

**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. 13**

The Thirteenth Case Management Conference in this matter was held on June 26, 2020. This Order serves as a non-exhaustive recitation of the key points of discussion during the conference.

**I. Bellwether Plaintiff Lonnie Burgus**

Plaintiff Lonnie Burgus is an alternate court selection who is currently eligible for Trial Group B. Mr. Burgus has until Wednesday, July 1, 2020 to inform the Court, in writing, whether he intends to proceed with his case in the bellwether trial pool. If Mr. Burgus chooses to leave the bellwether trial pool, the Court will promptly notify the parties on how Mr. Burgus will be replaced.

**II. Bellwether Plaintiff Sigifredo Garcia**

Plaintiff Sigifredo Garcia was selected for Group A but has not yet provided the third-party authorizations requested by Defendants. Plaintiffs' Leadership is evaluating Mr. Garcia's willingness to participate and cooperate as a bellwether Plaintiff and will update the Court on Mr. Garcia's status by Friday, July 3, 2020. If

Mr. Garcia will not go forward as a bellwether Plaintiff, the Court will promptly notify the parties on how Mr. Garcia will be replaced.

### **III. Schedule for Trial Group A**

The parties submitted separate proposed schedules<sup>1</sup> for the Trial Groups on June 22, 2020. By separate Order, the Court will adopt, for Group A only<sup>2</sup>, most of Plaintiffs' Proposed Schedule, with two amendments: (1) Corporate discovery and Government discovery closes on September 1, 2020, and (2) Fact discovery for Group A closes on October 9, 2020. The parties are permitted a maximum of six case-specific depositions per side and must seek leave of Court for any supplemental depositions. The parties must also seek leave of Court for any supplemental discovery beyond the deadlines set forth above.

To the extent Defendants intend to respond to a Short Form Complaint in an individual Group A case, they must do so by July 13, 2020.

The parties will provide a proposed schedule for Groups B, C, and D before the next Case Management Conference on July 29, 2020.

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<sup>1</sup> The parties submitted a joint Proposed Pretrial Order through trial for all the bellwether cases. The Proposed Order contained several agreed-upon dates and several disputed dates. Both parties submitted separate letters to the Court regarding their respective positions on the disputed dates, and the Court has taken the parties' positions into consideration.

<sup>2</sup> Note that the June 19, 2020 deadline for initial bellwether Plaintiffs to amend their Short Form Complaints to add party-plaintiffs asserting consortium claims is the only deadline that applies to all Trial Groups.

#### **IV. Outstanding Discovery**

##### **a. Government Records Productions**

No later than Tuesday, June 30, 2020, Plaintiffs will complete their review of Group A records from the Department of Defense, Veterans Health Administration, and Veterans Benefits Administration, and produce to Defendants these records with redactions pursuant to Pretrial Order Nos. 25 and 39.

##### **b. Depositions**

Defendants have submitted *Touhy*<sup>3</sup> requests to the Department of Defense to depose 30 current and former employees. No later than Tuesday, June 30, 2020, Defendants will submit to the Court a list of their names and identify whether they are current or former employees.<sup>4</sup>

Additionally, in light of the upcoming Government discovery deadline, the parties are directed to proceed with the depositions and/or interviews of former government employees.<sup>5</sup> The parties must timely serve a courtesy copy of the notice of deposition for each former employee on the Department of Defense.

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<sup>3</sup> *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

<sup>4</sup> This list, as well as Plaintiffs' list, was provided to the Court over the weekend.

<sup>5</sup> This applies to both fact and expert witnesses.

Finally, no later than Tuesday, June 30, 2020, the parties must submit to Judge Herndon a chart of all upcoming depositions.<sup>6</sup> The chart should include: (1) the name of the deponent; (2) whether the deponent is a Defendant, Government, or Plaintiff witness; and (3) the date of the deposition. If the parties have not yet agreed on a deposition date for the deponent, please also include: (1) the dates that have been offered for the deposition, if any; (2) when those dates were offered to the opposing party; and (3) the opposing party's response, if any.

**c. Written Discovery**

The parties have until July 8, 2020 to file a motion(s) to compel regarding deficient written discovery responses. The Court will enter an expedited briefing schedule and/or a hearing date on the motion(s) in an effort to efficiently resolve the dispute(s) raised in the motion(s).

**d. TAR Protocol**

The parties are continuing to meet and confer on a supplemental TAR proposal and will promptly notify Judge Jones if the parties are unable to reach an agreement, so as to avoid any delay in discovery.

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<sup>6</sup> The Court would also prefer that the parties include past depositions on the chart as well for a more complete record of depositions.

## **V. Choice of Law Committee**

Leadership for both parties should identify the attorneys who will address choice of law issues for Group A. These attorneys may come from the Law, Briefing & Legal Drafting Subcommittee and Joint Statutes of Limitations Committee. Before the August 28, 2020 Case Management Conference, the parties must provide the Court with a chart containing each party's position on any known choice of law issues for Group A.

## **VI. Science Day Regarding Medications**

Despite several "meet and confers," the parties have been unable to agree on a discovery protocol for ototoxic medications and illicit substances. As a result, and given the pressing need to define the scope of this important discovery issue, the Court will hold a second Science Day on or before the next Case Management Conference on July 29, 2020. The parties will meet and confer, and submit to the Court by Tuesday, June 30, 2020 at 12:00 pm Central a proposal for the format of this proceeding. If the parties cannot agree on a joint proposal, they must so inform the Court.

## **VII. Upcoming Case Management Conferences**

Case management conferences through the end of the year are scheduled on the following dates, and going forward will start at 10 am Central:

July 29, 2020

August 28, 2020

September 18, 2020

October 23, 2020

November 20, 2020

December 14, 2020

**SO ORDERED**, on this 29th day of June, 2020.

*M. Casey Rodgers*

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**M. CASEY RODGERS**

**UNITED STATES DISTRICT JUDGE**