

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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**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**

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**CASE MANAGEMENT ORDER NO. 36**  
**(Amended 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. This Order supersedes Case Management Order (“CMO”) No. 21.

**2. SELECTION OF BELLWETHER DISCOVERY CASES**

A. In accordance with Section II.2 of CMO No. 33, on or before **January 23, 2020**, at 4:30 p.m. Eastern, each side shall select five (5) cases from the Eligible Cases List and confidentially inform the Court of the selections. The Court shall remove the ten (10) selected cases from the Eligible Cases List and then provide the remaining Eligible Cases to the Clerk, who will randomly select 200 cases from the remaining Eligible Cases, for a total of 210 cases (the “Remaining Eligible Cases”).

B. In accordance with the process described in Section II.3 of CMO No. 33, from the 210 Remaining Eligible Cases, the PSC shall select sixteen (16) cases and the Defendants shall select sixteen (16) cases on or before **March 5, 2020**. From the group of thirty-two (32) cases selected by the PSC and Defendants, the PSC shall strike six (6) cases and the Defendants shall strike six (6) cases on or before **March 24, 2020**, leaving a pool of twenty (20) cases for core, case-specific discovery (the “Bellwether Discovery Cases”).

3. **SELECTION OF BELLWETHER TRIAL CASES**

A. The parties shall conduct Core Discovery in the Bellwether Discovery Cases from **March 24, 2020** through **October 8, 2020**. During Core Discovery, there shall be a “soft cap” of four (4) depositions per side in each Bellwether Discovery Case. The parties shall meet and confer regarding additional Core Discovery if they believe such discovery is needed beyond this date, so long as the additional discovery does not delay the selection of the final six (6) Bellwether Trial Cases that will occur on **October 28, 2020**, as set forth in Section 3.C, below, and recognizing that additional discovery is permitted in the final six (6) Bellwether Trial Cases. The parties will raise any disputed issues with the Court as the need may arise.

B. In accordance with Section III.1 of CMO No. 33, from the 20 Bellwether Discovery Cases, six (6) cases shall ultimately be chosen to serve as trial cases (the “Bellwether Trial Cases”). On or before **June 18, 2020**, the parties shall submit either a joint proposed CMO or competing proposals to govern the process for selecting and/or determining the six (6) Bellwether Trial Cases.

C. The six (6) Bellwether Trial Cases shall be selected and/or determined on **October 28, 2020**, and will then undergo preparation for trial, including additional fact discovery, expert discovery, and dispositive and trial-related motion practice.

D. The parties shall complete fact discovery in the Bellwether Trial Cases by **January 12, 2021**.

E. Absent agreement of the parties or subsequent Order of the Court, the deadline to complete general/generic corporate discovery (i.e., fact discovery against Defendants that applies in more than one case) in the six (6) Bellwether Trial Cases for which expert reports are due February 9, 2021, shall be **September 15, 2020**. 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 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 **February 9, 2021**, 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 **March 23, 2021**, 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 **April 13, 2021**. Should an expert submit a rebuttal expert report, Defendants will be permitted two extra weeks beyond May 28, 2021 to complete the deposition of that expert.

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 **May 28, 2021**. To the extent a Plaintiffs' expert is not serving a rebuttal report, the parties may attempt to schedule that expert's deposition sooner than April 13, 2021.

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 **June 25, 2021**.

B. Any motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before **July 2, 2021**.

C. Responses to summary judgment motions shall be filed on or before **July 26, 2021**.

D. Responses to motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before **August 5, 2021**.

E. Reply briefs in further support of summary judgment motions shall be filed on

or before **August 17, 2021**.

F. Reply briefs in further support of motions seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before **August 27, 2021**.

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. The parties will submit this as a joint proposed CMO or competing proposals to the Court on or before **May 28, 2021**.

6. **TRIAL SCHEDULE**

A. The first trial in this MDL will be held on **November 15, 2021** (or 30 days after the Court decides summary judgment and *Daubert* motions, whichever is later), with subsequent bellwether trials to follow.

IT IS SO ORDERED

SIGNED 24 day of January, 2020.



CLAIRE C. CECCHI  
United States District Judge