

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

**IN RE: AQUEOUS FILM-FORMING
FOAMS PRODUCTS LIABILITY
LITIGATION**

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**MDL No. 2:18-mn-2873-RMG
CASE MANAGEMENT ORDER NO. 26A
This Order Relates to All Actions**

**AMENDMENTS TO SECOND BELLWETHER PROGRAM:
INITIAL PERSONAL INJURY CLAIMS**

This CMO 26A amends the schedule set forth in CMO 26 with respect to the selection of the Initial Personal Injury Bellwether Discovery Pool Plaintiffs. Specifically, the following provisions of CMO 26 are hereby superseded as follows:

B. Selection of Initial Personal Injury Bellwether Discovery Pool Plaintiffs

1. The Parties shall propose Initial Personal Injury Bellwether Discovery Pool Plaintiffs in accordance with the provisions of CMO 26 as amended by this CMO 26A. The Parties shall confer on the selection of the Initial Personal Injury Bellwether Discovery Pool Plaintiffs prior to November 14, 2023. By November 14, 2023, the parties shall exchange lists of those Plaintiffs who will be jointly proposed to be included in the Initial Personal Injury Bellwether Discovery Pool Plaintiffs by agreement of the Parties. For the avoidance of doubt, selection shall be of individual plaintiffs and not entire cases where plaintiffs may have been part of multiple-plaintiff complaints. (However, an individual plaintiff named in a multi-plaintiff complaint can be selected). All claims brought by the selected individual plaintiff, including any dependent or derivative claims (e.g., loss of consortium), shall be litigated in this process, including, for example, claims for property damage or diminution in value.

3. In the event the Parties cannot agree on the plaintiffs to be selected in one or more disease categories—and the Parties are strongly encouraged to agree and to make their best efforts to select representative cases in each category—by November 17, 2023, the Parties shall exchange a list of proposed plaintiffs to fill the remaining slots.

4. Should any plaintiff voluntarily dismiss his or her action following selection as an Initial Personal Injury Bellwether Discovery Pool Plaintiff, such dismissal shall be with prejudice, absent agreement of the Parties or some special circumstances that may be presented to the Court if the Parties cannot agree. Further, should any Initial Personal Injury Bellwether Discovery Pool Plaintiff dismiss his/her case for any reason prior to January 26, 2024, Defendants may (but are not required to) select a replacement plaintiff (“Replacement Plaintiff”) for each dismissed Initial Personal Injury Bellwether Discovery Pool Plaintiff by no later than February 9, 2024.

6. By no later than December 1, 2023, the Parties shall jointly submit to the Court a list with each selected or proposed case, including the following information: (1) Plaintiff’s counsel information, (2) list of all defendants in the case (and counsel information), (3) a certification that all parties have waived *Lexecon* rights,² (4) a brief summary of the alleged injury(ies) and site(s) from which exposure occurred, (5) ECF references to the proposed Bellwether Plaintiff’s operative Complaint and relevant Defendants’ statements of affirmative defenses, and (6) if a plaintiff is not agreed, a brief explanation for why the proponent contends that plaintiff is representative and why the opponent contends that plaintiff is not representative. The Court shall select the 28 Initial

² For the avoidance of doubt, if a party waives *Lexecon* as to a specific case in the Initial Personal Injury Discovery Bellwether Pool, such waiver will not apply to any other case in the MDL.

Personal Injury Bellwether Discovery Pool Plaintiffs from this submission, and these Plaintiffs shall be subject to the provisions of Paragraphs B.4–5 above.

C. Further Proceedings With Regard to Personal Injury Cases

1. The Parties shall meet and confer regarding Tier 1 Discovery and will submit either an agreed Tier 1 Discovery CMO or a proposed Tier 1 Discovery CMO with identified disputes to the Court on or before December 1, 2023.

IT IS SO ORDERED.

Dated: October 2, 2023
Charleston, South Carolina

s/Richard Mark Gergel
Hon. Richard M. Gergel
United States District Judge