

**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 NO. 46
(Amended Scheduling Order)**

I. SCOPE AND APPLICABILITY

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, which is entered by agreement of the parties and upon the recommendation of Special Master Ellen Reisman, supersedes Case Management Order ("CMO") No. 36.

II. BELLWETHER DISCOVERY CASES

A. By agreement of the parties, the number of Bellwether Discovery Cases shall be reduced as of the date of this Order to nine (9). Those nine (9) Bellwether Discovery Cases are: (i) *Freddy Bales* (2:17-cv-06124); (ii) *William David Bartlett & Kathleen Bartlett* (2:17-cv-05937); (iii) *David Foster* (2:17-cv-02475); (iv) *Steve Kersch* (2:18-cv-03159); (v) *Kimberly Lee* (2:17-cv-00212); (vi) *Diane Nelson* (2:17-cv-13727); (vii) *James Rieder* (2:19-cv-00850); (viii) *Glen Romero & Vickie Sue Romero* (2:17-cv-05941); and (ix) *Susan Stewart* (2:17-cv-00206). No

further discovery shall be taken in any case previously identified as a Bellwether Discovery Case that is not in this group of nine (9).

B. The new deadline for completion of Core Discovery in the Bellwether Discovery Cases shall be January 21, 2021. As set forth in CMO 36, 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, 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.

C. From the nine (9) Bellwether Discovery Cases, six (6) cases shall ultimately be chosen to serve as trial cases (the "Bellwether Trial Cases"). The parties have agreed that the six (6) cases will be selected as follows: the PSC will select 1 case from among its picks and 1 case from among defense picks; the defendants will collectively select 1 case from among their picks and 1 case from among PSC's picks; and Special Master Ellen Reisman will select 2 cases, one from each group of picks, both of which must be in her opinion a representative case. The parties and Special Master Ellen Reisman will inform the Court of their selections on or before January 29, 2021, which selection shall be subject to the approval of the Court.

D. The six (6) selected Bellwether Trial Cases will then undergo preparation for trial, including additional fact discovery, expert discovery, and dispositive and trial-related motion practice.

III. **SCHEDULE FOR BELLWETHER TRIAL CASES**

The parties shall meet and confer with Special Master Ellen Reisman and make recommendations to the Court for dates that will supersede the dates currently in CMO 36 to accomplish the following: complete fact discovery in the Bellwether Trial Cases, disclose general and case-specific expert witnesses, depose general and case-specific expert witnesses, make motions for summary judgment, make *Daubert* motions, and submit proposals for the final pretrial schedule. Such recommendations shall be made to the Court on or before February 12, 2021.

IT IS SO ORDERED.

SIGNED this 4th day of December, 2020.



CLAIRE C. CECCHI
United States District Judge