

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

**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**

**CASE MANAGEMENT ORDER NO. 73
(Round Two Bellwether Case Schedule)**

I. Scope and Applicability

This Case Management Order (“CMO”) is intended to conserve judicial 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 CMO modifies certain deadlines set forth in CMO 54.

II. Second Bellwether Pool Discovery Pool

A. The following 20 cases were selected in accordance with CMO 54: (1) *Helen Abbott* (2:18-cv-14314); (2) *Jacqueline Auchtung* (2:19-cv-13234); (3) *Graham & Donna Benson* (2:18-cv-00388); (4) *Michael Binkowski* (2:19-cv-13998); (5) *Carolyn Norine Broadway* (2:19-cv-14234); (6) *Sandra & Charles Brown* (2:17-cv-05501); (7) *Mary Sue Carter* (2:19-cv-00108); (8) *Grace Conaway*

(2:18-cv-00765); (9) *Florence K. Gross* (2:19-cv-22037); (10) *Woozevalt Jeanpierre* (2:18-cv-05270); (11) *Larry Kalish* (2:20-cv-03822); (12) *Jacquelyn Kirksey* (2:19-cv-18462); (13) *Vickie Laudan* (2:18-cv-05729); (14) *Charlotte McGrew* (2:19-cv-16987); (15) *Robert Charles Ridges* (2:18-cv-11711); (16) *Florence Sage* (2:19-cv-03318); (17) *Diane K. Sax* (2:19-cv-09639); (18) *Brian Cameron Shaw* (2:20-cv-20437); (19) *Carolyn Sowell* (2:18-cv-05802); and (20) *Lisa Vivirito* (2:19-cv-17989). These 20 cases comprise the “Second Bellwether Discovery Pool Cases” and shall proceed for case-specific discovery.

B. No later March 30, 2022, each party must file a statement on the plaintiff’s individual docket clearly and unambiguously advising whether it will waive any applicable venue and *forum non conveniens* challenges to the case being tried in this district.¹

C. If, after the selection of the Second Bellwether Discovery Pool Cases, Plaintiffs dismiss any of the Second Bellwether Discovery Pool Cases, Defendants² will be permitted to submit a proposed replacement case for each dismissed case to Special Master Reisman. Special Master Ellen Reisman may reject a proposed replacement and require another one to be selected to the extent including such case

¹ 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.

² In referring to the “defendant” or “defendants” throughout this order, it is intended that a defendant(s) includes the defendant and its related entities.

in a bellwether discovery pool would not further the litigation in a meaningful way. Each side shall have 14 days from the date of Special Master Reisman's written approval 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.

III. Case-Specific Fact Discovery for Second Bellwether Discovery Pool Cases

A. Between April 4, 2022 and October 24, 2022, case-specific fact discovery of the Second Bellwether Discovery Pool Cases shall take place.

B. The following limitations shall apply to case-specific fact discovery:

1. Each Defendant³ 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 (including requests to produce sales representative custodial files) and 10 requests for admission to each Defendant.

³ 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.

3. In each individual case, each side will be entitled to take five (5) fact witness discovery depositions, which is inclusive of plaintiff, treating and prescribing physicians, and sales representatives.⁴
4. The deposition of any fact witness is limited to 3 hours absent agreement of the parties.

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	May 16, 2022
Deadline to respond to written discovery	June 13, 2022
Deposition deadline and close of fact discovery	October 24, 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.

⁴ 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 Reisman for decision.

B. By November 10, 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 November 10, 2022 and June 1, 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	January 13, 2023
Defendants' Expert Disclosures	February 17, 2023
Plaintiffs' expert witness rebuttal reports	March 17, 2023
Deposition deadline and close of expert discovery	June 1, 2023

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> motions	July 28, 2023
Filing dispositive motions	August 11, 2023
Responses to <i>Daubert</i> motions	August 28, 2023

Responses to dispositive motions
Replies to *Daubert* motions
Replies to dispositive motions

September 11, 2023
September 18, 2023
October 2, 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 25th day of March, 2022.



ELLEN K. REISMAN

Special Master