

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

**IN RE: HAIR RELAXER MARKETING  
SALES PRACTICES AND PRODUCTS  
LIABILITY LITIGATION**

**This Document Relates to:**

**ALL CASES**

**MDL 3060**

**Master Docket No.**

**Judge Mary M. Rowland**

**PLAINTIFFS' NOTICE OF FILING PROPOSED  
BELLWETHER SELECTION SCHEDULE AND PROCEDURE**

On November 9, 2023, Plaintiffs filed their Motion For Extension Of Time To Provide The Court With A Bellwether Plan In Accordance With Case Management Order No. 6 [Dkt 287]. As the Court has not ruled on that Motion, out of an abundance of caution, Plaintiffs attach hereto their draft bellwether plan. As noted in their Motion, Plaintiffs' Leadership understood that any such proposal should be a singular document that has been subject to a meet and confer between the parties. Plaintiffs' Leadership will be prepared to report further on these issues at the upcoming status conference on November 17, 2023.

Dated: November 10, 2023

Respectfully Submitted,

/s/ Edward A. Wallace

Edward A. Wallace

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**CASE MANAGEMENT ORDER NO. \_\_  
(Protocol for Selection of Initial Bellwether Discovery Cases  
and Initial Bellwether Trial Cases)**

**I. SCOPE OF ORDER**

1. In furtherance of the effective and efficient case management of complex litigation, this Case Management Order (“CMO”) will govern the guidelines and procedures for selecting a first wave of twenty (20) cases for which individual case-specific discovery will be conducted (the “Initial Bellwether Discovery Cases”), and then for selecting a smaller subset of four (4) cases thereafter to be prepared and worked up and tried as bellwether trial cases in this MDL Proceeding (the “Initial Bellwether Trial Cases”). The final number of Initial Bellwether Trial Cases will be agreed upon by the parties, or subject to ruling by the Court if the parties cannot agree, prior to the conclusion of discovery on the Initial Bellwether Discovery Cases.

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

1. Plaintiffs whose cases are eligible for selection for bellwether discovery are Plaintiffs who had:
- a. complaints pending in this MDL proceeding on or before December 15, 2023 that have been served upon all named Defendants; and

- b. served a Plaintiff Fact Sheet (“PFS”) that was “substantially complete” as set forth in Paragraph \_\_\_\_ of Case Management Order No. 10 on or before March 1, 2024.

2. Only Plaintiffs alleging the following injuries in their complaint and PFS shall be eligible for selection as an Initial Bellwether Discovery Case:

- a. Uterine cancer;
- b. Endometrial cancer; and/or
- c. Ovarian cancer.

### **III. SELECTION OF INITIAL BELLWETHER DISCOVERY CASES**

1. From among the cases eligible to be selected as Initial Bellwether Discovery Cases, pursuant to Paragraph 2 above, twenty (20) cases shall be selected through the following process:

2. On or before May 1, 2024 at Noon CST, the Plaintiffs and Defendants shall exchange their selections of twenty (20) Initial Bellwether Discovery Cases from among the eligible cases. The parties are encouraged to come to agreement on the twenty (20) selections.

3. The Parties shall each select ten (10) Initial Bellwether Discovery Cases, including seven (7) plaintiffs alleging uterine and/or endometrial cancer and three (3) plaintiffs alleging ovarian cancer.

4. On May 15, 2024, the parties shall jointly submit a proposed order to the Court identifying the twenty (20) cases selected by the parties as Initial Bellwether Discovery Cases, and discovery in such cases shall commence promptly. This submission will also provide notice to the Court as to whether each party will be waiving their right under *Lexecon v. Milberg Weiss*, 523 U.S. 26 (1998) to object to this Court overseeing the trial of their case.

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

6. In the event that a case selected as one of the Initial Bellwether Discovery Cases is dismissed by Plaintiffs before the selection of Initial Bellwether Trial Cases (addressed in Section V. below), the Court may at its discretion allow the selection of a replacement case by the Defendants or Plaintiffs, depending upon the circumstances of the dismissal, or otherwise adjust the balance of selections of the terms of this CMO to ensure the integrity of the bellwether process.

7. Following entry of an Order identifying any case as an Initial Bellwether Discovery Case, each Defendant in such case shall provide a completed Defendant Fact Sheet within 21 days.

#### **IV. INITIAL BELLWETHER CORE FACT DISCOVERY**

1. Between May 15, 2024 and September 11, 2024, bellwether discovery shall take place, with a maximum of three (3) depositions per side for each case. This shall be deemed “Core Discovery.” This shall be designed to provide information to enable the parties to assess the larger pool of cases, and consistent with Section VII. below, to provide information to the Court to enable the Court to select which cases shall serve as the first bellwether trials consistent with Section VII. below.

2. The parties shall be permitted to propound additional case specific written discovery demands, which shall presumptively be limited to no more than fifteen (15) interrogatories and fifteen (15) requests for production of documents per side, absent special circumstances or good cause.

## **V. SELECTION OF INITIAL BELLWETHER TRIAL CASES**

1. The Initial Bellwether Trial Cases shall either be selected by agreement of the parties subject to the Court's approval or, in the absence of agreement, selected by the Court.

2. After the completion of core bellwether discovery for the twenty (20) Initial Bellwether Discovery Cases, Plaintiffs' Co-Lead Counsel and Defendants collectively shall winnow the list of cases down to four (4) representative finalists which will be known as Initial Bellwether Trial Cases. The parties are encouraged to select representative cases by agreement. If the parties agree on which cases will be the Initial Bellwether Trial Cases, they are to file a joint report on September 13, 2024 explaining why the cases they have selected are appropriate Bellwether Trial Cases.

3. If the Parties cannot agree to which four (4) trial cases to select as the Initial Bellwether Trial Cases, the parties shall submit simultaneous briefing on September 13, 2024, not to exceed 20 pages, advocating which four (4) cases should be selected for additional discovery and trial. Responses to the simultaneous briefing will be due on September 20, 2024. Should the Court have to decide which cases will be the four (4) Bellwether Trial Cases, the Court will endeavor to issue its ruling by October 4, 2024.

4. In the event that a case selected as one of the Initial Bellwether Trial Cases is voluntarily dismissed by Plaintiffs after the selection of the four (4) Initial Bellwether Trial Cases, Defendants shall have the option (but shall not be required) to select a new trial case to replace it from among the Initial Bellwether Discovery Cases.

5. In the event that a case selected as one of the Initial Bellwether Trial Cases is resolved on summary judgment or otherwise resolved on the merits after the selection of the four (4) Initial Bellwether Trial Cases, that case shall not be replaced.

6. In the event that a case selected as one of the Initial Bellwether Trial Cases is resolved via settlement after selection of the four (4) Initial Bellwether Trial Cases, that case may, but is not required to, be replaced by the side whose case was settled.

7. Once the Initial Bellwether Trial Cases have been selected, further discovery can be conducted in each of the cases as needed to completely prepare the cases for trial. Such discovery will be completed by January 17, 2025.

8. Regarding expert discovery, for the first case to be tried in November 2025, the deadlines shall be:

- a. On or before February 24, 2025, Plaintiffs shall disclose expert witness testimony pursuant to Fed. R. Civ. P. 26(a)(2).
- b. On or before March 24, 2025, Defendants shall disclose expert witness testimony 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 (2) available dates when each expert is being tendered for deposition.
- e. Depositions of expert witnesses are to be completed by May 23, 2025.

## **VI. SUMMARY JUDGMENT AND *DAUBERT* MOTIONS**

1. For the first case to be tried in November 2025, the dispositive motions deadlines shall be:

- a. Any motion for summary judgment or for partial summary judgment shall be filed on or before July 1, 2025.

- b. Any motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before July 1, 2025.
- c. Responses to summary judgment motions and *Daubert* motions shall be filed on or before July 28, 2025.
- d. Replies in support of summary judgment motions and *Daubert* motions shall be filed on or before August 5, 2025.
- e. The Court will endeavor to rule on any summary judgment and *Daubert* motions by August 28, 2025.

2. The parties shall propose a schedule for dispositive motions concerning the remaining Initial Bellwether Trials at a later date.

#### **VII. TRIAL SEQUENCE**

1. The Court will determine the trial sequence either by agreement of the parties or following briefing by the parties with their respective positions.

2. The parties shall brief whether joint or multi-plaintiff bellwether trials may be appropriate for the selected Initial Bellwether Trial Cases. The parties shall submit simultaneous briefing on November 15, 2024, not to exceed 20 pages, stating their respective positions. Responses to the simultaneous briefing will be due on November 22, 2024. The Court will endeavor to issue its ruling by December 20, 2024. The parties will then submit their final trial sequence selections by January 6, 2025.

#### **VIII. INITIAL BELLWETHER TRIAL SCHEDULE**

1. Trial 1: Jury selection shall commence on November 3, 2025.
2. Trial 2: Jury selection shall commence on February 2, 2026.



3. The sequence of future Bellwether Trial Cases shall be determined by the Court at a later date.

4. This Order may be modified or amended for good cause shown, after appropriate notice and opportunity to be heard is provided to the affected parties, when the Court believes the interest of justice requires modification.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2023

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Mary M. Rowland  
United States District Judge