

**FILED**

JUL 27 2023

GREGG A. PADOVANO, J.S.C.

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY**

**IN RE ALLERGAN BIOCELL  
TEXTURED BREAST IMPLANT  
PRODUCTS LIABILITY LITIGATION**

**CASE NO. 634**

**MASTER DOCKET NO. BER-L-5064-20**

All prior orders remain in full force and effect  
except as modified by this Order.

**AMENDED CASE MANAGEMENT ORDER # 10  
(Protocol for Selection and Discovery of Initial Bellwether Discovery Cases)**

The Court finds that the Parties have conferred regarding a Case Management Order addressing guidelines and procedures for selecting a first wave of cases for certain individual case-specific discovery to be conducted (the “Initial Bellwether Discovery Cases”), from which a smaller subset of cases will then be proposed and designated as initial bellwether trial cases in MCL 634. The Parties having stipulated thereto, and for other good cause shown,

**IT IS ON THIS 27 DAY OF JULY, 2023, ORDERED** as follows:

**I. SCOPE OF THE ORDER**

As of July 1, 2023, there are approximately 326 Plaintiffs with filed individual injury cases that are part of MCL 634. Of these, 31 allege in their Complaint a diagnosis of BIA-ALCL; approximately 250 Plaintiffs allege in their Complaint injuries including, without limitation, a surgical explant of a BIOCELL device after July 24, 2019 (“revision surgery”)

In furtherance of the effective and efficient case management of complex litigation, this Case Management Order (“CMO”) will govern the guidelines and procedures for selecting a first wave of cases for certain individual case-specific discovery to be conducted (the “Initial Bellwether Discovery Cases”), from which a smaller subset of cases will then be proposed and designated as initial bellwether trial cases.

## **II. CASE ELIGIBILITY**

Cases shall be eligible to be selected as Initial Bellwether Discovery Cases if they involve a Plaintiff who has (a) been diagnosed with BIA-ALCL, or (b) not been diagnosed with BIA-ALCL but has undergone a revision surgery, and any remaining cases will be addressed in subsequent Orders. Any filed case in which a diagnosis of BIA-ALCL occurs after the filing of the case is required to serve a Plaintiff Fact Sheet (“PFS”) within 60 days of the BIA-ALCL diagnosis, or within 60 days after counsel for that Plaintiff learns of the BIA-ALCL diagnosis, whichever is later. No case shall be eligible to be selected as an Initial Bellwether Discovery Case unless the Plaintiff has uploaded a materially complete and verified PFS to BrownGreer’s MDL Centrality platform on or before December 22, 2023.

## **III. PROTOCOL FOR SELECTION OF INITIAL BELLWETHER DISCOVERY CASES**

**A.** The parties have agreed to engage in the preparation and uploading of PFSs and Defendant Fact Sheets (“DFSs”) following the Court’s approval of CMO 9. It is anticipated that this process shall be substantially completed by March 22, 2024.

**B.** On or before May 1, 2024, Plaintiffs’ Liaison Counsel and Counsel for Allergan shall propose the first wave of Initial Bellwether Discovery Cases (to be followed by subsequent waves pursuant to later Orders), that include:

- i. cases involving Plaintiffs diagnosed with BIA-ALCL; and
- ii. cases involving Plaintiffs who have not been diagnosed with BIA-ALCL but who have undergone a revision surgery as defined above.

**C.** If the parties cannot agree on the total number of Initial Bellwether Discovery Cases, that dispute will be submitted to the Court. In selecting their respective Initial Bellwether Discovery Cases, the parties shall each select cases that they have a good faith belief are representative cases that should be subject to bellwether discovery and then taken to trial. When exchanging selections, each

party will provide a list that includes the following information regarding the plaintiffs they have selected: that plaintiff's counsel, case number, implant date, product name, and primary alleged injuries.

**D.** Following selection of the Initial Bellwether Discovery Cases, core bellwether discovery may commence immediately and be completed in all Initial Bellwether Discovery Cases in six months. Unless otherwise agreed to by the parties, core bellwether discovery shall be limited to depositions of the Plaintiffs, the physicians who implanted and/or explanted Plaintiff's recalled implants ("Implanting/Explanting Doctors"), the Allergan sales representative(s) who communicated with or sold the implanting device to the Implanting Doctor(s), and the oncologist or main physician providing medical treatment for BIA-ALCL. This core bellwether discovery is designed to provide information to enable the parties to assess the cases, select the first wave of bellwether trial cases, and if agreement cannot be reached, provide information to the Court to enable the Court to select such bellwether trial cases from that first wave.

**E.** The Parties will develop a plan and process to coordinate and schedule the depositions of the relevant doctors above who rendered care and treatment to the Plaintiffs who are part of the Initial Bellwether Discovery pool, and the Parties will endeavor to promptly schedule these depositions after the Initial Bellwether Discovery Cases are selected.

**F.** Nothing in this Order shall prohibit a party from objecting to a proposed case-specific deposition and promptly raising their objections to opposing counsel and the Court as necessary.

#### **IV. BELLWETHER TRIAL CASES**

**A.** Following the completion of core discovery in the Initial Bellwether Discovery cases, the parties will negotiate and submit to the Court a Case Management Order for approval that will select the agreed upon number of Initial Bellwether Trial cases, or if agreement cannot be reached,

each sides' proposal so that the Court can make the selection, along with the final proposed pre-trial schedules and deadlines for the Initial Bellwether Trial Cases.

**B.** This Order may be modified or amended for good cause shown, after appropriate notice and opportunity to be heard is provided to the affected parties, when the Court believes the interest of justice requires modification.



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HON. GREGG A. PADOVANO, J.S.C.