



September 5, 2019

VIA ECF

Hon. Claire C. Cecchi, U.S.D.J.
United States District Court for the District of New Jersey
Martin Luther King, Jr. Bldg. & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

**Re: Proton-Pump Inhibitor Products Liability Litigation (No. II)
2:17-md-2789 (CCC)(MF) (MDL 2789)**

Dear Judge Cecchi:

The undersigned Defendants write to update the Court regarding the status of discussions with the PSC related to the Court’s bellwether plan articulated in chambers on August 13, 2019. In short, the parties disagree regarding one aspect of the Court’s plan and have reached an impasse with respect to a separate issue.

The parties agree that Exhibit A accurately describes the Court’s bellwether plan, except that the undersigned Defendants believe the Court suggested a cutoff date of May 1, 2019 for cases to be eligible for inclusion in the bellwether pool. The PSC disagrees, and the parties require clarification from the Court.

In addition, the undersigned Defendants made one counterproposal with respect to the Court’s plan; that is, the parties would make 20 picks from the bellwether eligible pool with each side having 10 strikes. The PSC rejected that counterproposal. Therefore, we are at an impasse.

The undersigned Defendants can be available for a call if the Court thinks that would be productive.

Respectfully,

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Subject: Bellwethers

Chris -- we are amenable to the Court's bellwether plan, with one point of clarification and one counter-proposal. Here is the plan that we heard from Judge Cecchi:

1 -- Eligible Cases would be determined using a cutoff date of roughly May 1st (which would capture approximately 1,000 - 1,050 cases);

2 -- From the Eligible Cases, a random pool of 150 cases would be generated;

3 -- From the Eligible Cases, each side would supplement that list of randomly generated cases with 10 picks -- 10 for plaintiffs and 10 for defendants;

4 -- That would give us a total pool of 170 total cases;

5 -- Each side would pick 15 cases from the 170 cases, and each side would have 4 strikes;

6 -- There would be a replenishment procedure but the Court provided almost no guidance that I recall - we will need to reach agreement on this;

7 -- That would leave a bellwether pool of 22 total cases;

8 -- A New Jersey trial would be second;

9 -- The parties would all have to commit to waive Lexecon for trials 1 and 3-6 at the beginning of the process; and

10 -- The 6 cases to be tried would be picked from the pool of 22 via a process to be determined later.

The one point of clarification is in number 1 above: the Eligible Cases/May 1st cut off date is for cases that are stage 1 and substantially complete as to all defendants (which captures about 1,000-1,050 cases). We would agree to exchange lists in advance, as Dave suggested.

The defendants counter proposal relates to items 5 and 7 -- it is our collective view that each side pick 20 cases, and each side have 10 strikes from the pool of 170, leaving a total pool of 20 cases to be worked up.

Thanks.

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