

**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. 2

The second case management conference in this matter was held on June 17, 2019. This Order serves as a non-exhaustive recitation of the key points of discussion during the conference.

I. Pleadings

The parties are continuing to meet and confer on issues related to multi-plaintiff actions, service of process, and Defendants' affirmative defenses. They will be prepared to formally address these issues with the Court at the next case management conference.

II. Discovery

The previously imposed stay of discovery is hereby **LIFTED**.

A. Phase 1 Discovery Schedule

The Court adopts the parties' proposed Phase 1 discovery and case management plan, as modified below.

Phase 1 Discovery & Dispositive Motion Schedule	
Event	Deadline
Commencement of generic discovery directed to Defendants and non-parties; Plaintiffs to serve initial documents requests on Defendants; Draft <i>Touhy</i> requests provided to the government	June 19, 2019
Call with government representatives to obtain feedback on the draft <i>Touhy</i> requests	Week of June 24, 2019
Deadline for Defendants to substantially complete early document exchange	June 27, 2019 ¹
Parties to serve initial <i>Touhy</i> requests on government; Deadline for Defendants to provide Rule 26(a)(1) initial disclosures	June 28, 2019
Deadline for Defendants to substantially complete document production	September 30, 2019
Deadline for Plaintiffs' Rule 30(b)(6) depositions	October 15, 2019 ²
Status report concerning Party and non-party discovery; Proposals from the Parties in connection with dispositive motion practice; Proposals from the parties for case-specific discovery/bellwether process	October 31, 2019

¹ Per the parties' agreement, this deadline is 10 days after entry of the proposed ESI Protocol on June 17, 2019. *See* Joint Rule 26(f) Report, ECF No. 434 at 4.

² To the extent the necessary documents have been produced, Plaintiffs should endeavor to complete Rule 30(b)(6) depositions by October 15, 2019. If this deadline becomes unfeasible, Plaintiffs should so advise the Court at the earliest possible time.

Summary judgment or other adjudication of Defendants' affirmative defenses (depending on status of party and non-party discovery)	Based on the progress of government <i>Touhy</i> productions, the parties will propose a deadline to the Court by October 31, 2019
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B. Depositions & Deposition Protocol

The parties are continuing to meet and confer concerning a deposition protocol for the litigation. The parties were directed to jointly submit a proposed deposition protocol to the Court by **July 15, 2019**. The joint filing should highlight any remaining areas of disagreement. To the extent there is a separate proposed protocol developed for the Rule 30(b)(6) depositions, that protocol also must be submitted by **July 15, 2019**.

III. Class Issues

On May 3, 2019, Plaintiff Sean Lynch filed a motion to establish a separate class action track and a procedure for selecting interim class counsel. *See* ECF No. 213. Thereafter, the Court tolled the deadline for Defendants' response and directed the parties to discuss the class action issue at their Rule 26(f) conference. *See* ECF No. 285. During the case management conference, Plaintiffs' leadership and Defendants advised the Court that they jointly oppose Mr. Lynch's motion.³ The

³ Plaintiffs reserved the right to pursue class certification in the future, if deemed appropriate. The 90-day deadline for filing a motion to certify a class was previously tolled, *see* CMO 1, ECF No. 86 at 5, and it will remain tolled until further order of the Court.

parties were directed to file a formal opposition brief to the pending motion by **July 1, 2019**.

IV. Upcoming Case Management Conferences

Case management conferences through the end of this year will be held as follows:

Thursday, July 25, 2019 at 1:30 p.m.

Monday, August 26, 2019 at 9:30 a.m.

Friday, September 27, 2019 at 9:30 a.m.

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.

Before every case management conference, the Court will hold a preconference meeting with leadership counsel for both sides. On July 25, 2019, the preconference meeting will begin at 12:30 p.m. On all other dates, that meeting will begin at 8:30 a.m. Each side is permitted up to four attorneys at the preconference meeting. To the extent the parties wish to include additional counsel in a particular preconference meeting, leadership counsel must seek leave of Court in advance. Additionally, seven days before every case management conference, the parties must submit a joint proposed agenda for the Court's review.

V. Biweekly Calls with Leadership

The Court will hold biweekly conference calls with leadership counsel for both sides.⁴ The parties do not need to submit an agenda for these calls, except where the Court will be asked to resolve a relatively complex issue or one in which context and background information would be helpful.

DONE and ORDERED, on this 20th day of June, 2019.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE

⁴ Leadership counsel will be contacted informally by the Court to set a schedule for the biweekly calls.