

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: FLUOROQUINOLONE PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2642 (JRT)

This Document Relates to All Actions

**PRETRIAL ORDER NO. 17
ON PHASE II BELLWETHER
DISCOVERY AND TRIALS**

The Court hereby enters the following order pertaining to selection of a second round of bellwether cases (hereinafter, “Phase II Bellwether cases”), including bellwether selection, case-specific discovery and bellwether trials. Following the selection of the Phase II Discovery cases, the parties shall submit a joint proposed order with a case-specific discovery deadline, trial selection deadline, and expert discovery schedule.

I. SELECTION OF PHASE II BELLWETHER CASES

A. Eligibility Criteria for Phase II Bellwether Cases

The “Phase II Cases” shall be comprised of all cases assigned to MDL 2642 **after** April 21, 2016 in which the plaintiff has served a substantially complete Plaintiff Fact Sheet and the plaintiff’s Short Form Complaint alleges (1) the plaintiff’s injuries are only peripheral neuropathy or symptoms of peripheral neuropathy and (2) injury from Avelox-only branded product usage or Cipro- only branded product usage. No cases where the plaintiff’s Short Form Complaint alleges injury from any product in combination with other fluoroquinolones can be included as a Phase II Case.

B. Selection Date of Phase II Discovery Cases

Three weeks after this Court's Orders on the Bayer Defendants' dispositive motions and *Daubert* challenges in the initial Bellwether trial cases (as previously selected under PTO13), Plaintiffs and the Bayer Defendants shall each identify from among the Phase II Cases, pursuant to the selection requirements set forth below, nine (9) bellwether candidates (for a total of eighteen (18) cases) to serve as the "Phase II Discovery cases."

C. Selection Requirements for Phase II Discovery Cases

1. Avelox Only Cases

Each side shall select seven (7) Avelox only cases. There are no other mandatory selection criteria for the Avelox only cases.

2. Cipro Only Cases

Each side shall select two (2) Cipro only cases. There are no other mandatory selection criteria for the Cipro only cases.

D. Dismissal and Replacement of Phase II Discovery Cases

1. Withdrawal of Counsel.

In the event Plaintiff's counsel moves to withdraw as counsel from a Phase II Discovery case, the case shall be removed from the Phase II Discovery cases. If the affected case is a Defense Selection, the Bayer Defendants may select a replacement case of their choosing from the Phase II Cases.

2. Voluntary Dismissal of Plaintiff Selection.

In the event a Plaintiff-selected case in the Phase II Discovery cases is voluntarily dismissed (and thus removed from the Phase II Discovery cases), there shall be no replacement pick.

3. Voluntary Dismissal of Defense Selection.

In the event a case in the Phase II Discovery cases selected by the Bayer Defendants is voluntarily dismissed (and thus removed from the Phase II Discovery cases), the Bayer Defendants may, at their discretion, select a replacement case of their choosing from the Phase II Cases.

II. PHASE II CASE-SPECIFIC DISCOVERY

Case-specific fact discovery for the Phase II Discovery cases, including the depositions of each Plaintiff, their spouse (if applicable), their prescribing physician(s), no more than four (4) treating physician(s), and no more than two (2) sales representatives/managers per case, and any other case-specific non-healthcare provider fact witnesses agreed to by the parties or by order of the Court, shall be completed no later than seven months from selection. Additional fact witnesses may be deposed only upon agreement of the parties or for good cause shown.

III. PHASE II BELLWETHER TRIAL SELECTION

Following the completion of case-specific fact discovery in each of the Phase II Discovery cases, the PSC and the Bayer Defendants will submit simultaneous briefing on a date to be determined identifying the cases they believe should serve as the Phase II Trial Cases, and the reasons therefore. The Court will select eight (8) cases to serve as the Phase II Trial Cases that will proceed thru expert discovery.

IV. FUTURE CASES

For all cases assigned to MDL 2642 that are not selected as Phase II Discovery cases, only fact sheet discovery and medical records collection shall occur until further order of the Court.

DATED: August 17, 2018
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
Chief Judge
United States District Court