

**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. 6

The seventh case management conference in this matter was held on November 22, 2019. This Order serves as a non-exhaustive recitation of the key points of discussion during the conference.

I. Initial Census

The initial census deadlines in Pretrial Order No. 18, ECF No. 775—including the deadlines for submission of Initial Census Questionnaire and for production of Initial Census Documents, as well as the related deficiency process deadlines—are hereby suspended, until further order. In the meantime, the parties are directed to collaborate with each other and with BrownGreer, PLC to identify the claimants who have fulfilled their initial census obligations. The parties should be prepared to propose and discuss a timeline for completing this identification process during the leadership conference call on November 26, 2019.

II. Government Discovery

With the assistance of Judge Herndon, the parties must review Defendants' supplemental DOD *Touhy* request dated July 26, 2019, as well as each side's DOD *Touhy* requests for interviews and/or depositions, and segregate the requests that are relevant to Defendants' affirmative defenses from those which are not relevant to the defenses. By **December 13, 2019**, the parties must submit the two lists to Major Evans and Major Kim, along with a request that the Government defer action on the *Touhy* requests that are not relevant to the affirmative defenses until after it responds to the *Touhy* requests for documents, interviews, and depositions that are relevant to the defenses.

The Court will communicate with the Department of Veterans Affairs about the permissible means and procedures for obtaining veterans' health and disability records (including audiograms) in the near future. Leadership counsel will be kept apprised of the status of those communications.

III. Phase 1 Dispositive Motions

The parties must confer and propose a joint schedule for briefing on the affirmative defenses by **December 12, 2019**. If they are unable to agree on a joint proposed briefing schedule, then each side must submit a separate proposal by that same date.

IV. Additional Discovery Issues

There is currently a dispute regarding Plaintiffs' request that Defendants search for and produce material responsive to Plaintiffs' document requests from the files of eight additional custodians. A telephone conference to address this dispute will be set before Judge Jones by separate order. Relatedly, the parties were directed to provide a production chart to the Court by December 12, 2019.

The parties are conferring about an issue involving exemplars of the CAEv2. If they are unable to resolve the issue, then Plaintiffs must file a motion to compel by December 2, 2019. Defendants' response is due by December 12, 2019 and must specify the number and location of exemplars in Defendants' possession or control, as well as describe the steps that were taken to locate additional exemplars. The parties should be prepared to discuss this issue during the biweekly leadership call on December 13, 2019.

The parties are also conferring about the scope of Plaintiffs' visit to the testing facility in Indianapolis, IN. They were directed to resolve this issue before the leadership conference call on November 26, 2019.

A dispute has arisen concerning a third-party subpoena directed to the French-German Research Institute of Saint-Louis (ISL). Plaintiffs will be filing a motion to enforce the subpoena in the near future. Plaintiffs may also be filing a motion for

leave to conduct a 30(b)(6) deposition of 3M regarding its reasonably accessible data sources, *see* ECF No. 777 at 6.

V. Bellwether Protocol

The parties must confer and propose a joint bellwether selection protocol and discovery schedule by **December 12, 2019**.¹ If the parties are unable to agree on a joint bellwether proposal, then each side must submit a separate proposal by that same date. The Court will discuss the bellwether proposal(s) with leadership during the biweekly leadership call on **December 13, 2019**. If briefing on separate proposals will be necessary, the parties should so advise the Court during the leadership conference call on **November 26, 2019**.

VI. Lien Resolution

The parties will present a proposed order on the appointment of a lien resolution administrator in the near future.

VII. Upcoming Case Management Conferences

Case management conferences are scheduled at 9:30 a.m., Central on the following dates:

Tuesday, January 14, 2020

Friday, February 21, 2020

Friday, March, 27, 2020

¹ Both sides should also confer with BrownGreer PLC about how MDL Centrality can assist in the bellwether process.

Friday, April 24, 2020

Friday, May 29, 2020

DONE AND ORDERED, on this 25th day of November, 2019.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE