

**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

CASE MANAGEMENT ORDER NO. 5

The fifth case management conference in this matter was held on September 27, 2019. This Order serves as a non-exhaustive recitation of the key points of discussion during the conference.

I. Master Pleadings

Plaintiffs' Master Long Form and Short Form Complaints were filed on September 20, 2019. *See* ECF Nos. 703-705. Defendants' response will be filed by October 31, 2019. The procedures for use of short form complaints in this litigation will be set forth in a separate pretrial order.

II. Census / Tolling

An order establishing a process for obtaining and producing information for the initial census in this matter will be entered shortly. All individual plaintiffs with cases filed in or transferred into the MDL will be required to comply with the census order. Deadlines related to the initial census, and also deadlines in the parties' tolling

agreement (including the expiration of the tolling period), may not be extended without leave of Court, which will be freely given on a showing of reasonable cause.

III. Discovery

The parties have made considerable progress on document discovery in this matter. They are conferring about a potential issue involving additional custodians. If any disagreements remain unresolved on **Friday, October 4, 2019**, then the parties must so advise the Court that same day. The parties must also immediately advise the Court of any disputes that arise involving discovery related to Defendants' affirmative defenses.

Plaintiffs have submitted a Notice to Inspect a testing facility in Indianapolis, IN. Defendants' response is due on October 14, 2019.

The first 30(b)(6) depositions are scheduled for October 17-18, 2019. The parties must advise the Court of any disputes regarding the topics to be covered during those depositions by **Friday, October 4, 2019**. The second 30(b)(6) deposition will begin on **Monday, November 11, 2019**. The parties disagree on the number of deposition days that may be used for this deposition. Simultaneous briefs on this issue must be filed by **Tuesday, October 15, 2019**. In their filing, Defendants must advise whether they intend to cross-notice this deposition. Finally, if any additional 30(b)(6) notices will be forthcoming, Plaintiffs must so advise Defendants by **Friday, October 4, 2019**.

The parties were directed to set aside the first three weeks of December 2019 for depositions of fact witnesses. Plaintiffs must disclose to Defendants which fact witnesses they wish to depose, based on the documents produced to date, by **Friday, October 4, 2019**.

IV. Discovery Master

The Court will be appointing a special master to help manage the discovery process for issues related to the affirmative defenses and to assist in moving the affirmative defenses into a posture for dispositive motion practice.

V. Motions to Remand

There are motions to remand currently pending in 77 individual cases, all seeking remand to Minnesota state courts. Because the disputed removal and remand issues may overlap with issues related to the affirmative defenses, the parties are conferring about the possibility of the Court resolving all of these issues at once, following Phase 1 discovery. The parties are directed to jointly advise the Court of their proposed plan in this regard by **Tuesday, October 15, 2019**.

VI. Multi-Plaintiff Actions

Approximately 200 cases have been filed in or transferred to this litigation as multi-plaintiff actions involving claims with different factual predicates (as opposed to derivative claims), many of which name close to 100 unrelated plaintiffs. Early on, the Court indicated its inclination to *sua sponte* find these cases improperly

joined and order them severed. *See* Case Management Order No. 1, ECF No. 86 at 4. However, the Court deferred ruling on the issue and will allow the parties to submit briefs, if they wish to do so, before any action is taken. Plaintiff Leadership are directed to confer with individual plaintiffs' counsel, as well as defense counsel, on a process for addressing multi-plaintiff actions—both the currently pending actions and future filed cases. The parties must be prepared to meaningfully discuss this issue at the next case management conference.

VII. Confidentiality

The Court discussed the possibility of modifying the Stipulated Order Governing Confidentiality and Privilege, ECF No. 442, to narrow the categories of information that may be filed under seal to materials that are entitled to be protected from public disclosure by law. *See, e.g.*, Fed. R. Civ. P. 5.2(a) (privacy protections for certain personal information); 26(c)(1)(g) (trade secret or other confidential research, development, or commercial information). The parties are directed to confer about this issue, including whether they believe Judge Jones may be of assistance, and be prepared to meaningfully discuss it at the next case management conference.

VIII. Upcoming Case Management Conferences

Case management conferences through the end of the year are scheduled as follows:

Friday, October 25, 2019 at 9:30 a.m.

Friday, November 22, 2019 at 9:30 a.m.

Monday, December 16, 2019 at 9:30 a.m.

SO ORDERED, on this 3rd day of October, 2019.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE