

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

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**IN RE: PROTON-PUMP  
INHIBITOR PRODUCTS  
LIABILITY LITIGATION**

**2:17-MD-2789 (CCC)(MF)  
(MDL 2789)  
and all member and related cases**

**Judge Claire C. Cecchi**

**This Document Relates to:  
ALL ACTIONS**

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**CASE MANAGEMENT ORDER NO. 54  
(Round Two Bellwether Case Selection Order)**

In furtherance of the effective and efficient case management of this litigation, the following Case Management Order is issued to establish procedures for identifying and selecting additional bellwether cases for case-specific discovery and either trial before this MDL Court or remand/transfer to an appropriate federal district court.

**I. Eligibility Requirements for Second Bellwether Discovery Pool**

The Plaintiffs whose cases are eligible for inclusion in the Second Bellwether Discovery Pool are Plaintiffs who, as of June 1, 2021: (a) had complaints pending in this MDL proceeding that have been served upon all named Defendants; (b) provided a Plaintiff Fact Sheet that was “substantially complete in all respects” as set forth in Paragraph II.B.1 of Case Management Order (hereinafter “CMO”) No. 9 regarding Plaintiff Fact Sheet and PFS Document Production; (c) in accordance with Section III of CMO No. 9, provided “Stage 1 Claim” evidence with respect to each

named defendant, meaning Plaintiffs who had produced a record identifying the use of at least one of each named defendant's proton pump inhibitor ("PPI") products; and (d) was not previously selected as one of the twenty Bellwether Discovery Cases pursuant to CMO No. 33 (hereinafter, "Round 2 Eligible Cases").

## **II. Selection Procedure for Second Bellwether Discovery Pool**

A. The Second Bellwether Discovery Pool shall be selected as follows:

1. On or before November 1, 2021, each side shall provide to Special Master Reisman (by email at PPISpecialMaster@rkgattorneys.com) a list of what it believes are the Eligible Round 2 Cases, and a selection of 8 cases from that list that it believes are representative of the issues present in this litigation. The 8 cases selected by each side must satisfy the following requirements: 2 cases must include Pfizer Inc. as a defendant<sup>1</sup> where the product allegedly used is Protonix, 2 cases must include Takeda<sup>2</sup> as a defendant where the product allegedly used is Prevacid or Dexilant, 2 cases must include GlaxoSmithKline<sup>3</sup> as a defendant where the product allegedly used is Prevacid 24HR or Nexium 24HR, and 2 cases must

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<sup>1</sup> In referring to the "defendant" or "defendants" throughout this order, it is intended that a defendant(s) includes the defendant and its related entities.

<sup>2</sup> Pursuant to CMO No. 24, the Takeda Defendants include Takeda Pharmaceuticals U.S.A., Inc. (TPUSA), Takeda Pharmaceuticals America (TPA), Inc., Takeda Development Center Americas, Inc. (TDCA), and Takeda Pharmaceutical Company Limited (TPC).

<sup>3</sup> Pursuant to CMO No. 25, GlaxoSmithKline defendants include Novartis Consumer Health, Inc., (n/k/a GSK Consumer Health, Inc.) and/or GlaxoSmithKline Consumer Healthcare Holdings (US) LLC.

include Procter & Gamble<sup>4</sup> as a defendant where the product allegedly used is Prilosec OTC, and at least 2 of the 8 cases shall involve Plaintiffs who reside in New Jersey and/or have circumstances pursuant to which applicable choice-of-law would dictate the application of New Jersey substantive law (a “New Jersey Plaintiff”). So long as these distribution criteria are satisfied, cases may involve one or more other defendants.

2. The Special Master shall select an additional 8 cases from the parties’ lists of Round 2 Eligible Cases, resulting in a total of 24 cases. Special Master Reisman will verify the eligibility of the 24 cases selected. For the purposes of conducting this verification, the Special Master may request additional information as to any case selected by the parties or the Special Master, including, but not limited to, evidence of date of retention of counsel or additional medical or other records. Any dispute about the eligibility of a particular case shall be determined conclusively by Special Master Reisman. Special Master Reisman reserves the right to reject a party’s case selection to the extent including such case in a bellwether discovery pool would not further the litigation in a meaningful way. If Special Master Reisman elects to reject a party’s selection, that party shall propose an alternate selection within five days.

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<sup>4</sup> The Procter & Gamble Company and/or Procter & Gamble Manufacturing Company.

3. Special Master Reisman will share the final list of 24 selected cases with each side. Each side may strike 2 picks from the list of 24 selected cases and must identify the cases it chooses to strike within 30 days of receipt of the list of selected cases.

B. The 20 remaining cases after the strikes have been exercised shall comprise the Second Bellwether Discovery Pool Cases and shall proceed for case-specific discovery. No later than 14 days after the selection of the Second Bellwether Discovery Pool Cases, each side must file a statement on the plaintiff's individual docket clearly and unambiguously advising whether they will waive any applicable venue and *forum non conveniens* challenges to the case being tried in this district.<sup>5</sup>

C. If, after the selection of the Second Bellwether Discovery Pool Cases, Plaintiffs dismiss one or more of the Second Bellwether Discovery Pool Cases, Defendants will be permitted to submit a proposed replacement case to Special Master Reisman. Each side shall have 14 days from the date of selection of a replacement case to file the statement regarding waiver of any applicable venue and *forum non conveniens* challenges as described in Paragraph II.B.

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<sup>5</sup> See *Lexecon v. Milberg Weiss*, 523 U.S. 26 (1998). Cases involving New Jersey Plaintiffs are exempt from this requirement as no *Lexecon* waiver is necessary.

### III. Fact Discovery for Second Bellwether Discovery Pool Cases

A. Between January 3, 2022 and July 8, 2022, fact discovery of the Second Bellwether Discovery Pool Cases shall take place.

B. The following limitations shall apply to fact discovery:

1. Each Defendant<sup>6</sup> is limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission per case.
2. Plaintiffs are limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission to each Defendant.
3. In each individual case, each side will be entitled to take five (5) fact witness discovery depositions, which is inclusive of plaintiff and treating and prescribing physicians as well as Sales Representatives.<sup>7</sup>
4. The deposition of any fact witness is limited to 3 hours absent agreement of the parties.

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<sup>6</sup> For the purposes of these discovery limitations, each defendant and its related entities will be treated as one defendant. For example, Takeda Pharmaceuticals U.S.A., Inc. (TPUSA) and Takeda Pharmaceuticals America (TPA), Inc. are related entities and treated as one defendant for purposes of these discovery limitations. Similarly, if more than one plaintiff is named (*e.g.* an individual and their spouse), plaintiffs are treated as one entity for purposes of these discovery limitations.

<sup>7</sup> To the extent disputes arise regarding the division of time between the parties for the deposition of treating physicians (three hours total absent agreement), such disputes should be referred to Special Master Ellen Reisman for decision.

C. Special Master Reisman will consider modifications to the above limitations only upon good cause shown and only if resolution cannot be reached after the parties meet and confer.

D. The following deadlines shall apply for fact discovery for the Second Bellwether Discovery Pool Cases:

Deadline to serve written discovery requests	February 14, 2022
Deadline to respond to written discovery	March 14, 2022
Deposition deadline and close of fact discovery	July 8, 2022

**IV. Second Bellwether Trial Pool Cases**

A. Upon completion of fact discovery for the Second Bellwether Discovery Pool Cases, 10 cases shall be selected as the Second Bellwether Trial Pool Cases and shall proceed to expert discovery and dispositive motions practice.

B. By August 5, 2022, each side shall select 4 cases from the Second Bellwether Discovery Pool to proceed in the Second Bellwether Trial Pool. The 4 cases selected by each side must satisfy the following requirements: 1 case must include Pfizer as a defendant, 1 case must include Takeda as a defendant, 1 case must include GlaxoSmithKline as a defendant, and 1 case must include Procter & Gamble as a defendant, and at least 1 case shall involve New Jersey Plaintiffs. So long as these distribution criteria are satisfied, cases may involve one or more other defendants. Special Master Ellen Reisman shall select 2 cases to proceed in the Second Bellwether Trial Pool.

**V. Expert Discovery for Second Bellwether Trial Pool Cases**

A. Between August 5, 2022 and February 3, 2023, expert discovery of the Second Bellwether Trial Pool Cases shall take place.

B. 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.

C. Depositions of Plaintiffs' experts will be completed before depositions of Defendants' experts in the same discipline, absent agreement of the parties or permission from the Special Master.

D. The following limitations shall apply to expert discovery:

1. Plaintiffs and each defendant are limited to no more than five experts per case (exclusive of treating physicians).
2. The deposition of any expert witness is limited to 7 hours absent agreement of the parties.
3. The parties are encouraged to coordinate the depositions of specific causation experts to the extent there is overlap in the parties' use of specific causation experts by multiple parties.

E. Special Master Reisman will consider modifications to the above limitations only upon good cause shown and only if resolution cannot be reached after the parties meet and confer.

F. The following deadlines shall apply for expert discovery for the Second Bellwether Trial Pool Cases:

Plaintiffs' Expert Disclosures	October 7, 2022
Defendants' Expert Disclosures	November 4, 2022
Plaintiffs' expert witness rebuttal reports	December 2, 2022
Deposition deadline and close of expert discovery	February 14, 2022

**VI. Summary Judgment and *Daubert* Motions for Second Bellwether Trial Pool**

A. The following deadlines shall apply for summary judgment and *Daubert* briefing:

Filing of <i>Daubert</i> and dispositive motions	April 10, 2023
Responses to <i>Daubert</i> and dispositive motions	May 10, 2023
Replies to <i>Daubert</i> and dispositive motions	May 26, 2023

B. 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.

**VII. Remand and Trial of Second Bellwether Trial Cases**

A. Upon completion of discovery and motions practice, Second Bellwether Trial Pool Cases that **do not** involve either a) a New Jersey Plaintiff, or b) a *Lexecon* waiver shall be transferred to a federal district court of proper venue pursuant to 28 U.S.C. §1404(a) (if directly-filed in this MDL), or remanded to the federal district court from which such case was initially transferred pursuant to 28 U.S.C. §1407.



B. Upon completion of discovery and motions practice for Second Bellwether Trial Pool Cases that involve either a) a New Jersey Plaintiff, or b) a *Lexecon* waiver, an order shall be entered setting forth the process for selecting and setting cases for trial as well as a pretrial schedule for final pretrial matters, exhibit lists, motions *in limine*, and deposition designations.

**SO ORDERED**

SIGNED on this 28<sup>th</sup> day of September, 2021.



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ELLEN K. REISMAN  
Special Master