IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: INVOKANA (CANAGLIFLOZIN) PRODUCTS LIABILITY LITIGATION	:	**MDL NO. 2750**
	:	**JUDGE BRIAN R. MARTINOTTI**
	:	**MAGISTRATE JUDGE LOIS H. GOODMAN**

CASE MANAGEMENT ORDER NO. 20

In accordance with Section III.A of Case Management Order No. 10, this Order shall govern the process and criteria for selection of Bellwether Plaintiffs.

I. PROTOCOL FOR SELECTION OF GROUP A BELLWETHER DISCOVERY CASES

A. On or before August 31, 2017, Plaintiffs and Defendants shall each identify the following cases to undergo Bellwether Core Discovery pursuant to Case Management Order No. 10:

1. Three (3) plaintiffs who ingested Invokana and subsequently developed diabetic ketoacidosis.

2. Three (3) plaintiffs who ingested Invokana and subsequently developed kidney injury.

B. The parties shall submit the complete list of twelve (12) cases selected for Bellwether Core Discovery to the Court.

C. A case may be eligible for initial selection as a bellwether candidate only where: (1) the case was filed on or before July 31, 2017; (2) Plaintiff was prescribed Invokana; (3) Plaintiff was a Type II diabetic, and (4) a substantially complete Plaintiff Fact Sheet ("PFS") was served on or before July 31, 2017.

D. Subject to the parameters of this Order, on August 31, 2017, a designee for the Plaintiff Steering Committee (PSC) and a designated counsel for Defendants shall exchange lists of: three (3) diabetic ketoacidosis Plaintiffs and three (3) kidney injury Plaintiffs that each chooses to undergo Bellwether Core Discovery. The lists shall include the named Plaintiff, MDL Docket Number, and identification of primary Plaintiff's Counsel.

E. In the event duplicate names appear on the respective lists of bellwether cases, replacement cases shall be identified in the following manner: using the court-assigned case numbers, the duplicate with the lowest (oldest) case number shall be replaced by the PSC, with the next duplicate replaced by the Defendants, and so on in alternating turns until all duplicates have been resolved and a full list of twelve (12) cases has been achieved.

F. In the event the parties disagree about the selections made by either side, then the parties shall promptly meet and confer in a good faith effort to resolve the issue. In the event resolution is not achieved within five (5) days, then the party that raised the disagreement shall bring the dispute to the Court's attention for resolution.

G. In selecting their respective six (6) cases, the parties are strongly encouraged to select cases that they have a good faith belief are representative cases that should be robustly discovered and then taken to trial.

H. Any case that is dismissed by Plaintiff before October 16, 2017, shall be replaced by a same injury case that can be selected by Defendants. Any case settled by Defendants before October 16, 2017, shall be replaced by a same injury case that can be selected by Plaintiffs. For any case either dismissed by Plaintiff or settled by Defendants after October 16, 2017, the parties shall meet and confer on how the case should be replaced, if at all. If the parties cannot agree, they shall submit their respective positions to the Court.

II. PROTOCOL FOR SELECTION OF GROUP B BELLWETHER DISCOVERY CASES

A. On or before March 30, 2018, Plaintiffs and Defendants shall each identify the following cases to undergo Bellwether Core Discovery pursuant to Case Management Order No. 10:

1. Three (3) plaintiffs who ingested Invokana and subsequently developed a cardiovascular injury ("CV") (e.g. myocardial infarction or stroke cases).

B. The parties shall submit the complete list of six (6) cases selected as Group B Bellwether Core Discovery to the Court.

C. A case may be eligible for initial selection as a bellwether candidate only where: (1) the case was filed on or before February 16, 2018; (2) Plaintiff was prescribed Invokana; (3) Plaintiff was a type 2 diabetic, and (4) a substantially complete Plaintiff Fact Sheet ("PFS") was served on or before February 16, 2018.

D. Subject to the parameters of this Order, on March 30, 2018, a designee for the Plaintiff Steering Committee (PSC) and a designated counsel for Defendants shall exchange lists of three (3) CV cases. The lists shall include the named Plaintiff, MDL Docket Number, and identification of primary Plaintiff's Counsel.

E. In the event duplicate names appear on the respective lists of bellwether cases, replacement cases shall be identified in the following manner: using the court-assigned case numbers, the duplicate with the lowest (oldest) case number shall be replaced by the PSC, with the next duplicate replaced by the Defendants, and so on in alternating turns until all duplicates have been resolved and a full list of six (6) cases has been achieved.

F. In the event the parties disagree about the selections made by either side, then the parties shall promptly meet and confer in a good faith effort to resolve the issue. In the event resolution is not

achieved within five (5) days, then the party that raised the disagreement shall bring the dispute to the Court's attention for resolution.

G. In selecting their respective three (3) cases, the parties are strongly encouraged to select cases that they have a good faith belief are representative cases that should be robustly discovered and then taken to trial.

H. Any case that is dismissed by plaintiff before June 29, 2018, shall be replaced by a same injury case that can be selected by Defendants. Any case settled by Defendant before June 29, 2018 shall be replaced by a same injury case that can be selected by Plaintiffs. For any case either dismissed by Plaintiff or settled by Defendants after June 29, 2018, the parties shall meet and confer on how the case should be replaced, if at all. If the parties cannot agree, they shall submit their respective positions to the Court

III. BELLWETHER CORE DISCOVERY SCHEDULE

A. GROUP A CASES:

1. Between September 1, 2017 and December 15, 2017 Bellwether Core Discovery shall take place, with a maximum of four (4) depositions per side for each case. This shall be designed to provide information to enable the parties to assess the larger pool of cases and to provide information to the Court to enable the Court to select which cases shall serve as the first bellwether trials. No extensions will be granted by the Court without good cause.

2. On or before a date to be agreed to by the parties, Defendants shall provide supplemental discovery responses to the questions the parties agreed to defer from the Defense Fact Sheets to Plaintiffs undergoing Bellwether Core Discovery.

B. GROUP B CASES:

1. Between April 2, 2018 and August 25, 2018 core bellwether discovery shall take place, with a maximum of four (4) depositions per side for each case. This shall be designed to provide information to enable the parties to assess the larger pool of cases and to provide information to the Court to enable the Court to select which cases shall serve as the first bellwether trials. No extensions will be granted by the Court without good cause.

2. On or before a date to be agreed to by the parties, Defendants shall provide supplemental discovery responses to the questions the parties agreed to defer from the Defense Fact Sheets to Plaintiffs undergoing Bellwether Core Discovery.

IV. SELECTION OF CASES FOR FURTHER DISCOVERY AND BELLWETHER TRIALS

A. GROUP A CASES:

1. Following initial Bellwether Core Discovery, the parties shall submit separate proposals to the Court narrowing their initial selection of twelve (12) cases down (or however many remain) to four (4) cases recommended for further discovery and bellwether trials. The parties shall choose two (2) cases from each of the two categories for a total of four (4) cases. Therefore, within each submission, there should be two (2) diabetic ketoacidosis cases selected and two (2) kidney injury cases selected. The submissions shall contain sufficient detail and analysis regarding their proposed selected cases and trial order.

2. The parties shall make their submissions to the Court on or before January 5, 2018.

3. By January 19, 2018, the Court will select three bellwether cases to serve as the first bellwether trials and the Court may designate the sequence of these bellwether trials.

4. The bellwether cases that are initially selected and those that are ultimately picked as the initial trials are to be representative cases.

5. The parties agree that the first three trials for Group A cases will not be joint plaintiff or multi-plaintiff trials.

6. No additional fact discovery by either party will be permitted in the bellwether cases that are not selected as the three final trial cases absent good cause.

B. GROUP B CASES:

1. Following initial Bellwether Core Discovery, the parties shall narrow their initial selection of six (6) cases down to one (1) case recommended for further discovery and bellwether trial. To the extent the parties cannot agree on the final case, the parties shall submit separate proposals with sufficient detail and analysis regarding their proposed selected cases and trial order.

2. The parties shall make their submissions to the Court on or before September 15, 2018.

3. By September 29, 2018, the Court will select the CV bellwether case to serve as the first CV bellwether trial.

4. Additional fact discovery regarding the Group B bellwether trial case may be conducted from October 2, 2018 through December 5, 2018 which may include additional written discovery and additional depositions (of new deponents only). No additional fact discovery by either party will be permitted in the bellwether cases that are not selected as the final trial case.

5. The bellwether cases that are initially selected and those that are ultimately picked as the initial trials are to be representative cases.

6. The parties agree that the first Group B case will not be a joint plaintiff or multi-plaintiff trial.

V. MISCELLANEOUS

A. See Case Management Order No. 10 for expert discovery, summary judgment, and *Daubert* scheduling and deadlines for Group A cases.

B. Expert discovery, summary judgment, and *Daubert* scheduling and deadlines for Group B cases will be the subject of a Case Management Order that the parties will submit on or before October 6, 2017.

C. It is imperative for the use of the bellwether process that is contemplated by this Order that both sides waive applicable venue and *forum non coveniens* challenges and stipulate that the trial of any of the final Group A and Group B bellwether cases as set forth in Section III can be conducted in the District of New Jersey without remanding any case to the transferor forum under *Lexecon v. Milberg Weiss* ("*Lexecon* Waiver"). Accordingly, unless an individual plaintiff does not agree to waive *Lexecon* within one week of selection, Plaintiffs will waive *Lexecon* for the twelve (12) Group A cases selected as well as the six (6) Group B cases that are selected. Any plaintiff refusing to waive *Lexecon* or his/her counsel shall appear in person before Judge Brian Martinotti and show cause why a *Lexecon* waiver is not being made, absent special circumstances to do so or permission not to appear expressly granted by the Court. Should it be determined that a *Lexecon* waiver is not possible, Defendants shall have the right to replace said case within two (2) days following any final determination about the *Lexecon* waiver status. Defendants hereby agree to irrevocably waive *Lexecon* for the three Group A cases ultimately selected by the Court or selected by either or both parties for the first bellwether trials pursuant to Section III.A above ("Group A Trials") and the one Group B case ultimately selected by the Court for the first CV bellwether trial pursuant to Section III.B above ("Group B Trial"). Defendants agree that the *Lexecon* waivers for the three Group A Trials and the one Group B Trial may not be withdrawn at

any time or for any reason. The parties do not waive their *Lexecon* rights except as expressly described above and reserve their rights to do so at a later time.

IT IS SO ORDERED.

Date: July 27, 2017

Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE