

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: PROTON-PUMP INHIBITOR
PRODUCTS LIABILITY LITIGATION
(No. II)**

**2:17-MD-2789 (CCC)(MF)
(MDL 2789)**

Judge Claire C. Cecchi

This Document Relates to: ALL ACTIONS

CASE MANAGEMENT ORDER #21

**CASE MANAGEMENT ORDER NO. 21
(Scheduling Order)**

1. SCOPE AND APPLICABILITY

A. This Order is intended to conserve judicial and party resources, eliminate duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. The following shall apply to all cases in MDL-2789.

2. BELLWETHER SELECTION

A. The parties shall present the Court with a plan to select representative cases to serve as “Bellwether Discovery Cases” that will undergo additional discovery (beyond the PFS and DFS), which shall be referred to as “Core Discovery.” This plan shall set forth how the Bellwether Discovery Cases will be selected. Following Core Discovery, the Bellwether Discovery Cases will be narrowed to a smaller pool of Bellwether Trial Cases, which will be the subject of a future order described in paragraph 3(B) below. The parties will present the plan and joint Case Management Order (“CMO”) or competing proposals to the Court on or before December 3, 2018, with the deadlines set forth herein maintained. The parties shall continue to discuss how to define

“Core Discovery” and will provide an update for the Court at the July 24, 2018 Case Management Conference (“CMC”).

3. SELECTION OF BELLWETHER DISCOVERY CASES

A. The Bellwether Discovery Cases shall be selected on February 28, 2019. The parties shall conduct Core Discovery on those cases from that time through June 28, 2019. The parties shall continue to discuss a presumptive cap on the maximum number of Bellwether Discovery Cases and will provide an update for the Court at the July 24, 2018 CMC.

B. Following completion of Core Discovery in the Bellwether Discovery Cases, the parties shall meet and confer regarding a plan to narrow the Bellwether Discovery Cases to a smaller pool of Bellwether Trial Cases. The Bellwether Trial Cases will then undergo preparation for trial, including additional fact discovery, expert discovery, and dispositive and trial-related motion practice. The parties shall submit an agreed upon CMO or competing proposals addressing selection of the Bellwether Trial Cases and the additional discovery to be conducted in Bellwether Trial Cases to the Court by July 19, 2019.

C. The parties shall complete fact discovery in the Bellwether Trial Cases by October 4, 2019.

D. Absent agreement of the parties or subsequent Order of the Court, there shall be a presumptive cut-off for general/generic corporate discovery (i.e., fact discovery against Defendants that applies in more than one case) in the Bellwether Trial Cases for which expert reports are due December 9, 2019 pursuant to Section 4.A. below, of November 22, 2019. The parties shall meet and confer regarding additional general/generic corporate discovery if they believe such discovery is needed beyond this date, including but not limited to supplemental

productions of select Custodial files and Non-Custodial data sources, and discovery related to events that occur after the cut-off and/or the most recent collection of documents. The parties will raise any disputed issues with the Court as the need may arise.

4. **BELLWETHER TRIAL CASE EXPERT SCHEDULE**

A. On or before December 9, 2019, Plaintiffs shall disclose general and case-specific expert witness reports for the Bellwether Trial Cases pursuant to Fed. R. Civ. P. 26(a)(2).

B. On or before January 15, 2020, Defendants shall disclose general and case-specific expert witness reports for the Bellwether Trial Cases pursuant to Fed. R. Civ. P. 26(a)(2).

C. Plaintiffs to disclose rebuttal expert witness reports, if any, by February 5, 2020.

D. Each expert witness disclosure shall include at least two dates when each expert is available for a deposition. Depositions can only commence after both sides expert reports have been served.

E. Depositions of Plaintiffs' experts will be completed before depositions of Defendants' experts in the same discipline, absent agreement of the parties or leave of Court, with all depositions of expert witnesses to be completed by March 12, 2020. To the extent a Plaintiffs' expert is not serving a rebuttal report, the parties may attempt to schedule that expert's deposition before February 5, 2020, but not before January 15, 2020.

F. The parties intend that the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provisions of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply.

5. **SUMMARY JUDGMENT AND DAUBERT MOTIONS IN TRIAL CASES**

A. Any motions for summary judgment or for partial summary judgment shall be filed on or before April 2, 2020.

B. Any motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before April 2, 2020.

C. Responses to summary judgment motions shall be filed on or before May 5, 2020.

D. Responses to motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before May 14, 2020.

E. Reply briefs in further support of summary judgment motions shall be filed on or before May 19, 2020.

F. Reply briefs in further support of motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before May 28, 2020.

G. If the Court determines that a hearing or oral argument on summary judgment and/or *Daubert* motions, or limited/certain parts thereof, is necessary, such a hearing may be scheduled by the Court for a date to be determined by the Court.

H. A more robust and detailed pretrial schedule for final pretrial matters, exhibit lists, motions *in limine*, and deposition designations will be the subject of a subsequent CMO that the parties will address shortly after the selection of the Bellwether Trial Cases, which should occur on or before July 19, 2019.

6. **TRIAL SCHEDULE**

A. The first trial in this MDL will be held on September 21, 2020, with subsequent bellwether trials to follow.

B. Lexecon: The parties will continue to discuss their position(s) on *Lexecon* waivers and will provide an update for the Court at the July 24, 2018 CMC.

IT IS SO ORDERED

SIGNED 27 day of July, 2018.



CLAIRE C. CECCHI
United States District Judge