

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

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

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**This Document Relates to:**

**ALL ACTIONS**

**MDL No. 3026**

**Case No. 1:22-cv-00071**

**Judge Rebecca R. Pallmeyer**

**STIPULATED DISCOVERY PROTOCOL REGARDING  
“BELLWETHER/CORE” AND “TRIAL SELECTIONS” DISCOVERY**

The Parties stipulate to the following:

**1. “Bellwether/Core” Fact Discovery to Facilitate Trial Selections**

- a. As an initial matter, the proposed limitations to “bellwether/core” discovery are for the purpose of balancing the need for the parties to ascertain sufficient information to make trial selections, without taking on the burden of full discovery at this stage of each bellwether case. The Parties agree that once any case is selected for trial, additional fact discovery will be necessary.
- b. Defendants may take up to 3 fact/medical depositions in each bellwether case during the “bellwether/core” discovery period. Such fact/medical depositions shall be limited to the Plaintiffs, parents, and treating healthcare provider(s). Plaintiffs may take an additional medical deposition if needed for purposes of making trial selections.
- c. Plaintiffs will not depose any of Defendants’ case-specific fact witnesses during the “bellwether/core” discovery period. Defendants’ case-specific fact witnesses include any Defendant’s sales personnel who interacted with Plaintiff’s treating physicians or treating hospital personnel regarding the product(s) alleged to be at issue, between 2 years before and 60 days after the first alleged use of such product(s).
- d. The Parties continue to meet and confer on the scope of discovery Defendants served on individual plaintiffs. In the event that the Parties are unable to reach agreement, the Parties will propose a stipulated briefing schedule for the Court’s approval.

## **2. Completing Fact Discovery in “Trial Selections”**

- a. When a wrongful death case is selected for trial, the Parties may take up to 8 additional depositions of fact/medical witnesses who reasonably may have information relating to liability. The 8-deposition allotment includes Defendants’ case-specific fact witnesses.
  - i. The Parties shall meet and confer to discuss the selection of deponents.
  - ii. In the event the parties cannot reach an agreement, the 8 deposition slots for each case shall be divided evenly between each party.
- b. When a survival case is selected for trial, the Parties may take up to 12 additional depositions of fact/medical witnesses who reasonably may have information relating to liability. The 12-deposition allotment includes Defendants’ case-specific fact witnesses.
  - i. The Parties shall meet and confer to discuss the selection of deponents.
  - ii. In the event the Parties cannot reach an agreement, the 12 deposition slots shall be divided evenly between each party.
- c. Notwithstanding the presumptive deposition limits set forth above in (a) and (b), the Parties agree that in the event a party plans to call a witness at trial who is under their control and was not deposed, that party shall make the witness available to the other side for a deposition in advance of trial.
- d. To the extent either side requires additional fact/medical depositions in advance of trial, the Parties shall meet and confer to discuss the relevancy/need of said fact/medical witness(es). If the Parties are unable to reach an agreement regarding the requested deposition(s), the party seeking the discovery may seek leave of court to take the additional deposition(s).

## **3. Depositions of Fact Witnesses, Defendants’ Case-Specific Fact Witnesses, and Treating Healthcare Providers**

- a. Depositions of Plaintiffs and/or parents are presumptively limited to 7 hours, exclusive of any re-direct examination by Plaintiff’s counsel. In the event Plaintiff’s counsel conducts a re-direct examination, Defendants’ counsel shall be granted additional time equal to the time used by Plaintiff’s counsel to inquire further, within the scope of Plaintiff’s re-direct examination.<sup>1</sup>

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<sup>1</sup> The Parties agree that they will endeavor to complete 7-hour depositions in one day. The Parties further agree that the same rules for re-direct and re-cross set forth in Paragraph 3(a) shall apply to all depositions taken in the above-captioned cases.

- b. Depositions of Defendants' case-specific fact witnesses are presumptively limited to 7 hours, exclusive of any re-direct examination by Defense counsel. In the event Defense counsel conducts a re-direct examination, Plaintiff's counsel shall be granted additional time equal to the time used by Defense counsel to inquire further, within the scope of Defense counsel's re-direct examination. To the extent the witness is called to testify more than once in a case in this MDL, the parties will meet and confer regarding the appropriate deposition time.
- c. Depositions of treating healthcare providers are presumptively limited to 5 hours. The Parties shall confer regarding the length of such depositions to the extent a treating healthcare provider imposes scheduling constraints.
  - i. The Parties will split the available deposition time equally.
  - ii. The Parties agree that each side shall have the opportunity to go first in half of the Bellwether Picks. Plaintiffs shall conduct their examination first in depositions of treating healthcare providers in any case that was a Plaintiffs' Bellwether Pick. Defendants shall conduct their examination first in depositions of treating healthcare providers in any case that was a Defense Bellwether Pick. The Parties will meet and confer regarding a procedure for randomizing the order of examination in cases that were Random Bellwether Picks.
  - iii. Contact with any treating healthcare provider shall be governed by the law of the state in which the healthcare provider currently practices. However, in all states, any party noticing a deposition may communicate directly with the healthcare provider's office for the limited purpose of scheduling same.

#### **4. Presumptive Caps on Defendants' ESI Custodians**

- a. Abbott
  - i. In addition to the 19 ESI custodians Abbott previously agreed to in the Illinois state cases, the Parties agree to set a presumptive cap of 45 additional Abbott ESI custodians, which Plaintiffs may identify, subject to further meet and confer between the Parties.
  - ii. The 45 additional custodians shall include the 10 custodians identified by name in Abbott's letter of March 1, 2023.
  - iii. Plaintiffs will endeavor to provide Counsel for Abbott a list of 20 proposed additional custodians on or before April 28, 2023.
  - iv. Plaintiffs will propose additional custodians for the remaining 15 slots at a later date, or on a rolling basis.

- v. The presumptive cap of 45 additional ESI custodians does not include case-specific witnesses, which are defined supra in subsection 1(c) of this protocol.
  - vi. Though the State Court plaintiffs are not signatories to the broader protocol for the federal cases, the State Court plaintiffs have separately agreed to be bound by all of the provisions in this subsection 4(a) regarding the presumptive cap on Abbott's ESI custodians. Abbott's agreement to provide the additional ESI custodians described in this subsection is contingent on the State Court plaintiffs' agreement.
- b. The PLC and Mead were not able to reach an agreement on Custodial Caps as to Mead and intend to brief the issue to the Court on April 26, 2023.

## **5. Additional Search Terms**

- a. The Parties have conferred extensively and have agreed in principle, subject to the approval of the clients, on search terms to be utilized. The parties will finalize their negotiations on or before April 28, 2023. To the extent there are any remaining disputes, the parties will propose a stipulated briefing schedule for the Court's approval at the next Case Management Conference.

## **6. Non-Case-Specific Depositions of Defendants' Current and Former Employees**

- a. The Parties will endeavor to reach agreement on a reasonable limit on the number of Defendants' current and former employees subject to non-case-specific deposition by Plaintiffs.
- b. For Defendants' current and former employees who have not previously been deposed in preterm infant nutrition litigation, Plaintiffs in the above-captioned cases will attempt to cooperate and coordinate with the Illinois state court plaintiffs to take a single, combined deposition. Such coordinated depositions are presumptively limited to 10 hours, exclusive of any re-direct examination by Defense counsel. In the event Defense counsel conducts a re-direct examination, Plaintiff's counsel shall be granted additional time equal to the time used by Defense counsel to inquire further, within the scope of Defense counsel's re-direct examination.
- c. In the event the Illinois state court plaintiffs decline to coordinate on the deposition of a Defendant's current or former employee who has not previously been deposed in preterm infant nutrition litigation, Plaintiffs' deposition time shall be presumptively limited to 7 hours, exclusive of any re-direct examination by Defense counsel. In the event Defense counsel conducts a re-direct examination, Plaintiffs' counsel shall be granted additional time equal to the time used by Defense counsel to inquire further, within the scope of Defense counsel's re-direct examination.

**7. Deposition Attendance**

- a. Parties may attend depositions in-person or remotely, at their own election.

**8. “Damages” Discovery**

- a. This protocol does not apply to discovery solely for the purpose of case-specific damages. Such discovery will be limited to “Trial Selections” and must be completed prior to the deadline for expert reports. The Parties will otherwise address such discovery in a separate protocol.

**9. Expert Discovery**

- a. This protocol does not address or otherwise apply to expert discovery. The Parties will address expert discovery in a separate protocol.

**10. Subject to Reasonableness and Good Faith**

- a. All of the foregoing guidelines are subject to reasonableness and good faith. To the extent a party believes the circumstances of a specific case warrant modifications to these guidelines, the Parties agree to confer on such issues in good faith.

Dated: April 18, 2023

Respectfully submitted,

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