

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

IN RE: 3M COMBAT ARMS  
EARPLUG PRODUCTS  
LIABILITY LITIGATION

Case No. 3:19md2885

This Document Relates to All Cases

Judge M. Casey Rodgers  
Magistrate Judge Gary R. Jones

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**CASE MANAGEMENT ORDER NO. 21**

The Twenty-First Case Management Conference (CMC) was held on August 20, 2021. This Order serves as a non-exhaustive recitation of the key points of discussion during the conference.

**I. New COVID-19 Policy**

The Court provided an update regarding precautionary measures intended to mitigate risks associated with Covid-19 due to the surge in cases in the local community. Effective Monday, August 23, 2021, attorneys, parties, and staff must have proof of vaccination or a negative Covid-19 test performed within the prior week in order to enter Courtroom 5 or the judge's chambers.

**II. Future Trials & Discovery Cases**

The Court provided parties with a preview of a series of upcoming orders, which will have a consequential impact on the future of the litigation. Due to the unprecedented backlog of cases piling up on the administrative docket, which tallies over 250,000 cases, the Court deems it necessary to accelerate the bellwether trials

and discovery for the remaining mass of cases. Beginning Friday, August 20, 2021, the Court entered the first in a series of orders requiring Plaintiffs to move cases from the administrative docket to the active docket, which the Court will refer to as “Transition Orders.” While this first order requires Plaintiffs to move 1,358 cases to the active docket, subsequent Transition Orders will require Plaintiffs to transition between 10,000 to 20,000 cases at a time.

The Court will also enter a series of orders, which it will refer to as “Wave Orders,” requiring the parties work up several hundred cases simultaneously. The first three Wave Orders will include approximately 500 cases per wave, and will consist of cases for which VA and DoD information/data has been received. The Court intends to enter a new Wave Order every 3 months with an 8-month discovery schedule for each wave. Once a wave has been worked up, the Court intends to remand the cases for trial.

Additionally, the Court has reached out to other judges in the Northern District of Florida to try cases in Bellwether Group C. These trials will take place between October and December of 2021. The Court also intends to solicit help trying the Bellwether Group D cases from other judges in the Circuit. These trials will take place in early Spring 2022, once discovery and dispositive motions have been completed.

### **III. Group C – Choice of Law**

The upcoming choice of law hearing for Bellwether Group C, which is currently scheduled for Friday, August 27, 2021, is postponed. *See* Pretrial Order No. 70, ECF No. 1666. To the extent necessary, the hearing will be rescheduled by separate order.

### **IV. Upcoming Trials**

Moving forward, any future attorney conferences with Judge Herndon must include the decision-makers for each side on the particular issues being discussed. Additionally, during trial, any attorney appearing in the trial on a given day must be physically present for that morning's attorney/Court conference.

### **V. Motion to Dismiss *Lopez* (Group C)**

The Court heard argument from both sides concerning the dismissal request of Bellwether Group C plaintiff, Kevin Lopez. The Court took the issue under advisement and will enter an order accordingly.

### **VI. Upcoming Case Management Conferences**

Future case management conferences will be scheduled by separate order.

**SO ORDERED**, on this 24th day of August 2021.

*M. Casey Rodgers*

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**M. CASEY RODGERS**  
**UNITED STATES DISTRICT JUDGE**