

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: COVIDIEN HERNIA MESH
PRODUCTS LIABILITY LITIGATION
NO. II,

This Document Relates To:

All Cases

MDL No. 1:22-md-03029-PBS

CASE MANAGEMENT ORDER NO. 4
(Scheduling Order—1st Amended)

In furtherance of the effective and efficient case management of complex litigation, the Court sets the following procedures for the identification and selection of the pool of Bellwether Discovery Cases from which the initial cases to be tried in this MDL will be selected, and establishes the following guidelines and schedule for discovery for these Bellwether Discovery Cases, some of which will be proposed and designated as the initial Bellwether Trial Cases in a later order of the Court.

In order to facilitate the selection of cases to be selected as Bellwether Discovery Cases, the procedures below shall apply to all actions transferred to *In Re: Covidien Hernia Mesh Products Liability Litigation No. II*, (MDL 3029) by the Judicial Panel on Multidistrict Litigation (“JPML”), all related actions originally filed pursuant to the Direct Filing Order, ECF No. 35, or removed to this Court, and any “tag-along” action transferred to this Court by the JPML.

As described in Section III below, on or before February 28, 2023, the Parties shall simultaneously identify three Representative Plaintiff candidates for the Bellwether Discovery Cases, for a total of six cases to be worked up for case-specific discovery (“Bellwether Discovery Pool Plaintiffs”). The Parties will identify these six cases to the Court in one filing. The deadlines in Sections III to IV will only apply to the Bellwether Discovery Pool Plaintiffs.

In the event that a case selected for the Bellwether Discovery Pool is withdrawn, settled or dismissed before August 31, 2023, the Court may at its discretion allow the selection of a replacement case by Defendants or Plaintiffs depending on the circumstances of the dismissal or otherwise adjust the balance of selections or the terms of this CMO to ensure the integrity of the bellwether process.

A future Case Management Order will detail the cases selected for trial and their schedules, including dispositive motion practice.

I. PLAINTIFF PROFILE FORMS (“PPF”)

| Date | Event |
|------------------|--|
| January 12, 2023 | Deadline for Plaintiffs to submit a completed PPF, including all executed authorizations, for all cases filed and served as of November 21, 2022. Plaintiffs shall endeavor to submit the PPFs on a rolling basis. The scope and parameters of the PPF will be governed by a separate CMO. |

II. GENERAL CORPORATE DISCOVERY DEADLINE¹

| Date | Event |
|---------------|---|
| April 8, 2024 | Deadline for completion of general corporate discovery of Defendants. |

¹ It is understood that additional general fact and expert discovery may be conducted in connection with any further cases selected for discovery, trial, remand, or future bellwether process as authorized by Court order or as otherwise identified in Court orders. The conclusion of the general fact and expert discovery authorized by this CMO should not be construed as grounds for termination of this MDL under 28 U.S.C. § 1407 or as any other bar to discovery that might be sought or needed in this MDL.

III. SELECTION OF BELLWETHER DISCOVERY POOL PLAINTIFFS

| Date | Event |
|-------------------|---|
| January 23, 2023 | Defendants shall provide Plaintiffs with a list of the names of all Plaintiffs who Defendants believe are eligible for the Bellwether Discovery Cases. To be eligible for the Bellwether Discovery Cases, a Plaintiff must have served a completed PPF as of January 12, 2023. |
| February 28, 2023 | The Parties shall simultaneously identify three Representative Plaintiff candidates for the Bellwether Discovery Cases, for a total of six cases to be worked up for case-specific discovery. None of the case selected shall allege wrongful death claims. The Parties will identify the six cases to the Court in one filing. |

IV. FACT DISCOVERY FOR BELLWETHER DISCOVERY POOL PLAINTIFFS

| Date | Event |
|------------------|--|
| April 1, 2023 | For the six Discovery Pool Plaintiffs selected, Plaintiffs shall serve a completed Plaintiff Fact Sheet (“PFS”). The scope and parameters of the PFS will be governed by a separate CMO. For the six Discovery Pool Plaintiffs selected, Defendants may serve case-specific written discovery provided such discovery is not duplicative of a PFS. |
| May 15, 2023 | For the six Discovery Pool Plaintiffs selected, Defendants will serve a Defendant Fact Sheet (“DFS”). The scope and parameters of the DFS will be governed by a separate CMO. For the six Discovery Pool Plaintiffs selected, Plaintiffs may serve case-specific written discovery provided such discovery is not duplicative of a DFS. |
| July 10, 2023 | Completion of independent medical examinations (“IME”) should IMEs be ordered by the Court or agreed upon by the Parties. |
| August 28, 2023 | Deadline for any motions to compel related to case-specific fact discovery; later-filed motions will be considered upon a showing of good cause. |
| December 1, 2023 | Completion of all case-specific fact discovery, which may include up to five fact depositions taken by each party in interest in each case. ² |

² An additional Case Management Order that sets forth the trial selection process will also set forth additional case-specific discovery that may be conducted on any trial cases to the extent the parties deem it necessary.

**V. EXPERT DISCOVERY FOR BELLWETHER DISCOVERY POOL
PLAINTIFFS**

| Date | Event |
|-------------------|--|
| April 22, 2024 | Plaintiffs shall serve expert disclosures and reports. |
| May 27, 2024 | Defendants shall serve expert disclosures and reports. |
| June 24, 2024 | Plaintiffs may serve any rebuttal expert reports. |
| September 6, 2024 | Completion of all expert discovery. The Parties shall coordinate the depositions of expert witnesses to the extent there is overlap in the use of experts in multiple cases. |

SO ORDERED.

/s/M. Page Kelley
~~Hon. Patti D. Saris~~ M. Page Kelley
~~United States District Judge~~
United States Magistrate Judge