

**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

**PRETRIAL ORDER NO. 23
Bellwether Selection Protocol**

To further the effective and efficient management of this litigation, the following procedures have been established for identifying and selecting the initial bellwether discovery pool cases.

1. On December 16, 2019, there were 139,693 claimants registered in MDL Centrality in connection with the 3M litigation. The Court, with the assistance of BrownGreer PLC, randomly selected 1% of that population—1,397 claimants—for consideration as potential bellwether candidates. Next, a series of prevalence analyses were conducted on the entire population of claimants with completed census forms, to identify the individual plaintiff characteristics that were most representative of the whole, in terms of branch of service, age, and injury. The analyses revealed that the most representative claimant is between the ages of 30 and 49, serves or served in the Army, and alleges a combination of tinnitus and hearing

loss. Of the randomly selected 1%, 175 cases met the three criteria.¹ Those 175 cases, which are identified on Exhibit A, comprise the first potential bellwether candidate pool for this litigation.

2. The 175 cases in the first potential bellwether candidate pool have already filed Short Form Complaints on either the administrative docket or the 3M MDL docket. From this pool, the Court randomly selected six cases to proceed with case-specific discovery, along with one alternate.² Plaintiff Leadership and Defendants will each select nine cases from the remaining potential bellwether candidates—seven cases to proceed with discovery, two cases as alternates—using the process outlined below, resulting in an initial discovery pool of 20 cases and 5 alternates.³

3. The parties are currently finalizing an agreed Bellwether Selection Form, which will be made available in MDL Centrality once it has been approved by the Court. Thereafter, each of the plaintiffs in the first potential bellwether

¹ Initially, there were 177 cases that appeared to meet the criteria; however, two cases have since been removed from the list.

² The six cases randomly selected by the Court for the initial discovery pool are: Kevin Lopez (PID 160400), Lewis Keefer (PID 11295), Luke Vilsmeier (PID 91380), Jared King (PID 30281), Jonathan Vaughn (PID 31013), and William Wayman (PID 83748). A seventh case, Lonnie Burgus (PID 60806), was randomly selected as an alternate. The Court's randomly selected cases are highlighted in yellow on Exhibit A.

³ The alternates must be included in *Touhy* requests for cases in the initial bellwether discovery pool. The Court will discuss with the parties whether the alternates will be fully worked up as part of the discovery process.

candidate pool, including the seven randomly selected by the Court, must submit a completed Bellwether Selection Form to BrownGreer PLC within **21 days** after notification is made that the form is available in MDL Centrality.⁴ Failure to timely submit a completed Bellwether Selection Form will be grounds for sanctions, up to and including dismissal of a case.

4. The plaintiff leadership team—and the Early Vetting Subcommittee, in particular—has been tasked with assisting in the timely submission of Bellwether Selection Forms. **To protect the integrity of the bellwether selection process, members of the plaintiff leadership team are prohibited from investigating any potential bellwether candidate and/or claim at this time, beyond obtaining responses to the questions on the Bellwether Selection Form.**

5. After the Bellwether Selection Forms submission deadline, each side will select seven cases for inclusion in the initial discovery pool, along with two alternates. By **February 18, 2020**, the parties must jointly advise the Court of their respective selections.

⁴ A plaintiff may answer appropriate questions, in good faith, by indicating “not applicable,” “I don’t know,” or “unknown.” The plaintiffs’ responses need not be sworn under penalty of perjury and there wi

6. The parties must be prepared to discuss a schedule for the completion of case-specific discovery and the filing of *Daubert* and/or dispositive motions, if any, for the initial discovery pool during the next leadership call.

SO ORDERED, on this 21st day of January, 2020.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE

Exhibit A

Claims Within 1% Random Selection: Age 30-49, Army, Hearing Loss and Tinnitus

Row	Plaintiff ID	Plaintiff Name	Law Firm Name
1.	116838	Sloan, Ronald Elliot	Abraham, Watkins, Nichols, Sorrels, Agosto & Aziz
2.	116964	McGraw, Jesse Michael	Abraham, Watkins, Nichols, Sorrels, Agosto & Aziz
3.	138793	Palanki, Joseph Frank	Abraham, Watkins, Nichols, Sorrels, Agosto & Aziz
4.	138901	Adams, Joseph Jay	Abraham, Watkins, Nichols, Sorrels, Agosto & Aziz
5.	162092	Gutierrez Reyes, Luis A.	Abraham, Watkins, Nichols, Sorrels, Agosto & Aziz
6.	60447	Beal, James E.	Aylstock, Witkin, Kreis & Overholtz, PLLC
7.	60806	Burgus, Lonnie Eugene	Aylstock, Witkin, Kreis & Overholtz, PLLC
8.	63126	Lawrence, Ralph	Aylstock, Witkin, Kreis & Overholtz, PLLC
9.	65397	Troy, Travis	Aylstock, Witkin, Kreis & Overholtz, PLLC
10.	65936	Zavalavieyra, Jose	Aylstock, Witkin, Kreis & Overholtz, PLLC
11.	99806	Otero, Ary	Aylstock, Witkin, Kreis & Overholtz, PLLC
12.	66104	Adkins, Brandon	Bailey Cowan Heckaman PLLC
13.	117177	Cater, Colin	Baron & Budd
14.	117349	Fausett, Matthew William	Baron & Budd
15.	66875	Eargle, Whitney Vaughn	Bernstein Liebhard LLP
16.	67340	Knisell, Kevin	Bernstein Liebhard LLP
17.	1329	Lemapu, Nathan	Blasingame, Burch, Garrard & Ashley, P.C.
18.	168825	Hansberry, April	Blasingame, Burch, Garrard & Ashley, P.C.
19.	68112	Carr, Brandon	Brent Coon & Associates
20.	91889	Byrd, Charlie Edward	Burwell Nebout Trial Lawyers
21.	78744	Belton, Rima D	Carey Danis & Lowe
22.	90718	Ziolkowski, David	Clark, Love & Hutson PLLC
23.	90795	Guess, Brandon V	Clark, Love & Hutson PLLC
24.	89947	Tyler, Tim	Clark, Love & Hutson PLLC
25.	167468	Blankenship, Chad	Clark, Love & Hutson PLLC
26.	65984	Rowe, Vernon C	Colson Hicks Eidson
27.	74142	Poore, Timothy	Danziger & De Llano
28.	74976	Smith, Clint	Danziger & De Llano
29.	75939	Wilkinson, David	Danziger & De Llano
30.	75993	Wilson, Daniel	Danziger & De Llano
31.	76177	Blackmon, Andrew	DeGaris Wright McCall
32.	76323	Wilkison, Jerry	DeGaris Wright McCall
33.	76328	Wooten, Joshua	DeGaris Wright McCall
34.	107236	Alexander, Gary	Douglas & London
35.	108329	Caruso, Nathan	Douglas & London
36.	108744	Craft, Kristopher	Douglas & London
37.	108756	Craven, Michael	Douglas & London
38.	109776	Garcia, Sigifredo	Douglas & London
39.	110175	Guzman, Jonathan	Douglas & London
40.	112454	Montanez, Luis	Douglas & London
41.	115039	Valencia, Francisco	Douglas & London
42.	115141	Vlasto, Christopher	Douglas & London
43.	115450	Wilkins, Mark	Douglas & London
44.	115491	Williams, Calvin	Douglas & London

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45.	107485	Ball, Dustin	Douglas & London
46.	167705	Potter, Grant	Fears Nachawati
47.	167715	Sholley, Erik	Fears Nachawati
48.	76356	Barton, Reuben	Fleming, Nolen & Jez, L.L.P.
49.	76399	Christenson, Ryan	Fleming, Nolen & Jez, L.L.P.
50.	76535	Huante, Rudy	Fleming, Nolen & Jez, L.L.P.
51.	56508	Watson, Christopher	Gori Julian & Associates
52.	56617	Gellerman, Milton	Gori Julian & Associates
53.	57509	James, Richard	Gori Julian & Associates
54.	58778	Pelkey, Jessica	Gori Julian & Associates
55.	58878	Nosko, Jordan	Gori Julian & Associates
56.	59637	Bookhart, Cedric L.	Gori Julian & Associates
57.	155989	Leardo, Eduardo	Goza & Honnold, LLC
58.	170563	Macias, Francisco	Grant & Eisenhofer
59.	79599	Hensley, Marcus	Heninger Garrison Davis, LLC
60.	79857	McCombs, Dustin	Heninger Garrison Davis, LLC
61.	170138	Herrin, Kristopher	Heninger Garrison Davis, LLC
62.	10428	Taylor, Joseph	Hensley Legal Group, PC
63.	80663	Graham, Jeffrey	Holland Law Firm
64.	80944	Tapia, Brandon	Holland Law Firm
65.	137410	Camarillorazo, Guillermo	Jensen & Associates
66.	137901	Baker, Kevin	Jensen & Associates
67.	138590	Wilkerson, Steven	Jensen & Associates
68.	116003	Reyes, Jonathan	Joel Bieber Firm
69.	16834	Thomas, Andrew James	Johnson Becker
70.	19183	Askew, Laquinsa	Tracey & Fox Law Firm
71.	19465	Baker, Lloyd E.	Tracey & Fox Law Firm
72.	20660	Davis, Jeremy M.	Tracey & Fox Law Firm
73.	20868	Doss, Darry L.	Tracey & Fox Law Firm
74.	21040	Emerson, Andrew C	Tracey & Fox Law Firm
75.	22137	Horres, Kenneth	Tracey & Fox Law Firm
76.	22300	Jaeger, Andrew J.	Tracey & Fox Law Firm
77.	23779	Nicholson, Jason M	Tracey & Fox Law Firm
78.	24539	Rivera, Derik	Tracey & Fox Law Firm
79.	24701	Rothe, Kirt W.	Tracey & Fox Law Firm
80.	24850	Sartain, Brandon	Tracey & Fox Law Firm
81.	25689	Vales, Joseph	Tracey & Fox Law Firm
82.	26053	Wilke, Tylor	Tracey & Fox Law Firm
83.	129600	Adams, Tarun	Junell & Associates, PLLC
84.	131382	Floyd, Kedrick	Junell & Associates, PLLC
85.	131556	Garza, Christopher	Junell & Associates, PLLC
86.	131574	Genessy, Nathan	Junell & Associates, PLLC
87.	133116	Matthews, Joseph	Junell & Associates, PLLC
88.	133326	Mick, Andrew	Junell & Associates, PLLC

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Row	Plaintiff ID	Plaintiff Name	Law Firm Name
89.	133362	Miller, Andrew	Junell & Associates, PLLC
90.	134986	Stoeber, Andrew	Junell & Associates, PLLC
91.	160400	Lopez, Kevin	Junell & Associates, PLLC
92.	43581	Butler, Ben C	Keller Lenkner
93.	43635	Carr, Zachary	Keller Lenkner
94.	44768	Horton, William	Keller Lenkner
95.	45022	Kibler, Dak	Keller Lenkner
96.	45425	McNeal, Chad S	Keller Lenkner
97.	45531	Montero, Carlos A	Keller Lenkner
98.	46591	Taylor, Michael R	Keller Lenkner
99.	158129	Batocabe, Joselito	Keller Lenkner
100.	164055	Firster, Jesse	Langston & Lott, PLLC
101.	11295	Keefer, Lewis	Levin Papantonio Thomas Mitchell Rafferty & Proctor, P.A.
102.	102337	Bednarek, Brian	Lockridge Grindal Nauen
103.	139639	Garcia, Joshua	Matthews & Associates
104.	11895	Benson, Kenneth	McDonald Worley
105.	12029	Wonser, Benjamin	McDonald Worley
106.	12134	Austin, Toby	McDonald Worley
107.	12196	Williams, Charles	McDonald Worley
108.	12839	Colondres, Jose Antonio	McSweeney/Langevin LLC
109.	91198	Belfi, Matthew	Messa & Associates
110.	91380	Vilsmeyer, Luke F.	Messa & Associates
111.	85799	Manning, Sandra	Monsour Law Firm
112.	85833	Perry, Nathan	Monsour Law Firm
113.	5323	Jordan, James	Morgan & Morgan
114.	126252	Stryker, Mark Vincent	Morgan & Morgan
115.	165088	Minor, Todd	Morgan & Morgan
116.	165134	Vater, Richard Wilson	Morgan & Morgan
117.	128730	Clark, Tremayne	Morris Bart, LLC
118.	129388	Forstall, Derek	Morris Bart, LLC
119.	51455	Blum, Michelle	Mostyn Law
120.	51655	Patterson, Damon	Mostyn Law
121.	51836	Carter, Daniel	Mostyn Law
122.	126960	Stephens, Alberta	Mostyn Law
123.	167901	Donato, David	Mostyn Law
124.	17110	Anderson, Alexander E.	Murphy Law Firm
125.	17764	Campsey, Ryan Dale	Murphy Law Firm
126.	29996	Garcia, Tlaloc	OnderLaw, LLC
127.	30033	Graham, Chris	OnderLaw, LLC
128.	30068	Hacker, Stephen	OnderLaw, LLC
129.	30281	King, Jared	OnderLaw, LLC
130.	30301	Kudlo, David	OnderLaw, LLC
131.	31013	Vaughn, Jonathan	OnderLaw, LLC
132.	160131	Husband, Joshua Alan	OnderLaw, LLC

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Row	Plaintiff ID	Plaintiff Name	Law Firm Name
133.	164121	Cone, Richard	OnderLaw, LLC
134.	52882	Coar, Larry	Peterson & Associates, P.C.
135.	106559	Angerstein, Michael	Price Armstrong
136.	15385	Franklin, Wesley	Pulaski Law Firm, PLLC
137.	26495	Estes, Luke	Pulaski Law Firm, PLLC
138.	26956	Mayfield, Bradley	Pulaski Law Firm, PLLC
139.	28194	Johnson, Robert	Pulaski Law Firm, PLLC
140.	94115	Parent, Scott C.	Richardson, Patrick, Westbrook & Brickman, LLC
141.	92368	Crouchet, Darrick	Robinson Calcagnie, Inc.
142.	148989	Green, Joshuah	Searcy Denney Scarola Barnhart and Shipley
143.	81923	Stelling, Carter	Seeger Weiss LLP
144.	82204	Vassar, David	Seeger Weiss LLP
145.	82346	Smith, Eric	Seeger Weiss LLP
146.	83093	Johnson, Maurice	Seeger Weiss LLP
147.	83334	Atteberry, Ricky	Seeger Weiss LLP
148.	83660	Kirk, Tony	Seeger Weiss LLP
149.	83748	Wayman, William	Seeger Weiss LLP
150.	16118	Gomez, Carlos	Simmons Hanly Conroy
151.	16206	Ging, Wesley	Simmons Hanly Conroy
152.	165487	Cornell, Sean	Simmons Hanly Conroy
153.	165526	Kelley, Denise	Simmons Hanly Conroy
154.	6429	Baker, John	Stueve Siegel Hanson
155.	6731	De Alba, Oscar	Stueve Siegel Hanson
156.	7740	Rissinger, Jeff	Stueve Siegel Hanson
157.	7971	Taylor, Steven	Stueve Siegel Hanson
158.	29208	Van Winkle, Leo	The Carlson Law Firm
159.	127869	Silven, Benjamin	The DiLorenzo Law Firm, LLC
160.	127967	Whaley, Christopher	The DiLorenzo Law Firm, LLC
161.	49034	Netto, Bruce	The Lanier Law Firm
162.	49521	Duling, Eric	The Spencer Law Firm
163.	151325	Olson, Robert	Thomas J Henry
164.	151564	Reviere, Anthony	Thomas J Henry
165.	151595	Rivas, Joel	Thomas J Henry
166.	151598	Rivera, Carlos	Thomas J Henry
167.	151901	Smith, Brian	Thomas J Henry
168.	162146	Vaillancourt, Joshua	Thomas J Henry
169.	163246	Bucko, Kenneth	Thomas J Henry
170.	163273	Finley, Theodore	Thomas J Henry
171.	136427	Robinson, Orane	Thomas J Henry
172.	4946	Kessler, Franklin	Thornton Law Firm
173.	95350	Arbour, Garrett Joseph	Wagstaff & Cartmell, LLP
174.	95556	Love, Jamal Rashad	Wagstaff & Cartmell, LLP
175.	4601	Sansone, Vincent	Weller, Green, Toups & Terrell, LLP