

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

IN RE: JOHNSON & JOHNSON	)	
TALCUM POWDER PRODUCTS	)	
MARKETING, SALES PRACTICES AND	)	MDL Docket No. 2738
PRODUCTS LIABILITY LITIGATION	)	
_____	)	
	)	
This Document Relates To All Cases	)	
_____	)	

**THIS MATTER** having been brought before the Court during the May 6, 2020 status conference, with the purpose of establishing a process for identifying and selecting bellwether cases for trial before the MDL Court in the District of New Jersey, and for good cause shown:

**IT IS** on this 15th day of May, 2020,

**ORDERED** that case selection and discovery shall proceed in two stages as follows:

## STAGE 1 - Plaintiff Profile Forms.

1. From among cases pending in this MDL proceeding as of May 1, 2020, 1,000 shall be randomly selected (the “Selected Cases”). Plaintiffs in each of the Selected Cases, shall complete a Plaintiff Profile Form (“PPF”) and produce the core records specified in paragraph 2 and a signed medical records authorization (which

is not a substitute for production of medical records as required herein). The parties shall meet and confer on the list of cases from which the random selection shall be made, the random selection procedure, and the form of the PPF and shall submit to the Court their recommendations on those issues and a proposed order within one week.

2. Within 90 days of entry of the Order identifying the Selected Cases, plaintiffs in each of the Selected Cases shall complete the PPF ordered by the Court, provide signed medical record retrieval authorizations, and counsel for Plaintiffs shall promptly order the following core records and produce them to defense counsel upon receipt:

- a. All Medical records or reports from any hospital, physician, or other health care provider who treated plaintiff for ovarian cancer or any gynecologic disease, condition or symptom alleged in the Complaint and/or PPF ; and
- b. If applicable, decedent-user's death certificate and copies of letters testamentary or letters of administration confirming standing of the named plaintiff.

3. Each plaintiff in the Selected Case group will be deemed to waive their rights under *Lexecon v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), if they become one of the Discovery Pool Cases as defined below, unless they file a statement with the Court stating that they do not wish to waive their *Lexecon* rights within thirty (30) days from the date of selection as a Discovery Pool

Case. If the case is not selected as a Discovery Pool Case, the waiver will be deemed null and void.

**STAGE 2 – Discovery Pool Cases.**

4. From among the Selected Cases, a group of 30 representative cases shall be selected for further work up (the “Discovery Pool Cases”). The parties shall meet and confer regarding the process for selecting the Discovery Pool Cases, the timing of that selection, and the scope of case-specific discovery for the Discovery Pool Cases, and shall submit to the Court their recommendations on these issues and a proposed order within 60 days of the date of this Order. From the selected Discovery Pool Cases, bellwether trial cases will be selected by a process to be decided at a later date.

5. If plaintiffs in any of the Discovery Pool Cases do not wish to proceed, they may dismiss the case with prejudice within two weeks of selection, with each party to bear their own costs. Thereafter, defendants reserve their right to seek sanctions for a voluntary dismissal which occurs during the process of further case work up.

6. Within thirty (30) days of the date of selection for Discovery Pool Cases, each plaintiff who has been selected as a member of the Discovery Pool Cases shall file an Amended Short Form Complaint setting out specifically which causes of action they intend to pursue. If no Amended Short Form Complaint is filed, it

will be assumed that they are pursuing all causes of action listed in the originally-filed Short Form Complaint.

7. Within sixty (60) days of the date of selection for Discovery Pool Cases, the defendants shall file an answer to include any previously asserted affirmative defenses that each defendant contends are actually being asserted in the particular case.

8. Except as specified in this Order or otherwise authorized by the Court, all case-specific discovery in this MDL proceeding shall remain stayed.

/s/ Freda L. Wolfson  
Hon. Freda L. Wolfson,  
U.S. Chief District Judge