

Hon. James F. Hyland, J.S.C.

IN RE TAXOTERE LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY

CASE TYPE: MCL NO. 628

MASTER DOCKET NO.:

MID-L-4998-18-CM

CIVIL ACTION
IN RE TAXOTERE LITIGATION

**ORDER ON SELECTION OF BELLWETHER
DISCOVERY CASES AND TRIAL CASES**

The Court hereby issues the following Order to govern the selection of Bellwether Discovery Cases and Bellwether Trial Cases.¹

I. Eligibility Requirements for the Bellwether Discovery Cases

1. To be eligible for bellwether discovery pursuant to this Order each Plaintiff must demonstrate the following:

- i. As of April 1, 2020, Plaintiff had a complaint pending in this MCL proceeding that had been served upon Defendants Sanofi U.S. Services, Inc. and Sanofi-Aventis U.S. LLC, Winthrop US (together, “Sanofi”); and
- ii. By June 30, 2020, Plaintiff (a) provided a “substantially complete” Plaintiff Fact Sheet to Defendants as set forth in Paragraph 11 of the Plaintiff Fact Sheet and Defendant Fact Sheet Implementation Order; (b) complied with Product

¹ This Order does not govern cases involving Plaintiffs and the non-Sanofi Defendants and does not impose obligations on or otherwise bind Plaintiffs or the non-Sanofi Defendants in non-Sanofi use cases, including in cases that do not meet the criteria set forth in I.2. Plaintiffs and the non-Sanofi Defendants reserve their rights to separately address the procedures that will govern such cases.

Identification Order No. 3; (c) have used best efforts to comply with the ESI Protocol Governing Plaintiffs' Responsibilities Relevant to ESI,² and (d) has not been diagnosed with a second primary cancer (hereinafter, the "Eligible Cases").³

2. Only cases with product identification evidence identifying Sanofi as the sole manufacturer for all docetaxel infusions received by Plaintiffs are eligible for bellwether discovery pursuant to this Order.

II. Selection Procedure for the Bellwether Discovery Cases

1. The parties shall submit an agreed upon list of Eligible Cases to the Court by July 21, 2020. To the extent there are disputes about the eligibility of a particular case for bellwether discovery, such disputes shall be presented to and decided by the Court. After all eligibility disputes are resolved, the final list of Eligible Cases shall be filed with the Court and made available to all counsel who represent parties on such list.

2. Within twenty-one (21) days after publication of the list, any plaintiff who believes she cannot proceed as a Bellwether Discovery Plaintiff due to a serious medical or family issue shall submit a written certification indicating the basis upon which the plaintiff cannot participate in the bellwether pool. Such certifications shall be provided to Liaison Counsel for Plaintiffs and Sanofi. Any plaintiff who fails to submit a written certification will be presumed to have assented to participating as a bellwether candidate absent a showing of good cause.

3. The parties shall meet and confer as to whether such plaintiffs may be removed from the bellwether discovery pool within thirty (30) days of the publication of the list. To the extent there are disputes about whether a plaintiff should be removed from the list, such disputes

² Nothing in this Order shall obviate a plaintiffs' obligation to comply with the ESI protocol.

³ In order for consideration under the eligibility requirements, Defendants are required to serve deficiency notices in the potential bellwether eligible cases by June 1, 2020.

shall be presented to and decided by the Court. All such disputes shall be resolved by the parties or submitted to the Court for determination within forty (40) days of the publication of the list.

4. After the eligible case list is finalized, the Court shall randomly select twenty-five (25) Bellwether Discovery Cases for Phase I Discovery. The final list of twenty-five (25) Bellwether Discovery Cases shall be entered by the Court. Additionally, the Court shall also select ten (10) alternate Bellwether Discovery Plaintiffs at random. These ten (10) Bellwether Discovery Plaintiff alternate cases shall meet the same criteria to be a Bellwether Discovery Plaintiff as set forth in Section I of this Order, shall be kept by the Court in the order in which they were selected and shall remain confidential only known to the Court unless and until they are required as set forth in paragraph III. 6.

III. Phase I Discovery

1. Phase I discovery shall commence on the date the Court publishes the final list of 25 Bellwether Discovery Cases.

2. Phase I Discovery will consist of three (3) depositions per case and shall be limited to the depositions of Plaintiff, the oncologist who prescribed Taxotere (docetaxel) to Plaintiff, and one healthcare provider who treated Plaintiff for her alleged injury, if any. If a Plaintiff has not sought treatment from a healthcare provider for her alleged injury, one other healthcare provider selected by the parties may be deposed. If the parties are unable to agree on the third healthcare provider, each side can proceed with their deposition choice.

3. Defendants will produce Taxotere related case specific call notes, targeting information, sample data and any other relevant emails or other written communications between plaintiffs' prescribing physicians and/or treatment facilities used by the prescribing physician and Sanofi sales employees, medical science liaisons, marketing organization representatives,

distributors or other sales representatives that relate to (i) Taxotere (docetaxel), and/or (ii) hair loss, and/or (iii) permanent hair loss and/or alopecia, at least twenty-one (21) days prior to the physician depositions in each individual case.

4. No depositions shall be taken within thirty (30) days of the commencement of Phase I Discovery in order to facilitate fulsome records collection in each of the Bellwether Discovery Cases.

5. The deadline for completing Phase I Discovery is five (5) months from the date the Court publishes the final list of 25 Bellwether Discovery Cases.⁴

6. If at any time during Phase I Discovery the number of Bellwether Discovery Cases drops below twenty-five (25), the Court will first utilize the 10 alternate cases referenced in paragraph II.4 to replenish the bellwether discovery pool to twenty-five (25) cases. This replenishment shall occur through notification to the Court of the number of cases needed to replenish the Bellwether Discovery Cases to twenty-five (25) and, within ten (10) days thereafter, the Court shall notify the parties as to which randomly selected cases will be added to the pool to replenish the dismissed bellwether discovery cases. The alternate Bellwether cases shall be added to the bellwether discovery pool in the same order in which they were randomly selected. If circumstances arise regarding the replenishment of cases whereby Defendants desire a different remedy, or Plaintiffs believe they should be entitled to replenishment or a different remedy, the Court may meet with the parties to determine which remedy should be adopted.

⁴ The parties acknowledge the impact of the COVID-19 pandemic on the ability to conduct discovery in an expeditious manner and have aligned on a five-month window to conduct initial discovery.

7. If a dispute arises regarding the product identification status of any case during Phase I, the parties will present the dispute to the Court to determine whether such case may proceed into Phase II.

IV. Selection Procedure for Phase II Discovery

1. Fourteen (14) days after the completion of Phase I Discovery, each side shall simultaneously select four (4) cases from the list of remaining Bellwether Discovery Cases to proceed to Phase II Discovery. Liaison counsel shall email the case names and docket numbers of their Phase II case selections to the Court at 12:00 pm noon eastern time. If a Plaintiff dismisses a Phase II defense pick, Defendants may replenish from the remaining Plaintiffs in the Bellwether Discovery Cases.

V. Phase II Discovery

1. Phase II discovery shall commence on the date the Phase II Discovery Cases are selected by the parties.

2. Phase II Discovery will consist of no more than four (4) case specific depositions per case, two (2) to be selected by Plaintiff and two (2) to be selected by Sanofi. The deadline for completing Phase II Discovery is two (2) months.

VI. Selection Procedure for Phase III Discovery

1. At the conclusion of Phase II Discovery, the parties will use alternating strikes to narrow the pool to four (4) cases. Defendants shall execute the first strike.

VII. Phase III Discovery

1. Phase III discovery shall commence on the date the four (4) Phase III Discovery Cases are selected.

2. Phase III Discovery shall be completed within 150 days.

3. All remaining fact witness depositions shall be completed within the first sixty (60) days of Phase III Discovery.

4. Plaintiffs shall serve expert reports sixty (60) days into Phase III Discovery.

5. Defendants shall serve expert reports one hundred and twenty (120) days into Phase III Discovery.

6. Plaintiffs' rebuttal reports (if any) will be due 150 days into Phase III Discovery.

7. Depositions of experts will occur at the conclusion of Phase III Discovery and be completed within 90 days.

8. If a general causation expert has already been deposed as part of the general causation case in the MDL litigation, each side will be limited to a three (3) hour supplemental deposition absent a showing of good cause.

9. The parties will meet and confer to develop a proposed schedule for dispositive motions and related pretrial motions, including pretrial exchanges and a tentative trial date before the end of Phase II Discovery, as well as the start date for the work up of the second group of bellwether eligible cases.

/s/ James F. Hyland
The Hon. James F. Hyland, J.S.C.