

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION



IN RE: ABBOTT LABORATORIES, ET  
AL., PRETERM INFANT NUTRITION  
PRODUCTS LIABILITY LITIGATION

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MDL 3026

Master Docket No. 1:22-cv-00071

Judge Rebecca R. Pallmeyer

CASE MANAGEMENT ORDER NO. 7

This Document Relates to:

ALL CASES

**Protocol for Selection of Initial Bellwether Discovery Cases and Initial  
Bellwether Trial Cases, and Authorization of Plaintiff Profile Forms**

**I. SCOPE OF ORDER**

1. In furtherance of the effective and efficient case management of complex litigation, this Case Management Order (“CMO”) will govern the guidelines and procedures for selecting a first wave of 12 cases for which individual case-specific discovery will be conducted (the “Initial Bellwether Discovery Cases”), and then for selecting a smaller subset of four cases thereafter to be designated to be tried as bellwether cases in this MDL Proceeding (the “Initial Bellwether Trial Cases”). It will also authorize the form of the Plaintiff Profile Form and medical record authorizations to be provided by each Plaintiff.

**II. DETERMINATION OF CASES ELIGIBLE FOR INITIAL BELLWETHER  
DISCOVERY CASES**

2. Cases filed on or before September 16, 2022, shall be eligible to be selected as an Initial Bellwether Discovery Case. All Plaintiffs with a case filed in this MDL are to provide the Defendants a substantially completed Plaintiff Profile Form (“PPF”) and medical record authorizations, in the form attached hereto as Exhibits A-D, on or before September 16, 2022. A

Plaintiff is only required to execute Exhibit D (psychotherapy authorization) to the extent the Plaintiff intends to assert a claim for psychiatric and/or psychological conditions. However, this is without prejudice to Defendants subsequently seeking such information in discovery. For a PPF to be complete, it must provide responses to all fields in the form, and must include fully executed authorizations for medical records of the Infant alleged to have been injured, any twin or other sibling of the Infant carried in the same pregnancy, and the Infant's mother. In addition, each Plaintiff shall provide at the same time all medical records in the Plaintiff's or counsel's possession related to the case, including those of the Infant, any twin or other sibling carried in the same pregnancy, and the mother. PPFs may be electronically signed to comply with this provision; however, medical record authorizations must be hand-signed.

3. Without regard to whether a case shall be included in the bellwether process, all Plaintiffs must complete the PPF and medical record authorizations and provide the records in Plaintiff's or counsel's possession. Plaintiffs who file a case in this MDL after September 16, 2022, shall provide their PPF, medical record authorizations, and the medical records in Plaintiff's or counsel's possession, within 30 days of filing.

### **III. SELECTION OF INITIAL BELLWETHER DISCOVERY CASES**

4. From among the cases eligible to be selected as Initial Bellwether Discovery Cases, 12 cases shall be selected through the following process:

- (a) Plaintiffs' Selections – Four Cases. On or before September 30, 2022, at Noon CST, Plaintiffs' Co-Lead Counsel shall provide to Defendants their selections of four Initial Bellwether Discovery Cases from among the eligible cases. At least one but no more than three of the four cases selected by Plaintiffs shall include Mead Johnson as a Defendant. The parties shall jointly submit a proposed order to the Court identifying the four selected

cases as Initial Bellwether Discovery Cases and discovery on those cases shall commence promptly.

(b) Random Selections By the Court – Four Cases. On or before September 30, 2022, at Noon CST, the parties shall submit to the Court: 1) a list of the cases in which Abbott is the sole defendant (List 1), and 2) a list of the cases in which Mead Johnson is a defendant (either together with Abbott or as the sole defendant) (List 2). Defendants shall be entitled, but not required, to exclude from these lists any case in which a completed PPF was not submitted on or before September 16, 2022. The Parties shall thereafter employ a computer-generated application to randomly select three cases from List 1 and one case from List 2. Upon selection of the random cases, the Parties shall supply the Court with a Stipulation and proposed order identifying those four cases as Initial Bellwether Discovery Cases, and discovery on those cases shall commence promptly.

(c) Defendants’ Selections – Four Cases. On or before November 23, 2022, at Noon CST, Defendants shall provide to Plaintiffs’ Co-Lead Counsel their selections of four Initial Bellwether Discovery Cases from among the eligible cases. In selecting such cases, Defendants shall ensure that, when combined with the other Initial Bellwether Discovery Cases, at least one but no more than five of the 12 Initial Bellwether Discovery Cases include Mead Johnson as a defendant, unless Mead Johnson consents to the inclusion of such additional cases. The parties shall jointly submit a proposed order to the Court identifying each case so selected by Defendants as an Initial Bellwether Discovery Case, and discovery in such case shall commence promptly.

5. In selecting their respective Initial Bellwether Discovery Cases, the parties shall select cases that they have a good faith belief are representative of the body of then-filed cases as a whole, and that should be subject to discovery and then taken to trial.

6. In the event that a case selected as one of the Initial Bellwether Discovery Cases is dismissed by Plaintiffs before the selection of Initial Bellwether Trial Cases (addressed in Section IV below), the Court may at its discretion allow the selection of a replacement case by the Defendants or Plaintiffs, depending upon the circumstances of the dismissal, or otherwise adjust the balance of selections of the terms of this CMO to ensure the integrity of the bellwether process.

7. Following entry of an Order identifying any case as an Initial Bellwether Discovery Case:

- (i) The plaintiff in such case shall upload a completed Plaintiff Fact Sheet (“PFS”) within 30 days of the Order.
- (ii) Each defendant in such case shall upload a completed Defendant Fact Sheet (“DFS”) within 30 days of the deadline for the PFS.

#### **IV. SELECTION OF INITIAL BELLWETHER TRIAL CASES**

8. Within 14 days after Fact Discovery has been completed for the 12 Initial Bellwether Discovery Cases, the Plaintiffs’ Co-Lead Counsel and Defendants’ Counsel, shall each simultaneously identify two cases as Initial Bellwether Trial Cases, for a total of four Initial Bellwether Trial Cases. The parties shall jointly notify the Court of their four Initial Bellwether Trial Cases by 5 PM Central time on that same date, and shall each also file at that time three-page submissions explaining which of the cases they submit should be tried first, and on what basis.

9. The Court will determine which of the four Initial Bellwether Trial Cases will be tried first, based on the parties’ filed submissions. Each of the Initial Bellwether Trial Cases shall

be set for trial (with pretrial deadlines to be set on a staggered basis accordingly) every 12 weeks thereafter, alternating between cases selected by Plaintiffs and Defendants.

10. In the event that a case selected as one of the Initial Bellwether Trial Cases is voluntarily dismissed by Plaintiffs after the selection of the four Initial Bellwether Trial Cases, Defendants shall have the option (but shall not be required) to select a new trial case to replace it from among the Initial Bellwether Discovery Cases.

11. In the event that a case selected as one of the Initial Bellwether Trial Cases is resolved on summary judgment or otherwise resolved on the merits after the selection of the four Initial Bellwether Trial Cases, that case shall not be replaced.

12. In the event that a case selected as one of the Initial Bellwether Trial Cases is resolved via settlement after selection of the four Initial Bellwether Trial Cases, that case may, but is not required, to be replaced by the party who initially selected the settling case for the Bellwether pool.

13. The parties will confer to address additional details regarding the venue, logistical and other jurisdictional considerations for the Initial Bellwether Trials, and will endeavor to provide an agreed proposed Initial Bellwether Trial Protocol to the MDL Court. In the event the parties are unable to reach agreement on any aspect of that proposed protocol, they will submit simultaneous ten-page briefs to the Court 14 days before the CMC at which the issue is to be heard, and five-page reply briefs seven days before the CMC at which the issue is to be heard, together with the proposed protocol insofar as it is agreed.

14. This Order may be modified or amended for good cause shown, after appropriate notice and opportunity to be heard is provided to the affected parties, when the Court believes the interest of justice requires modification.

**IT IS SO ORDERED.**

Dated: August 18, 2022

A handwritten signature in black ink, reading "Rebecca R. Pallmeyer", with a long horizontal flourish extending to the right.

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Hon. Rebecca R. Pallmeyer  
Chief Judge