification, Location, and Production of All Responsive Documents
Defendants' counsel shall certify that they have engaged in good faith and best efforts to identify, locate and produce all responsive documents and electronically-stored information requested by the Plaintiffs' Steering Committee and/or the Louisiana Western plaintiffs approved by this Court. Such certification will be subject to the obligations and requirements of Fed.R.Civ.P. 11.

July 1, 2015 and the 1st of each month thereafter, until March 23, 2016

Exchange of Witness and Exhibit Lists
The parties shall exchange ***witness and exhibit lists*** for the cases designated for the first trial fixing. **No witness or exhibit may be added without good cause shown and leave of Court once the discovery deadline of September 11, 2015 has passed** (except for experts identified, and reports produced, in accordance with this order); *however*, witnesses and exhibits may be removed at any time prior to March 23, 2016. All exhibits must be identified with particularity and not by an *in globo* designation. Each witness' contact information must be included, along with a declaration of whether the witness is expected to testify live at trial or will require a video deposition, or deposition transcript.

July 1, 2015

Plaintiffs' General Causation Expert Identification
Deadline for Plaintiffs to identify all general causation experts and produce background information (*See* Fed.R.Civ.Pro.26(a)(1)(B)(iv-vi)).

July 8, 2015	**Plaintiffs' General Causation Expert Reports** Deadline for Plaintiffs to produce general causation expert reports.
July 22, 201	**Defendants' General Causation Expert Identification** Deadline for Defendants to identify all general causation experts and produce background information (*See* Fed.R.Civ.Pro.26(a)(1)(B)(iv-vi)).
July 29, 2015	**Defendants' General Causation Expert Reports** Deadline for Defendants to produce general causation expert reports.
August 10 through September 14, 2015	**Expert Depositions** All expert depositions, other than trial video depositions, must be completed in this period, unless leave of Court is obtained.[4]
August 10, 2015	**Plaintiffs' Specific Causation Expert Identification** Plaintiffs to identify all specific causation experts and produce background information (*See* Fed.R.Civ.Pro.26(a)(1)(B)(iv-vi)).
No later than August 10, 2015	**Second Formal Settlement Negotiations** The parties are strongly encouraged to continue all settlement negotiations throughout this process. ***On or before August 10, 2015***, Special Master Russo will schedule a second settlement conference and mediation with Magistrate Judge Hanna if deemed appropriate, *as to the cases included in the trial nomination pool, or, if final case designation has been completed, as to the cases that have been designated for trial beginning May 2, 2016.* Counsel will be required to make themselves, and their clients, available to participate, in person, in any negotiations ordered by this Court. Plaintiffs' and Defendants' counsel will be required to file into the record a certification of settlement efforts in a form that will be provided by the Court and that will contain requirements beyond the Court's standard certification, and such certification will be governed by the requirements of Fed.R.Civ.P. 11.
August 17, 2015	**Plaintiffs' Specific Causation Expert Reports** Plaintiffs to produce specific causation expert reports.
August 31, 2015	**Defendants' Specific Causation Expert Identification** Defendants to identify all specific causation experts and produce background information (*See* Fed.R.Civ.Pro.26(a)(1)(B)(iv-vi)).

[4] Unless agreed to by all parties or by order of this Court, deposition of Plaintiffs' experts shall occur before deposition of Defendants' experts within the same discipline.

September 8, 2015 **Defendants' Specific Causation Expert Reports**
Defendants to produce specific causation expert reports.

September 11, 2015 **Deadline for Completion of Discovery**

September 18, 2015 **Plaintiffs' Certification of Remaining Claims**

In the interest of minimizing the amount of time spent, by the parties and by this Court, in testing, briefing, considering, and ruling on the viability and effect of claims that are not expected to be tried, *Plaintiffs will be required to certify* each of the claim(s) made they intend to pursue at trial, and to dismiss those claim(s) they do not intend to present at trial.

Counsel for each of the Plaintiffs shall file into the record a Certification: (a) that he or she has reviewed each claim asserted in the Complaint (as amended, if relevant); (b) that he or she has considered the evidence available to support each and every such claim; (c) that he or she has conferred with the client(s), and (d) he or she has made a good faith effort to identify those claims that will be pursued at trial and will take prompt action to dismiss those which will not be pursued at trial. This certification shall be signed by trial counsel, lead counsel, and, where relevant, the attorney who represents the Plaintiff individually, and be governed by Fed.R.Civ.P. 11. Plaintiffs shall move to dismiss each claim originally asserted in the Plaintiffs' complaints that is not listed in the certification.

September 25, 2015 **Deadline for Submitting Requests to File Daubert Motions**
Counsel are encouraged to submit such requests earlier (and may do so piecemeal as to any issue they wish to adopt from their filing in Allen v. Takeda), as soon as they develop an intent to file a Daubert motion on any given issue as to any given expert. The Special Masters will make a recommendation on the requests for leave as soon as possible. ***Within 4 calendar days of issuance of that recommendation***, any party aggrieved by it will be permitted an immediate appeal to this Court.

The parties will be required to obtain leave prior to filing any Daubert motion at this juncture. Such leave may be requested by submitting descriptions of the proposed motions (each no longer than 1 page in length) to the Special Masters identifying which of the issues already presented to the Court in Allen they wish to re-urge by adoption, identified by page, paragraph, and document number, within the document where those issues were urged. The parties shall, also, identify what, if any, issues were not addressed by

this Court in Allen or which are impacted by the application of Louisiana law, or new facts, or a change in otherwise applicable law which they wish to challenge pursuant to Daubert, Fed.R.Civ.P. 26(b)(4), or Fed.R.Evid. 702. The Special Masters will make a recommendation on the request as soon as possible. ***Within 4 calendar days of issuance of the Special Masters' recommendation***, any party aggrieved by the Special Masters' recommendation will be permitted an immediate appeal to this Court.

October 2, 2015 **Deadline for Submitting Requests to File Dispositive Motions**
Counsel are encouraged to submit such requests earlier (and may do so piecemeal as to any issue they wish to adopt from their filing in Allen), as soon as they develop an intent to file a dispositive motion on any given issue. The Special Masters will make a recommendation on the requests for leave as soon as possible. ***Within 4 calendar days of issuance of that recommendation***, any party aggrieved by it will be permitted an immediate appeal to this Court.

The parties will be required to obtain leave prior to filing any dispositive motion at this juncture. Such leave may be requested by submitting descriptions of the proposed motions (each no longer than 1 page in length) to the Special Masters identifying which of the issues already presented to the Court in Allen they wish to re-urge, identified by page, paragraph, and document number within the document where those issues were urged and what, if any, issues were not addressed by this Court in Allen or which are impacted by the application of Louisiana law or new facts, or a change in otherwise applicable law they now wish to address. The Special Masters will make a recommendation on the request as soon as possible. ***Within 4 calendar days of issuance of the Special Masters' recommendation***, any party aggrieved by the Special Masters' recommendation will be permitted an immediate appeal to this Court.

October 16, 2015 **Deadline for Filing Daubert Motions**
The parties should have already, at this juncture, obtained leave. Such leave should have been requested as noted above.

October 23, 2015 **Deadline for Filing Dispositive Motions**
The parties should have already, at this juncture, obtained leave. Such leave should have been requested as noted above.

After dispositive motions have been filed

Third Formal Settlement Negotiations

After the parties have filed dispositive motions, Special Master Russo shall schedule a third formal settlement conference as to *the cases designated to commence trial on May 2, 2016*. Magistrate Judge Hanna will be available for mediation on any one case, or group of cases, where appropriate. Counsel will be required to make themselves, and their clients, available to participate, in person, in any negotiations ordered by this Court.

Plaintiffs' and Defendants' counsel will be required to file into the record a certification of settlement efforts in a form that will be provided by the Court and that will contain requirements beyond the Court's standard certification and such certification will be governed by the requirements of Fed.R.Civ.P. 11.

November 6, 2015

Deadline for Filing Oppositions to Daubert Motions

Any Daubert motion or issue re-urged by adoption from Allen should be responded to by way of adoption of the response filed in Allen, identified by paragraph, page, and document number. Thus, opposition to issues raised by adoption of arguments in Allen should be identified by reference to page, paragraph, and document number of the opposition filed as to that issue in Allen, unless the opposition is impacted by the application of Louisiana law, new facts, or a change in otherwise applicable law. Any issue raised not by way of adoption, should be responded to in the normal fashion.

November 13, 2015

Deadline for Filing Motions for Leave to File Reply Briefs in Support of Daubert Motions[5]

November 13, 2015

Deadline for Filing Oppositions to Dispositive Motions

Opposition to issues raised by adoption of arguments in Allen should be identified by reference to page, paragraph, and document number of the opposition filed as to that issue in Allen, unless the opposition is impacted by the application of Louisiana law or new facts, or a change in otherwise applicable law. Any issues not raised by adoption, should be responded to in the normal fashion.

November 20, 2015

Deadline for Filing Motions for Leave to File Reply Briefs in Support of Dispositive Motions

December 1, 2015

Dispositive Motions Ripe for Ruling

All dispositive motions must be fully ripe for ruling (*i.e.*, all motions, oppositions, and any allowed replies must have been filed).

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[5] The parties shall have 21 days following service of oppositions or reply briefs, if any, to resolve any matters concerning privilege or confidentiality pursuant to paragraph 10 of the Protective Order (*i.e.*, Case Management Order: Protecting the Confidentiality of Discovery Materials).

No later than January 10, 2016

Fourth Formal Settlement Negotiations

On or before January 10, 2016, Special Master Russo shall schedule a fourth settlement conference *as to the cases designated to commence trial on May 2, 2016*. Magistrate Judge Hanna will be available for mediation on any one case, or group of cases, where appropriate. Counsel will be required to make themselves, and their clients, available to participate, in person, in face to face negotiations.

Plaintiffs' and Defendants' counsel will be required to file into the record a certification of settlement efforts in a form that will be provided by the Court. That form will contain requirements beyond the Court's standard certification, and will be governed by Fed.R.Civ.P. 11.

Month of February, 2016

Trial Depositions

Trial video depositions must be scheduled to occur this month, where possible.

With regard to trial video depositions, the Court intends to preside over those depositions in person and encourages the parties to schedule them, where possible, in the State of Louisiana. For those depositions that cannot be scheduled within Louisiana, the Court will make itself available to travel for that purpose, travel costs to be borne by the party noticing the depositions. The parties should be prepared to engage in full contemporaneous objections, and will receive immediate rulings on all objections that will carry over for use at trial.

Editing Video Depositions

Editing of video trial depositions should begin immediately. There will be no formal briefing on disputes. Instead, the parties shall succinctly identify any disputes in a manner to be identified by this Court, as will be explained by the Special Masters, and provided to this Court along with the Pre-Trial Order, if not before. Hearings on excerpt disputes will be held, in open Court, during the week of the pre-trial conference. The parties are strongly urged to reach equitable resolution of all issues, before hearings of this Court.

February 1, 2016

Deadline for Submitting Requests to File Motions *in Limine*

Counsel are encouraged to submit such requests earlier (and may do so piecemeal as to any issue they wish to adopt from their filing in Allen), as soon as they develop an intent to file a motion *in limine* on any given issue. The Special Masters will make a recommendation on the requests as soon as possible. ***Within 4 calendar days of***

issuance of the Special Masters' recommendation, any party aggrieved by the Special Masters' recommendation will be permitted an immediate appeal to this Court.

Such leave may be requested by submitting descriptions of the proposed motions (each no longer than 1 page in length) to the Special Masters identifying which of the issues already presented to the Court in Allen they wish to re-urge, identified by page, paragraph, and document number within the document where those issues were urged. The parties shall, also, identify what, if any, issues were not addressed by this Court in Allen or which are impacted by the application of Louisiana law, new facts, or a change in otherwise applicable law they now wish to address. The Special Masters will make a recommendation on the request as soon as possible. ***Within 4 calendar days of issuance of the Special Masters' recommendation***, any party aggrieved by the Special Masters' recommendation will be permitted an immediate appeal to this Court. The parties are strongly urged to reach equitable resolution of remaining issues before hearings by this Court.

February 18, 2016 — **Deadline for Filing Motions *in Limine***

Motions *in limine* will be addressed and ruled upon in open Court the week of the pre-trial conference. The parties are strongly encouraged to resolve any disputes before such hearings of the Court.

March 7, 2016 — **Deadline for Filing Oppositions to Motions *in Limine***

Any motion *in limine* or issue included therein that is re-urged by adoption from Allen should be responded to by way of adoption of the response filed in Allen, identified by paragraph, page, and document number. Thus, opposition to issues raised by adoption of arguments in Allen should be identified by reference to page, paragraph, and document number of the opposition filed as to that issue in Allen, unless the opposition is impacted by the application of Louisiana law, new facts, or a change in otherwise applicable law. Any issue raised not by way of adoption, should be responded to in the normal fashion.

March 14, 2016 — **Deadline for Filing Motions for Leave to File Reply Briefs in Support of Motions *in Limine***

March 15, 2016 — **Plaintiffs' Inserts**

Plaintiffs shall submit to Defendants inserts for proposed pre-trial order, *voir dire*, jury interrogatories, and jury instructions.

March 18, 2016	**Defendants' Inserts** Defendants shall submit to Plaintiffs inserts for proposed pre-trial order, *voir dire*, jury interrogatories, and jury instructions.
Before the parties submit a joint proposed Pre-Trial Order	**Final Formal Settlement Negotiations** ***Before the parties have submitted their proposed joint Pre-Trial Order***, or earlier, as deemed appropriate, Special Master Russo shall schedule a final settlement conference *as to the cases designated to commence trial on May 2, 2016.* Magistrate Judge Hanna will be available for mediation on any one case, or group of cases, where appropriate. Counsel will be required to make themselves, and their clients, available to participate, in person, in any face to face negotiations ordered by this Court. Plaintiffs' and Defendants' counsel will be required to file into the record a certification of settlement efforts as to each case, in a form that will be provided by the Court, and will be governed by Fed.R.Civ.P. 11. That certification must include a general description of the good-faith efforts to settle and a statement of counsel's good-faith conclusion that the case will not settle, and must be signed by a member of the Plaintiff's Steering Committee, the attorney who represents the Plaintiff individually, and lead and trial counsel for the Defendants. The certification must be submitted prior to trial, as **the case will not proceed to trial without this certification.**
March 24, 2016 or earlier	**Counsel Conference** Counsel for the parties shall confer, preferably in person, to create the Pre-Trial Order, joint jury instructions, joint jury interrogatories, proposed *voir dire* requests, and identify and discuss any possible objections to each party's final will call witness and exhibit list. Once submitted, witnesses may not be omitted from this list without good cause shown and agreement of the opposing party. No witness may be added at this late date without a showing of extreme good cause.
March 28, 2016	**Pre-Trial Order** Deadline to file proposed joint Pre-trial Order, together with proposed *voir dire* requests, joint jury interrogatories, joint jury instructions, and final will call witness and exhibit lists. Counsel should look to the Pre-Trial Order which governed the Allen case. However, counsel are strongly encouraged to consult with the Special Masters for guidance, instructions, and assistance in preparing the proposed Pre-Trial Order.

April 11, 2016	**Pre-Trial Conference.**[6]
April 11-15, 2016	**Hearings and Rulings on Excerpts and Motions *in Limine*** In Court hearings and rulings on video deposition excerpts and any possible remaining *in limine* issues.
April 25, 2016	**Bench Books** (that have not already been provided). **Glossary** (provided to Court Reporter). **Training for electronic courtroom.**[7]
May 2, 2016	**Trial** Trial to begin and continue to completion.[8]

SO ORDERED, this 23 day of February, 2015.

HONORABLE REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

[6] This Court's pre-trial conferences are extensive and address both substantive and procedural issues at great length. Counsel should expect that the pre-trial conference will be lengthy, and make their travel plans accordingly.

[7] This is the deadline by which training must be completed, however counsel are encouraged to schedule such training earlier than the deadline, if possible. Counsel must bring to the training the laptops they intend to use for the presentation of exhibits at trial.

[8] Trial will proceed unless *all* cases set to be tried are dismissed, settled, or otherwise incapable of being tried. Settlement or dismissal of fewer than all cases will not result in a continuance of those cases remaining. Counsel should engage in trial preparation with this in mind.

APPENDIX “2C”

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
RECEIVED - LAFAYETTE

FEB 19 2013

TONY R. MOORE, CLERK
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

IN RE ACTOS (PIOGLITAZONE-PRODUCTS LIABILITY LITIGATION	6-11-md-2299
This Document Applies to All Cases	JUDGE DOHERTY
	MAGISTRATE JUDGE HANNA

SCHEDULING ORDER:
PILOT BELLWETHER PROGRAM (*FIRST TRIAL*)

This Court having considered the scope of these proceedings, the number of plaintiffs, the amount of discovery that will be required, and the time necessary to complete pre-trial preparations, hereby establishes a Pilot Bellwether Program ["PBP"]. The PBP establishes a stream-lined trial preparation schedule for a minimum of two Pilot Bellwether trials. This Court is aware that the schedule established herein will place extraordinary burdens on this Court, counsel, and the parties. Nonetheless, this abbreviated schedule is imposed so as to serve the very important goal of moving these proceedings toward completion of this Court's responsibilities in a reasonable timeframe.

PLEASE NOTE: THE DEADLINES ESTABLISHED HEREIN SHOULD BE CONSIDERED HARD AND FAST. *THEY WILL NOT BE EXTENDED, CONTINUED, OR DELAYED BY THE COURT IN ANY WAY ABSENT EXTRAORDINARILY GOOD CAUSE SHOWN.*[1]

Trial Date (1st Pilot Bellwether Trial):	***January 27, 2014***
Pre-Trial Conference:	***January 13, 2014, 10:00 am***
Trial Date (2nd Pilot Bellwether Trial):	***April 14, 2014***
Pre-Trial Conference:	***March 31, 2014, 10:00 am***[2]

[1] As to deadlines that impact this Court's ability to complete its tasks – tasks such as briefing deadlines – the parties are expected to comply with all deadlines or obtain extensions from the Court. However, with regard to deadlines that do not have an immediate impact on the Court's ability to perform its tasks, the parties are permitted to grant extensions to each other, but should be advised that such extensions will not be enforced by this Court.

[2] A separate Scheduling Order providing deadlines for the second Pilot Bellwether trial will be issued hereafter.

DEADLINES

2/28/2013: Plaintiffs shall provide a complete set of all ***requests for production*** of documents to Defendants.

3/25/2013: The Court shall establish a ***schedule for anticipated motions and briefing of legal issues***.

4/1/2013: Each side shall nominate P***ilot Bellwether Discovery Pool*** participants, as follows.

- Each side will nominate 5 plaintiffs to participate in discovery.
- The only plaintiffs eligible to be included in the discovery pool will be plaintiffs who submitted Plaintiff Fact Sheets to the Defendants by December 31, 2012.
- To the extent that a plaintiff wishes to participate in the discovery pool but has not complied with the December 31, 2012 deadline, he or she may participate if, and only if, a completed fact sheet and authorizations, together with a complete set of medical records, can be produced to the Defendants no later than ***March 8, 2013***.

The following additional limitations shall apply to the Pilot Bellwether Discovery Pool nominees:

(a) No plaintiff who has asserted a class action is eligible for participation as a member of the Pilot Bellwether Discovery Pool.

(b) No plaintiff may be a nominee unless he or she: (i) actually consumed Actos; (ii) has been diagnosed with diabetes; and (iii) has been diagnosed with bladder cancer (no fear of cancer case).

- Nominating counsel shall certify, with regard to every Pilot Bellwether Discovery Pool nominee, that: (i) counsel has reviewed all available information about the nominee; (ii) counsel believes that the nominee's case can be ready for trial by January 27, 2014 (or, in the case of Defendants' nominees, April 14, 2014); (iii) counsel intends to try the nominee's case, if accepted by this Court; (iv) counsel does not intend to dismiss the nominee's case; and (v) counsel has no reason to believe that the nominee's case will be settled individually prior to trial.

4/8/2013: With regard to the Pilot Bellwether Discovery Pool nominees, Defendants shall notify this Court and Co-Lead Counsel whether or not they waive their right, as applicable, to venue or to have non-Louisiana cases remanded to transferor courts for trial (***the Lexecon issue***).

4/8/2013: Defendants shall notify the PSC, with regard to the Pilot Bellwether Discovery Pool nominees, of any gap in the ***essential preliminary discovery*** required by this Court's Case Management Order: Plaintiff Fact Sheets (Rec. Doc. 1355).

4/22/2013: Plaintiffs shall ***cure any deficiencies*** in essential preliminary discovery on Pilot Bellwether Discovery Pool nominees.

4/23/2013: Pilot Bellwether Discovery Pool Nominees may ***move for leave to amend their complaints***.[3]

5/3/2013: Parties to exchange first ***witness and exhibit lists***.[4] "Witnesses" shall include factual witnesses as well as experts, identified by area of expertise (deadline for identifying experts by name is separate). ***Updates due the first day of each month thereafter***. No witness or exhibit may be added without leave of Court once the discovery deadline has passed; however, witnesses and exhibits may be removed through January 2, 2014. Counsel are cautioned that, in creating witness and exhibit lists, good faith is expected at all times.

6/3/2013: Defendants must ***certify good-faith belief*** that all documents requested by the Plaintiffs, agreed by the Defendants to be produced, and/or ordered by this Court, have been produced or will be produced within ten (10) days of this date.

7/15/2013: Plaintiffs' shall ***identify their nominee*** for the first trial. Defendants shall ***identify their nominee*** for the second trial.

8/1/2013: ***Expert-Related Deadlines*** Begin

Plaintiffs' Deadlines	**Defendants' Deadlines**
8/1: Plaintiffs to identify experts and produce background information (*See* Fed. R. Civ. Proc. 26(a)(1)(B)(iv-vi))	**8/26**: Defendants to identify experts and produce background information (*See* Fed. R. Civ. Proc. 26(a)(1)(B)(iv-vi))
8/7: Plaintiffs to produce expert reports	**9/3**: Defendants to produce expert reports
9/5 through 10/4: Plaintiffs' expert depositions[5]	**9/5 through 10/4**: Defendants' expert depositions

[3] In filing any motion for leave to amend, counsel are cautioned to comply with Local Rule 7.6.

[4] This requirement is imposed in lieu of the Fed. R. Civ. Proc. 26(f) reporting requirement.

[5] Depositions of Plaintiffs' experts shall occur before depositions of Defendants' experts within the same discipline.

10/11/2013: Deadline for supplementation, if any, of expert reports and completion of supplemental expert depositions, if any. In light of the fact that expert reports must be produced prior to the completion of discovery, supplementation of reports and depositions will be permitted (pursuant to Fed. R. Civ. Pro. 26(a)(1)(D)) in order to respond to factual information discovered after an original report is issued.

10/1/2013: ***Discovery*** Deadline[6]

10/14/2013: Motions Deadline Begin (***limine, any remaining dispositive motions***)

Motions: **10/14**
Oppositions: **11/1**
Replies: **11/8**[7]

10/17/2013: ***Deposition Excerpt Designations*** Deadlines Begin

Plaintiffs' Deadlines	**Defendants' Deadlines**
10/17: Plaintiffs to produce excerpt designations, if any	**10/28**: Defendants to produce excerpt designations, if any
11/11: Plaintiffs' objections to Defendants' designations and counter-designations	**10/31**: Defendants' objections to Plaintiffs' designations and counter-designations

No replies will be permitted. This Court will determine whether and, if so, when argument will be heard on the admissibility of deposition excerpts.

10/21/2013: Motions Deadline Begin (***Daubert*** motions)

Motions: 10/21
Oppositions: **11/18**[8]
Reply arguments on Daubert motions, if necessary, may be presented at the evidentiary hearing

12/2/2013: ***Expert Roundtable/Daubert evidentiary hearing***

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[6] Counsel are expected to schedule and sequence discovery so as to permit all deadlines to be met. This Court's Special Masters, as well as Magistrate Judge Hanna, will be available to assist the parties in such scheduling should it prove necessary. Moreover, if a separate Order is necessary, counsel should notify this Court, through the Special Masters.

[7] The parties shall have 10 days following "service" of all reply briefs to resolve any matters concerning privilege or confidentiality pursuant to paragraph 10 of the Protective Order (*i.e.*, Case Management Order: Protecting the Confidentiality of Discovery Materials).

[8] The parties shall have 10 days following "service" of all opposition briefs to resolve any matters concerning privilege or confidentiality pursuant to paragraph 10 of the Protective Order (*i.e.*, Case Management Order: Protecting the Confidentiality of Discovery Materials).

1/2/2014: Final *identification* of **will-call witnesses** (and the substance of their testimony) and *identification and exchange of* all **exhibits** (and the purpose for which they are offered).

1/6/2014: Deadline for completing ***Trial Depositions***

In an effort to streamline trial preparation as much as possible, the ***Court expects the parties to make significant efforts to produce witnesses for trial*** rather than relying on deposition testimony. To the extent that trial depositions are necessary, they must be completed by this date.

1/6/2014: ***Pre-trial order***

The Court will amend its standard pre-trial order form and will provide the new form to counsel no later than **4/1/2013**.

1/13/2014: ***Pre-trial conference***

1/22/2014: ***Bench books***
Glossary
Training for electronic courtroom.[9]

1/27/2014: ***Trial*** of the first bellwether case.

SO ORDERED, this 19 day of February, 2013.

REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

[9] This is the deadline by which training must be completed, but counsel are encouraged to schedule such training earlier than January 22, 2014. Counsel must bring to the training the laptops that they intend to use for the presentation of exhibits.

APPENDIX “3A”

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE ANTHEM, INC. DATA BREACH LITIGATION

Case No. 15-MD-02617-LHK

CASE MANAGEMENT ORDER AND ORDER DENYING ADMINISTRATIVE MOTION TO FILE UNDER SEAL

Re: Dkt. No. 315

Lead Plaintiffs' Counsel: Eve Cervantez; Andrew Friedman; Meredith Johnson
Anthem Defendants' Counsel: Craig Hoover; Desmond Hogan; Peter Bisio; Maren Clouse; Chad Fuller
Defendant Blue Cross Blue Shield Association's Counsel: Brian Kavanaugh

A case management conference was held on October 23, 2015. For a list of all counsel who appeared at the case management conference, see ECF No. 322. A further case management conference is set for November 10, 2015, at 3 p.m. or 11 a.m. if the Court's criminal trial resolves by way of a plea. The parties shall file their joint case management statement by November 6, 2015.

At the case management conference, the Court made the following rulings:

MOTION TO FILE UNDER SEAL (ECF No. 315)

For the reasons stated on the record, the Court DENIED without prejudice Plaintiffs' Administrative Motion to File Under Seal Portions of the Consolidated Amended Class Action Complaint. The parties shall file a renewed motion no later than October 30, 2015. The parties shall follow the applicable procedures for filing under seal set out in ECF No. 325.

SERVICE

Plaintiffs shall serve all Defendants named in the Consolidated Amended Class Action Complaint that have not yet been served by October 29, 2015.

INDIVIDUAL CASE UPDATES

In *Smilow, et al. v. Anthem Life & Disability Insurance Company, et al.*, No. 15-CV-4739-LHK (N.D. Cal.), the parties shall file by November 3, 2015 supplemental briefs not to exceed 10 pages in length which address the impact of relevant Ninth Circuit precedent on the pending motion to remand. This motion to remand is set for hearing on November 23, 2015, at 1 p.m.

With respect to *Smilow v. Anthem Blue Cross Life & Health Insurance Company, et al.*, a case that was originally filed in Los Angeles County Superior Court on February 17, 2015, Defendants shall file a statement by November 6, 2015 that updates the Court on the status of the case. Specifically, Defendants' statement shall apprise the Court of whether the case is in state or federal court and how the parties intend to proceed.

NARROWING OF ISSUES ON MOTION TO DISMISS

Anthem, Inc., and the 25 Anthem affiliates named in the Consolidated Amended Class Action Complaint[1] (collectively, the "Anthem Defendants") shall file one motion to dismiss not to exceed 25 pages in length. Plaintiffs shall file an opposition not to exceed 25 pages in length, and the Anthem Defendants shall file a reply not to exceed 15 pages in length.

Blue Cross Blue Shield Association, and the 17 non-Anthem Blue Cross Blue Shield companies named in the Consolidated Amended Class Action Complaint[2] (collectively, the "Blue Cross Blue Shield Defendants") shall file one motion to dismiss not to exceed 20 pages in length. Plaintiffs shall file an opposition not to exceed 20 pages in length, and the Blue Cross Blue Shield Defendants shall file a reply not to exceed 10 pages in length.

Both motions shall be limited to a combined total of 10 claims, with 5 claims selected by Plaintiffs, 3 claims selected by the Anthem Defendants, and 2 claims selected by the Blue Cross

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[1] Blue Cross and Blue Shield of Georgia; Blue Cross Blue Shield Healthcare Plan of Georgia; Anthem Blue Cross and Blue Shield of Indiana; Anthem Blue Cross of California; Anthem Blue Cross Life and Health Insurance Company; Rocky Mountain Hospital and Medical Service; Anthem Blue Cross and Blue Shield of Connecticut; Anthem Blue Cross and Blue Shield of Kentucky; Anthem Blue Cross and Blue Shield of Maine; Anthem Blue Cross and Blue Shield of Missouri; Anthem Blue Cross and Blue Shield of Missouri (RightChoice Managed Care, Inc. & Healthy Alliance Life Insurance Company); Anthem Blue Cross and Blue Shield of New Hampshire; Empire Blue Cross and Blue Shield; Anthem Blue Cross and Blue Shield of Ohio; Anthem Blue Cross and Blue Shield of Virginia (Anthem Health Plans of Virginia & HMO HealthKeepers); Anthem Blue Cross and Blue Shield of Wisconsin (Blue Cross Blue Shield of Wisconsin & Compcare Health Services Insurance Corporation); Amerigroup Services; HealthLink; Unicare Life & Health Insurance Company; CareMore Health Plan; the Anthem Companies; the Anthem Companies of California.

[2] Blue Cross and Blue Shield of Alabama; Blue Cross Blue Shield of Arizona; Arkansas Blue Cross and Blue Shield; Blue Shield of California; Blue Cross and Blue Shield of Illinois; Blue Cross and Blue Shield of Florida; CareFirst BlueCross BlueShield; Blue Cross and Blue Shield of Massachusetts; Blue Cross and Blue Shield of Michigan; Blue Cross and Blue Shield of Minnesota; Horizon Blue Cross and Blue Shield of New Jersey; Blue Cross and Blue Shield of North Carolina; Highmark Blue Shield; Highmark Blue Cross Blue Shield West Virginia; BlueCross BlueShield of Tennessee; Blue Cross and Blue Shield of Texas; Blue Cross and Blue Shield of Vermont.

Blue Shield Defendants. Any subsequent motions to dismiss and motions for class certification shall be limited to these 10 claims. The briefing schedule for these motions to dismiss is set forth in the case schedule below.

DISCOVERY

The parties shall file a Joint Coordination Order by November 13, 2015. This Order shall help coordinate discovery between this case and any related state court cases.

CASE SCHEDULE

For reasons stated on the record, the Court has amended the case schedule in a number of respects. The updated case schedule is as follows:

Scheduled Event	Date
Deadline to Serve Remaining Defendants	October 29, 2015
Deadline to File Renewed Motion to Seal	October 30, 2015
Deadline to Exchange Initial Disclosures & to Disclose Non-Party Interested Entities or Persons (for Defendants already served)	November 2, 2015
Deadline to File Joint Coordination Order	November 13, 2015
Deadline to Exchange Initial Disclosures & to Disclose Non-Party Interested Entities or Persons (for Defendants not already served)	November 20, 2015
Hearing on Motion to Remand in *Smilow*	November 23, 2015, at 1 p.m.
Briefing Schedule on Motion to Dismiss	**Motion:** November 23, 2015 **Opp'n:** December 21, 2015 **Reply:** January 19, 2016
Hearing on Motion to Dismiss	February 4, 2016, at 1:30 p.m.
Deadline to File Second Consolidated Amended Complaint, if any	30 Days After Ruling on Motion to Dismiss
Deadline to File Second Round Motion to Dismiss, if any	21 Days After Filing of Second Consolidated Amended Complaint
Deadline to File Opposition to Second Round Motion to Dismiss, if any	21 Days After Filing of Second Round Motion to Dismiss
Deadline to File Reply in Support of Second Round Motion to Dismiss, if any	14 Days After Filing of Opposition to Second Round Motion to Dismiss
Hearing on Second Round Motion to Dismiss, if any	May 26, 2016, at 1:30 p.m.

Close of Fact Discovery	October 17, 2016 (July 25, 2016)[3]
Identification of Plaintiffs' Experts for Class Certification and Report	November 7, 2016 (August 15, 2016)
Identification of Defendants' Experts for Class Certification and Report	November 28, 2016 (September 6, 2016)
Identification of Plaintiffs' Rebuttal Witnesses for Class Certification and Report	December 19, 2016 (September 26, 2016)
Last Day to Depose Experts (i.e., Close of Expert Discovery)	January 23, 2017 (October 31, 2016)
Last Day to Amend Pleadings/Add Parties	February 3, 2017 (November 14, 2016)
Deadline to File Motion for Class Certification	**Motion:** February 17, 2017 (November 30, 2016) **Opp'n:** March 17, 2017 (January 13, 2017) **Reply:** April 14, 2017 (February 13, 2017)
Deadline for Defendants to File *Daubert* Motions	**Motion:** March 17, 2017 (January 13, 2017) **Opp'n:** April 14, 2017 (February 13, 2017) **Reply:** April 28, 2017 (February 27, 2017)
Deadline for Plaintiffs to File *Daubert* Motions	**Motion:** April 14, 2017 (February 13, 2017) **Opp'n:** April 28, 2017 (February 27, 2017) **Reply:** May 12, 2017 (March 13, 2017)
Hearing on Motion for Class Certification and *Daubert* Motions	June 1, 2017, at 1:30 p.m. (April 6, 2017, at 1:30 p.m.)

IT IS SO ORDERED.

Dated: October 25, 2015

Lucy H. Koh

LUCY H. KOH
United States District Judge

[3] Dates in parentheses assume no second round motion to dismiss is filed.

APPENDIX “4A”

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: APPLE INC. DEVICE PERFORMANCE LITIGATION.

CASE NO. 18-MD-2827

SAN JOSE, CALIFORNIA

JULY 11, 2018

PAGES 1 - 48

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR PLAINTIFFS:

COTCHETT, PITRE & MCCARTHY LLP
BY: JOSEPH W. COTCHETT
MARK C. MOLUMPHY
STEPHANIE D. BIEHL
840 MALCOLM ROAD
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KAPLAN, FOX & KILSHEIMER LLP
BY: LAURENCE D. KING
DAVID A. STRAITE
FREDERIC S. FOX
350 SANSOME STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT PRODUCED WITH COMPUTER.

A P P E A R A N C E S: (CONT'D)

FOR THE DEFENDANT: GIBSON, DUNN & CRUTCHER LLP
BY: CHRISTOPHER CHORBA
BROOKE MYERS WALLACE
G. CHARLES NIERLICH
JILLIAN LONDON
333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071

ALSO PRESENT:

THE BRANDI LAW FIRM
BY: TERENCE D. EDWARDS
354 PINE STREET, THIRD FLOOR
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONICALLY:

ERIC ARTRIP
JOSHUA EGGNATZ
MARK DEARMAN
LARRY W. GABRIEL
STEPHEN F. ROSENTHAL

SAN JOSE, CALIFORNIA JULY 11, 2018

P R O C E E D I N G S

01:40PM (COURT CONVENED AT 1:41 P.M.)

01:41PM THE COURT: LET'S CALL OUR 1:30 CALENDAR. THIS IS IN RE: APPLE INC. DEVICE PERFORMANCE LITIGATION, 18-MD-2827.

01:41PM I THINK WHAT I'LL DO IS JUST GO THROUGH THE LIST OF WHAT I HAVE OF INDIVIDUALS WHO ARE PRESENT. THAT MIGHT MAKE IT EASIER. AND IF I CALL YOUR NAME, YOU CAN JUST PLEASE SING OUT.

01:41PM I'LL START WITH THE DEFENSE.

01:41PM CHARLES NIERLICH.

01:41PM MR. NIERLICH: GOOD AFTERNOON, YOUR HONOR.

01:41PM THE COURT: CHRISTOPHER CHORBA.

01:41PM MR. CHORBA: GOOD AFTERNOON, YOUR HONOR.

01:41PM THE COURT: BROOKE MYERS WALLACE.

01:41PM MS. WALLACE: GOOD AFTERNOON, YOUR HONOR.

01:41PM THE COURT: JILLIAN LONDON.

01:42PM MS. LONDON: GOOD AFTERNOON, YOUR HONOR.

01:42PM THE COURT: THANK YOU. GOOD AFTERNOON.

01:42PM LET ME TURN TO PLAINTIFFS' COUNSEL AND AGAIN GOING DOWN THE LIST. THERE MAY BE SOME THAT ARE ON PHONE APPEARANCE.

01:42PM STEPHEN ROSENTHAL.

01:42PM MR. ROSENTHAL: YES, YOUR HONOR.

01:42PM THE COURT: THANK YOU. YOU APPEAR TELEPHONICALLY.

01:42PM DAVID STRAITE.

01:42PM MR. STAITE: GOOD AFTERNOON, YOUR HONOR.

THE COURT: GOOD AFTERNOON.

FREDERIC FOX.

MR. FOX: GOOD AFTERNOON, YOUR HONOR.

THE COURT: GOOD AFTERNOON.

JOSEPH COTCHETT.

MR. COTCHETT: GOOD AFTERNOON, YOUR HONOR.

THE COURT: THANK YOU. GOOD AFTERNOON.

MARK MOLUMPHY.

MR. MOLUMPHY: GOOD AFTERNOON.

THE COURT: STEPHANIE BIEHL.

MS. BIEHL: GOOD AFTERNOON.

THE COURT: MARK DEARMAN APPEARS TELEPHONICALLY.

MR. DEARMAN: PRESENT, YOUR HONOR. GOOD AFTERNOON.

THE COURT: THANK YOU. GOOD AFTERNOON.

I UNDERSTAND LARRY GABRIEL ALSO APPEARS TELEPHONICALLY AND HE'S ON LISTEN-ONLY MODE WHICH IS SOMETHING THAT I ENCOURAGE.

AND I MISSED LAURENCE KING.

MR. KING: GOOD AFTERNOON, YOUR HONOR.

THE COURT: ALSO I THINK JOSHUA EGGNATZ. HAS HE JOINED US TELEPHONICALLY? NOT YET. ALL RIGHT.

ERIC ARTRIP, ARE YOU ON THE LINE, SIR? THERE'S NO RESPONSE.

MARK DEARMAN?

MR. DEARMAN: I AM PRESENT, YOUR HONOR.

THE COURT: THANK YOU. AND I BELIEVE LARRY GABRIEL

01:43PM HAS ALREADY INDICATED ON LISTEN-ONLY MODE.

AND STEPHEN ROSENTHAL.

MR. ROSENTHAL: YES, YOUR HONOR.

THE COURT: THANK YOU. GOOD AFTERNOON. I ALSO WANT TO IDENTIFY TERENCE EDWARDS WHO I BELIEVE IS IN THE STATE CASE.

MR. EDWARDS: YES.

THE COURT: THANK YOU. GOOD AFTERNOON, SIR.

ANYONE THAT I MISSED THAT WOULD -- WHO I SHOULD RECOGNIZE FOR THE RECORD? I SEE OR HEAR NO RESPONSE.

WELL, LET'S GO FORWARD WITH OUR CASE MANAGEMENT THEN, AND I DID RECEIVE DOCUMENT 153, WHICH WAS THE SECOND SUPPLEMENTAL STATEMENT. I APPRECIATE THAT.

I DO HAVE SOME QUESTIONS ABOUT WHAT WE SHOULD DO NEXT. I HAD ASKED PLAINTIFFS TO IDENTIFY THEIR FIVE OR SIX BEST CLAIMS HERE SO THAT WE COULD PRIORITIZE THOSE AND GO FORWARD WITH THOSE.

I UNDERSTAND APPLE HAS SOME THOUGHTS ABOUT TWO WHAT THEY IDENTIFY AS THRESHOLD ISSUES, AND THESE ARE NEW CLAIMS ON BEHALF OF FOREIGN RESIDENTS AND THEN CLAIMS --

MR. CHORBA: MAY I, YOUR HONOR?

THE COURT: YES. -- AND THEN CLAIMS REGARDING IPADS.

MR. CHORBA: THAT'S CORRECT, YOUR HONOR.

THE COURT: SO WHY DON'T I HEAR FROM YOU.

MR. CHORBA: YOUR HONOR, WE BELIEVE THOSE ISSUES

01:44PM SHOULD BE SEQUENCED FIRST.

THE COURT: THIS IS FOR THE RECORD MR. CHORBA SPEAKING.

MR. CHORBA: THANK YOU. I APPRECIATE THAT YOUR HONOR. IT'S A PLEASURE TO BE BEFORE YOU AGAIN.

AT THE OUTSET, I THINK AS WE MENTIONED IN OUR PORTION OF THE STATEMENT, APPLE JUST WANTS TO MAKE SURE THAT WE UNDERSTAND YOUR'S SEQUENCING PROPOSAL.

AS WE UNDERSTAND IT, IT WOULDN'T BE WITH PREJUDICE TO OUR ABILITY TO ADDRESS THE REMAINING CLAIMS IN THE COMPLAINT. IT'S JUST WHAT MAKES SENSE TO GO FIRST.

WHAT WE WANT TO AVOID IS THE SITUATION WHERE WE GO THROUGH THE PROCESS AND WE GO THROUGH DISCOVERY ON THIS PROCESS, PERHAPS CLASS CERTIFICATION WHERE THERE ARE CLAIMS WHERE WE HAVE NOT HAD A RULE 12 OPPORTUNITY.

I DON'T KNOW THAT THERE'S A USUAL MDL, BUT I WOULD SAY IN A MORE CUSTOMARY MDL WE WOULD BE DEALING WITH A VERY LARGE CASE, 50 STATE CLAIMS, MANY DIFFERENT NAMED PLAINTIFFS. HERE THE ADDED LAYER OF COMPLEXITY, AND THIS IS WHY WE THINK THESE ISSUES SHOULD BE ADDED FIRST, IS THAT THE PLAINTIFFS ARE ATTEMPTING TO BRING IN CLAIMANTS THAT ARE NON-U.S. RESIDENTS, CLAIMANTS FROM COUNTRIES WHERE THERE ARE ONGOING MATTERS AND THERE IS ONGOING LITIGATION.

I'LL GIVE YOUR HONOR THE EXAMPLE OF SOUTH KOREA. THEY HAVE TWO SOUTH KOREAN CITIZENS NAMED IN THE CONSOLIDATED

AMENDED COMPLAINT.

SOUTH KOREA, OF COURSE, DOES NOT RECOGNIZE OUR CIVIL CLASS ACTION SYSTEM.

IN SOUTH KOREA THEY HAVE WHAT ARE CALLED GROUP ACTIONS, AND THERE IS A GROUP ACTION NOW PENDING ACTION IN SOUTH KOREA WHERE THERE ARE 64,000 NAMED PLAINTIFFS IN THE ACTION AND INCLUDING THE TWO SOUTH KOREAN CITIZENS WHO ARE NAMED IN THE CONSOLIDATED AMENDED COMPLAINT.

SO BY ATTEMPTING -- WE THINK IT WOULD BE EXTRAORDINARY TO ALLOW CLAIMS BY NON-U.S. RESIDENTS TO PROCEED UNDER CALIFORNIA LAW.

PLAINTIFFS DISAGREE. THEY'VE SAID THEY HAVE SELECTED THESE COUNTRIES BASED ON THEIR UNDERSTANDING THAT THESE COUNTRIES WOULD RECOGNIZE THE U.S. JUDGMENT.

WE ACTUALLY DON'T BELIEVE THAT'S THE CASE. WE'VE CONSULTED WITH INTERNATIONAL COUNSEL, BUT IN ANY EVENT, THIS IS REALLY A THRESHOLD GATEKEEPING ISSUE THAT OUGHT TO BE ADDRESSED BEFORE ANYTHING ELSE. IT WILL AFFECT THE SCOPE OF THE CASE, AND IT WILL AFFECT THE SCOPE OF DISCOVERY. IT IMPACTS MATTERS SUCH AS THE BINDING NATURE OF ANY FOREIGN JUDGMENTS, THEIR CONSTITUTIONAL DUE PROCESS ISSUES, THEIR INTERNATIONAL COMITY, AS WELL, YOUR HONOR, THERE IS AN ISSUE OF ONE-WAY INTERVENTION.

WE DON'T WANT TO BE IN A SITUATION WHERE A FOREIGN RESIDENT CAN SIT BACK AND WAIT AND SEE WHAT HAPPENS. AND LET'S SAY APPLE PREVAILS IN THIS CASE AND OBTAINS A JUDGMENT, AND

01:47PM THEN THOSE FOREIGN CLAIMANTS WOULD ARGUE, WELL, THAT'S NOT
01:47PM BINDING SO WE'RE GOING TO MAKE YOU DO IT ALL OVER AGAIN.
01:47PM SO IT MAKES ABUNDANCE SENSE FROM OUR PERSPECTIVE TO
01:47PM ADDRESS THIS FIRST. WHETHER IT BE APPLE'S MOTION TO DISMISS,
01:47PM WHETHER, AS WE'VE SUGGESTED, THERE'S AN ORDER TO SHOW WHERE
01:47PM PLAINTIFFS ACTUALLY JUSTIFY WHY THEY THINK THEY CAN DO THIS,
01:47PM WE'RE SOMEWHAT AGNOSTIC AS TO THAT, BUT WE DO THINK IT SHOULD
01:47PM GO FIRST.
01:47PM AND ONE MORE SORT OF CLERICAL HOUSEKEEPING ISSUE. ONE OF
01:47PM OUR PRIMARY CONCERNS IS THAT IF WE'RE FORCED TO BRIEF THIS, WE
01:47PM WOULD HAVE TO BRIEF ISSUES ARISING UNDER FOREIGN LAW IN ORDER
01:47PM TO ADDRESS THE ISSUES COMPREHENSIVELY TO YOUR HONOR. WE SIMPLY
01:47PM -- WE'VE LOOKED AT IT, AND WE CANNOT DO THAT ON THE EXISTING
01:47PM SCHEDULE.
01:47PM THE COURT: WELL, THAT WAS -- YOUR COMMENT, BECAUSE
01:47PM WHAT I WAS GOING TO SUGGEST WAS ONE POSSIBLE THING IS TO HAVE
01:47PM YOU ADD THESE ISSUES TO YOUR MOTION TO DISMISS, AND I WOULD
01:47PM GIVE THE PARTIES ADDITIONAL PAGES TO COMPLEMENT THAT.
01:47PM I THOUGHT THAT I WOULD -- CANDIDLY, I WOULD LIKE TO DO
01:48PM THAT SO AS TO NOT DISTURB THE SCHEDULE THAT WE HAVE.
01:48PM MR. CHORBA: THE ONLY WRINKLE, YOUR HONOR, IS WE
01:48PM WANT TO MAKE SURE WE HAVE THE OPPORTUNITY. THIS WAS JUST
01:48PM DROPPED ON US ABOUT A WEEK AGO, YOU KNOW, SHORTLY BEFORE
01:48PM MIDNIGHT ON MONDAY. THERE WAS REALLY NO NOTICE THAT THIS WAS
01:48PM COMING. IT'S 40 COUNTRIES. WE HAVE NAMED PLAINTIFFS.

01:48PM THE COURT: YOU SAID YOU GOT IT AT TWO MINUTES BEFORE MIDNIGHT.

MR. CHORBA: IT WAS ACTUALLY TEN MINUTES TO MIDNIGHT. I DON'T WANT TO MISLEAD THE COURT.

THE COURT: WELL, THAT'S DIFFERENT.

MR. CHORBA: IT WAS A BIG DIFFERENCE, YOUR HONOR.

(LAUGHTER.)

MR. CHORBA: BUT THE POINT IS WE HAVE 40 COUNTRIES THAT ARE ATTEMPTED IN ADDITION TO THE U.S., SO 41 TOTAL. WE ONLY HAVE NAMED PLAINTIFFS FROM I THINK 15 OF THOSE COUNTRIES SO THERE'S KIND OF BASIC ISSUES RIGHT THERE, WHAT DO WE DO WITH THE OTHER 25?

I THINK WE CAN ALL AGREE THAT SOMEONE FROM AZERBAIJAN WOULDN'T BE PROPERLY REPRESENTED UNLESS AT A MINIMUM THERE WAS SOMEONE FROM THAT COUNTRY, AND, OF COURSE, WE'RE NOT ENCOURAGING THEM TO BRING SOMEONE FROM THAT COUNTRY.

01:49PM MY ONLY CONCERN, YOUR HONOR, IS THAT WE WANT TO MAKE SURE AS A MATTER OF DUE PROCESS WE HAVE THE OPPORTUNITY TO BRIEF THE ISSUE COMPREHENSIVELY.

UNDER RULE 44.1, IT, MAY BE REQUIRED THAT WE HAVE TO BRIEF ISSUES OF FOREIGN LAW. THERE'S A PROCESS OF WHERE WE GET EXPERT DECLARATIONS, AND I JUST DON'T WANT TO MISLEAD THE COURT DOING THAT IN A 30-DAY WINDOW IS GOING TO BE DIFFICULT FOR US IF NOT AT ALL POSSIBLE.

IT'S SUMMER SEASON. IF WE HAVE TO CONSULT WITH FOREIGN

01:49PM EXPERTS GETTING THOSE DECLARATIONS OVER THE SUMMER, WE'VE ALREADY STARTED THE PROCESS, BUT IT'S GOING TO BE TIME CONSUMING.

THE COURT: THANK YOU. THE OTHER ISSUE I HAD WAS AS TO THE IPAD CLAIMS, AND I'M JUST CURIOUS ABOUT THIS COURT'S JURISDICTION TO EVEN TAKE THOSE ON THIS MDL, AND I'LL HEAR FROM PLAINTIFFS ON THAT, TOO.

THAT -- AT LEAST TO ME THAT PRESENTS AN EXISTING ISSUE THAT I WAS ALSO GOING TO HAVE THE PARTIES BRIEF, AND I THINK IT'S BETTER TO HAVE THAT DONE UP-FRONT JUST SO WE KNOW WHAT WE'RE PLAYING WITH.

MR. CHORBA: WE AGREE, YOUR HONOR, IT WOULD SIGNIFICANTLY EXPAND THE SCOPE OF DISCOVERY AND WE BELIEVE THE CONCLUSIONS. IT'S A VERY, VERY LENGTHY COMPLAINT, BUT IF YOU ACTUALLY LOOK AT THE ALLEGATIONS REGARDING THE IPAD, THEY'RE VERY SUMMARY IN NATURE. PLAINTIFFS QUOTE A BUNCH OF SPECIAL EVENTS AND PRESS RELEASES BUT THERE ARE NO ACTUAL ALLEGATIONS.

I CAN REPRESENT TO THE COURT THAT THE ISSUES THAT REALLY LED TO THE FILING OF THIS LAWSUIT SIMPLY ARE NOT PRESENT WITH THE IPADS AND SO IT'S JUST A WHOLE DIFFERENT KETTLE OF FISH FROM OUR PERSPECTIVE.

AS YOU NOTED, AND I THINK WE NOTED IN OUR SUBMISSION, THE JPML ORDER SPECIFICALLY REFERENCED IPHONES. NOW, TO BE COMPLETELY UP-FRONT WITH YOUR HONOR, THERE WERE CONSTITUENT COMPLAINTS AT THE TIME THAT INCLUDED OTHER DEVICES, BUT

01:50PM CERTAINLY IT WAS WELL BEYOND THE SCOPE OF WHAT WE WERE
01:50PM EXPECTING, AND WE THINK THAT WAS ANOTHER THRESHOLD GATEKEEPING
01:50PM ISSUE. AND ANOTHER EXAMPLE, THERE ARE TEN NAMED PLAINTIFFS
01:50PM FROM CALIFORNIA AND NOT A SINGLE ONE ALLEGES THAT HE OR SHE
01:50PM PURCHASED AN IPAD DEVICE. SO THEY'RE KIND OF BASIC HOMEWORK
01:50PM ISSUES THAT I DON'T THINK PLAINTIFFS' COUNSEL TOOK CARE OF
01:50PM BEFORE FILING THIS LAST MONDAY.
01:50PM THE COURT: LET ME HEAR FROM PLAINTIFFS ON THAT.
01:50PM THANK YOU. MR. COTCHETT.
01:51PM YOU CAN STAY.
01:51PM MR. CHORBA: THANK YOU, YOUR HONOR.
01:51PM MR. COTCHETT: LET ME SEE, YOUR HONOR, IF I CAN BE
01:51PM VERY BRIEF ON THIS ISSUE, AND MR. STRAITE WILL SPEAK TO THAT
01:51PM POINT YOU JUST RAISED.
01:51PM LET'S BE VERY SIMPLE HERE. YOU ASKED IF WE COULD IDENTIFY
01:51PM THE BASIC CLAIMS THAT WE WOULD WANT TO MOVE AFTER AND GET THIS
01:51PM SHOW GOING. WE TOLD COUNSEL THAT THERE ARE 6 CLAIMS, THAT'S
01:51PM ALL, OUT OF THE 70 THAT WE THINK WOULD MOVE THIS CASE
01:51PM DRAMATICALLY ON A 12(B)(6) MOTION.
01:51PM I WON'T REPEAT THE SIX HERE. THE FIRST IS A FEDERAL
01:51PM CLAIM. THE OTHER FIVE ARE ALL THE SIMPLE CALIFORNIA CLAIMS.
01:51PM AND BY THE WAY, ON THEIR WARRANTY, AS WE ALL KNOW, IT STATES
01:51PM CALIFORNIA LAW WILL GOVERN. SO YOU CAN'T GET MORE BASIC THAN
01:51PM THESE SIX CLAIMS ON A 12(B)(6) MOTION, AND THAT'S WHAT WE HAVE
01:52PM BEFORE US.

01:52PM NOW, WHAT COUNSEL IS ARGUING TO YOU IS THAT NOW, YOUR HONOR, WE HAVE THESE INTERNATIONAL CLAIMS, AND WE SHOULD REALLY HEAR THOSE FIRST AND GET THOSE OUT OF THE WAY OR DO IT IN CONJUNCTION WITH THE 12(B)(6).

01:52PM WE THINK THIS CASE CAN BE MOVED VERY QUICKLY. WE CAN GET INTO DISCOVERY. IF WE HAVE RULINGS ON THE FIRST 6 MAJOR CLAIMS, THEY TAKE UP -- ALTHOUGH THERE ARE 70 WRITTEN, AS YOU KNOW, MANY OF THEM OVERLAP, MANY OF THE CALIFORNIA OVERLAP ON THE STATE STATUTES, THEY ALL HAVE LITTLE WRINKLES TO THEM, WE CAN GET TO THOSE LATER.

01:52PM BUT IN RESPONDING TO COUNSEL'S COMMENT, OR REQUEST, THAT THE INTERNATIONAL OR THE NON-CALIFORNIA, OR IF YOU WANT TO CALL IT THE NON-U.S. PLAINTIFFS, SHOULD ALL BE LUMPED IN INITIALLY, A VERY DISTINGUISHED JUDGE SITTING IN THE NORTHERN DISTRICT OF CALIFORNIA HAS ALREADY DEALT WITH THIS ISSUE. IT WAS RAISED IN A CASE VERY SIMILAR, A CASE CALLED FITZHENRY-RUSSELL VERSUS COCA-COLA AND IN THAT CASE THE VERY DISTINGUISHED JUDGE RULED BEING PRESENTED WITH THE SAME ISSUE.

01:53PM "IT IS PREFERABLE TO DEFER RULING ON THE SCOPE OF THE CLASS IN THE CONTEXT OF A CLASS CERTIFICATION MOTION AND NOT ON A MOTION TO DISMISS." THAT VERY DISTINGUISHED JUDGE WENT ON TO SAY THAT THE SIMPLE WAY TO PROCEED IS TO GET THE 12(B)(6) ISSUES OUT OF THE WAY, AND THEN WHAT COUNSEL WANTS TO RAISE ON ALL OF THESE DIFFERENT COUNTRIES, THAT WILL ALL COME IN ON THE CLASS CERT MOTION. IT WILL HAVE NOTHING TO DO WITH THE

01:53PM VIABILITY OF THE SIX BASIC CLAIMS, AND I THINK THAT'S WHAT YOU
01:54PM WERE ASKING FOR WHEN WE APPEARED LAST BEFORE YOU. GIVE ME THE
01:54PM TOP SIX. LET'S MOVE FORWARD. LET'S GET THAT GOING.
01:54PM NOW, WE THOUGHT WE HAD A SCHEDULE ALL IRONED OUT. WE HAD
01:54PM A HEARING SET FOR SEPTEMBER 20TH TO HEAR ALL OF THE MOTIONS ON
01:54PM THE BASIC SIX.
01:54PM THE OTHER DAY ON THE PHONE COUNSEL NOW SAYS THAT HE NEEDS
01:54PM AN EXTRA WEEK, OR SOME PEOPLE ARE ON VACATION, THEY CAN'T ARGUE
01:54PM ON THAT DATE. WE OFFERED THEM TO PUSH IT A WEEK OR WHAT HAVE
01:54PM YOU. NOW, I UNDERSTAND WE DON'T HAVE A DATE TO HEAR THE BASIC
01:54PM SIX CLAIMS THAT WE HAVE.
01:54PM I THINK THE COURT SHOULD RULE THAT THE ARGUMENT AS TO THE
01:54PM NON-STATE, NON-U.S. WILL BE HEARD AT THE CLASS CERT TIME. WE
01:54PM DON'T HAVE TO GET INTO DISCOVERY ON MALAYSIA, ON JAPAN, ON
01:54PM KOREA AT THIS POINT.
01:55PM WHAT WE HAVE TO DO TO MOVE THE CASE AHEAD, AND WE'LL TALK
01:55PM TO THE DISCOVERY MOTION IN A MOMENT, IS JUST DECIDE THAT WE'RE
01:55PM GOING TO HEAR THE FIRST SIX. ALL OF THE ISSUES THAT THEY RAISE
01:55PM CAN BE HEARD AT THE CLASS CERT MOTION. AND THAT DISTINGUISHED
01:55PM JUDGE WAS ABSOLUTELY RIGHT WHEN HE RULED IN THE COCA COLA CASE
01:55PM ON A VERY SIMILAR ISSUE.
01:55PM THE COURT: ALL RIGHT.
01:55PM MR. CHORBA: YOUR HONOR, I TRUST YOU'RE FAMILIAR
01:55PM WITH THAT CASE AND IT DID NOT INVOLVE, AS FAR AS I UNDERSTAND
01:55PM IT, THE NON-U.S. CLAIMANTS' ISSUE WHICH IS A COMPLETELY

DISTINCT ISSUE.

WE ARE NOT BEFORE YOU -- ALTHOUGH THERE IS A NINTH CIRCUIT AUTHORITY FOR ADDRESSING SCOPE OF THE CLASS, I DISAGREE WITH MR. COTCHETT ON THAT ISSUE. IT'S THE VINOLI CASE, VINOLI VERSUS COUNTRYWIDE.

BUT IN ANY EVENT, THAT'S NOT WHAT WE'RE TALKING ABOUT HERE. WHAT WE ARE TALKING ABOUT HERE IS DO THESE NON-RESIDENT NON-U.S. PLAINTIFFS EVEN HAVE THE AUTHORITY TO COME IN WHEN AGAIN I CITED TWO OF THEM ARE ALREADY LITIGATING THE SAME ISSUES IN SOUTH KOREA.

SO WE THINK IT'S A THRESHOLD GATEKEEPING ISSUE. CERTAINLY IT'S GOING TO AFFECT THE SCOPE OF DISCOVERY THAT COUNSEL SEEKS. THEY'VE ALREADY SOUGHT DISCOVERY RELATING TO FOREIGN JURISDICTION.

SO THE EARLIER WE ADDRESS THIS FROM OUR PERSPECTIVE THE BETTER WE ADDRESS IT. AND IF EITHER SIDE DISAGREES WITH YOUR HONOR'S RULING, THEN THERE ARE PROCEDURES.

THERE'S ONE OTHER ISSUE I WANTED TO CORRECT. MR. COTCHETT JUST STATED TO THE COURT THAT APPLE'S WARRANTY PROVIDES THAT CALIFORNIA LAW GOVERNS. HE'S ACTUALLY INCORRECT.

AS THEY CITED IN THEIR CONSOLIDATED AMENDED COMPLAINT, THAT'S WHAT THE SOFTWARE LICENSE AGREEMENT PROVIDES. HOWEVER, THERE'S AN EXPRESS CARVEOUT FOR U.K. LAW. AGAIN, THEY'VE NOTED THAT IN THEIR CONSOLIDATED AMENDED COMPLAINT.

I HAVE THE ONE YEAR LIMITED WARRANTY THAT APPLIES TO

HARDWARE, AND THERE ARE ALLEGATIONS IN THIS CASE THAT RELATE. THEY ALLEGE THAT THE BATTERIES ARE DEFECTIVE, THAT THE DEVICES ARE DEFECTIVE. SO IT'S NOT JUST ABOUT SOFTWARE. I'M READING, QUOTE, "THIS WARRANTY IS GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE COUNTRY IN WHICH THE APPLE PRODUCT PURCHASED TOOK PLACE." SO IT'S NOT AS SIMPLE AS CHERRY PICKING ONE AGREEMENT AND SAYING THERE'S A CHOICE OF CALIFORNIA LAW. TO THEN MAKE THE ARGUMENT THAT THERE'S A CALIFORNIA VENUE REQUIREMENT FOR THOSE CLAIMS BUT THEN ALSO EVERY SINGLE OTHER CLAIM UNDER THE SUN MUST BE BROUGHT IN A U.S. COURT AND MUST BE GOVERNED BY CALIFORNIA LAW.

COUNSEL DOESN'T BELIEVE THAT BECAUSE THEN THEY WOULDN'T HAVE FILED 76 CLAIMS ARISING UNDER THE 50 STATE LAWS PLUS THE LAWS OF OTHER COUNTRIES.

SO WE THINK YOUR HONOR SHOULD STICK WITH WHAT I BELIEVE WAS YOUR INITIAL INSTINCT AND HAVE US BRIEF THESE THRESHOLD ISSUES FIRST.

THE COURT: ALL RIGHT. THANK YOU. WHAT ABOUT THE IPAD ISSUE, WERE YOU GOING TO SPEAK TO THAT?

MR. COTCHETT: I'M GOING TO LET MR. STRAITE SPEAK TO THAT. BUT JUST TO RESPOND IN 3 SECONDS, WE JUST WANT TO TAKE THESE FIRST SIX BASIC CLAIMS AND GET THEM OUT OF THE WAY. ARE THEY GOOD? ARE THEY BAD? DO THEY NEED TO BE AMENDED OR NOT?

THE COURT: CAN WE DO THAT CONCURRENTLY WITH ME ASKING YOU TO PROVIDE INFORMATION ABOUT THESE OTHER CASES?

01:57PM MR. COTCHETT: ABSOLUTELY. ABSOLUTELY.

01:57PM THE COURT: OKAY. HE SOUNDS VERY COOPERATIVE, MR CHORBA.

01:57PM MR. COTCHETT: THAT SEAL UP THERE, YOUR HONOR, WILL ALLOW YOU TO DO ANYTHING IN THIS COURTROOM.

01:58PM THE COURT: WELL, I HAVE SOME THINGS IN MIND.

01:58PM MR. COTCHETT: THANK YOU VERY MUCH, YOUR HONOR.

01:58PM THE COURT: THANK YOU.

01:58PM MR. CHORBA: WE ARE TRYING TO WORK OUT AS MUCH AS WE CAN, YOUR HONOR.

01:58PM THE COURT: I APPRECIATE, I APPRECIATE THE COOPERATION THAT YOU'VE ENGAGED IN, BUT THIS IS BIG LITIGATION.

01:58PM MR. CHORBA: AND I AGREE. AND JUST SO IT'S CLEAR, WE'VE PROPOSED TWO ALTERNATIVE SCHEDULES TO PLAINTIFFS' COUNSEL. WE DO HAVE A CONFLICT WITH SEPTEMBER 20TH. WE'VE RAISED IT. WE'VE AGREED TO THAT. BUT WE ALSO WERE UP-FRONT AND SAID, LOOK, IF WE HAVE TO BRIEF THESE NON-U.S. CLAIMANTS, WE PROPOSED A SCHEDULE FOR THAT AS WELL.

01:58PM THE COURT: GREAT. THANK YOU.

01:58PM MR. STAITE.

01:58PM MR. STAITE: GOOD AFTERNOON, YOUR HONOR. DAVID STRAITE, CO-LEAD COUNSEL.

01:58PM YOU ASKED A FEW QUESTIONS REGARDING FIRST THE IPAD ISSUE. IPADS, OF COURSE, WERE IDENTIFIED EARLY ON. I BELIEVE THE FIRST CASE THAT NAMED IPADS WAS IN JANUARY. MANY OF THE

01:58PM COMPLAINTS THAT HAVE BEEN CONSOLIDATED WITH THE MDL HAVE
01:58PM ALLEGED CLAIMS INVOLVING THE IPADS.
01:58PM THE OPERATING SYSTEM IOS 10.2.1, FOR EXAMPLE, WAS THE
01:58PM FIRST OPERATING SYSTEM THAT HAD THIS AGGRESSIVE FRODDLING
01:59PM SOFTWARE THAT WE ALLEGE THAT ALSO THAT SOFTWARE THAT IS USED ON
01:59PM THE IPADS.
01:59PM SO IT'S NOT A SURPRISE THAT THE IPAD WILL BE IN THE CASE.
01:59PM YES, A VERY SHORT TWO PAGE ORDER FROM THE JPML DID NOT
01:59PM EXPRESSLY USE THE PHRASE IPADS. IT SAID IPHONES BECAUSE THAT'S
01:59PM THE PREDOMINANT FOCUS.
01:59PM BUT IPADS WERE MENTIONED IN MANY COMPLAINTS. WE ALSO
01:59PM INCLUDED THE IPADS IN THE CONSOLIDATED AMENDED COMPLAINT. SO
01:59PM IT'S NOT A SURPRISE THAT THEY ARE NOT NEW CLAIMS, THEY'RE PART
01:59PM OF THE ORIGINAL CLAIMS.
01:59PM THE COURT: SO MY QUESTION WAS WHETHER OR NOT I HAD
01:59PM JURISDICTION, NOTWITHSTANDING MR. COTCHETT'S VIEW OF THE SEAL
01:59PM BEHIND ME, BUT DO I HAVE JURISDICTION TO ACTUALLY ACCEPT THOSE
01:59PM CASES WHEN THIS CASE WAS REFERRED TO ME BY THE MDL PANEL?
01:59PM MR. STRAITE: YES, YOUR HONOR. THE JPML REFERRED
01:59PM THE MDL WHICH ALSO THEN ALSO CONSOLIDATED A NUMBER OF CASES,
01:59PM PREEXISTING CONSOLIDATED, PREEXISTING CASES THAT HAD IPAD
01:59PM LISTED AS ONE OF THE RELEVANT DEVICES.
01:59PM THE COURT: AND THAT'S SUFFICIENT.
01:59PM MR. STAITE: ABSOLUTELY, YOUR HONOR, YES.
01:59PM THE COURT: DO YOU WANT TO SPEAK TO THAT?

01:59PM MR. CHORBA: YOUR HONOR, OUR OBJECTION IS MORE
02:00PM SUFFICIENCY OF PLEADING THAN JURISDICTION, BUT THESE ARE ISSUES
02:00PM THAT WE SHOULD ADDRESS IN BRIEFING.
02:00PM THE COURT: OKAY.
02:00PM MR. STRAITE: I'D LIKE TO SPEAK ALSO, YOUR HONOR, TO
02:00PM MR CHORBA'S EARLIER COMMENT ABOUT INTERNATIONAL CLAIMS BEING
02:00PM ADDED. OF COURSE, THEY WERE EXPANDED, ADDITIONAL CLAIMS ON
02:00PM BEHALF OF CITIZENS AND RESIDENTS AND OTHER COUNTRIES WERE ADDED
02:00PM IN, BUT THOSE WERE IN ADDITION TO CLAIMS THAT WERE ALREADY IN
02:00PM THE CONSOLIDATED CASES.
02:00PM SO, FOR EXAMPLE, CLAIMS WERE ALSO ASSERTED BY RESIDENTS IN
02:00PM SOUTH KOREA, IN BELGIUM, IN THE NETHERLANDS, ET CETERA, AND
02:00PM THERE WERE A NUMBER OF COUNTRIES. MOST RECENTLY CHILE WAS
02:00PM ADDED, AND APPLE DID NOT OBJECT TO THE MOTION FOR RELATION AND
02:00PM CONSOLIDATION WITH THE MDL INVOLVING THAT CHILEAN CASE. SO IT
02:00PM SHOULD NOT BE A SURPRISE THAT THE INTERNATIONAL CLAIMS ARE
02:00PM INCLUDED IN YOUR HONOR'S ORDER DATED MAY 15TH APPOINTING
02:00PM LEADERSHIP.
02:00PM YOU APPOINTED AN INTERNATIONAL LIAISON COMMITTEE, AND ONE
02:00PM OF THEIR DUTIES WAS TO MAKE RECOMMENDATIONS, INTERIM CO-LEAD
02:00PM COUNSEL, AND TO ASSIST IN PURSUIT OF ANY CLAIMS BASED ON THE
02:01PM LAWS OUTSIDE OF THE UNITED STATES OR ON BEHALF OF CLASS MEMBERS
02:01PM RESIDING OUTSIDE OF THE UNITED STATES.
02:01PM THE COURT: ARE YOU KEEPING UP WITH MR. STRAITE?
02:01PM MR. STAITE: I'LL SPEAK MORE SLOWLY. AND SO IT

SHOULD NOT HAVE BEEN A SURPRISE THAT PRIOR TO MAY 15TH THAT, OF COURSE, WE WOULD BE ASSERTING CLAIMS ON BEHALF OF AN INTERNATIONAL CLASS LIMITED TO THE 41 COUNTRIES IDENTIFIED, IF NOT 70, BUT TO THE EXTENT THERE WAS ANY QUESTION, WE DO BELIEVE YOUR ORDER OF MAY 15TH RESOLVED IT. WE HAD PERMISSION TO PROCEED INTERNATIONALLY.

I THINK ALSO A POINT WAS MADE BY APPLE COUNSEL IN CANADA. ONE OF THE EXHIBITS TO THE COMPLAINT, EXHIBIT 4, IS A TRANSCRIPT OF THE PROCEEDINGS BEFORE THE HOUSE OF COMMONS IN OTTAWA AND BEFORE THE COMMITTEE AND PARLIAMENT AND THEY'RE A MEMBER OF PARLIAMENT AND THEY CAN -- ERNESTINE SMITH ASKED WILL CONSUMERS BE RECEIVING COMPENSATION BECAUSE OF APPLE'S ACTIONS? AND APPLE'S REPRESENTATIVE, MR. POTTER, SAID, OF COURSE, WE HAVE 4 CLASS ACTIONS IN CANADA AND OVER 50 IN THE UNITED STATES. THERE WILL BE A RESULT ONE WAY OR ANOTHER ON THOSE THINGS AS TO WHETHER THERE WAS MATERIAL NONDISCLOSURES AND WHO QUALIFIES TO BE A MEMBER OF THE CLASSES IN THE CASE IS PERHAPS BETTER LEFT TO THOSE CASES.

SO EVEN BACK IN MARCH A REPRESENTATIVE OF APPLE REPRESENTED TO THE HOUSE OF COMMONS IN OTTAWA THAT THE ISSUE OF CLASS CERTIFICATION WOULD BE LEFT TO THE CASES THAT THEY'VE IDENTIFIED.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

MR. CHORBA: JUST TWO QUICK POINTS. IT'S NOT CORRECT THAT WE DIDN'T OBJECT TO THE CHILEAN PLAINTIFFS.

02:02PM THAT'S THE ONLY COMPLAINT THAT MR. STRAITE THERE REFERENCED.

02:02PM WE EXPLICITLY OBJECTED TO BOTH VENUE AND JURISDICTION IN

02:02PM THE STIPULATION. WE CONDITIONED OUR STIPULATION TO RELATE IT

02:02PM TO THE MDL ON THAT OBJECTION.

02:02PM AND SECOND, HE JUST REFERENCED PORTIONS OF A TRANSCRIPT.

02:02PM THAT APPLE REPRESENTATIVE REFERENCED THE PENDENCY OF FOUR CLASS

02:02PM ACTIONS IN CANADA. AT NO POINT DID APPLE CONCEDE OR STATE THAT

02:02PM IN ANY WAY ALL OF THOSE ACTIONS SHOULD BE SHUT DOWN IN CANADA

02:02PM AND THEN TRANSFERRED TO THE U.S. I DON'T KNOW WHAT THE

02:03PM PROCEDURES ARE FOR CONTEMPT BEFORE THE CANADIAN PARLIAMENT, BUT

02:03PM I ASSURE YOU THAT IT WOULD LIKELY HAVE OCCURRED HAD HE DARE

02:03PM SUGGEST A THING.

02:03PM SO THESE CLASS ACTIONS IN MOST OF THESE COUNTRIES IF

02:03PM THEY'RE SEEKING TO BRING INTO THE MDL, WHAT THEY'RE ACTUALLY

02:03PM TRYING TO DO IS TAKE CLAIMS AWAY FROM FOREIGN COUNTRIES AND

02:03PM FOREIGN PLAINTIFFS WITHOUT CITING ANY AUTHORITY THAT WOULD

02:03PM SUPPORT SUCH A THING.

02:03PM MR. STRAITE: YOUR HONOR, TO THAT POINT, IT'S VERY

02:03PM IMPORTANT TO DISTINGUISH BETWEEN CLASS ACTIONS AND GROUP CLASS

02:03PM ACTIONS OVERSEAS. WE'RE AWARE OF TWO CLASS ACTIONS OUTSIDE OF

02:03PM THE UNITED STATES IF WE COUNT THE ACTIONS AS ONE ACTION IN

02:03PM CANADA AND THE ACTIONS AS ONE ACTION IN ISRAEL THAT ARE

02:03PM PROCEEDING IN AN AMERICAN STYLE CLASS ACTION.

02:03PM WE'VE BEEN IN CONTACT WITH COUNSEL IN BOTH OF THOSE

02:03PM ACTIONS. THE CANADIAN COUNSEL, OF COURSE, ARE COMFORTABLE, AS

02:03PM WE SAID IN OUR COMPLAINT, WITH THOSE CANADIAN CLAIMS PROCEEDING
02:03PM HERE IN THE UNITED STATES. WE HAD A SIMILAR CONVERSATION WITH
02:03PM COUNSEL IN ISRAEL, AND THEY WERE NOT AS COMFORTABLE SO WE DID
02:03PM NOT PURSUE ISRAEL.
02:03PM SO WE HAVE NOT CO-OPTED A SINGLE CLASS ACTION AROUND THE
02:03PM WORLD. WE'VE BEEN IN CLOSE CONTACT WITH COUNSEL, AND WE'RE
02:04PM PROCEEDING IN A WAY THAT WORKS BEST TO PROTECT THESE CUSTOMERS.
02:04PM OF COURSE THERE ARE OTHER COUNTRIES WITH PROCEEDINGS AROUND THE
02:04PM WORLD, BUT THOSE ARE NOT TECHNICALLY CLASS ACTIONS AS
02:04PM MR. CHORBA POINTED OUT. WE AGREE WITH HIM. THEY'RE GROUP
02:04PM ACTIONS AND SO WE'RE NOT CO-OPTING THOSE LITIGATIONS.
02:04PM THE COURT: AND YOU'RE NOT INTENDING TO BRING THOSE
02:04PM CASES INTO THIS?
02:04PM MR. STAITE: CORRECT. SO, FOR EXAMPLE, WE
02:04PM IDENTIFIED ACTIONS PROCEEDING ON AN INDIVIDUAL BASIS IN RUSSIA.
02:04PM THERE ARE NO CLASS ACTION PROCEEDINGS IN RUSSIA. WE HAVE A --
02:04PM CLAIMS ON BEHALF OF RUSSIAN CUSTOMERS HERE THAT WE PROPOSE TO
02:04PM INCLUDE IN THE CLASS, BUT THAT WOULD NOT EXCLUDE THOSE ACTIONS
02:04PM INDIVIDUALLY PROCEEDING IN RUSSIA AT ALL.
02:04PM SO WE'VE CO-OPTED NOTHING. WE'RE SIMPLY PROVIDING HERE A
02:04PM VEHICLE HERE FOR RESOLUTION ON BEHALF OF THIS GLOBAL CLASS
02:04PM DEFINED TO INCLUDE THE 41 COUNTRIES IN FOOTNOTE 70.
02:04PM THE COURT: THANK YOU. I RECALL WHEN WE FIRST MET
02:04PM ABOUT THIS CASE THE PLAINTIFFS SUGGESTING THAT THEY WOULD
02:04PM COORDINATE, I THINK THAT WAS THE WORD THAT THEY USED,

COORDINATE FOREIGN LITIGATION, AND I ACCEPTED THAT REPRESENTATION, OF COURSE, AND -- ALTHOUGH I WASN'T REALLY SURE WHAT THE DEFINITION IS AND WHAT YOU MEANT BY THAT.

IS THIS WHAT YOU MEAN BY COORDINATION?

MR. STRAITE: YES, YOUR HONOR. COORDINATION MEANS CONSULTING WITH COUNSEL IN THESE VARIOUS COUNTRIES AND DETERMINING WHAT THE BEST VERSION.

SO, FOR EXAMPLE, IN CANADA THERE'S, OF COURSE, AN AMERICAN BAR ASSOCIATION PROTOCOL FOR COORDINATION BETWEEN THE JUDGES. COUNSEL IN THAT COUNTRY WOULD BE COMFORTABLE WITH US PROCEEDING HERE IN CALIFORNIA BECAUSE, AS WE NOTED BEFORE, THE CALIFORNIA CHOICE OF LAW PROVISION AND BECAUSE CALIFORNIA -- SORRY, BECAUSE CANADA WILL RESPECT A CLASS JUDGMENT FROM THIS COURT.

SO THERE IT WAS APPROPRIATE TO PROCEED ON BEHALF OF CANADIANS THAT IS NOT PRESENT NECESSARILY IN ISRAEL. SO THERE WE WOULD BE COORDINATING WITH THEM. SO, FOR EXAMPLE, WHEN THEY'RE READY TO INITIATE 28 U.S.C. SECTION 1782 DISCOVERY IN AID OF FOREIGN TRIBUNAL, WE WILL BE THERE TO ASSIST TO THE EXTENT THAT THE ISRAEL ACTION PROCEEDS SEPARATELY.

WE WOULD GO COUNTRY BY COUNTRY TO MAKE SURE THAT CONSUMERS ARE PROTECTED THROUGHOUT THE WORLD. WE WOULD ACT HERE AND REPRESENT IT TO YOUR HONOR AS SORT OF THE HOME COURT, AND PROCEED EITHER WITH THEM IN OUR CLASS OR IF THEY'RE NOT IN OUR CLASS THEN WE WOULD COORDINATE TO MAKE SURE THAT EVERYONE IS PROTECTED.

02:06PM THE COURT: HOW WOULD THAT WORK? THANK YOU FOR THAT, MR. STRAITE.

HOW WOULD THAT WORK SHOULD -- AND I'M JUST CURIOUS, AND I'M GETTING WAY AHEAD OF OURSELVES HERE, BUT I'M JUST CURIOUS ABOUT BILLINGS FOR WORK IN CASES THAT WOULD NOT NECESSARILY BE IN FRONT OF THIS COURT?

MR. STAITE: YES, NOW WE'RE GOING DEEP IN THERE.

FOR LEAD COUNSEL, OF COURSE, BECAUSE PART OF OUR DUTY WOULD BE TO COORDINATE AND TO MAKE SURE THAT WE ARE DEFINING THE CLASS CORRECTLY, I SUPPOSE THAT WE WOULD BE CAUTIOUS, BUT WE WOULD BILL FOR IT, BUT WE WOULD HAVE A DEEPER CONVERSATION IF YOUR HONOR WANTS TO.

THE COURT: IT JUST CAME TO MY MIND AS YOU WERE TALKING ABOUT THE DUTIES THAT YOU ARE GOING TO ENGAGE FOR OTHER CUSTOMERS AND CONSUMERS.

MR. COTCHETT: RIGHT.

THE COURT: ANY OBSERVATIONS?

MR. CHORBA: JUST THAT, YOUR HONOR, I THINK COUNSEL HAS A MUCH DIFFERENT UNDERSTANDING OF THE WORD "COORDINATE." I THINK WHAT WE ENVISIONED WAS WHAT HE REFERENCED WITH RESPECT TO ISRAEL WAS WHETHER THERE WERE CLAIMANTS THAT AREN'T IN THE U.S. AND WHETHER OR NOT THERE ARE, FRANKLY, PENDING CLASS ACTIONS, CIVIL ACTIONS, WHATEVER THERE ARE, THAT THERE WOULD BE COORDINATION, SHARING OF DISCOVERY, AND WE WERE COMPLETELY WILLING TO DO THAT.

02:07PM WHAT IT SHOULDN'T BE IS ASSERTING THE EXACT SAME CLAIMS IN A CALIFORNIA FEDERAL COURT THAT ARE BEING PURSUED WHETHER IT'S ONE INDIVIDUAL IN RUSSIA OR WHETHER IT'S 64,000 CLAIMANTS IN SOUTH KOREA OR WHETHER IT'S 4 CLASS ACTIONS IN CANADA. THE REASON WHY THERE ARE ONLY TWO CLASS ACTIONS PENDING WORLDWIDE, OTHER THAN THIS ONE, IS BECAUSE FOREIGN COURTS DON'T RECOGNIZE AND FOREIGN LAWS DON'T RECOGNIZE U.S. STYLE TRADITIONAL OPT-OUT CLASS ACTIONS. MANY COUNTRIES HAVE AN OPT-IN SYSTEM. FOR EXAMPLE, JAPAN WHICH IS ONE OF THE COUNTRIES THAT IS NOT REPRESENTED BY A NAMED PLAINTIFF, BUT I HAVE SOME EXPERIENCE LITIGATING THOSE ISSUES IN THE TOYOTA LITIGATION AND WHAT THAT IS, IS THAT YOU'RE PRESUMPTIVELY OUT UNLESS YOU OPT IN.

HERE YOU'RE PRESUMPTIVELY IN UNLESS YOU OPT OUT IF A CLASS IS CERTIFIED.

SO THESE ARE ALL ISSUES -- WE OBVIOUSLY DISAGREE ABOUT THIS, BUT THESE ARE ISSUES THAT WE WOULD ACTUALLY BRIEF BECAUSE THEY WOULD HAVE A VERY INCONSEQUENTIAL IMPACT ON THE TRAJECTORY OF THIS CASE.

THE COURT: THANK YOU.

MR. STAITE: YOUR HONOR, WE AGREE THAT THESE ISSUES SHOULD BE BRIEFED, AND WE'RE CONFIDENT THAT THE 39 COUNTRIES PLUS THE UNITED STATES AND PLUS UNITED KINGDOM WE IDENTIFY WILL BE COUNTRIES THAT RECOGNIZE A JUDGMENT. I THINK MR CHORBA IS INCORRECT WHEN HE SAYS THAT THESE COUNTRIES DON'T RECOGNIZE THE AMERICAN STYLE CLASS ACTION. THEY DON'T HAVE A VEHICLE FOR AN

AMERICAN STYLE CLASS ACTION IN THEIR COUNTRY, BUT THEY CERTAINLY WILL RECOGNIZE A CLASS JUDGMENT FROM THE U.S. MANY COURTS HAVE SAID SO, AND WE'RE ONLY TALKING ABOUT 39 OR 40 COUNTRIES. IT'S A SMALL MINORITY OF THE 180 OR 200 THAT THERE ARE, BUT THESE ARE COUNTRIES THAT WILL RECOGNIZE.

FOR EXAMPLE, THE UNITED KINGDOM DOES NOT HAVE AN AMERICAN STYLE CLASS ACTION, BUT THEY CERTAINLY WILL RECOGNIZE A CLASS JUDGMENT FROM THE U.S., AND IT HAPPENS ALL OF THE TIME IN SECURITIES CASES, FOR EXAMPLE, OR HUNDREDS OF THEM. THIS HAS BEEN WELL BRIEFED IN MANY OTHER CASES.

BUT I THINK MR. CHORBA'S DISCUSSION GOES TO A DEEPER ISSUE. WHILE WE AGREE THAT THEY SHOULDN'T BE PRECLUDED FROM BRIEFING THE DEFINITION OF A CLASS, WHICH COUNTRIES ARE IN, IT DOESN'T PRECLUDE THEM FROM BRINGING THAT BRIEF. THE QUESTION IS WHEN.

AND THAT -- IN OUR VIEW, THIS IS A CLASS DEFINITION ISSUE, AND WE CONCEDED IN OUR JOINT STATEMENT IN THE PLAINTIFFS' POSITION THERE THAT IF THERE WERE A JURISDICTIONAL CHALLENGE TO THE NAMED PLAINTIFF, THAT MIGHT BE A DIFFERENT QUESTION. BUT IF IT'S A QUESTION ABOUT THE ENFORCEABILITY OR JUDGMENT AGAINST ABSENT CLASS MEMBERS, THAT WOULD BE MORE PROPERLY A CLASS CERTIFICATION ISSUE. WE SEEMED TO BE RUSHING THAT. AND TO THE EXTENT THAT WE ARE TRYING TO GET SOME THRESHOLD ISSUES RESOLVED, SOME CORE ISSUES RESOLVED ON THE SCHEDULE THAT YOUR HONOR PUT FORTH, COMPLICATING THAT ALREADY TIGHT SCHEDULE WITH

CLASS CERTIFICATIONS SEEMS A BIT BACKWARDS.

THE COURT: OKAY.

MR. CHORBA: JUST ONE CORRECTION, YOUR HONOR. I MENTIONED THREE CLASS ACTIONS. THERE'S ACTUALLY A RECENT CLASS ACTION FILED IN COLUMBIA, AND I MENTION THAT NOT ONLY TO CORRECT MYSELF BUT ALSO MR. STRAITE MENTIONED THEY'RE ONLY AWARE OF CANADA AND ISRAEL. IT'S ACTUALLY NOT TRUE.

JAMES VLAHAKIS IS ONE OF THE MEMBERS OF THE PLAINTIFFS' STEERING COMMITTEE, AND HE'S ACTUALLY BEEN PUT FORWARD BEFORE THE COLUMBIA COURT AS AN EXPERT ON U.S. CONSUMER LAW. SO COUNSEL IS NOT JUST COORDINATING, THEY'RE ACTUALLY PARTICIPATING AT LEAST WITH RESPECT TO COLUMBIA IN THESE ACTIONS.

TO MR. STRAITE'S POINT ABOUT HOW IT SHOULD ONLY RELATE TO THE NAMED PLAINTIFFS, I DON'T ACTUALLY THINK WE DISAGREE BECAUSE WE'RE AT A MOTION TO DISMISS CHALLENGING THE NAMED PLAINTIFFS, BUT WHAT THEY SHOULD NOT BE PERMITTED TO DO IS NAME ONLY 15 RESIDENTS OF THOSE FOREIGN COUNTRIES, PURSUE CLAIMS ON BEHALF OF 40 DIFFERENT COUNTRIES, AND BECAUSE THEY DIDN'T NAME PLAINTIFFS, WHICH WE THINK IS A THRESHOLD PLEADING DEFICIENCY, BYPASS THAT ANALYSIS ALTOGETHER INTO A CLASS CERTIFICATION.

THE COURT: ALL RIGHT. THANK YOU. THANKS VERY MUCH.

LET ME MOVE TO ANOTHER TOPIC I WANTED TO TALK ABOUT WAS OUTSTANDING MOTIONS, AND I THINK DOCKET 31 IN ANOTHER CASE AND

DOCKET 18 IN ANOTHER CASE AND THERE ARE SOME MOTIONS FOR EXPEDITED. I'D LIKE TO HEAR ABOUT THAT.

MR. KING: GOOD AFTERNOON, YOUR HONOR. LAURENCE KING FOR PLAINTIFFS.

AT THE LAST CMC WE DISCUSSED THIS ISSUE BRIEFLY AND THEN YOUR HONOR INDICATED THAT SINCE THE AMENDED COMPLAINT WAS FORTHCOMING VERY SOON AT THAT POINT, WE, YOU KNOW, WE MIGHT AS WELL WAIT FOR IT INSTEAD OF DETERMINING WHETHER IT WAS APPROPRIATE TO PRODUCE THIS EXPEDITED DISCOVERY THAT WE REQUESTED PRE-COMPLAINT.

THE AMENDED CONSOLIDATED COMPLAINT HAS NOW BEEN FILED. ANY ARGUMENT THAT APPLE MAY HAVE HAD THAT DIFFERENCES IN THE INITIAL COMPLAINT MADE IT DIFFICULT TO TELL WHAT DISCOVERY WOULD BE RELEVANT AND WHAT DISCOVERY WOULD NOT BE RELEVANT, THOSE HAVE GONE AWAY.

WE HAVE ALSO TAKEN THE ADDITIONAL STEP OF SERVING A FORMAL REQUEST WITH RESPECT TO THE SUBSET OF DISCOVERY THAT WE SEEK ON AN EXPEDITED BASIS, BUT BASICALLY WE JUST WANTED TO SPELL IT OUT AND HAVE IT CLEARLY IN A DOCUMENT. THESE ARE DOCUMENTS EXCHANGED WITH REGULATORS, WHETHER THE U.S. OR OTHER COUNTRIES, AND THESE ARE DOCUMENTS PRODUCED, IF ANY, IN OTHER LITIGATIONS ANYWHERE.

SO, AGAIN, WE BELIEVE TO THE EXTENT THAT THESE DOCUMENTS HAVE ALREADY BEEN PRODUCED OR HAVE BEEN PACKAGED FOR PRODUCTION, IF YOU WILL, AND THEY'RE RELEVANT TO THE CLAIMS IN

THE NOW AMENDED CONSOLIDATED COMPLAINT, THEY CAN BE EASILY PRODUCED TO PLAINTIFFS WITHOUT BURDEN OR WITH MINIMAL BURDEN TO APPLE, AND TO THE EXTENT THAT THERE ARE CONFIDENTIALITY CONCERNS, WHICH MR CHORBA ALSO RAISED AT THE LAST CMC, WE'RE HAPPY TO DEAL WITH THOSE, OF COURSE, BUT ON AN EXPEDITED BASIS. WE CAN DEAL WITH THEM BY RECEIVING THE DOCUMENTS ON AN ATTORNEYS' EYES ONLY BASIS.

THE COURT: THANK YOU. IT SEEMS TO ME THAT THE BASIS OF THE MOTION, THE EXPEDITED INJUNCTIVE RELIEF IS PERHAPS NOT AS NECESSARY NOW, AND MY THOUGHT WAS TO DENY THE MOTION NOW JUST TO TAKE CARE OF THE MOTION AS IT IS, ALLOW YOU TO MEET AND CONFER ON THESE OTHER ISSUES, AND THEN IF NEED BE, OF COURSE I'M NOT GOING TO PRECLUDE YOU FROM FILING SOMETHING ADDITIONAL SHOULD YOU NOT SEEK THE RELIEF THAT YOU WANT IN THE MEET AND CONFER.

MR. KING: JUST FOR CLARITY OF THE RECORD, YOUR HONOR, I WAS SPEAKING TO THE EXPEDITED DISCOVERY REQUEST.

THE COURT: WELL, I THINK IT APPLIES TO THAT AS WELL, I THINK.

MR. CHORBA: AND WE WOULD AGREE, YOUR HONOR, WE SHOULD MEET AND CONFER. WE STARTED THAT PROCESS LAST WEEK.

THE CONSOLIDATED AMENDED COMPLAINT IS ACTUALLY BROADER IN SOME AREAS BUT NARROWER IN OTHERS. WE'VE TALKED ABOUT IPAD, IT'S BROADER. IT'S ALSO BROADER IN THAT THEY INCLUDE IPHONE 5 DEVICES. I CAN TELL YOU MR. STRAITE CALLED IT THROTTLING AND

WE CALLED IT POWER MANAGEMENT FEATURES DO NOT APPLY TO THOSE DEVICES. SO THEY WERE NOT PART OF THESE DOCUMENTS THAT WERE COLLECTED AND PRODUCED.

THE COMPLAINT IS ALSO NARROWER IN THE SENSE THAT THEY ARE NOT INCLUDING, AS THEY SHOULD NOT, THE IPHONE 8 AND 10, THE TWO NEWEST DEVICES THAT APPLE RELEASED LAST FALL. SOME OF THESE PRODUCTIONS INCLUDE THOSE.

SO WE THINK THE PARTIES SHOULD MEET AND CONFER. THEY HAVE ALREADY INDICATED THAT THEY WILL NOT ACCEPT THIS PRODUCTION TO REGULATORS IN LIEU OF A FULL CUSTODIAL PRODUCTION OF THE SEARCH TERMS. SO WE'RE ALREADY GOING TO HAVE TO GO THROUGH THAT PROCESS.

IF THERE IS MATERIAL THAT HAS BEEN COLLECTED, IF THERE IS MATERIAL THAT IS AVAILABLE, WE'LL GET IT TO THEM AS QUICKLY AS WE CAN, BUT WE DON'T WANT TO GO THROUGH THIS PROCESS TWICE. SO WE THINK WE SHOULD MEET AND CONFER ON IT, AND WE'RE COMMITTED TO WORKING THROUGH IT AS QUICKLY AS WE CAN.

THE ONLY CAVEAT I WOULD ADD, YOUR HONOR, IS THE INTERNATIONAL ASPECT OF IT AND THE IPAD ASPECT OF IT. I STRESS TO YOU THAT WOULD DRAMATICALLY INCREASE THE SCOPE OF DISCOVERY.

THE COURT: PARDON ME FOR INTERRUPTING YOU.

MR. CHORBA: YES.

THE COURT: BUT WHAT I WAS INCLINED TO DO IS TO ALLOW YOU TO MEET AND CONFER AND STAY DISCOVERY ON THOSE --

MR. CHORBA: THANK YOU, YOUR HONOR.

02:14PM THE COURT: -- THOSE DEVICES PENDING OUR NEXT
02:15PM HEARING, WHICH IS GOING TO BE ON THOSE MOTIONS.
02:15PM BECAUSE I THINK YOU'LL HAVE ENOUGH TO DO WITHOUT DEALING
02:15PM WITH THOSE OTHER DEVICES AT THIS POINT.
02:15PM MR. CHORBA: THANK YOU, YOUR HONOR.
02:15PM MR. KING: YES. THANK YOU, YOUR HONOR. WE HEAR THE
02:15PM COURT'S INCLINATION AND WE JUST HAD, CONSISTENT WITH YOUR
02:15PM HONOR'S DIRECTION AT THE BEGINNING OF THE CASE TO MOVE
02:15PM EXPEDITIOUSLY, WE HAVE SPENT TIME TRYING TO CARVE OUT AREAS OF
02:15PM DISCOVERY WHERE WE THOUGHT IT MADE SENSE TO MOVE QUICKLY.
02:15PM THE COURT: I APPRECIATE THAT. THANK YOU.
02:15PM MR. KING: WE THOUGHT DOCUMENTS ALREADY PRODUCED
02:15PM WOULD BE A LOGICAL ONE.
02:15PM THE COURT: I APPRECIATE THAT. LET'S PROCEED THIS
02:15PM WAY, I THINK WE'LL STAY ANY TYPE OF DISCOVERY ON THE OTHER
02:15PM DEVICES PENDING OUR HEARING, OUR 12(B)(6) HEARING.
02:15PM MR. KING: TO BE CLEAR, BY "OTHER DEVICES," THE
02:15PM COURT MEANS?
02:15PM THE COURT: THE IPAD I GUESS IS WHAT I'M TALKING
02:15PM ABOUT, RIGHT?
02:15PM MR. CHORBA: AND THAT WOULD INCLUDE THE
02:15PM INTERNATIONAL AS WELL, YOUR HONOR?
02:15PM THE COURT: YES. YES. FOR NOW, RIGHT.
02:15PM MR. CHORBA: THANK YOU.
02:15PM THE COURT: AND THAT'S WITHOUT ANY PREJUDICE TO YOU

BRINGING THIS BACK IN FRONT OF ME SHOULD THE NEED ARISE.

MR. CHORBA: I THINK YOUR HONOR IS CORRECT, THAT GIVES US PLENTY TO WORK WITH IN THE INTERIM.

THE COURT: SO LET ME MOVE TO -- THERE WAS A MOTION ALSO FOR COMPLIANCE WITH THE RULE 26(F). I THINK THAT'S MOOT.

MR. CHORBA: WE AGREED IN THE STATEMENT.

MR. KING: YES, YOUR HONOR.

THE COURT: RIGHT. THANK YOU FOR THAT.

THERE WAS ANOTHER MOTION, I THINK IT'S DOCKET 116. THIS IS AGAIN AN EXPEDITED DISCOVERY TYPE OF MOTION AND THE REGULATORS AND GOVERNMENTAL ENTITIES.

MR. CHORBA: THAT'S JUST WHAT WE DISCUSSED.

THE COURT: DO YOU NEED ANY FURTHER HELP ON THIS?

MR. CHORBA: NO.

THE COURT: RIGHT. I JUST TOLD YOU WHAT I WOULD LIKE TO YOU DO ON THAT. BUT IF YOU DO NEED ANY ADDITIONAL HELP, WHAT I HAD WOULD LIKE YOU TO DO IS TO SEE JUDGE DEMARCHI.

MR. CHORBA: OKAY.

THE COURT: AND I'VE TALKED TO HER. YOU MIGHT BE VISITING HER.

MR. CHORBA: OKAY.

THE COURT: I JUST WANTED TO REVISIT THIS BEFORE I LEAVE IT. IF THERE IS ANY DISCUSSION ON THAT, THEN YOU CAN CONTACT JUDGE DEMARCHI, AND SHE'LL BE EAGER TO HEAR FROM YOU.

MR. CHORBA: THANK YOU, YOUR HONOR.

MR. COTCHETT: WE APPRECIATE THAT.

MR. KING: THANK YOU, YOUR HONOR. WE APPRECIATE THAT. IN THAT CONNECTION I SHOULD ALSO RAISE THAT WE HAVE STARTED THE PROCESS OF INTERFACING WITH JUDGE WESTERFIELD TO BE THE SPECIAL MASTER IN THIS CASE.

THE COURT: AND THAT WAS MY NEXT QUESTION. I'M GOING DOWN MY LIST.

WHAT IS THE STATUS OF THAT?

MR. CHORBA: SHE'S ON A THREE-WEEK VACATION, GOD BLESS HER, SO WE REACHED OUT TO OUR CASE MANAGER. WE'VE WORKED AND EXCHANGED DRAFTS OF A STIPULATION TO PRESENT TO YOUR HONOR. I ACTUALLY THINK THAT WE'RE PRETTY FAR ALONG. THERE JUST HAVE BEEN OTHER FISH TO FRY SO TO SPEAK, BUT I THINK WE ACTUALLY OWE PLAINTIFFS' COMMENTS BACK TO THEIR DRAFT WHICH WE EXPECT TO GET TO THEM THIS WEEK.

MS. BIEHL: STEPHANIE BIEHL, YOUR HONOR. THAT'S CORRECT. WE SENT A REVERSION OF EDITS TO APPLE COUNSEL LAST WEEK, AND WE ARE AWAITING THEIR COUNTER OR THEIR APPROVAL. AS SOON AS THAT'S WORKED OUT, WE WILL SUBMIT IT TO JUDGE WESTERFIELD.

THE COURT: THANK YOU FOR THAT. WHEN WE WERE LAST HERE, I'M NOT BEING CRITICAL, BUT IT SOUNDED LIKE SHE JUST NEEDED A PEN TO SIGN.

MS. BIEHL: THAT IS CORRECT. UNFORTUNATELY FOR US SHE'S OUT OF THE COUNTRY AND FORTUNATELY FOR HER SHE'S OUT OF

THE COUNTRY ON VACATION.

MR. CHORBA: AND COUNSEL IS CORRECT, YOUR HONOR, WE THOUGHT IT WAS PRUDENT TO ACTUALLY SHOW HER THE STIPULATION BEFORE WE PRESENTED IT TO YOUR HONOR JUST IN CASE SHE HAD ANY ISSUES.

THE COURT: OKAY. ALL RIGHT. THANK YOU FOR THAT.

LET'S SEE. I THINK YOU ALSO PROPOSE INITIAL DISCLOSURE TAKE PLACE ON SEPTEMBER 5TH.

MR. KING: YES, YOUR HONOR.

THE COURT: I THINK THAT IS REASONABLE. YOU'RE ALSO GOING TO SUBMIT THE PROTECTIVE ORDERS AND ESI PROTOCOLS AND THOSE TYPES OF THINGS. THAT'S FINE.

LET ME ASK ABOUT, THERE IS ALSO SOMETHING INTRIGUING HERE YOU WERE TALKING ABOUT SELECTION OF A MEDIATOR. CAN YOU TELL ME A LITTLE ABOUT THAT.

MR. CHORBA: YES, YOUR HONOR. WE PROPOSED A FEW NAMES TO PLAINTIFFS' COUNSEL. I THINK THEY'RE EVALUATING.

MR. COTCHETT INDICATED THAT HE MAY HAVE SOME NAMES FOR US TO CONSIDER. THE PARTIES HAVE ALSO, I CAN REPRESENT, AS WE STATED IN THE JOINT REPORT, EXPRESSED A WILLINGNESS TO SORT OF SIT DOWN AND START SOME EARLY CONVERSATIONS AMONGST THEMSELVES, AND WE'RE COMMITTED TO DOING THAT.

THE COURT: OKAY.

MR. KING: YES, YOUR HONOR. THAT'S CORRECT. I WOULD ADD THAT RECEIVING DISCOVERY FROM OUR PERSPECTIVE WOULD

BE AN INTEGRAL PART OF EVALUATING THE CASE.

THE COURT: I'M TOLD THAT SOMETIMES INFORMS THAT PROCESS.

LET'S MOVE TO THE PRO SE ACTIONS. I THINK THERE ARE THREE OF THEM.

WE HAD REACHED OUT TO OUR LOCAL RESIDENT PRO SE DEPARTMENT HERE, KEVIN, AND HE -- I DON'T SEE HIM IN THE AUDIENCE.

THE CLERK: HE WAS HERE. HE HAD TO GO TO JUDGE KOH'S COURTROOM FOR A HEARING.

THE COURT: HE WAS HERE, AND HE HAD TO GO DOWN TO JUDGE KOH. I THOUGHT WHAT I WOULD DO IS REFER AT LEAST THE THREE WE KNOW OF, MOHAMMED, HOGUE, AND OLIVER, TO OUR PRO SE OFFICE TO SEE IF HE CAN REACH OUT TO THEM FOR ANY TYPE OF ASSISTANCE.

I THINK YOU UNDERSTAND WHAT HE DOES. SHOULD I USE THE WORD "COORDINATE"? HE WILL CONTACT THOSE INDIVIDUALS. HE CAN'T REPRESENT THEM PER SE, BUT HE CAN CERTAINLY ASSIST THEM. IF THEY WISH TO REMAIN PRO SE, THAT'S FINE, BUT HE CAN DIRECT THEM AND TRY AND FIND COUNSEL IF THEY REQUEST THAT.

I DON'T KNOW IF ANY OF THESE THREE HAVE BEEN IN CONTACT WITH PLAINTIFFS' COUNSEL OR NOT, BUT HE, KEVIN, MIGHT BE ABLE TO INTERFACE IN THAT REGARD AS WELL.

MR. KING: THAT'S FINE WITH PLAINTIFFS, YOUR HONOR.

THE COURT: ALL RIGHT. NO OBJECTION. WE'LL ENGAGE HIM TO DO THAT.

02:20PM ANYTHING ELSE BEFORE WE MOVE ON?

MR. KING: WE DO, YOUR HONOR. MR. STRAITE WILL ADDRESS THE 23(D) MOTION THAT WE HAD MADE BUT THEN WAS STAYED BY THE COURT SOME TIME AGO.

THE COURT: RIGHT.

MR. STAITE: SORRY, YOUR HONOR. BACK AGAIN. I'LL SPEAK SLOWER THIS TIME.

AS YOUR HONOR KNOWS, ON FEBRUARY 6TH, ON OR ABOUT FEBRUARY 6TH, A 23(D) MOTION WAS FILED IN THREE ACTIONS, GALLMANN, CUNNINGHAM, AND BLOCK, SEEKING COURT SUPERVISION OVER APPLE'S COMMUNICATIONS WITH ABSENT PUNITIVE CLASS MEMBERS REGARDING THE BATTERY REPLACEMENT PROGRAM.

WE ASKED APPLE, YOU SAW IN THE EXHIBITS TO THAT MOTION CORRESPONDENCE BETWEEN AT THAT TIME COUNSEL FOR THOSE THREE PLAINTIFFS AND APPLE ASKING THEM TO CONFIRM THAT PARTICIPATION IN THE BATTERY REPLACEMENT PROGRAM WOULD NOT IN ANY WAY IMPACT CLAIMS IN THE MDL.

APPLE COUNSEL SAYS THIS IS PREMATURE. UNTIL WE SEE A CONSOLIDATED COMPLAINT, HOW DO WE KNOW WHETHER OR NOT ANY CLAIMS WOULD BE AFFECTED OR OTHERWISE IMPACTED?

SO WE AGREED AFTER THE LEADERSHIP WAS RULED ON ON MAY 15TH, WE AGREED TO WAIT UNTIL THE CONSOLIDATED AMENDED COMPLAINT WAS FILED AND THEN SEE IF WE CAN STIPULATE TO A RESOLUTION.

THE COMPLAINT, OF COURSE, WAS FILED ON JULY 2ND. WE SPOKE

ABOUT THE OUTSTANDING 23(D) MOTION ON JULY 3RD, AND I THINK WE SPOKE BRIEFLY ON JULY 5TH HOPING THAT WE WOULD BE ABLE TO ACHIEVE A STIPULATED RESOLUTION, WHICH IN OUR EYES WOULD BE A ONE SENTENCE STIPULATION. "APPLE HEREBY STIPULATES THAT THE PARTICIPATION IN THE BATTERY REPLACEMENT PROGRAM DOES NOT IMPACT CLAIMS IN THE MDL."

THE BATTERY REPLACEMENT PROGRAM ALSO NOW HAS EXPANDED TO INCLUDE A $50 CREDIT PROGRAM FOR A LIMITED NUMBER OF PEOPLE WHO PURCHASED FULL PRICED BATTERIES IN THE PREVIOUS CALENDAR YEAR, AND SO WE, OF COURSE, WANTED THE STIPULATION TO INCLUDE THAT PART OF THE PROGRAM AS WELL.

WE RECEIVED A LETTER FROM MR CHORBA ON JULY 5TH, THIS PAST THURSDAY, WHICH MADE US QUESTION WHETHER A STIPULATION WAS POSSIBLE, WHETHER APPLE WOULD BE WILLING TO SIGN THAT ONE SENTENCE STIPULATION.

SO I DON'T KNOW IF APPLE WANTS TO BE HEARD ON THIS POINT, BUT IT'S OUR VIEW THAT A STIPULATION MAY NOT BE POSSIBLE GIVEN WHAT WE WOULD LIKE.

SO THAT MOTION MAY BE PULLED FROM THE THREE INDIVIDUAL ACTIONS AND RE-FILED IN THE MDL VERY SOON UNLESS, OF COURSE, APPLE WERE GOING TO STIPULATE TO THAT SENTENCE HERE, WHICH I DOUBT. WE WILL LET THEM SPEAK FOR THEMSELVES.

MR. CHORBA: I'M A LITTLE SURPRISED THAT THIS IS COMING UP BECAUSE WE HAD A CONVERSATION WITH MOST OF MR. STRAITE'S COLLEAGUES AND HE WAS IN THE AIR FLYING FROM NEW

YORK WHERE WE DISCUSSED THIS VERY ISSUE.

THE CORRESPONDENCE DATED JULY 5TH TO WHICH MR. STRAITE RESPONDS WAS A RESPONSE TO THEIR C.L.R.A. NOTICE LETTER WHICH WE RECEIVED ON THE FRIDAY BEFORE THE CONSOLIDATED AMENDED COMPLAINT BASICALLY EXPLAINING WHY THE NOTICE WAS INSUFFICIENT FOR A VARIETY OF WAYS.

I THINK, FRANKLY, COUNSEL IS READING THAT IN A WAY TO TRY TO VIEW APPLE AS TAKING A DIFFERENT POSITION. I CONFIRMED ON THE CALL YESTERDAY WITH MR. STRAITE'S COLLEAGUES THAT WE HAVE NOT CHANGED OUR POSITION.

THE ONLY WRINKLE HERE, TO GET INTO THE WEEDS JUST A LITTLE BIT, YOUR HONOR, IS MR. STRAITE REFERENCED CURRENTLY THROUGH THE END OF THE YEAR CUSTOMERS CAN BRING IN AN ELIGIBLE DEVICE AND INSTEAD OF PAYING $79 FOR A BATTERY REPLACEMENT, THEY CAN RECEIVE IT FOR $29. THIS WAS ANNOUNCED AT THE END OF LAST YEAR.

A FEW MONTHS AGO APPLE ANNOUNCED THAT FOR THOSE CUSTOMERS WHO HAD PURCHASED THE BATTERY REPLACEMENT IN 2017 BEFORE THIS PROGRAM WAS ANNOUNCED, THAT IT WOULD GIVE A $50 CREDIT. SO BASICALLY IF A DAY BEFORE THE PROGRAM WAS ANNOUNCED YOU REPLACED YOUR BATTERY, YOU'RE NOT DISADVANTAGED BY PAYING THE FULL AMOUNT INSTEAD OF THE $29 AMOUNT. COUNSEL THEN SPOKE WITH US ABOUT THAT AND WANTED TO MAKE SURE THERE WAS NO ISSUE.

THE ONLY CARVEOUT THAT WE STATED TO MR. STRAITE'S STIPULATION WE THINK IS A BASIC AND COMMON SENSE ONE. WE DON'T

VIEW THE CONSOLIDATED AMENDED COMPLAINT AS SEEKING AS DAMAGES ON BEHALF OF ANY CLASS MEMBER, THE $50 ADDITIONAL THAT WAS PAID IN 2017. HOWEVER, WE SAID THE ONLY CAVEAT THAT WE WOULD HAVE TO THAT STIPULATION IS THAT THE CLASS MEMBERS CAN'T RECOVER THE SAME DOLLAR TWICE FOR THE SAME EXACT ALLEGED HARM.

I THINK THIS IS AN ACADEMIC ISSUE. I THINK IT'S ALMOST LIKE A LAW SCHOOL EXAM HYPOTHETICAL BECAUSE I DON'T PERCEIVE THEM TAKING THAT POSITION, BUT WE ARE EARLY IN THE CASE. THEY HAVE NOT STATED THE DAMAGES CLAIM, AND SO I STILL CONTINUE TO THINK WE CAN STIPULATE TO THIS. I WOULD URGE COUNSEL TO SEND US THE STIPULATION. WE'VE BEEN WAITING FOR THIS FOR A WHILE, AND LET'S SEE IF WE CAN WORK THIS OUT AND AVOID YET ANOTHER URGENT MOTION.

THE COURT: SHOULD I ALLOW YOU TO DO THAT, MR. STRAITE, THAT IS, CONTINUE TO SPEAK?

MR. STAITE: I WOULD CERTAINLY THINK SPEAKING IS A GOOD THING BECAUSE IT CAN BE ILLUMINATING SOMETIMES. BUT WE DID NOT DO A STIPULATION PRIOR TO THE AMENDED COMPLAINT BECAUSE COUNSEL ASKED US TO WAIT FOR TIME TO SEE IT.

NOW THAT IT'S THERE WE ASK WOULD THE STIPULATION BE POSSIBLE? WE DON'T HAVE A SENSE THAT IT WOULD BE PRECISELY BECAUSE OF THE CARVEOUT THAT MR CHORBA JUST REFERRED TO. IT IS THAT CARVEOUT THAT IS SORT OF THE ACADEMIC QUESTION. THAT IS THE BLUE BOOK QUESTION.

IF APPLE IS TAKING THE POSITION THAT A CUSTOMER

PARTICIPATING IN THE BATTERY REPLACEMENT PROGRAM WOULD BE AN ADVANCE OR OFFSET ON DAMAGES, THEY'RE FREE TO TAKE THAT POSITION, BUT IT NEEDS TO BE COMMUNICATED TO THE ABSENT CLASS MEMBERS UNDER COURT SUPERVISION. RULE 23(D) IS EXPLICIT AND CLEAR ON THIS POINT THAT IF THERE'S GOING TO BE COMMUNICATIONS WITH ABSENT CLASS MEMBERS REGARDING THE SUBSTANCE OF THE LITIGATION WHICH WOULD INCLUDE, I WOULD IMAGINE, DAMAGES THAT ARE AVAILABLE UNDER THE VARIOUS CLAIMS THAT WE'RE ASSERTING, AT A MINIMUM THE COURT NEEDS TO BE INVOLVED IN THOSE COMMUNICATIONS. WE'RE NOT SAYING THAT APPLE NEEDS TO COME OVER TO OUR VIEW OF THE WORLD. WE'RE SAYING THAT THEY HAVE TO AGREE WITH US. WE'RE SAYING EITHER AGREE THAT THESE GOOD WILL GESTURES DO NOT COUNT AS AN OFFSET TO DAMAGES OR THE OTHER ALTERNATIVE IS IF THEY ARE TAKING THE POSITION THAT THEY'RE AN OFFSET ON ADVANCE ON DAMAGES, THAT'S A COMMUNICATION WITH ABSENT CLASS MEMBERS REGARDING THIS CASE THAT REQUIRES COURT SUPERVISION. THEY'RE ATTEMPTING NOW, AND, IN FACT, THEY HAVE ALREADY STARTED TO COMMUNICATING WITH CUSTOMERS WITHOUT GOING THROUGH YOUR HONOR. RULE 23(D) REQUIRES COURT SUPERVISION OVER THOSE COMMUNICATIONS, AND THAT'S WHAT WE'RE OBJECTING TO.

MR. CHORBA: YOUR HONOR, I DON'T KNOW HOW TO SAY IT ANYMORE STRAIGHTFORWARD THAN I DID A MOMENT AGO. IT'S ONLY THIS ISSUE OF DOUBLE RECOVERY. IT'S NOT AN ADVANCE ON DAMAGES. IF THEY'RE SEEKING, FOR EXAMPLE, FULL REFUND OF THE PURCHASE

PRICE, WE WOULDN'T CLAIM THAT THERE WAS A $50 OFFSET.

IT WOULD ONLY BE IF THEY'RE PRESENTING TO YOU AT THE APPROPRIATE STAGE, IN ADDITION TO ALL OF THE OTHER MEASURES OF DAMAGES, THESE CLASS MEMBERS. IF THEY PAID $79, THEY GET $50 BACK AND THAT INDIVIDUAL SAME PERSON GOT THE SAME $50 FOR THE SAME EXACT AMOUNT.

SO I WOULD URGE COUNSEL NOT TO STAND UP WHEN HE WASN'T ON THE CALL YESTERDAY, TO PICK UP THE PHONE, WE CAN DISCUSS THIS, SEND US A DRAFT STIPULATION. WE AGREE, WE AVERT A MOTION. WE DON'T AGREE, THEY RENEW THEIR MOTION.

THE COURT: I'M GOING TO ALLOW YOU TO TALK. I THINK YOU BOTH HAVE REASONABLE MINDS HERE. I THINK YOU CAN FIND COMMON GROUND.

MR. STAITE: WE OPT TO NOT FILE A MOTION WITHOUT ANOTHER IMPORTANT CALL.

THE COURT: OKAY. THANK YOU FOR THE UPDATE ON THAT. ANYTHING ELSE?

MR. CHORBA: IF YOU'VE CONCLUDED, I HAVE A QUESTION. I KNOW YOU'RE LIKELY GOING TO ISSUE AN ORDER ON THE CLAIMS AND THE MOTION TO DISMISS ISSUE, I PRESUME?

THE COURT: YES.

MR. CHORBA: MR. COTCHETT SAID SOMETHING AND MY CLIENT WANTS ME TO MAKE SURE I AM CLEAR ON THE RECORD. WE WANT TO MAKE SURE THAT ANY SEQUENCING OR PROCEDURE DOES NOT MEAN THAT APPLE CANNOT MOVE FORWARD WITH ITS FULL RULE 12 AGAINST

ALL OF THE CLAIMS. WE WANT TO JUST MAKE SURE --

THE COURT: NO, YOU'RE NOT GOING TO WAIVE ANY POSITION, AND I'M NOT GOING TO ALLOW THAT TO OCCUR ON EITHER SIDE.

MR. CHORBA: THANK YOU.

THE COURT: BOTH SIDES ARE GOING TO GET A FULL HEARING ON MOTIONS YOU WISH TO PRESENT.

MR. CHORBA: THANK YOU, YOUR HONOR.

THE COURT: YOU'RE WELCOME. I DO WANT TO INDICATE I THOUGHT I SAW KEVIN COME IN.

MR. KNESTRICK: YES.

THE COURT: OUR PRO SE. THANK YOU. WE SPOKE IN YOUR ABSENCE.

MR. KNESTRICK: THAT'S WHAT I HEARD, YOUR HONOR.

THE COURT: THERE ARE THREE PRO SE INDIVIDUALS WHOSE NAMES ARE MOHAMMED, HOGUE, AND OLIVER. I BELIEVE HOGUE IS GOING TO BE DIFFICULT -- I AM TOLD THAT HE'S IN CUSTODY I BELIEVE IN IDAHO?

MR. KNESTRICK: YES, YOUR HONOR.

THE COURT: MR. OLIVER I BELIEVE IS IN GEORGIA OR -- NO, OLIVER IS HERE, I THINK, AND MR. MOHAMMED MIGHT BE IN GEORGIA. I HAVE THOSE INCORRECT.

HAVE YOU BEEN IN CONTACT WITH THEM?

MR. KNESTRICK: NO. I HAVE INFORMATION FOR ALL THREE OF THESE PRO SE LITIGANTS. SO I'M HERE AS A RESOURCE FOR

THEM AS THEY REPRESENT THEMSELVES.

I SAW THE CASE MANAGEMENT CONFERENCE STATEMENT. I JUST WANT TO BE CLEAR I WILL NOT BE REPRESENTING THEM AND THEY DON'T -- BUT I WILL BE HELPING THEM REPRESENT THEMSELVES AND ADVISING THEM AS THEIR CASE PROCEEDS.

THE COURT: THANK YOU FOR BEING HERE AND I MADE THAT CLEAR TO COUNSEL ON THE RECORD, BUT THAT YOU WOULD NOT BE THEIR ATTORNEY OF RECORD, BUT YOU WOULD PROVIDE ASSISTANCE TO THEM EITHER IN THEIR CONTINUED SELF-REPRESENTATION OR -- THIS IS THE THIRD TIME THIS WORD HAS COME UP -- COORDINATE WITH PLAINTIFFS AND DEFENSE AS TO POSITIONS.

AND WITH PLAINTIFFS I SUGGESTED THAT YOU MIGHT BE A CONDUIT TO COMMUNICATION WITH PLAINTIFFS AS TO THEIR DESIRE, THEIR INTEREST, AND CURIOSITY IN SECURING COUNSEL TO REPRESENT THEM IN THIS CASE.

MR. KNESTRICK: YES, YOUR HONOR, ABSOLUTELY. I CAN PROVIDE ALL OF THOSE SERVICES.

THE COURT: THANK YOU VERY MUCH. THANK YOU FOR BEING HERE.

LADIES AND GENTLEMEN, IF YOU WISH TO SPEAK TO KEVIN ABOUT ANYTHING, PLEASE DO SO. HE'S HAPPY TO MAKE HIMSELF AVAILABLE.

MR. KNESTRICK: GREAT. THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU SO MUCH.

WHAT I WILL DO IS I THINK THE NEXT CMC DATE IS AUGUST 23RD, AUGUST 23RD AT 1:30, AND I ASKED THAT YOU PROVIDE

A JOINT CASE MANAGEMENT STATEMENT SEVEN DAYS PRIOR.

I AM GOING TO KEEP US ON SCHEDULE WITH THE MOTION TO DISMISS DATES THAT I PREVIOUSLY SUGGESTED.

I KNOW I THINK, MR CHORBA, YOU'RE ON YOUR FEET, AND YOU'RE GOING TO ASK FOR AN EXTRA WEEK, I THINK.

MR. CHORBA: THERE ARE TWO ISSUES, YOUR HONOR. IF YOU KEEP US ON THAT SCHEDULE, WE HAD WORKED OUT WITH PLAINTIFFS' COUNSEL TO CONTINUE THE HEARING DATE BECAUSE MR. BOUTROUS IS GOING TO ARGUE THAT AND HE'S NOT AVAILABLE.

THE COURT: THAT WAS THE 27TH.

MR. CHORBA: IT WAS THE 20TH. WE HAD AGREED TO OCTOBER 4TH IF IT HAD WORKED FOR YOUR HONOR. IT WASN'T AN AVAILABLE DATE ONLINE.

(DISCUSSION OFF THE RECORD.)

THE COURT: CAN WE GO BACKWARDS FROM THAT DATE TO SEE IF THERE ARE ANY DATES AVAILABLE.

MR. CHORBA: THE ONLY ISSUE IS THAT IN YOUR SCHEDULE, AND IF WE'RE GOING TO DO MORE THAN ANTICIPATED, YOU TALKED ABOUT TWO OR THREE CLAIMS NOW. IT MIGHT BE, AS I AM READING, THE SIX, PLUS THE INTERNATIONAL AND PLUS THE IPAD. WE ONLY HAD A WEEK FOR REPLY, AND THAT'S CUTTING IT REALLY, REALLY CLOSE TO US.

THE COURT: SO THE 20TH YOU'RE TALKING ABOUT?

MR. CHORBA: RIGHT. SO IF YOU WENT BACKWARDS AND ADVANCED THE HEARING BACK IN TIME, IT WOULD CUT SHORT OUR

02:32PM REPLY.

THE COURT: BACKWARDS FROM THE 4TH, YOUR HONOR.

MR. CHORBA: I'M SORRY, YOUR HONOR. SO THE 11TH YOU MEAN?

THE COURT: WELL, YOU'RE ASKING FOR A HEARING DATE OF OCTOBER 4TH.

MR. CHORBA: YEAH, AND WE CLEARED THE 4TH AND 11TH WITH OPPOSING COUNSEL. IF THERE'S A DATE THAT WORKS FOR YOUR HONOR.

THE COURT: THAT'S WHAT I'M LOOKING AT. I HAVE SEEN WE HAVE -- WE'RE SET TO BE IN TRIAL, BUT I'M HAPPY TO HAVE THAT TRIAL GO DARK A DAY OR TWO SO WE CAN HEAR YOUR MOTIONS.

MR. COTCHETT: SO THE 4TH WOULD WORK WITH YOU?

THE COURT: SO GOING BACKWARDS FROM THE 4TH IN OCTOBER. SO THE 3RD, THE 2ND.

MR. COTCHETT: EITHER DAY.

MR. CHORBA: SAME HERE, YOUR HONOR.

(DISCUSSION OFF THE RECORD.)

THE COURT: THE 3RD AND 4TH ARE NOT AVAILABLE. SO THE 2ND.

MR. COTCHETT: THE 2ND IS FINE.

MR. CHORBA: I BELIEVE THAT'S FINE FOR US AS WELL. THANK YOU FOR ACCOMMODATING US.

THE COURT: SURE. SHOULD WE START IN THE MORNING? 10:00 O'CLOCK?

MR. COTCHETT: 10:00 O'CLOCK WOULD BE FINE.

MR. CHORBA: THAT'S FINE WITH US. WE'LL MAKE IT WORK.

AND, YOUR HONOR, WE WORKED OUT WITH COUNSEL, I THINK THEY GOT AN EXTRA WEEK AND WE GOT AN EXTRA WEEK. IS THAT SOMETHING THAT WE CAN WORK OUT?

THE COURT: YES.

MR. COTCHETT: THANK YOU VERY MUCH, YOUR HONOR.

THE COURT: YOU'RE WELCOME. THANK YOU.

MR. CHORBA: THANK YOU, YOUR HONOR.

THE CLERK: SO THAT HEARING IS IN LIEU OF THE SEPTEMBER 20TH DATE?

THE COURT: THAT'S CORRECT.

MR. CHORBA: THANK YOU SO MUCH.

THE COURT: ALL RIGHT. THANK YOU. ANYTHING FURTHER?

MR. COTCHETT: JUST SO WE'RE CLEAR, THE HEARING DATE WILL BE ON THE 2ND OF OCTOBER AT 10:00 O'CLOCK.

THE COURT: CORRECT.

MR. CHORBA: AND I'M SORRY. I THINK YOU WERE ABOUT TO SAY THAT THE JOINT CMC IS DUE A WEEK BEFORE THE 23RD.

THE COURT: A WEEK BEFORE THE 23RD THAT'S RIGHT.

ALL RIGHT. ANYTHING ELSE? ANYONE ON THE PHONE WISH TO BE HEARD? I HEAR NO RESPONSES. WITH THAT THEN WE'LL DISENGAGE THE LINES. THANK YOU FOLKS FOR BEING HERE. GOOD TO SEE YOU.

02:34PM MR. COTCHETT: THANK YOU, YOUR HONOR.

02:34PM MR. STAITE: THANK YOU, YOUR HONOR.

02:34PM MR. CHORBA: THANK YOU, YOUR HONOR.

02:37PM (RECESS FROM 2:37 P.M. UNTIL 2:37 P.M.)

02:39PM THE COURT: WE'RE BACK ON THE RECORD. ALL COUNSEL PREVIOUSLY PRESENT ARE PRESENT AGAIN EXCEPT FOR COUNSEL ON THE PHONE.

AS SOON AS I HIT THE DOOR I REALIZED A CALENDAR ERROR, AND I APOLOGIZE. LET ME ASK CAN WE SET THE HEARING DATE FOR SEPTEMBER 28TH, THAT'S A FRIDAY?

02:39PM MR. CHORBA: SURE.

02:39PM MR. COTCHETT: ABSOLUTELY, YOUR HONOR.

02:39PM MR. CHORBA: SURE. JUST CHECKING BECAUSE AGAIN IT WAS MR. BOUTROUS WITH THE SCHEDULING CONFLICT. I GUESS WE'LL MAKE IT WORK. I GUESS MY ONLY CONCERN IS MAKING SURE WE HAVE TWO WEEKS FOR THE REPLY PAPERS.

02:39PM THE COURT: WELL, THEN THOSE DATES WOULD CALCULATE AUGUST 9TH; OPPOSITION, SEPTEMBER 6TH; REPLY SEPTEMBER 13TH; HEARING SEPTEMBER 28TH.

02:40PM MR. COTCHETT: PERFECT.

02:40PM MR. CHORBA: THAT'S THE ISSUE, YOUR HONOR. THAT'S ONLY ONE WEEK FOR OUR REPLY. I DON'T MEAN TO BE SO FOCUSSED ON THAT. WE JUST WANT TO MAKE SURE WE ADDRESSED THE ISSUES COMPREHENSIVELY, AND IT SOUNDS LIKE WE MAY HAVE BEEN INCLUDING THE INTERNATIONAL ISSUES WHICH ARE QUITE SIGNIFICANT. SO I

UNDERSTAND YOUR HONOR'S DESIRES TO KEEP THE THING MOVING.

THE COURT: WOULD IT -- IF I HAD --

MR. CHORBA: AND I DON'T WANT TO CRUNCH THE COURT WITH HAVING LESS TIME WITH OUR PAPERS.

THE COURT: WELL, COULD YOU GET IT IN THAT FOLLOWING WEEK, THE 17TH? THE 18TH?

MR. CHORBA: WE'LL DO WHATEVER YOU NEED, YOUR HONOR.

THE COURT: HOW MUCH DO I WANT TO PUNISH -- HOW MANY WEEKENDS DO I WANT TO DESTROY FOR YOUR ASSOCIATES?

MR. CHORBA: THAT'S REALLY THE ISSUE, AND I DON'T WANT TO CUT INTO COUNSEL'S TIME EITHER, AND THEY HAVE APPROXIMATELY A MONTH, AND WE HAVE A WEEK. THERE COULD BE A LITTLE GIVE ON THEIRS, IF WE DON'T GET IT TEN MINUTES TO MIDNIGHT. IF WE GET IT MAYBE A DAY OR TWO EARLY, THAT WOULD HELP US.

MR. COTCHETT: WE'LL DO THAT.

THE COURT: DO YOU WANT TO YIELD TIME FOR YOUR COLLEAGUE OPPOSITE.

MR. CHORBA: IF WE GET TWO WEEKS, MAYBE, YOUR HONOR, COULD WE CONFER AND TRY TO WORK THIS OUT AND IF WE CAN PRESENT A SCHEDULE TO YOUR HONOR WITH A HEARING ON THE 28TH.

THE COURT: WELL, THAT'S WHAT I WOULD LIKE TO DO, AND I APOLOGIZE FOR NOT GRASPING THAT EARLIER. WE WILL HAVE A HEARING ON FRIDAY, SEPTEMBER 28TH AT 10:00 A.M., AND THEN IF THE MOTION CAN BE FILED BY AUGUST 9TH. DO YOU NEED MORE TIME

THAN THAT OR --

MR. CHORBA: AGAIN, YOUR HONOR, WE WANTED MORE TIME, BUT IF YOUR HONOR IS KEEPING A SCHEDULE EARLY SEPTEMBER, WE'LL MAKE IT WORK. CAN WE JUST RESERVE THE RIGHT IF WE HAVE TROUBLE IDENTIFYING, IF WE NEED TO GO TO RULE 44.1, CAN WE MAKE AN APPLICATION, AN ADMINISTRATIVE APPLICATION TO THE COURT?

THE COURT: OF COURSE. YES. THANK YOU, MR. CHORBA.

MR. COTCHETT: RIGHT NOW WE'RE SET FOR THE 28TH FOR THE HEARING, IS THAT CORRECT, YOUR HONOR?

THE COURT: THAT'S CORRECT, SEPTEMBER 28TH AT 10:00 A.M.

MR. COTCHETT: THE 28TH. AND THEN WE WILL WORK BACK. IF THEY NEED SOME TIME, WE'LL GIVE THEM SOME TIME.

MR. CHORBA: THANK YOU, MR. COTCHETT. THANK YOU, YOUR HONOR.

THE COURT: AND I APOLOGIZE, COUNSEL, I APOLOGIZE FOR NOT CATCHING THE GLITCH IN MY SCHEDULE.

MR. COTCHETT: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

THE CLERK: COURT IS ADJOURNED.

(COURT CONCLUDED AT 2:42 P.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

Irene Rodriguez

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: JULY 18, 20187

APPENDIX “5A”

A CERTIFIED TRUE COPY
ATTEST
By Darion Payne on Jun 15, 2009
FOR THE UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
2009 JUN 15 PM 4:55
LORETTA G. WHYTE
CLERK

UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

Jun 15, 2009
FILED
CLERK'S OFFICE

IN RE: CHINESE-MANUFACTURED DRYWALL PRODUCTS LIABILITY LITIGATION

MDL No. 2047

TRANSFER ORDER

Before the entire Panel: Plaintiffs in two Southern District of Florida actions move, respectively, pursuant to 28 U.S.C. § 1407, for coordinated or consolidated pretrial proceedings of certain actions listed on Schedule A in the Southern District of Florida. The two motions collectively encompass ten actions, four actions in the Southern District of Florida, three actions in the Middle District of Florida and one action each in the Northern District of Florida, Eastern District of Louisiana, and Southern District of Ohio.[1]

Taylor Morrison Services, Inc., a defendant in a Middle District of Florida action (*Culliton*), initially opposed the motion and supported centralization in the Middle District of Florida in the alternative; at oral argument this defendant appeared to fully support centralization in the Middle District of Florida. Venture Supply, Inc., and Porter-Blaine Corp., two defendants in the related action in the Eastern District of Virginia, oppose inclusion of that action, which is not embraced by either motion, in any multidistrict proceedings at this time and ask that any transfer of the action be considered at a later date.

Plaintiff in the Southern District of Ohio action supports centralization but suggests the Southern District of Ohio as the transferee district. Plaintiffs in a related action in the Southern District of Alabama initially suggested centralization in that district, but at oral argument these plaintiffs seemed to support centralization in the Middle District of Florida or the Eastern District of Louisiana. All other responding parties support centralization in the Middle District of Florida, the Southern District of Florida or the Eastern District of Louisiana.

On the basis of the papers filed and hearing session held, we find that these ten actions involve common questions of fact, and that centralization under Section 1407 in the Eastern District of Louisiana will serve the convenience of the parties and witnesses and promote the just and efficient

[1] The parties have notified the Panel of 67 related actions pending in numerous federal districts. These actions and any other related actions will be treated as potential tag-along actions. *See* Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

Fee
Process
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CtRmDep
Doc. No.

conduct of this litigation. All actions share factual questions concerning drywall manufactured in China, imported to and distributed in the United States, and used in the construction of houses; plaintiffs in all actions allege that the drywall emits smelly, corrosive gases. Centralization under Section 1407 will eliminate duplicative discovery, including any discovery on international parties; prevent inconsistent pretrial rulings, particularly those with respect to class certification issues; and conserve the resources of the parties, their counsel and the judiciary. Also, we concur with the request of the defendants in the Eastern District of Virginia related action to consider transfer of that action in the normal course.

No district is a clear focal point of this litigation. The common manufacturing defendant and its affiliates are foreign entities without a major presence in any of the suggested transferee districts. Most actions also name local entities, such as builders and suppliers, as defendants. All of the suggested districts, particularly those in the southeastern region, have a nexus to the litigation through allegedly affected houses built with the drywall at issue. On balance, we are persuaded that the Eastern District of Louisiana is a preferable transferee forum for this litigation. Centralization in this district permits the Panel to effect the Section 1407 assignment to a judge who has extensive experience in multidistrict litigation as well as the ability and temperament to steer this complex litigation on a steady and expeditious course.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Eastern District of Louisiana are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for coordinated or consolidated pretrial proceedings with the action listed on Schedule A and pending in that district.

PANEL ON MULTIDISTRICT LITIGATION

John G. Heyburn II
Chairman

J. Frederick Motz
Kathryn H. Vratil
W. Royal Furgeson, Jr.
Robert L. Miller, Jr.
David R. Hansen
Frank C. Damrell, Jr.

IN RE: CHINESE-MANUFACTURED DRYWALL PRODUCTS LIABILITY LITIGATION MDL No. 2047

SCHEDULE A

	EDLA SEC.L/3
Middle District of Florida	
Shane M. Allen, et al. v. Knauf Plasterboard (Tianjin) Co., Ltd., et al., C.A. No. 2:09-54	09-4112
Duane Ankney v. Knauf Gips KG, et al., C.A. No. 2:09-166	09-4113
Kristin Morgan Culliton v. Taylor Morrison Services, Inc., et al., C.A. No. 8:09-589	09-4114
Northern District of Florida	
The Mitchell Co., Inc. v. Knauf Gips KG, et al., C.A. No. 3:09-89	09-4115
Southern District of Florida	
Lawrence Riesz, et al. v. Knauf Plasterboard (Tianjin) Co., Ltd., et al., C.A. No. 0:09-60371	09-4116
Karin Vickers, et al. v. Knauf Gips KG, et al., C.A. No. 1:09-20510	09-4117
Lorena Garcia, et al. v. Lennar Corp., et al., C.A. No. 1:09-20739	09-4118
Janet Morris-Chin, et al. v. Knauf Plasterboard (Tianjin) Co., Ltd., et al., C.A. No. 1:09-20796	09-4119
Eastern District of Louisiana	
Jill M. Donaldson, et al. v. Knauf Gips KG, et al., C.A. No. 2:09-2981	
Southern District of Ohio	
Steven Minafri v. M/I Homes, Inc., et al., C.A. No. 2:09-167	09-4120

SCHEDULE B

Judicial Panel on Multidistrict Litigation - Panel Service List
for
MDL 2047 - IN RE: Chinese-Manufactured Drywall Products Liability Litigation

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more then one attorney. See Panel rule 5.2(c).

Party Representation Key

* Signifies that an appearance was made on behalf of the party by the representing attorney.
# Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 2047 - Chinese-Manufactured Drywall PL

For Open Cases

Docket: 2047 - IN RE: Chinese-Manufactured Drywall Products Liability Litigation
Status: Transferred on 06/15/2009
Transferee District: LAE Judge: Fallon, Eldon E. Printed on 06/15/2009

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on

MULTIDISTRICT LITIGATION

CHAIRMAN:
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United States District Court
Western District of Kentucky

MEMBERS:
Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Kathryn H. Vratil
United States District Court
District of Kansas

David R. Hansen
United States Court of Appeals
Eighth Circuit

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DIRECT REPLY TO:

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June 15, 2009

Loretta G. Whyte, Clerk
U.S. District Court
500 Poydras Street
Room C-151
New Orleans, LA 70130

Re: MDL No. 2047 -- IN RE: Chinese-Manufactured Drywall Products Liability Litigation

Dear Ms. Whyte:

Attached as a separate document is a certified copy of a transfer order that the Judicial Panel on Multidistrict Litigation issued today in the above-captioned matter. The order is directed to you for filing. Rule 1.5 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 428 (2001), states "A transfer or remand pursuant to 28 U.S. C. § 1407 shall be effective when the transfer or remand order is filed in the office of the clerk of the district court of the transferee district."

Today we are also serving an information copy of the order on the transferor court(s). The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred [transferor court]."

Rule 1.6(a), pertaining to transfer of files, states "the clerk of the transferor district court shall forward to the clerk of the transferee district court the complete original file and a certified copy of the docket sheet for each transferred action." **With the advent of electronic filing, many transferee courts have found that it is not necessary to request the original file. Some transferee courts will send their certified copy of the Panel order with notification of the newly assigned transferee court case number and inform the transferor courts that they will copy the docket sheet via PACER. Others may request a certified copy of the docket sheet and a copy of the complaint (especially if it was removed from state court). You should be specific as to the files you would like to receive from the transferor courts and if no files will be necessary, you should make that clear. Therefore, Rule 1.6(a) will be satisfied once a transferor court has complied with your request.**

You may find Chapter 7 of Volume 4 of the Clerks Manual, United States District Courts helpful in managing the MDL docket.

The Panel Clerk's Office maintains the only statistical accounting of multidistrict litigation traffic in the federal courts. Therefore, we would appreciate your cooperation in keeping the Panel advised of the progress of this litigation. We are particularly interested in receiving the docket numbers assigned to each transferred action by your court; the caption and docket numbers of all actions originally filed in your district; and copies

of orders regarding appointment of liaison counsel, settlements, dismissals, state court remands, and reassignments to other judges in your district.

Your attention is also directed to Panel Rule 7.6, regarding termination and remand of transferred actions. Upon notification from your court of a finding by the transferee judge suggesting to the Panel that Section 1407 remand of a transferred action is appropriate, this office will promptly file a conditional remand order.

Attached to this letter, for your information, is a copy of the Panel Service List and a listing of the transferor court clerks with respect to this order.

Very truly,

Jeffery N. Lüthi
Clerk of the Panel

By Darion Payne
Darion Payne
Deputy Clerk

Attachments (Transfer Order is a Separate Document)

cc: Transferee Judge: Judge Eldon E. Fallon
Chief Judge Transferee District: Judge Sarah Vance

JPML Form 33

Judicial Panel on Multidistrict Litigation - Panel Service List
for
MDL 2047 - IN RE: Chinese-Manufactured Drywall Products Liability Litigation

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more then one attorney. See Panel rule 5.2(c).

Party Representation Key

* Signifies that an appearance was made on behalf of the party by the representing attorney.
# Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 2047 - Chinese-Manufactured Drywall PL

For Open Cases

Docket: 2047 - IN RE: Chinese-Manufactured Drywall Products Liability Litigation
Status: Transferred on 06/15/2009
Transferee District: LAE Judge: Fallon, Eldon E. Printed on 06/15/2009

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APPENDIX “5B”

MINUTE ENTRY
FALLON, J.
DECEMBER 15, 2011

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED DRY WALL PRODUCTS LIABILITY LITIGATION	:	**MDL NO. 2047**
	:	**SECTION: L**
	:	**JUDGE FALLON**
	:	**MAG. WILKINSON**

THIS DOCUMENT RELATES TO ALL CASES

The monthly status conference was held on this date in the Courtroom of Judge Eldon E. Fallon. Prior to the conference, the Court met with Liaison Counsel and the Chairs of the Steering Committees.

The conference was transcribed by Ms. Susan Zielie, Official Court Reporter. Counsel may contact Ms. Zielie at (504) 589-7781 to request a copy of the transcript. A summary of the monthly status conference follows.

The Court commenced the conference by announcing the global class action settlement agreement between the Plaintiffs' Steering Committee ("PSC") and Knauf Plasterboard Tianjin ("KPT"). The Court summarized the background of the litigation involving the PSC and KPT. The Court noted that more than 4,200 properties are alleged to have defective drywall manufactured by KPT. The agreement provides for an uncapped fund for remediation of claimants' homes and permits the claimants to select from: full remediation by an approved builder, owner self-remediation, and cash-out, less a discount. It also contains an other loss fund for loss of property equity in foreclosures and short sales and alleged personal injuries; this fund

JS10(01:20)

Case 2:21-mc-01230-JFC Document 1436-2 Filed 01/18/23 Page 179 of 440

is capped. Attorneys fees are paid separate from the claimants' recovery, totaling $160 million. The Court also expressed its appreciation to the state court judges, particularly Judge Farina and Judge Greene, as well as the Attorney General of Alabama, Luther Strange, and all legislators, such as Senator Nelson from Florida, who have worked to resolve the Chinese drywall issues.

In furtherance of the settlement agreement, IT IS ORDERED that the settling parties are to file the completed settlement agreement by December 20, 2011, and a preliminary approval hearing on the agreement is scheduled for January 4, 2012, at 9:00 a.m. Once the agreement is filed, the Court will post it on its website. The briefing schedule and conference call information will be provided by the Court at a later date.

After the Court announced the settlement, Judge Farina spoke, then counsel for the PSC and counsel for KTP further explained and commented on the agreement.

Following the settlement announcement, Liaison Counsel reported to the Court on topics set forth in Joint Report No. 28. *See* (R. Doc. 11809). With regard to profile forms, Plaintiffs' Liaison Counsel ("PLC") reported that many are still outstanding despite the Court's recent Order requiring submission. Accordingly, the Court directed that all profile forms still outstanding are be filed before the next monthly status conference on January 26, 2012.

Next, Dawn Barrios, Chair of the Federal/State Coordination Committee, reported on the status of related state court proceedings. Ms. Barrios informed the Court that she issued a FOIA request to the CPSC for information regarding properties containing Chinese drywall, but that the CPSC has yet to respond to her request. PLC noted that the PSC was contacted by the CPSC seeking information about the litigation, to which the PSC responded it would exchange information only if the CPSC did also. The Court directed counsel to keep it updated on the status of this situation.

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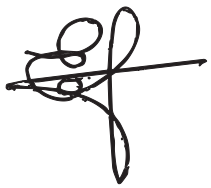
With regard to the motion set for hearing following the conference, the Plaintiffs' Omnibus Motion for Preliminary Default Judgment (R. Doc. 11773), IT IS ORDERED that this Motion is continued to the next monthly status conference, and any defendants named in this Motion have the opportunity to enter an appearance and avoid default if they do so prior to this date.

IT IS FURTHER ORDERED that the next monthly status conference will be held on January 26, 2012, and the next on February 23, 2012. The call-in information for these conferences will be posted on the Court's website on the "Calendar" page.



APPENDIX “6A”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: DAVOL, INC./C.R. BARD, INC., POLYPROPYLENE HERNIA MESH PRODUCTS LIABILITY LITIGATION

Case No. 2:18-md-2846

CHIEF JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson

This document relates to:
ALL ACTIONS.

CASE MANAGEMENT ORDER NO. 10

Bellwether Scheduling Order

In furtherance of the effective and efficient case management of complex litigation, the following procedures set forth the identification and selection of the pool of Bellwether Discovery Cases and the Bellwether Trial Cases from which the initial cases to be tried in this MDL will be selected, and to establish guidelines and a schedule for discovery for these Bellwether Discovery Cases, some of which will be proposed and designated as the initial Bellwether Trial Cases.

In order to facilitate the selection of cases to be selected as Bellwether Discovery Cases and Bellwether Trial Cases, the procedures below shall apply to all actions transferred to *In Re: Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Products Liability Litigation* (MDL No. 2846) by the Judicial Panel on Multidistrict Litigation ("JPML"), all related actions originally filed pursuant to CMO 2 (DIRECT FILING), and/or CMO 9 (MASTER PLEADING), or removed to this Court, and any "tag-along" actions transferred to this Court by the JPML.

As described in Section III below, on or before January 31, 2019, the Parties shall simultaneously identify six Representative Plaintiff candidates for the Bellwether Discovery Cases,

for a total of twelve cases to be worked up for case-specific discovery ("Bellwether Discovery Pool Plaintiffs"). The parties will identify these twelve cases to the Court in one filing. The Court will review the twelve Discovery Pool Plaintiffs selected by the Parties to ensure that they represent a sample of the cases currently pending in this MDL and are consistent with the guidelines set by the Court. The Court may in its sole discretion substitute any case on a Party's list with another case of its choosing and may request input from the Parties in doing so. The Court will issue an order identifying the twelve Bellwether Discovery Pool Plaintiffs. The deadlines in Sections III to IV will only apply to the Bellwether Discovery Pool Plaintiffs. In the event that a case selected for the Bellwether Discovery Pool is dismissed before July 12, 2019, 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 or the terms of this CMO to ensure the integrity of the bellwether process.

As described in Section V below, after Core Discovery occurs for the twelve Bellwether Discovery Pool Plaintiffs, the Parties shall each simultaneously identify a list of three cases for trial consideration, for a total of six cases. The six cases selected will be referred to as the "Bellwether Trial Pool Plaintiffs." The deadlines in Sections VI to IX will only apply to the Bellwether Trial Pool Plaintiffs. The parties shall make these selections on July 12, 2019, and shall jointly notify the Court of the six cases on that day.

The Court will select three of the Bellwether Trial Pool cases for bellwether trials. The cases shall be selected following briefing by the parties and shall be selected by the Court by February 14, 2020, and shall proceed to final pretrial and trial as set forth below in Sections X to XII. The presumptive sequence of trials shall be alternating picks, such that no side has two selections tried consecutively. However, the parties and/or the Court reserve the right to amend

this procedure. In the event that a case selected for the Bellwether Trial Pool or for trial is dismissed before trial, the Court may at its discretion allow the selection of a replacement case by Defendants or Plaintiffs, depending upon the circumstances of the dismissal, or otherwise adjust the balance of selections or the terms of this CMO to ensure the integrity of the bellwether process. For each case set for trial, the Court will set the deadlines in Section X to XII.

Additional cases may be selected for trial, and future Case Management Orders will detail those cases and schedules, and any criteria for pretrial workup.

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.

I. PLAINTIFF PROFILE FORMS ("PPF")

Date	Event
December 19, 2018	Deadline for Plaintiffs to submit a completed PPF, including all executed authorizations, for all cases filed and served as of November 21, 2018. Plaintiffs shall endeavor to submit the PPFs on a rolling basis. For any Plaintiff in a case filed and served after November 21, 2018, Plaintiff shall submit a completed PPF within 60 days after Defendants serve a Short Form Answer. The scope and parameters of the PPF will be governed by a separate CMO.

II. GENERAL FACT DISCOVERY DEADLINES AS TO BELLWETHER TRIAL CASES[1]

Date	Event
October 28, 2019	Deadline for completion of General Fact Discovery for the Bellwether Trial Cases.

III. SELECTION OF DISCOVERY POOL PLAINTIFFS FOR INITIAL CASE SPECIFIC DISCOVERY

Date	Event
January 31, 2019	The Parties shall simultaneously identify six Representative Plaintiff candidates for the Bellwether Discovery Cases, for a total of twelve cases to be worked up for case-specific discovery. The Parties will identify these twelve cases to the Court in one filing.

IV. CORE FACT DISCOVERY FOR BELLWETHER DISCOVERY POOL PLAINTIFFS

Date	Event
March 25, 2019	For the twelve Discovery Pool Plaintiffs selected, Plaintiffs shall serve a completed Plaintiff Fact Sheet ("PFS"), including all authorizations. The scope and parameters of the PFS will be governed by a separate CMO.
April 25, 2019	Defendants will serve a Defendant Fact Sheet ("DFS"). The scope and parameters of the DFS will be governed by a separate CMO.
May 3, 2019	Completion of independent medical examinations ("IME"), should IMEs be ordered by the Court or agreed

[1] To aid in an effective and meaningful Bellwether trial process, the parties have agreed to set deadlines for general fact and expert discovery applicable to the Bellwether Trial Cases and Bellwether Trial cases subject to this CMO. Consistent with the purpose of this MDL, however, it is understood that additional general fact and expert discovery may be conducted in connection with any further cases selected for discovery, trial, remand, or future bellwether process as authorized by Court order or as otherwise identified in Court orders. The conclusion of the general fact and expert discovery authorized by this CMO should not be construed as grounds for termination of this MDL under 28 U.S.C. § 1407 or as any other bar to discovery that might be sought or needed in this MDL.

	upon by the Parties.
June 14, 2019	Deadline for any motions to compel related to case specific fact discovery; later-filed motions will be considered upon a showing of good cause.
June 28, 2019	Completion of all Core Fact Discovery, which may include up to four case-specific fact depositions noticed by each party in interest in each case.

V. SELECTION OF BELLWETHER TRIAL POOL PLAINTIFFS

Date	**Event**
July 12, 2019	The Parties shall simultaneously each identify a list of three Bellwether Trial Pool Plaintiffs from the Discovery Pool Plaintiffs for trial consideration and shall jointly notify the Court of the six Bellwether Trial Pool Cases that day.

VI. ADDITIONAL FACT DISCOVERY FOR BELLWETHER TRIAL POOL PLAINTIFFS

Date	**Event**
August 1, 2019	Deadline to serve interrogatories and requests for production related to case specific fact discovery in the Bellwether Trial Cases.
September 6, 2019	Completion of all Additional Fact Discovery, which may include up to three additional case-specific fact depositions noticed by each party in interest in each case.

VII. EXPERT DISCOVERY FOR BELLWETHER TRIAL POOL PLAINTIFFS

Date	**Event**
September 30, 2019	Plaintiff to serve expert reports.
October 28, 2019	Defendants to serve expert reports.
December 6, 2019	Deadline for expert depositions.

VIII. DISPOSITIVE MOTIONS FOR BELLWETHER TRIAL POOL PLAINTIFFS

Date	Event
December 21, 2019	Dispositive motions to be filed.
January 21, 2020	Opposition papers to dispositive motions to be filed.
February 4, 2020	Reply papers to dispositive motions to be filed.
TBD	Oral argument on dispositive motions, at the discretion of the Court.

IX. *DAUBERT* MOTIONS FOR BELLWETHER TRIAL POOL PLAINTIFFS

Date	Event
December 21, 2019	Deadline for filing of any *Daubert* or other motions concerning any expert (hereafter "expert motions").
January 21, 2020	Opposition papers to expert motions to be filed.
February 4, 2020	Reply papers to expert motions to be filed.
TBD	Oral argument on expert motions, at the discretion of the Court.

X. FINAL PRE-TRIAL ACTIVITIES FOR FINAL THREE BELLWETHER TRIAL CASES

Date	Event
February 14, 2020	Selection by Court of the first Trial Case out of the list submitted by the parties of three cases each that have went through case specific discovery.
May 8, 2020	Bellwether Trial Case No. 1 Commences
July 13, 2020	Bellwether Trial Case No. 2 Commences
September 14, 2020	Bellwether Trial Case No. 3 Commences

The Court will set all final Pre-trial schedules and deadlines for the final three Bellwether Trial Cases, which shall include schedules and deadlines for the following: (1) motions in limine, oppositions, replies, and argument(s), if so determined by the Court; (2) deposition designations, counter designations and objections, and objections to counter designations and reply designations;

(3) fact witness and expert witness lists; (4) exhibit lists designations and objections; (5) proposed jury instructions; (6) proposed *voir dire* questions; (7) a date for a final pre-trial conference; and (8) other deadlines and hearings as the Court requires.

IT IS SO ORDERED.

11-20-2018
DATE

EDMUND A. SARGUS, JR.
CHIEF UNITED STATES DISTRICT JUDGE

11/20/2018
DATE

KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE

APPENDIX “7A”

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: E.I. DU PONT DE NEMOURS AND COMPANY
C-8 PERSONAL INJURY LITIGATION MDL No. 2433

TRANSFER ORDER

Before the Panel:[*] Pursuant to 28 U.S.C. § 1407, defendant E.I. du Pont de Nemours and Company (DuPont) moves to centralize this litigation in the Southern District of Ohio or, alternatively, in the Southern District of West Virginia. This litigation currently consists of twenty-six actions pending in the Southern District of Ohio and the Southern District of West Virginia, as listed on Schedule A.[1]

All of the responding parties agree that centralization is appropriate. In addition to DuPont, plaintiffs in twenty-five actions support centralization in the Southern District of Ohio. Plaintiffs in four potential tag-along actions in the Southern District of Ohio and the Southern District of West Virginia request centralization in the Southern District of West Virginia. Plaintiffs in another four potential tag-along actions seek centralization in the Eastern District of New York. Notably, every party supports centralization in the Southern District of Ohio, at least in the alternative, and several parties also suggest the Southern District of West Virginia as an alternative transferee forum.

On the basis of the papers filed and the hearing session held, we find that these actions involve common questions of fact, and that centralization under Section 1407 in the Southern District of Ohio will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All the actions are personal injury or wrongful death actions arising out of plaintiffs' alleged ingestion of drinking water contaminated with a chemical, C-8 (also known as perfluorooctoanoic acid (PFOA) or ammonium perfluorooctanoate (APFO)), discharged from DuPont's Washington Works Plant near Parkersburg, West Virginia. All of the plaintiffs in this litigation allege that they suffer or suffered from one or more of six diseases identified as potentially linked to C-8 exposure by a study conducted as part of a 2005 settlement between DuPont and a class of approximately 80,000 persons residing in six water districts allegedly contaminated by C-8 from the Washington Works Plant. *See Leach v. E.I. Du Pont de Nemours & Co.*, No. 01-C-608 (W. Va. Cir. Ct.). Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel and the judiciary.

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[*] Judge John G. Heyburn II took no part in the decision of this matter.

[1] The parties have notified the Panel of eleven additional related actions pending in the same two districts. These and any other related actions are potential tag-along actions. *See* Panel Rule 7.1.

Weighing all factors, we have selected the Southern District of Ohio as the transferee district for this litigation. All the parties agree—at least in the alternative—that transfer to the Southern District of Ohio is appropriate. The majority of the related actions are pending in this district, including the first-filed and most advanced action. The Southern District of Ohio is both accessible and convenient for parties and witnesses. Four of the six water districts allegedly contaminated by C-8 are in the Southern District of Ohio, as are the majority of potential plaintiffs. Further, centralization in this district permits the Panel to assign the litigation to a less-utilized district with an experienced judge who is not presently overseeing a multidistrict litigation.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Southern District of Ohio are transferred to the Southern District of Ohio and, with the consent of that court, assigned to the Honorable Edmund A. Sargus, Jr., for coordinated or consolidated pretrial proceedings with the actions pending there.

PANEL ON MULTIDISTRICT LITIGATION

Kathryn H. Vratil
Acting Chairman

W. Royal Furgeson, Jr.
Marjorie O. Rendell
Lewis A. Kaplan
Paul J. Barbadoro
Charles R. Breyer

IN RE: E.I. DU PONT DE NEMOURS AND COMPANY
C-8 PERSONAL INJURY LITIGATION MDL No. 2433

SCHEDULE A

Southern District of Ohio

Thomas Yakubik v. E. I. DuPont De Nemours and Company, C.A. No. 2:12-00815
John Borman v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01180
Betty Bragg v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01181
Lotie Cline v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01182
Elmer A. Crites v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01183
Linda Davis v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01184
Crystal Forshey v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01185
Melinda Gibson v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01186
Vicky Lightfritz v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01187
Willard Lightfritz v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01188
Kathi Lowe v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01189
Kit McPeek-Stalnaker v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01190
Thomas Eugene Molden v. E. I. du Pont de Nemours and Company,
C.A. No. 2:12-01191
Jack Offenberger v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01192
Terry Pugh v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01193
Kay Sheridan v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01194
Herbert Short v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01195
John Wright v. E. I. du Pont de Nemours and Company, C.A. No. 2:12-01196
Amber Wriston v. E. I. du Pont de Nemours and Company, C.A. No. 2:13-00002

Southern District of West Virginia

Summer Mitchell v. E. I. du Pont de Nemours and Company, C.A. No. 3:12-09572
Thomas Deryl Northup v. E. I. du Pont de Nemours and Company, C.A. No. 3:12-09574
Kathy Selby v. E. I. du Pont de Nemours and Company, C.A. No. 3:12-09576
Mary Harper v. E. I. du Pont de Nemours and Company, C.A. No. 3:12-09577
Virginia Morrison, et al. v. E. I. du Pont de Nemours and Company, C.A. No. 6:12-07053
Scott Blackwell v. E. I. du Pont de Nemours and Company, C.A. No. 6:12-07054
Sandra Tennant v. E. I. du Pont de Nemours and Company, C.A. No. 6:12-07055

APPENDIX “7B”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: E. I. DU PONT DE NEMOURS AND COMPANY C-8 PERSONAL INJURY LITIGATION

Case No. 2:13-md-2433

CHIEF JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Elizabeth Preston Deavers

This document relates to:

ALL CASES

CASE MANAGEMENT ORDER NO. 22

Appointment of Claims Administrator and Special Master

This matter is before the Court on Plaintiffs' Unopposed Motion to Appoint a Claims Administrator and a Special Master to Administer the C8 Personal Injury Litigation Master Settlement Agreement ("Plaintiffs' Motion"). (ECF No. 5092.) For the reasons that follow, the Court **GRANTS** Plaintiffs' Motion.

I.

On March 31, 2017, Plaintiffs and counsel for Defendant E. I. du Pont de Nemours and Company (collectively referred to as the "Parties") entered into a Master Settlement Agreement ("MSA") on behalf of all Eligible Claimants. The Parties are now preparing to execute the provisions established in the MSA.

A. Claims Administrator

In Plaintiffs' Motion, they request that Daniel J. Balhoff, Esq., of Perry, Balhoff, Mengis & Burns, L.L.C., be appointed as the MSA Claims Administrator. As set forth in the MSA, and in Plaintiffs' Motion, the Special Master will be responsible for the appellate review and

determination of any appeals of Phase One Awards, if any, in addition to the collection, review, and determination of any Phase Two Awards, if any.

The Court has reviewed all of the information about Mr. Balhoff provided by Plaintiffs in their Motion. In view of Mr. Balhoff's education, numerous court-appointments to settlement allocation services, mediation panel experience, and background in mediation of the MSA in the instant matter, the Court finds him qualified to serve as the Claims Administrator of the MSA. Thus, the Court appoints Mr. Balhoff as the MSA Claims Administrator to perform, at minimum, the following duties with respect to the MSA:

> 1) Collect, administer, review, evaluate, and determine Phase One Awards of Eligible Claimants pursuant to the terms of the MSA;
>
> 2) Allocate dollar values and identify individual settlement Phase One Awards to the Eligible Claimants pursuant to the terms of the MSA;
>
> 3) Collect and maintain all Claim Forms, in the form attached to the MSA as Exhibit 4, and records submitted in support thereof, Releases, in the form attached to MSA as Exhibit 5, and Stipulations of Dismissal, in the form attached to the MSA as Exhibit 6;
>
> 4) Provide the Parties with a Notice of Enrollment, as defined in the MSA, and pursuant to the terms of the MSA;
>
> 5) Review and investigate any Eligible Claimant's submissions for deficiencies, deception, dishonesty, or fraud, and take steps necessary to prevent any such deficiencies, deception, dishonesty, and/or fraud in accordance with the terms of the MSA;
>
> 6) Maintain a computerized database of all information submitted by Eligible Claimants in accordance with all applicable federal, state, and local laws, regulations, and guidelines, including, without limitation, HIPAA, as set forth in the MSA;
>
> 7) Communicate with the Court, Parties, Eligible Claimants, and/or the Qualified Settlement Fund Administrator as necessary to effectuate the MSA; and
>
> 8) Report to the Court on a monthly basis the work performed and other matters as requested by the Court.

B. Special Master

Pursuant to Rule 53 of the Federal Rules of Civil Procedure, Plaintiffs ask for the appointment of the Daniel J. Stack, Esq., as the MSA Special Master. Rule 53 permits this Court to appoint a special master to "perform duties consented to by the parties." Fed. R. Civ. P. 53(a)(1)(A). In light of his extensive experience and his recent Special Master appointments at the multidistrict litigation level, highlighted in Plaintiffs' Motion, the Court finds Judge Stack is well-qualified to assume the responsibilities of the Special Master. Therefore, pursuant to Rule 53, the Court hereby appoints the Honorable Daniel J. Stack (ret.) as the Special Master to perform the following duties in connection with the MSA:

> 1) Appellate review, appellate evaluation, and appellate determination of any appealed Phase One Awards of Eligible Claimants, if any, consistent with the terms of the MSA;
>
> 2) Collect, administer, review, evaluate, and determine Phase Two Awards of Eligible Claimants, if any, pursuant to the terms of the terms MSA;
>
> 3) Allocate dollar values and identify individual Phase Two Awards to the Eligible Claimants, pursuant to the terms of the MSA;
>
> 4) Maintain a database of all information submitted by Eligible Claimants pertaining to any Phase Two Awards in accordance with all applicable federal, state, and local laws, regulations, and guidelines, including, without limitation, HIPAA;
>
> 5) Review and investigate any Phase One appeals and/or Phase Two Award submissions for deception, dishonesty, or fraud and take steps necessary to prevent any such deception, dishonesty, and/or fraud, as set forth in the MSA;
>
> 6) Resolve and/or mediate any other dispute involving the MSA not specifically covered by the explicit terms of the MSA; and
>
> 7) Report to the Court on a monthly basis the work performed and other matters as requested by the Court.

II.

For the reasons stated above, the Court **GRANTS** Plaintiffs' Unopposed Motion to Appoint a Claims Administrator and Special Master to Administer the C8 Personal Injury Litigation Master Settlement Agreement. (ECF No. 5092.) The Court hereby **APPOINTS** Daniel J. Balhoff, Esq., of Perry, Balhoff, Mengis & Burns, L.L.C., as the MSA Claims Administrator and Daniel J. Stack, Esq., as the MSA Special Master.

IT IS SO ORDERED.

4-12-2017
DATE

EDMUND A. SARGUS, JR.
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX “8A”

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: ELMIRON (PENTOSAN POLYSULFATE SODIUM) PRODUCTS LIABILITY LITIGATION	**Case No. 2:20-md-02973 (BRM)(ESK)** **MDL No. 2973** **JUDGE BRIAN R. MARTINOTTI** **JUDGE EDWARD S. KIEL**
THIS DOCUMENT RELATES TO: ALL ACTIONS	

CASE MANAGEMENT ORDER NO. 17
(Bellwether Selection and Scheduling Order)

I. SCOPE OF ORDER

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 bellwether cases as part of *In Re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation* ("MDL No. 2973"). This Order will further govern the guidelines and procedures for case-specific discovery to be conducted in bellwether cases (the "Bellwether Discovery Cases"), a smaller subset of which (three) will be proposed and designated as trial cases ("Bellwether Trial Cases"). The guidelines and procedures set forth herein will apply to all actions that are a part of MDL No. 2973, including those transferred to MDL No. 2973 by the Judicial Panel on Multidistrict Litigation ("JPML"); those directly filed in this Court, whether pursuant to Amended CMO 6 (Direct Filing Order) or not; and those removed to this Court.

A number of provisions in this Order, including certain limitations on discovery and the scope of motions practice, reflect compromise and agreement reached by the parties through

extensive meet and confer efforts as well as assistance from Special Master Polifroni. These agreements reflect the parties' assessment of the unique facts and circumstances presented by the cases coordinated in this MDL.

II. CASE ELIGIBILITY

A. A case shall be eligible for initial selection to undergo case-specific bellwether discovery ("Eligible Cases") only where: (1) the plaintiff ingested Elmiron and has provided proof of prescription on or before November 7, 2021; (2) the plaintiff developed pigmentary maculopathy and/or exacerbation of underlying retinal disorder subsequent to Elmiron use;[1] and (3) the plaintiff has uploaded a substantially complete PFS to BrownGreer's MDL Centrality platform on or before September 24, 2021.

III. PROTOCOL FOR SELECTION OF BELLWETHER DISCOVERY AND TRIAL CASES

A. On or before November 15, 2021, Plaintiffs Executive Committee and Lead Counsel for Defendants shall each select and exchange **10** Eligible Cases to undergo case-specific bellwether discovery for a total of **20** Bellwether Discovery Cases. When exchanging selections, each party will provide a list that includes the following information regarding the plaintiffs that they have selected: Plaintiff's counsel, case index number, and primary alleged injury.

B. By November 17, 2021, the parties shall exchange written *Lexecon* waivers for all Bellwether Discovery Cases. To the extent a party fails to waive *Lexecon*, the matter shall be

[1] A party shall not be permitted to challenge the inclusion of a particular case as one of the other party's 10 Bellwether Discovery Cases on the basis of the particular plaintiff's injury or damages alleged.

addressed with Special Master Polifroni immediately and by no later than Friday, November 19, 2021.

C. On or before November 22, 2021, Plaintiffs' Executive Committee and Defendants' Liaison Counsel will jointly notify the Court of their respective selections comprising the Bellwether Discovery Cases.

D. Unless otherwise agreed by the parties, if a Bellwether Discovery Case Plaintiff dismisses a Bellwether Discovery Case *before* December 20, 2021, the party which originally selected the Bellwether Discovery Case may select a replacement case within 10 days of dismissal. If a Bellwether Discovery Case Plaintiff dismisses a Bellwether Discovery Case *after* December 20, 2021 (so long as the dismissal is not based upon a ruling or decision from the Court or due to a a mutually agreed to resolution of the case), Defendants may select a replacement case within 10 days of dismissal.

E. Pursuant to the schedule and procedures described below in Section IV, all parties may commence Fact Discovery in the Bellwether Discovery Cases on November 22, 2021 and this fact discovery shall be completed by March 31, 2022, with one exception for certain sales related depositions as described in Part III.F.5 below.

F. To facilitate the efficient conduct of fact discovery in the Bellwether Discovery Cases and compliance with the deadlines herein:

1. On or before December 8, 2021, Plaintiffs' counsel shall be required to provide two dates in January 2022 for depositions of each of the injured plaintiffs selected as a Bellwether Discovery Case, and Defendants shall be required to accept one of those two dates on or before December 15, 2021. In offering deposition dates, Defendants' counsel and Plaintiffs' Executive Committee and/or its designee will

use best efforts to coordinate and avoid offering dates that will necessitate more than 2 individual plaintiff depositions on any day.

2. For any defense witness that a Bellwether Discovery Case Plaintiff seeks to depose, within 14 days of a request for said deposition, Defendants shall provide two available dates for that witness's deposition or provide a last known address. Case-specific defense depositions in the Bellwether Discovery Cases are not subject to the time limitations set out in the CMO Regarding Deposition Limits but shall be made consistent with the agreements reflected in that Order. Namely, witnesses whose depositions already have been taken pursuant to general MDL discovery shall not be re-deposed in any Bellwether Discovery Case absent good cause. Nothing in this Order shall prohibit Defendants from objecting to a proposed case-specific deposition and promptly raising their objections with the requesting Counsel and Special Master Polifroni as necessary. Further, this section is not intended to address sales related depositions, which are defined and governed by Section III.F.5 below.
3. For any witness beyond the injured Plaintiff and Treating Doctors (defined in Section III.F.4. below) that Defendants seek to depose in a Bellwether Discovery Case, within 14 days of a request for said deposition, Plaintiff's counsel shall provide two available dates for that witness's deposition or provide a last known address. Nothing in this Order shall prohibit Plaintiff's counsel and/or a PEC designee from objecting to a proposed case-specific deposition and promptly raising their objections Defendants and Special Master Polifroni as necessary.

4. Beginning on December 15, 2021, Plaintiff's counsel and/or a designee of the Plaintiffs' Executive Committee and Defense Lead Counsel, Defense Liaison Counsel and/or their designee will develop a plan and process to coordinate and schedule the depositions of the relevant prescribing doctors and treating physicians ("Treating Doctors") who rendered care and treatment to the plaintiffs who are part of the Bellwether Discovery Pool. The parties will endeavor to schedule and depose the Treating Doctor depositions during the months of February and March 2021. For any Treating Doctor, the relevant Bellwether Discovery Case Plaintiff shall be deposed first, absent special circumstances.

5. With respect to sales representative depositions, each Bellwether Discovery Case will be initially limited to two such depositions for a total of 40 sales representative depositions to occur before the March 31, 2022 preliminary fact discovery cut off. In addition, upon selection of the Bellwether Trial Cases described in Section III.G below, each Bellwether Trial Case may request up to three (3) additional sales related deposition, *i.e.,* either deposition(s) of additional sales representatives or deposition(s) of regional manager, for a total of up to 49 sales related depositions during the entire bellwether process. The parties will work to schedule the 9 additional sales related depositions permitted in the Bellwether Trial Cases during the month of April and up through May 5, 2022. For purposes of the additional sales related depositions, the witnesses requested in each Bellwether Trial Case must relate to and be relevant to the case-specific plaintiff's prescribing doctor(s) or his/her practice.

G. With respect to Treating Doctor depositions, nothing shall prevent a Plaintiff or her/his counsel from meeting with a Treating Doctor. Should a Bellwether Discovery Case Plaintiff or her/his counsel show or provide a Treating Doctor with copies of some or all documents or other materials contained in Defendants' document production, the identity of such documents or materials shall be disclosed to Lead and Liaison Counsel for Defendants or their designee no later than 48 hours prior to the Treating Doctor's deposition. In the event that documents or other materials are shown or provided to a Treating Doctor within 48 hours of a deposition, then said documents or materials shall be provided to Lead and Liaison Counsel for Defendants or their designee as soon as practical and must be provided at least 3 hours before questioning begins at the Treating Doctor's deposition. Further, before a Treating Doctor is provided such documents or materials, if provided in advance of a deposition, he/she must sign Exhibit A to the Protective Order (as required by that Order), a copy of which shall be provided to Lead and Liaison Counsel for Defendants.

H. Following fact discovery of the 20 Bellwether Discovery Cases, three (3) cases will be selected as the Bellwether Trial Cases. The Bellwether Trial Cases will be selected on April 8, 2022, and either selected by the Court or selected as follows:

- One case will be selected by the Plaintiffs' Executive Committee;
- One case will be selected by the Defendants' Lead Counsel;
- One case will be selected by the Court.

Should the Court desire briefing, facts or data to make case selections, such request shall be discussed no later than the March 2022 Case Management Conference and shall be provided by the parties on or before April 1, 2022.

I. The three (3) Bellwether Trial Cases will proceed to Expert Discovery as follows:

1. Plaintiffs shall serve expert reports in each of the three (3) cases by May 10, 2022.

2. Defendants shall serve expert reports in each of the three (3) cases by June 17, 2022.

3. Plaintiffs shall serve rebuttal reports, if any, in each of the three (3) cases by June 27, 2022.

4. Expert Depositions shall commence no earlier than June 17, 2022 and shall be completed by September 9, 2022.

J. Expert depositions shall not commence until all expert reports have been tendered, although if a given expert does not intend to tender a rebuttal report, the parties may start the deposition(s) of such expert after June 17 and before June 27, 2022.

K. Along with any Rule 26(a) expert disclosures, the parties shall provide two dates when an expert is available for their deposition.

L. For each medical or scientific discipline, the parties shall schedule the deposition for the Plaintiff's expert first, with a deposition of the corresponding Defendants' expert, if any, to follow no sooner than forty-eight (48) hours later. The parties shall meet and confer on scheduling and work cooperatively to achieve this order as often as feasible.

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

IV. SCHEDULE FOR BELLWETHER DISCOVERY AND TRIAL CASES[2]

A. The schedule is as follows:

[2] The deadlines in Section IV will apply only to those cases selected as Bellwether Discovery Cases.

November 15, 2021	Initial Bellwether Discovery Cases to be selected.
November 22, 2021	Final Bellwether Discovery Cases reported to Judge Martinotti and Fact Discovery to Commence for the 20 Bellwether Discovery Cases.
December 2, 2021	For each plaintiff selected as a Bellwether Discovery Case, his/her counsel shall provide to Defense Lead and Defense Liaison counsel: (1) Any retinal imaging available in the plaintiff or his/her counsel's possession, including in color, digital format where available; and (2) All ophthalmology records in the plaintiff or his/her counsel's possession, including any medical records reflecting a diagnosis of the vision related issue (pigmentary maculopathy or underlying retinal disorder alleged to have been exacerbated subsequent to Elmiron use) identified during the parties' selection of Bellwether Discovery Cases, as set out in Section III.A above.
March 31, 2022	Completion of fact discovery for the 20 Bellwether Discovery Cases, with the exception of the additional sales related depositions for the 3 Bellwether Trial Cases described in Section III.E.5. above.
April 8, 2022	Either the Court will select the three (3) cases to serve as Bellwether Trial Cases or the parties will each pick one and the Court will pick one.
May 10, 2022	Deadline for Plaintiffs to serve expert reports in each of the three (3) Bellwether Trial cases.
June 17, 2022	Deadline for Defendants to serve expert reports in each of the three (3) Bellwether Trial cases.
June 27, 2022	Deadline for Plaintiffs to serve rebuttal expert reports in each of the three (3) Bellwether Trial cases.
September 9, 2022	Expert Depositions to conclude.
September 13, 2022	Dispositive motions to be filed.
September 20, 2022	*Daubert* motions to be filed.
October 13, 2022	Opposition briefs to dispositive motions to be filed.
October 20, 2022	Opposition briefs to *Daubert* motions to be filed.
October 26, 2022	Reply briefs to dispositive motions to be filed.
November 4, 2022	Reply briefs to *Daubert* motions to be filed.

January 2023	Bellwether Trial Case No. 1 will commence.
March 2023	Bellwether Trial Case No. 2 will commence.
May 2023	Bellwether Trial Case No. 3 will commence.

B. To the extent dispositive motions are filed, Defendants reserve the right to file a total of 4 dispositive motions. One such motion may be filed in a Bellwether Discovery Case that is not chosen as a Bellwether Trial Case; the other 3 motions may only be filed in one or more of the Bellwether Trial Cases. However, *Daubert* motions shall be limited to the Bellwether Trial Cases.

C. On or before August 1, 2022, the parties will negotiate a Case Management Order to submit to the Court for approval that will set forth the final pre-trial schedules and deadlines for the three (3) Bellwether Trial Cases, which shall include schedules and deadlines for the following: (1) motions *in limine*, oppositions, replies, and argument(s), if so determined by the Court; (2) deposition designations, counter designations and objections, including objections to counter designations and reply designations; (3) fact witness and expert witness lists; (4) exhibit lists and objections; (5) proposed jury instructions; (5) proposed *voir dire* process, including a questionnaire, if any; (6) a date for a final pre-trial conference; and (6) any other deadlines and hearings as the Court requires.

D. 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.**

BY THE COURT:

/s/ Brian R. Martinotti
Hon. Brian R. Martinotti, USDJ

APPENDIX “9A”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: ETHICON, INC., POWER MORCELLATOR PRODUCTS LIABILITY LITIGATION	)	
	)	MDL No. 2652
(This Document Relates to All Cases)	)	
	)	D. Kan. No. 15-md-2652-KHV

SCHEDULING ORDER NO. 1

On December 21, 2015, a status and scheduling conference was conducted in this multidistrict litigation ("MDL") by U.S. District Judge Kathryn H. Vratil and U.S. Magistrate Judge James P. O'Hara. Before the conference, via e-mail, counsel submitted to the court their proposed case management order, most aspects of which were stipulated. The parties have filed a joint motion and separate memoranda with regard to the disputed aspects of their case management plan (*see* ECF doc. 75). In consideration of the foregoing, and the statements of counsel during the conference, the court now enters this scheduling order, which is to be read in light of the stipulated order regarding discovery of electronically stored information ("ESI") (ECF doc. 61) and the stipulated protective order (ECF doc. 62), both of which were filed on December 9, 2015. Further, it's anticipated this scheduling order will be supplemented on or shortly after January 6, 2016, when the court conducts its next status conference to consider the parties' proposed orders for discovery in *in extremis* cases, product identification, amendment of pleadings,

disclosures by surgeons and surgical facilities, and pathology preservation (*see* ECF docs. 10 and 63).[1]

1. PSC Resignations. Rebecca King and Francois Blandeau recently e-mailed letters to the court seeking to resign from the plaintiffs' steering committee ("PSC") on the basis that all of their clients have settled their claims in this MDL. During the status and scheduling conference, the PSC's co-lead counsel objected to the proposed resignations; defendants have no objections. By **January 4, 2016**, Ms. King and Mr. Blandeau must file formal motions to resign. Any responses must be filed by **January 11, 2016**, and any replies must be filed by **January 13, 2016**.

2. Service of this Order.

For cases not currently part of this MDL, defendants must serve a copy of this scheduling order on counsel for any newly added plaintiff within 2 business days of transfer of that plaintiff's case to this MDL.

3. Common-Discovery Deadlines.

[1] To be clear, this scheduling order applies to all parties in this MDL, including the KARL STORZ defendants. On December 22, 2015, the court received a letter from KARL STORZ's counsel, which at one point asked that the order apply to KARL STORZ and at another point asked that it not apply to KARL STORZ. KARL STORZ complains in the letter that it was not involved in the negotiations between counsel for plaintiffs and Ethicon in proposing case-management deadlines. However, KARL STORZ was bound by the same deadlines as the other parties for submitting proposed case-management orders and motions to resolve outstanding case-management issues (*see* November 19, 2015 order, ECF doc. 10). These deadlines passed with KARL STORZ submitting nothing to the court, nor complaining to the court that the other parties were excluding it from joint submissions. At the scheduling conference held on December 21, 2015, counsel for KARL STORZ remained silent and lodged no objection to any of the deadlines discussed by the court and the other parties. Because KARL STORZ sat on its hands for more than a month, the court has little sympathy for the concerns raised by counsel's belated December 22, 2015 letter. KARL STORZ will be bound by this scheduling order, but may submit a motion for specific relief at an appropriate time.

a. Defendants already have produced to the PSC all discovery responses, ESI, and documents produced in all cases transferred to this MDL as of December 15, 2015.

b. By **January 15, 2016**, defendants must serve the initial disclosures required by Fed. R. Civ. P. 26(a)(1)(A). Such disclosures may be MDL-captioned and are not required to be made in each individual action. Supplementations of these initial disclosures must be served at such times and under such circumstances as required by Fed. R. Civ. P. 26(e). Should anything be included in defendants' final disclosures under Fed. R. Civ. P. 26(a)(3) that has not previously appeared in their initial Rule 26(a)(1)(A) disclosures or a timely Rule 26(e) supplement thereto, the witness or exhibit probably will be excluded under Fed. R. Civ. P. 37(c)(1).

c. By **January 15, 2016**, or within 5 business days of their case being transferred into this MDL, whichever is later, each plaintiff must provide defendants duly executed written authorizations for all known healthcare providers who have treated plaintiffs within three years prior to the subject morcellation procedure, except for psychiatric or mental health providers, social workers, or therapists of that general type (collectively, "mental health providers"). Defendants are not precluded from later requesting such authorizations for any mental health provider who treated a plaintiff within three years prior to the subject morcellation procedure, or subsequent to said procedure; if a meet-and-confer fails to achieve an agreement regarding such request(s), defendants may file a motion to compel production of such authorizations under pertinent law. Defendants may request such authorizations and file such a motion at any time until **January 31, 2017**.

d. By **January 15, 2016**, or within 5 business days of their case being transferred into this MDL, whichever is later, plaintiffs must also produce copies of all medical records in their possession. To the extent additional discoverable healthcare providers are subsequently identified and authorizations for the records of these additional healthcare providers are requested, plaintiffs must provide duly executed written authorizations within 30 days of the authorizations being requested.

e. By **January 15, 2016**, or within 30 days of their case being transferred into this MDL, whichever is later, plaintiffs must serve the initial disclosures required by Fed. R. Civ. P. 26(a)(1)(A). If not in plaintiffs' counsel's possession at that time, plaintiffs must produce documents supporting economic loss as they reasonably become available. As earlier indicated, supplementations of these initial disclosures must be served at such times and under such circumstances as required by Rule 26(e). Should anything be included in plaintiffs' final disclosures under Rule 26(a)(3) that has not previously appeared in the initial Rule 26(a)(1)(A) disclosures or a timely Rule 26(e) supplement thereto, the witness or exhibit probably will be excluded under Fed. R. Civ. P. 37(c)(1).

f. By **February 10, 2016**, the PSC may serve written discovery on defendants, including an initial set of master discovery requests. The parties continue to meet and confer regarding defendants' request to serve common interrogatories and written discovery requests on plaintiffs.

g. All common written discovery must be served in time to be completed by **November 1, 2016**. If written discovery requests are served on a date such that the subject discovery cannot be timely completed by this deadline, then the parties must meet

and confer, and make reasonable, good-faith efforts to accommodate such requests before burdening the court with motion practice.

h. By **January 15, 2016**, plaintiffs must identify the morcellating surgeon in each case. For cases that join this MDL after the filing of this scheduling order, plaintiffs must identify the morcellating surgeon in each case within 5 business days after the case is transferred into this MDL.

i. Any party with knowledge must notify all parties where the Ethicon (or KARL STORZ) morcellation device used during the gynecological procedure at issue in an individual plaintiff's case is located within 30 days of a case being transferred into this MDL. If a party has no knowledge of the location of the morcellator, however, no action is required.

j. On or after **February 15, 2016**, plaintiffs may commence the deposition(s) of defendants' corporate witness(es) under Fed. R. Civ. P. 30(b)(6). Plaintiffs must serve all such deposition notices at least 60 days in advance of the scheduled deposition date. All such deposition notices must be served by **May 2, 2016.** All 30(b)(6) depositions must be completed by **January 31, 2017**. Unless otherwise stipulated by the parties or ordered by the court, the duration of 30(b)(6) depositions is limited to 7 hours. If the PSC seeks to examine a 30(b)(6) witness for longer than 7 hours, then the parties must meet and confer, and make reasonable, good-faith efforts to accommodate such requests before burdening the court with motion practice.

k. By **January 29, 2016**, the parties must meet and confer to determine the identities of those fact witnesses included in defendants' initial Rule 26(a)(1)(A)

disclosures whom plaintiffs wish to depose, mindful that additional fact witnesses may be identified later. On or after **March 7, 2016**, depositions of defendants' fact witnesses may begin.

l. Any additional search terms used to cull collected ESI must be requested by plaintiffs by **April 1, 2016**. If additional search terms are requested by the PSC after this deadline, then the parties must meet and confer, and make reasonable, good-faith efforts to accommodate such requests before burdening the court with motion practice.

m. Any additional custodial files and non-custodial data sources to be produced by defendants must be requested by plaintiffs by **June 1, 2016**. If additional custodial files and non-custodial data are requested by the PSC after this deadline, then the parties must meet and confer, and make reasonable, good-faith efforts to accommodate such requests before burdening the court with motion practice.

n. By **January 31, 2017,** all common fact discovery must be completed (but as earlier indicated, common written discovery must be completed by November 1, 2016).

4. Protocol for Common Depositions.

a. Depositions of defendants and of third-parties, and logistical matters related to depositions, must be coordinated by deposition-coordinating counsel for plaintiffs (Andrea Hirsch) and for the Ethicon defendants (James Murdica).

b. In addition to the information required by Fed. R. Civ. P. 30(b), each deposition notice must include the name of each deponent, and contact information for deposition-coordinating counsel that will allow interested counsel to obtain information

regarding the deposition. If the deposition is to be videotaped, the notice must state the name, firm, and address of the videographer. If the notice asks the deponent to produce, or if the witness may be asked about, documents that may contain confidential information, the witness must be provided with a copy of the protective order filed in this MDL (ECF doc. 62).

c. Counsel noticing a deposition must consult in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually convenient times. Unless otherwise agreed to by the parties, depositions may be attended only by counsel for defendants, attorneys designated in advance by the PSC, the deponent, the deponent's attorney, in-house counsel for the parties, court reporters, videographers, and any person who is assisting defendants or the PSC and whose presence is reasonably required by the attorneys attending the deposition.

d. Once a deposition has been scheduled, it must not be taken off calendar, postponed, rescheduled, or relocated less than 10 calendar days in advance of the date it is scheduled to occur, except upon agreement of counsel or by leave of court. The parties have agreed production of new documents or ESI relevant to the deposition within 30 days of the scheduled deposition date would constitute good cause to reschedule a deposition.

e. If the parties become aware of persons who possess relevant information, but who by reason of age or ill health may become unavailable for deposition, the deposition may be taken as soon as practicable.

f. Disputes between the parties should be addressed to this court rather than the U.S. District Court in the district in which the deposition is being conducted. In any event, except as otherwise provided in this scheduling order, all depositions in this MDL are governed by the written guidelines that are available on the court's website:

http://www.ksd.uscourts.gov/deposition-guidelines/

g. Unless otherwise stipulated by the parties or ordered by the court, the duration of all fact depositions is limited to 7 hours. If the PSC seeks to examine a fact witness for longer than 7 hours, then the parties must meet and confer, and make reasonable, good faith efforts accommodate such requests before burdening the court with motion practice.

h. Unless otherwise agreed, depositions of any of the Ethicon defendants' current and former employees who reside or work in the United States will take place at one of the following locations, at such defendants' election: (1) New Jersey, or (b) the district where the witness resides or works. Defense counsel will make reasonable efforts to obtain the agreement of former employees of defendants to appear at the designated locations.

i. Depositions may be used under the conditions prescribed in Fed. R. Civ. P. 32(a) or as otherwise permitted by the Federal Rules of Evidence.

j. Timing for service of third-party witnesses subpoenaed to produce documents will be governed by the relevant law in the jurisdiction in which the witness resides.

5. Case-Specific Discovery.

a. Case-specific written discovery of all parties will commence on **March 1, 2016**, but the parties are continuing to meet-and-confer as to the format of case-specific discovery requests and the procedures for serving and responding to such requests. All case-specific written discovery must be served in time to be completed by **January 31, 2017**.

b. For each case transferred to this MDL, defendants intend to depose the following fact witnesses: (a) the plaintiff and (b) the surgeon who performed the morcellation. Depositions must be conducted in accordance with the terms set forth below.

i. Case-specific discovery for *in extremis* cases will have priority and may commence at any time beginning **January 11, 2016**. Nothing in this scheduling order precludes the parties from expediting discovery for an *in extremis* case as becomes necessary. The parties are continuing to meet and confer about the procedures for discovery in *in extremis* cases and will set forth such procedures in a separate proposal to the court.

ii. Unless other otherwise agreed by the PSC, depositions of plaintiffs and the morcellating surgeons in all non-*in extremis* cases will begin **December 1, 2016**. All such depositions must be completed by **January 31, 2017**.

iii. The parties will meet and confer as to the timing and procedures for any other depositions that may take place during the case-specific phase of discovery, including sales personnel and/or treating physicians other than the morcellating surgeon, but such depositions must be completed by **January 31, 2017**.

c. The parties are continuing to meet and confer about the order of questioning at surgeon and healthcare-provider depositions.

d. Contact with a morcellating surgeon or treating physician for a plaintiff will be governed by the relevant law in the jurisdiction in which the surgeon or physician resides. The parties are continuing to meet and confer as to disclosure requirements, if any, related to such communications.

6. Written Discovery Procedures. As relates to all written discovery conducted in this MDL under Fed. R. Civ. P. 33, 34, and 36, if any such discovery is 15 days past due, the non-deficient party must send an e-mail or letter giving notice of the material deficiency to counsel for the deficient party. The deficiency notice must specifically identify the allegedly material deficiency and state that the deficient party has 30 days to cure it. Deficiency notices must not be used to annoy or harass the other party. If the alleged material deficiency is not cured within 30 days from the date of the deficiency notice, or within any extension of that time as agreed to by the parties or by the court, provided the non-deficient party has complied with the letter and spirit of the meet-and-confer requirements of Fed. R. Civ. P. 37(a)(1) and D. Kan. Rule 37.2, the non-deficient party may move for appropriate remedies from the court. The parties and counsel are respectfully reminded in this regard that, under D. Kan. Rule 37.2, a "reasonable effort to confer" means more than sending a letter or e-mail to the opposing party -- it requires that the parties in good faith actually converse, confer, compare views, consult, and deliberate, or in good faith attempt to do so. If issues remain unresolved after the parties have complied with Fed. R. Civ. P. 37(a)(1) and D. Kan. Rule 37.2, before filing a

discovery-related motion, they are strongly encouraged (but not required) to consider sending a very concise e-mail to Judge O'Hara outlining the problem and asking for a telephone conference. Any remaining disputes may be presented to the court by the aggrieved party filing a combined motion and supporting brief for relief. Unless otherwise ordered for good cause shown, briefs in opposition must be filed within 5 business days of the filing of the underlying motion, and any reply briefs must be filed within 2 business days of the filing of the response; the text of the parties' principal briefs with regard to discovery disputes must be limited to 5 double-spaced pages, with replies limited to 2 double-spaced pages; such filings must use no smaller than 12-point font.

7. Expert Discovery, *Daubert* Motions, and Dispositive Motions.

a. By **June 3, 2016**, the parties will meet and confer about what experts they each view as being potentially common experts, in order that each side will have some sense of the common experts the other believes to be relevant. Such meet-and-confer will not limit either side in terms of the experts for which it ultimately serves disclosures under Fed. R. Civ. P. 26(a)(2).

b. For all cases transferred to this MDL as of September 1, 2016, as relates to common experts, and all case-specific experts in *in extremis* cases, expert disclosures required by Fed. R. Civ. P. 26(a)(2), including final, complete, signed reports from retained experts, must be served by plaintiffs by **February 6, 2017**, and by defendants by **February 27, 2017**. The parties' expert disclosures must also include at least 2 proposed full-day deposition settings; in any event, each of plaintiffs' experts must be produced for deposition before the corresponding defense expert is deposed. The parties must serve

any objections to such disclosures (other than objections pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law), within 2 business days after service of the disclosures. These objections should be confined to technical objections related to the sufficiency of the written expert disclosures (e.g., whether all of the information required by Rule 26(a)(2)(B) has been provided) and need not extend to the admissibility of the expert's proposed testimony. If such technical objections are served, counsel must confer or make a reasonable effort to confer consistent with D. Kan. Rule 37.2 before filing any motion based on those objections. Expert depositions will commence **March 2, 2017**, and all expert-related discovery must be commenced or served in time to be completed by **April 3, 2017**. For all cases transferred to or filed in this MDL as of September 1, 2016, all motions to exclude the testimony of common expert witnesses, and experts in *in extremis* cases, pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law, must be filed by **April 24, 2017**; responses to such motions must be filed by **May 15, 2017**, and any replies must be filed by **May 30, 2017**.

c. The court will subsequently determine if there are dispositive motions with significant common effect and/or guidance for the remand courts that should be filed and heard in this MDL; this is presently believed to be unlikely. But if such motions are filed and heard in this MDL, the parties and counsel are reminded that compliance with Fed. R. Civ. P. 56 and D. Kan. Rule 56.1 is mandatory, i.e., summary-judgment briefs that fail

to comply with these rules may be rejected, resulting in summary denial of a motion or consideration of a properly supported motion as uncontested. Further, the court strongly encourages the parties to explore submission of motions on stipulated facts and agreement resolving legal issues that are not subject to a good-faith dispute. The parties should follow the summary-judgment guidelines available on the court's website:

http://www.ksd.uscourts.gov/summary-judgment/

8. Rule 1, 26(b), and 26(g) Requirements. Especially in light of the time-sensitive nature of many cases within this MDL, the court expects the parties and counsel to efficiently limit the scope of all discovery mindful of the December 1, 2015 proportionality amendments to Rule 26(b)(1). That is, the parties are entitled to obtain pretrial discovery regarding any nonprivileged matter *provided* it's (a) relevant to a party's claim or defense, AND (b) proportional to the needs of this case. Under Fed. R. Civ. P. 26(b)(1), whether any particular discovery request is proportional is to be determined by considering, to the extent they apply, the following six factors: (1) the importance of the issues at stake in the action, (2) the amount in controversy, (3) the parties' relative access to relevant information, (4) the parties' resources, (5) the importance of the discovery in resolving the issues, and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit.

The expense and delay often associated with civil litigation can be dramatically reduced if the parties and counsel conduct discovery in the "just, speedy, and inexpensive" manner mandated by Fed. R. Civ. P. 1. In this regard, this court plans to strictly enforce the certification requirements of Fed. R. Civ. P. 26(g). Among other

things, Rule 26(g)(1) provides that, by signing a discovery request, response, or objection, it is certified as (i) consistent with the applicable rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law; (ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and (iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action. If a certification violates these restrictions without substantial justification, under Rule 26(g)(3), the court *must* impose an appropriate sanction on the responsible attorney or party, or both; the sanction *may* include an order to pay the reasonable expenses, including attorney fees, caused by the violation. Therefore, *before* the parties and counsel serve any discovery requests, responses, or objections in this case, lest they incur sanctions later, the court *strongly* suggests that they carefully review the excellent discussion of Rule 26(g) found in *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354 (D. Md. 2008).

9. Discovery Stipulations. To avoid the filing of unnecessary motions, the court encourages the parties to utilize stipulations regarding discovery procedures. *See* Fed. R. Civ. P. 29. However, this does not apply to extensions of time that interfere with the deadlines to complete discovery, or for the briefing or hearing of a motion. *See* Fed. R. Civ. P. 29; D. Kan. Rule 6.1(c). Nor does this apply to modifying the requirements of Fed. R. Civ. P. 26(a)(2) concerning experts' reports. *See* D. Kan. Rule 26.4(c).

10. Comparative Fault. In their proposed order concerning amendment of pleadings, the parties are encouraged to include a deadline for any party asserting comparative fault to identify all persons or entities whose fault is to be compared for purposes of Kan. Stat. Ann. § 60-258a (or any other similar comparative-fault statute that might be applicable). If another person or entity is so identified, then the party asserting comparative fault also must specify the nature of the fault which is claimed.

11. Status Conferences. By noon at least 2 business days before *all* status conferences in this MDL,[2] the parties' lead counsel must confer and then jointly submit to the court a status report and a proposed agenda in a letter e-mailed to: ksd_vratil_chambers@ksd.uscourts.gov and ksd_ohara_chambers@ksd.uscourts.gov. The letter shall be limited to 3, single-spaced pages.

12. Merits-Related Briefs. The arguments and authorities section of briefs or memoranda submitted in connection with any non-discovery related motions must not exceed 30 pages, absent an order of the court. *See* D. Kan. Rule 7.1(e).

13. Oral Argument. Oral argument on motions, whether discovery or merits-related, will be granted only if requested and the court determines it'd be beneficial. *See* D. Kan. Rule 7.2.

14. Tag-Along Application. This scheduling order (and all of the court's subsequent orders, both procedural and substantive), and likewise all discovery conducted in this MDL, will apply to all cases that later are consolidated in the MDL docket, including any

[2] This is a modification to the 48-hour deadline set in the court's November 19, 2015 order (ECF doc. 10 at 4).

tag-along cases or other cases transferred to this court after the date of this order, unless a party shows good cause to the contrary, by filing a formal motion and supporting brief, within 14 days after the docketing of that case in this court. The court does not intend to revisit issues that already have been decided just because a newly added party disagrees with the court's reasoning or result. But the court would entertain motions filed under this show-cause provision if a newly added party demonstrates why its case is distinguishable. If such a motion is filed, any response must be filed within 14 days of its filing and any reply must be filed within 14 days of the filing of any response.

15. Alternative Dispute Resolution ("ADR"). Although some cases in this MDL already have been settled through direct negotiations, it's premature to require mediation or any other form of ADR. However, the court intends to revisit the issue of ADR at later status conferences. If participation in an ADR process is ordered later, an ADR report, on the form located on the court's Internet website, must be filed by defense counsel within five days of any scheduled ADR process:

http://www.ksd.uscourts.gov/adr-report/

16. Professionalism. This court, like the Kansas Supreme Court, has formally adopted the Kansas Bar Association's *Pillars of Professionalism* (2012) as aspirational goals to guide lawyers in their pursuit of civility, professionalism, and service to the public. Counsel are expected to familiarize themselves with the *Pillars of Professionalism* and conduct themselves accordingly when litigating cases in this court. The *Pillars of Professionalism* are available on this court's website:

http://www.ksd.uscourts.gov/pillars-of-professionalism/

This scheduling order will not be modified except by leave of court upon a showing of good cause.

IT IS SO ORDERED.

Dated December 24, 2015, at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
U.S. District Judge

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

APPENDIX “10A”

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 08/22/2017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

This Document Relates to All Actions

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JESSE M. FURMAN, United States District Judge:

[Regarding the August 11, 2017 Statu

The Court, having held a Status Conference on August 11, 2 opportunity to be heard on the agenda items set forth in the parties' letter (Docket No. 4370), issues this Order to memorialize the actic Status Conference.

I. NEXT STATUS CONFERENCE

A Status Conference will be held **Wednesday, October** Courtroom 1105 of the Thurgood Marshall U.S. Courthouse, 40 Cent

II. COORDINATION IN RELATED ACTIONS

Unless and until the Court orders otherwise, the parties shc efforts in Related Actions pursuant to Order No. 15 (Docket No. 315 emerging coordination issues through their joint letter updates (*see* O or in separate letter updates, as circumstances require.[1]

III. ECONOMIC LOSS BELLWETHER PROCEDURE

Consistent with the Court's comments at the Status Conference to adopt an economic loss bellwether procedure, by **Friday, Augus**

[1] The parties should treat this as a continuing obligation until the Court orde include it in future proposed orders memorializing the actions taken and rulings

submit a joint proposal or competing proposals addressing, among the other issues discussed at the Status Conference: (1) the timing and briefing schedule for plaintiffs' proposed motion for leave to amend the Fourth Amended Consolidated Complaint; (2) and which states the parties believe should be the subject of the bellwether procedure, along with a jointly agreed proposed schedule or competing proposed schedules addressing class certification motion and summary judgment motion practice. To the extent the parties submit competing letter briefs, those letter briefs should not exceed ten single-spaced pages each. Additionally, per the parties' agreement (Docket Nos. 4337-4338), the parties should meet and confer regarding application of the Court's prior motion to dismiss opinions to the remaining 35 states and submit an agreed plan (or competing plans) with respect to resolving any differences in the parties' positions by no later than **December 15, 2017**.

IV. TRIAL SETTING FOR BELLWETHER TRIAL NO. 11

Consistent with the Court's comments at the Status Conference, the trial date for Bellwether Trial No. 11 has been continued to **Monday, June 18, 2017**. The parties should review the current pretrial schedule, meet and confer and propose any modifications as appropriate.

V. SETTLEMENT

Consistent with the Court's comments at the Status Conference, the parties should meet and confer and submit a joint or competing proposals regarding a mediator for the economic loss claims by no later than **Monday, August 21, 2017**.

SO ORDERED.

Dated: August 21, 2017
New York, New York

JESSE M. FURMAN
United States District Judge

APPENDIX “11A”

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE: LUMBER LIQUIDATORS CHINESE-MANUFACTURED FLOORING PRODUCTS MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	)	MDL No. 1:15md2627 (AJT/TRJ)

This Document Relates to ALL Cases

PRETRIAL ORDER #5
Regarding Service of Process,
Representative Complaints, Motions to Dismiss and Remand

Pursuant to Paragraph 22 of the Court's Pretrial Order #1 dated July 2, 2015 [Doc. No. 10], Defendant Lumber Liquidators, Inc. has filed a Motion for Modification of Pretrial Order #1 [Doc. No. 515] (the "Motion"). Upon consideration of the Motion, the memorandum in support thereof and Plaintiffs' response thereto and also Plaintiffs' Submission Regarding Case Classification Pursuant to Pretrial Order No. 1 [Doc. No. 519], the Court concludes that the prompt and efficient resolution of these proceedings would be served through the Court's consideration of certain preliminary motions to dismiss within the context of a select number of representative cases, recognizing that other cases may raise issues that will need to be considered. Accordingly, it is hereby ORDERED as follows:

1. On or before September 9, 2015, defendants in all cases shall identify any case in these proceedings in which they have not been served with process and in which they insist on being served with process. In the absence of any identification pursuant to this requirement, the defendants will be deemed to have voluntarily submitted themselves to the personal jurisdiction of the court in which that action was filed and this Court.

2. On or before September 11, 2015, Plaintiffs' Co-Lead Counsel shall file and/or identify representative complaint(s) filed under the laws of five different states, one of which shall be California. In selecting these representative complaints, counsel shall solicit the views of Defendants' Co-Lead Counsel concerning which states to select; and it is the Court's expectation that the representative claims will be selected from among those states with the largest number of Lumber Liquidators stores or with other characteristics that would capture a disproportionate number of potential class members and best allow common issues to be addressed. The Court recognizes that this process will not permit the Court to address initially all issues that may need to be resolved in all cases. However, the Court does not intend to allow this procedure to unduly delay the Court's dealing with any other preliminary issues raised by these other cases or affect the nature, scope or timing of discovery as to all cases.
3. On or before September 30, 2015, the defendants shall file in response to any representative complaint filed or identified pursuant to this Order: (1) an answer pursuant to Fed. R. Civ. P. 12(a); and (2) any motions to dismiss or stay, with any oppositions thereto filed on or before October 16, 2015, and any replies to any oppositions on or before October 23, 2015.
4. On or before September 23, 2015, defendants shall file any motion to dismiss any particular case on any presently known ground(s) other than those pursuant to Fed. R. Civ. P. 12(b)(6), 12(c) or 56 or which would substantially duplicate any motion to dismiss or stay filed in response to the representative complaints filed pursuant to this Order; and the plaintiffs in those particular cases shall file any opposition to any such

and defendants, any replies thereto, as required under the Federal Rules and the Court's Local Rules.

5. On or before September 23, 2015, defendants shall file any motions to remand any action to state court from which it was removed; and the plaintiffs in any such cases shall file any opposition to any such motion, and defendants, any replies thereto, as required under the Federal Rules and the Local Rules.

The Clerk is directed to forward copies of this Order to all counsel of record.

/s/
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
September 3, 2015

APPENDIX “12A”

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: INVOKANA (CANAGLIFLOZIN)
PRODUCTS LIABILITY LITIGATION MDL No. 2750

TRANSFER ORDER

Before the Panel:[*] Plaintiffs in 29 actions pending in the District of New Jersey move under 28 U.S.C. § 1407 to centralize this litigation in that district. The litigation consists of 55 actions, as listed on the attached Schedule A. The Panel has been informed of 44 additional related federal actions.[1]

The 55 actions involve allegations that ingestion of the drug Invokana may cause a variety of injuries, including diabetic ketoacidosis and kidney damage, and that defendant Janssen Pharmaceuticals, Inc. (Janssen), which developed and manufactured the drug, failed to adequately test the drug and warn of its risks. Invokana and its sister drug Invokamet[2] belong to a class of diabetes drugs known as Sodium Glucose Cotransporter 2 (SGLT2) inhibitors. Other SLGT2 inhibitors include Farxiga (dapagliflozin) and Jardiance (empagliflozin). Farxiga is marketed and distributed by AstraZeneca Pharmaceuticals LP, AstraZeneca LP, AstraZeneca AB, AstraZeneca PLC, and Bristol-Myers Squibb Co. (collectively the Farxiga Defendants), and Jardiance is marketed and distributed by Boehringer Ingelheim Pharmaceuticals, Inc., Eli Lilly and Company, and Lilly USA, LLC (collectively the Jardiance Defendants). Of the 55 actions, only one, the Western District of Kentucky *House* action, is a so-called "combination case" – an action involving ingestion of not only Invokana or Invokamet but also another SGLT2 inhibitor (in this case, Farxiga).

The central dispute concerning centralization is whether the proposed MDL should include only Invokana/Invokamet cases or cases involving other SGLT2 inhibitors, including Farxiga and Jardiance.[3] Moving plaintiffs, as well as plaintiffs in certain other actions, support centralization of only Invokana/Invokamet cases, but differ, to some extent, regarding the choice of a transferee

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[*] Judge Ellen Segal Huvelle took no part in the decision of this matter.

[1] Those actions and any other related federal actions are potential tag-along actions. *See* Panel Rules 1.1(h), 7.1, and 7.2.

[2] The active ingredient in Invokana is canagliflozin, while Invokamet contains both canagliflozin and metformin.

[3] Twenty of the 44 potential tag-along actions are Farxiga-only cases, Jardiance-only cases, or "combination cases."

district. Plaintiffs in six District of New Jersey constituent actions (*Erway*, *Johnston*, *Mullin*, *Puente*, *Sanders*, and *Sarkisyan*) and three District of New Jersey potential tag-along action (*Aris*, *Monot*, and *Plott*) support centralization of the Invokana/Invokamet cases in the District of New Jersey.[4] Plaintiffs in four Southern District of Illinois constituent actions (*Allen*, *Counts*, *Freeman*, and *Schurman*) and the Western District of Kentucky *House* constituent action support centralization of the Invokana/Invokamet cases in the Southern District of Illinois (or, in the alternative, the District of New Jersey). Plaintiff in an Eastern District of Missouri potential tag-along action (*Seamon*) supports centralization of Invokana/Invokamet cases in the Eastern District of Missouri (or, in the alternative, the District of New Jersey).

Plaintiff in the constituent District of Minnesota *Schroeder* action, as well as plaintiffs in two potential tag-along actions[5] (collectively the *Schroeder* Plaintiffs), argue for "class-wide" centralization, in the Northern District of Illinois, of cases involving not only Invokana but also Farxiga and Jardiance. Plaintiffs in seven potential tag-along actions[6] support the *Schroeder* Plaintiffs' position in its entirety. Plaintiffs in eight potential tag-along actions[7] support class-wide centralization, but in the District of New Jersey. Plaintiff in a potential tag-along action (*Martin*) in the Northern District of West Virginia supports class-wide centralization, but in the Northern District of West Virginia (or, in the alternative, the Northern District of Illinois).

Janssen supports centralization of only Invokana/Invokamet in the District of New Jersey (or, in the alternative, the Northern District of Illinois). The Farxiga Defendants oppose inclusion of any Farxiga claims or cases in the proposed MDL. If the Panel orders class-wide centralization over their objections, then the Farxiga Defendants favor centralization in either the District of New Jersey or the Northern District of Illinois. The Jardiance Defendants oppose inclusion of any Jardiance claims or cases in the proposed MDL.

On the basis of the papers filed and the hearing session held, we find that the Invokana/Invokamet actions involve common questions of fact, and that centralization of these cases will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. The actions share factual questions arising from allegations that taking Invokana or Invokamet may result in patients suffering various injuries, including diabetic ketoacidosis and

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[4] The *Puente*, *Sanders*, *Sarkisyan*, and *Plott* plaintiffs support centralization in the Southern District of Illinois, in the alternative.

[5] Southern District of Indiana *MacMurray* and Western District of Tennessee *Mitchell*.

[6] Central District of California *Gray*, Northern District of Florida *Kampke*, Central District of Illinois *Cape*, Northern District of Illinois *Faedtke*, Southern District of Illinois *Klein*, Southern District of New York *Warner*, and Northern District of Ohio *Carlson*.

[7] Southern District of New York *Burkett*, *Doty*, *Fowler*, *Hudson*, *Perez*, *Ponce*, *Popwell*, and *Prosser*.

kidney damage. The actions thus implicate numerous common issues concerning the development, manufacture, testing, regulatory history, promotion, and labeling of the drugs. Centralization will eliminate duplicative discovery, prevent inconsistent pretrial rulings on *Daubert* issues and other pretrial matters, and conserve the resources of the parties, their counsel, and the judiciary.

On the current record, we are not convinced that the MDL should include claims involving Farxiga, Jardiance, or any other SLGT2 inhibitor, including any such claims in "combination cases." We are "typically hesitant to centralize litigation against multiple, competing defendants which marketed, manufactured and sold similar products." *See, e.g.*, *In re: Yellow Brass Plumbing Component Prods. Liab. Litig.*, 844 F. Supp. 2d 1377, 1378 (J.P.M.L. 2012). Centralizing competing defendants in the same MDL may unnecessarily complicate case management, due to the need to protect trade secret and confidential information. *See, e.g., In re: Watson Fentanyl Patch Prods. Liab. Litig*., 883 F. Supp. 2d 1350, 1351 (J.P.M.L. 2012) ("Centralization of all actions against all manufacturers will add few efficiencies to the resolution of this litigation," and "could complicate these matters, as defendants may need to erect complicated confidentiality barriers, since they are business competitors."). In addition, a multi-defendant MDL may prolong pretrial proceedings, because of, *inter alia*, the possible need for separate discovery and motion tracks, as well as the need for additional bellwether trials. Here, especially given the relatively small number of Farxiga-only cases (fifteen), Jardiance-only cases (three), and "combination cases" (three), we conclude that class-wide centralization is not warranted at the present time.

We select the District of New Jersey as transferee district for this litigation. Janssen is headquartered in that district, and many witnesses and relevant documents are likely to be found there. In addition, 37 of the constituent actions are pending in that district, as are multiple tag-along actions. Finally, centralization in the District of New Jersey allows us to assign the litigation to Judge Brian R. Martinotti, an able and experienced jurist who has not had the opportunity to preside over an MDL. Judge Martinotti already is presiding over the constituent and tag-along actions pending in the district, and we are confident that he will steer this litigation on a prudent course.

IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the District of New Jersey are transferred to the District of New Jersey, and, with the consent of that court, assigned to the Honorable Brian R. Martinotti for coordinated or consolidated pretrial proceedings.

IT IS FURTHER ORDERED that the claims in the Western District of Kentucky *House* action against defendants Bristol-Myers Squibb Company, AstraZeneca PLC, AstraZeneca LP, AstraZeneca Pharmaceuticals LP, and AstraZeneca AB are simultaneously separated and remanded to the Western District of Kentucky.

PANEL ON MULTIDISTRICT LITIGATION

Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
Catherine D. Perry
Charles R. Breyer
R. David Proctor

IN RE: INVOKANA (CANAGLIFLOZIN)
PRODUCTS LIABILITY LITIGATION MDL No. 2750

SCHEDULE A

Eastern District of California

ANZO v. JANSSEN RESEARCH & DEVELOPMENT, LLC, ET AL., C.A. No. 2:15-02217

Northern District of Georgia

BRAZIL v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 4:15-00204

Northern District of Illinois

DAVIS v. JANSSEN PHARMACEUTICALS, INC., C.A. No. 1:16-08838

Southern District of Illinois

SCHURMAN v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:15-01180
ALLEN v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:15-01195
COUNTS v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:15-01196
FREEMAN, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-00557

Western District of Kentucky

HOUSE v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:15-00894
ADYE v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL., C.A. No. 3:16-00107
ADKINS v. JANSSEN RESEARCH & DEVELOPMENT, LLC, ET AL.,
C.A. No. 3:16-00330
WOODWARD v. JANSSEN RESEARCH & DEVELOPMENT, LLC, ET AL.,
C.A. No. 3:16-00486

Eastern District of Louisiana

GUIDRY v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 2:15-04591
MADDOX v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 2:16-01189
LESSARD v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 2:16-02329

MDL No. 2750 Schedule A (Continued)

Middle District of Louisiana

JACKSON, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-00319

Western District of Louisiana

MARSHALL v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 5:16-00664
RUTLAND v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 5:16-00666

District of Minnesota

SCHROEDER v. JANSSEN PHARMACEUTICALS, INC., C.A. No. 0:16-03035

District of New Jersey

PUENTE, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:15-08070
BENJAMIN v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-01786
PARTINGTON v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-01787
ANDERS, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-01897
SWINNEY, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-01898
SEIFRIED v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-01931
BOWLING, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-02048
ROBERTSON, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-02050
HUMPHRIES, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-02278
GARCIA v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-02361
MILBURN v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 3:16-02386
KUNO v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-02938
THOMPSON v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-03114
HENDERSON, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-03362
WADDLE v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-04024
WARREN v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-04136

MDL No. 2750 Schedule A (Continued)

DESALIS v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-04484
FOREHAND v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-04485
JACKSON v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-04486
ROGERS v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-04489
SUTHERLAND v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-04490
LEMKE v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05316
JOHNSTON v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05383
MULLIN v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05388
ERWAY v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05394
ERVIN, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05478
SARKISYAN, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-05479
BUCHANAN v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05645
FELIX v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05649
HUDSON v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05674
JAYJOHN, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-05675
KEMP, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05676
LUNA, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05677
POOLE v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05681
STRINGER, ET AL. v. JANSSEN PHARMACEUTICALS, INC., ET AL.,
C.A. No. 3:16-05682
WILLIAMS v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05683
SANDERS v. JANSSEN PHARMACEUTICALS, INC., ET AL., C.A. No. 3:16-05940

APPENDIX “12B”

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: INVOKANA (CANAGLIFLOZIN) PRODUCTS LIABILITY LITIGATION	:	**MDL NO. 2750**
	:	**JUDGE BRIAN R. MARTINOTTI**
	:	**MAGISTRATE JUDGE LOIS H. GOODMAN**

CASE MANAGEMENT ORDER NO. 20

In accordance with Section III.A of Case Management Order No. 10, this Order shall govern the process and criteria for selection of Bellwether Plaintiffs.

I. PROTOCOL FOR SELECTION OF GROUP A BELLWETHER DISCOVERY CASES

A. On or before August 31, 2017, Plaintiffs and Defendants shall each identify the following cases to undergo Bellwether Core Discovery pursuant to Case Management Order No. 10:

1. Three (3) plaintiffs who ingested Invokana and subsequently developed diabetic ketoacidosis.

2. Three (3) plaintiffs who ingested Invokana and subsequently developed kidney injury.

B. The parties shall submit the complete list of twelve (12) cases selected for Bellwether Core Discovery to the Court.

C. A case may be eligible for initial selection as a bellwether candidate only where: (1) the case was filed on or before July 31, 2017; (2) Plaintiff was prescribed Invokana; (3) Plaintiff was a Type II diabetic, and (4) a substantially complete Plaintiff Fact Sheet ("PFS") was served on or before July 31, 2017.

D. Subject to the parameters of this Order, on August 31, 2017, a designee for the Plaintiff Steering Committee (PSC) and a designated counsel for Defendants shall exchange lists of: three (3) diabetic ketoacidosis Plaintiffs and three (3) kidney injury Plaintiffs that each chooses to undergo Bellwether Core Discovery. The lists shall include the named Plaintiff, MDL Docket Number, and identification of primary Plaintiff's Counsel.

E. In the event duplicate names appear on the respective lists of bellwether cases, replacement cases shall be identified in the following manner: using the court-assigned case numbers, the duplicate with the lowest (oldest) case number shall be replaced by the PSC, with the next duplicate replaced by the Defendants, and so on in alternating turns until all duplicates have been resolved and a full list of twelve (12) cases has been achieved.

F. In the event the parties disagree about the selections made by either side, then the parties shall promptly meet and confer in a good faith effort to resolve the issue. In the event resolution is not achieved within five (5) days, then the party that raised the disagreement shall bring the dispute to the Court's attention for resolution.

G. In selecting their respective six (6) cases, the parties are strongly encouraged to select cases that they have a good faith belief are representative cases that should be robustly discovered and then taken to trial.

H. Any case that is dismissed by Plaintiff before October 16, 2017, shall be replaced by a same injury case that can be selected by Defendants. Any case settled by Defendants before October 16, 2017, shall be replaced by a same injury case that can be selected by Plaintiffs. For any case either dismissed by Plaintiff or settled by Defendants after October 16, 2017, the parties shall meet and confer on how the case should be replaced, if at all. If the parties cannot agree, they shall submit their respective positions to the Court.

II. PROTOCOL FOR SELECTION OF GROUP B BELLWETHER DISCOVERY CASES

A. On or before March 30, 2018, Plaintiffs and Defendants shall each identify the following cases to undergo Bellwether Core Discovery pursuant to Case Management Order No. 10:

1. Three (3) plaintiffs who ingested Invokana and subsequently developed a cardiovascular injury ("CV") (e.g. myocardial infarction or stroke cases).

B. The parties shall submit the complete list of six (6) cases selected as Group B Bellwether Core Discovery to the Court.

C. A case may be eligible for initial selection as a bellwether candidate only where: (1) the case was filed on or before February 16, 2018; (2) Plaintiff was prescribed Invokana; (3) Plaintiff was a type 2 diabetic, and (4) a substantially complete Plaintiff Fact Sheet ("PFS") was served on or before February 16, 2018.

D. Subject to the parameters of this Order, on March 30, 2018, a designee for the Plaintiff Steering Committee (PSC) and a designated counsel for Defendants shall exchange lists of three (3) CV cases. The lists shall include the named Plaintiff, MDL Docket Number, and identification of primary Plaintiff's Counsel.

E. In the event duplicate names appear on the respective lists of bellwether cases, replacement cases shall be identified in the following manner: using the court-assigned case numbers, the duplicate with the lowest (oldest) case number shall be replaced by the PSC, with the next duplicate replaced by the Defendants, and so on in alternating turns until all duplicates have been resolved and a full list of six (6) cases has been achieved.

F. In the event the parties disagree about the selections made by either side, then the parties shall promptly meet and confer in a good faith effort to resolve the issue. In the event resolution is not

achieved within five (5) days, then the party that raised the disagreement shall bring the dispute to the Court's attention for resolution.

G. In selecting their respective three (3) cases, the parties are strongly encouraged to select cases that they have a good faith belief are representative cases that should be robustly discovered and then taken to trial.

H. Any case that is dismissed by plaintiff before June 29, 2018, shall be replaced by a same injury case that can be selected by Defendants. Any case settled by Defendant before June 29, 2018 shall be replaced by a same injury case that can be selected by Plaintiffs. For any case either dismissed by Plaintiff or settled by Defendants after June 29, 2018, the parties shall meet and confer on how the case should be replaced, if at all. If the parties cannot agree, they shall submit their respective positions to the Court

III. BELLWETHER CORE DISCOVERY SCHEDULE

A. GROUP A CASES:

1. Between September 1, 2017 and December 15, 2017 Bellwether Core Discovery shall take place, with a maximum of four (4) depositions per side for each case. This shall be designed to provide information to enable the parties to assess the larger pool of cases and to provide information to the Court to enable the Court to select which cases shall serve as the first bellwether trials. No extensions will be granted by the Court without good cause.

2. On or before a date to be agreed to by the parties, Defendants shall provide supplemental discovery responses to the questions the parties agreed to defer from the Defense Fact Sheets to Plaintiffs undergoing Bellwether Core Discovery.

B. GROUP B CASES:

1. Between April 2, 2018 and August 25, 2018 core bellwether discovery shall take place, with a maximum of four (4) depositions per side for each case. This shall be designed to provide information to enable the parties to assess the larger pool of cases and to provide information to the Court to enable the Court to select which cases shall serve as the first bellwether trials. No extensions will be granted by the Court without good cause.

2. On or before a date to be agreed to by the parties, Defendants shall provide supplemental discovery responses to the questions the parties agreed to defer from the Defense Fact Sheets to Plaintiffs undergoing Bellwether Core Discovery.

IV. SELECTION OF CASES FOR FURTHER DISCOVERY AND BELLWETHER TRIALS

A. GROUP A CASES:

1. Following initial Bellwether Core Discovery, the parties shall submit separate proposals to the Court narrowing their initial selection of twelve (12) cases down (or however many remain) to four (4) cases recommended for further discovery and bellwether trials. The parties shall choose two (2) cases from each of the two categories for a total of four (4) cases. Therefore, within each submission, there should be two (2) diabetic ketoacidosis cases selected and two (2) kidney injury cases selected. The submissions shall contain sufficient detail and analysis regarding their proposed selected cases and trial order.

2. The parties shall make their submissions to the Court on or before January 5, 2018.

3. By January 19, 2018, the Court will select three bellwether cases to serve as the first bellwether trials and the Court may designate the sequence of these bellwether trials.

4. The bellwether cases that are initially selected and those that are ultimately picked as the initial trials are to be representative cases.

5. The parties agree that the first three trials for Group A cases will not be joint plaintiff or multi-plaintiff trials.

6. No additional fact discovery by either party will be permitted in the bellwether cases that are not selected as the three final trial cases absent good cause.

B. GROUP B CASES:

1. Following initial Bellwether Core Discovery, the parties shall narrow their initial selection of six (6) cases down to one (1) case recommended for further discovery and bellwether trial. To the extent the parties cannot agree on the final case, the parties shall submit separate proposals with sufficient detail and analysis regarding their proposed selected cases and trial order.

2. The parties shall make their submissions to the Court on or before September 15, 2018.

3. By September 29, 2018, the Court will select the CV bellwether case to serve as the first CV bellwether trial.

4. Additional fact discovery regarding the Group B bellwether trial case may be conducted from October 2, 2018 through December 5, 2018 which may include additional written discovery and additional depositions (of new deponents only). No additional fact discovery by either party will be permitted in the bellwether cases that are not selected as the final trial case.

5. The bellwether cases that are initially selected and those that are ultimately picked as the initial trials are to be representative cases.

6. The parties agree that the first Group B case will not be a joint plaintiff or multi-plaintiff trial.

V. MISCELLANEOUS

A. See Case Management Order No. 10 for expert discovery, summary judgment, and *Daubert* scheduling and deadlines for Group A cases.

B. Expert discovery, summary judgment, and *Daubert* scheduling and deadlines for Group B cases will be the subject of a Case Management Order that the parties will submit on or before October 6, 2017.

C. It is imperative for the use of the bellwether process that is contemplated by this Order that both sides waive applicable venue and *forum non coveniens* challenges and stipulate that the trial of any of the final Group A and Group B bellwether cases as set forth in Section III can be conducted in the District of New Jersey without remanding any case to the transferor forum under *Lexecon v. Milberg Weiss* ("*Lexecon* Waiver"). Accordingly, unless an individual plaintiff does not agree to waive *Lexecon* within one week of selection, Plaintiffs will waive *Lexecon* for the twelve (12) Group A cases selected as well as the six (6) Group B cases that are selected. Any plaintiff refusing to waive *Lexecon* or his/her counsel shall appear in person before Judge Brian Martinotti and show cause why a *Lexecon* waiver is not being made, absent special circumstances to do so or permission not to appear expressly granted by the Court. Should it be determined that a *Lexecon* waiver is not possible, Defendants shall have the right to replace said case within two (2) days following any final determination about the *Lexecon* waiver status. Defendants hereby agree to irrevocably waive *Lexecon* for the three Group A cases ultimately selected by the Court or selected by either or both parties for the first bellwether trials pursuant to Section III.A above ("Group A Trials") and the one Group B case ultimately selected by the Court for the first CV bellwether trial pursuant to Section III.B above ("Group B Trial"). Defendants agree that the *Lexecon* waivers for the three Group A Trials and the one Group B Trial may not be withdrawn at

any time or for any reason. The parties do not waive their *Lexecon* rights except as expressly described above and reserve their rights to do so at a later time.

IT IS SO ORDERED.

Date: July 27, 2017

Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

APPENDIX “13A”

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: JUUL LABS, INC., MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION MDL No. 2913

TRANSFER ORDER

Before the Panel: Common defendant Juul Labs, Inc. (JLI) moves under 28 U.S.C. § 1407 to centralize this litigation in the Northern District of California or the District of New Jersey. The litigation consists of the ten actions listed on the attached Schedule A, five in the Northern District of California, two in the Middle District of Alabama, and one each in the Middle District of Florida, the Southern District of Florida, and the Southern District of New York. The Panel has been notified of more than forty potentially-related actions.[1]

The actions in this litigation involve allegations that JLI has marketed its JUUL nicotine delivery products in a manner designed to attract minors, that JLI's marketing misrepresents or omits that JUUL products are more potent and addictive than cigarettes, that JUUL products are defective and unreasonably dangerous due to their attractiveness to minors, and that JLI promotes nicotine addiction. The actions include both putative class actions and individual personal injury cases. In the briefing to the Panel, a number of responding plaintiffs argued that the Panel should create two MDLs – one for the putative class actions in the Northern District of California, and a second for the individual actions in the District of New Jersey.[2] The plaintiffs who first advocated that position stated at oral argument that they now support centralization of all actions in a single MDL. None of the other plaintiffs who filed briefs in favor of a two-MDL approach presented oral argument. All other responding parties support centralization of all related actions in one MDL, but they disagree on an appropriate transferee district. Suggested districts include the Northern District of California, the Eastern District of Louisiana, the District of Maryland, and the District of New Jersey.

On the basis of the papers filed and the hearing session held, we find that these actions involve common questions of fact, and that centralization – of all actions – in the Northern District of California will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. These actions share multiple factual issues concerning the development, manufacture, labeling, and marketing of JUUL products, and the alleged risks posed

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[1] These and any other related actions are potential tag-along actions. *See* Panel Rules 1.1(h), 7.1, and 7.2.

[2] Plaintiffs in three tag-alongs filed a brief requesting separate centralization of the individual actions in either the Northern District of Illinois or the Eastern District of Wisconsin.

by use of those products. Centralization will eliminate duplicative discovery, the possibility of inconsistent rulings on class certification, *Daubert* motions, and other pretrial matters, and conserve judicial and party resources.

The proposal to create two MDLs is not well-taken. Given the substantial overlap in the core factual issues, parties, and claims, a single MDL will best achieve Section 1407's purposes. The Panel frequently centralizes dockets comprising both class actions and individual cases. *See, e.g., In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 357 F. Supp. 3d 1391 (J.P.M.L. 2018) (centralizing litigation consisting of personal injury cases, class actions asserting medical monitoring and property damage claims, and actions by various governmental entities). As with those dockets, the transferee judge can use separate tracks or other appropriate pretrial techniques to accommodate any differences among the actions.

We select the Northern District of California as the transferee district. JLI is headquartered in that district, and it represents that most of the key evidence and witnesses are located there. Five constituent actions, including the first-filed case, are pending in the Northern District of California, as are several tag-alongs. Judge William H. Orrick III, to whom we assign the litigation, is an experienced transferee judge. He has been presiding over most of the California actions since they were filed and already has ruled on two motions to dismiss. We are confident that he will steer this litigation on a prudent course.

IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the Northern District of California are transferred to the Northern District of California, and, with the consent of that court, assigned to the Honorable William H. Orrick III for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Lewis A. Kaplan
R. David Proctor
Karen K. Caldwell

Ellen Segal Huvelle
Catherine D. Perry
Nathaniel M. Gorton

IN RE: JUUL LABS, INC., MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION MDL No. 2913

SCHEDULE A

Middle District of Alabama

WEST v. JUUL LABS, INC., ET AL., C.A. No. 2:19-00505
HELMS v. JUUL LABS, INC., ET AL., C.A. No. 2:19-00527

Northern District of California

COLGATE, ET AL. v. JUUL LABS, INC., ET AL., C.A. No. 3:18-02499
Y., ET AL. v. JUUL LABS, INC., C.A. No. 3:18-06776
VISCOMI, ET AL. v. JUUL LABS, INC., ET AL., C.A. No. 3:18-06808
ZAMPA v. JUUL LABS, INC., C.A. No. 3:19-02466
SWEARINGEN, ET AL. v. JUUL LABS, INC., ET AL., C.A. No. 3:19-04424

Middle District of Florida

NESSMITH, ET AL. v. ALTRIA GROUP, INC., ET AL., C.A. No. 8:19-00884

Southern District of Florida

SHAPIRO, ET AL. v. ALTRIA GROUP, INC., ET AL., C.A. No. 0:19-61548

Southern District of New York

D.P. v. JUUL LABS, INC., ET AL., C.A. No. 7:18-05758

APPENDIX “13B”

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CIVIL MINUTES

Date: December 6, 2022	**Time:** 6 minutes 4:30 p.m. to 4:36 p.m.	**Judge:** WILLIAM H. ORRICK
Case No.: 19-md-02913-WHO	**Case Name:** In Re: Juul Labs, Inc., Marketing, Sales Practices	

Attorneys for Plaintiffs: Dena Sharp, Sarah London, Dean Kawamoto, and Ellen Relkin

Attorneys for Defendants: John Massaro, Brian Stekloff, Peter Farrell, James Kramer, and Michael Guzman

Deputy Clerk: Jean Davis **Court Reporter:** Marla Knox

PROCEEDINGS

(Additional counsel in attendance; only counsel who appeared in camera or spoke at the Case Management Conference are identified.)

At 4:00 p.m. plaintiffs' Co-Lead counsel and defense counsel identified above participated in an *in camera* video conference.

At 4:30 p.m. Case Management Conference conducted via videoconference. Ms. London announces that an agreement in principle has been reached with JUUL, its directors, the retailer and distributor defendants, and the eLiquid defendants that will create settlement programs to resolve the personal injury cases, tribal cases, class cases, and government entity cases as to these entities and individuals. The settlement does not include Altria. Lead counsel will be distributing information to all plaintiffs' counsel regarding the process and procedures for participation in the settlement programs.

A further Case Management Conference is set for December 16, 2022 at 1:00 p.m. (joint statement to be filed the preceding Wednesday). The Court will address the schedule for and implementation of the settlement programs, to the extent they involve the Court, as well as the schedule for ongoing cases involving Altria.

APPENDIX “14A”

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

IN RE: MARRIOTT INTERNATIONAL CUSTOMER DATA SECURITY BREACH LITIGATION	*	
THIS DOCUMENT RELATES TO ALL ACTIONS	*	**MDL No.: 19-md-2879**
	*	**JUDGE GRIMM**

* * * * * * * * * * * * * *

CASE MANAGEMENT ORDER #2 APPOINTING LEAD COUNSEL, LIAISON COUNSEL, AND STEERING COMMITTEE

This matter is before the Court on competing motions to appoint lead counsel, liaison counsel, and members of a steering committee submitted by various counsel for the Consumer Plaintiffs, Financial Institution Plaintiff, Derivative Action Plaintiffs, and Securities Action Plaintiffs. This Court, in Case Management Order No. 1 ("CMO No. 1"), set forth the main criteria it would consider in appointing leadership positions in this matter, including: (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. Having considered all timely submissions in light of the criteria set forth in CMO No. 1, the Manual for Complex Litigation, and Federal Rule of Civil Procedure 23(g), and having considered oral arguments during the hearing held on April 29, 2019, the Court hereby appoints the following leadership:

I. Plaintiffs' Co-Lead Counsel

a. Consumer Plaintiffs' Co-Lead Counsel

The Court appoints the following attorneys as the Consumer Plaintiffs' Co-Lead Counsel:

Andrew Friedman
Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue, NW, Suite 500
Washington, D.C. 20005

Amy Keller
DiCello Levitt Gutzler LLC
10 North Dearborn Street, 11th Floor
Chicago, Illinois 60602

James Pizzirusso
Hausfeld LLP
1700 K Street, NW, Suite 650
Washington, D.C. 20006

b. Financial Institution Plaintiff's Co-Lead Counsel

The Court appoints the following attorneys as the Financial Institution Plaintiff's Co-Lead Counsel:

Arthur Murray
Murray Law Firm
650 Poydras Street, Suite 2150
New Orleans, LA 70130

Steven Silverman
Silverman Thompson Slutkin & White, LLC
201 N. Charles Street, Suite 2600
Baltimore, MD 21201

c. Derivative Action Plaintiffs' Co-Lead Counsel

The Court appoints the following attorneys as the Derivative Action Plaintiffs' Co-Lead Counsel:

Timothy Brown
The Brown Law Firm, P.C.
240 Townsend Square
Oyster Bay, NY 11771

Gregory Egleston
Gainey McKenna & Egleston
440 Park Avenue South, 5th Floor
New York, NY 10016

d. Securities Action Plaintiffs' Co-Lead Counsel

The Court appoints the following attorneys as the Securities Action Plaintiffs' Co-Lead Counsel:

Eric Belfi
Mark Goldman
Christopher Keller
Francis McConville
Carol Villegas
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

e. Co-Interim Class Counsel

Co-Lead Counsel are also hereby designated as Co-Interim Class Counsel pursuant to Rule 23(g) to "act on behalf of a putative class before determining whether to certify the action as a class action." *See* Fed. R. Civ. P. 23(g)(3).

II. Plaintiffs' Liaison Counsel

a. Consumer Plaintiffs' Liaison Counsel

The Court appoints the following attorneys as the Consumer Plaintiffs' Liaison Counsel:

Veronica Nannis
Joseph Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770

James Ulwick
Kramon & Graham PA
1 South Street, Suite 2600
Baltimore, MD 21202

b. Financial Institution Plaintiff's Liaison Counsel

The Court appoints the following attorney as the Financial Institution Plaintiff's Co-Lead Counsel:

Steven Silverman
Silverman Thompson Slutkin & White, LLC
201 N. Charles Street, Suite 2600
Baltimore, MD 21201

c. Derivative Action Plaintiffs' Liaison Counsel

The Court appoints the following attorneys as the Derivative Action Plaintiffs' Liaison Counsel:

Andrew O'Connell
Thomas & Libowitz, P.A.
100 Light Street, Suite 1100
Baltimore, MD 21202

d. Securities Action Plaintiffs' Liaison Counsel

The Court appoints the following attorneys as the Securities Action Plaintiffs' Co-Lead Counsel:

Eric Belfi
Mark Goldman
Christopher Keller
Francis McConville
Carol Villegas
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

III. Plaintiffs' Steering Committee

a. Consumer Plaintiffs' Steering Committee

The Court appoints the following attorneys as the Consumer Plaintiffs' Steering Committee:

MaryBeth V. Gibson
The Finley Firm, P.C.

3535 Piedmont Road, Bldg. 14, Suite 230
Atlanta, GA 30305

Megan Jones
Hausfeld LLP
600 Montgomery Street, Suite 3200
San Francisco, CA 94111

Jason Lichtman
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street, 8th Floor
New York, NY 10013

Gary F. Lynch
Carlson Lynch LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222

Timothy Maloney
Joseph Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770

Eve-Lynn Rapp
Edelson PC
123 Townsend Street, Suite 100
San Francisco, CA 94107

Daniel Robinson
Robinson Calcagnie, Inc.
19 Corporate Plaza Drive
Newport Beach, CA 92660

Norman Siegel
Stueve Siegel Hanson LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112

Ariana Tadler
Milberg Tadler Phillips Grossman LLP
1 Penn Plaza
New York, NY 10119

b. Financial Institution Plaintiff's Steering Committee

The Court appoints the following attorneys as the Financial Institution Plaintiff's Steering

Committee:

Stuart A. Davidson
Robbins Geller Rudman & Dowd LLP
120 E. Palmetto Park Rd., Suite 500
Boca Raton, FL 33432

Brian C. Gudmundson
Zimmerman Reed LLP
1100 IDS Center, 80 S. 8th St.
Minneapolis, MN 55402

Charles Van Horn
Berman Fink Van Horn P.C.
3475 Piedmont Road, NE, Suite 1100
Atlanta, GA 30305

The Court appoints the following attorney as the Financial Institution Coordinating Discovery Counsel:

Stuart A. Davidson
Robbins Geller Rudman & Dowd LLP
120 E. Palmetto Park Rd., Suite 500
Boca Raton, FL 33432

All the foregoing appointments are personal to the individual attorney appointed. Although the Court expects that the individual attorneys will draw upon their firms, including their firms' resources, to assist them with their duties, each individual attorney is personally responsible for his or her duties. The Court may add or replace individual attorneys, if and as circumstances warrant.

IV. Defendants' Counsel

The Court appoints the following attorneys as Defendants' Co-Lead Counsel for the Consumer and Financial tracks:

Lisa Ghannoum
Gilbert Keteltas
Daniel Warren
Baker & Hostetler LLP
Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114

The Court appoints the following attorneys as Defendants' Co-Lead Counsel for the Securities and Derivative Action tracks:

Jason J. Mendro
Laura Kathryn O'Boyle
Adam H. Offenhartz
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166

The Court appoints the following attorneys as Defendants' Coordinating Discovery Counsel:

Lisa Ghannoum
Gilbert Keteltas
Daniel Warren
Baker & Hostetler LLP
Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114

V. Duties of Co-Lead Counsel

The Co-Lead Counsel shall be responsible for coordinating during pretrial proceedings (with respect to their own tracks), including:

a. Determine (after consultation with other co-counsel as may be appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of all matters arising during pretrial proceedings;

b. Coordinate the initiation and conduct of discovery consistent with the requirements of the Federal Rules of Civil Procedure relating to discovery or any other subsequent order of this Court;

c. Coordinate with members of the Steering Committee in management of the litigation and fund the necessary and appropriate costs of discovery and other common benefit efforts,

including the maintenance of a plaintiffs' document depository, *see* Manual for Complex Litigation, Fourth, section 40.261;

d. Coordinate settlement discussions or other dispute resolution efforts on behalf of the plaintiffs, under the Court's supervision, if and as appropriate, but not enter binding agreements except to the extent expressly authorized;

e. Delegate specific tasks to other counsel in the matter to ensure that pretrial preparation is conducted effectively, efficiently, and economically, that schedules are met, and that unnecessary expenditures of time and expense are avoided;

f. Consider the qualifications of non-leadership counsel who submitted leadership applications for specific tasks;

g. Consult with and employ consultants or experts, as necessary;

h. Enter into stipulations, with opposing counsel, necessary for the conduct of the litigation;

i. Encourage full cooperation and efficiency among all Plaintiffs' counsel;

j. Prepare and distribute to the parties periodic status reports;

k. Maintain adequate time and disbursement records covering service of designated counsel and establish guidelines, for approval by the Court, as to the keeping of time records and expenses;

l. Determine reasonable compensation for non-leadership counsel commensurate with their contributions from a settlement fund, if any;

m. Monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;

n. Present all matters of common concern to the plaintiffs;

o. Perform such other duties as may be incidental to proper coordination with the Steering Committees' pretrial activities or as authorized by further Order of the Court; and

p. Submit, if appropriate, additional committees and counsel for designation by the Court.

VI. Duties of Liaison Counsel

The Liaison Counsel shall have the following responsibilities, including:

a. Maintain an up-to-date, comprehensive Service List of Plaintiffs and promptly advise the Court and Defendants' counsel of changes to Plaintiffs' Service List;

b. Receive and distribute to Plaintiffs' counsel, as appropriate, Orders, notices, and correspondence from the Court, to the extent such documents are not electronically filed;

c. Receive and distribute to Plaintiffs' counsel, as appropriate, discovery pleadings and correspondence and other documents from Defendants' counsel that are not electronically filed;

d. Establish and maintain a document depository;

e. Maintain and make available to co-counsel at reasonable hours a complete file of all documents served by or upon each party;

f. Assist Co-Lead Counsel and Plaintiffs' Steering Committee in the coordination of activities, discovery, meetings and hearings and assist in resolving scheduling conflicts among the parties;

g. Maintain a file-endorsed copy of this Order, and serve the same on the parties and/or their attorneys in any actions later instituted in, removed to, or transferred to, these proceedings; and

h. Communicate with the Court, on behalf of the Plaintiffs' Co-Lead Counsels, concerning scheduling and other administrative matters.

VII. Duties of Plaintiffs' Steering Committee

The Plaintiffs' Steering Committee shall have the following responsibilities, including:

a. Participate in common benefit work to advance the litigation, assigned and performed under the direction of Co-Lead Counsel;

b. Meet and confer with Co-Lead Counsel, as needed, to provide advice regarding any matter, as may be requested from time to time by Co-Lead Counsel; and

c. May form subcommittees to perform specific common benefit tasks, such as discovery, to aid in the effective and efficient conduct of this litigation.

VIII. Duties of Coordinating Discovery Counsel

The Coordinating Discovery Counsel shall ensure that—to the extent possible—discovery is coordinated among tracks (and, to the extent possible, among other pending actions that are not dismissed, administratively closed, or stayed, including the shareholder derivative cases and the governmental-enforcement action) to avoid duplication and ensure efficiency.

IX. Other Duties

a. All counsel must keep a daily record of their time spent and expenses incurred in connection with this litigation and must report on a monthly basis their expenses and hours worked to Co-Lead Counsel. Co-Lead Counsel will make such records and reports available to members of the Steering Committee upon request. In order for their time and expenses to be compensable, those not serving in leadership positions must secure the express authorization of Co-Lead Counsel for any projects or work undertaken in this litigation.

b. On a quarterly basis, beginning on July 31, 2019, and thereafter on the last business day of each July, October, January, and April, Co-Lead Counsel shall submit to the Court, *in camera*, reports analyzing hours billed in this matter by all Plaintiffs' counsel. Failure to maintain and submit records with sufficient descriptions of the time spent and expenses incurred and consistent with Local Rules may be grounds for denying attorneys' fees and/or expenses, for the period that relates to the missing or inadequate submissions.

X. Substantive Conference

Within fourteen (14) days of the appointment of Co-Lead Counsel, the parties are ordered to engage in a substantive conference to discuss discovery, including a proposed ESI protocol, a protective order, a preservation order, the production and disclosure of any forensic report, and initial disclosures. The parties shall submit a proposed Case Management Order #3 by May 13, 2019, which should include the following:

a. A detailed proposal of the selection process for the strongest five individual claims to be brought in an amended consolidated complaint;

b. A discovery plan for all tracks with specific dates (i.e., not "14 days from the filing of the amended complaint");

c. A briefing schedule for all tracks with specific dates; and

d. A date for a discovery conference with the Court.

IT IS SO ORDERED.

Date: April 29, 2019

Paul W. Grimm
United States District Judge

APPENDIX “15A”

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION MDL No. 2804

TRANSFER ORDER

Before the Panel:[*] Plaintiffs in 46 actions move under 28 U.S.C. § 1407 to centralize pretrial proceedings in the Southern District of Ohio or the Southern District of Illinois, but plaintiffs do not oppose centralization in the Southern District of West Virginia. These cases concern the alleged improper marketing of and inappropriate distribution of various prescription opiate medications into cities, states and towns across the country. Plaintiffs' motion includes the 64 actions listed on Schedule A,[1] which are pending in nine districts. Since plaintiffs filed this motion, the parties have notified the Panel of 115 potentially related actions.[2]

Responding plaintiffs' positions on centralization vary considerably. Plaintiffs in over 40 actions or potential tag-along actions support centralization. Plaintiffs in fifteen actions or potential tag-along actions oppose centralization altogether or oppose transfer of their action. In addition to opposing transfer, the State of West Virginia suggests that we delay transferring its case until the Southern District of West Virginia court decides its motion to remand to state court. Third party payor plaintiffs in an Eastern District of Pennsylvania potential tag-along action (*Philadelphia Teachers Health and Welfare Fund*) oppose centralization of third party payor actions. Western District of Washington plaintiff City of Everett opposes centralization and, alternatively, requests exclusion of its case. Northern District of Illinois tag-along plaintiff City of Chicago asks the Panel to defer transfer of its action until document discovery is completed.

Defendants' positions on centralization also vary considerably. The "Big Three" distributor defendants,[3] which reportedly distribute over 80% of the drugs at issue and are defendants in most cases,

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[*] Judges Lewis A. Kaplan and Ellen Segal Huvelle did not participate in the decision of this matter.

[1] Two actions included on plaintiffs' motion to centralize were remanded to state court during the pendency of the motion.

[2] These actions, and any other related actions, are potential tag-along actions. *See* Panel Rules 1.1(h), 7.1 and 7.2.

[3] AmerisourceBergen Drug Corp., AmerisourceBergen Corp., McKesson Corp., Cardinal Health 110, LLC, Cardinal Health, Inc., Cardinal Health 105, Inc., Cardinal Health 108, LLC, Cardinal Health 112, LLC, Cardinal Health 414, LLC, and Cardinal Health subsidiary The Harvard Drug

support centralization in the Southern District of West Virginia. These defendants request that the Panel either delay issuing its transfer order or delay transfer of their cases until their motions to dismiss are decided. Defendant distributor Miami-Luken also supports centralization in the Southern District of West Virginia. Multiple manufacturer defendants[4] support centralization in the Southern District of New York or the Northern District of Illinois; defendant Malinckrodt, LLC, takes no position on centralization but supports the same districts. Teva defendants[5] suggest centralization in the Eastern District of Pennsylvania or the manufacturers' preferred districts. Physician defendants[6] in three Ohio actions, who are alleged to be "key opinion leaders" paid by manufacturing defendants, do not oppose centralization in the Southern District of Ohio.

Defendants in several Southern District of West Virginia cases oppose centralization. These defendants include several smaller distributor defendants or "closed" distributors that supply only their own stores.[7] Many of these defendants specifically request exclusion of the claims against them from the MDL. Also, manufacturer Pfizer, Inc., opposes centralization and requests that we exclude any claims against it from this MDL.[8]

The responding parties suggest a wide range of potential transferee districts, including: the Southern District of West Virginia, the Southern District of Illinois, the Northern District of Illinois, the Eastern District of Missouri (in a brief submitted after the Panel's hearing), the District of New Jersey, the

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Group, L.L.C.

[4] Actavis LLC, Actavis Pharma, Inc., Allergan PLC, Allergan Finance, LLC, Allergan plc f/k/a Actavis plc, Actavis Pharma Inc. f/k/a Watson Pharma Inc., Watson Pharmaceuticals, Inc. n/k/a Actavis, Inc., and Allergan PLC f/k/a Actavis PLS, Cephalon, Inc., Endo Health Solutions, Inc., Endo Pharmaceuticals, Inc., Janssen Pharmaceutica Inc., Johnson & Johnson, Ortho-McNeil-Janssen Pharmaceuticals, Inc., Purdue Frederick Company Inc., Purdue Pharma Inc., Purdue Pharma L.P., Teva Pharmaceuticals Industries Ltd., Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Watson Pharmaceuticals, Inc., Janssen Pharmaceutica Inc. n/k/a Janssen Pharmaceuticals, Inc.

[5] Teva Pharmaceutical Industries, Ltd., Teva Pharmaceuticals U.S.A, Inc., Cephalon, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc.

[6] Scott Fishman, M.D., Perry Fine, M.D., Lynn Webster, M.D., and Russell Portenoy, M.D.

[7] JM Smith Corp.; CVS Indiana, LLC and Omnicare Distribution Center, LLC; TopRx; Kroger Limited Partnership I, Kroger Limited Partnership II, SAJ Distributors (a Walgreens distributor for two months in 2012), Walgreen Eastern Co., Inc., and Rite Aid of Maryland, Inc.; Masters Pharmaceuticals and KeySource Medical; WalMart Stores East, LP.

[8] Pfizer specifically requests that we exclude any potential future claims against it because of its minimal involvement in the opioid market. At oral argument, counsel stated that Pfizer was not named as a defendant in any pending case. In the absence of a case before us, the Panel will not address Pfizer's argument.

Southern District of New York, the Southern District of Ohio, the Northern District of Ohio, the Eastern District of Pennsylvania, the Eastern District of Texas, the Western District of Washington and the Eastern District of Wisconsin.

After considering the argument of counsel, we find that the actions in this litigation involve common questions of fact, and that centralization in the Northern District of Ohio will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Plaintiffs in the actions before us are cities, counties and states that allege that: (1) manufacturers of prescription opioid medications overstated the benefits and downplayed the risks of the use of their opioids and aggressively marketed (directly and through key opinion leaders) these drugs to physicians, and/or (2) distributors failed to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates. All actions involve common factual questions about, *inter alia*, the manufacturing and distributor defendants' knowledge of and conduct regarding the alleged diversion of these prescription opiates, as well as the manufacturers' alleged improper marketing of such drugs. Both manufacturers and distributors are under an obligation under the Controlled Substances Act and similar state laws to prevent diversion of opiates and other controlled substances into illicit channels. Plaintiffs assert that defendants have failed to adhere to those standards, which caused the diversion of opiates into their communities. Plaintiffs variously bring claims for violation of RICO statutes, consumer protection laws, state analogues to the Controlled Substances Act, as well as common law claims such as public nuisance, negligence, negligent misrepresentation, fraud and unjust enrichment.

The parties opposing transfer stress the uniqueness of the claims they bring (or the claims that are brought against them), and they argue that centralization of so many diverse claims against manufacturers and distributors will lead to inefficiencies that could slow the progress of all cases. While we appreciate these arguments, we are not persuaded by them. All of the actions can be expected to implicate common fact questions as to the allegedly improper marketing and widespread diversion of prescription opiates into states, counties and cities across the nation, and discovery likely will be voluminous. Although individualized factual issues may arise in each action, such issues do not – especially at this early stage of litigation – negate the efficiencies to be gained by centralization. The transferee judge might find it useful, for example, to establish different tracks for the different types of parties or claims. The alternative of allowing the various cases to proceed independently across myriad districts raises a significant risk of inconsistent rulings and inefficient pretrial proceedings. In our opinion, centralization will substantially reduce the risk of duplicative discovery, minimize the possibility of inconsistent pretrial obligations, and prevent conflicting rulings on pretrial motions. Centralization will also allow a single transferee judge to coordinate with numerous cases pending in state courts. Finally, we deny the requests to delay transfer pending rulings on various pretrial motions (*e.g.*, motions to dismiss or to remand to state court) or until the completion of document discovery in *City of Chicago*.

Although all of the cases on the motion before us involve claims brought by political subdivisions, we have been notified of potential tag-along actions brought by individuals, consumers, hospitals and third party payors. As reflected in our questions at oral argument, this litigation might evolve to include

additional categories of plaintiffs and defendants, as well as different types of claims. We will address whether to include specific actions or claims through the conditional transfer order process.[9]

As this litigation progresses, it may become apparent that certain types of actions or claims could be more efficiently handled in the actions' respective transferor courts. Should the transferee judge deem remand of any claims or actions appropriate (or, relatedly, the subsequent exclusion of similar types of claims or actions from the centralized proceedings), then he may accomplish this by filing a suggestion of remand to the Panel. *See* Panel Rule 10.1. As always, we trust such matters to the sound judgment of the transferee judge.

Most parties acknowledge that any number of the proposed transferee districts would be suitable for this litigation that is nationwide in scope. We are persuaded that the Northern District of Ohio is the appropriate transferee district for this litigation. Ohio has a strong factual connection to this litigation, given that it has experienced a significant rise in the number of opioid-related overdoses in the past several years and expended significant sums in dealing with the effects of the opioid epidemic. The Northern District of Ohio presents a geographically central and accessible forum that is relatively close to defendants' various headquarters in New York, Connecticut, New Jersey and Pennsylvania. Indeed, one of the Big Three distributor defendants, Cardinal Health, is based in Ohio. Judge Dan A. Polster is an experienced transferee judge who presides over several opiate cases. Judge Polster's previous MDL experience, particularly MDL No. 1909 – *In re: Gadolinium Contrast Dyes Products Liability Litigation*, which involved several hundred cases, has provided him valuable insight into the management of complex, multidistrict litigation. We have no doubt that Judge Polster will steer this litigation on a prudent course.

IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside of the Northern District of Ohio are transferred to the Northern District of Ohio and, with the consent of that court, assigned to the Honorable Dan A. Polster for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Charles R. Breyer
R. David Proctor
Marjorie O. Rendell
Catherine D. Perry

[9] Eastern District of Pennsylvania *Philadelphia Teachers Health and Welfare Fund* third party payor plaintiff opposed centralization of such claims, stating that it intends to file a motion for centralization of third party payor claims. We will address that motion, if it is filed, in due course.

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION MDL No. 2804

SCHEDULE A

Northern District of Alabama

CITY OF BIRMINGHAM v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-01360

Eastern District of California

COUNTY OF SAN JOAQUIN, ET AL. v. PURDUE PHARMA, L.P., ET AL., C.A. No. 2:17-01485

Southern District of Illinois

PEOPLE OF THE STATE OF ILLINOIS, ET AL. v. PURDUE PHARMA LP, ET AL., C.A. No. 3:17-00616
PEOPLE OF THE STATE OF ILLINOIS, ET AL. v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 3:17-00856
PEOPLE OF STATE OF ILLINOIS, ET AL. v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 3:17-00876

Eastern District of Kentucky

BOONE COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00157
PENDLETON COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00161
CAMPBELL COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00167
ANDERSON COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 3:17-00070
FRANKLIN COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 3:17-00071
SHELBY COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 3:17-00072
HENRY COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 3:17-00073
BOYLE COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 5:17-00367
FLEMING COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 5:17-00368

Eastern District of Kentucky (cont.)

GARRARD COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 5:17-00369
LINCOLN COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 5:17-00370
MADISON COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 5:17-00371
NICHOLAS COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 5:17-00373
BELL COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 6:17-00246
HARLAN COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 6:17-00247
KNOX COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 6:17-00248
LESLIE COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 6:17-00249
WHITLEY COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 6:17-00250
CLAY COUNTY FISCAL COURT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 6:17-00255

Western District of Kentucky

THE FISCAL COURT OF CUMBERLAND COUNTY v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 1:17-00163
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 3:17-00508
THE FISCAL COURT OF SPENCER COUNTY v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 3:17-00557
THE FISCAL COURT OF UNION COUNTY v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 4:17-00120
THE FISCAL COURT OF CARLISLE COUNTY v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 5:17-00136

Northern District of Ohio

CITY OF LORAIN v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:17-01639
CITY OF PARMA v. PURDUE PHARMA L.P., ET AL., C.A. No. 1:17-01872

Southern District of Ohio

CLERMONT COUNTY BOARD OF COUNTY COMMISSIONERS v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00662
BELMONT COUNTY BOARD OF COUNTY COMMISSIONERS v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00663
BROWN COUNTY BOARD OF COUNTY COMMISSIONERS v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00664
VINTON COUNTY BOARD OF COUNTY COMMISSIONERS v. AMERISOURCEBERGEN CORPORATION, ET AL., C.A. No. 2:17-00665
JACKSON COUNTY BOARD OF COUNTY COMMISSIONERS v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00680
SCIOTO COUNTY BOARD OF COUNTY COMMISSIONERS v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00682
PIKE COUNTY BOARD OF COUNTY COMMISSIONERS v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00696
ROSS COUNTY BOARD OF COUNTY COMMISSIONERS v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00704
CITY OF CINCINNATI v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00713
CITY OF PORTSMOUTH v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00723
GALLIA COUNTY BOARD OF COMMISSIONERS v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00768
HOCKING COUNTY BOARD OF COMMISSIONERS v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00769
LAWRENCE COUNTY BOARD OF COMMISSIONERS v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-00770
DAYTON v. PURDUE PHARMA LP, ET AL., C.A. No. 3:17-00229

Western District of Washington

CITY OF EVERETT v. PURDUE PHARMA LP, ET AL., C.A. No. 2:17-00209
CITY OF TACOMA v. PURDUE PHARMA, L.P., ET AL., C.A. No. 3:17-05737

Southern District of West Virginia

THE COUNTY COMMISSION OF MCDOWELL COUNTY v. MCKESSON CORPORATION, ET AL., C.A. No. 1:17-00946
HONAKER v. WEST VIRGINIA BOARD OF PHARMACY, ET AL., C.A. No. 1:17-03364
THE COUNTY COMMISSION OF MERCER COUNTY v. WEST VIRGINIA BOARD OF PHARMACY, C.A. No. 1:17-03716

Southern District of West Virginia (cont.)

KANAWHA COUNTY COMMISSION v. RITE AID OF MARYLAND, INC., ET AL., C.A. No. 2:17-01666
FAYETTE COUNTY COMMISSION v. CARDINAL HEALTH, INC., ET AL., C.A. No. 2:17-01957
BOONE COUNTY COMMISSION v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 2:17-02028
LOGAN COUNTY COMMISSION v. CARDINAL HEALTH, INC., ET AL., C.A. No. 2:17-02296
THE COUNTY COMMISSION OF LINCOLN COUNTY v. WEST VIRGINIA BOARD OF PHARMACY, ET AL., C.A. No. 2:17-03366
LIVINGGOOD v. WEST VIRGINIA BOARD OF PHARMACY, ET AL., C.A. No. 2:17-03369
SPARKS v. WEST VIRGINIA BOARD OF PHARMACY, C.A. No. 2:17-03372
CARLTON, ET AL. v. WEST VIRGINIA BOARD OF PHARMACY, ET AL., C.A. No. 2:17-03532
STATE OF WEST VIRGINIA, ET AL. v. MCKESSON CORPORATION, C.A. No. 2:17-03555
BARKER v. WEST VIRGINIA BOARD OF PHARMACY, ET AL., C.A. No. 2:17-03715
THE CITY OF HUNTINGTON v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 3:17-01362
CABELL COUNTY COMMISSION v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 3:17-01665
WAYNE COUNTY COMMISSION v. RITE AID OF MARYLAND, INC., ET AL., C.A. No. 3:17-01962
WYOMING COUNTY COMMISSION v. AMERISOURCEBERGEN DRUG CORPORATION, ET AL., C.A. No. 5:17-02311

APPENDIX “15B”

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	**CASE NO. 1:17-MD-2804**
	)	
	)	**JUDGE POLSTER**
	)	
	)	**CASE MANAGEMENT ORDER NO. 7**
	)	**SETTING NEW DEADLINES FOR**
	)	**TRACK ONE CASES**

This Court earlier set case management deadlines in connection with the "Track One Cases." *See* CMO-1 at 6-8 (docket no. 232). The parties unanimously requested extension of those deadlines and submitted various proposed schedules. Having reviewed those proposals, the Court now enters the following amended case management schedule.

August 31, 2018 – The parties shall exchange lists of initial fact witness depositions. If the parties agree, depositions may proceed immediately. As much as possible, however, depositions shall be taken of witnesses only after relevant documents have been produced. Thus, the majority of depositions shall occur between October 25, 2018 and January 25, 2019.

October 25, 2018 – For all parties *except* retail pharmacy defendants: (1) production of documents shall be substantially complete; and (2) traditional 30(b)(6) depositions shall be substantially complete (i.e., 30(b)(6) depositions concerning discovery-related issues, such as types and location of documents and databases).

November 9, 2018 – For retail pharmacy defendants: (1) production of documents shall be substantially complete; and (2) traditional 30(b)(6) depositions shall be substantially complete (i.e.,

30(b)(6) depositions concerning discovery-related issues, such as types and location of documents and databases).

January 25, 2019 – all 30(b)(6) and fact depositions shall be completed.

February 8, 2019 – Plaintiffs shall serve expert reports and, for each expert, provide two proposed deposition dates between **February 18 and March 15, 2019**.

March 26, 2019 – Defendants shall serve expert reports and, for each expert, provide two proposed deposition dates between **April 8 and May 3, 2019**.

May 13, 2019, 4:00 p.m. – Deadline for *Daubert* and dispositive motions.

June 10, 2019, 4:00 p.m. – Deadline for responses to *Daubert* and dispositive motions.

July 1, 2019, 4:00 p.m. – Deadline for replies in support of *Daubert* and dispositive motions.

July 16, 2019 – Hearings on *Daubert* and dispositive motions, or as otherwise set by the Court, if necessary.

August 22, 2019, 12:00 noon – Final Pretrial Hearing.

September 3, 2019 – Trial.

In a separate order, the Court will set deadlines for motions in limine, deposition designations, jury instructions, jury questionnaire, and other pretrial submissions.

IT IS SO ORDERED.

/s/ Dan Aaron Polster
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Dated: August 13, 2018

APPENDIX “15C”

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	**CASE NO. 1:17-MD-2804**
	)	
	)	**JUDGE POLSTER**
THIS DOCUMENT RELATES TO: ***"All Cases"***	)	
	)	
	)	**ORDER ESTABLISHING COMMON BENEFIT FEE FUND AND DIRECTING CERTAIN PAYMENTS**

This Order addresses the "hold-back" amounts that the Court ordered the Track One Plaintiffs to place into escrow, and also touches on Common Benefit fees and expenses.

In December of 2019, after several defendants in the Track One trial reached monetary settlements with Plaintiffs Cuyahoga and Summit Counties, the Court directed the Counties to place into escrow a portion of their settlement funds. *See* docket no. 2980. At that time, the Court explained it was "weighing whether it is appropriate to enter an order addressing the issue of MDL common benefit fees and expenses, and if so, the appropriate 'hold-back' assessment amount;" but the Court "had not reached a decision on these issues." *Id.* at 1. Accordingly, the Court directed "the Track One Plaintiffs [to] place into escrow 7.5% of any settlement funds they receive or received from any defendant in this case," from which a common benefit assessment (if any) would later be paid. *Id.* at 2. That money – totaling about $21.3 million – has been sitting in escrow ever since.

About a month after the Court's hold-back Order, the Plaintiffs' Executive Committee

("PEC") moved for entry of an Order establishing a common benefit fee fund. After receiving substantial briefing from dozens of interested parties, and invaluable counsel from expert consultant Professor William B. Rubenstein, the Court observed:

> there is a wide consensus confirming the accuracy of the PEC's statements that: (1) "scores of attorneys from the PEC firms and others" have "performed [work] for the common benefit of plaintiffs in the [MDL] proceedings," as well as in other opioid cases, reply brief at 3, 1 (docket no. 3212); and (2) those attorneys are entitled to some measure of "reimbursement and compensation of expenses and work incurred and performed for the common benefit" of those plaintiffs, *id.* at 1. The Court shares in this consensus.

Docket no. 3397 at 2.

Nonetheless, the Court concluded that neither imposing a common benefit assessment or establishing a common benefit fund was appropriate ***at that time***. *Id.* Among other reasons, the Court observed that, "[b]ecause of the inordinate complexity of this MDL, the Court is hesitant to enter a 'one-size-fits-all' common benefit order applicable by default to every possible settlement permutation." *Id.* at 5. Indeed, the parties agreed it was "likely that a global settlement [would] provide a separate fund and/or other mechanisms for payment of both common benefit and private contractual fees and costs," which could "moot the need for a common benefit order." *Id.* at 4, 3 (internal quotation marks omitted).

The PEC and the Track One Counties have now submitted a motion asking the Court to allow distribution of the $21.3 Million held in escrow. *See* docket no. 3762 ("*Agreed Motion*"). The motion reflects an agreement between the Track One Counties and the PEC, alone, on how the fees associated with the Track One settlements should be divided amongst them, and asks the Court to permit that division. The PEC asks for the following, and the Counties agree:

- a 5% Common Benefit Fee assessment against ***only*** the settlement funds received by Summit and Cuyahoga Counties in the Track One bellwether trial;

- establishment of a Common Benefit Fee fund to receive the 5% Summit/Cuyahoga fee assessment, as well as possible future fee assessments, to be held pending further Orders of this Court.

- a 2.5% Common Benefit Expense assessment against ***only*** the settlement funds received by Summit and Cuyahoga Counties in the Track One bellwether trial; and

- payment of the 2.5% Summit/Cuyahoga expense assessment to the PEC MDL Capital Account as partial reimbursement of Track One litigation expenses.[1]

- termination of the escrow requirements.

The PEC also makes clear it is ***not*** seeking a global common benefit order applicable to any other case. Specifically, the PEC explains that:

- although it may later seek Orders imposing common benefit fee and expense assessments on future settlements and judgments – and may seek different assessments on different settlements and judgments – the PEC is not requesting any such Orders at this time;

- with regard to any future common benefit Order, the PEC will not seek to make it applicable to settlement proceeds or judgments payable to a State Attorney General, nor to any state court plaintiff that is entirely outside of the Court's jurisdiction (with certain understandable exceptions); and

- with regard to any future common benefit Order, the PEC will not seek to make it applicable to settlement proceeds if the settlement already provides for a separate fund for full payment

[1] Regarding the 2.5% expense assessment of $7.1 Million, the PEC asks that it be distributed directly to the PEC MDL Capital Account, instead of first going into the Common Benefit Fund and then being distributed from there. The Court permits this procedure with the understanding, and upon the condition, that none of this money will be used to reimburse any individual attorney or law firm. Given the PEC's averments that the $7.1 Million equals only about half of the amount the PEC advanced for expenses in the Track One bellwether case, and that all of these expenses met the Court's requirements, the Court is not overly concerned that these funds would reimburse an attorney for expenses that were not properly incurred. *See* Declaration of Peter H. Weinberger (docket no. 3761-1); docket no. 358 (Order Regarding Plaintiff Attorneys' Fees and Expenses – Protocol for Work Performed and Expenses Incurred). Nonetheless, reimbursement to individual counsel of common benefit expenses will occur only after formal application and the expenses are audited and approved. The Court will reconcile the $7.1 Million payment as necessary at that time.

of common benefit fees and expenses (except with respect to plaintiffs who opt out). *See* docket no. 3765.

The Court appreciates the narrow purpose of the *Agreed Motion* and agrees that the specific requests made are appropriate at this time. Accordingly, the Court now **ORDERS** as follows.

1. Establishment of MDL No. 2804 Common Benefit Fund.

An interest-bearing account will be established at a financial institution to be proposed by the PEC, under this Court's ongoing jurisdiction, to receive the Summit/Cuyahoga assessment and any appropriate future assessments, to be held pending further Orders of this Court. These funds will be held subject to the direction of this Court and are hereinafter referred to as the "Common Benefit Fund." No party or attorney has any individual right to any of these funds except to the extent of amounts directed to be disbursed to that party or attorney by order of this Court. These funds do not constitute the separate property of any party or attorney and are not subject to garnishment or attachment for the debts of any party or attorney except when and as directed to be disbursed to a specific person as provided by Court order.

a. The Court will appoint by subsequent Order upon PEC recommendation a qualified certified public accountant (the "Common Benefit Fund CPA") to maintain this account and act as escrow agent, keep detailed records of all deposits and withdrawals, and to prepare tax returns and other tax filings.

b. If the Common Benefit Fund ultimately exceeds the amount needed to make all future payments of Court-approved common benefit fees and expenses, the Court will order the remaining funds be returned to those plaintiffs whose settlements have contributed to the

Common Benefit Fund, including Summit and Cuyahoga Counties. Any such refund will be made in proportion to the amount of the contributions.

c. Nothing in this Order shall be deemed to modify, alter, or change the term of any fee contract between plaintiffs' counsel and their individual clients.

2. The CT1 Common Benefit Fee Assessment.

Summit and Cuyahoga Counties shall, within seven (7) days of the Order appointing the Common Benefit Fund CPA, deposit an amount equivalent to five percent (5%) of their recoveries from their bellwether settlement and previously subject to this Court's Order Regarding Track One Settlement Funds (docket no. 2980). Specifically, a payment of 5% ($14.2 million) of the net monetary recovery received by Summit County and Cuyahoga County will be made as a contribution to the MDL No. 2804 Common Benefit Fund, to be based on each County's share of the total recovery. The Common Benefit Fund shall be funded from fees charged pursuant to each counties' contract with private counsel.

3. Expense Reimbursement.

Summit and Cuyahoga Counties shall, within seven (7) days of the Order appointing the Common Benefit Fund CPA, pay to the PEC MDL Capital Account an amount equivalent to two-and-a-half percent (2.5%) of their recoveries from their bellwether settlement and previously subject to this Court's Order Regarding Track One Settlement Funds (docket no. 2980). Specifically, a payment of 2.5% ($7.1 million) of the net monetary recovery received by Summit County and Cuyahoga County will be paid to the PEC MDL Capital Account, to be based on each County's

share of the total recovery. The unreimbursed portion of these CT1 expenses paid by the PEC may be submitted for payment, as appropriate, from future common benefit assessments ordered by this Court.

4. Further Proceedings and Continuing Jurisdiction.

This Order is without prejudice to any other assessments of or awards of fees and costs as may be ordered by this Court under any jurisdictional mechanism including Rule 23(h), the common benefit doctrine, a Court-approved agreement among the parties to any global or comprehensive settlement with any defendant, or that may be provided by contract between attorneys and clients.

Nothing in this Order precludes the parties from negotiating, agreeing upon, and proposing a different fee structure in a global settlement of claims against any defendant that provides a different fund or mechanism for fairly compensating common benefit work and costs. Nothing in this Order precludes any party from objecting to or opposing any future proposal regarding common benefit assessments or awards.

Any disputes or requests for relief from or modification of this Order will be decided by this Court in the exercise of its continuing jurisdiction over the parties subject to this Order, and its authority and discretion under the common benefit doctrine.

IT IS SO ORDERED.

/s/ Dan Aaron Polster
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Dated: July 22, 2021

APPENDIX “16A”

Foregoing is a true and correct copy of
The original on file in my office.
ATTEST
WILLIAM T. WALSH, Clerk
United States District Cout
District of New Jersey

By: s/Jacquie Lambiase
Deputy Clerk
Date: 8/4/17

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: PROTON-PUMP INHIBITOR PRODUCTS LIABILITY LITIGATION (NO. II)

MDL No. 2789

TRANSFER ORDER

Before the Panel:[*] Plaintiffs in 24 actions pending in the District of New Jersey move to centralize this litigation in that district, or, in the alternative, the Southern District of Illinois. The litigation consists of the 161 actions listed on the attached Schedule A. The Panel has been informed of 34 additional federal actions involving related issues.[1]

All responding plaintiffs support centralization, but certain plaintiffs argue, in the first instance, for the Southern District of Illinois. Defendants' positions on centralization vary. Defendants AstraZeneca Pharmaceuticals LP and AstraZeneca LP (AstraZeneca) support centralization in the District of New Jersey or the Central District of California. Defendants Pfizer Inc., Wyeth Pharmaceuticals, Inc., Wyeth, LLC, and Wyeth-Ayerst Laboratories (collectively Pfizer) support centralization in the District of New Jersey (or, in the alternative, the Eastern District of Pennsylvania). Defendants Procter & Gamble Company and The Procter & Gamble Manufacturing Company (P&G) do not oppose centralization in the District of New Jersey. Various Takeda defendants (Takeda)[2] oppose centralization, and do not suggest any transferee district, if centralization is ordered over their objections. Novartis Consumer Health, Inc. (NCH), which is sued only in a potential tag-along action (in which Takeda also is a defendant), also opposes centralization, and, if centralization is ordered over its objections, advocates the District of New Jersey or the Eastern District of Pennsylvania. Both Takeda and NCH further argue that if an MDL is created, any cases or claims against them should be excluded. Finally, three other Novartis entities – Novartis Pharmaceuticals Corporation, Novartis Vaccines and Diagnostics, Inc. and Novartis Institute for Biomedical Research, Inc. – oppose centralization on the grounds that they are not

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[*] Judge Marjorie O. Rendell took no part in the decision of this matter.

[1] These and any other related actions are potential tag-along actions. *See* Panel Rules 1.1(h), 7.1, and 7.2.

[2] Takeda Pharmaceutical Company Limited, Takeda Pharmaceuticals U.S.A., Inc., Takeda Pharmaceuticals International, Inc., Takeda Development Center Americas, Inc., Takeda California, Inc., Takeda Pharmaceuticals America, Inc., Takeda GmbH, Takeda Pharmaceuticals LLC, and TAP Pharmaceutical Products, Inc.

current or former manufacturers or developers of any of the pharmaceuticals at issue, and thus are not proper parties.

I.

In the complaints in these 161 personal injury and wrongful death actions, plaintiffs allege that as a result of taking one or more proton-pump inhibitors (PPIs), they or their decedents suffered kidney injury (*e.g.*, chronic kidney disease (CKD),[3] acute interstitial nephritis, end stage renal disease, or kidney failure). Plaintiffs allege that defendants failed to adequately warn of the negative effects and risks associated with PPIs.

This litigation is before us for the second time this year. At our January hearing session, we denied a motion for centralization brought by plaintiffs in six PPI actions. *In re: Proton-Pump Inhibitor Prods. Liab. Litig.* (*Proton-Pump I*), — F. Supp. 3d —, 2017 WL 475581 (J.P.M.L. Feb. 2, 2017). The motion encompassed fifteen constituent actions and 24 potential tag-along actions pending in a total of seventeen districts. *Id.* at *1. All defendants opposed centralization. *Id.*

In *Proton-Pump I*, we recognized that the actions shared certain factual issues "arising from plaintiffs' allegations that taking [PPIs] may result in various types of kidney injury," including the conditions listed above. *Id.* But we concluded that centralization was not warranted for a number of reasons. First, the named defendants varied from action to action: AstraZeneca was sued in most of the actions (14 constituent actions and 23 tag-alongs), but P&G was sued in only eight, Takeda in four, and Pfizer in two. We thus reasoned that centralization "appear[ed] unlikely to serve the convenience of most, if not all, defendants and their witnesses." *Id.* Second, defendants were (and still are) competitors, and centralizing them in a single MDL "likely would complicate case management due to the need to protect trade secret and confidential information," and might prolong pretrial proceedings, because of, *inter alia*, the possible need for separate discovery and motion tracks, as well as additional bellwether trials. *Id.* at *2. Third, we found that a significant amount of discovery was "almost certain to be defendant-specific," given that the drugs at issue were "not identical," with each having "a unique development, testing, and marketing history, and each [having been] approved by the FDA at different times." *Id.* We stated that the differences among the drugs, as well as the variety of injuries alleged, "significantly undermine[d] any efficiency gains to be achieved from centralization." *Id.* Finally, we noted that although moving plaintiffs had "almost guarantee[d]" that the number of actions would increase "by the hundreds if not thousands," the Section 1407 motion encompassed only 39 cases, including tag-alongs. *Id.*

[3] Plaintiffs in more than 120 of the constituent actions allege that they suffered CKD.

II.

In support of this new motion,[4] plaintiffs, AstraZeneca, and Pfizer argue that the number of involved actions, districts, and plaintiffs' counsel has increased significantly since *Proton-Pump I*, that many more cases likely will be filed, that there now are a significant number of related state court actions,[5] and that informal coordination and cooperation are not practicable to manage litigation of this scope. After careful review of the record, we agree with this assessment.

As stated above, these actions share factual issues arising from allegations that taking one or more PPIs can result in kidney injury, and that defendants failed to adequately warn of the negative effects and risks of PPI use. Although several of the grounds on which we denied centralization in *Proton-Pump I* remain largely valid,[6] we find that the significantly larger number of involved actions, districts, and counsel, the concomitant increase in burden on party and judicial resources, and the opportunity for federal-state coordination, coupled with most defendants' change in position to now support centralization, tip the balance in favor of creating an MDL.[7] Centralization will facilitate a uniform and efficient pretrial approach to this litigation, eliminate duplicative discovery, prevent inconsistent rulings on *Daubert* and other pretrial issues, and conserve the resources of the parties, their counsel, and the judiciary. While we do not discount the case management-related difficulties that a multi-product and multi-defendant MDL such as this may entail, the unusual circumstances presented convince us that at this juncture, formal centralization under Section 1407 is the best course. As we repeatedly have stated, a transferee judge can employ any number of techniques, such as establishing separate discovery and motion tracks, to manage pretrial proceedings efficiently. *See, e.g., In re: AndroGel Prods. Liab. Litig.*, 24 F. Supp. 3d 1378,

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[4] We note that our denial of centralization in *Proton-Pump I* did not foreclose the filing of this second motion for centralization. That earlier denial also does not preclude us from reaching a different result here. We will do so only rarely, however, where a significant change in circumstances has occurred. *See In re: Plavix Mktg., Sales Practices & Prods. Liab. Litig. (No. II)*, 923 F. Supp. 2d 1376, 1378 (J.P.M.L 2013).

[5] AstraZeneca represents that it has been sued in 87 state court PPI actions – 85 in Delaware, one in Missouri, and one in Ohio.

[6] The variety of alleged kidney injuries arguably has diminished, as most plaintiffs allege that they suffer from CKD. In addition, the status of defendants as competitors (and defendants' concerns regarding trade secrets, etc.) may be less of an issue in this litigation, given that most (and possibly all) of these medications no longer have patent protection.

[7] *See In re: Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prods. Liab. Litig. (No. II)*, 997 F. Supp. 2d 1354, 1356 (J.P.M.L. 2014) (granting follow-up motion for centralization, where number of related actions had grown from 29 in thirteen districts to over 225 in more than 40 districts; the number of involved plaintiffs' firms had grown as well; and the Panel had been informed of related cases pending in at least three state courts).

1379-80 (J.P.M.L. 2014).[8] As with any MDL, the transferee judge has substantial discretion to refine the litigation's parameters. *Id.* at 1380 ("[T]he transferee judge retains wide discretion as to how the MDL should be defined . . . ."). If, after close examination, she determines that Section 1407 remand of any claims or actions involving a particular defendant or PPI is appropriate, procedures are available to accomplish this with minimal delay. *Id.* (citing Panel Rule 10.1).

In opposing centralization and arguing that if centralized, any cases and claims against it should be excluded from the MDL, Takeda relies heavily on our decision in *Proton-Pump I*, and further argues that it is sued in only a minority of the 161 actions. For the reasons stated above, we conclude that *Proton-Pump I* does not control the outcome here. And, although it is true that AstraZeneca is sued in far more actions than Takeda, a significant number of actions are "mixed use" cases in which the plaintiffs allege use of more than one PPI, and sue Takeda and one or more other PPI manufacturers, including AstraZeneca.[9] The prospect of additional cases against Takeda does not seem far-fetched.[10] Given these circumstances, including the seemingly indivisible nature of plaintiffs' alleged injuries in the "mixed use" cases, we decline to carve out from the MDL cases or claims against Takeda.[11]

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[8] In *Androgel*, we ordered industry-wide centralization of all cases alleging injuries arising from the use of testosterone replacement therapies on the grounds that a number of plaintiffs had "used more than one testosterone replacement therapy," and that "[t]he other approaches proposed by the parties—centralizing only [cases involving AbbVie's Androgel product] (and perhaps transferring 'combination cases'), separating and remanding claims against certain manufacturers, or transferring only claims relating to testosterone replacement gels—could prove too procedurally complicated, might result in a *de facto* industry-wide centralization as cases involving multiple drugs become part of the MDL, or may require successive motions for centralization." *In re: Androgel Prods. Liab. Litig.*, 24 F. Supp. 3d at 1379. These same circumstances are present in the PPI cases now before us.

[9] For example, the Middle District of Florida *Lear* plaintiff alleges use, at various times, of AstraZeneca's Nexium and Prilosec PPIs, Takeda's Prevacid PPI, and Pfizer's Protonix PPI; the District of Idaho *Buzbee* plaintiff alleges use of Nexium and Prevacid; the Western District of Louisiana *Crandell* plaintiff alleges use of Nexium, Prevacid, and Prilosec; the District of New Jersey *Luzzo* plaintiff alleges use of Nexium and Prevacid; and the Eastern District of Pennsylvania *Miller* plaintiff alleges use of Nexium and Prevacid.

[10] Sales of Prevacid, which came to market in 1995, reportedly exceeded $3 billion annually at one time.

[11] Whether claims against NCH, which markets Prevacid 24HR, should be included in the MDL is best addressed through our conditional transfer order process, as NCH is sued only in an Eastern District of Tennessee tag-along action. Similarly, whether future claims against the three other Novartis entities – Novartis Pharmaceuticals Corporation, Novartis Vaccines and Diagnostics,

(continued...)

We select the District of New Jersey as transferee district for this litigation. More than 60 of the 161 constituent actions already are pending in D. New Jersey (more than in any other district). The district is a relatively convenient venue, and enjoys the support of most plaintiffs, as well as the AstraZeneca, Pfizer, and P&G defendants. Further, centralization in the District of New Jersey enables us to assign the litigation to Judge Claire C. Cecchi, an experienced transferee judge who already is actively managing the PPI cases filed in that district. We are confident that the judge will steer this litigation on a prudent course.

IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the District of New Jersey are transferred to the District of New Jersey, and, with the consent of that court, assigned to the Honorable Claire C. Cecchi for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Sarah Vance

Sarah S. Vance
Chair

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry
Lewis A. Kaplan
R. David Proctor

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[11](...continued)
Inc. and Novartis Institute for Biomedical Research, Inc. – should be transferred to the MDL is not properly before us, as those entities currently are not sued in any of the constituent or tag-along cases (having been voluntarily dismissed from the one action in which they previously were named).

IN RE: PROTON-PUMP INHIBITOR PRODUCTS LIABILITY LITIGATION (NO. II) MDL No. 2789

SCHEDULE A

District of Arizona

DAVIS v. TAKEDA PHARMACEUTICALS USA INCORPORATED, ET AL., C.A. No. 2:16-04485

Eastern District of California

THOMAS v. TAKEDA PHARMACEUTICALS USA, INC., ET AL., C.A. No. 1:16-01566
COSTAMAGNA, ET AL. v. THE PROCTER & GAMBLE COMPANY, ET AL., C.A. No. 2:17-00409

Middle District of Florida

LEAR v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 3:17-00240

District of Idaho

BUZBEE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 3:17-00174

Central District of Illinois

MULLEN v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 1:17-01220

Northern District of Illinois

WEITER v. TAKEDA PHARMACEUTICALS USA, INC., ET AL., C.A. No. 1:16-11199
PARKER v. TAKEDA PHARMACEUTICAL COMPANY LIMITED, ET AL., C.A. No. 1:17-03764

Southern District of Illinois

COLEMAN, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 3:17-00130
ROSENSTEEL, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 3:17-00131
DRAVLAND, JR. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 3:17-00133

MDL No. 2789 Schedule A (Continued)

RICHARDSON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 3:17-00406
MCGILL, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 3:17-00461
WINTERS, SR. v. ASTRAZENECA PHARMACEUTICALS, LP, ET AL.,
C.A. No. 3:17-00535

District of Kansas

KOON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-02605
DONECKER v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 6:17-01082

Eastern District of Kentucky

CARPENTER v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 0:16-00159
ROBERTS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 5:17-00117
LOCKARD, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 6:17-00125
THACKER, ET AL. v. THE PROCTER & GAMBLE COMPANY, ET AL.,
C.A. No. 7:17-00078

Western District of Kentucky

LOWE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 5:17-00078

Eastern District of Louisiana

LABICHE, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 2:16-15893
JOHNSON, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 2:16-16424
TILLMAN v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-17742
BALES v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-17744
SELF v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-17746
LEBLANC v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-17748
EDWARDS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-17750
DONALD v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-17753
MCCOY v. ASTRAZENECA PHARMACEUTICALS, LP, ET AL., C.A. No. 2:16-17903

MDL No. 2789 Schedule A (Continued)

ELLIS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-17904
ROGERS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-17906
HARTS, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-02298
WILLIAMS v. PROCTOR & GAMBLE COMPANY, ET AL., C.A. No. 2:17-03972
MORRIS v. ASTRAZENECA LP, ET AL., C.A. No. 2:17-04804
BRUNET v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-05114

Middle District of Louisiana

DAVIS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 3:16-00686
SMITH v. ASTRAZENECA PHARMACEUTICALS, LP, ET AL., C.A. No. 3:16-00696

Western District of Louisiana

CAESAR v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00198
MODICUE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 6:16-01444
MILLER v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 6:16-01455
CRANDELL v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 6:16-01460
BUSH v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 6:17-00669

District of Maine

MCGARR v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 1:17-00183

District of Maryland

BURCH v. WYETH PHARMACEUTICALS, INC., ET AL., C.A. No. 8:17-00970

Eastern District of Missouri

MILLIGAN v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 4:17-01546

Western District of Missouri

GREGG v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 6:17-03101

MDL No. 2789 Schedule A (Continued)

District of New Jersey

GOODSTEIN v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-05143
SPRATT v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-05523
BOYD v. ASTRAZENECA LP, ET AL., C.A. No. 2:16-08121
HUNTER v. ASTRAZENECA LP, ET AL., C.A. No. 2:16-08895
ADKINS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00194
SAVAGE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00196
PIERRE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00198
AUBREY v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00201
GILYARD v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00202
TONEY v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00203
WATKINS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00204
STEWART v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00206
GRAVES v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00207
SCOTT v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00208
CARRUTHERS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00211
LEE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00212
WILBURN v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00213
WILKERSON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00215
LAYTON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00216
GUTIERREZ v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00217
HAWKINS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00218
HUDSON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00219
LLOYD v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00500
MASSENGILL v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00761
GARRISON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-01207
ELLIOTT v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-01413
JAY, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-01606
MUSE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-01870
JONES v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-02098
DEVITO v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-02465
FOSTER v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-02475
LUZZO v. ASTRAZENECA LP, ET AL., C.A. No. 2:17-02567

MDL No. 2789 Schedule A (Continued)

STARKS v. ASTRAZENECA PHARMACEUTICALS, LP, ET AL., C.A. No. 2:17-02597
PETTIES v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-02700
ROBERTSON v. ASTRAZENECA LP, ET AL., C.A. No. 2:17-02744
PETERSON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-02999
HENDERSON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 2:17-03056
BOOTHE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03191
HOLLOWAY v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 2:17-03192
VALENTINE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 2:17-03193
ALLEN v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03197
MORRIS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03200
KELLEY v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03204
HOUZER v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03207
BOULER v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03209
CARROLL v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03210
HUNTER-MALONE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 2:17-03211
KILIAN v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03265
LANE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03302
BOWENS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03316
STUKES v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03343
LAURENT v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03346
ZELLARS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03364
BREWINGTON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 2:17-03365
CHISLEY v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03366
BERNARD v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03461
MITCHELL v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03467
LYTTLE, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL.,
C.A. No. 2:17-03562
TACNEAU v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03591
HOWARD v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03594
JONES, JR. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-03606

Eastern District of New York

GAGLIO v. ASTRAZENECA PHARMACEUTICAL LP, ET AL., C.A. No. 1:17-02383
HOLBECK v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 1:17-03192

MDL No. 2789 Schedule A (Continued)

Northern District of New York

HORNFECK v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 5:16-01243

Western District of North Carolina

MOORE v. TAKEDA PHARMACEUTICALS USA, INC., ET AL., C.A. No. 1:16-00364

Southern District of Ohio

GOMEZ, ET AL. v. PROCTER & GAMBLE MANUFACTURING COMPANY, ET AL., C.A. No. 1:17-00340
BURNETT v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:16-00894
BUTLER v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00183

Northern District of Oklahoma

BELLAMY v. TAKEDA PHARMACEUTICAL COMPANY LTD., ET AL., C.A. No. 4:17-00289

Western District of Oklahoma

ROUNDTREE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 5:17-00432

Eastern District of Pennsylvania

COOPER v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00050
STOCKTON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00051
RUSS, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00052
BALL, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00053
GARRITY, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00054
BROOKINS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00055
VERTREES, ET AL. v. TAKEDA PHARMACEUTICAL COMPANY LIMITED, ET AL., C.A. No. 2:17-00079

MDL No. 2789 Schedule A (Continued)

MARTINEZ, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00080
PACK v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00081
MALLARD, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00082
ROBINSON, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00083
DONALD v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00084
WILLINGHAM v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00095
ANSON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00096
BURNETT, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00097
HALL, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00098
STAFFORD v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00100
HAMILTON, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00101
KENNEDY v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00102
KING, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00103
BARTLETT, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00104
MILLER, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00105
ROMERO, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00107
CLAXTON v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00138
SWIFT v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00139
PERDEW v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00140
SEGURA v. WYETH, LLC, ET AL., C.A. No. 2:17-00141
KETCHUM, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00142
VALENTINE v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00148
JONES v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00149
GRIGGS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00150
MCDANIEL v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00151

MDL No. 2789 Schedule A (Continued)

LAPOLLA, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00152
PARMS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00153
ADAMS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00154
RUNYONS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00155
NEWELL, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00156
RIGGS, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00157
WHITAKER, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-00160

District of South Carolina

ALL, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 1:17-00968
HARRIS v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 6:17-01045

District of Utah

CLARK v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 1:16-00160

Southern District of West Virginia

CHURCH, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 1:16-07910
KREUGER, ET AL. v. ASTRAZENECA PHARMACEUTICALS LP, ET AL., C.A. No. 2:17-02370

APPENDIX “16B”

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: PROTON-PUMP INHIBITOR PRODUCTS LIABILITY LITIGATION	**2:17-MD-2789 (CCC)(MF) (MDL 2789) and all member and related cases**
This Document Relates to: ALL ACTIONS	**Judge Claire C. Cecchi**

CASE MANAGEMENT ORDER NO. 15 ON MAY 1, 2018 STATUS CONFERENCE

The Court having held a case management conference on May 1, 2018, and after reviewing the parties' submissions and having discussed various case management issues with the parties, enters the following ORDER:

1. The parties reported that they had reached agreement on a Science Day case management order, which was submitted to the Court on May 4, 2018.

2. The Court denied Defendants' motion for the Court to consider general causation and preemption before conducting case-specific fact discovery in individual cases. The parties shall meet and confer on the Scheduling Order in the form proposed by Plaintiffs. Contemporaneously with this, the parties shall meet and confer on the issue of "soft caps" on the number of custodial file productions and depositions, and submit agreed-to orders or letters setting forth the parties' respective positions on these matters by June 7, 2018.

3. AstraZeneca shall complete its production of its first 10 custodial files pursuant to CMO No. 12 by July 31, 2018.

4. The parties shall meet and confer on additional custodians and shall report to the Court on their progress at, or in advance of, the June 12 status conference.

5. Plaintiffs reported that they have reached agreement with the Takeda Defendants on search terms. Plaintiffs shall continue to confer with the Pfizer and P&G Defendants on search terms and will report to the Court on their progress at, or in advance of, the June 12 status conference.

6. Plaintiffs continue to meet and confer on the Defendant Fact Sheet ("DFS") with the Takeda, Procter & Gamble, and AstraZeneca Defendants. If the parties are unable to agree, they shall submit letters setting forth their respective positions by June 7, 2018.

7. The parties shall continue to meet and confer and shall report back to the Court at the next status conference if there are outstanding issues relating to any 30(b)(6) depositions or dates that need to be scheduled.

8. The parties shall submit an order setting forth the service of process procedures agreed to between the PSC and Defendants in advance of the next status conference.

9. The Court appoints PSC member, Sindhu Daniel, as Liaison Counsel for *Pro Se* Plaintiffs. Ms. Daniel can be contacted at:

Baron & Budd, P.C.
3102 Oak Lawn Ave., Ste. 1100
Dallas, TX 75219
(214) 521-3605
sdaniel@baronbudd.com

10. The Court has scheduled an in-person status conference for June 12, 2018 at 1:00 p.m. The parties shall submit a joint status report and agenda for that conference by June 8, 2018.

SO ORDERED:

Dated: Newark, New Jersey
May 18, 2018

CLAIRE C. CECCHI
United States District Judge

APPENDIX “16C”

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: PROTON-PUMP INHIBITOR PRODUCTS LIABILITY LITIGATION (No. II)

This Document Relates to: ALL ACTIONS

2:17-MD-2789 (CCC)(MF)
(MDL 2789)

Judge Claire C. Cecchi

CASE MANAGEMENT ORDER #21

CASE MANAGEMENT ORDER NO. 21
(Scheduling Order)

1. SCOPE AND APPLICABILITY

A. This Order is intended to conserve judicial and party resources, eliminate duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. The following shall apply to all cases in MDL-2789.

2. BELLWETHER SELECTION

A. The parties shall present the Court with a plan to select representative cases to serve as "Bellwether Discovery Cases" that will undergo additional discovery (beyond the PFS and DFS), which shall be referred to as "Core Discovery." This plan shall set forth how the Bellwether Discovery Cases will be selected. Following Core Discovery, the Bellwether Discovery Cases will be narrowed to a smaller pool of Bellwether Trial Cases, which will be the subject of a future order described in paragraph 3(B) below. The parties will present the plan and joint Case Management Order ("CMO") or competing proposals to the Court on or before December 3, 2018, with the deadlines set forth herein maintained. The parties shall continue to discuss how to define

"Core Discovery" and will provide an update for the Court at the July 24, 2018 Case Management Conference ("CMC").

3. SELECTION OF BELLWETHER DISCOVERY CASES

A. The Bellwether Discovery Cases shall be selected on February 28, 2019. The parties shall conduct Core Discovery on those cases from that time through June 28, 2019. The parties shall continue to discuss a presumptive cap on the maximum number of Bellwether Discovery Cases and will provide an update for the Court at the July 24, 2018 CMC.

B. Following completion of Core Discovery in the Bellwether Discovery Cases, the parties shall meet and confer regarding a plan to narrow the Bellwether Discovery Cases to a smaller pool of Bellwether Trial Cases. The Bellwether Trial Cases will then undergo preparation for trial, including additional fact discovery, expert discovery, and dispositive and trial-related motion practice. The parties shall submit an agreed upon CMO or competing proposals addressing selection of the Bellwether Trial Cases and the additional discovery to be conducted in Bellwether Trial Cases to the Court by July 19, 2019.

C. The parties shall complete fact discovery in the Bellwether Trial Cases by October 4, 2019.

D. Absent agreement of the parties or subsequent Order of the Court, there shall be a presumptive cut-off for general/generic corporate discovery (i.e., fact discovery against Defendants that applies in more than one case) in the Bellwether Trial Cases for which expert reports are due December 9, 2019 pursuant to Section 4.A. below, of November 22, 2019. The parties shall meet and confer regarding additional general/generic corporate discovery if they believe such discovery is needed beyond this date, including but not limited to supplemental

productions of select Custodial files and Non-Custodial data sources, and discovery related to events that occur after the cut-off and/or the most recent collection of documents. The parties will raise any disputed issues with the Court as the need may arise.

4. BELLWETHER TRIAL CASE EXPERT SCHEDULE

A. On or before December 9, 2019, Plaintiffs shall disclose general and case-specific expert witness reports for the Bellwether Trial Cases pursuant to Fed. R. Civ. P. 26(a)(2).

B. On or before January 15, 2020, Defendants shall disclose general and case-specific expert witness reports for the Bellwether Trial Cases pursuant to Fed. R. Civ. P. 26(a)(2).

C. Plaintiffs to disclose rebuttal expert witness reports, if any, by February 5, 2020.

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

E. Depositions of Plaintiffs' experts will be completed before depositions of Defendants' experts in the same discipline, absent agreement of the parties or leave of Court, with all depositions of expert witnesses to be completed by March 12, 2020. To the extent a Plaintiffs' expert is not serving a rebuttal report, the parties may attempt to schedule that expert's deposition before February 5, 2020, but not before January 15, 2020.

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

5. SUMMARY JUDGMENT AND *DAUBERT* MOTIONS IN TRIAL CASES

A. Any motions for summary judgment or for partial summary judgment shall be filed on or before April 2, 2020.

B. Any motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before April 2, 2020.

C. Responses to summary judgment motions shall be filed on or before May 5, 2020.

D. Responses to motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before May 14, 2020.

E. Reply briefs in further support of summary judgment motions shall be filed on or before May 19, 2020.

F. Reply briefs in further support of motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before May 28, 2020.

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

H. A more robust and detailed pretrial schedule for final pretrial matters, exhibit lists, motions *in limine*, and deposition designations will be the subject of a subsequent CMO that the parties will address shortly after the selection of the Bellwether Trial Cases, which should occur on or before July 19, 2019.

6. TRIAL SCHEDULE

A. The first trial in this MDL will be held on September 21, 2020, with subsequent bellwether trials to follow.

B. *Lexecon*: The parties will continue to discuss their position(s) on *Lexecon* waivers and will provide an update for the Court at the July 24, 2018 CMC.

IT IS SO **ORDERED**

SIGNED 27 day of July, 2018.

CLAIRE C. CECCHI
United States District Judge

APPENDIX “17A”

FILED
OCT 23 2013
BRIAN R. MARTINOTTI
J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

IN RE Stryker Rejuvenate & ABG II

Modular Hip Implant LITIGATION

CASE NO. 296
MASTER DOCKET NO.:BER-L-936-13

CIVIL ACTION
CASE MANAGEMENT ORDER #10

All prior orders remain in full force and effect except as modified by this Order

This Matter having been assigned to the Honorable Brian R. Martinotti, J.S.C., pursuant to the Supreme Court's Order of January 24, 2013, designating this matter for Multicounty Litigation Status ("MCL") of Stryker Rejuvenate & ABG II Modular Hip Implant Litigation (hereinafter referred to as "Stryker") [a Multidistrict Litigation ("MDL") pending before the Honorable Donovan W. Frank, USDJ], and the Court having reviewed the proposed agenda, conducting a CMC on October 23, 2013, counsel appearing, for good cause shown and for the reasons set forth on the record,

IT IS on this 23rd day of October 2013,

ORDERED:

I. COMPLIANCE WITH PRIOR ORDERS:

1. ORDERS ENTERED SINCE CMO #9:

   A. Order Governing Format of Production (entered September 30, 2013)

B. Implementing Order for Defendant Fact Sheet (entered October 23, 2013)

2. COMPLIANCE:

A. Counsel have met and are continuing to meet on the following:

i. Defendants' Fact Sheet: Parties have agreed upon a Fact Sheet. An order implementing same has been entered. See Implementing Order for Defendant Fact Sheet entered October 23, 2013.

ii. Scope, parameters and timing for service of written discovery: Parties may serve discovery requests compliant with court rules and shall continue to meet and confer.

iii. Protective Order: Parties shall continue to meet and confer regarding a Final Protective Order. If parties cannot agree by November 11, 2013, parties will have a conference call with the Court on November 12, 2013 at 8:30 am.

iv. Mediation: See CMO #8 paragraphs (III)(2) & (3).

1. **PHASE I**: Defendants have selected the following two matters for Phase I mediation:

a. Rudolph Maggi and Lissa Maggi, et al. v. Howmedica Osteonics Corporation, BER-L-1404-13

b. Donna Murray, et al. v. Howmedica Osteonics Corporation, BER-L-1576-13

2. Formal mediation to take place no later than December 15, 2013.

3. **PHASE II**: Subject to paragraph 4, the pool of Phase II Mediation cases will consist of all cases filed and served after April 2, 2013 but prior to July 26, 2013, in which a Plaintiff has opted to be included in the mediation process and has complied with the Plaintiff's Preliminary Disclosure Fact Sheet deadlines.

4. Counsel will meet and confer by November 16, 2013 to devise a method to capture those cases that were not eligible for Phase 1 mediation but filed prior to April 2, 2013.

v. Parties shall continue to meet and confer regarding the production of exemplars.

II. DISCOVERY

1. WRITTEN DISCOVERY :

A. Defendant will produce insurance policies within thirty (30) days.

2. Parties have met and conferred on October 8, 2013 and October 17, 2013 and have made progress regarding the corporate organization information exchange. Parties shall continue to meet and confer.

3. Parties have met and conferred as to the ESI information exchange and potential additional depositions. Parties shall continue to meet and confer.

4. ROLLING PRODUCTIONS:

A. The parties have met and conferred and continue to meet and confer regarding discovery, generally, and specifically, and on Defendant's rolling production of documents. The parties have agreed as follows:

i. Defendant's Phase I production was completed on October 11, 2013.

ii. Defendants will produce Phase II documents by October 25, 2013.

iii. Defendants will produce Phase III documents by November 25, 2013.

5. Records Authorizations:

A. All authorizations shall be in the form provided by Defendant. See CMO #8 paragraph (II)(4). Plaintiffs are directed to the Multi-County Litigation website to obtain appropriate approved authorizations.

B. All outstanding authorizations for all other cases with completed Fact Sheets shall be returned to Defendant's counsel in accordance with prior orders.

C. Authorizations for all other cases to be completed and returned to Defendant's counsel with completed Fact Sheet as per prior orders.

III. CASE MANAGEMENT:

1. All new complaints shall be served within thirty (30) days of receipt of a filed copy from the Court.

2. All other Plaintiffs shall serve completed Fact Sheets on Defendant and Liaison Counsel within sixty (60) days of service of the complaint.

3. Parties are required to comply with CMO #3 regarding the service of preliminary disclosure forms. (See CMO #3, paragraph (I)(2)(A)(i).)

4. File & Serve Service: pending proposal and continued discussion

5. Service on Defendants: The Court entered an order on August 13, 2013.

6. If Plaintiffs are not receiving e-mails from Plaintiff's liaison counsel, please reach out to Ellen Relkin, ERelkin@weitzlux.com.

IV. GENERAL:

1. The next Case Management Conference is scheduled for November 18, 2013, at 11:00am. Liaison counsel shall meet at 10:00am. **Counsel shall submit a proposed agenda seven (7) days prior to this Case Management Conference.**

2. *Pro hac vice* motions shall not be filed until complaint is filed and served on Defendants.

3. The official record shall be the transcript provided by the court reporter retained by counsel. The reporter shall preserve all proceedings and shall email a transcript of any court proceeding to the court within 14 days of the proceeding.

4. Subject to agreement by and between counsel and with permission from the Court, counsel is permitted to appear telephonically; in order to have your appearance on the record, it is counsel's responsibility to Email liaison counsel and the court reporter at least one hour before the proceeding with your name, firm, and party representing,

indicating that you intend to appear by phone; in addition you must confirm you appearance, immediately following the proceeding. Absent the above, counsel's appearance will not be noted.

5. By consent of all parties, the court may contact or be contacted on an *ex parte* basis regarding settlement issues only.

6. The court may, from time to time, conduct phone conferences with defense counsel and liaison counsel.

7. The Court directs all counsel to R.1:4-8 and expects all counsel to abide by the parameters set forth therein.

8. All Court proceedings will start at the designated scheduled time. Counsel is expected to arrive promptly for these proceedings.

9. Counsel shall provide the Court with their preferred e-mail address by e-mailing same to Kelly Gibson at Kelly.Gibson@judiciary.state.nj.us and Stephanie Gino at Stephanie.Gino@judiciary.state.nj.us.

10. Counsel shall copy their co-counsel and all adversaries on all e-mails and other electronic correspondence submitted to the Court [COUNSEL IS PROHIBITED FROM FILING ANY PLEADING ELECTRONICALLY]. Any such submission received after 4:30 p.m. will be deemed received at 9:00 a.m. on the next day Court is in session. Any such submission received after 4:30 p.m. on a Friday or over a weekend, will be deemed received on 9:00 a.m. on the next day Court is in session.

11. Counsel is directed to contact The Superior Court of New Jersey, Attorneys Accounts: P.O. Box 980, Hughes Justice Complex, 25 W. Market Street,

Trenton, New Jersey 08625, (609) 633-8643 to establish a collateral account for any filing fees within seven (7) days.

12. Counsel is required to check the Judiciary's Web Site dedicated to this matter for any decisions/Orders/information contained therein.

13. A copy of this Order and any subsequent Orders to the Court will be posted on the Judiciary Web Site.

BRIAN R. MARTINOTTI, J.S.C.

APPENDIX “18A”

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

In Re: Syngenta AG MIR162 Corn Litigation	)	
	)	**MDL No. 2591**
This document relates to: All Cases	)	**Case No. 2:14-md-2591-JWL-JPO**

JOINT STATUS REPORT CONCERNING BELLWETHER SELECTIONS

On November 12, 2015, the parties completed selecting the 8 bellwether states. Plaintiffs selected Missouri, Nebraska, South Dakota, and Arkansas. Syngenta selected Iowa, Ohio, Illinois, and Kansas. Beginning on November 19 and completing on November 20, the Parties made their selections for the 48 individual producer bellwether plaintiffs. The selections are attached as Exhibit A. Syngenta's statement with respect to the selections is attached hereto as Exhibit B. Plaintiffs' statement with respect to the selections is attached hereto as Exhibit C.

Date: November 20, 2015

Respectfully Submitted by:

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Date: November 20, 2015

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 20, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Patrick J. Stueve
Co-Lead Counsel and Liaison Counsel for Plaintiffs

EXHIBIT A

Exhibit A -- Bellwether Selections Nov. 20, 2015

Iowa						
Plaintiffs' Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Cronin Inc.	Cronin, Inc. et al. v. Syngenta Corp. et al.	5:14-cv-04084	10/3/2014	N.D. Iowa	Plymouth	900
Noonan Farms Inc.	Koeller et al. v. Syngenta AG et al.	2:15-cv-09593	11/19/2015	D. Kansas	Palo Alto	1200
Don Prohaska	Koeller et al. v. Syngenta AG et al.	2:15-cv-09593	11/19/2015	D. Kansas	Garner	2011, 1690
Syngenta's Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
LBJ Ventures	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Calhoun	201, 0
Rodney Olthoff	Olthoff v. Syngenta Corp. et al.	3:15-cv-03074	1/14/2015	N.D. Iowa	Kossuth	0, 359
Shane Curry	Curry v. Syngenta Corp. et al.	3:15-cv-03075	1/14/2015	N.D. Iowa	Kossuth	0, 11
South Dakota						
Plaintiffs' Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Steven and John S. Cap	McDonald AG, Inc. et al. v. Syngenta AG et al.	2:15-cv-09592	11/19/2015	D. Kansas	Bon Homme	1234, 912
John Anderson	Anderson et al. v. Syngenta Corp. et al.	1:15-cv-01038	10/13/2015	D.S.D.	Clark	3553, 5625
Chad Murphy	Murphy v. Syngenta Corp. et al.	1:15-cv-01067	10/13/2015	D.S.D.	Kingsbury	2509, 3300
Syngenta's Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Richard Glanzer	Glanzer v. Syngenta Corp. et al.	4:15-cv-04010	1/14/2015	D.S.D.	Beadle	237, 250
Mike Halter	Halter v. Syngenta Corp. et al.	4:15-cv-04018	1/14/2015	D.S.D.	Beadle	274, 0
Randy Overgard	Overgard v. Syngenta Corp. et al.	4:15-cv-04038	1/23/2015	D.S.D.	Turner	117, 118

Ohio						
Plaintiffs' Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
McKee Family Farms	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Chillicothe	746, 476
Partners 5 LLC	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Leipsic	255,255
LDT Keller Farms	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Ft. Recovery	745, 745
Syngenta's Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
D&J Stoller	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Paulding	438, 450
Gary Duane Mathews	Mathews v. Syngenta Corp. et al.	2:14-cv-02328	11/18/2014	S.D. Ohio	Fayette	534, 375
Eveyln I. Linder Child's Trust	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Sandusky	8, 8
Nebraska						
Plaintiffs' Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
R&W Farms	McDonald AG, Inc. et al. v. Syngenta AG et al.	2:15-cv-09592	11/19/2015	D. Kansas	Hayes	1000, 2000
Matt & Robin Bargen	McDonald AG, Inc. et al. v. Syngenta AG et al.	2:15-cv-09592	11/19/2015	D. Kansas	Nuckolls, Jewell	4300
Dustin Wegner	Koeller et al. v. Syngenta AG et al.	2:15-cv-09593	11/19/2015	D. Kansas	Gage	1050, 1070
Syngenta's Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Linden Kaliff	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	York	0, 156
Springvale Stock Farm	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Dixon	482, 457
B&A Riessland Farms	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Buffalo	395, 309

Illinois						
Plaintiffs' Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Russ Koeller	Koeller et al. v. Syngenta AG et al.	2:15-cv-09593	11/19/2015	D. Kansas	New Canton	1190, 1275
McDonald AG	McDonald AG, Inc. et al. v. Syngenta AG et al.	2:15-cv-09592	11/19/2015	D. Kansas	Macon & Moultrie	1700, 2220
Tom Justison	Koeller et al. v. Syngenta AG et al.	2:15-cv-09593	11/19/2015	D. Kansas	Butler	1200, 1200
Syngenta's Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Sandra Boyer	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Crawford	0, 65
Leon Taylor	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Crawford	0, 19
Ken Kennedy d/b/a Kennedy Farms	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Macon	118, 74
Arkansas						
Plaintiffs' Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Kenny Falwell	Falwell et al. v. Syngenta Corp. et al.	3:15-cv-00012	1/14/2015	E.D. Ark.	White	297, 1359
Three Guys Farming Inc.	McDonald AG, Inc. et al. v. Syngenta AG et al.	2:15-cv-09592	11/19/2015	D. Kansas	Jackson	633, 502
Pat Skarda	McDonald AG, Inc. et al. v. Syngenta AG et al.	2:15-cv-09592	11/19/2015	D. Kansas	Prarie	414, 364
Syngenta's Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Dixie Plantation P'Ship	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	White	78, 0
JP Lofton Farms	Wilson Farm, Inc. et al. v. Syngenta AG et al.	4:14-cv-01908	11/11/2014	E.D. Mo.	St. Francis	675, 0
Jason Runsick	Runsick et al. v. Syngenta Corp. et al.	3:15-cv-00006	1/9/2015	E.D. Ark.	Jackson	169, 296

Kansas						
Plaintiffs' Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Van Gundy Farms, LLC	Koeller et al. v. Syngenta AG et al.	2:15-cv-09593	11/19/2015	D. Kansas	Lyon	500, 450
Mark Fischer	McDonald AG, Inc. et al. v. Syngenta AG et al.	2:15-cv-09592	11/19/2015	D. Kansas	Ford / Gray	3000, 3000
Gary Harshberger / Harshberger Enterprises	McDonald AG, Inc. et al. v. Syngenta AG et al.	2:15-cv-09592	11/19/2015	D. Kansas	Ford / Meade	2200, 2200
Syngenta's Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Eugene Goering	Goering v. Syngenta Corp. et al.	6:15-cv-01015	1/13/2015	D. Kansas	McPherson	272, 307
James Shortt Trust	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Pottawatomie	56, 55
Joseph Murname Trust	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Crawford	53, 66
Missouri						
Plaintiffs' Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Gregory Harris	Bentlage et al. v. Syngenta Corp. et al.	3:14-cv-05151	11/13/2014	W.D. Mo.	Barton	321, 479
Claas Farms	Luke Claas and Meinke Farms et al. v. Syngenta Corp. et al.	2:14-cv-04267	10/3/2014	W.D. Mo.	Moniteau	350, 350
Wright Brothers Partnership	Wright et al. v. Syngenta AG et al.	2:15-cv-09597	11/20/2015	D. Kansas	Butler	1539, 1201
Syngenta's Selections						
Plaintiff Name	*Case Caption*	*Case No.*	*Filing Date*	*Court*	*Location*	*Corn Acres (2013, 2014)*
Glenn Bix	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Nodaway	308, 234
Ivan Woltemath	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Atchison	400, 303
Dierking Farms	Borah et al. v. Syngenta AG et al.	4:15-cv-00353	5/21/2015	E.D. Texas	Saline	651, 536

Plaintiffs have provided the county and acreage information for the bellwethers selected by plaintiffs and Syngenta has provided county and acreage information for its bellwethers based on the PFS it has received from those plaintiffs.

EXHIBIT B

In response to the Court's request for a concise description of why each side's bellwether plaintiff selections are representative, Syngenta states that its selections include farmers with differing corn acreage (large, medium, and small farmers, as well as farmers who do not grow corn every year); practices regarding the use, storage, and sale of corn (including farmers who do and do not use corn for feeding livestock and for ethanol); insurance and crop protection policies; and ownership status of the land they farm (lease v. own v. co-op). Syngenta's selections also capture diversity in harvest seasons and proximity to export channels.

Neither Syngenta nor the Court can evaluate the representativeness of opposing counsel's bellwether plaintiff selections, however, because the majority consists of persons who have yet to provide Plaintiff Facts Sheets or who are not even part of this MDL yet because they did not file suit until yesterday or even today. Plaintiffs' approach of holding these plaintiffs in secret until now can only be described as tactical—and is improper on its face.

In particular, the MDL leadership began selecting bellwethers yesterday and made 15 (of 24) picks whom Syngenta had no record of being in this MDL. After Syngenta inquired (and pointed out that one was previously remanded), the MDL leadership hours later revealed that these plaintiffs had just filed their cases yesterday and today. This approach is plainly improper:

- It is now clear why plaintiffs moved to stay PFS's, given their plan to file suit for and pick these new plaintiffs knowing that Syngenta and the Court would have no information about variations in each plaintiff's crop subsidies, sales practices, and other facts found only in PFS's. 17 of the 24 selections have *not* provided PFS's.

- In any event, the newly added plaintiffs are not even part of this MDL until they satisfy the transfer procedure for cases filed in this District under the Court's February 4, 2015 Order, ECF No. 116.

- What's more, most of them filed in this District but are not Kansas residents and do not allege anything to do with Kansas—meaning they cannot satisfy venue under 28 U.S.C. § 1391, in addition to ignoring the Court's guidance that venue objections (as well as *Lexecon* rights) should not be abridged or unilaterally overridden.

Syngenta requests a telephonic status hearing to address these issues with the Court.

PLAINTIFFS' STATEMENT.

EXHIBIT C

Syngenta complains about Co-Lead Counsel's use of new plaintiffs as bellwethers, but refused to (1) exchange advance copies of these statements or (2) specifically identify what additional information it needed during the selection process to assess representativeness. It prematurely requests a hearing when Plaintiffs have agreed to meet and confer.

In 7 days, Co-Lead Counsel identified and obtained consent from 24 bellwether plaintiffs across 8 states. The pool represents geographic diversity (47 counties) and size-of-farm diversity (11 – 4,300 corn acres). *See Exhibit A*. To do this, Co-Lead Counsel necessarily had to reach out to plaintiffs whose cases were not yet on file, but provided Syngenta location and acreage information for nearly every plaintiff during the process. The Court's order did not restrict bellwether selections to plaintiffs already on file or plaintiffs who had already served PFSs. To do so—when the vast majority of farmers have not yet filed individual cases—would have been limiting: for example, Ohio (Syngenta's selection) consisted of only 11 plaintiffs (9 from a single case). Once the new bellwether plaintiffs serve their PFS, if Syngenta legitimately contends it would have made its bellwether selections differently, Co-Lead Counsel offered to meet and confer regarding a request for substitution in good faith. Use of new plaintiffs does not affect discovery. Depositions cannot start until all bellwether plaintiffs respond to Syngenta's just-served document requests. ECF No. 1205. Depositions can begin promptly for the dozens of previously-filed plaintiffs upon compliance with these requests; new plaintiffs will simultaneously respond to both the PFS and the new requests. Their depositions can then commence. New Plaintiffs filed in the District of Kansas, so *Lexecon* is not an issue. As it stands, the pool for each state currently represents a diversity of originating districts, not necessarily tied to a farmer's location: in fact, 15 of Syngenta's selections (covering 7 states) originate from a single case filed in the Eastern District of Texas (*Borah*). *See Exhibit A*.

APPENDIX “19A”

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: TESTOSTERONE REPLACEMENT THERAPY PRODUCTS LIABILITY LITIGATION

Case No. 1:14-CV-01748
MDL 2545

JUDGE MATTHEW F. KENNELLY

This document relates to: ALL ACTIONS

CASE MANAGEMENT ORDER NO. 14
CASE MANAGEMENT PLAN – Part 2
(AbbVie bellwether cases – selection and pretrial / trial schedule)

The Court has considered the parties' proposals and revised proposals for a case management plan relating to the selection and trial of AbbVie-only bellwether cases. The Court is unpersuaded that the revised proposal by the AbbVie defendants to bifurcate expert discovery and summary judgment (as between general causation and other matters) represents a fair, efficient, and reasonable way to manage the pretrial proceedings in this case. One factor in this regard, but certainly not the only one, is the fact that this MDL proceeding involves six other manufacturer defendants. The Court is unconvinced that there is a fair, efficient, and reasonable way to adopt AbbVie's proposal in a way that makes the overall MDL proceeding manageable.

The Court has, however, elongated to some extent the overall process as proposed by plaintiffs for selecting AbbVie-only bellwether cases. The Court has done so to ensure fairness to all parties and to maximize the likelihood that the bellwether selection and trial process will be both representative and productive. The Court has also established a fact discovery cutoff date for the AbbVie-only bellwether cases, subject to modification upon a showing of good cause and due diligence.

The Court enters this schedule based on the express understanding, as discussed at the

most recent case management conference, that counsel will promptly negotiate and present a proposed case management plan or plans for the non-AbbVie-only cases.

The Court orders the following:

I. PROTOCOL FOR SELECTION OF ABBVIE BELLWETHER CASES

A. On or before July 11, 2015, the parties shall submit to the Court a proposed Case Management Order ("CMO") identifying the process and parameters for selecting AbbVie-only bellwether plaintiffs for two tiers of cases: (1) Thromboembolism ("TE") clotting injury cases (*e.g.*, deep vein thrombosis ("DVT"), Pulmonary Embolism ("PE"), or other clotting cases; and (2) cardiovascular cases (*e.g.*, heart attack). The Court will endeavor to enter a CMO in this regard by July 31, 2015.

B. By October 31, 2015, the Plaintiffs and Defendants shall identify the following AbbVie-only cases:

1. Eight (8) TE injury bellwether candidates per side that shall serve as bellwether discovery plaintiffs. The process and mechanisms of designations and selections of bellwethers shall be done in accordance with a separate CMO that will be submitted to the Court on or before July 11, 2015, as set forth in paragraph I.A, above.

2. Eight (8) cardiovascular injury bellwether candidates per side that that shall serve as bellwether discovery plaintiffs. The process and mechanisms of designations and selections of bellwethers shall be done in accordance with a CMO that will be submitted to the Court on or before July 11, 2015, as set forth in paragraph I.A, above.

II. ABBVIE BELLWETHER FACT DISCOVERY SCHEDULE

A. Between November 1, 2015 and January 15, 2016, core bellwether discovery shall take place, with a maximum of four (4) depositions per side for each case. This shall be designed to provide information to enable the parties to assess the larger pool of cases and, consistent with paragraph II.B, below, to provide information to the Court to enable the Court to select which cases shall serve as the first bellwether trials consistent with paragraph II.C, below.

B. On or before February 15, 2016, in accordance with the CMO described in paragraph I.A above, the parties will develop a methodology for proposing and selecting, with the Court's involvement, which of the bellwether cases should be selected as initial trial cases. As part of that CMO, each side shall provide the Court with the specified number of bellwether cases from which the trial pool will be selected.

C. By March 1, 2016, the Court will select which bellwether cases are to serve as the first three TE trials and which are to serve as the first three cardiovascular trials and shall designate the order of these bellwether trials.

D. The bellwether cases that are initially selected and those that are ultimately the picked as the initial trials are to be representative cases.

E. Fact discovery regarding the bellwether cases is to be completed by April 15, 2016. This does not relieve a party of its duty to supplement its disclosures as provided under the Federal Rules of Civil Procedure, CMOs entered in this case, or other applicable law and rules. Any request to extend or reopen fact discovery after April 15, 2016 must be supported by a showing of good cause and due diligence.

III. ABBVIE BELLWETHER EXPERT DISCOVERY SCHEDULE

A. On or before May 2, 2016, Plaintiffs shall disclose expert witness testimony for

each of the first six (6) bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

B. On or before June 6, 2016, Defendants shall disclose expert witness testimony for each of the first six (6) bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

C. Any request by Plaintiffs to disclose rebuttal expert witness testimony must be made promptly following receipt of defendants' Fed. R. Civ. P. 26(a)(2) disclosures.

D. Each expert witness disclosure shall include at least two available dates when each expert is being tendered for deposition.

E. Depositions of expert witnesses are to be completed by July 11, 2016. The parties may propose a more extended schedule for case-specific expert depositions concerning bellwether trials 2 through 6.

F. The parties intend that the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply to all cases, whether pending in state or federal court. Accordingly, in order to foster cooperation between the MDL and state court litigations, counsel for the parties shall jointly seek to enter in all state court proceedings, whether already filed or hereafter filed, an order expressly agreeing that the limitations on expert discovery set forth in Rule 26(b)(4)(A)-(D) shall apply in all such state court proceedings.

IV. SUMMARY JUDGMENT & DAUBERT MOTIONS IN ABBVIE BELLWETHER CASES

A. Any motion for summary judgment or for partial summary judgment shall be filed on or before August 1, 2016.

B. Any motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before August 1, 2016.

C. Responses to summary judgment motions and *Daubert* motions shall be filed on or before August 29, 2016.

D. Replies in support of summary judgment motions and *Daubert* motions shall be filed on or before September 19, 2016.

E. The Court will endeavor to rule on any summary judgment and *Daubert* motions relating to the earlier bellwether trials by October 10, 2016 and on the remaining motions at reasonable intervals after that.

V. INITIAL ABBVIE BELLWETHER TRIAL SCHEDULE

The first six AbbVie-only initial bellwether trials shall begin on the following dates:

1. MDL TE #1 (Bellwether No. 1) shall begin on October 31, 2016.
2. MDL TE #2 (Bellwether No. 2) shall begin on December 5, 2016.
3. MDL TE #3 (Bellwether No. 3) shall begin on January 9, 2017.
4. MDL Cardiovascular #1 (Bellwether No. 4) shall begin on February 13, 2017.
5. MDL Cardiovascular #2 (Bellwether No. 5) shall begin on March 20, 2017.
6. MDL Cardiovascular #3 (Bellwether No. 6) shall begin on April 24, 2017.

This trial schedule is subject to modification if, among other reasons, summary judgment is granted for defendants in some but not all of the selected bellwether trials.

IT IS SO ORDERED.

Date: November 6, 2014

United States District Judge
Matthew F. Kennelly

APPENDIX “19B”

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: TESTOSTERONE REPLACEMENT THERAPY PRODUCTS LIABILITY LITIGATION	**Case No. 1:14-CV-01748** **MDL 2545**
	JUDGE MATTHEW F. KENNELLY
This document relates to: ALL ACTIONS	

THIRD AMENDED CASE MANAGEMENT ORDER NO. 14
CASE MANAGEMENT PLAN – Part 2
(AbbVie bellwether cases – selection and pretrial / trial schedule)

The Court hereby issues the following Third Amended Case Management Order No. 14 in accordance with the Case Management Order No. 29. For ease of reference to all counsel and litigants, all amendments to Third Amended Case Management Order No. 14 are indicated by being underlined.

The Court has considered the parties' proposals and revised proposals for a case management plan relating to the selection and trial of AbbVie-only bellwether cases. The Court is unpersuaded that the revised proposal by the AbbVie defendants to bifurcate expert discovery and summary judgment (as between general causation and other matters) represents a fair, efficient, and reasonable way to manage the pretrial proceedings in this case. One factor in this regard, but certainly not the only one, is the fact that this MDL proceeding involves six other manufacturer defendants. The Court is unconvinced that there is a fair, efficient, and reasonable way to adopt AbbVie's proposal in a way that makes the overall MDL proceeding manageable.

The Court has, however, elongated to some extent the overall process as proposed by plaintiffs for selecting AbbVie-only bellwether cases. The Court has done so to ensure fairness to all parties and to maximize the likelihood that the bellwether selection and trial process will be both representative and productive. The Court has also established a fact discovery cutoff date

for the AbbVie-only bellwether cases, subject to modification upon a showing of good cause and due diligence.

The Court enters this schedule based on the express understanding, as discussed at the most recent case management conference, that counsel will promptly negotiate and present a proposed case management plan or plans for the non-AbbVie-only cases.

The Court orders the following:

I. PROTOCOL FOR SELECTION OF ABBVIE BELLWETHER CASES

A. On or before August 10, 2015, the parties shall submit to the Court a proposed Case Management Order ("CMO") identifying the process and parameters for selecting AbbVie-only bellwether plaintiffs for two tiers of cases: (1) Thromboembolism ("TE") clotting injury cases (e.g., deep vein thrombosis ("DVT"), Pulmonary Embolism ("PE"), or other clotting cases; and (2) cardiovascular cases (e.g., heart attack). The Court will endeavor to enter a CMO in this regard by August 31, 2015. Only cases that have been filed and for which plaintiff's fact sheets have been completed in accordance with Amended CMO 9 on or before June 15, 2015 will be eligible to be selected as a bellwether plaintiff.

B. By October 31, 2015, the Plaintiffs and Defendants shall identify the following AbbVie-only cases:

1. Eight (8) TE injury bellwether candidates per side that shall serve as bellwether discovery plaintiffs. The process and mechanisms of designations and selections of bellwethers shall be done in accordance with a separate CMO that will be submitted to the Court on or before August 10, 2015, as set forth in paragraph I.A, above.

2. Eight (8) cardiovascular injury bellwether candidates per side that that shall serve as bellwether discovery plaintiffs. The process and mechanisms of designations and selections of bellwethers shall be done in accordance with a CMO that will be submitted to the Court on or before August 10, 2015, as set forth in paragraph I.A, above.

C. Following multiple and various challenges, the 26 remaining bellwether discovery cases are identified on the attached Appendix A.

II. ABBVIE BELLWETHER FACT DISCOVERY SCHEDULE

A. Between December 1, 2015 and July 6, 2016, core bellwether discovery shall take place, with a maximum of four (4) depositions per side for each case. This shall be designed to provide information to enable the parties to assess the larger pool of cases and, consistent with paragraph II.B, below, to provide information to the Court to enable the Court to select which cases shall serve as the first bellwether trials consistent with paragraph II.C, below.

B. On or before July 20, 2016, the parties will submit proposals for the Court's selection of the initial bellwether trial cases.

C. By August 5, 2016, the Court will select up to eight (8) bellwether cases to serve as the first bellwether trials and shall designate the order of these bellwether trials.

D. The bellwether cases that are initially selected and those that are ultimately picked as the initial trials are to be representative cases.

E. Additional fact discovery regarding the bellwether trial cases is to be completed by September 19, 2016. This does not relieve a party of its duty to supplement its disclosures as provided under the Federal Rules of Civil Procedure, CMOs entered in this case, or other

applicable law and rules. Any request to extend or reopen fact discovery after September 19, 2016 must be supported by a showing of good cause and due diligence.

III. ABBVIE BELLWETHER EXPERT DISCOVERY SCHEDULE

A. On or before October 24, 2016, Plaintiffs shall make expert witness disclosures for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

B. On or before November 29, 2016, Defendants shall make expert witness disclosures for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

C. Any request by Plaintiffs to disclose rebuttal expert witness testimony must be made by December 9, 2016. Any rebuttal disclosures allowed by the Court are to be completed by December 21, 2016.

D. Each expert witness disclosure shall include at least two available dates when each expert is being tendered for deposition.

E. Depositions of expert witnesses are to be completed by January 20, 2017. The parties may propose a more extended schedule for case-specific expert depositions concerning bellwether trials after the first set trial.

F. The parties intend that the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply to all cases, whether pending in state or federal court. Accordingly, in order to foster cooperation between the MDL and state court litigations, counsel for the parties shall jointly seek to enter in all state court proceedings, whether already filed or hereafter filed, an order expressly agreeing that the limitations on expert discovery set forth in Rule 26(b)(4)(A)-(D) shall apply in all such state court proceedings.

IV. SUMMARY JUDGMENT & DAUBERT MOTIONS IN ABBVIE BELLWETHER CASES

A. Any motion for summary judgment or for partial summary judgment shall be filed on or before February 17, 2017.

B. Any motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before February 17, 2017.

C. Responses to summary judgment motions and *Daubert* motions shall be filed on or before March 20, 2017.

D. Replies in support of summary judgment motions and *Daubert* motions shall be filed on or before April 10, 2017.

E. The Court will endeavor to rule on any summary judgment and *Daubert* motions relating to the earlier bellwether trials by May 8, 2017 and on the remaining motions at reasonable intervals after that.

V. INITIAL ABBVIE BELLWETHER TRIAL SCHEDULE

The first AbbVie-only initial bellwether trials shall begin on the following dates:

1. June 5, 2017
2. July 17, 2017
3. August 28, 2017
4. October 9, 2017
5. November 20, 2017
6. January 8, 2018

This trial schedule is subject to modification if, among other reasons, summary judgment is granted for defendants in some but not all of the selected bellwether trials.

IT IS SO ORDERED.

Date: May 3, 2016

United States District Judge
Matthew F. Kennelly

Exhibit A

#	Case Name	TRT User	MDL NDIL Case No.	Primary Counsel
1	Adkins, John v. AbbVie Inc. et al.	Adkins, John	14-cv-09753	The Levensten Law Firm
2	Blanck, Lance v. AbbVie Inc. et al.	Blanck, Lance	15-cv-01077	Ross Feller Casey
3	Cannon, Sr. Richard v. AbbVie Inc. et al.	Cannon, Sr., Richard	15-cv-01835	Onder, Shelton, O'Leary & Peterson
4	Cribbs, Edward v. AbbVie Inc. et al.	Cribbs, Edward	15-cv-01056	Weitz & Luxenberg
5	Cripe, Robert v. AbbVie Inc. et al.	Cripe, Robert	14-cv-00843	Schachter Hendy & Johnson
6	Deel, David v. AbbVie Inc. et al.	Deel, David	14-cv-10435	Morgan & Morgan
7	Dial, Corliss v. AbbVie Inc. et al.	Dial, Gene	15-cv-02190	Anapol Schwartz
8	Diesslin, Theodor v. AbbVie Inc. et al.	Diesslin, Theodor	14-cv-06770	Burg Simpson Eldredge Hersh & Jardine
9	Ennis, Michael v. AbbVie Inc. et al.	Ennis, Michael	15-cv-00624	Seeger Weiss LLP
10	Frost, Cecile v. AbbVie Inc. et al.	Frost, Cecile	15-cv-01484	Pogust Braslow & Millrood, LLC
11	Garcia, Froylan v. AbbVie Inc. et al.	Garcia, Froylan	15-cv-01086	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
12	Hession, Kevin v. AbbVie Inc. et al.	Hession, Kevin	14-cv-08222	Douglas & London
13	Konrad, Jeffrey v. AbbVie Inc. et al.	Konrad, Jeffrey	15-cv-00966	Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
14	LaForest, Kenneth v. AbbVie Inc. et al.	LaForest, Kenneth	15-cv-00692	Seeger Weiss LLP
15	Long, Anthony v. AbbVie Inc. et al.	Long, Anthony	14-cv-06996	The Levensten Law Firm
16	Martina, Randy v. AbbVie Inc. et al.	Martina, Randy	14-cv-08598	Weitz & Luxenberg
17	Mitchell, Jesse v. AbbVie Inc. et al.	Mitchell, Jesse	14-cv-09178	Goldberg & Osborne
18	Myers, Arthur v. AbbVie Inc. et al.	Myers, Arthur	15-cv-01085	Ross Feller Casey
19	Nolte, Robert v. AbbVie Inc. et al.	Nolte, Robert	14-cv-08135	Goldberg & Osborne
20	Patridge, Jesse v. AbbVie Inc. et al.	Patridge, Jesse	14-cv-07960	Simmons Hanly Conroy LLC
21	Romanik, Michael v. AbbVie Inc. et al.	Romanik, Michael	14-cv-08202	Ross Feller Casey
22	Rowley, Robert v. AbbVie Inc. et al.	Rowley, Robert	15-cv-02760	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
23	Shepherd, Dale v. AbbVie Inc. et al.	Shepherd, Dale	15-cv-00404	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
24	Truax, Roccie v. AbbVie Inc. et al.	Truax, Roccie	14-cv-02935	Levin Simes LLP
25	Trusty, Joe v. AbbVie Inc. et al.	Trusty, Joe	15-cv-01015	Levin Simes LLP
26	White, Peggy v. AbbVie Inc. et al.	White, Dave	14-cv-03818	Janet Jenner & Suggs

APPENDIX “19C”

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: TESTOSTERONE REPLACEMENT THERAPY PRODUCTS LIABILITY LITIGATION	**Case No. 1:14-CV-01748** **MDL 2545**
	JUDGE MATTHEW F. KENNELLY
This document relates to: ALL ACTIONS	

FOURTH AMENDED CASE MANAGEMENT ORDER NO. 14
CASE MANAGEMENT PLAN – Part 2
(AbbVie bellwether cases – selection and pretrial / trial schedule)

The Court hereby issues the following Fourth Amended Case Management Order No. 14. The only revisions as compared with the previous version of Case Management Order No. 14 are in Section V.

The Court has considered the parties' proposals and revised proposals for a case management plan relating to the selection and trial of AbbVie-only bellwether cases. The Court is unpersuaded that the revised proposal by the AbbVie defendants to bifurcate expert discovery and summary judgment (as between general causation and other matters) represents a fair, efficient, and reasonable way to manage the pretrial proceedings in this case. One factor in this regard, but certainly not the only one, is the fact that this MDL proceeding involves six other manufacturer defendants. The Court is unconvinced that there is a fair, efficient, and reasonable way to adopt AbbVie's proposal in a way that makes the overall MDL proceeding manageable.

The Court has, however, elongated to some extent the overall process as proposed by plaintiffs for selecting AbbVie-only bellwether cases. The Court has done so to ensure fairness to all parties and to maximize the likelihood that the bellwether selection and trial process will be both representative and productive. The Court has also established a fact discovery cutoff date

for the AbbVie-only bellwether cases, subject to modification upon a showing of good cause and due diligence.

The Court enters this schedule based on the express understanding, as discussed at the most recent case management conference, that counsel will promptly negotiate and present a proposed case management plan or plans for the non-AbbVie-only cases.

The Court orders the following:

I. PROTOCOL FOR SELECTION OF ABBVIE BELLWETHER CASES

A. On or before August 10, 2015, the parties shall submit to the Court a proposed Case Management Order ("CMO") identifying the process and parameters for selecting AbbVie-only bellwether plaintiffs for two tiers of cases: (1) Thromboembolism ("TE") clotting injury cases (e.g., deep vein thrombosis ("DVT"), Pulmonary Embolism ("PE"), or other clotting cases; and (2) cardiovascular cases (e.g., heart attack). The Court will endeavor to enter a CMO in this regard by August 31, 2015. Only cases that have been filed and for which plaintiff's fact sheets have been completed in accordance with Amended CMO 9 on or before June 15, 2015 will be eligible to be selected as a bellwether plaintiff.

B. By October 31, 2015, the Plaintiffs and Defendants shall identify the following AbbVie-only cases:

1. Eight (8) TE injury bellwether candidates per side that shall serve as bellwether discovery plaintiffs. The process and mechanisms of designations and selections of bellwethers shall be done in accordance with a separate CMO that will be submitted to the Court on or before August 10, 2015, as set forth in paragraph I.A, above.

2. Eight (8) cardiovascular injury bellwether candidates per side that that shall serve as bellwether discovery plaintiffs. The process and mechanisms of designations and selections of bellwethers shall be done in accordance with a CMO that will be submitted to the Court on or before August 10, 2015, as set forth in paragraph I.A, above.

C. Following multiple and various challenges, the 26 remaining bellwether discovery cases are identified on the attached Appendix A.

II. ABBVIE BELLWETHER FACT DISCOVERY SCHEDULE

A. Between December 1, 2015 and July 6, 2016, core bellwether discovery shall take place, with a maximum of four (4) depositions per side for each case. This shall be designed to provide information to enable the parties to assess the larger pool of cases and, consistent with paragraph II.B, below, to provide information to the Court to enable the Court to select which cases shall serve as the first bellwether trials consistent with paragraph II.C, below.

B. On or before July 20, 2016, the parties will submit proposals for the Court's selection of the initial bellwether trial cases.

C. By August 5, 2016, the Court will select up to eight (8) bellwether cases to serve as the first bellwether trials and shall designate the order of these bellwether trials.

D. The bellwether cases that are initially selected and those that are ultimately picked as the initial trials are to be representative cases.

E. Additional fact discovery regarding the bellwether trial cases is to be completed by September 19, 2016. This does not relieve a party of its duty to supplement its disclosures as provided under the Federal Rules of Civil Procedure, CMOs entered in this case, or other

applicable law and rules. Any request to extend or reopen fact discovery after September 19, 2016 must be supported by a showing of good cause and due diligence.

III. ABBVIE BELLWETHER EXPERT DISCOVERY SCHEDULE

A. On or before October 24, 2016, Plaintiffs shall make expert witness disclosures for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

B. On or before November 29, 2016, Defendants shall make expert witness disclosures for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

C. Any request by Plaintiffs to disclose rebuttal expert witness testimony must be made by December 9, 2016. Any rebuttal disclosures allowed by the Court are to be completed by December 21, 2016.

D. Each expert witness disclosure shall include at least two available dates when each expert is being tendered for deposition.

E. Depositions of expert witnesses are to be completed by January 20, 2017. The parties may propose a more extended schedule for case-specific expert depositions concerning bellwether trials after the first set trial.

F. The parties intend that the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply to all cases, whether pending in state or federal court. Accordingly, in order to foster cooperation between the MDL and state court litigations, counsel for the parties shall jointly seek to enter in all state court proceedings, whether already filed or hereafter filed, an order expressly agreeing that the limitations on expert discovery set forth in Rule 26(b)(4)(A)-(D) shall apply in all such state court proceedings.

IV. SUMMARY JUDGMENT & DAUBERT MOTIONS IN ABBVIE BELLWETHER CASES

A. Any motion for summary judgment or for partial summary judgment shall be filed on or before February 17, 2017.

B. Any motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before February 17, 2017.

C. Responses to summary judgment motions and *Daubert* motions shall be filed on or before March 20, 2017.

D. Replies in support of summary judgment motions and *Daubert* motions shall be filed on or before April 10, 2017.

E. The Court will endeavor to rule on any summary judgment and *Daubert* motions relating to the earlier bellwether trials by May 8, 2017 and on the remaining motions at reasonable intervals after that.

V. INITIAL ABBVIE BELLWETHER TRIAL SCHEDULE

The Court will try six AbbVie-only bellwether trials beginning on June 5, 2017. The Court's intention since the entry of the first version of this AbbVie bellwether trial schedule has been to try these six bellwether trials continuously, in immediate succession to each other, with a short break between each trial. The previous iteration of this order, dated December 11, 2015, set the six trials to begin on dates at approximate five-week intervals starting on June 5, 2017. The Court set that schedule anticipating that each case would take approximately four weeks to try. The Court is now informed and believes that each trial will take approximately two to three weeks to try.

Consistent with the Court's stated intention to try cases continuously starting on June 5, 2017, counsel are directed to be ready to try each of the bellwether cases at approximate four-week intervals starting on that date. This should give counsel approximately a week after each

trial to finalize preparation for the next trial. Thus counsel should anticipate that the bellwether trials should be trial-ready on the following dates: June 5, 2017; July 3, 2017 (though the trial likely will not start until July 5, 2017 due to the July 4 holiday); July 31, 2017; August 28, 2017; September 25, 2017; and October 23, 2017. The start date of any given trial may be adjusted if the previous trial proves to last longer than the estimated two to three weeks. For this reason, counsel should anticipate that they will need to be available to try AbbVie-only bellwether cases from June 5, 2017 through the end of 2017.

As stated in the previous version of this order, this schedule is subject to adjustment if, among other reasons, summary judgment is granted for defendants in some but not all of the selected bellwether trials.

IT IS SO ORDERED.

Date: October 27, 2016

MATTHEW F. KENNELLY
United States District Judge

Exhibit A

#	Case Name	TRT User	MDL NDIL Case No.	Primary Counsel
1	Adkins, John v. AbbVie Inc. et al.	Adkins, John	14-cv-09753	The Levensten Law Firm
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5	Cripe, Robert v. AbbVie Inc. et al.	Cripe, Robert	14-cv-00843	Schachter Hendy & Johnson
6	Deel, David v. AbbVie Inc. et al.	Deel, David	14-cv-10435	Morgan & Morgan
7	Dial, Corliss v. AbbVie Inc. et al.	Dial, Gene	15-cv-02190	Anapol Schwartz
8	Diesslin, Theodor v. AbbVie Inc. et al.	Diesslin, Theodor	14-cv-06770	Burg Simpson Eldredge Hersh & Jardine
9	Ennis, Michael v. AbbVie Inc. et al.	Ennis, Michael	15-cv-00624	Seeger Weiss LLP
10	Frost, Cecile v. AbbVie Inc. et al.	Frost, Cecile	15-cv-01484	Pogust Braslow & Millrood, LLC
11	Garcia, Froylan v. AbbVie Inc. et al.	Garcia, Froylan	15-cv-01086	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
12	Hession, Kevin v. AbbVie Inc. et al.	Hession, Kevin	14-cv-08222	Douglas & London
13	Konrad, Jeffrey v. AbbVie Inc. et al.	Konrad, Jeffrey	15-cv-00966	Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
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16	Martina, Randy v. AbbVie Inc. et al.	Martina, Randy	14-cv-08598	Weitz & Luxenberg
17	Mitchell, Jesse v. AbbVie Inc. et al.	Mitchell, Jesse	14-cv-09178	Goldberg & Osborne
18	Myers, Arthur v. AbbVie Inc. et al.	Myers, Arthur	15-cv-01085	Ross Feller Casey
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20	Patridge, Jesse v. AbbVie Inc. et al.	Patridge, Jesse	14-cv-07960	Simmons Hanly Conroy LLC
21	Romanik, Michael v. AbbVie Inc. et al.	Romanik, Michael	14-cv-08202	Ross Feller Casey
22	Rowley, Robert v. AbbVie Inc. et al.	Rowley, Robert	15-cv-02760	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
23	Shepherd, Dale v. AbbVie Inc. et al.	Shepherd, Dale	15-cv-00404	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
24	Truax, Roccie v. AbbVie Inc. et al.	Truax, Roccie	14-cv-02935	Levin Simes LLP
25	Trusty, Joe v. AbbVie Inc. et al.	Trusty, Joe	15-cv-01015	Levin Simes LLP
26	White, Peggy v. AbbVie Inc. et al.	White, Dave	14-cv-03818	Janet Jenner & Suggs

#	Case Name	TRT User	MDL NDIL Case No.	Primary Counsel
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2	Blanck, Lance v. AbbVie Inc. et al.	Blanck, Lance	15-cv-01077	Ross Feller Casey
3	Cannon, Sr. Richard v. AbbVie Inc. et al.	Cannon, Sr., Richard	15-cv-01835	Onder, Shelton, O'Leary & Peterson
4	Cribbs, Edward v. AbbVie Inc. et al.	Cribbs, Edward	15-cv-01056	Weitz & Luxenberg
5	Cripe, Robert v. AbbVie Inc. et al.	Cripe, Robert	14-cv-00843	Schachter Hendy & Johnson
6	Deel, David v. AbbVie Inc. et al.	Deel, David	14-cv-10435	Morgan & Morgan
7	Dial, Corliss v. AbbVie Inc. et al.	Dial, Gene	15-cv-02190	Anapol Schwartz
8	Diesslin, Theodor v. AbbVie Inc. et al.	Diesslin, Theodor	14-cv-06770	Burg Simpson Eldredge Hersh & Jardine
9	Ennis, Michael v. AbbVie Inc. et al.	Ennis, Michael	15-cv-00624	Seeger Weiss LLP
10	Frost, Cecile v. AbbVie Inc. et al.	Frost, Cecile	15-cv-01484	Pogust Braslow & Millrood, LLC
11	Garcia, Froylan v. AbbVie Inc. et al.	Garcia, Froylan	15-cv-01086	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
12	Hession, Kevin v. AbbVie Inc. et al.	Hession, Kevin	14-cv-08222	Douglas & London
13	Konrad, Jeffrey v. AbbVie Inc. et al.	Konrad, Jeffrey	15-cv-00966	Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
14	LaForest, Kenneth v. AbbVie Inc. et al.	LaForest, Kenneth	15-cv-00692	Seeger Weiss LLP
15	Long, Anthony v. AbbVie Inc. et al.	Long, Anthony	14-cv-06996	The Levensten Law Firm
16	Martina, Randy v. AbbVie Inc. et al.	Martina, Randy	14-cv-08598	Weitz & Luxenberg
17	Mitchell, Jesse v. AbbVie Inc. et al.	Mitchell, Jesse	14-cv-09178	Goldberg & Osborne
18	Myers, Arthur v. AbbVie Inc. et al.	Myers, Arthur	15-cv-01085	Ross Feller Casey
19	Nolte, Robert v. AbbVie Inc. et al.	Nolte, Robert	14-cv-08135	Goldberg & Osborne
20	Patridge, Jesse v. AbbVie Inc. et al.	Patridge, Jesse	14-cv-07960	Simmons Hanly Conroy LLC
21	Romanik, Michael v. AbbVie Inc. et al.	Romanik, Michael	14-cv-08202	Ross Feller Casey
22	Rowley, Robert v. AbbVie Inc. et al.	Rowley, Robert	15-cv-02760	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
23	Shepherd, Dale v. AbbVie Inc. et al.	Shepherd, Dale	15-cv-00404	Robert J. Debry & Associates; Burg Simpson Eldredge Hersh & Jardine
24	Truax, Roccie v. AbbVie Inc. et al.	Truax, Roccie	14-cv-02935	Levin Simes LLP
25	Trusty, Joe v. AbbVie Inc. et al.	Trusty, Joe	15-cv-01015	Levin Simes LLP
26	White, Peggy v. AbbVie Inc. et al.	White, Dave	14-cv-03818	Janet Jenner & Suggs

APPENDIX “19D”

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

IN RE: TESTOSTERONE REPLACEMENT THERAPY PRODUCTS LIABILITY LITIGATION	**CASE NO. 1:14-CV-01748** **MDL 2545**
	JUDGE MATTHEW F. KENNELLY
This Document Relates to:	
ALL ACTIONS INVOLVING CLAIMS AGAINST ABBVIE DEFENDANTS	

CASE MANAGEMENT ORDER NO. 134
(STAY OF CASES INVOLVING CLAIMS AGAINST ABBVIE DEFENDANTS)

On September 10, 2018, the Court was advised by counsel for plaintiffs and counsel for defendants AbbVie Inc., Abbott Laboratories, Solvay Pharmaceuticals, Inc., and Unimed Pharmaceuticals, LLC ("AbbVie Defendants"), that the parties have entered into a Confidential Term Sheet regarding a potential global settlement, including all filed cases involving claims against one or more AbbVie Defendants. Based on this report, the Court directs that all proceedings involving plaintiffs and one or more AbbVie Defendants will be stayed, except as hereafter ordered by the Court, so that the parties may devote their efforts to finalizing a Master Settlement Agreement. The parties are directed to report on a regular basis to Special Master Randi Ellis regarding their progress. These parties are relieved from any dates and deadlines relating to AbbVie Defendants in any Case Management Order.

IT IS SO ORDERED.

Date: September 10, 2018

MATTHEW F. KENNELLY
UNITED STATES DISTRICT JUDGE

APPENDIX “20A”

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

IN RE: WHIRLPOOL CORP. FRONT-LOADING WASHER, PRODUCTS LIABILITY LITIGATION,	:	CASE NO. 1:08WP65000 MDL No. 2001

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Pursuant to the case management conference held on March 27, 2009, this case is assigned to the Complex Track and the Court orders as follows:

APPOINTMENT OF PLAINTIFFS' CO-LEAD COUNSEL, LIAISON COUNSEL AND STEERING COMMITTEE:

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Liaison Counsel:

Brian Ruschel
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Mark Schlachet
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1001 Lakeside Avenue
Cleveland , OH 44114

Schwartz A Steven
Chimicles & Tikellis LLP
One Haverford Centre
Haverford , PA 19041

CASE MANAGEMENT DEADLINES:

1) Deadline to add parties or amend pleadings: April 30, 2009;

2) Deadline to file motion to dismiss: March 13, 2009

2) Response to motion to dismiss: April 3, 2009;

3) Reply supporting motion to dismiss: April 17, 2009;

4) Oral argument on motion to dismiss: May 1, 2009, at 8:30 a.m.

5) Deadline for Whirlpool to complete rolling productions of documents: May 15, 2009;

6) Plaintiffs' depositions to be completed: June 12, 2009;

7) Parties to identify experts, if any, and provide Rule 26(a)(2) reports: July 17, 2009;

8) Identification of rebuttal experts or rebuttal opinions and provide or supplement any Rule 26(a)(2) reports: August 17, 2009;

9) Deadline to depose experts: September 18, 2009;

CLASS CERTIFICATION BRIEFING:

1) Plaintiffs' motion/brief for class certification in *Glazer v. Whirlpool*: September 30, 2009;

2) Defendant's response to motion/brief: October 28, 2009;

3) Plaintiffs reply supporting motion/brief for class certification: November 13,2009;

4) Class certification hearing and status conference: December 2, 2009, at,

at 12:00 noon, Courtroom 18A (Cleveland)

5) Deadline for filing all class certification motions for remaining MDL cases: January 18, 2010;

6) Opposition to class certification motions for remaining MDL cases: February 18, 2010;

7) Replies supporting all class certification motions for remaining MDL cases: March 2, 2010;

8) Class certification hearing on remaining MDL cases: March 10, 2010, at 12:00 noon, Courtroom 18A Cleveland);

MISCELLANEOUS DATES: (DISPOSITIVE MOTIONS, FINAL DISCOVERY, ETC.)

1) Deadline to complete discovery to support/defend dispositive motion: December 31, 2009;

2) Deadline for parties to conduct mediation, if mutually agreeable: January 29, 2010;

3) Dispositive motion deadline: January 11, 2010;

4) Opposition to dispositive motion: February 7, 2010;

5) Replies supporting dispositive motion: February 15, 2010;

6) Final discovery deadline: April 30, 2010;

7) Deadline for *Glazer* parties to meet and confer regarding stipulations of fact or law: May 7, 2010;

8) Remand of non-Ohio actions to transferor courts: May 7, 2010;

9) Deadline for *Glazer* parties to file joint stipulation and trial order, witness lists and exhibit lists: May 14, 2010;

10) Status conferences set for May 14, 2009, August 26, 2009 and November 4, 2009, at 12:00 noon each date in Chambers 18A (Cleveland);

11) Final pretrial conference in *Glazer*: May 19, 2010, at 3:00 p.m., Chambers 18A (Cleveland);

12) Jury trial in *Glazer*: May 24, 2010, at 8:00 a.m., Courtroom 18A (Cleveland).

IT IS SO ORDERED.

Dated: March 31, 2009

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

APPENDIX “21A”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN) PRODUCTS LIABILITY LITIGATION	*	**MDL NO. 2592**
	*	**SECTION L**
	*	
	*	**JUDGE ELDON E. FALLON**
	*	
	*	**MAG. JUDGE SHUSHAN**
**********	*	

THIS DOCUMENT RELATES TO: ALL CASES

PRETRIAL ORDER #1
Setting Initial Conference

It appearing that civil actions listed on Schedule A, attached hereto, which were transferred to this Court by order of the Judicial Panel on Multi District Litigation pursuant to its order of December 12, 2014 merit special attention as complex litigation, the following Order is issued:

1. INTRODUCTION—It is not yet known how many attorneys will eventually join this litigation, but we can assume it will be a large number. The attorneys involved in a multi-district case, such as this, will probably be laboring together for some time in the future with work progressively becoming more complicated and exacting. Some will know each other and some will be complete strangers. Undoubtedly each has a different style and personality. It is likely that during the course of this litigation their working relationship will occasionally be strained, communication derailed, and mutual trust questioned. The just and efficient resolution of this litigation will depend in large measure on the way the attorneys comport themselves and overcome the temptations and trepidations inherent in a case of this magnitude. The Manual for Complex Litigation recognizes that judicial involvement in managing complex litigation does not lessen the duties and responsibilities of the attorneys. To the contrary, the added demands

and burdens of this type of litigation place a premium on professionalism and require counsel to fulfill their obligations as advocates in a manner that will foster and sustain good working relations among fellow counsel and the Court. The Court expects, indeed insists, that professionalism and courteous cooperation permeate this proceeding from now until this litigation is concluded. The court record should never be the repository of ill- chosen words arising out of a sense of frustration over real or imagined issues. Because of the high level of competence and experience of attorneys who are generally involved in multi-district litigation, this Court is confident that this objective will be achieved without judicial intervention.

2. APPLICABILITY OF ORDER—Prior to the initial pretrial conference and entry of a comprehensive order governing all further proceedings in this case, the provisions of this Order shall govern the practice and procedure in those actions that were transferred to this Court by the Judicial Panel on Multi District Litigation pursuant to its order of December 12, 2014 listed on Schedule A. This Order also applies to all related cases filed in all sections of the Eastern District of Louisiana and will also apply to any "tag-along actions" later filed in, removed to, or transferred to this Court.

3. CONSOLIDATION—The civil actions listed on Schedule A are consolidated for pretrial purposes. Any “tag-along actions” later filed in, removed to or transferred to this Court, or directly filed in the Eastern District of Louisiana, will automatically be consolidated with this action without the necessity of future motions or orders. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the

effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

4. DATE OF INITIAL CONFERENCE AND AGENDA FOR CONFERENCE—Matters relating to pretrial and discovery proceedings in these cases will be addressed at an initial pretrial conference to be held on January 29, 2015 at 9:00 a.m. in Judge Eldon E. Fallon's courtroom, Room C- 468, United States Courthouse, 500 Poydras Street, New Orleans, Louisiana. Counsel are expected to familiarize themselves with the Manual for Complex Litigation, Fourth ("MCL 4th") and be prepared at the conference to suggest procedures that will facilitate the expeditious, economical, and just resolution of this litigation. The items listed in MCL 4th Sections 22.6, 22.61, 22.62, and 22.63 shall, to the extent applicable, constitute a tentative agenda for the conference. Counsel shall confer and seek consensus to the extent possible with respect to the items on the agenda, including a proposed discovery plan, amendment of pleadings, consideration of any class action allegations and motions, and be prepared to discuss the mode of trial. If the parties have any suggestions as to any case management orders or additional agenda items, these shall be faxed to (504) 589-6966 or otherwise submitted to the Court on or before January 27, 2015.

5. POSITION STATEMENT—Plaintiffs and defendants shall submit to the Court on or before January 20, 2015 a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered in evidence against a party in later proceedings. The parties' statements shall list all

pending motions, as well as all related cases pending in state or federal court, together with their current status, including any discovery taken to date, to the extent known. The parties shall be limited to one such submission for all plaintiffs and one such submission for all defendants.

6. APPEARANCE AT INITIAL CONFERENCE—Each party represented by counsel shall appear at the initial pretrial conference through their attorney who will have primary responsibility for the party's interest in this litigation. Parties not represented by counsel may appear in person or through an authorized and responsible agent. To minimize costs and facilitate a manageable conference, parties with similar interests may agree, to the extent practicable, to have an attending attorney represent their interest at the conference. A party, by designating an attorney to represent the party's interest at this initial conference, will not be precluded from personally participating or selecting other representation during the future course of this litigation, nor will attendance at the conference waive objections to jurisdiction, venue or service.

7. SERVICE—Prior to the initial conference, service of all papers shall be made on each of the attorneys on the Panel Attorney Service List attached hereto and designated as Schedule B. Counsel on this list are requested to forward a copy of this order to other attorneys who should be notified of the conference. Any attorney who wishes to have his/her name added to or deleted from such Panel Attorney Service List may do so upon request to the Clerk of this Court and notice to all other persons on such service list. Parties who are not named as parties in this litigation but may later be joined as parties or who are parties in related litigation pending in other federal or state courts are invited to attend in person or through counsel. Liaison counsel

for the parties, if appointed before the conference, shall present to the Court at the initial conference a list of attorneys and their office addresses, phone and fax numbers, and E-mail addresses.

8. EXTENSION AND STAY—Each defendant is granted an extension of time for responding by motion or answer to the complaint(s) until a date to be set by this Court. Pending the initial conference and further orders of this Court, all outstanding discovery proceedings are stayed, and no further discovery shall be initiated. Moreover, all pending motions must be renoticed for resolution on a motion day or days after the Court's initial conference herein.

9. MASTER DOCKET FILE—Any pleading or document which is to be filed in any of these actions shall be filed with the Clerk of this Court and not in the transferor court. The Clerk of this Court will maintain a master docket case file under the style "In Re: XARELTO (RIVAROXABAN) PRODUCTS LIABILITY LITIGATION" and the identification "MDL No. 2592." When a pleading is intended to be applicable to all actions, this shall be indicated by the words: "This Document Relates to All Cases." When a pleading is intended to apply to less than all cases, this Court's docket number for each individual case to which the document number relates shall appear immediately after the words "This Document Relates to." The following is a sample of the pleading style:

IN RE: XARELTO (RIVAROXABAN) PRODUCTS LIABILITY LITIGATION	MDL No. 2592 SECTION: L JUDGE FALLON MAG. JUDGE SHUSHAN
THIS DOCUMENT RELATES TO:	

10. FILING—All documents filed in this Court must be filed electronically pursuant to Local Rule 5.7 E and this Court's Administrative Procedures for Electronic Filing. Attorneys may register for electronic filing at www.laed.uscourts.gov/case-information/cmecf/e-file-registration. An attorney who, due to exceptional circumstances, is unable to comply with the requirements of electronic filing, may apply to the Court for an order granting an exemption. The application shall be in writing, filed with the Clerk of Court, and shall state the reason for the attorney's inability to comply.

Pro se litigants who have not been authorized to file electronically shall continue to file their pleadings with the Clerk of this Court in the traditional manner, on paper.

The Clerk of Court is directed to make all entries on the master docket sheet with a notation listing the cases to which the document applies, except that a document closing a case will also be entered on the individual docket sheet. All documents shall be filed in the master file.

11. DOCKETING—When an action that properly belongs as part of *In Re: Xarelto (Rivaroxaban) Products Liability Litigation* is hereinafter filed in the Eastern District of Louisiana or transferred here from another court, the Clerk of this Court shall:

a. File a copy of this Order in the separate file for such action;

b. Make an appropriate entry on the master docket sheet;

c. Forward to the attorneys for the plaintiff in the newly filed or transferred case a copy of this Order;

d. Upon the first appearance of any new defendant, forward to the attorneys for the defendant in such newly filed or transferred cases a copy of this Order.

12. APPEARANCES IN LITIGATION—Counsel who appeared in a transferor court prior to transfer need not enter an additional appearance before this Court. Moreover, attorneys admitted to practice and in good standing in any United States District Court are admitted pro hac vice in this litigation, and the requirements of Local Rules 83.2.6E and 83.2.7 are waived. Association of local counsel is not required.

13. PRESERVATION OF EVIDENCE—All parties and their counsel are directed to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things in possession, custody and control of the parties to this action, and any employees, agents, contractors, carriers, bailees, or other nonparties who possess materials reasonably anticipated to be subject to discovery in this action. "Documents, data, and tangible things" is to be interpreted broadly to include writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, electronic messages, voice mail, E-mail, telephone message records or logs, computer and network activity logs, hard drives, backup data, removable computer storage media such as tapes, discs and cards, printouts, document image files, Web pages, databases, spreadsheets, software, books, ledgers, journals, orders, invoices, bills, vouchers, checks statements, worksheets, summaries, compilations, computations, charts, diagrams, graphic presentations, drawings, films, charts, digital or chemical process photographs, video, phonographic, tape or digital recordings or transcripts thereof, drafts, jottings and notes, studies or drafts of studies or other similar such material. Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, and metadata, is also included in this definition. Preservation includes the obligation not to alter any such thing as to its form, content or manner of filing. Until the parties reach an agreement on a

preservation plan or the Court orders otherwise, each party shall take reasonable steps to preserve all documents, data and tangible things containing information potentially relevant to the subject matter of this litigation. Each counsel is under an obligation to the Court to exercise all reasonable efforts to identify and notify parties and nonparties, including employees of corporate or institutional parties of the contents of this paragraph. Failure to comply may lead to dismissal of claims, striking of defenses, imposition of adverse inferences or other dire consequences.

Before any devices, tangible things, documents, and other records which are reasonably calculated to lead to admissible evidence are destroyed, altered, or erased, counsel shall confer to resolve questions as to whether the information should be preserved. If counsel are unable to agree, any party may apply to this Court for clarification or relief from this Order upon reasonable notice.

14. FILING OF DISCOVERY REQUESTS—In accordance with Rule 5(d) of the Federal Rules of Civil Procedure, discovery requests and responses are not to be filed with the Clerk nor sent to the Judge's Chambers, except when specifically ordered by the Court to the extent needed in connection with a motion.

15. LIAISON COUNSEL—It is the intent of the Court to appoint liaison counsel for the parties. Liaison counsel shall be authorized to receive orders and notices from the Court on behalf of all parties within their liaison group, and pending further orders of the Court, shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison group and perform other tasks determined by the Court. Liaison counsel shall be

required to maintain complete files with copies of all documents served upon them and shall make such files available to parties within their liaison group upon request. Liaison counsel are also authorized to receive orders and notices from the Judicial Panel on Multi District Litigation pursuant to Rule 5.2(e) of the Panel's Rules of Procedure or from the transferee court on behalf of all parties within their liaison group and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison group. Plaintiffs' liaison counsel shall coordinate the establishment of a document depository, real or virtual, to be available to all participating plaintiffs' counsel. The expenses incurred in performing the services of liaison counsel shall be shared equally by all members of the liaison's group in a manner agreeable to the parties or set by the Court failing such agreement. Applications/nominations for the designation of liaison must be filed with the Eastern District of Louisiana's Clerk's Office either electronically or on paper (original and one copy) on or before January 15, 2015. The applications and nominations must also be served upon counsel named in Schedule B on the day of filing. No submissions longer than three (3) pages will be considered. Appointment of liaison counsel shall be made by the Court after full consideration of the proposals. At the initial conference, liaison counsel and/or the parties should be prepared to discuss any additional needs for an organizational structure or any additional matters consistent with the efficient handling of this matter. Henceforth, liaison counsel for all parties shall meet and confer prior to the Court conferences; prepare agendas for the conferences and submit them to the Court three days before the conference; and report at the conference regarding the status of the case.

16. PLAINITFFS' STEERING COMMITTEE—It is also the Court's intent to appoint a Plaintiffs' Steering Committee ("PSC") to conduct and coordinate the discovery stage of this

litigation with the defendant's representatives or committee. Applications/nominations for the PSC positions must be filed with the Eastern District of Louisiana's Clerk's Office either electronically or on paper (original and one copy) on or before February 2, 2015. The applications and nominations must also be served upon counsel named in Schedule B on the day of filing. The main criteria for membership in the PSC will be: (a) willingness and availability to commit to a time-consuming project; (b) ability to work cooperatively with others; and (c) professional experience in this type of litigation (d) willingness to commit the necessary resources to pursue this matter. Applications/nominations should succinctly address each of the above criteria as well as any other relevant matters. No submissions longer than four (4) pages will be considered. The Court will only consider attorneys who have filed a civil action in this litigation, and the application/nomination should include a list of cases in which the attorney appears as counsel.

Objections may be made to the appointment of a proposed applicant/nominee. Nevertheless, the Court will entertain only written objections to any application/nomination. These must be filed with the Clerk of Court either electronically or on paper (original and one copy) on or before February 5, 2015. The objections, if there be any, must be short, yet thorough, and must be supported by necessary documentation. As with the application/nomination, any objection must be served on all counsel appearing on the attached list on the day of filing.

The PSC will have the following responsibilities:

Discovery

1. Initiate, coordinate, and conduct all pretrial discovery on behalf of plaintiffs in all actions which are consolidated with the instant multidistrict litigation.
2. Develop and propose to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all plaintiffs.
3. Cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial discovery of relevant issue found in the pleadings of this litigation. Similar requests, notices, and subpoenas may be caused to be issued by the PSC upon written request by an individual attorney in order to assist him/her in the preparation of the pretrial stages of his/her client's particular claims.
4. Conduct all discovery in a coordinated, efficient, and consolidated manner on behalf and for the benefit of all plaintiffs. No attorney for a plaintiff may be excluded from attending the examination of witnesses and other proceedings. Such attorney may suggest questions to be posed to deponents through the designated PSC members provided that such questions are not repetitious.

Hearings and Meeting

1. Call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the

Court. Initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matter(s) pertaining to pretrial proceedings.

2. Examine witnesses and introduce evidence at hearings on behalf of plaintiffs.

3. Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the Court, subject of course to the right of any plaintiff's counsel to present non-repetitive individual or different positions.

Miscellaneous

1. Submit and argue any verbal or written motions presented to the Court or Magistrate on behalf of the PSC as well as oppose when necessary any motions submitted by the defendant or other parties which involve matters within the sphere of the responsibilities of the PSC.

2. Negotiate and enter into stipulations with Defendants regarding this litigation. All stipulations entered into by the PSC, except for strictly administrative details such as scheduling, must be submitted for Court approval and will not be binding until the Court has ratified the stipulation. Any attorney not in agreement with a non-administrative stipulation shall file with the Court a written objection thereto within ten (10) days after he/she knows or should have reasonably become aware of the stipulation. Failure to object within the term allowed shall be deemed a waiver and the stipulation will automatically be binding on that party.

3. Explore, develop, and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation.
4. Maintain adequate files of all pretrial matters and have them available, under reasonable terms and conditions, for examination by plaintiffs or their attorneys.
5. Prepare periodic status reports summarizing the PSC's work and progress. These reports shall be submitted to the Plaintiffs' Liaison Counsel who will promptly distribute copies to the other plaintiffs' attorneys.
6. Perform any task necessary and proper for the PSC to accomplish its responsibilities as defined by the Court's orders.
7. Perform such other functions as may be expressly authorized by further orders of this Court.
8. Reimbursement for costs and/or fees for services will be set at a time and in a manner established by the Court after due notice to all counsel and after a hearing.

17. DEFENDANT(S) STEERING COMMITTEE—The Court will consider the recommendations of the defendant(s) for membership on the defendant(s) steering committee. Defendant(s) Steering Committee will have the duties and responsibilities described in Paragraph 17 of this order as it pertains to this respective group.

18. MDL 2592 WEBSITE—A website particular to MDL 2592 has been created and can be accessed by going to this Court's website located at www.laed.uscourts.gov and clicking on "MDL & Mass/Class Action," and then clicking on the link to "Xarelto (Rivaroxaban) Products Liability Litigation, 14-MD-2592 (Hon. Eldon E. Fallon)" located under the" Multi-District Litigation (MDL) Cases" heading. The MDL 2592 website may also be accessed directly by going to www.laed.uscourts.gov/xarelto. The website will contain forms, court orders, minute entries, a calendar of upcoming events, and other relevant information.

19. COMMUNICATION WITH THE COURT—Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel. Nevertheless, the Court recognizes that cooperation by and among plaintiffs' counsel and by and among defendant's counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between plaintiffs' counsel and among and between defendant's counsel shall not be deemed a waiver of the attorney-client privilege or the protection afforded attorney's work product, and cooperative efforts contemplated above shall in no way be used against any plaintiff by any defendant or against any defendant by any plaintiff. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

New Orleans, Louisiana this 17th day of December, 2014.

UNITED STATES DISTRICT JUDGE

Attachments

IN RE: XARELTO (RIVAROXABAN)
PRODUCTS LIABILITY LITIGATION MDL No. 2592

SCHEDULE A

Northern District of Florida

NICHOLSON v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 5:14-00173

Southern District of Florida

PACKARD v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 0:14-61448

Southern District of Illinois

LEMP, ET AL. v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 3:14-00987
HANEY v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 3:14-00988
LEACH v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 3:14-00989
RUCKER v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 3:14-01026
PENNELL, ET AL. v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 3:14-01040
MCMUNN v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 3:14-01042
BIVEN v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 3:14-01050
MULRONEY v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 3:14-01073

Eastern District of Kentucky

BOLTON, ET AL. v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 0:14-00146

Western District of Kentucky

COX v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 3:14-00579

Eastern District of Louisiana

BRASWELL v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 2:14-02258

Eastern District of New York

JEFFCOAT v. JANSSEN REASEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 1:14-04524
GRIGGS, ET AL. v. JANSSEN RESEARCH & DEVELPMENT LLC, ET AL.,
C.A. No. 1:14-04841
BOYNTON, ET AL. v. JANSSEN RESEARCH & DEVELPMENT LLC, ET AL.,
C.A. No. 1:14-05133
USELTON v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 1:14-05728
GREEN, ET AL. v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 1:14-05871

District of Utah

ARMSTRONG, ET AL. v. JANSSEN RESEARCH & DEVELOPMENT, ET AL.,
C.A. No. 2:14-00599

District of Vermont

MCGOWAN v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET AL.,
C.A. No. 2:14-00159

Southern District of West Virginia

DALRYMPLE v. JANSSEN RESEARCH & DEVELOPMENT LLC, ET. AL.,
C.A. No. 5:14-25893

SCHEDULE B

Plaintiffs' Counsel

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Plaintiffs: Ruth E. McGowan as the Executrix for and on behalf of the heirs of the estate of Thomas C. Dunkley, Edwin Nicholson, Sharon Rucker as the Administrator for and on behalf of the heirs of the Estate of Marion Rucker, Jr.

Michael London
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Plaintiffs: Shirley Boynton & James Boynton, Harry Griggs and Joseph Griggs, on behalf of the Estate of Charles Griggs, deceased, and Harry Griggs and Joseph Griggs, Individually, Julia Green and Arthur Green, Carolyn Uselton, Jeanne Jeffcoat

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Plaintiff: Ronald Dalrymple

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Plaintiffs: Christopher Braswell, Dorothy Leach, William F. Haney, Mary K. Lemp and Charles Lemp, Jr., Stanley Pennell and Nancy Pennell, Michael Mulroney

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Plaintiff: Robert Biven

Scott R. Bickford, T.A.
Lawrence J. Centola, III
Jason Z. Landry
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Plaintiffs: Joann Varnado and Christian Varnado, individually and on behalf of decedent Gerald Varnado

Eve S. Reardon, Esq.
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Plaintiffs: Joann Varnado and Christian Varnado, individually and on behalf of decedent Gerald Varnado

Morris Bart
Daniel B. Snellings
Mekel Alvarez
MORRIS BART, LLC
909 Poydras Street, 20th Floor
New Orleans, LA 70112
Plaintiffs: James J. Brien Sr. and Dolly S. Brien, Linda Randazzo, individually, and on behalf of Lawrence Randazzo, Samantha Davis, Claudette Brown, Patricia Ferguson, Douglas and Shirley Silvey, Lionel St. Amand

Galen M. Hair, T.A.
Benjamin C. Varadi
VARADI, HAIR & CHECKI, LLC
650 Poydras St., Ste. 1550
New Orleans, LA 70130
Plaintiffs: Estate of Cornelius McLain Goodwin III, Rose Marie Goodwin, Steven Wayne Goodwin, Craig McLain Goodwin, Liza Ann Gatson and Cornelius McLain Goodwin IV

Ronald E. Johnson, Jr.
Sarah N. Lynch
SCHACHTER, HENDY & JOHNSON, PSC
909 Wright's Summit Parkway #210
Ft. Wright, KY 41011
Plaintiffs: Tony Mathena and Karen Mathena

Amy M. Carter
SIMON GREENSTONE PANATIER BARTLETT, P.C.
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Dallas, TX 75204
Plaintiff: Marilyn S. Haney, as the Executrix for and on Behalf of the Heirs of the Estate of Bobby N. Haney

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Steven Davis
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Plaintiff: Theodore Van Dorn, Jr.; Howard Mize

M. Elizabeth Graham
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Wilmington, DE 19801
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Fax: (302) 722-7001
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Plaintiff: William Sandusky

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Fax: (303) 708-0527
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Kristian Rasmussen
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Chad Joseph Primeaux
Douglas Robert Plymale
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Plaintiff: William Heffker

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Defendants' Counsel

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North Rhine-Westphalia, Germany

APPENDIX “21B”

MINUTE ENTRY

FALLON, J.

MAY 14, 2019

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN) PRODUCTS LIABILITY LITIGATION	*	MDL 2592
	*	SECTION L
THIS DOCUMENT RELATES TO ALL CASES	*	JUDGE ELDON E. FALLON
	*	MAG. JUDGE NORTH

* *

THIS DOCUMENT RELATES TO ALL CASES

A status conference was held on this date in the Courtroom of Judge Eldon E. Fallon. At the conference, a representative from Plaintiffs' Liaison Counsel ("PLC"), Gerald Meunier, reported to the Court on the topics set forth in the Proposed Agenda. This status conference was transcribed by Ms. Mary Thompson, Official Court Reporter. Counsel may contact Ms. Thompson at (504) 589-7783 to request a copy of the transcript. A summary of the status conference follows.

1. SETTLEMENT

On May 6, 2019, the Plaintiffs' Leadership and Defendants entered into a final Master Settlement Agreement for resolution of Xarelto product liability claims covered by the agreement. The Master Settlement Agreement establishes the deadline for Plaintiffs to enroll in the Settlement Program on or before August 5, 2019. Enrollment in the program shall be done via BrownGreer MDL Centrality website at https://www.mdlcentrality.com/mdl2592/, and a copy of the Master

JS10: 01:06

Settlement Agreement is available on that website. Additional information regarding the Master Settlement Agreement will be available on the BrownGreer MDL Centrality website.

2. PRE-TRIAL ORDERS

Since the filing of Joint Report No. 36 on March 8, 2019, the Court has not issued any additional Pre-Trial Orders.

3. CASE MANAGEMENT ORDERS:

On March 25, 2019, the Court issued Case Management Order No. 9 (Stay of Proceedings) [Rec. Doc. 12900]; Case Management Order No. 10 (Registration) [Rec. Doc. 12901] and 10(A) (Registration Forms) [Rec. Doc. 12905; and Case Management Order No. 11 (Docket Control Order) [Rec. Doc. 12902]. Section 2C of CMO 10 requires that all specific supplemental registration information must be submitted by June 8, 2019. Registration on the BrownGreer MDL Centrality website is required of all plaintiffs and not just plaintiffs who decide to enroll in the settlement program. Failure to timely provide the registration information may result in dismissal of the action with prejudice.

4. COUNSEL CONTACT INFORMATION FORM

All counsel in the MDL are required to complete the Counsel Contact Information Form attached to PTO No. 4A, and forward it to the appropriate Liaison Counsel. This information must be kept current by counsel providing the information, and will be relied upon throughout the litigation.

5. PLAINTIFF AND DEFENDANT FACT SHEETS

As noted above, on March 25, 2019, the Court issued Case Management Order No. 9 (Stay of Proceedings) [Rec. Doc. 12900]; Case Management Order No. 10 (Registration) [Rec. Doc.

12901] and 10(A) (Registration Forms) [Rec. Doc. 12905; and Case Management Order No. 11 (Docket Control Order) [Rec. Doc. 12902].

6. SERVICE OF PROCESS ON DEFENDANTS

On March 16, 2018, the Court entered an Order [Rec. Doc. 8926] vacating and replacing the March 24, 2015 Order [Rec. Doc. 4217] and the February 15, 2018 Order [Rec. Doc. 8628] and relates to service of process, and addresses a filing backlog in the MDL over the last three months. For these backlogged cases, the March 16, 2018 Order extends the deadline for service of process, allowing the plaintiffs, for that defendant to whom the summons was addressed, sixty (60) days from the date on which the Court issues the summons to serve that defendant. This extension only applies when the plaintiff presents or has presented the properly addressed summons to the clerk for signature and seal at the time of the filing of the complaint.

On May 7, 2019, the Court entered an Order [Rec. Doc. 13472] to address a backlog in the entry of Summons for recently filed cases. Cases that were already docketed in the MDL as of May 7, 2019 will have 75 days from that date to serve the Complaint with a Summons.

7. PRESERVATION ORDER

On May 4, 2015, the Court issued Pre-Trial Order No. 15 [Rec. Doc. 897], a Consent Order Regarding the Preservation of Documents and Electronically Stored Information. Pre-Trial Order No. 15 modifies paragraph 13 of Pre-Trial Order No. 1 relating to preservation of evidence. Further, the Court issued Pre-Trial Order No. 15B on October 21, 2015 [Rec. Doc. 1477] regarding the obligation of all parties to preserve voicemail, instant messages sent or received on an instant messaging system, or text messages sent or received on a cellular phone, smartphone, tablet or other mobile device. Pre-Trial Order 15B vacated previously entered Pre-Trial Order 15A. [Rec. Doc. 1301]. On March 25, 2019, the Court issued Case Management Order 11 [Rec. Doc. 12902]

which in Section II addresses the obligation of plaintiffs to preserve records relevant to their claims.

8. ORDER GOVERNING THE PARTIES' INTERACTIONS WITH MDL PLAINTIFFS' PRESCRIBING AND TREATING PHYSICIANS

On April 28, 2016, the Court entered Pre-Trial Order No. 28 [Rec. Doc. 3156] Regarding Contact with Physicians. On January 10, 2017, the Court entered Pre-Trial Order No. 28A [Rec. Doc. 5018] regarding the parties' interactions with MDL Plaintiff's prescribing and treating physicians for the four bellwether cases through end of trial and regarding the maintaining of a record by Plaintiffs' counsel of their contacts *ex parte* with physicians for each of the other 36 discovery pool cases.

On February 27, 2018, the Court entered CMO No. 6, which modifies Pre-Trial Order No. 28 to require, for those Plaintiffs selected in Wave 1 and Wave 2, joint scheduling of physician depositions, i.e. both parties will contact physician's office together for purpose of scheduling a date for deposition. Pre-Trial Order No. 28's record-keeping and disclosure provisions are extended to all Wave 1 and Wave 2 selected cases. On September 13, 2018, the Court entered the Joint Stipulated Order Addressing Order of Examination for Certain Prescribing and Treating Physician Depositions Pursuant to Case Management Orders Nos. 6 and 6A. [Rec. Doc. 10882].

On October 9, 2018, the Court entered Pretrial Order 28B, addressing the application of Pretrial Orders 28 and 28A regarding ex parte physician communication and retention of experts to the cases selected pursuant to Case Management Order 6.

9. BELLWETHER CASES

The following bellwether trials took place in the MDL:

a. ***Joseph J. Boudreaux, Jr., et al. v. Janssen et al.,*** **Case No. 2:14-cv-02720**, which commenced in the Eastern District of Louisiana on April 24, 2017 and concluded on May 3, 2017, resulted in a verdict for the Defendants. Plaintiffs' Motion for New Trial

was denied on September 20, 2017 (Rec. Doc. 7644). Plaintiffs' filed a Notice of Appeal on October 18, 2017 (Rec. Doc. 7830). A Notice of Conditional Cross Appeal was filed by the Defendants on November 1, 2017 (Rec. Doc. 7911).

b. ***Joseph Orr, Jr., et al. v. Janssen et al.,*** **Case No. 2:15-cv-03708**, which commenced in the Eastern District of Louisiana on May 30, 2017 and concluded on June 9, 2017, resulted in a verdict for the Defendants. Plaintiffs' Motion for New Trial was denied on September 20, 2017 (Rec. Doc. 7644). Plaintiffs' filed a Notice of Appeal on October 18, 2017 (Rec. Doc. 7829). A Notice of Conditional Cross Appeal was filed by the Defendants on November 1, 2017 (Rec. Doc. 7912).

c. ***Mingo v. Janssen Research & Development, LLC, et al.,*** **Case No. 2:15-cv-03367**, which commenced in the Southern District of Mississippi on August 7, 2017 and concluded on August 18, 2017, resulted in a verdict for the Defendants. Plaintiff's Motion for New Trial was denied on December 14, 2017 (Rec. Doc. 8145). Plaintiff filed a Notice of Appeal on January 12, 2018 (Rec. Doc. 8307). A Notice of Conditional Cross Appeal was filed by the Defendants on January 26, 2018 (Rec. Doc.8502).

On March 14, 2018, the United States Court of Appeals for the Fifth Circuit issued a Briefing Notice. Appellants Cross-Appellees Joseph J. Boudreaux, Jr., Loretta Boudreaux, Kim Deagano, Joseph Orr, III, Joseph Orr, Jr., Kelli Walker and Dora Mingo filed their brief on April 23, 2018. Appellees Cross-Appellants Bayer HealthCare Pharmaceuticals Inc., and Bayer Pharma AG, Janssen Research & Development LLC, and Janssen Pharmaceuticals, Inc. filed their brief on June 7, 2018. Appellants Cross-Appellees Joseph J. Boudreaux, Jr., Loretta Boudreaux, Kim Deagano, Joseph Orr, III, Joseph Orr, Jr., Kelli Walker and Dora Mingo's Reply briefing and Response to the contingent Cross-Appeal was initially due July 9, 2018 but they filed a Motion to Suspend Briefing pending the filing of supplements to the record, which was granted by the United States Fifth Circuit Court of Appeals on July 2, 2018. [Document: 00514537474]. The Fifth Circuit directed the parties to notify the court immediately upon completion of the record. On September 19, 2018, the United States Fifth Circuit Court of Appeals directed the parties to file a motion to supplement the record on appeal and include all documents purported to be missing from the record. [Document 00514647196]. The record was supplemented and on January 11, 2019,

the Fifth Circuit Court of Appeals advised that briefing had resumed. Appellants/Cross-Appellees' response and reply briefs were filed on January 25, 2019. [Document: 514810489]. Appellees/Cross-Appellants' reply brief was filed on February 22, 2019. [Document: 514847298]. Briefing is now complete for these appeals. The parties have jointly requested the appeals to be stayed in light of the pending settlement. The stay motion remains pending.

The following bellwether case was voluntarily dismissed with prejudice:

> ***Henry v. Janssen Research & Development, LLC et al.***, **Case No. 2:15-cv-00224**, Order signed on November 2, 2017 (Rec. Doc. 7943).

10. STATE/FEDERAL COORDINATION

Plaintiffs have appealed the judgments in favor of Defendants in *Hartman v. Janssen Pharmaceuticals, Inc., et al.* (Case No. 160503416); *Russell et al. v. Janssen Pharmaceuticals, Inc., et al*. (Case No. 150500362); and *Cooney et al. v. Janssen Pharmaceuticals, Inc., et al.* (Case No. 160602012). All appeals have been stayed.

In accordance with Pre-Trial Orders No. 7 and 7A, as well as Case Management Order No. 1, PLC and DLC have had, and will continue to have, communications regarding the State Liaison Committee, as well as the status of coordination of MDL and state court actions. The parties will report to the Court on recent developments in state court cases.

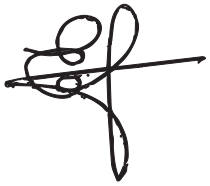
11. NEXT STATUS CONFERENCE

The next monthly status conference is set for June 24, 2019 at 9:00 a.m.

12. CMO 10 REGISTRATION

CMO 10 set forth the requirements and deadlines for registration for the settlement

program. The Parties will update the Court on the status of registration and the need for any motion practice to enforce compliance with the Court Orders.



APPENDIX “22A”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

IN RE YASMIN AND YAZ (DROSPIRENONE) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	)	**3:09-md-02100-DRH-PMF** **MDL No. 2100**

This Document Relates to:

ALL CASES

AMENDED
CASE MANAGEMENT ORDER NO. 24
BELLWETHER TRIAL SELECTION PLAN

I. INTRODUCTION

1. The process of establishing a bellwether plan began with discussions at monthly conferences. At the same time, a number of meetings occurred between the parties in an effort to resolve all their differences on the issues at bar. At the last conference, it was reported that the meet and confer efforts had been exhausted for the most part. The Court directed each side to submit detailed proposals simultaneously and to reply simultaneously. The parties, however, agreed to meet and confer in a last attempt to agree. The dispute is now at issue and the Court, with very detailed submissions from each side of the issue before it as well as the arguments made by each side at the last conference embedded in its

memory, enters this order. The Court considered the submissions, including the exhibits attached thereto, and arguments of the parties, District Judge Fallon's article regarding his experience in Vioxx and Propulsid (**Eldon E. Fallon, Jeremy T. Grabill & Robert Pitard Wynne, Bellwether Trials in Multidistrict Litigation, 82 TUL. L. REV. 2323 (2008)**), and a number of orders of other district judges handling MDL cases who have considered the same issue. The Court finds that this litigation will benefit substantially from the establishment of bellwether trials. Currently, there are well in excess of 3700 filed cases in this district and the number grows by leaps and bounds every month. This amended order follows the October monthly status conference, at which the PSC aired a number of issues which it takes with the original order. Despite contradicting much of what it originally advocated, the predominate effect of the Plaintiffs' position is that they want the trial schedule pushed back four months. In keeping with the aggressive schedule and demeanor all agreed upon when this MDL was established, while keeping fairness and a just adjudication of the issues at the fore, the Court believes it has arrived at a fair adjustment to its previously established plan in order to alleviate Plaintiffs' concerns yet achieve the goals established early on. [1]

2. The order now entered governs the selection of Plaintiffs for discovery and trial as part of a bellwether trial plan for cases currently pending in

[1] Throughout this amended order the Court will employ the unusual device of underlining new language and striking through language that is to be removed, in order to make it easier for all to quickly see the difference between the old and new orders.

MDL No. 2100 involving Plaintiffs who allegedly suffered personal injury from taking YAZ®, Yasmin® and/or Ocella®. It is critical to a successful bellwether plan that an honest representative sampling of cases be achieved. Each side of this litigation, through its representative leadership, has expressed, in some form, a willingness to waive all objections to venue, including the issues involved in ***Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 28, 118 S.Ct. 956, 140 L.Ed.2d 62 (1998)**, The Court finds such a waiver to be critical to the success of this endeavor. However, the Court also finds that such a waiver must be completely voluntary, just as the holding of bellwether trials is within the discretion of the transferee judge. Therefore, if any Plaintiff or Defendant chosen for the list of cases for the bellwether plan does not waive all venue issues so that all cases so chosen can be tried, if reached, under the plan in this district, then the bellwether plan will be withdrawn and the parties will be without this valuable resource in attempting to determine the many issues with which bellwether trials would be able to assist the parties. To clarify, if one Plaintiff out of all the Plaintiffs chosen does not waive venue objections to have her case tried in the Southern District of Illinois, her case won't simply be replaced with another, but the bellwether plan will be withdrawn by the Court. The reason is quite simple, the Plaintiffs in the course of arguing, both orally and in writing, of the importance to the success of the bellwether plan and the randomization of the selection process to keep one side or the other from having the right to veto a case's selection by virtue of playing the venue objection card. The Court was able

to confirm that position in its independent research. Now, surprisingly, after taking such a strong position, it is the plaintiff's who are threatening the Court with the "Lexecon card" not the Defendants. The Court hopes that all Plaintiffs understand the important nature of a good bellwether plan and the need to proceed with it. An aggressive trial schedule will be pursued by the Court, whether the parties participate in the selection process in order to make sure it has a true bellwether character, or whether the Court selects the cases, thereby losing the ability to select true mill run cases. Parties will then be left with gleaning what they can from the cases selected.

II. BACKGROUND

3. As heretofore established, the most critical element of this plan and the purpose it seeks to serve is for the most representative cases to be selected and for no one to lose sight of that objective. The Plaintiff's Steering Committee has a role to competently represent, at the very least administratively, all of the plaintiffs in this litigation. Defendant's leadership committee must competently represent the defendants. Together, however, they share a common interest in this phase of the litigation, which is to put together a list of cases that most accurately represent the typical case at issue in this litigation. Successful fact gathering during the bellwether process could well lead to an earlier conclusion to this litigation rather than a protracted litigation process, thereby conserving precious resources, redirecting resources, shaping expectations and

serving the ends of justice for all concerned. Little credibility will be attached to this process, and it will be a waste of everyone's time and resources, if cases are selected which do not accurately reflect the run-of-the-mill case. If the very best case is selected, the defense will not base any settlement value on it as an outlier. If a case is picked that is dismissed on summary judgment, after the Plaintiff's evidence or a jury's verdict when it is obviously a weak case, the plaintiffs side will look upon it as an outlier as well.

4. Likewise, the Court will not take a chance with random selection despite its endorsement by the Complex Litigation Manual. ***See* Manual for Complex Litigation (Fourth) § 22.315 (2004)**. Most modern plans seem to disfavor random selection in order to have better control over the representative characteristics of the cases selected. ***See* Fallon, Grabill & Wynne, *supra*, at 2349-2351** (discussing various methods for populating the pool of potential bellwether cases). ***See e.g., Id.* at n. 95** (discussing the bellwether selection process in the Guidant Defibrillators Products Liability Litigation (allowing each party to select an equal number of cases to populate the pool) and noting the court's preference for party input in selecting representative cases).[2] The Court

[2] The Court also notes that some courts that have employed random selection have expressed dissatisfaction with the results. ***See e.g.,* Nov. 10, 2009 New Jersey Seroquel Hearing Transcript at 43:2-43:3** (the district court, reflecting on the pool of cases available for bellwether trials (which had been selected at random) stated: "I can tell you that in looking at the remaining three cases, none of them would be my pick for a bellwether; that would be for sure. They each have some wrinkle in them that doesn't make them the ideal bellwether, but this

finds that the process that will provide the best sampling of cases will be one that allows both sides of this litigation to have a role in selecting cases, along with a veto process in the later stages of the litigation, in case advocacy has trumped altruism and both sides have decided to ignore my efforts at objectivity.

III. SELECTION PROCESS

5. The pool of cases, with which discovery will be pursued, from which the bellwether trials will be drawn will consist of ~~fifty (50)~~ twenty-four (24) cases. This reduction in the number of cases should adequately address the Plaintiffs concerns regarding the ability to get the cases ready for trial. The Court does not accept the assertion from Plaintiffs that the only way to insure a list of cases that can be ready for trial is to let them control the list. Assuring true representative cases for a bellwether plan requires bipartisan input. ~~Twenty-five (25)~~ Twelve (12) Plaintiffs[3] will be selected by each side, the PSC and ~~Bayer~~ Defendants.

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is what we have. These are the three cases we have.") (Attached hereto as Exhibit A).

[3] For purposes of this Order, the term "Plaintiff" shall refer to an individual who took YAZ®, Yasmin® and/or Ocella® and allegedly suffered a personal injury (a "primary Plaintiff"). The claims of derivative Plaintiffs (such as spouses asserting a loss of consortium claim) shall be subject to discovery and trial pursuant to this Order if the primary Plaintiff from whom such Plaintiffs' claims derive is selected for discovery and/or trial. Further, Plaintiffs who filed complaints containing multiple primary Plaintiffs must be selected (if at all) individually. The claims of any primary Plaintiffs in multi-Plaintiff complaints are hereby automatically

Counsel discussed at length the nature of the alleged injuries pled in the complaints on file. While stroke and heart attack cases make up nine to ten percent of the cases, the parties have agreed not to include that group in the bellwether trials, in part, because those numbers pale in comparison to the other alleged ailments. Venus thromboembolisms (VTE) (which include pulmonary embolisms and deep vein thromboses) make up forty to forty-one percent; while gallbladder injuries account for the remaining forty-three percent of the alleged harms caused by the pharmaceuticals at issue. The Plaintiffs would have the Court put off the gallbladder cases until the end of the bellwether process in a second wave. The Court disagrees with that suggestion. Therefore, when the parties select this pool, equal numbers of venous cases and gallbladder cases should be chosen

6. Other Plaintiffs will also be excluded. Those Plaintiffs whose cases were not filed ~~and served~~ as of the date of this order may not be included by either side on the list of bellwether eligible cases. ~~Any Plaintiff who names as a defendant an entity or individual other than Defendants Bayer Corporation, Bayer Healthcare LLC, Bayer Pharmaceuticals Corporation, Bayer Healthcare~~

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severed from the claims of other Plaintiffs in the same complaint upon inclusion of the primary Plaintiff in the Discovery Pool.

~~Pharmaceuticals, Inc., Berlex Laboratories, Inc., Berlex, Inc., and/or Bayer Schering Pharma AG shall not be eligible for the list of bellwether cases.~~[4]

7. On October 27, 2010, Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel shall exchange lists of ~~twenty-five~~ twelve plaintiffs names that each choose to be placed on the bellwether list for discovery and potential trial (~~13~~ 8 VTE cases and ~~12~~ 4 gall bladder cases). Moreover, on that same day each counsel shall file with the Court, unsealed, said lists. In the event, duplicate names appear on the list, replacement names shall be filled in the following manner. Utilizing the court assigned case numbers, the lowest (oldest) number shall have the duplicate designation replaced by the PSC, the next duplicate by the ~~Bayer~~ Defendants and so on in alternating turns until all duplicates have been resolved and a full list of fifty cases has been achieved. The parties shall keep a record of this replacement procedure, because it shall be carried over if necessary should any plaintiffs be dismissed for failure to complete her Plaintiff Fact Sheet (PFS) or properly sign her medical authorizations. See paragraph 8.

IV. FACT SHEETS

8. If a plaintiff is identified as eligible pursuant to paragraph 7, but has not yet provided a PFS substantially complete in all respects and/or failed to properly fill out and sign the medical authorizations accompanying the PFS, as

[4] This change is intended to allow plaintiffs who have sued any defendant that has been allowed by the case management orders to participate in bellwether trials if representative factually.

provided for by CMO No. 12, by the date of this Order, such discovery shall be due on the earlier of (1) its original due date under CMO No. 12, or (2) twenty-one (21) days after entry of this Order, provided that an Answer has been filed in her case. If an Answer has not yet been filed, one will be filed within 7 days, and the PFS and medical authorization supplied, substantially complete in all respects, within 21 days thereafter. If Plaintiffs do not comply with these deadlines, Defendants shall notify Liaison Counsel of the missing preliminary discovery. If the substantially completed PFS and medical authorizations are not provided within 14 days, the case will be dismissed without prejudice immediately upon the Court's receipt of Defendant's motion. The case will promptly be replaced on the bellwether list in accordance with the procedure set out in paragraph 7 above.

It is the intent of the Court that all efforts be made to pick representative cases regardless of the initial state of preliminary pleadings and discovery. All efforts should be made to correct any preliminary pleading or discovery deficiencies immediately upon that case being selected.

9. Bayer shall provide a Defendant Fact Sheet (DFS), if one has not already been provided, in all eligible plaintiffs cases, where PFS and authorizations have been appropriately provided, on the earlier of (1) its original due date under CMO No. 18, or (2) twenty-one (21) days after the Plaintiff's production of a PFS and authorization pursuant to paragraph 8. Failure to comply will result in the imposition of any sanction available to the Court in the exercise of its inherent power.

V. CASE-SPECIFIC CORE DISCOVERY

10. Discovery in any case included in the bellwether discovery pool shall commence following the exchange of party selections on November 1, 2010.

11. In connection with any individual plaintiff's case, the parties may take the depositions of plaintiff's prescribing physician(s), primary treating physician(s), as well as two additional depositions per side. In the event either party seeks discovery beyond these depositions in an individual plaintiff's case, agreement, in writing, between Liaison Counsel must be obtained or, if no agreement can be obtained after a good faith attempt, leave of Court must be obtained upon a showing of good cause.

12. Core case-specific discovery shall be completed no later than March 14, 2011.

VI. TRIAL SELECTION

13. The first trial is set September 12, 2011. This will be a pulmonary embolism (PE) case.

14. The second trial is set January 9, 2012. This will be a gallbladder (GB) case.

15. The third trial is set April 2, 2012. This will be an additional thromboembolic (VTE) case.

16. The selection process for each trial will be as follows. The Liaison Counsel, together with any lead counsel he wishes to have present, shall meet and confer for the purpose of accomplishing this task. ~~Eight~~ Four cases of each type designated: ~~eight~~ four PE, ~~eight~~ four GB and ~~eight~~ four VTE will be selected for the trial pool by each party submitting ~~four~~ two plaintiffs names each in each category. Thereafter, each party shall have veto privileges ~~to one of the four cases in each category submitted by the opposing party~~ as follows: Each party shall have the right to exercise two vetoes; one to be exercised in a VTE case (either in one of the PE cases in the first trial group or one of the general VTE cases in the third trial group) and one in a gallbladder case. The result will ~~be six cases in each category, three selected by each party~~ vary in its application. For example, depending on how the vetoes are exercised there could be either six or seven cases remaining in the PE trial group and the same for the VTE trial group. However, there will be six remaining in the gallbladder trial group. Those names shall be submitted to the Court without any indication which party submitted what name. Upon receiving those names the court will select one case in each category to be the first case to be tried and two cases to be backups in case the first case cannot be tried for some reason. The Court will allow the parties to determine when to make this trial selection based on the discovery process and when they feel they are best able to make an informed decision regarding this issue of bellwether selection.

VII. DISCOVERY COMPLETION

17. Once a trial pool has been selected further discovery can be conducted in each of the six cases as needed to completely prepare the cases for trial. For the PE case, to be tried in September, that discovery shall be completed by April 20, 2011.

Further deadlines shall be:

a. May 2, 2011: Deadline for Plaintiff to serve Rule 26(a) case-specific expert disclosures and reports.

b. June 2, 2011: Deadline for Defendants to serve Rule 26(a) case-specific expert disclosures and reports.

c. June 22, 2011: Deadline for Plaintiff to serve any case-specific rebuttal reports under Rule 26(a).

d. July 20, 2011: Depositions of all case-specific experts shall be completed. No depositions of any of Plaintiff's experts shall be conducted until after the Defendants' expert reports have been served in accordance with 17(b) above.

18. For the GB case, to be tried in January, discovery shall be completed by September 2, 2011.

Further deadlines shall be:

a. September 16, 2011: Deadline for Plaintiff to serve Rule 26(a) case-specific expert disclosures and reports.

b. October 18, 2011: Deadline for Defendants to serve Rule 26(a)

case-specific expert disclosures and reports.

c. November 7, 2011: Deadline for Plaintiff to serve any case-specific rebuttal reports under Rule 26(a).

d. November 16, 2011: Depositions of all case-specific experts shall be completed. No depositions of any of Plaintiff's experts shall be conducted until after the Defendants' expert reports have been served in accordance with 18(b) above.

19. For the VTE case, to be tried in April, discovery shall be completed by November 28, 2011.

Further deadlines shall be:

a. December 9, 2011: Deadline for Plaintiff to serve Rule 26(a) case-specific expert disclosures and reports.

b. January 10, 2012: Deadline for Defendants to serve Rule 26(a) case-specific expert disclosures and reports.

c. January 30, 2012: Deadline for Plaintiff to serve any case-specific rebuttal reports under Rule 26(a).

d. February 8, 2012: Depositions of all case-specific experts shall be completed. No depositions of any of Plaintiff's experts shall be conducted until after the Defendants' experts reports have been served in accordance with 19(b) above.

20. Plaintiffs suggested in their documentation that treating physicians are not subject to expert reporting under Rule 26(a)(2). The Defendants did not

take a position. The Court refers the parties to ***Meyers v. National R.R. Passenger Corp. (Amtrak)*, No. 09-3323, 2010 WL 3385182 (7th Cir. Aug. 30, 2010)**. The ***Meyers*** court held, at page *5 that "a treating physician who is offered to provide expert testimony as the cause of the plaintiff's injury, but who did not make that determination in the course of providing treatment, should be deemed to be one 'retained or specially employed to provide expert testimony in the case,' and is required to submit an expert report in accordance with Rule 26(a)(2)."

VIII. CONCLUSION

21. Having found that this litigation will benefit from the establishment of bellwether trials, the Court has set firm trial dates and means and method for selecting the cases for trials. Likewise, the Court has set discovery deadlines, which are summarized below:

- **Core case-specific discovery deadline: March 14, 2011**
- **Additional deadlines:**

	Pulmonary Embolism (PE) Case	**Gallbladder (GB) Case**	**Thromboembolic (VTE) Case**
Discovery completed	April 20, 2011	September 2, 2011	November 28, 2011
Deadline for Plaintiff to serve Rule 26(a) case-specific expert disclosures and reports	May 2, 2011	September 16, 2011	December 9, 2011
Deadline for Defendants to serve Rule 26(a) case-specific expert disclosures and reports	June 2, 2011	October 18, 2011	January 10, 2012
Deadline for Plaintiff to serve any case-specific rebuttal reports under Rule 26(a)	June 22 2011	November 7, 2011	January 30, 2012
Completion of depositions of all case-specific experts	July 20, 2011	November 16, 2011	February 8, 2012
Trial Date	September 12, 2011	January 9, 2012	April 2, 2012

SO ORDERED:

/s/ David R. Herndon

Chief Judge
United States District Court DATE: October 13, 2010

APPENDIX “22B”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

IN RE YASMIN AND YAZ (DROSPIRENONE) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	)	**3:09-md-02100-DRH-CJP**
	)	**MDL No. 2100**

This Document Relates to:

ALL CASES

INITIAL CONFERENCE ORDER

HERNDON, Chief Judge:

It appearing that the cases assigned to MDL No. 2100, *In Re Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, merit special attention as complex litigation, the Court **ORDERS**:

1. **Applicability of Order**. Prior to the initial pretrial conference and entry of a comprehensive order governing all further proceedings in this case, the provisions of this Order shall govern the practice and procedure in those actions that were transferred to this Court by the Judicial Panel on Multi District Litigation ("JPMDL") pursuant to its order of October 1, 2009. This Order also applies to all related cases filed in the Southern District of Illinois and will also apply to any "tag-along actions" later filed in, removed to, or transferred to this Court.

2. **Consolidation**. The civil actions assigned to MDL No. 2100 are consolidated for pretrial purposes. Any "tag-along actions" later filed in, removed to or transferred to this Court, or directly filed in the Southern District of Illinois, will automatically be consolidated with this action without the necessity of future motions or orders. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

3. **Initial Conference**. All necessary counsel shall appear for a conference with the undersigned on November 19, 2009 at 1:00 p.m. in Room 7of the United States Courthouse for the Southern District of Illinois.

(a) **Attendance**. To minimize costs and facilitate a manageable conference, parties are not required to attend the conference, and parties with similar interests are expected to agree to the extent practicable on a single attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation; and attendance at the conference will not waive objections to jurisdiction, venue, or service.

(b) **Service List**. This Order is being emailed to the persons shown on the attached service list, which has been prepared from the Panel Service List issued by the JPML, the list of Involved Counsel issued by the JPML in connection with Conditional Transfer Order No. 1, and the list of counsel joining Plaintiffs' motions regarding MDL liaison counsel. Counsel on this list are requested to forward a copy of the Order to other attorneys who should be notified of the conference. A corrected service list will be prepared after the conference.

(c) **Other Participants**. Persons who are not named as parties in this litigation, but may later be joined as parties or are parties in related litigation pending in other federal and state courts, are invited to attend in person or by counsel.

4. **Preparations for Conference**.

(a) **Procedures for Complex Litigation**. Counsel are expected to familiarize themselves with the *Manual for Complex Litigation, Fourth* ("MCL 4th") and be prepared at the conference to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation. The items listed in the MCL 4th Sections 22.6, 22.61, 22.62 and 22.63 shall, to the extent applicable, constitute a tentative agenda for the conference.

(b) **Position Statement**. Plaintiffs and Defendants shall submit to the Court by November 9, 2009 a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered in evidence against a party in later proceedings. The parties' statements shall list all pending motions, as well as related cases pending in state or federal court, together with their current status, including any discovery taken to date, to the extent known. The parties shall be limited to one such submission for all Plaintiffs and one such submission for all Defendants.

(c) **Rule 7.1 Disclosures**. To assist the Court in identifying any problems of recusal or disqualification, counsel will submit to the Court by November 9, 2009, disclosures that comply with Federal Rule of Civil Procedure 7.1.

(d) **Meeting of Counsel.** Counsel for the parties shall meet to discuss the following:

(i) issues relating to timetables for dispositive motions;

(ii) issues relating to preservation of discoverable information;

(iii) issues relating to privileges that could arise, including ex parte contact between Defendants and medical providers for Plaintiffs, Defendants' claims of trade secrets, and any others that are likely to arise;

(iv) issues relating to limits on discovery, such as limits on interrogatory numbers, limits on duration and number of depositions;

(v) time frame for discovery - completion of document production, interrogatory exchange, depositions;

(vi) time frame for expert witness designation and deposing;

(vii) other Fed.R.Civ.P. 16 and 26(f) topics not addressed above.

The Court anticipates a unified case management plan to result from the meeting of counsel, agreed upon by all counsel. To the extent that there is any disagreement, the details of the disagreement outlining each position of those who disagree must be set out in the joint case management plan for the Court to examine in order to make an informed decision about how best to proceed.

(e) **List of Related Cases**. Counsel shall file a statement listing all known related cases pending in state or federal court.

5. **Interim Measures**. Until otherwise ordered by the Court:

(a) **Admission of Counsel**. Counsel who appeared in a transferor court prior to transfer need not enter an additional appearance before this Court. Moreover, attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation. Association of local co-counsel is not required.

(b) **Pleadings**. Each Defendant is granted an extension of time for responding by motion or answer to the complaint(s) until a date to be set at the conference.

(c) **Pending and New Discovery**. Pending the conference, all outstanding disclosure and discovery proceedings are stayed and no further discovery shall be initiated. This Order does not (1) preclude voluntary informal discovery regarding the identification and location of relevant documents and witnesses; (2) preclude parties from stipulating to the conduct of a deposition that has already been scheduled; (3) prevent a party from voluntarily making disclosures, responding to an outstanding discovery request under Federal Rule of Civil Procedure 33, 34, or 36; or (4) authorize a party to suspend its efforts in gathering information needed to respond to a request under Rule 33, 34, or 36. Relief from this stay may be granted for good cause shown, such as the ill health of a proposed deponent.

(d) **Motions**. No motion shall be filed under Rule 11, 12 or 56 without leave of Court and unless it includes a certificate that the movant has conferred with opposing counsel in a good-faith effort to resolve the matter without Court action.

(e) **Orders of Transferor Courts**. All orders by transferor courts imposing dates for pleading or discovery are vacated.

(f) **Master Docket File**. Any pleadings or document which is to be filed in any of these actions shall be filed with the Clerk of this Court and not in the transferor court. The Clerk of this Court will maintain a master docket case file under the style "*In Re Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*" and the identification "MDL No. 2100". When a pleading is intended to be applicable to all actions, this shall be indicated by the words: "This Document Relates to All Cases." When a pleading is intended to apply to less than all cases, this Court's docket number for each individual case to which the document number relates shall appear immediately after the words "This Document Relates to".

(g) **Filing**. All documents filed in this Court, subsequent to those initiating a new case, must be filed electronically pursuant to this Court's E-Filing Rules and the CM/ECF User's Manual. Attorneys may register for electronic filing at http://www.ilsd.uscourts.gov/cmecf_regform.html.

(h) **Docketing**. When an action properly belongs as a part of *In Re Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation* is hereinafter filed in the Southern District of Illinois or transferred here from another court, the Clerk of the Court shall:

(i) file a copy of this Order in the separate file for such action;

(ii) make an appropriate entry on the master docket sheet;

(iii) forward to the attorneys for the Plaintiff in the newly filed or transferred case a copy of this Order;

(iv) upon the first appearance of any new Defendant, forward to the attorneys for the Defendant in such newly filed or transferred case a copy of this Order.

(i) **Communications with the Court**. Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel.

Nevertheless, the Court recognizes that cooperation by and among Plaintiffs' counsel and by and among Defendants' counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between Plaintiffs' counsel and among and between Defendants' counsel shall not be deemed a waiver of the attorney-client privilege or the protection afforded attorney's work product, and cooperative efforts contemplated above shall in no way be used against any Plaintiff by any Defendant or against any Defendant by any Plaintiff. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

6. **Applications for Lead and Liaison counsel Appointments**. The Court intends to appoint Plaintiffs' lead counsel and/or a Plaintiffs' steering committee, as well as Plaintiffs' liaison counsel. Applications for these positions must be filed with the Clerk's office on or before November 9, 2009. The Court will only consider attorneys who have filed a civil action in this litigation. The main criteria for these appointments are (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. Agreement among Plaintiffs' counsel for these positions will be given due consideration.

Dated: October 23, 2009

/s/ David R. Herndon

CHIEF JUDGE
UNITED STATES DISTRICT COURT

Printed on 10/01/2009

Judicial Panel on Multidistrict Litigation - Panel Service List
for
MDL 2100 - IN RE: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more then one attorney. See Panel rule 5.2(c).

Party Representation Key

* Signifies that an appearance was made on behalf of the party by the representing attorney.
# Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 2100 - Yasmin and Yaz (Drospirenone) Marketing, SP & PL

For Open Cases

Judicial Panel on Multidistrict Litigation - Panel Service List

Docket: 2100 - IN RE: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation
Status: Transferred on 10/01/2009
Transferee District: ILS Judge: Herndon, David R. Printed on 10/01/2009

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APPENDIX “22C”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

IN RE YASMIN AND YAZ (DROSPIRENONE) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	)	**3:09-md-02100-DRH-CJP**
	)	**MDL No. 2100**

This Document Relates to:

ALL CASES

INITIAL CONFERENCE ORDER

HERNDON, Chief Judge:

It appearing that the cases assigned to MDL No. 2100, *In Re Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, merit special attention as complex litigation, the Court **ORDERS**:

1. **Applicability of Order**. Prior to the initial pretrial conference and entry of a comprehensive order governing all further proceedings in this case, the provisions of this Order shall govern the practice and procedure in those actions that were transferred to this Court by the Judicial Panel on Multi District Litigation ("JPMDL") pursuant to its order of October 1, 2009. This Order also applies to all related cases filed in the Southern District of Illinois and will also apply to any "tag-along actions" later filed in, removed to, or transferred to this Court.

2. **Consolidation**. The civil actions assigned to MDL No. 2100 are consolidated for pretrial purposes. Any "tag-along actions" later filed in, removed to or transferred to this Court, or directly filed in the Southern District of Illinois, will automatically be consolidated with this action without the necessity of future motions or orders. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

3. **Initial Conference**. All necessary counsel shall appear for a conference with the undersigned on November 19, 2009 at 1:00 p.m. in Room 7of the United States Courthouse for the Southern District of Illinois.

(a) **Attendance**. To minimize costs and facilitate a manageable conference, parties are not required to attend the conference, and parties with similar interests are expected to agree to the extent practicable on a single attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation; and attendance at the conference will not waive objections to jurisdiction, venue, or service.

(b) **Service List**. This Order is being emailed to the persons shown on the attached service list, which has been prepared from the Panel Service List issued by the JPML, the list of Involved Counsel issued by the JPML in connection with Conditional Transfer Order No. 1, and the list of counsel joining Plaintiffs' motions regarding MDL liaison counsel. Counsel on this list are requested to forward a copy of the Order to other attorneys who should be notified of the conference. A corrected service list will be prepared after the conference.

(c) **Other Participants**. Persons who are not named as parties in this litigation, but may later be joined as parties or are parties in related litigation pending in other federal and state courts, are invited to attend in person or by counsel.

4. **Preparations for Conference**.

(a) **Procedures for Complex Litigation**. Counsel are expected to familiarize themselves with the *Manual for Complex Litigation, Fourth* ("MCL 4th") and be prepared at the conference to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation. The items listed in the MCL 4th Sections 22.6, 22.61, 22.62 and 22.63 shall, to the extent applicable, constitute a tentative agenda for the conference.

(b) **Position Statement**. Plaintiffs and Defendants shall submit to the Court by November 9, 2009 a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered in evidence against a party in later proceedings. The parties' statements shall list all pending motions, as well as related cases pending in state or federal court, together with their current status, including any discovery taken to date, to the extent known. The parties shall be limited to one such submission for all Plaintiffs and one such submission for all Defendants.

(c) **Rule 7.1 Disclosures**. To assist the Court in identifying any problems of recusal or disqualification, counsel will submit to the Court by November 9, 2009, disclosures that comply with Federal Rule of Civil Procedure 7.1.

(d) **Meeting of Counsel.** Counsel for the parties shall meet to discuss the following:

(i) issues relating to timetables for dispositive motions;

(ii) issues relating to preservation of discoverable information;

(iii) issues relating to privileges that could arise, including ex parte contact between Defendants and medical providers for Plaintiffs, Defendants' claims of trade secrets, and any others that are likely to arise;

(iv) issues relating to limits on discovery, such as limits on interrogatory numbers, limits on duration and number of depositions;

(v) time frame for discovery - completion of document production, interrogatory exchange, depositions;

(vi) time frame for expert witness designation and deposing;

(vii) other Fed.R.Civ.P. 16 and 26(f) topics not addressed above.

The Court anticipates a unified case management plan to result from the meeting of counsel, agreed upon by all counsel. To the extent that there is any disagreement, the details of the disagreement outlining each position of those who disagree must be set out in the joint case management plan for the Court to examine in order to make an informed decision about how best to proceed.

(e) **List of Related Cases**. Counsel shall file a statement listing all known related cases pending in state or federal court.

5. **Interim Measures**. Until otherwise ordered by the Court:

(a) **Admission of Counsel**. Counsel who appeared in a transferor court prior to transfer need not enter an additional appearance before this Court. Moreover, attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation. Association of local co-counsel is not required.

(b) **Pleadings**. Each Defendant is granted an extension of time for responding by motion or answer to the complaint(s) until a date to be set at the conference.

(c) **Pending and New Discovery**. Pending the conference, all outstanding disclosure and discovery proceedings are stayed and no further discovery shall be initiated. This Order does not (1) preclude voluntary informal discovery regarding the identification and location of relevant documents and witnesses; (2) preclude parties from stipulating to the conduct of a deposition that has already been scheduled; (3) prevent a party from voluntarily making disclosures, responding to an outstanding discovery request under Federal Rule of Civil Procedure 33, 34, or 36; or (4) authorize a party to suspend its efforts in gathering information needed to respond to a request under Rule 33, 34, or 36. Relief from this stay may be granted for good cause shown, such as the ill health of a proposed deponent.

(d) **Motions**. No motion shall be filed under Rule 11, 12 or 56 without leave of Court and unless it includes a certificate that the movant has conferred with opposing counsel in a good-faith effort to resolve the matter without Court action.

(e) **Orders of Transferor Courts**. All orders by transferor courts imposing dates for pleading or discovery are vacated.

(f) **Master Docket File**. Any pleadings or document which is to be filed in any of these actions shall be filed with the Clerk of this Court and not in the transferor court. The Clerk of this Court will maintain a master docket case file under the style "*In Re Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*" and the identification "MDL No. 2100". When a pleading is intended to be applicable to all actions, this shall be indicated by the words: "This Document Relates to All Cases." When a pleading is intended to apply to less than all cases, this Court's docket number for each individual case to which the document number relates shall appear immediately after the words "This Document Relates to".

(g) **Filing**. All documents filed in this Court, subsequent to those initiating a new case, must be filed electronically pursuant to this Court's E-Filing Rules and the CM/ECF User's Manual. Attorneys may register for electronic filing at http://www.ilsd.uscourts.gov/cmecf_regform.html.

(h) **Docketing**. When an action properly belongs as a part of *In Re Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation* is hereinafter filed in the Southern District of Illinois or transferred here from another court, the Clerk of the Court shall:

(i) file a copy of this Order in the separate file for such action;

(ii) make an appropriate entry on the master docket sheet;

(iii) forward to the attorneys for the Plaintiff in the newly filed or transferred case a copy of this Order;

(iv) upon the first appearance of any new Defendant, forward to the attorneys for the Defendant in such newly filed or transferred case a copy of this Order.

(i) **Communications with the Court**. Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel.

Nevertheless, the Court recognizes that cooperation by and among Plaintiffs' counsel and by and among Defendants' counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between Plaintiffs' counsel and among and between Defendants' counsel shall not be deemed a waiver of the attorney-client privilege or the protection afforded attorney's work product, and cooperative efforts contemplated above shall in no way be used against any Plaintiff by any Defendant or against any Defendant by any Plaintiff. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

6. **Applications for Lead and Liaison counsel Appointments**. The Court intends to appoint Plaintiffs' lead counsel and/or a Plaintiffs' steering committee, as well as Plaintiffs' liaison counsel. Applications for these positions must be filed with the Clerk's office on or before November 9, 2009. The Court will only consider attorneys who have filed a civil action in this litigation. The main criteria for these appointments are (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. Agreement among Plaintiffs' counsel for these positions will be given due consideration.

Dated: October 23, 2009

/s/ David R. Herndon

CHIEF JUDGE
UNITED STATES DISTRICT COURT

Printed on 10/01/2009

Judicial Panel on Multidistrict Litigation - Panel Service List
for
MDL 2100 - IN RE: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more then one attorney. See Panel rule 5.2(c).

Party Representation Key

* Signifies that an appearance was made on behalf of the party by the representing attorney.
# Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 2100 - Yasmin and Yaz (Drospirenone) Marketing, SP & PL

For Open Cases

Docket: 2100 - IN RE: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation

Status: Transferred on 10/01/2009

Transferee District: ILS Judge: Herndon, David R. Printed on 10/01/2009

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“APPENDIX 22D”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

IN RE YASMIN AND YAZ (DROSPIRENONE) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	:	**3:09-md-02100-DRH-PMF**
	:	**MDL No. 2100**
	:	Judge David R. Herndon
This Document Applies To All Actions	:	

CASE MANAGEMENT ORDER NO. 59
(Negotiating Plaintiff Committee – Gallbladder Resolution Program)

This Court, in cooperation with the state court Judges in the Pennsylvania, New Jersey and California coordinated proceedings, is appointing members to a Negotiating Plaintiff Committee ("NPC"), which is being established to (a) negotiate terms of a voluntary Gallbladder Resolution Program with counsel for the Bayer defendants with the assistance of Special Master Stephen Saltzburg and (b) work with the Courts, the Special Master and counsel for the Bayer

Defendants to implement said program on behalf of plaintiffs. The following attorneys are hereby appointed as members of the NPC:

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and

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So Ordered:

Digitally signed by David R. Herndon
Date: 2013.03.15 08:05:17 -05'00'

Chief Judge
United States District Court

Date: March 15, 2013

EXHIBIT 2

Personal Injury Claims -- Plaintiffs' Proposed Schedule

2/28/2023
Substantial completion of Defendants' document productions

12/15/2023
Plaintiffs' 26(a)(2) disclosures for initial bellwether trial(s) (case specific and general)

Generic Discovery

4/2023 - 5/2023
- Discovery/bellwether eligible case pool fixed; case selection methodology determined
- Deadline to confer with SM Welsh regarding bellwether mediations
- Case selection for discovery/ potential bellwether pool

9/1/2023
- Parties' agreed case selections for initial bellwether trial(s), or competing submissions to Court re: early trials
- *Selected cases proceed through further discovery and expert disclosures*

11/30/2023
Close of discovery in case(s) selected for initial bellwether trial(s)

5/6/2024
Close of briefing on Dispositive/ Rule 702 motions*

2025 –

Post Bellwether MDL Proceedings (on unresolved claims), e.g.,
- Development of unresolved cases for potential remand back to transferor courts
- Development of potential future trial cases for WD PA

Case-Specific/Bellwether Discovery & Workup -- First Bellwethers

Summer 2023
Parties to proceed with mediations of cases selected for bellwether mediation track before Special Mediator Welsh

7/1/22 Start of Discovery

Bellwether Mediations

Bellwether Selected Cases Trial Ready

2022	2023	2024	2025

8/31/2023
Substantial completion of document production

2/28/2024
Conclusion of fact discovery (other than case-specific)

Generic Discovery

3/15/2024
Ps' expert disclosures on general causation

5/15/2024
Ds' expert disclosures on general causation

8/15/2024
Date for completion of expert depositions on general causation

12/2024 or 1/2025
Potential hearing date for Rule 702 motions on general causation experts (subject to Court's scheduling)

Personal Injury Claims – Phillips's Proposed Schedule

*final pre-trial exchanges/proceedings, hearing on dispositive/702 motions, and trial date as set by Court

Personal Injury Claims -- Plaintiffs' Proposed Schedule

2025 –

Post Bellwether MDL Proceedings (on unresolved claims), e.g.,

- Development of unresolved cases for potential remand back to transferor courts
- Development of potential future trial cases for WD PA

2025	2026	2027

~4/2025, est
Case selection for discovery/ potential bellwether pool begins (30 days after Ruling on Rule 702 motions)

~2/2026, est
All case-specific expert depositions complete (270 days after Bellwether Selection)

~4/2026, est
Close of briefing on Dispositive/ Rule 702 motions (60 days after case-specific expert depositions complete)*

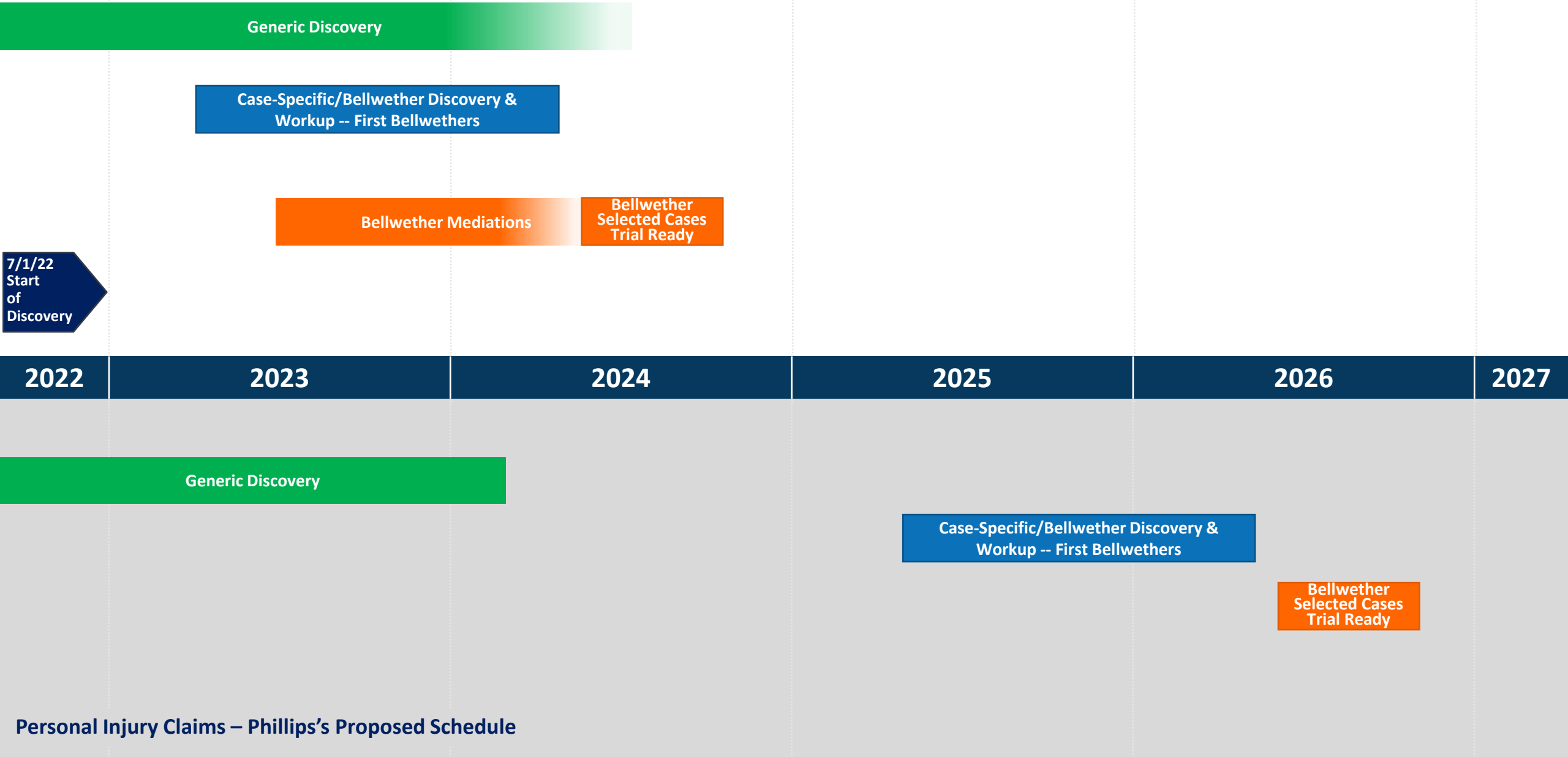
Case-Specific/Bellwether Discovery & Workup -- First Bellwethers

Bellwether Selected Cases Trial Ready

Personal Injury Claims – Phillips's Proposed Schedule

*final pre-trial exchanges/proceedings, hearing on dispositive/702 motions, and trial date as set by Court

Personal Injury Claims -- Plaintiffs' Proposed Schedule



Personal Injury Claims – Phillips's Proposed Schedule

Philips MDL: Supplemental Discovery Plan[1]

Philips Defendants' Proposed Schedule[2]

Date[3]	Economic Loss Class Action	Medical Monitoring Class Action	Individual Personal Injury Claims
1/31/23[4]	Deadline to complete jurisdictional discovery re: KPNV. Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction	Deadline to complete jurisdictional discovery re: KPNV. Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction	Deadline to complete jurisdictional discovery re: KPNV. Deadline to reach agreement on briefing schedule for KPNV's Rule 12(b)(2) motion re: personal jurisdiction
2/16/23			Last date for any tolling benefits under prior private Tolling Agreement (pre Census Registry)
3/21/23	Briefing completed on all motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated).[5]		

[1] All dates assume no further complaint amendments are requested by Plaintiffs or allowed by the Court. Defendants reserve their full rights to seek a different schedule if there are any further amendments to one or more of the complaints.

[2] The shaded boxes reflect events and deadlines subject of a prior court order or agreement.

[3] After the parties agree to the timelines set forth herein, all dates to be adjusted to account for weekends and holidays in accordance with Fed. R. Civ. P. 6.

[4] The parties have been engaged in extensive—and expedited—jurisdictional discovery regarding KPNV, including document requests and interrogatories, under the oversight of Special Master Katz. In addition, the parties have scheduled a Rule 30(b)(6) corporate representative deposition of KPNV for February 1, 2023. This would be the only jurisdictional discovery to occur beyond the Court's January 31, 2023 deadline.

[5] As reflected in Defendants' Submission on Case Management and Discovery Plan, there is also a dispute between the parties as to the briefing schedule for the non-Respironics defendants' Rule 12(b)(6) motion to dismiss the economic loss class action. As explained therein, unlike Plaintiffs' proposal, the non-Respironics defendants' proposal would avoid the need for either a sur-reply or a sur-sur-reply.

Date[3]	Economic Loss Class Action	Medical Monitoring Class Action	Individual Personal Injury Claims
4/23 or 5/23	*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's and Special Master's scheduling)*		
4/21/23		Briefing completed on motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated).	Briefing completed on motions to dismiss, except KPNV's Rule 12(b)(2) motion re: personal jurisdiction (which will be separately negotiated).
5/23 or 6/23		*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's and Special Master's scheduling)*	*Potential hearing date for motions to dismiss and/or consideration of Report and Recommendation by Special Master (subject to Court's and Special Master's scheduling)*
7/31/23	Submit stipulation, competing proposals and/or disputes for discovery and bellwether selections (if any) for class certification. Plaintiffs to identify whether they will be seeking to certify a national class of any state law claims.		
8/31/23	Substantial completion of Ds' and Ps' document productions. Deadline to provide dates for depositions of plaintiffs on class certification. Deadline for completion of visual examination of devices of putative class reps.	Substantial completion of Ds' and Ps' document productions. Deadline for completion of visual examination of devices of putative class reps. Submit stipulation, competing proposals and/or disputes for discovery and bellwether selections (if any) for class certification.	Substantial completion of Ds' document productions. Deadline for completion of visual examination of devices of plaintiffs.

Date[3]	Economic Loss Class Action	Medical Monitoring Class Action	Individual Personal Injury Claims
		Plaintiffs to identify whether they will be seeking to certify a national class of any state law claims.	
9/30/23	Ps to disclose subject matter of expert witnesses on class cert issues.	Deadline to provide dates for depositions of plaintiffs on class certification. Ps to propose stratification of injuries (including identification of any abandoned injuries)	Ps to propose stratification of injuries (including identification of any abandoned injuries) Stipulated discovery/bellwether selection methodology, or disputes to Court (parties' proposal(s) to include methodology for how to select cases for bellwether mediations, bellwether trials, or both, depending on Court's preferences on bellwether mediations and/or bellwether trials)
11/30/23	Deadline for completion of depositions of class representatives.	Ps to disclose subject matter of expert witnesses on class cert issues. Ps to disclose subject matter of expert witnesses on general causation issues.	Ps to disclose subject matter of expert witnesses on general causation issues.
1/15/24	Ps' expert disclosures on class certification.	Deadline for completion of depositions of class representatives.	
2/15/24		Ps' expert disclosures on class certification.	

Date[3]	Economic Loss Class Action	Medical Monitoring Class Action	Individual Personal Injury Claims
2/28/24	Conclusion of fact discovery.[6]	Conclusion of fact discovery.[6]	Conclusion of fact discovery (other than case-specific fact discovery).[6]
3/15/24	Ds' expert disclosures on class certification.	Ps' expert disclosures on general causation	Ps' expert disclosures on general causation
4/15/24	Ps' rebuttal disclosures on class certification.	Ds' expert disclosures on class certification.	
5/15/24		Ps' rebuttal disclosures on class certification. Ds' expert disclosures on general causation.	Ds' expert disclosures on general causation.
6/15/24	Deadline to complete expert depositions on class certification.	Ps' rebuttal disclosures on general causation.	Ps' rebuttal disclosures on general causation.
6/30/24	Plaintiffs file motion for class certification		
8/15/24		Deadline to complete expert depositions on class certification and general causation.	Deadline to complete expert depositions on general causation.
9/15/24	Defendants file class certification opposition	Plaintiffs file motion for class certification Deadline for Rule 702/Daubert motions on general causation experts.	Deadline for Rule 702/Daubert motions on general causation experts, and for summary judgment motions on general causation.
10/30/24	Plaintiffs file class certification reply.	Oppositions to Rule 702/Daubert motions on general causation experts.	Oppositions to Rule 702/Daubert motions on general causation experts,

[6] Defendants' proposal on the close of fact discovery is more than reasonable. For the fact discovery period, Plaintiffs negotiated to take 60 individual fact depositions plus 70 hours of Rule 30(b)(6) testimony. Defendants may depose each of the more than 150 named class action plaintiffs. Further, the parties have also served dozens of third-party subpoenas, which will likely also result in additional depositions (which are not included in the limits set forth above). (Dkt. No. 946.)

Date[3]	Economic Loss Class Action	Medical Monitoring Class Action	Individual Personal Injury Claims
	Parties file Rule 702/Daubert motions on class certification issues		and for summary judgment motions on general causation.
11/30/24		Defendants file class certification opposition Reply briefs on Rule 702/Daubert motions on general causation experts.	Reply briefs on Rule 702/Daubert motions on general causation experts, and for summary judgment motions on general causation.
12/15/24	Parties file oppositions to Rule 702/Daubert motions on class certification issues		
1/25 or 2/25	*Potential hearing date on class certification and related Rule 702/Daubert issues (subject to Court's scheduling)*	*Potential hearing date for Rule 702/Daubert motions on general causation experts (subject to Court's scheduling)*	*Potential hearing date for Rule 702/Daubert motions on general causation experts (subject to Court's scheduling)*
1/15/25		Plaintiffs file class certification reply Parties file Rule 702/Daubert motions on class certification issues	*See individual schedule below for setting cases for bellwether mediations and/or trials*
3/1/25		Parties file Rule 702/Daubert oppositions on class certification issues	*See individual schedule below for setting cases for bellwether mediations and/or trials*
4/25		*Potential hearing date on class certification and related Rule 702/Daubert issues (subject to Court's scheduling)*	*See individual schedule below for setting cases for bellwether mediations and/or trials*

Defendants believe that, at this stage, the Court should only set a schedule (1) in the class actions, through class certification, and (2) in the personal injury cases, through a decision on the threshold issue of general causation. Plaintiffs agree with the former, but disagree with the latter. In the event the Court determines to set a schedule for later proceedings in the personal injury cases, Defendants propose the schedule below.

Date[3]	Economic Loss Class Action	Medical Monitoring Class Action	Individual Personal Injury Claims
30 days after Ruling on Rule 702/Daubert Motions			Case selection for discovery/potential bellwether pool begins.
90 days before Bellwether Selection			Production of all materials for all cases eligible for bellwether pool.
90 days after Bellwether Selection			Ps to disclose subject matter of expert witnesses on case-specific issues for bellwether(s).
180 days after Bellwether Selection			Close of case-specific fact discovery for bellwether pool.
210 days after Bellwether Selection			Ps' Rule 26(a)(2) expert disclosures for bellwether(s) (case-specific).
240 days after Bellwether Selection			Ds' Rule 26(a)(2) expert disclosures for bellwether(s) (case-specific). Parties' agreed selections for bellwether, or competing submissions to Court.
270 days after Bellwether Selection			All case-specific expert depositions complete (Ps' experts deposed before Ds' experts; Ps' expert rebuttals, if any, disclosed in advance of Ps' expert depositions.)
300 days after Bellwether Selection			Deadline for Rule 702/Daubert motions on proposed case-specific experts, and for summary judgment motions on

Date[3]	Economic Loss Class Action	Medical Monitoring Class Action	Individual Personal Injury Claims
			specific causation or in specific bellwether cases.
330 days after Bellwether Selection			Deadline for oppositions to Rule 702/Daubert motions on proposed case-specific experts, and for summary judgment motions on specific causation or in specific bellwether cases.
360 days after Bellwether Selection			Deadline for reply briefs on Rule 702/Daubert motions on proposed case-specific experts, and for summary judgment motions on specific causation or in specific bellwether cases.

Nothing shall preclude Defendants from moving for summary judgment directed to the claims of the named plaintiffs in the class actions at the same time of the filing of the oppositions to the anticipated motions for class certification.

The parties propose that the Court hold a pre-hearing conference at a time and date convenient to the Court to discuss the format with respect to the class certification hearing, the identification of witnesses, exhibits, objections, etc.

The parties have conferred regarding scheduling for proceedings beyond class certification in the economic loss and medical monitoring class actions and agree that the nature and scope of such proceedings will depend materially on the outcome of the motion for class certification. The parties therefore propose to meet and confer within 30 days of the decision on Plaintiffs' anticipated motions for class certification and report back to the Court on the schedule of any future proceedings, including with respect to additional expert activities, discovery, and summary judgment motions.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LIABILITY LITIGATION	Master Docket: Misc. No. 21-01230
This Document Relates To: *All Actions*	MDL No. 3014

DEFENDANTS' MEMORANDUM IN SUPPORT OF ENTRY OF
THEIR PROPOSED CASE MANAGEMENT AND DISCOVERY PLAN ORDER

Defendant Philips RS North America LLC ("Philips RS") and Defendants Koninklijke Philips N.V. ("KPNV"), Philips North America LLC, Philips Holding USA Inc., and Philips RS North America Holding Corporation (together, "Philips") (collectively the "Philips Defendants") propose adoption of a case management and discovery plan that will coordinate discovery, development, and resolution of common issues across the Economic Loss, Medical Monitoring, and Personal Injury case tracks, while fulfilling this Court's expectation that general fact discovery will be completed within one to two years of its commencement in July 2022.[1]

The Philips Defendants' schedule accomplishes these goals in the following ways:

- Consistent with the goal of every MDL, by *coordinating* the fact discovery, expert opinions and motion practice across the three tracks with uniform or complementary deadlines, including:
    - a uniform deadline for substantial completion of document production by all parties and for the initial visual inspections of all plaintiffs' devices 14 months after the commencement of fact discovery; and
    - a uniform deadline for completion of general fact discovery in all three tracks 20 months after the commencement of fact discovery;

[1] December 14, 2022 Case Management Conference ("CMC") Tr. at 33:25–34:2.

- By establishing a process and procedure to address class certification for all of the classes proposed by plaintiffs in both the Economic Loss and Medical Monitoring tracks, including the nationwide classes, not just a subset of state classes;

- By prioritizing resolution of common *general* causation issues prior to the selection and work up of individual personal injury cases that may serve as bellwethers on *specific* causation issues and which additional work may be unnecessary based on the Court's rulings on general causation; and,

- By reserving the expenditure of this Court's limited resources to common issues that are most likely to promote speedy resolution of this litigation.

Plaintiffs' proposed plan is contrary to these goals. Plaintiffs' plan rejects phasing and prioritizes litigation of narrow bellwether cases to the exclusion of common issues, such as general causation. This would be a wasteful consumption of limited judicial resources.

Nor does Plaintiffs' approach provide for coordination between the class action tracks and the personal injury track. Under Plaintiffs' plan, the personal injury track lurches forward independently of the two class action tracks, which is inconsistent with the coordination required in any effectively managed MDL. Plaintiffs' proposal also fails to comply with this Court's goal of completing general fact discovery within one to two years by permitting general fact discovery to proceed indefinitely in all cases except for selected bellwethers.

The Philips defendants have collected and processed over ***23 terabytes*** of data in connection with Plaintiffs' expansive discovery requests.[2] Plaintiffs nevertheless propose an unworkable and entirely one-sided substantial completion deadline for production of documents by Defendants by the end of next month, just 8 months after discovery started. Despite Plaintiffs' demands, they refuse to agree to any deadline for initial visual inspections of their devices in the personal injury cases and refuse altogether to permit inspections of the devices of the named class action plaintiffs suing the Philips Defendants. Finally, Plaintiffs' proposal unnecessarily

[2] For sake of comparison, 10 terabytes could hold the entire printed collection of the Library of Congress.

complicates and delays resolution of class certification issues with an unwieldy and prejudicial "class bellwether" concept that makes little sense where, as here, Plaintiffs are seeking to certify nationwide classes.

This Court should adopt the Philips Defendants' proposal to ensure that this MDL proceeds in an efficient, expeditious, coordinated, and logical manner protecting the rights of all parties and promoting resolution of common issues and of this litigation as a whole.

A. The Court Should Adopt the Philips Defendants' Proposed Date for Substantial Completion of Document Production.

The Philips Defendants propose a substantial completion deadline for document production and initial device inspections of August 31, 2023—14 months from the start of fact discovery on July 1, 2022—and a final fact discovery deadline of February 28, 2024—20 months from the start of discovery. These deadlines are reasonable and realistic given the millions of documents that the Philips Defendants have to collect, review and produce in response to the hundreds of discovery requests that Plaintiffs have served, the large number of attorneys and reviewers that Defendants have devoted to the discovery process, and the number of depositions the parties must complete by the end of the fact discovery period.[3]

First, Plaintiffs seek a massive volume of documents over a *17-year period*. To date, Plaintiffs have served 127 requests for production on each of the Philips Defendants, 63 interrogatories on Philips RS (which largely seek the identification of documents), and 24 interrogatories on Philips, encompassing broad swaths of both custodial and non-custodial data.

[3] Plaintiffs negotiated to take 60 individual fact depositions plus 70 hours of Rule 30(b)(6) testimony. Defendants may depose each of the more than 150 named class action plaintiffs. Further, the parties have also served dozens of third-party subpoenas, which will likely also result in additional depositions (which are not included in the limits set forth above). ECF No. 946. It will take time to complete this massive volume of depositions.

With respect to custodial data, the Philips Defendants initially proposed collecting, processing and reviewing documents from 45 custodians from 2014 through the present, and applying 35 search terms. After extensive meeting-and-conferring, the Philips Defendants have now agreed to expand: (a) the collection to 66 custodians; (b) the date range back to 2005; and (c) the number of search terms to 305. To date, this has resulted in a review universe of approximately five million custodial documents alone, and that volume continues to expand as additional custodial documents are loaded.

The Philips Defendants' review and production process involves multiple vendors (one for document review and another for document production) and several layers of review. As is typical, there is first and second-level review at the document review vendor, and then a quality review by lawyers on the case team. Although Plaintiffs are not entitled to "discovery on discovery," *Alley v. MTD Prod., Inc.*, 2018 WL 4689112, at *2 (W.D. Pa. Sept. 28, 2018) (Gibson, J.), the Philips Defendants have been transparent about the details regarding the number of first and second level reviewers at the document review vendor (over 150 reviewers), the pace of the review (around 70 documents/hour depending on the documents), the time necessary for each level of review (about 4-6 week from quality control review to production), and the low responsiveness rates given Plaintiffs' overly broad search terms (only approximately 5% of the custodial documents tend to be responsive). On non-custodial data, Defendants have made 59 non-custodial productions from multiple databases consisting of approximately 2.8 million pages of documents.

Several categories of the Philips Defendants' production of non-custodial data (such as sales training material and regulatory filings) are complete. Other categories are subject to ever-expanding requests from Plaintiffs, privacy issues, and technical issues. To take two examples:

- **Complaints:** Philips Defendants disclosed that complaint files were a source of non-custodial information on June 29, 2022, and explained that Complaints regarding the devices are housed within SAP. The complaint file consists of data that forms a Product Analysis Report as well as additional attachments such as patient communications and regulatory reports (if applicable). Philips Defendants agreed to produce those complaints that the company self-identified as relating to foam degradation. To do this, Philips Defendants had to *build* an IT program to condense each complaint file and its attachments into a single zip file, that could then be exported to the document vendor. To date, Philips Defendants have produced over 105,000 complaint files related to foam degradation (of which less then 5,000 pre-date the recall). At Plaintiffs' request, Philips Defendants produced these complaint files prior to attorney review. Approximately 9,500 complaint files come from outside of the U.S., and they must be produced in compliance with the General Data Protection Regulation (GDPR) which governs data protection and privacy in the EU. Compliance with the GDPR has resulted in significant additional review and redaction costs. Moreover, given Plaintiffs' position that they would seek additional complaints beyond those that the company identified as relating to foam degradation, Philips Defendants have extracted *all* the underlying complaint data from SAP for *all* the recalled devices—over ***one million records***—and loaded this data into a stand-alone SQL database maintained by a separate vendor, in order to engage in further negotiations with Plaintiffs.

- **SharePoints:** The Philips Defendants allow employees to collaborate on individual "data rooms" known as SharePoint sites. Philips Defendants initially disclosed that SharePoints were a source of non-custodial ESI data on June 29, 2022. In their September 15, 2022 letter, Philips Defendants explained that they had a list of over 150,000 SharePoint sites maintained by the Philips Defendants and would identify relevant SharePoint sites during the custodial interview

process, given that initial custodians had just been agreed upon. Philips Defendants also explained that they were willing to work with Plaintiffs to determine appropriate search terms to query the titles of the SharePoint team sites to determine which ones may contain potentially relevant information. Beginning on October 28, 2022, the parties began discussions about the potentially relevant SharePoint sites. On December 1, 2022, Defendants agreed to collect and review a list of ***288 SharePoints sites*** that were identified by custodians and identified by counsel through running keyword searches. These SharePoints contained approximately ***3.3 terabytes of data*** which had to be transferred from the Philips Defendants to the document vendor, and resulted in approximately 550,000 viewable documents, 230,414 of which hit on the agreed-upon search terms. Defendants have agreed to review the *entire* 550,000 document population.[4]

These two examples highlight the one-sidedness, privacy issues, technical concerns, and iterative requests for data from Plaintiffs, whose requests evolve depending on the data produced. And all the while the review population has expanded, Plaintiffs have been entirely inflexible on moving the substantial completion deadline. But Plaintiffs cannot have it both ways. By contrast, Plaintiffs have produced just 83 documents to date. They have failed to provide preservation information with respect to all Plaintiffs despite multiple requests, have not informed Philips Defendants *where* their devices are located, and refuse to agree to any deadline for substantial completion of initial visual device inspections or to agree to allow any inspection for the named class action plaintiffs' devices.

Second, the Philips Defendants' proposed discovery deadlines are appropriate and more than reasonable. Fact discovery in complex MDLs (and even complex non-MDLs) can take two

[4] Note that this estimate does *not* account for Plaintiffs' additional demand that the Philips Defendants consider collecting and producing (1) all SharePoints owned by agreed-upon custodians; and (2) all SharePoints owned by owners of the existing agreed-upon SharePoints.

years, if not more.[5] Here, the Philips Defendants' proposed schedule, including the substantial completion deadline of August 31, 2023, will complete general fact discovery within 20 months of its commencement. That is fully in-line with prior MDLs.

Third, Plaintiffs' demands to accelerate the pace of document review are an improper attack on Philips Defendants' prerogatives, as the responding parties, to decide how to conduct quality control. Philips Defendants alone are "in the best position to choose an appropriate method of searching *and culling* data." *See, e.g.*, *Ford Motor Co. v. Edgewood Properties, Inc.*, 257 F.R.D. 418, 427 (D.N.J. 2009) (emphasis added) (quoting *The Sedona Conference Best Practices Commentary on the Use of Search and Information Retrieval Methods in E–Discovery*, 8 Sedona Conf. J. 189, 204 (2007)); *see also Hartle v. Firstenergy Generation Corp.*, 2010 WL 11469562, at *1 (W.D. Pa. Dec. 23, 2010) (Conti, J.) (instructing parties to consult the Sedona Principles). Philips Defendants have stringent professional duties to conduct a responsible quality control. *See, e.g.*, *Bans Pasta, LLC v. Mirko Franchising, LLC*, 2015 WL 13861049, at *3 (W.D. Va. Feb. 6, 2015) (citation omitted) (negligent conduct of QC resulted in sanctions). Philips Defendants will not adopt procedures that increase the risk of inadvertently waiving attorney-client privilege or failing to produce responsive documents to unnecessarily accelerate the production timeline.

[5] *E.g.*, *In re: Fosamax Prods. Liab. Litig.*, 1:06-md-01789 (S.D.NY.), Case Management Order No. 3, ECF No. 15 (Nov. 1, 2006) (25 months of fact discovery); *In re: Avandia Marketing, Sales Pracs. & Prods. Liab. Litig.*, 2:07-md-01871 (E.D. Pa.), Pretrial Order No. 6, Report & Recommendation of the Special Master as to Discovery Plan, Pretrial Order No. 23, ECF No. 125 (May 21, 2008), ECF No. 204 (Sept. 11, 2008), ECF No. 217 (Nov. 26, 2008) (18 months of fact discovery); *In re Tropicana Orange Juice Mktg. & Sales Pracs. Litig.*, 2016 WL 8200509, at *1 (D.N.J. Dec. 19, 2016) (23 months of fact discovery); *Carnegie Mellon Univ. v. Marvell Tech. Grp.*, 2012 WL 12894749, at *1 (W.D. Pa. June 12, 2012) (Fischer, J.) (three years for fact and expert discovery); *In re: Zantac (Ranitidine) Products Liability Litig.*, No. 20-md-2924 (S.D. Fla.), ECF No. 875 (June 18, 2020) (18 months for the completion of all fact discovery).

The Philips Defendants are fully committed to doing everything reasonably feasible to meet the proposed discovery deadlines. The Philips Defendants are employing over ***150 document reviewers***, which is an extraordinary number of reviewers in any case. Plaintiffs have consistently requested, and the Philips Defendants have largely agreed to provide, documents far beyond those which are relevant to the foam degradation at the core of this MDL. But rather than burden this Court with discovery disputes, the Philips Defendants have agreed to much of this discovery. They simply need adequate time to complete it.

Additionally, the Philips Defendants have offered to commit to substantial completion of specific groups of priority custodians prior to August 31, 2023. This would address Plaintiffs' desire to begin depositions of certain custodians. Plaintiffs thus have no reason to claim that the substantial completion deadline is causing them any prejudice or delay, and the August deadline will provide the Philips Defendants the time they need to complete a responsible and defensible document collection, review and production.

B. <u>The Court and the Parties Should Focus on the Threshold General Causation Question Before Turning to Specific Causation and Bellwether Selection.</u>

The parties' proposed case management and discovery plans diverge over three main conceptual issues: (1) whether and how to stage pre-trial discovery and motion practice relating to common issues across the Economic Loss, Medical Monitoring, and Personal Injury case tracks, including whether to prioritize general causation and defer specific causation until general causation has been decided; (2) when to select personal injury bellwether cases for trial; and (3) whether to use the bellwether process for class certification motion practice at all. The Philips Defendants propose to stage discovery to prioritize general causation, which applies to all plaintiffs. Plaintiffs, on the other hand, propose to litigate exclusively through a bellwether process in which general and specific causation issues are decided only in the context of specific cases.

1. The Court should Prioritize General Causation.

The purpose of centralizing litigation in an MDL for consolidated pre-trial discovery and motion practice is "to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and the courts." Ann. Manual Complex Lit. § 20.131 (4th ed.). The JPML established this MDL because it determined that "[a]ll of the Philips actions," including the Medical Monitoring and Economic Loss putative classes and the personal injury cases, presented "similar factual questions" amenable to "common discovery" and resolution.[6] Consistent with the JPML's directives, this Court should adopt the Philips Defendants' proposed schedule, which prioritizes common issues.

Plaintiffs must prove general and specific causation. *See DeLuca v. Merrell Dow Pharmaceuticals*, 911 F.2d 941, 958 (3d Cir. 1990). "General causation is whether a substance is capable of causing a particular injury or condition in the general population, while specific causation is whether a substance caused a particular individual's injury." *In re Zoloft (Sertralinehydrochloride) Products Liab. Litig.*, 176 F. Supp. 3d 483, 491 (E.D. Pa. 2016). The Manual for Complex Litigation recommends that where, as here, "causation issues dominate litigation, it may be appropriate for the ***transferee court in an MDL proceeding to conduct a Daubert hearing on general causation issues, leaving specific causation issues for the transferor courts on remand***." Ann. Manual Complex Lit. § 22.87 (4th ed.) (emphasis added).

The phased approach to causation issues advocated by the Manual has been used routinely in analogous MDL proceedings, including in cases that involved multiple tracks for personal injury, medical monitoring, and economic loss claims. For example, in *In re Zantac (Ranitidine) Products Liability Litigation*, 20-md-2924 (S.D. Fla), the court prioritized deciding general

[6] JPML Transfer Order, 2:21-mc-01230-JFC, ECF. No. 1.

causation issues first, with completion first of general causation fact discovery, then expert discovery leading to *Daubert* motions and ultimately a summary judgment ruling that resolved the bulk, if not all, of the claims in the case.[7] Similarly, in *In re Valsartan, Losartan & Irbesartan Products Liability Litigation*, 1:19-md-02875 (D.N.J.), the court adopted a schedule for personal injury, medical monitoring, and economic loss claims with the first phase of discovery to be disclosure of general causation opinions.[8]

Similar prioritization of general causation is particularly appropriate here. Plaintiffs in the Personal Injury and the Medical Monitoring tracks allege that use of the recalled devices exposed them to half a dozen different chemicals, VOCs, and particulates that allegedly caused or increased the risk of more than twenty different types of cancers, respiratory ailments, and various other conditions. *E.g.*, MMSAC ¶ 371; PIAC ¶¶ 22, 653. It is Plaintiffs' burden to come forward with admissible expert opinion that the recalled devices were generally capable of exposing a user to all of the alleged harmful emissions in sufficient quantities and concentrations to be capable of causing the ailments Plaintiffs allegedly suffered. Without such evidence, Plaintiffs' claims fail and specific causation is irrelevant. *See Wells v. SmithKline Beecham Corp*., 601 F.3d 375, 378 (5th Cir. 2010) ("Sequence matters: a plaintiff must establish general causation before moving to specific causation."); *In re Zantac (Ranitidine) Prod. Liab. Litig.*, No. 20-MD-2924, 2022 WL 17480906, at *167 (S.D. Fla. Dec. 6, 2022) (granting summary judgment motion on all claims, including personal injury, medical monitoring, and economic loss, for lack of general causation).

[7] *Zantac* Pretrial Order No. 30, ECF No. 875 (June 18, 2020), available at https://www.flsd.uscourts.gov/sites/flsd/files/20md2924/show_temp_6.pdf.
[8] *Valsartan* Revised Case Management Order No. 22, ECF No. 726 (Jan. 11, 2021), available at https://www.njd.uscourts.gov/sites/njd/files/MDL2875_RevisedCMONo22%28%23726%29.pdf.

For all these reasons, discovery and dispositive motion practice on general causation—an issue applicable to all plaintiffs—should precede specific causation. "Ruling on [such] an omnibus motion for summary judgment that involve[s] issues common to all cases … 'will promote the just and efficient conduct' of these actions and, thus, is the type of 'coordinated or consolidated pretrial proceedings' envisioned by Section 1407." *In re Lipitor (Atorvastatin Calcium) Marketing, Sales Practices and Products Liability Litigation*, 227 F. Supp. 3d 452, 490 (D.S.C. 2017). The Court's rulings on general causation should be first priority because this Court can "dispose of the issues far more quickly and efficiently than dozens of courts spread across the country." *Id.* at 491.

Rulings relating to specific causation bind only a single plaintiff at a time, do comparatively little to advance the litigation as a whole, impose substantial burdens on the judiciary and the parties, and should be deferred until after threshold general causation issues are decided.

2. Plaintiffs' Proposed Bellwether Plan for the Personal Injury Track is Unworkable.

Plaintiffs' proposal to litigate issues of general and specific causation exclusively through bellwether cases must be rejected for multiple reasons.

First, Plaintiffs propose to prematurely fix the eligible pool of bellwether personal injury plaintiffs in April 2023. "[C]ataloguing and dividing the entire universe of cases within the MDL" is an essential first step because bellwethers are useful only if the parties agree they "are representative of the larger group of litigants." Eldon E. Fallon et. al., *Bellwether Trials in Multidistrict Litigation*, 82 Tul. L. Rev. 2323, 2344 (2008); Ann. Manual Complex Lit. § 13.15 (4th ed.). Otherwise, "the transferee court and the attorneys risk trying an anomalous case, thereby wasting substantial amounts of both time and money[.]" Fallon, 82 Tul. L. Rev. at 2344.

Cataloguing the universe of plaintiffs is impossible at this stage, because only a small percentage of the expected plaintiffs have filed short form complaints. As of January 17, 2023,

there were just 266 short form personal injury complaints on file, but Plaintiffs' census registry lists 17,454 potential claimants who identify physical injuries. That means the bellwether pool is just *1.5 percent* of the presently known population of potential claimants—hardly a representative sample. Indeed, that is a conservative estimate, considering that the now terminated tolling agreement included more than 60,000 potential claimants.[9] The full universe of plaintiffs also will likely continue to grow, making the current set of potential bellwethers even less representative. For instance, Seeger Weiss claims to represent over 3,000 personal injury clients, but as of January 17, 2023, that firm had filed just 23 short form complaints.[10]

At the same time, the potential bellwether pool is even smaller and less representative than the full set of short form complaints, because the only cases that can be tried by this Court are the approximately one hundred personal injury cases initially filed in this federal district. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 40 (1998). Pennsylvania law differs from other states, and this small pool is neither large nor representative enough to permit selection of bellwethers that will be useful to the parties. Because these facts make it impossible at this stage to compile a "randomly selected, statistically significant sample" of bellwethers, Plaintiffs' proposal must be rejected. *In re Chevron U.S.A., Inc*., 109 F.3d 1016, 1021 (5th Cir. 1997).

Second, general causation in this case cannot be efficiently litigated using a bellwether process. Bellwether trials consume enormous judicial and litigant resources and resolve only individual cases. As noted, Plaintiffs allege that use of the recalled devices exposed them to half a dozen different harmful chemicals, VOCs, and particulates that allegedly caused more than twenty different cancers and other conditions. PIAC ¶ 653. To obtain exemplar rulings on all of

[9] December 14, 2022 CMC Tr. at 45:3–5.
[10] May 19, 2022 CMC Tr. at 18:3–4.

the potential combinations of emissions and injuries would require the Court to select an exceedingly large number of bellwethers. It is far more efficient to address general causation issues as they apply to *all* Plaintiffs at once at the outset of the case, as that process will narrow and focus the scope of Plaintiffs' personal injury claims.

Third, Plaintiffs' proposed schedule would require the Parties to select bellwether plaintiffs on May 19, 2023—before Defendants' motions to dismiss are even decided or answers have been filed. Pleadings will not be closed until late 2023 at the *earliest*. The Parties cannot select bellwethers before knowing whether Plaintiffs have stated any claims and, if so, which claims.

Finally, Plaintiffs' proposal to litigate issues of general and specific causation exclusively via a subset of bellwether cases is inconsistent with the statutory mandate to "promote the just and efficient conduct" of all the transferred actions. 28 U.S.C. § 1407(a). Bellwether trials may be useful, but an MDL court's primary function is to achieve efficiency from consolidated pre-trial discovery and motion practice. *See In re: Fluoroquinolone Products Liability Litigation*, 122 F. Supp. 3d 1378, 1380–81 (J.P.M.L. 2015). Plaintiffs' plan to indefinitely warehouse the overwhelming majority of the transferred actions in favor of litigating only narrow bellwether cases is not a proper use of Section 1407 jurisdiction.

3. Plaintiffs' Proposed Bellwether Plan for Deciding Class Issues Is Unworkable.

The Economic Loss and Medical Monitoring Master Complaints each seek certification of a nationwide class or, in the alternative, separate state sub-classes for all (or nearly all) states and jurisdictions in the United States. Plaintiffs propose to select an unspecified limited number of class plaintiffs and an unspecific subset of state sub-classes to serve as bellwethers for class discovery and motion practice, while Plaintiffs' putative nationwide and remaining state sub-

classes are held in abeyance. That approach will not promote the "just, speedy, and inexpensive determination" of the transferred cases, for at least two reasons. Fed. R. Civ. P. 1.

First, Rule 23 requires class certification to be decided "at an early practicable time." Fed. R. Civ. P. 23(c). Who is or will be bound by any judgments, the scope of merits discovery, and what procedures will need to be completed before trial all depend on the class certification ruling. Deciding only "representative" sub-class certification motions would neither resolve uncertainty nor yield any efficiency, because the Parties cannot simply agree to treat unfiled certification motions as having been granted based on the Court's ruling on an exemplar. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (holding courts have an independent obligation to ensure satisfaction of Rule 23 for each class certified, even if certification is not contested). All of the same class discovery and motion practice would still be necessary for the remaining classes. Plaintiffs propose *no deadlines* for these critical tasks. Defendants' proposal has this work completed in late 2024 or early 2025.

The Court should order consolidated class discovery of all of Plaintiffs' proposed class representatives and set a firm, early date by which Plaintiffs must move for certification of every class they want to certify, so that all class certification issues can be fully decided at once, including the viability of a nationwide class whose claims are governed by widely divergent state law. Defendants should not be required to defend against putative nationwide classes and yet be denied the opportunity to take discovery and oppose certification of nationwide classes.[11]

Second, Plaintiffs' proposal to decide only a subset of class certification motions and leave other putative classes waiting in the wings also implicates the rule against "one-way intervention."

[11] As part of the meet-and-confer process leading up to this filing, Defendants asked Plaintiffs if they still intended to pursue nationwide classes despite the multiple issues that would create for Plaintiffs at class certification. Plaintiffs declined to withdraw their nationwide class request.

See Taha v. Cnty. of Bucks, 862 F.3d 292, 298–99 (3d Cir. 2017). "One-way intervention" occurs whenever merits issues are decided in a case before class certification has been decided, allowing the putative class members to benefit from favorable decisions without "subjecting themselves to the binding effect of an unfavorable one" by opting out of the class. *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 545–47 (1974). A schedule that permits this deprives the defendant "of the benefits of the class action device to which it is entitled under Rule 23—namely, the full preclusive effect of the class action judgment." *In re Citizens Bank, N.A.*, 15 F.4th 607, 620–21 (3d Cir. 2021). Accordingly, it is well established that "[i]f a class action defendant insists upon early class action determination and notice, he is, under the rule, entitled to it." *Id.* at 619.

In a case such as this where multiple proposed putative classes will be litigated alongside individual personal injury cases in a single consolidated action, avoiding "one-way intervention" generally requires the Court to resolve all class certification issues before turning to the merits. *Windber Hosp. v. Travelers Prop. Cas. Co. of Am.*, No. 3:20-CV-80, 2020 WL 4012095, at *1 (W.D. Pa. July 14, 2020) (Gibson, J.) ("[w]hen the rule is implicated, courts deny the merits-based motion without prejudice, pending a decision on class certification"); *Slapikas v. First Am. Title Ins. Co.*, No. CIV.A. 06-84, 2010 WL 3222129, at *4 (W.D. Pa. Aug. 13, 2010) (Conti, J.) (partial summary judgment ruling vacated to avoid "one-way intervention"). This includes the merits of individual claims coordinated with the class action claims. *In re Citizens Bank, N.A.*, 15 F.4th 607, 620 (3d Cir. 2021) (mandamus to preclude trial of FLSA claim before certification of class claims under similar state laws in violation of rule against "one-way intervention").

Indeed, the only case Plaintiffs have provided as an example of the kind of class bellwether approach they propose used a schedule very different from the schedule Plaintiffs propose. *See In re: Whirlpool Corp. Front-Loading Washer Prod. Liab. Litig.*, 1:08-wp-65000-CAB, MDL No.

2001 (N.D. Ohio), Case Management Order No. 1, ECF No. 34-1 (Mar. 31, 2009).[12] There, the court adopted a schedule that required Plaintiffs to complete *all class discovery* and move to certify *every class* alleged in Plaintiffs' complaint before permitting dispositive motion briefing. *Id.* Plaintiffs' proposed schedule, however, contemplates taking class discovery of a small subset of proposed class representatives rather than completing all class discovery and filing only a subset of potential class certification motions instead of resolving all class issues. And under Plaintiffs' schedule, bellwether *trials* in the personal injury track would begin before the limited class certification briefing has even begun—plainly violating the rule against "one-way intervention."

For these reasons, Plaintiffs' proposed plan to hold in abeyance class discovery for the majority of their alleged classes, including national classes, and to hold back the majority of their putative motions for class certification indefinitely, would unreasonably impede progress of the entire consolidated action and must be rejected.

C. Plaintiffs' Proposal To Raise Their Evidentiary Arguments For The First Time In A Sur-Reply to Philips' Rule 12(b)(6) Motion Violates Basic Procedural Safeguards.

At the December 14, 2022 hearing, the Court stated that despite the fact that Rule 12(b)(6) motions should be decided on the pleadings, Plaintiffs could seek to oppose Philips' December 6, 2022 Rule 12(b)(6) motion in the economic loss class action by bringing to the Court's attention information from the evidentiary record developed over the course of jurisdictional discovery of KPNV. The Court contemplated at the time that this evidence might be brought to the Court's attention through a sur-reply by Plaintiffs. Plaintiffs should make any such showing *in their opposition brief*, not through a sur-reply. Then Philips can respond in its reply. Philips, as the movant, should not be deprived of the opportunity to respond to Plaintiffs' arguments.

[12] Available at https://www.ohnd.uscourts.gov/sites/ohnd/files/MDL2001-CaseManagementOrder.pdf.

Jurisdictional discovery is set to close on February 1, 2023. To the extent Plaintiffs are concerned that they will have insufficient time to review the jurisdictional discovery record in time to include in their opposition brief (currently due February 4, 2023), Philips is more than willing to agree to extend Plaintiffs' opposition brief deadline. Philips can then submit a comprehensive reply, which would conclude briefing on the motion. In the event, however, the Court allows Plaintiffs to file a sur-reply, Philips should be allowed to file a sur-sur-reply so that Philips (as the movant) may respond to whatever evidence Plaintiffs identify in their sur-reply. But there is no need for a sur-reply (or a sur-sur-reply) because Plaintiffs can make their evidentiary submission in their opposition brief. It would also be far more efficient, including for the Court, to have three briefs, not five briefs, on this one motion.

D. Conclusion.

For all the foregoing reasons, this Court should adopt the Philips Defendants' proposed case management and discovery schedule.

Date: January 18, 2023

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