

**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. 20

The Twentieth Case Management Conference (CMC) in this matter was held on July 9, 2021. This Order serves as a non-exhaustive recitation of the key points of discussion during the conference.

I. Early Vetting Subcommittee Update

The Court received an update from the Early Vetting Subcommittee. To help facilitate the process, and more specifically identify those cases where claimants' service dates predate sales of the Combat Arms Earplugs version 2 (CAEv2) to the military, the Court will enter an Order requiring claimants to provide proof (including affidavits or declarations) of their dates of use of the CAEv2. Additionally, the Court intends to reinstate the census form deadline. The parties and the Court will work with BrownGreer to analyze the existing MDL Centrality data, which will inform these Orders.

II. Group B Trial Schedule and Start Dates

a. Proposed Pretrial Schedule for Taylor Trial

The Court adopts the following deadlines agreed to by the parties for pretrial exchange of witness and exhibits lists and deposition designations:

	<u>Deadline</u>
Parties to exchange witness lists, clearly identifying which witnesses will be called at trial, which witnesses may be called at trial, and whether those witnesses will testify live in person, live remotely, and/or through prior deposition testimony.	July 14, 2021
Parties to exchange initial exhibit lists and affirmative deposition designations.	July 16, 2021
Parties to exchange objections to initial exhibits and affirmative deposition designations as well as counter-designations.	August 2, 2021
Parties to exchange supplemental exhibit lists.	August 5, 2021
Parties to exchange objections to counter-designations and supplemental exhibits.	August 9, 2021
Parties to submit priority deposition designations and exhibits for ruling. Rulings in previous bellwether trials must be clearly identified. Additionally, deposition designations must follow the same format as those submitted for the Group A bellwether trials.	August 30, 2021

The Court has also considered Defendants' oral motion to reconsider the August 6, 2021 dispositive motions deadline set forth in Pretrial Order No. 70, ECF No. 1666, for all Group B cases. Defendants argued that the summary judgment

briefing deadlines for the Group B cases should be bifurcated such that the briefing for *Taylor* and either *Blum* or *Adkins* would remain due on August 6, 2021, and the deadline for briefing the cases consolidated for trial, *Hensley*, *Sloan*, and *Wayman*, would be due at a later date in light of the January 2022 trial date. The Court denies Defendants' motion.

b. Blum Trial

The motion to dismiss in *Blum* is stayed pending an update from Blum's counsel by **Friday, July 16, 2021** regarding Blum's ability and willingness to keep her October trial date as scheduled if the Court were to excuse her presence in-person at trial and allow her to appear by Zoom for the entire trial, or either in person or by Zoom for only her examination.

c. Proposed Consolidation of Taylor and Adkins Trials

The Court will not consider consolidating the *Taylor* and *Adkins* trials unless the parties agree to single trials in *Hensley*, *Sloan*, and *Wayman*, currently scheduled as a consolidated trial in January 2022.

d. January Consolidated Trial of Hensley, Sloan, and Wayman

The consolidated trial of *Hensley*, *Sloan*, and *Wayman* will begin the first week of January following the New Year's holiday and last for five weeks. The time will be split 55/45, with Plaintiffs having 55% of the time allotted and Defendants having the remaining 45% of the five weeks to present their case. Should the parties

agree on less than five weeks for trial, they must promptly inform the Court. A separate Order Setting Trial and an Order reflecting the time allocation are forthcoming.

III. *Estes, Hacker, Keefer, and Baker Cases*

The parties will meet and confer on 28 U.S.C. § 1961 post-judgment interest and will report back to the undersigned.

Additionally, Defendants have several exhibits they may want to include in their appeal(s) to the Eleventh Circuit that were not admitted in the trials. The parties have agreed to meet and confer on those exhibits and will submit them to the Court; the Court will then submit them to the Eleventh Circuit.

Defendants also raised a question on how to include in any individual case appealed orders entered on the master MDL docket applying to all individual cases—for example, the briefing and Order on the parties' cross motions for summary judgment on the government contractor defense. The Court will reach out to the Eleventh Circuit to ask how it would like this handled, and will let the parties know.

IV. *Group C & D Schedules*

The deadlines set forth in Pretrial Order No. 70, ECF No. 1666 remain in force.

V. Deposition of Colonel (Ret.) Jay Vietas

Defendants recently noticed Colonel (Ret.) Jay Vietas' deposition in the Minnesota state court litigation and cross-noticed the deposition in the MDL. However, Defendants have withdrawn their cross-notice pending resolution of Plaintiffs' motion to quash now pending in Minnesota. Should the motion to quash be denied, Defendants must file a motion for leave to use the deposition in the MDL.

VI. Future Trials

The Court will appoint a subcommittee led by Chris Seeger and Barry Fields to work with the Court and BrownGreer to analyze the data on the current cases to inform future handling of cases for trial.

VII. Upcoming Case Management Conferences

Case management conferences are scheduled on the following upcoming dates at 10AM central:

August 20, 2021

SO ORDERED, on this 12th day of July, 2021.

M. Casey Rodgers

**M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE**