

IN CLERK'S OFFICE

U.S. District Court E.D.N.Y.

4/19/2024

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
\_\_\_\_\_  
IN RE: EXACTECH POLYETHYLENE  
ORTHOPEDIC PRODUCTS LIABILITY  
LITIGATION

22-MD-3044 (NGG) (MMH)

This Document Applies to: ALL CASES

\_\_\_\_\_  
NICHOLAS G. GARAUFIS, United States District Judge.

**BELLWETHER TRIAL CASE MANAGEMENT ORDER NO. 2:**

In accordance with the court's January 26, 2024 Bellwether Trial Case Management Order ("Bellwether Trial Order No. 1") (Dkt. 521), the court selects the following plaintiffs for the bellwether trials:

Bellwether Trial No. 1 (June 2025):<sup>1</sup> Gayle Tarloff, 23-CV-5793 (EDNY Pool)

Bellwether Trial No. 2 (August 2025): Geraldine Larson, 22-CV-6643 (EDNY Pool)

Bellwether Trial No. 3 (TBD 2025): Dana Kessler Kramer, 23-CV-658 (National Pool)

In the court's Bellwether Trial Order No. 1, the court provided that it would select two cases from each pool for a total of four cases. *See* Bellwether Trial Order No. 1 ¶ 11. However, for the reasons outlined in their bellwether trial briefing, only one plaintiff—Kessler Kramer—is an appropriate bellwether plaintiff for the National Pool. (*See* Pl. Mem. (Dkt. 583); Exactech Mem. (Dkt. 584); Exactech Reply (Dkt. 588); Pl. Reply (Dkt. 589).)<sup>2</sup> For the fourth bellwether trial, the parties are DIRECTED to confer and submit a consensus pick from the plaintiffs in the National Preliminary Pool by May 3, 2024. The submission should include what factors make the proposed plaintiff representative such that he or she is an appropriate bellwether

\_\_\_\_\_  
<sup>1</sup> The exact jury selection dates are not yet finalized and are subject to change.

<sup>2</sup> Because the parties' memoranda and replies discuss potential bellwether plaintiffs' confidential medical histories, the parties' motions for leave to file under seal are GRANTED. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 124 (2d Cir. 2006).

plaintiff. If the parties are unable to agree on a joint choice for the final bellwether plaintiff, by May 3, 2024, the parties shall each submit a proposed bellwether plaintiff from the National Preliminary Pool to the court for its selection, with a brief explanation of why the plaintiff is representative of the pool of plaintiffs.

The Clerk of Court is respectfully DIRECTED to enter a copy of this Order on the individual docket for each of the three selected bellwether plaintiffs and transfer the three individual cases to the MDL docket, 22-MD-3044.

SO ORDERED.

Dated: April 19, 2024  
Brooklyn, New York

s/Nicholas G. Garaufis  
NICHOLAS G. GARAUFIS  
United States District Judge