

**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. 12

The Twelfth Case Management Conference in this matter was held on May 29, 2020. This Order serves as a non-exhaustive recitation of the key points of discussion during the conference.

I. Federal-State Court Coordination

The parties and Minnesota state court plaintiffs' counsel have submitted a proposed federal-state court coordination order. The parties are directed to submit a revised proposed order that references the relevant provisions of Pretrial Order No. 13, the Deposition Protocol for the MDL. To the extent the parties wish to designate Mike Burns and/or Mark Nomellini as Co-Federal/State Liaison Counsel with Rick Paul of Paul LLP, the revised order should so specify.

II. Samples of Earplugs and Wallet Cards

The Court has possession of 80 earplugs (40 pairs) and 40 packs of wallet cards (five wallet cards per pack), which were shipped from the Department of Defense. The parties have agreed that the Court will retain five pairs of earplugs

and one pack of wallet cards, and that the remaining earplugs and wallet cards will be split evenly among them. The parties will designate representatives to obtain the samples from the Court, simultaneously. At that time, a chain of custody form will be executed by a representative of each of the parties and a representative of the Court.

III. Government Discovery

The procedures for obtaining, reviewing, sharing, and using certain confidential records produced by the Department of Veterans Affairs (“VA”) for the bellwether plaintiffs are set forth in Pretrial Order Nos. 25 and 39. To the extent a dispute arises over any log of redacted and/or withheld documents submitted with a bellwether plaintiff’s production of VA records to Defendants, the parties should promptly bring the matter to the Court for resolution.

Procedures will be set by separate order for the review and production of confidential VA records for the representative sample of 1,509 plaintiffs.

IV. Corporate Discovery

The parties are meeting and conferring regarding additional custodians, as well as possible TAR elusion issues. If the parties are unable to reach agreement, then each side must email its position on the outstanding disputes to Judge Jones, by noon EST on Friday, June 5, 2020. If necessary, Judge Jones will set a telephone hearing and resolve the disputes.

The deposition of Robert Zielinski is set for June 22, 2020. The deposition of Bob Klun is set for June 24, 2020.

V. Bellwether Cases

Due to the time it has taken to obtain relevant servicemembers' records from the government, and the unique challenges presented by the COVID-19 pandemic, the Court finds it necessary to amend the discovery and trial schedule for the initial bellwether cases. The amendments will be reflected in a separate Order.

VI. Oral Arguments on the Cross-Motions for Summary Judgment

Oral arguments on the cross-motions for summary judgment will be heard on Monday, June 15, 2020 at 1:00 p.m. The parties are conferring about a proposed schedule for the proceeding and directed to submit their joint proposal to the Court by June 8, 2020. The joint submission should highlight any areas of disagreement.

VII. Upcoming Case Management Conferences

Case management conferences through the end of the year are scheduled at 9:30 a.m. Central on the following dates:

June 26, 2020

July 29, 2020

August 28, 2020

September 18, 2020

October 23, 2020

November 20, 2020

December 14, 2020

SO ORDERED, on this 2nd day of June, 2020.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE