

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**IN RE: BIOZORB PRODUCT LIABILITY
LITIGATION**

This document relates to all Plaintiffs

Case No. 1:22-cv-11895-ADB

JOINT STATUS REPORT

In advance of the scheduled December 4, 2024 status conference, Plaintiffs and Hologic, Inc. (“Hologic”) jointly file this status report to update the Court on the progress of the BioZorb Litigation. The Parties look forward to the opportunity to discuss the status of the litigation and address any questions the Court may have.

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Overview of case filings. As of the date of this filing, there are a total of 22 complaints involving 100 total plaintiffs pending before this Court. Of those, 98 plaintiffs are represented by the undersigned plaintiffs’ counsel. Two plaintiffs are represented by Ketterer, Browne & Associates, LLC. *See Nudel v. Hologic, Inc.*, No. 1:24-cv-12495; *Holcomb v. Hologic, Inc.*, No. 1:24-cv-12784.

Status of Bellwether Discovery. Pursuant to the Court’s February 26, 2024 order establishing a bellwether plan for the BioZorb litigation (the “Bellwether Order”), the Parties have been diligently and cooperatively pursuing discovery for the ten Discovery Pool Plaintiffs. As set forth in the Parties’ August 27, 2024 Joint Status Report, the Discovery Pool Plaintiffs are as follows:

Plaintiffs' picks	Hologic's picks
Christina Patras (<i>Lyons</i> , No. 1:22-cv-11895)	Beth Deuel (<i>Shirkey</i> , No. 1:23-cv-10579)
Julie Block (<i>Block</i> , No. 1:22-cv-12194)	Nerissa Burke (<i>Block</i> , No. 1:22-cv-12194)
Rebecca Shirkey (<i>Shirkey</i> , No. 1:23-cv-10579)	Joanna Perez (<i>Stine</i> , No. 1:23-cv-10599)
Cynthia Kresch (<i>Chambers</i> , No. 1:23-cv-10260)	Pamela Gibson (<i>Stine</i> , No. 1:23-cv-10599)
Kimberly Taylor (<i>Chambers</i> , No. 1:23-cv-10260)	Pamela Mazzanti (<i>Shirkey</i> , No. 1:23-cv-10579)

The Parties are on track to timely complete “core” discovery relating to the Discovery Pool Plaintiffs. As of the date of this submission, the Parties have completed twenty-six third-party fact witness depositions for the Discovery Pool Plaintiffs. Three additional third-party witness fact depositions have been scheduled, and the Parties are working on scheduling two others in advance of the December 16, 2024 deadline for completion of core depositions. *See Bellwether Order* at 8.

Plaintiffs’ Discovery to Hologic. The Parties have been working cooperatively to complete discovery on Hologic. Plaintiffs have requested depositions of thirteen current or former Hologic employees, and on August 23, 2024, served a Rule 30(b)(6) deposition notice on Hologic, which noticed several different topics. To date, the Parties have completed depositions of four Hologic company witnesses, including a Rule 30(b)(6) deposition on topics pertaining to research and development. Seven additional company witness depositions have been scheduled, and will take place between December 6, 2024 and March 14, 2025, and the Parties are working to schedule the remaining fact depositions. The Parties are accordingly on track to complete corporate discovery on Hologic in advance of the April 25, 2025 deadline. *See Bellwether Order* at 9.

Dispositive Motions in the Track A and B Cases. As the Court is aware, Hologic filed

early summary judgment motions based on the learned intermediary doctrine or statute of limitations as to eighteen of the twenty-one pending Track A and B Plaintiffs, including nine of the ten Discovery Pool Plaintiffs.¹ Since the date of the last conference, the Court has ruled on four of those motions, including the summary judgment motion pertaining to Discovery Pool Plaintiff Burke. Hologic additionally filed a motion to dismiss the design defect claims in the Track A and B cases on November 11, 2024. *See Evers*, No. 1:22-cv-11895, ECF No. 190. That motion will be fully briefed by December 16, 2024. *See id.*, ECF No. 177. The Parties would be pleased to answer any questions the Court may have about these pending motions and their impact on the selection of cases for trial at the status conference.

Trial Selection and Structure. Pursuant to the Bellwether Order, the Parties will “strike” three Plaintiffs each, and the remaining four Discovery Pool Plaintiffs will be eligible to participate in a bellwether trial (“Trial Pool Plaintiffs”). *See* Bellwether Order at 9. The Parties will then submit by December 19, 2024 a Case Management Order that (1) identifies the four Plaintiffs selected to be eligible for trial, and (2) proposes a “method for trial selection and/or structure.” *See id.*

The Parties have met and conferred but were unable to reach agreement on bellwether trial selection and structure. Specifically, Plaintiffs intend to ask the Court for a multi-plaintiff trial comprised of multiple Trial Pool Plaintiffs. Hologic objects to a multi-plaintiff trial and intends to propose a single-plaintiff trial structure. The Parties propose to submit memoranda on December 19 reflecting their respective positions, along with their proposed Case Management

¹ The vast majority of these motions (seventeen) were based principally on the learned intermediary doctrine. In one case, that of Discovery Pool Plaintiff Rebecca Shirkey, Hologic’s motion was based on the statute of limitations.

Orders.

Bellwether Trial Date. The Court determined in its February 26, 2024 order that a trial date will be scheduled in or around July 2025. *See* Bellwether Order at 10-11. Parties respectfully request that the Court set a date certain for trial. The Parties are continuing to confer concerning proposed trial scheduling and would welcome the Court providing guidance on its preferences and availability at the conference. To the extent necessary, the Parties can also further address trial scheduling in their forthcoming December 19 submissions.

Next Case Management Conference. The Parties respectfully suggest that, following the December 19, 2024 submissions, the Court convene a status conference early in the new year to address the Parties' trial structure and scheduling proposals.

Respectfully submitted,

Dated: December 3, 2024

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By its attorneys,

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CERTIFICATE OF SERVICE

I, Pietro A. Conte, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) and paper copies will be sent to those indicated as non-registered participants on December 3, 2024.

/s/ Pietro A. Conte
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