

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: PROTON-PUMP
INHIBITOR PRODUCTS
LIABILITY LITIGATION

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

Judge Claire C. Cecchi

This Document Relates to:

*Angel Marie Lee, as Administrator of
the Estate of David P. Foster,
Deceased (2:17-cv-02475-CCC-
LDW)*

CASE MANAGEMENT ORDER NO. 86
(Amended Bellwether Pretrial Scheduling Order for *Foster*)

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 Civil Action No. 2:17-cv-02475 in MDL 2789. This CMO modifies certain deadlines set forth in CMO No. 82 and is entered upon the recommendation of Special Master Ellen Reisman. This CMO does not modify the trial date for *Foster* set forth in CMO No. 85 of April 10, 2023 (or 30 days after the Court decides summary judgment and *Daubert* motions, whichever is later).

II. PRETRIAL SCHEDULE FOR *FOSTER*

- A. Motions in limine for *Foster* shall be filed on or before **November 18, 2022**.
- B. Oppositions to motions in limine for *Foster* shall be filed on or before **December 9, 2022**.
- C. Deposition designations for *Foster* shall be filed on or before **December 12, 2022**.
- D. Replies to oppositions to motions in limine for *Foster* and any stipulations to such motions shall be filed on or before **December 20, 2022**.
- E. Parties shall exchange lists of their “most likely to use” exhibits for *Foster* on or before **December 22, 2022**, identifying the approximately 500 documents (exclusive of medical records and medical/scientific literature) they are most likely to offer into evidence at trial. If a party in good faith supplements its exhibit list before trial with a reasonable number of additional exhibits, the other party shall not object to the additional exhibits on the basis of timing of their addition to the exhibit list, but the party reserves the right to object to the additional exhibits on any other grounds.

- F. Objections to deposition designations and counter-designations for *Foster* shall be filed on or before **January 17, 2023**.
- G. Objections to deposition counter-designations for *Foster* shall be filed on or before **January 31, 2023**.
- H. Objections to the approximately 500 documents (exclusive of medical records and medical/scientific literature) that the parties are most likely to offer into evidence at trial for *Foster* shall be filed on or before **February 2, 2023**. The parties in *Foster* reserve their right to object to all other exhibits until time of trial.
- I. Special Master Ellen Reisman shall issue Reports & Recommendations for *Foster* on Defendant's motion for summary judgment, on Defendant's *Daubert* motions as to Dr. Jeffrey Silberzweig, and on the parties' motions in limine.
- J. Objections to the Reports & Recommendations issued by Special Master Ellen Reisman for *Foster* on Defendant's motion for summary judgment, on Defendant's *Daubert* motions as to Dr. Jeffrey Silberzweig, and on the parties' motions in limine shall be filed within **21 days** after the respective Reports & Recommendations are issued.
- K. Responses to objections to the Reports & Recommendations issued by Special Master Ellen Reisman for *Foster* on Defendant's motion for

summary judgment, on Defendant's *Daubert* motion as to Dr. Jeffrey Silberzweig, and on the parties' motions in limine shall be filed within **7 days** after the respective objections are filed.

- L. If the Court determines that a hearing or additional oral argument on summary judgment and/or *Daubert* motions, or limited/certain parts thereof, is necessary, such a hearing will be scheduled at the Court's convenience thereafter.
- M. Parties shall exchange on or before **February 13, 2023** their lists of up to 50 exhibits for *Foster* that they are likely to use at trial and on which they are seeking ruling in advance of the trial. The list should be in a spreadsheet format that includes the document exhibit number, bates number, date, and brief description.
- N. Parties shall exchange on or before **February 13, 2023** the transcripts for up to 8 witnesses for *Foster* they are likely to play at trial and on which they are seeking ruling in advance of the trial on designations and/or counter-designations. The transcripts should be exchanged as electronic .pdf files with designations and counter-designations color coded in the transcript.
- O. Parties shall exchange on or before **February 22, 2023** their objections, with a brief explanation not to exceed 75 words for each objection, to

the up to 50 priority exhibits for *Foster* designated by the other party.

- P. Parties shall exchange on or before **February 22, 2023** their objections, with a brief explanation inserted as a bubble comment and not to exceed 75 words for each designation or counter-designation, to the designations and counter-designations for the 8 priority transcripts for *Foster* designated by the other party.
- Q. Each party shall submit proposed jury instructions, jury questionnaires, and verdict forms for *Foster* on or before **February 24, 2023**.
- R. Parties shall exchange on or before **March 1, 2023** their responses, not to exceed 75 words per response, to the objections for the up to 50 priority exhibits for *Foster* designated by the other party. Each party shall also submit to the Court a spreadsheet with copies of the exhibits.
- S. Parties shall exchange on or before **March 1, 2023** a response, with a brief explanation inserted as a bubble comment and not to exceed 75 words, to the objections to the designations and counter-designations for the 8 priority transcripts for *Foster* designated by the other party. Each party shall also submit to the Court copies of the transcripts with annotated comments as well as any implicated exhibits.
- T. Plaintiff shall send to defendant on or before **March 3, 2023** a draft of a proposed Joint Pretrial Order for *Foster*.

- U. The parties shall submit a proposed Joint Pretrial Order to the Court for *Foster* on or before **March 10, 2023**.
- V. The Court shall hold a final pretrial conference for *Foster* on a date(s) to be provided by the Court.

III. MEET AND CONFER

The Court reminds the parties that the Federal Rules of Civil Procedure “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1; *see also* Fed. R. Evid. 102 (Rules of evidence “should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay ... to the end of ascertaining the truth and securing a just determination.”). Accordingly, the parties shall meet and confer in good faith and attempt to resolve any disputes regarding the admission into evidence of any exhibit or testimony, any proposed jury questionnaires or instructions, and any other matter set forth above in Section II prior to filing any motion or other paper seeking the Court’s determination on the issue.

IT IS SO ORDERED

SIGNED 18 day of November, 2022.



CLAIRE C. CECCHI
United States District Judge