

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

IN RE: HAIR RELAXER MARKETING SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	MDL No. 3060 Case No. 23 C 818 Judge Mary M. Rowland This document relates to: All Cases
--	--

DEFENDANTS' JOINT SUBMISSION REGARDING BELLWETHER SELECTION

I. INTRODUCTION

With the additional time provided by the Court, the parties have made substantial progress in negotiating a case management order to govern bellwether selection. Unfortunately, the parties are unable to reach agreement on certain issues stemming from a fundamental disagreement as to the overall course of this litigation.¹ Rather than simply rush individual cases to trial, Defendants' proposal (attached as Exhibit A) seeks to (a) provide sufficient time for *all* parties to gather information about the cases and the underpinning scientific theories, (b) further the purpose of this MDL in reaching global determinations applicable to all pending cases, and (c) eliminate duplicative expert discovery and motion practice. There remain six disputes for the Court to adjudicate:

(1) **How and when to adjudicate the myriad non-cancer injuries**

The parties have agreed that a certain number of cancer cases will be selected for bellwether treatment but cannot reach agreement on how and when to address non-cancer injuries. Defendants believe non-cancer cases in which the non-cancer injury is alleged in more than 10% of the eligible cases should be addressed on an identical timeline to the cancer cases. Plaintiffs want to postpone addressing non-cancer cases indefinitely.

(2) **Whether a case must be filed *and served* by February 1, 2024 to be eligible for bellwether selection**

The parties agreed to designate **February 1, 2024** as the cut-off date for cases to be eligible for bellwether selection. Defendants maintain that any case filed by that date should be eligible; plaintiffs, however, want to limit eligible cases to those “filed and served” by that deadline. Such a limitation would allow plaintiffs to artificially skew

¹ Despite Defendants' repeated requests, plaintiffs failed to provide Defendants with their final proposed bellwether protocol until 6:59 PM CT on Monday, January 15, 2024—*i.e.*, a federal holiday and the night before the bellwether protocol was due to be filed with this Court. In that eleventh hour proposal, plaintiffs included *for the first time* several new and highly prejudicial paragraphs related to resolving disputes about PFS substantial completeness, including provisions that would require Defendants to review thousands of PFSs within 21 days of receiving them or else waive their right to challenge deficient responses to those PFSs. (*See* Pl. Proposal at §§ II(2)(a)-(c).) Such a provision contravenes the procedures set out in this Court's PFS Case Management Order No. 9—procedures that resulted from months of negotiations. (*See, e.g.*, ECF No. 343.) This Court should not entertain plaintiffs' attempt to unilaterally unwind Case Management Order No. 9 and force Defendants into an untenable PFS review schedule.

the cases in the bellwether pool by allowing them to serve only their best cases before February 1, 2024 and to wait to serve the remaining, weaker cases.

(3) Substantial completion of most eligible Plaintiff Fact Sheets (“PFSs”) as a condition to initiating the bellwether selection process

At some point this summer, the parties will each select eight cases as Initial Bellwether Discovery Cases from the over 8,000 cases already filed. Plaintiffs know the facts of their cases; Defendants do not. The PFS process is intended to address this information imbalance. To ensure relative parity of information about plaintiffs, their medical history, background, injury claims, and damages, Defendants maintain that bellwether selection should *only* occur after plaintiffs have provided substantially complete PFSs for a critical mass of the eligible cases (*i.e.*, 75%).² Plaintiffs claim this is unnecessary.

(4) Timing of Rule 702 (*Daubert*) motions and hearing on general causation ahead of Bellwether Trial Case selection and case-specific motions

The parties fundamentally disagree on when this Court should address general causation. Defendants contend that plaintiffs’ science is dubious and that their general causation experts will likely fail to satisfy Rule 702. Defendants have thus proposed a dual-tracked schedule that proceeds with initial bellwether fact-discovery *in parallel* with general causation expert discovery and motion practice to test the scientific evidence. This is *not* front-loaded general causation, as that already would have been in process now. Rather, this process ensures that the parties and the Court only proceed to trial on cases where the general causation science is sufficient. Plaintiffs prefer to defer general causation issues as long as possible, and not surprisingly, also do not want a Science Day.

(5) Process for substitution when a bellwether case is settled or dismissed

Defendants want the parties to mutually agree on a substitute Bellwether Discovery Case if one is settled prior to selecting cases for trial, or, if the parties cannot agree, the Court will select a substitute following briefing by the parties. Plaintiffs want the unilateral right to select a substitute case. Defendants are concerned that unilateral selection of a substitute case may negatively alter resolution incentives and the representative nature of the process.

(6) Realistic length of time for case-specific fact discovery and expert discovery

Defendants maintain that case-specific fact discovery on 16 Initial Bellwether Discovery Cases—with allowance for as many as eight depositions per case for a total of 128 depositions—will take at least eight months. Plaintiffs, who have already benefited from seven months of general discovery against Defendants, contend it can

² In addition, the current bellwether selection date assumes Science Day will occur before bellwether selection. As discussed with the Court and in their Science Day submission (ECF No. 292), Defendants must have basic information about plaintiffs’ theory of causation to assess cases for bellwether selection.

be done in only four months. For case-specific expert depositions on five Initial Bellwether Trial Cases, Defendants contend that at least four months is needed. Plaintiffs contend that all expert discovery (including for general causation, other general issues, and all case-specific issues) can be accomplished in the same amount of time. Simply put, plaintiffs want an unrealistically short schedule while Defendants prefer a more realistic schedule to avoid multiple requests for extensions.

Over the course of the parties' additional two months of negotiations, Defendants have made significant concessions from their initial proposal (ECF No. 289) in an attempt to finalize a bellwether protocol with plaintiffs, including *inter alia*: moving the eligibility date from June to February 2024, accelerating the timing of case-specific discovery by **21 months**, shaving **an entire year** from their overall schedule, and agreeing to conduct case-specific discovery in parallel with general causation. Plaintiffs have largely stuck to their original proposal: they moved back the selection of Initial Bellwether Discovery Cases by **75 calendar days** but refused to consider addressing general causation at any point prior to all discovery being completed, and they extended their overall proposed schedule by **less than two months**.

In litigation involving thousands of disparate claims, fairness requires that **both** sides be allowed to work up the cases as they deem appropriate on a reasonable timetable. Defendants' proposed Bellwether Protocol affords plaintiffs sufficient time to complete the fact discovery they told the Court is their priority. At the same time, the Protocol provides Defendants an opportunity to understand the claims and injuries of each plaintiff through the PFS process and a mechanism to challenge general causation with respect to the myriad novel and unsupported claims and injuries alleged in the litigation (a challenge that, if successful, would significantly winnow down the docket and expedite resolution of the claims).

Critically, if bellwether trials are to produce reliable information about the nature of the claims and injuries in this MDL—which is precisely the purpose of bellwether trials—the bellwether cases must include as many of the alleged claims and injuries as possible, and the

bellwether protocol must set reasonable dates and deadlines to identify, select, work up, and try those cases. Fairness also requires that neither side in the litigation be afforded an unfair advantage by having superior knowledge or a one-sided bellwether selection process for trial. Unfortunately, plaintiffs' proposal fails to meet these basic elements and imposes unrealistic deadlines. For these reasons and those set out more fully below, the Court should adopt Defendants' proposal.

II. DISCUSSION

A. Bellwether Selection Should Identify *Representative Cases*

Bellwether trials must “produc[e] reliable information about other cases centralized in [the] proceeding,” with an eye toward “enhancing prospects of settlement or...resolving common issues or claims.” MELISSA J. WHITNEY, *BELLWETHER TRIALS IN MDL PROCEEDINGS: A GUIDE FOR TRANSFEREE JUDGES* 3 (Fed. Jud. Ctr. 2019). Because bellwether trials serve as “informative indicators of future trends” and as “catalysts for an ultimate resolution.” Eldon E. Fallon et al., *Bellwether Trials in Multidistrict Litigation*, 82 TUL. L. REV. 2323, 2343 (2008). For bellwether trials to fulfill their purpose, the selected claims and injuries tried “should be representative of the range of cases” in the MDL as a whole. MANUAL FOR COMPLEX LITIGATION (Fourth) § 22.315 (2004) [hereinafter “MANUAL”], available at <https://www.uscourts.gov/sites/default/files/mcl4.pdf> (last visited December 5, 2023). As the Manual clarifies:

Test cases should 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, whether they can be fairly developed and litigated on a group basis, and what range of values the cases may have if resolution is attempted on a group basis. *The more representative the test cases, the more reliable the information about similar cases will be.* (*Id.* (emphasis added).)³

³ See also Whitney, *supra*, at 3–4 (citing MANUAL §§ 22.314, 22.315) (“If bellwether cases are representative of the broader range of cases in the ... proceeding, they can provide the parties and [the] court with information on the strengths and weaknesses of various claims and defenses and the settlement

Thus, to craft an appropriate bellwether procedure, it is essential that adequate information be available to determine whether the chosen cases are truly representative.

“In litigation with numerous plaintiffs, the judge may direct the parties or a special master to identify relevant characteristics of the parties affecting pretrial organization, discovery, settlement, or trial.” MANUAL at § 22.316. “Paramount to these discussions materially advancing the litigation process is a willingness on the part of the plaintiffs to, as clearly as possible and based on the available information received and known thus far, articulate their claims and/or theories of liability against the different defendants.” *In re Zantac (Ranitidine) Prods. Liab. Litig.*, MDL 2924, No. 9:20-md-02924-RLR, Doc. 557 at 2 (S.D. Fla. Apr. 3, 2020). In fact, where plaintiffs fail to provide fundamental information pertinent to the characteristics and categorization of their claims, courts simply cannot structure a bellwether process. *See, e.g., Adams v. Deva Concepts, LLC*, No. 1:20-cv-9717-GHW, 2023 U.S. Dist. LEXIS 179559, at *13-14 (S.D.N.Y. Oct. 4, 2023) (declining to implement bellwether proposal because the court lacked sufficient information to ascertain representative categories of claimants).

B. Defendants’ Process For Selecting Cases Meets The Goals Of Bellwether Trials

In accordance with the purpose of bellwether trials, Defendants have proposed a comprehensive schedule designed to allow the parties and the Court to make informed decisions about bellwether candidates, including the “representative” nature of claims and injuries, and to narrow the scope of cases eligible for selection as bellwether trial cases. (*See generally* Ex. A.) Thus, first, as set out in Defendants’ Science Day proposal (ECF No. 292-1), Defendants must understand plaintiffs’ theories of liability, including the allegedly harmful ingredients, the specific

value of cases.”); *In re Chevron U.S.A., Inc.*, 109 F.3d 1016, 1019 (5th Cir. 1997) (“A bellwether trial designed to achieve its value ascertainment function for settlement purposes or to answer troubling causation or liability issues common to the universe of claimants has as a core element representativeness.”).

injuries alleged to have been caused by those ingredients, and the scientific theory (or theories) on which they rely. Second, the parties must be able to evaluate as many of the cases that comprise this MDL as possible to determine which injuries and facts are indeed common across them. Finally, Defendants must have information about the individual plaintiffs who make up the bellwether pool.

Defendants' proposal contemplates collecting the foregoing information prior to the parties selecting eight cases (including at least one case from each of the Designated Injuries) for a total of 16 cases to serve as Initial Bellwether Discovery Cases on **August 22, 2024** and proceeding with case-specific discovery for those cases until **April 15, 2025**. (*See* Ex. A at § 5.) On a parallel track, the parties will engage in general causation expert discovery and motion practice from **August 22, 2024** to **June 2025**. (*See id.* at § 4; *see also* Comparison of Parties' Bellwether Protocols, attached as Exhibit B, at 4–8.) Assuming any injury categories survive the general causation vetting process, within 30 days of the Court's order on general causation (~ **September 15, 2025**), five "representative" cases shall be selected to serve as trial cases ("the Bellwether Trial Cases") with (a) each side selecting one case and (b) the parties jointly designating the remaining three trial cases or submitting briefing to the Court so that the Court can select the remaining case(s). (*See* Ex. A at § 6(a); *see also* Ex. B at 9.) Once the Bellwether Trial Cases have been selected, the parties will have ninety (90) days (until ~ **December 15, 2025**) to complete any remaining fact discovery. (*See* Ex. A at § 6(b); *see also* Ex. B at 10.) Approximately 30 days after the completion of all remaining fact discovery (~ **January 13, 2026**), the parties shall engage in all remaining general and case-specific expert discovery. (*See* Ex. A at §§ 6(c)-(e); *see also* Ex. B at 10-11.) The parties will then proceed to summary judgment and any remaining expert motion practice (~**June 12, 2026**). (*See* Ex. A at §§ 6(f); *see also* Ex. B at 11.)

In reflexively arguing against Defendants’ proposal, plaintiffs contend that the proposal purportedly “bifurcates” the litigation and addresses general causation first (at the expense of discovery) and that such a structure is not “traditional” in mass tort litigation. Both arguments fail.

1. Defendants’ Proposal Is Not A “Bifurcation” But Rather Dual Tracks Fact Discovery And General Causation

Defendants’ proposal does not bifurcate or frontload general causation from other issues in the MDL or otherwise prevent plaintiffs from engaging in company discovery that they claim is of paramount importance. Fact discovery against Defendants has been underway since June 2023 and will continue until February 2025. Plaintiffs have already taken multiple depositions and served extensive written discovery. Defendants’ proposal does nothing to interfere with this process. Instead, Defendants’ proposal contemplates that the parties will select Initial Bellwether Discovery Cases on August 22, 2024, *the same day* plaintiffs submit their general causation expert reports. (*See* Ex. A at §§ 4(a), 5(a).) Simply put, while the parties engage in general causation expert discovery and related motion practice, plaintiffs’ discovery against Defendants continues unabated. (*See id.* at §§ 4(a)-(h) and 5(c); *accord* Ex. B at 4-7.) Thus, plaintiffs’ concerns about bifurcation and impingement on discovery rights are unfounded.⁴

2. Other Product Liability MDL Courts Have Prioritized General Causation

During the parties’ meet and confer sessions, plaintiffs repeatedly claimed that it is “traditional” for MDL courts in mass tort cases to wait to address general causation until after completion of all fact discovery. This is also not accurate. As an initial matter, it is critical for a court to customize management of an MDL to fit the facts of that particular MDL. *See* MANUAL

⁴ It bears noting that the substantial majority of discovery taken from Defendants will be general, rather than case-specific. Accordingly, any argument by plaintiffs that beginning case-specific discovery in August 2024 would stymie them from efficiently pursuing their claims—*where general discovery will have been ongoing since June of 2023*—is unavailing.

at § 10.1. It makes no sense to treat all MDLs the same, and it simply is not done. In any event, it is well-established that, “[b]ecause expert opinions play a vital role in many products liability MDLs, both during the discovery process and at trial, [MDL courts] should establish at an early pretrial conference a schedule for disclosing expert opinions in written reports, for deposing the experts, and for resolving *Daubert* motions.” BARBARA J. ROTHSTEIN & CATHERINE R. BORDEN, MANAGING MULTIDISTRICT LITIGATION IN PRODUCTS LIABILITY CASES: A POCKET GUIDE FOR TRANSFEREE JUDGES 35 (Fed. Jud. Ctr. 2011) (ebook) (“Rothstein & Borden, *Managing Multidistrict Litigation*”), available at <https://www.govinfo.gov/content/pkg/GOVPUB-JU13-PURL-gpo38538/pdf/GOVPUB-JU13-PURL-gpo38538.pdf> (last visited Dec. 5, 2023).

In a product liability MDL in particular, this means addressing the admissibility of general causation expert opinion at a stage relevant to all of the cases, particularly where, as here, “scientific or technical issues are central to the claims and defenses[, where] resolution of the admissibility of such evidence will as a practical matter be dispositive of the litigation” and where “scientific issues need to be sequenced or staged in a particular order to promote economy and efficiency in the litigation.” *Id.* Otherwise, Plaintiffs would secure a new bite at the general causation apple with each case.

For example, in a recent MDL addressing products liability claims relating to the pharmaceutical Zantac, the MDL court adopted a schedule that, like Defendants’ proposal, required that Rule 702 (*Daubert*) challenges on general causation be decided prior to any bellwether trial selection. *See In re Zantac (Ranitidine) Prods. Liab. Litig.*, MDL 2924, No. 9:20-md-02924-RLR, Doc. 767 at 2 (S.D. Fla. July 22, 2020). The rationale for such a schedule is logical: addressing general causation before bellwether trial selection allows the Court to narrow the inventory of cases appropriate for bellwether trial selection and ensures that the parties and the

Court do not expend substantial resources developing cases for trial that will be dismissed on the determinative issue of general causation. In *Zantac*, for example, determining general causation prior to engaging in individualized discovery allowed the court to determine that the plaintiffs could not present admissible expert testimony establishing general causation, resulting in the cases being dismissed without the need for further costly proceedings. *See, e.g., In re Zantac (Ranitidine) Prods. Liab. Litig.*, 644 F. Supp. 3d 1075, 1286-87 (S.D. Fla. 2022). In so doing, *Zantac* went even further than Defendants seek to do here since individualized discovery will occur *simultaneously* with general causation expert discovery. (*See Ex. A at §§ 4, 5.*)

Other MDL courts have similarly prioritized general causation. *See, e.g., In re Onglyza (Saxagliptin) and Kombiglyze Xr (Saxagliptin and Metformin) Prods. Liab. Litig.*, MDL 2809, No. 5:18-md-2809-KKC, Doc. 179 at 1 (E.D. Ky. Oct. 24, 2018) (concluding that addressing general causation “before considering plaintiff-specific issues [would] best ensure the most efficient resolution of these actions and use of the parties’ and the Court’s resources” because it “is a critical issue in this case, common to all actions” and if the plaintiffs are unable to establish general causation, “then the parties will not be required to undergo the time and expense of further discovery and litigation”); *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs., and Prods. Liab. Litig.*, MDL 2738, No. 3:16-md-02738-FLW-LHG, Doc. 4173 at 1-2 (D.N.J. Feb. 6, 2018) (acknowledging that the court had called for staging of discovery, with the initial focus on general causation and expert motion practice); *In re Acetaminophen ADHD-ASD Prods. Liab. Litig.*, MDL 3043, No. 1:22-md-03043-DLC, Doc. 246 (S.D.N.Y. Dec. 7, 2022) (setting general causation as the first phase of discovery even before the bellwether selection process had been determined).⁵

⁵ Contrary to what plaintiffs argue, the practice of determining general causation issues as a docket-management method is neither new nor “non-traditional.” In fact, courts have addressed general causation

It is especially appropriate here to address general causation before selection of Bellwether Trial Cases because doing so will allow the Court and the parties to meaningfully determine what, if any, claims and injuries are capable of being tried. Critically, this is not an asbestos case or other well-worn tort case, where the general causation issues have been litigated extensively and the science on causation is settled or there is a “signature” disease associated with a challenged chemical (*e.g.*, tobacco and lung cancer). To the contrary, and as the Master Long Form Complaint alleges, plaintiffs supposedly “could not have discovered with reasonable diligence” the nature of their claims and injuries until at least June 2021 (when the White article⁶ was released) and October 2022 (when the Chang article⁷ was published) because those studies first “revealed” a purported link between hair straightening products and certain cancers. (*See* ECF No. 106, Master Long Form Compl. at ¶¶ 85–90, 232.) The fact that, in their pleadings, plaintiffs primarily relied on only the White and Chang articles to support their general causation theories for ovarian and uterine cancers, respectively, only confirms the need for the Court to address the merits of those theories as soon as possible to avoid wasting the Court’s and the parties’ resources.

determinations early in bellwether selection processes for over 20 years. *See, e.g.*, Barbara J. Rothstein et al., *A Model Mass Tort: The PPA Experience*, 54 DRAKE L. REV. 621, 638 (2006). For example, in *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, MDL 1407, No. 2:01-md-1407-BJR, Doc. 1892 (W.D. Wash. June 18, 2003), the MDL court decided to take “an aggressive role in determining the admissibility of scientific evidence” on general causation because, “[w]here the plaintiffs’ experts’ testimony is ruled inadmissible, the plaintiffs’ cases are usually subject to dismissal.” Rothstein et al., *supra*, at 638. In fact, the *PPA* court required general causation expert discovery to proceed while case-specific expert discovery was required to wait until after remand. ROTHSTEIN & BORDEN, *supra*, at 35. While the *PPA* model goes further than Defendants’ proposal in this MDL, “[t]he approach employed in *In re PPA* has become accepted as a model case management technique for incorporating the trends toward global resolution of scientific issues....” Rothstein, et al., *supra*, at 638.

⁶ Alexandra J. White et al., *Use of hair products in relation to ovarian cancer risk*, 42(9) *Carcinogenesis* 1189, 1189–95 (June 21, 2026), <https://doi.org/10.1093/carcin/bgab056> [hereinafter “the White article”].

⁷ Che-Jung Chang, et al., *Use of Straighteners and Other Hair Products and Incident Uterine Cancer*, 114(12) *J. Nat’l Cancer Inst.* 1636, 1636–45 (Oct. 17, 2022), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9949582/> [hereinafter “the Chang article”].

Ovarian, uterine and endometrial cancers are not the only injuries being alleged in this MDL. Moreover, plaintiffs claim that some or all of the various alleged injuries are caused by unspecified groups of ingredients that may or may not be present in individual hair relaxers sold by particular Defendants. These ingredients play different roles in the product at differing concentrations, may have different hypothesized mechanisms for causation, and different bodies of relevant epidemiological evidence. Adding complexity, the chemicals in the products at issue are present in various other products and environments to which plaintiffs are likely to have been exposed. At present, only plaintiffs have the ability to resolve these differences because, to date, they have failed to provide sufficient information for the Court or Defendants to understand precisely why plaintiffs filed these lawsuits against these Defendants alleging the specific injuries they are claiming. Defendants' proposed Science Day and bellwether orders seek to redress the current state of unilateral knowledge that becomes more prejudicial to Defendants as each day passes. Defendants' proposal is the only proposal that offers a way to "thin the herd" prior to trials, which is one of the principal responsibilities of an MDL Court.

In light of the foregoing, the Court should adopt Defendants' proposal as the option that affords maximum efficiency to the Court and the parties while allowing plaintiffs to proceed with case-specific written discovery, documents, and limited depositions.

D. Plaintiffs' Bellwether Proposal Must Be Rejected As Framed

1. Plaintiffs' Proposal Does Not Allow Selection Of "Representative" Cases

Although plaintiffs agree that "the parties shall select cases that they have a good faith belief are representative of the body of then-filed cases as a whole" (*see* ECF No. 290-1 at 3), their proposal deprives Defendants and the Court of data that will allow identification of "representative" cases. While plaintiffs know the number of claims, the injuries they will advance, and the details

surrounding each of their plaintiffs, such data has not been shared with Defendants or the Court and, under plaintiffs' proposal, may not be shared before bellwether selection. This information imbalance is profoundly unfair and is why it is well-established that, "to decide whether to use bellwether trials and what their structure would be, the Court requires sufficient information to 'identif[y]...the pertinent characteristics and categorization of the plaintiffs, as different clusters of plaintiffs may have different attributes.'" *Adams*, 2023 U.S. Dist. LEXIS 179559, at *13–14.

As an initial matter, plaintiffs' proposal does not contemplate receiving a representative number of substantially completed PFSs—much less giving Defendants sufficient time to obtain and analyze medical records—before selecting Initial Bellwether Discovery Cases. (*See* Pl. Proposal at § III(1); *see also* Ex. B at 1–3.) Indeed, for cases filed through December 19, 2023, most of the PFSs are not even due until mid-April, 2024, and for cases filed between December 19, 2023 and February 1, 2024, PFSs are not due until 45 days after service of the Short Form Complaint ("SFC"), which could be mid-June 2024. To make matters worse, these deadlines do not account for the need to address deficiencies, collect medical records, and analyze data for thousands of claims, which will realistically take several months. Yet plaintiffs propose that initial bellwether discovery cases be selected one month after service of PFSs in mid-July 2024. Without the "substantially complete" PFS pre-condition to bellwether selection, plaintiffs could force bellwether cases to be selected without the facts and injuries of a substantial number of cases being known and, in turn, depriving Defendants and the Court of a means to truly determine representativeness. This alone renders plaintiffs' proposal unfair and unworkable.

Moreover, to the exclusion of all other injuries and claims, plaintiffs' proposal selects uterine, endometrial, and ovarian cancers as "representative" for purposes of bellwether selection, without any data showing that these three injuries are the only ones that predominate the broader

population. (*See* Pl. Proposal at § II(2)(a).) Plaintiffs’ proposal suggests that any other injuries that *might be* representative would have to be addressed later on a separate track, hoping to never have to address those arguably weaker claims. (*Id.* at § II(2)(b).) This approach could extend the litigation indefinitely and frustrate the purpose of bellwether trials.

In addition, plaintiffs’ timeline and deadlines do not allow sufficient time for the parties and the Court to gather and consider the facts and make informed decisions on what would constitute representative Bellwether Trial Cases. For example, plaintiffs’ proposal contemplates closing core bellwether discovery in November 2024, just months after the Initial Bellwether Discovery Cases are selected and without regard to the status of PFS substantial completion. (*See id.* at § IV(1).) Thus, under plaintiffs’ proposal, Defendants may not even know the first thing about a Bellwether Discovery Case—other than the basis provided in the PFS, which may not even be complete—at the time they are being asked to select trial cases.

Moreover, plaintiffs’ failure to include *any* processes whereby the Court is informed of the core medical and scientific theories—by way of Science Day or the like—impedes the Court’s ability to make informed decisions as the litigation proceeds, including, for example, on selection of bellwether cases if the parties are unable to agree. (*See id.* at § IV(2).) The Court should reject plaintiffs’ proposal because it does not allow the parties and the Court to be fully and fairly informed of the case inventory or the scientific claims at issue. *See, e.g., Adams*, 2023 U.S. Dist. LEXIS 179559, at *13–14 (declining to implement the plaintiffs’ bellwether proposal where the court lacked sufficient information to ascertain representative categories of claimants).⁸

⁸ Because Defendants do not have information about plaintiffs’ scientific theory of causation, they do not yet know whether cases against any one Defendant will provide meaningful information as to other Defendants, whose products may or may not have the same or similar formulations. For this reason, it is imperative that the Court address issues related to general causation as early as practicable. In addition, as the Court is aware, different plaintiffs allegedly used different products manufactured by different Defendants at different times. In other words, each Defendant will not be in each case. To date, plaintiffs

2. Plaintiffs' Process Allows For The Possibility Of Manipulating The Cases To Be Tried

Plaintiffs' proposal contemplates that only cases "in which a [SFC] has been filed *and served* before February 1, 2024" will be eligible for selection in the bellwether pool. (*See* Pl. Proposal at § II(1) (emphasis added).) Service is exclusively within plaintiffs' control. If plaintiffs' counsel determine that a particular case is stronger, they can serve that SFC prior to February 1, 2024. But for weaker cases, plaintiffs can simply choose not to serve the SFCs by the eligibility deadline, thus eliminating these weaker cases from potential bellwether selection. Defendants' proposal requires only that a case be *filed* by the deadline to be eligible for selection.

Further problematic in plaintiffs' proposal is that, prior to selection of Bellwether Trial Cases, if a Bellwether Discovery Case is resolved via settlement, plaintiffs will have the unilateral right to designate a replacement case. (*See id.* at § III(4).) With such a large number of cases, attrition is to be expected, but this approach has the potential to allow plaintiffs to manipulate the trial of cases favorable to their interests. Moreover, plaintiffs have the option of choosing when they settle a case, resulting in unnecessary but significant expense to Defendants and burden on the Court. Plaintiffs should not be granted unilateral power to control bellwether selection, as doing so would be unfair and contravene the basic purpose of bellwether trials to address representative claims and, in turn, evaluate global resolution. Defendants' proposal requires mutual selection of replacement cases with the Court as the final arbiter.

have not identified with sufficient specificity which products from which manufacturer allegedly were used by which plaintiff. Defendants thus reserve the right to ask the Court to modify the procedures for bellwether selection if necessary to ensure equitable treatment across Defendants.

3. Plaintiffs' Proposal Gives The Illusion Of Efficiency But Is Not Achievable

Plaintiffs' proposal contemplates trying the first bellwether case in January 2026, while Defendants' proposal projects trial (at the earliest) in the second half of 2026 but allows for possible resolution of a large number of cases by August 2025 via a ruling on general causation. (*See generally* Ex. B.) The discrepancy in these schedules can largely be attributed to two significant flaws in plaintiffs' proposal. First, as addressed above, plaintiffs' schedule lacks processes to allow the parties and the Court to make informed decisions in selecting truly representative cases as bellwethers. Second, their timeline for completing certain work is significantly (and unrealistically) compressed. Plaintiffs' timeline contemplates that the parties will complete "core bellwether discovery" in four months, including case-specific interrogatories and document requests relating to 16 Initial Bellwether Discovery Cases and up to 128 depositions (four depositions per side for each of those cases), assuming medical records are even collected in those cases by plaintiffs' discovery start date, which is dubious. (*See* Pl. Proposal at § III(3).) Anyone with experience in complex litigation knows that complete medical record collection and analyses (including expert consultation), and scheduling and completing that many depositions (including doctor depositions, which are notoriously difficult to schedule) in that short amount of time is unrealistic and guaranteed to fail. In contrast, Defendants' proposal allows eight months to complete this discovery. (*See* Ex. B at 4–7.)

III. CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court adopt their Bellwether Proposal and reject plaintiffs' competing proposal.

Dated: January 16, 2024

Respectfully submitted,

/s/Mark C. Goodman

Mark C. Goodman

BAKER & MCKENZIE LLP

Two Embarcadero Center, Suite 1100

San Francisco, CA 94111

T: (415) 576-3080

mark.goodman@bakermckenzie.com

*Defense Liaison Counsel and Counsel for Defendant
Namasté Laboratories, LLC*

Mark D. Taylor

BAKER & MCKENZIE LLP

1900 North Pearl Street, Suite 1500

Dallas, TX 75201

T: (214) 978-3089

mark.taylor@bakermckenzie.com

Maurice Bellan

BAKER & MCKENZIE LLP

815 Connecticut Avenue, NW

Washington, DC 20006

T: (202) 452-7057

maurice.bellan@bakermckenzie.com

Barry Thompson

BAKER & MCKENZIE LLP

10250 Constellation Boulevard, Suite 1850

Los Angeles, CA 90067

T: (310) 201-4703

barry.thompson@bakermckenzie.com

Colleen Baime

Laura Kelly

Baker & McKenzie LLP

300 East Randolph Street, Suite 5000

Chicago, IL 60601

T: (312) 861-2510

colleen.baime@bakermckenzie.com

laura.kelly@bakermckenzie.com

Counsel for Defendant Namasté Laboratories, LLC

Seth A. Litman
Irvin Hernandez
THOMPSON HINE LLP
Two Alliance Center
3560 Lenox Road, Suite 1600
Atlanta, GA 30326
T: (404) 541-2900
Seth.Litman@ThompsonHine.com
Irvin.Hernandez@ThompsonHine.com

*Counsel for Keratin Defendants Keratin Complex and
Keratin Holdings, LLC*

Dennis S. Ellis
Katherine F. Murray
Nicholas J. Begakis
Serli Polatoglu
ELLIS GEORGE CIPOLLONE O'BRIEN LLP
2121 Avenue of the Stars
Suite 3000, 30th Floor
Los Angeles, CA 90067
T: (310) 274-7100
F: (310) 275-5697
dellis@egcfirm.com
kmurray@egcfirm.com nbegakis@egcfirm.com
spolatoglu@egcfirm.com

Jonathan Blakley
GORDON REES SCULLY MANSUKHANI LLP
1 N. Franklin St., Suite 800
Chicago, IL 60606
T: (312) 565-1400
F: (312) 565-6511
jblakley@grsm.com

Peter Siachos
GORDON REES SCULLY MANSUKHANI LLP
18 Columbia Turnpike, Suite 220
Florham Park, NJ 07932
T: (973) 549-2500
F: (973) 377-1911
psiachos@grsm.com

*Counsel for Defendants L'Oréal USA, Inc., L'Oréal
USA Products, Inc. and SoftSheen-Carson LLC*

Lori B. Leskin
ARNOLD & PORTER KAYE SCHOLER, LLP
250 West 55th Street
New York, NY 10019
T: (212) 836-8641
F: (212) 836-8689
Lori.leskin@arnoldporter.com

Rhonda R. Trotter
ARNOLD & PORTER KAYE SCHOLER, LLP
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017
T: (213) 243-4000
F: (213) 243-4199

*Counsel for Defendants Strength of Nature LLC;
Strength of Nature Global LLC; and Godrej SON
Holdings*

R. Trent Taylor
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916
T: (804) 775-1182
F: (804) 225-5409
rtaylor@mcguirewoods.com

Patrick P. Clyder
Royce B. DuBiner
MCGUIREWOODS LLP
77 West Wacker Drive, Suite 4100
Chicago, IL 60601-1818
T: (312) 849-8100
F: (312) 849-3690
pclyder@mcguirewoods.com
rdubiner@mcguirewoods.com

Counsel for Defendant House of Cheatham LLC

Joseph P. Sullivan
Kevin A. Titus
Bryan E. Curry
LITCHFIELD CAVO LLP
303 W. Madison, Suite 300
Chicago, IL 60606
T: 312-781-6677
F: 312-781-6630
sullivanj@litchfieldcavo.com
titus@litchfieldcavo.com
curry@litchfieldcavo.com

*Counsel for Defendant Beauty Bell Enterprises, LLC
f/k/a House of Cheatham, Inc.*

Richard J. Leamy, Jr.
Kristen A. Schank
Anna Morrison Ricordati
WIEDNER & MCAULIFFE, LTD.
1 N. Franklin St., Suite 1900
Chicago, IL 60606
T: (312) 855-1105
rjleamy@wmlaw.com
kaschank@wmlaw.com
amricordati@wmlaw.com

Counsel for Defendant Avlon Industries, Inc.

Melissa Fallah
Robert W. Petti
Alyssa P. Fleischman
MARON MARVEL
191 N. Wacker Drive – Suite 2950
Chicago, IL 60606
T: (312) 579-2018 (ofc)
mfallah@maronmarvel.com rpetti@maronmarvel.com
afleischman@maronmarvel.com

Counsel for Defendant Luster Products, Inc.

Robert A. Atkins
Daniel H. Levi
Shimeng (Simona) Xu
**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**
1285 Avenue of the Americas
New York, NY 10019
T: (212) 373-3000
ratkins@paulweiss.com
dlevi@paulweiss.com
sxu@paulweiss.com

Randy S. Luskey
**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**
535 Mission Street, 24th Floor
San Francisco, CA 94105
T: (628) 432-5112
rluskey@paulweiss.com

David E. Cole
**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**
2001 K Street, NW
Washington, DC 20006
T: (202) 223-7348
dcole@paulweiss.com

Abbot P. Edward
Melissa He
Erich J. Gleber
HAWKINS PARNELL & YOUNG LLP
275 Madison Avenue, 10th Floor
New York, NY 10016
eabbot@hpylaw.com
mhe@hpylaw.com
egleber@hpylaw.com

*Counsel for Defendants Revlon, Inc., Revlon
Consumer Products Corporation, and Revlon Group
Holdings LLC*

Heidi Levine
SIDLEY AUSTIN LLP
787 7th Ave
New York, NY 10019
T: (212) 839-5300
hlevine@sidley.com

Lisa M. Gilford
SIDLEY AUSTIN LLP
555 W 5th Street
Los Angeles, CA 90013
T: (213) 896-6000
lgilford@sidley.com

Kara L. McCall
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
T: (312) 853-2666
kmccall@sidley.com

Counsel for Sally Beauty Supply LLC

Joseph J. Welter
Ryan M. Frierott
GOLDBERG SEGALLIA
665 Main Street
Buffalo, NY 14203
T: (716) 566-5457
jwelter@goldbergsegalla.com
rfrierott@goldbergsegalla.com

Counsel for AFAM Concept, Inc.

Nancy L. Patterson
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002-5005
T: (713) 890-5195
F: (713).890-5001
nancy.patterson@morganlewis.com

Mark A. Fiore
MORGAN, LEWIS & BOCKIUS LLP
2222 Market Street
Philadelphia, PA 19103-3007
T: (215) 963-4685
F: (215) 963-5001
mark.fiore@morganlewis.com

Monica C. Pedroza
MORGAN, LEWIS & BOCKIUS LLP
110 N. Wacker Drive, Suite 2800
Chicago, Illinois 60606-1511
T: (312) 324-1484
F: (312) 324-1001
monica.pedroza@morganlewis.com

*Counsel for Defendant
John Paul Mitchell Systems*

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In Re: HAIR RELAXER MARKETING
SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION

MDL NO. 3060

THIS DOCUMENT RELATES TO
ALL CASES

[PROPOSED] CASE MANAGEMENT ORDER NO. __
(Bellwether Selection Schedule and Procedure)

- 1) **Scope of Order** This order applies to: (a) all actions transferred to *In Re Hair Relaxer Marketing Sales Practices and Products Liability Litigation* by the Judicial Panel on Multidistrict Litigation (“JPML”) pursuant to its order of February 6, 2023; (b) all related actions originally filed in or removed to this Court; and (c) any “tag-along” actions transferred to this Court by the JPML pursuant to Rules 6.2 and 7.1 of the Rules of Procedure of the JPML subsequent to the filing of the final transfer order by the Clerk of the Court.
- 2) **Eligible Cases.** All cases in which a Short Form Complaint (“SFC”) has been filed before February 1, 2024 will be presumptively eligible to be included in the bellwether trial pool, subject to the qualifications as set forth below (the “Eligible Cases”).
- 3) **Designated Injuries.** Only a plaintiff alleging the following injuries (the “Designated Injuries”) in the SFC and/or Plaintiff Fact Sheet (“PFS”) shall be eligible for selection as an initial bellwether case for discovery (“Initial Bellwether Discovery Case”): (a) uterine cancer; (b) endometrial cancer; (c) ovarian cancer; and/or (d) any injury alleged in the SFC and/or PFS in more than 10% of the Eligible Cases. Regarding (d) of this Section 3, to promote efficiency, and subject to the Court’s approval, the parties may adjust the percentage of Eligible Cases upward or downward by agreement, or agree to place one or more categories of Designated

Injuries on a separate bellwether track, or they may jointly suggest that the Court take other appropriate action.

4) General Expert Discovery and Briefing.

- a) On August 22, 2024, the plaintiffs shall serve defendants with general causation expert reports regarding the Designated Injuries. Reports submitted at this time shall not address regulatory, company conduct or other liability claims or defenses, and shall not involve damages or the facts of any individual case. 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 in this MDL.
- b) Assuming the other deadlines in this Case Management Order are met, all depositions of any of plaintiffs' experts on general causation shall be completed by October 21, 2024.
- c) Defendants shall provide the plaintiffs with general causation expert reports for each of the Designated Injuries by January 10, 2025.
- d) Assuming the other deadlines in this Case Management Order are met, all depositions of any defendants' experts on general causation shall be completed by March 10, 2025.
- e) The parties shall file any Rule 702 (*Daubert*) motions on general causation by April 8, 2025.
- f) The parties shall file any opposition to Rule 702 (*Daubert*) motions on general causation by May 9, 2025.
- g) The parties shall file any reply in support of any Rule 702 (*Daubert*) motions on general causation by June 6, 2025.

h) The Court shall conduct hearings, as necessary, on the Rule 702 (*Daubert*) motions following the completion of briefing.

5) Selection of Initial Bellwether Discovery Cases.

- a) Assuming that, as of July 1, 2024, 75% of the PFSs (for cases filed before February 1, 2024) are substantially complete, as defined by Case Management Order No. 9 (PFS implementation), on August 22, 2024, the plaintiffs and defendants shall each designate eight (8) cases (including at least one case from each of the Designated Injuries), which cases shall comprise the “Initial Bellwether Discovery Cases.”
- b) Pursuant to Case Management Order No. 8 (Service of and Responses to SFCs), each defendant shall serve its answer and affirmative defenses to each of the Initial Bellwether Discovery Cases in which it is named within 45 days of selection of such cases.
- c) Fact discovery in the Initial Bellwether Discovery Cases, including, but not limited to, additional written discovery and depositions of the plaintiffs in those cases, their family members, and their treating healthcare providers, will commence on August 22, 2024 and will be completed by April 15, 2025. Each Initial Bellwether Discovery Case will be limited to a total of four (4) fact depositions per side for this phase of the bellwether process unless a good cause showing is made that more depositions are warranted. Case specific discovery in the Initial Bellwether Discovery Cases shall be referred to as "Core Discovery."
- d) If, prior to April 15, 2025, any of the Initial Bellwether Discovery Cases are voluntarily dismissed by a plaintiff, defendants shall be permitted to designate a replacement case of the same injury type as the dismissed case. If, prior to April 15, 2025, any of the Initial Bellwether Discovery Cases are resolved by settlement as to all defendants named in that

case, the parties shall jointly designate a replacement case of the same injury type as the settled case. If the parties are unable to agree, they shall submit simultaneous briefing to the Court on this issue. The parties shall work in good faith to complete fact discovery permitted in this section for the replacement case(s) prior to the selection deadline of the Bellwether Trial Cases set forth in Section 6, *infra*.

6) Selection of Bellwether Trial Cases.

- a) Within thirty (30) days of the Court's order on the Rule 702 (*Daubert*) motions filed under Section 4, *supra*, for any of the Designated Injuries for which the general causation experts remain, five (5) representative cases shall be selected to serve as the potential trial cases ("the Bellwether Trial Cases"). The plaintiffs shall select one (1) case for trial, the defendants shall select one (1) case for trial, and the parties shall jointly select three (3) cases for trial. If the parties are unable to agree on the last three cases, they shall submit simultaneous briefing to the Court on this issue. The Parties and the Court will work together to insure that at least one case is selected from each of the Designated Injuries categories. The Court shall have discretion to balance, or otherwise adjust, the trial pool of cases.
- b) Within ninety (90) days of designating the Bellwether Trial Cases, all remaining fact discovery, if any, must be completed.
- c) Within one hundred twenty (120) days of designating the Bellwether Trial Cases, the plaintiffs will provide any and all remaining general expert reports not included in Section 4, *supra*, (e.g., regulatory, company conduct and any and all claims and liability) and on specific causation, liability, and damages ("case-specific expert reports").

- d) Thirty (30) days after receiving the plaintiffs' case-specific and remaining general expert reports, defendants shall provide their case-specific and remaining general expert reports.
 - e) Within ninety (90) days of the defendants' submission of case-specific and remaining general expert reports, the parties will complete expert depositions regarding case-specific causation, liability and damages (and any other remaining) opinions.
 - f) Within thirty (30) days of completing case-specific and remaining general expert discovery in the Bellwether Trial Cases, the parties will file summary judgment motions, as appropriate, and/or Rule 702 (*Daubert*) motions in any of the Bellwether Trial Cases.
- 7) **Trial Selection and Pre-Trial and Trial Deadlines.** The parties will meet and confer within thirty (30) days of the selection of the Bellwether Trial Cases to determine an appropriate case management order for the remaining deadlines.
- 8) **Duty to Supplement.** Nothing herein relieves a party of its duty to supplement its disclosures, PFSs, and any other discovery as provided under the Federal Rules of Civil Procedure, orders entered in this MDL, or other applicable law and rules.

Ordered this ____ day of _____, 2024.

Mary M. Rowland
United States District Judge

EXHIBIT B

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
1	Monday, January 15, 2024	Plaintiffs identify with specificity the theories of liability they intend to pursue in the Member Actions, including products, the active hair relaxing ingredient in each product, the allegedly harmful ingredient(s)/chemical(s) in each product identified, the specific injuries alleged to be caused by those chemicals/ingredients; and the scientific theory allegedly connecting each product and ingredient with the each injury identified. ¹	Same		
2	Thursday, February 1, 2024	All cases with a Short Form Complaint <i>filed</i> before this date are presumptively eligible for the bellwether trial pool (the "Eligible Cases").		All cases with a Short Form Complaint <i>filed and served</i> on or before this date are presumptively eligible for the bellwether trial pool (the "Eligible Cases").	
3	Friday, March 1, 2024				Only cases with complaints filed in the MDL on or before December 15, 2023 that allege uterine cancer, endometrial cancer, or ovarian cancer in the complaint and PFS and that serve substantially complete PFS on or before this date are eligible for bellwether selection.
4	Friday, March 15, 2024	Plaintiffs will communicate to Defendants if they intend to amend or supplement list for their Science Day presentation. ²	Same		
5	Sunday, March 31, 2024		All cases filed before this date are presumptively eligible for the bellwether trial pool.		
6	Wednesday, April 17, 2024	Science Day ³	Same		

¹ See Defendants' Science Day Proposal, ECF No. 292-1. Given the timing of this filing, this date will need to be adjourned to a later date, but it should still occur in advance of Science Day and any bellwether selection.

² See *id.*

³ See *id.*

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
7	Wednesday, May 1, 2024				Each party selects ten (10) Initial Bellwether Discovery Cases, including seven (7) plaintiffs alleging uterine and/or endometrial cancer and three (3) plaintiffs alleging ovarian cancer, for a total of twenty (20) Initial Bellwether Discovery Cases from among the eligible cases. In selecting these cases, the parties will 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.
8	Wednesday, May 15, 2024				Parties jointly submit a proposed order to the Court identifying the twenty (20) Initial Bellwether Discovery Cases, and discovery in such cases shall commence promptly. "Core Bellwether Discovery" to begin on this date as well. This includes up to three (3) depositions per side per case for a total of one hundred twenty (120) depositions. The parties are permitted to propound additional case specific written 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.
9	Friday, May 17, 2024				The Court enters order identifying any case as an Initial Bellwether Discovery Case. ***ESTIMATED DATE***
10	Friday, June 7, 2024				Each Defendant in an Initial Bellwether Discovery Case will provide a completed Defendant Fact Sheet for each case.
11	Friday, June 14, 2024		Substantially complete PFS submitted in at least 85% of cases filed by March 31, 2024. ***ESTIMATED DATE***		

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
12	Monday, July 1, 2024	At least 75% of the PFSs (for cases filed before February 1, 2024) must be substantially complete, as defined by CMO 9 (PFS implementation), as of this date, in order to move forward. ⁴ ***ESTIMATED DATE***			
13	Monday, July 15, 2024			<p>Any other primary injury alleged by more than 10% of the Eligible Cases by this date will be subject to a later negotiated bellwether protocol or the parties may suggest that the Court take other appropriate action, including other case management orders to address injuries claimed in remaining cases in this MDL.</p> <p>Plaintiffs and defendants shall each designate eight (8) cases (including at least one case from each of the Designated Injuries), and this shall comprise the Initial Bellwether Discovery Cases.</p> <p>Fact discovery in the Initial Bellwether Discovery Cases, including but not limited to additional written discovery and depositions, will commence on this date. Each bellwether case will be limited to a total of four (4) fact depositions per side for this phase of the bellwether process unless a good cause showing is made that more depositions are warranted. All case specific discovery conducted in the sixteen (16) Initial Bellwether Discovery Cases shall be referred to as "Core Discovery."</p>	
14	Tuesday, August 13, 2024		Parties obtain report of injuries alleged in PFS and inform the Court of the number of cases and percentage of total cases that allege each type of injury, each product and each chemical/ingredient involved in the cases.		

⁴ All subsequent dates in Defendants' protocol are dependent on this threshold of substantially completed PFSs being reached on or before this date.

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
15	Thursday, August 22, 2024	<p>Plaintiffs shall serve defendants with general causation expert reports regarding the Designated Injuries.</p> <p>Plaintiffs and defendants shall each designate eight (8) cases (including at least one case from each of the Designated Injuries) (the "Initial Bellwether Discovery Cases"). Any case that alleges in the Short Form Complaint or PFS (a) uterine cancer, (b) endometrial cancer, (c) ovarian cancer, or (d) an injury alleged by more than 10% of the Eligible Cases as of this date (the "Designated Injuries") will be eligible for selection as an initial bellwether case for discovery.</p> <p>Fact discovery in the Initial Bellwether Discovery Cases, including , but not limited to, additional written discovery and depositions of the plaintiffs in those cases, their family members, and their treating healthcare providers, will commence. Each bellwether case will be limited to a total of four (4) fact depositions per side for this phase of the bellwether process unless a good cause showing is made that more depositions are warranted.</p>			
16	Thursday, August 29, 2024			Each defendant shall serve its Answer and Affirmative Defenses to each of the Initial Bellwether Discovery Cases (45 days after case selection).	
17	Wednesday, September 11, 2024				Core Bellwether Discovery to be completed.
18	Thursday, September 12, 2024		Plaintiffs file list of injuries included in the PFS that they will pursue in the litigation (the "Designated Injuries") and a list of injuries alleged in the PFS that they will not pursue in the litigation (the "Non-Designated Injuries").		

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
19	Friday, September 13, 2024				<p>Parties to submit joint report, identifying four (4) representative finalists (the "Initial Bellwether Trial Cases") agreed to by the parties and explaining why the selected cases are appropriate Bellwether Trial Cases.</p> <p>Alternatively, if the parties are unable to agree, the parties shall submit simultaneous briefing, not to exceed 20 pages, advocating for which four (4) cases should be selected for additional discovery and trial.</p>
20	Friday, September 20, 2024				Responses to simultaneous briefing on appropriate Initial Bellwether Trial Cases due.
21	Friday, October 4, 2024				The Court endeavors to issue its ruling on the four (4) Initial Bellwether Trial Cases by this date.
22	Monday, October 7, 2024	Each defendant shall serve its Answer and Affirmative Defenses to each of the Initial Bellwether Discovery Cases in which it is named (45 days after case selection).			
23	Monday, October 14, 2024		Plaintiffs provide general causation expert reports for each of the Designated Injuries.		
24	Monday, October 21, 2024	All depositions of plaintiffs' experts on general causation shall be completed.			

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
25	Friday, November 15, 2024			<p>Fact discovery in the Initial Bellwether Discovery Cases, including but not limited to additional written discovery, and depositions of the plaintiffs in those cases and their treating healthcare providers, will be completed.</p> <p>The Parties shall winnow the list of cases down to five (5) representative finalists which will be known as the "Bellwether Trial Cases." If the parties agree on these cases, they must file a joint report on this date explaining why the cases they have selected are appropriate Bellwether Trial Cases. If they cannot agree, they shall submit simultaneous briefing to the Court supporting their respective choice of cases on this date, advocating which five (5) cases should be selected for additional discovery as Bellwether Trial Cases and trial.</p>	The parties shall submit simultaneous briefing, not to exceed twenty (20) pages, on whether joint or multi-plaintiff bellwether trials may be appropriate for the selected Initial Bellwether Trial Cases.
26	Friday, November 22, 2024				Responses to the simultaneous briefing on joint or multi-plaintiff bellwether trials are due.
27	Tuesday, December 3, 2024			Should the Court have to decide which cases will be the five (5) Initial Bellwether Trial Cases, the Court will endeavor to issue its ruling by this date.	
28	Friday, December 20, 2024				The Court will endeavor to issue its ruling on joint or multi-plaintiff bellwether trials by this date.
29	Saturday, January 6, 2024				The parties submit their final trial sequence selections for the four (4) Initial Bellwether Trial Cases.
30	Friday, January 10, 2025	Defendants shall provide plaintiffs with general causation expert reports for each of the Designated Injuries.	All depositions of plaintiffs' experts on general causation are completed.		
31	Friday, January 17, 2025				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, but it must be completed on or before this date.

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
32	Monday, February 3, 2025			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, but it must be completed on or before this date.	
33	Monday, February 10, 2025		Defendants provide general causation expert reports for each of the Designated Injuries.		
34	Monday, February 24, 2025				For first Bellwether Trial Case (to be tried in November 2025), plaintiffs shall disclose expert witness testimony pursuant to Fed. R. Civ. P. 26(a)(2).
35	Monday, March 10, 2025	All depositions of defendants' experts on general causation shall be completed.			
36	Friday, March 21, 2025			Plaintiffs shall provide Defendants with expert reports pursuant to Fed. R. Civ. P. 26(a)(2).	
37	Monday, March 24, 2025				For first Bellwether Trial Case (to be tried in November 2025), defendants shall disclose expert witness testimony pursuant to Fed. R. Civ. P. 26(a)(2).
38	Friday, April 4, 2025			The parties will submit briefing to the Court on or before this date to assist in the Court's determination of the sequence of the trial case(s), including briefing on whether joint or multi-plaintiff bellwether trials may be appropriate for the selected Bellwether Trial Cases.	
39	Tuesday, April 8, 2025	The parties shall file any Rule 702 (<i>Daubert</i>) motions on general causation.			
40	Tuesday, April 15, 2025	Fact discovery in the Initial Bellwether Discovery Cases, including , but not limited to, additional written discovery and depositions of the plaintiffs in those cases, their family members, and their treating healthcare providers, will be completed by this date.			

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
41	Monday, April 21, 2025			Defendants shall provide Plaintiffs with expert reports pursuant to Fed. R. Civ. P. 26(a)(2).	
42	Friday, May 9, 2025	The parties shall file any opposition to Rule 702 (<i>Daubert</i>) motions on general causation.			
43	Monday, May 12, 2025		All depositions of defendants' experts on general causation are completed.	Plaintiffs to disclose rebuttal expert reports, if any.	
44	Friday, May 23, 2025				For first Bellwether Trial Case (to be tried in November 2025), depositions of expert witnesses are to be completed.
45	Friday, June 6, 2025	The parties shall file any reply in support of their Rule 702 (<i>Daubert</i>) motions on general causation.			
46	Tuesday, July 1, 2025				For first Bellwether Trial Case (to be tried in November 2025), any motion for summary judgment or for partial summary judgment and any motions seeking to challenge expert testimony pursuant to <i>Daubert</i> must be filed. **The schedule for dispositive motions concerning the remaining Initial Bellwether Trials to be determined by the parties at a later date.**
47	Wednesday, July 9, 2025		Parties file any dispositive and Rule 702 (<i>Daubert</i>) motions on general causation.		
48	Friday, July 18, 2025			Depositions of expert witnesses are to be completed.	
49	Monday, July 28, 2025				For first Bellwether Trial Case (to be tried in November 2025), responses to summary judgment motions and <i>Daubert</i> motions must be filed.
50	Tuesday, August 5, 2025				For first Bellwether Trial Case (to be tried in November 2025), replies in support of summary judgment motions and <i>Daubert</i> motions must be filed.

DEFENDANTS' COMPARISON OF THE PARTIES' BELLWETHER PROTOCOLS

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
51	Friday, August 8, 2025			Any motion for summary judgment or for partial summary judgment shall be filed.	
52	Friday, August 15, 2025	The Court issues its order on the Rule 702 (<i>Daubert</i>) motions on general causation. ⁵ ***ESTIMATED DATE***			
53	Friday, August 22, 2025			Any motions seeking to challenge expert testimony pursuant to <i>Daubert</i> shall be filed.	
54	Thursday, August 28, 2025				For first Bellwether Trial Case (to be tried in November 2025), the Court will endeavor to rule on any summary judgment and <i>Daubert</i> motions by this date.
55	Monday, September 8, 2025		Parties file any opposition to dispositive and Rule 702 (<i>Daubert</i>) motions on general causation.		
56	Friday, September 12, 2025			Responses to summary judgment motions shall be filed.	
57	Monday, September 15, 2025	For any of the Designated Injuries for which the general causation experts remain, five (5) representative cases shall be selected to serve as the potential trial cases ("the Bellwether Trial Cases"). The plaintiffs shall select one (1) case for trial, the defendants shall select one (1) case for trial, and the parties shall jointly select three (3) cases for trial. If the parties are unable to agree on the last three cases, they shall submit simultaneous briefing to the Court on this issue. The Parties and the Court will work together to insure that at least one case is selected from each of the Designated Injuries categories.			

⁵ This date is an estimate of when the Court will rule on the parties' Rule 702 (*Daubert*) motions on general causation. To the extent this ruling issues earlier or later, this will impact all remaining dates in the schedule by the same incremental change.

DEFENDANTS' COMPARISON OF THE PARTIES' BELLWETHER PROTOCOLS

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
58	Friday, September 26, 2025			Replies in support of summary judgment motions shall be filed.	
59	Monday, September 29, 2025			Responses to <i>Daubert</i> motions shall be filed.	
60	Wednesday, October 8, 2025		Parties file any reply in support of their dispositive and Rule 702 (<i>Daubert</i>) motions on general causation.		
61	Monday, October 13, 2025			Replies in support of <i>Daubert</i> motions shall be filed.	
62	Wednesday, October 15, 2025	The parties will meet and confer to determine an appropriate case management order for the remaining deadlines.			
63	Monday, November 3, 2025				Jury selection to begin in first Bellwether Trial Case.
64	Thursday, November 6, 2025			The Court will endeavor to rule on any summary judgment and <i>Daubert</i> motions.	
65	Friday, November 7, 2025 to Friday, November 21, 2025		The Court to conduct hearings on the dispositive and Rule 702 (<i>Daubert</i>) motions/		
66	November 2025				First Bellwether Trial Case to be tried during the month of November 2025.
67	Monday, December 15, 2025	All remaining fact discovery, if any, must be completed for the Bellwether Trial Cases.			
68	Tuesday, January 13, 2026	Plaintiffs will provide any and all remaining general expert reports (e.g., regulatory, company conduct and any and all claims and liability) and on specific causation, liability, and damages ("case-specific expert reports").			

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
69	Thursday, January 15, 2026		The Court's final ruling on dispositive and/or Rule 702 motions (assuming, for purposes of this schedule, it is not entirely dispositive of the litigation). ***ESTIMATED DATE***		
70	Tuesday, January 20, 2026			Jury selection shall commence on Trial 1.	
71	Monday, February 2, 2026				Jury selection to begin in second Bellwether Trial Case. **The sequence of other Bellwether Trial Cases to be determined by the Court.**
72	Thursday, February 12, 2026	Defendants shall provide their case-specific and remaining general expert reports.			
73	Monday, March 16, 2026		In an Initial Exchange, each side will select five (5) of the remaining cases for each type of four (4) injuries to be agreed by the parties after meet and confer or court intervention. This means the parties will each select twenty (20) cases, spanning four (4) different injuries, for a total of forty (40) cases in the initial bellwether pool of cases.		
74	Monday, March 30, 2026			Jury selection shall commence on Trial 2.	
75	Tuesday, March 31, 2026		Each party strikes two (2) cases selected by the other side for each type of injury in the Initial Exchange, leaving three (3) bellwether cases for each type of injury. This means that the parties will agree to a list of twenty-four (24) total cases, spanning four (4) different injuries, as the list of "Potential Bellwether Cases."		
76	Monday, April 6, 2026		Parties notify the Court of list of twenty-four (24) Potential Bellwether Cases.		

DEFENDANTS' COMPARISON OF THE PARTIES' BELLWETHER PROTOCOLS

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
77	Wednesday, May 6, 2026		Defendants serve answers and affirmative defenses for the twenty-four (24) Potential Bellwether Cases.		
78	Wednesday, May 13, 2026	The Parties will complete expert depositions regarding case-specific causation, liability and damages (and any other remaining) opinions.			
79	Thursday, May 21, 2026		Pursuant to the Plaintiff Fact Sheet Case Management Order, parties respond to Tier 2 case-specific discovery, including the production of documents.		
80	Friday, June 12, 2026	The Parties will file summary judgment motions as appropriate, and/or Rule 702 (<i>Daubert</i>) motions in any of the Bellwether Trial Cases.			
81	Monday, November 2, 2026		Fact discovery in the twenty-four (24) Potential Bellwether Cases, including depositions of the plaintiffs in those cases and their treating physicians, will be completed. Each bellwether case is limited to a total of five (5) fact depositions for this phase of the bellwether process, which means the parties will be completing up to one hundred twenty (120) depositions during this phase.		
82	Wednesday, December 2, 2026		Each side will designate five (5) cases for trial, with a least one case from each of the four (4) injury types, for a total of ten (10) "Bellwether Trial Cases."		
83	Friday, January 1, 2027		All remaining fact discovery, if any, must be completed. No more than two (2) case-specific depositions, if any, may be taken per case by each side. This means the parties will be completing up to forty (40) depositions during this period.		
84	Monday, February 1, 2027		Plaintiffs will provide any and all expert reports on specific causation, liability and damages ("case-specific expert reports").		

DEFENDANTS' COMPARISON OF THE PARTIES' BELLWETHER PROTOCOLS

No.	Date	Defendants' Current Proposed Schedule (Exhibit A)	Defendants' Prior November 10, 2023 Proposed Schedule (ECF No. 289-1)	Plaintiffs' Current Proposed Schedule	Plaintiffs' Prior November 10, 2023 Proposed Schedule (ECF No. 290-1)
85	Wednesday, March 3, 2027		Defendants will provide their specific case-specific expert reports.		
86	Tuesday, June 1, 2027		Parties will complete expert depositions regarding their case-specific causation, liability and damages opinions.		
87	Thursday, July 1, 2027		Parties will submit a proposed case management order for further selection of a total of six (6) Bellwether Trial Cases to proceed through case-specific summary judgment and Rule 702 (<i>Daubert</i>) motions, other pre-trial motions and trial, including the selection and order of the cases for trial settings.		