

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

**IN RE: ELMIRON (PENTOSAN
POLYSULFATE SODIUM)
PRODUCTS LIABILITY
LITIGATION**

Case No. 2:20-md-02973 (BRM)(ESK)

MDL No. 2973

**JUDGE BRIAN R. MARTINOTTI
JUDGE EDWARD S. KIEL**

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

CMO 17 - Amended

I. SCOPE OF ORDER

In furtherance of the effective and efficient case management of complex litigation, this Case Management Order (“CMO”) will govern the guidelines and procedures for selecting bellwether trial cases as part of *In Re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation* (“MDL No. 2973”). This Order will supplement and amend CMO 17 and further govern the guidelines and procedures for the bellwether cases.

II. SALES REPRESENTATIVE DISCOVERY IN THE BELLWETHER CASES

- A. Janssen will produce the custodial files of the sales representatives who are associated with the Bellwether Trial Cases (“BTC”) and that were identified in the PSC’s emails dated February 11, 2022 and February 22, 2022. Janssen will use the filter terms agreed to by the parties in general discovery and produce responsive documents within 2 weeks of the selection of each BTC. Plaintiffs may seek additional custodial files of sales representatives based on a showing

that newly discovered information not previously available demonstrates that said sales representative(s) may have discoverable/relevant information to the given BTC. If plaintiffs seek additional custodial files of sales representatives, the parties shall meet and confer regarding the production and immediately raise any disputes with Judge Polifroni.

B. Plaintiffs may take up to 5 depositions per BTC, which may consist of some combination of sales representatives and/or up to 3 district managers (“DM”) who directly supervised a sales representative during the time when he or she detailed Elmiron to plaintiff’s prescribing healthcare provider. The title “district manager” is not intended to be a limitation, i.e., if there are other titles that have been used to describe a direct supervisor of a sales representative, such titles are intended to be covered by the term “district manager.” Plaintiffs reserve their right to seek depositions of other, more senior managers who had supervisory responsibilities for relevant BTC sales representatives in connection with general discovery and defendants reserve their right to object to such requests, and the parties will raise any disputes over such requests with Judge Polifroni.

C. To the extent plaintiffs seek to depose a DM, Janssen will produce a custodial file for each DM chosen. Janssen will continue its efforts to locate additional information about the identities of DMs who directly supervised one or more of the representatives associated with the BTCs and, where available, will provide that information to plaintiffs within 3 business days of the selection of any BTC

so that plaintiffs can specify the DM(s) they wish to depose pursuant to subsection B. Janssen will make best efforts to produce the custodial file for the DM(s) chosen by plaintiffs within 2 weeks of plaintiffs' selection. If additional time is required for such production, Janssen shall let plaintiffs know.

III. SCHEDULE FOR BELLWETHER DISCOVERY AND TRIAL CASES (as amended from CMO 17) ¹

A. The Bellwether schedule is amended as follows:

April 18, 2022	Each side picks 1 case out of the pool of 20 to serve as one of the three Bellwether finalist trial cases.
April 19, 2022	Each side submits letter-briefs to the Court at 6pm Eastern (simultaneous submissions) so the Court can pick the 3 rd case. These letter-briefs should advance what case(s) are most representative to be the 3 rd case. Letter-briefs should be no longer than 10 pages.
April 22, 2022	Each side to submit rebuttal/response to other side's picks by April 22, 2022, at 6pm eastern (simultaneous submissions). Letter-briefs should be no longer than 10 pages. Parties are encouraged to meet and confer and come to an agreement on the third case, before and during the pendency of the letter-briefing.
April 25, 2022	The Court to select finalist (3 rd case) by April 25, 2022. The parties have agreed that any deadlines for the final/third case will be extended and if Court takes longer to select, the deadlines will be extended accordingly.
May 26, 2022	Deadline for Plaintiffs to serve expert reports in each of the three (3) Bellwether Trial cases.
June 30, 2022	Deadline for Defendants to serve expert reports in each of the three (3) Bellwether Trial cases.
July 11, 2022	Deadline for Plaintiffs to serve rebuttal expert reports in each of the three (3) Bellwether Trial cases. Expert depositions shall not commence until all reports have been tendered, although if a given expert does not intend to serve a rebuttal report, the parties may start the depositions after July 1, 2022. For each medical or scientific discipline, the parties shall endeavor to schedule the deposition for the Plaintiff's expert in said discipline first, with a deposition of the corresponding Defendants' expert, if any, to follow no sooner than forty-eight (48) hours

¹ The deadlines in this Section will apply only to those cases selected as Bellwether Trial Cases.

	later. The parties shall meet and confer on scheduling and work cooperatively to achieve this sequence as often as feasible.
September 9, 2022	Expert Depositions to Conclude
September 20, 2022	Dispositive motions as well as <i>Daubert</i> motions in three (3) Bellwether Trial Cases due to be filed.
October 20, 2022	Opposition briefs to dispositive motions and <i>Daubert</i> motions due to be filed.
November 1, 2022	Reply briefs to dispositive motions and <i>Daubert</i> motions due to be filed.
January 2023	Bellwether Trial Case No. 1 will commence.
March 2023	Bellwether Trial Case No. 2 will commence.
May 2023	Bellwether Trial Case No. 3 will commence.

It is so **ORDERED**.

BY THE COURT:



Hon. Brian R. Martinotti, USDJ