

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: FLUOROQUINOLONE PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2642 (JRT)

This Document Relates to All Actions

**PRETRIAL ORDER NO. 5
INITIAL CASE MANAGEMENT PLAN**

1. SCOPE AND APPLICABILITY OF PLAN

This Case Management Plan is intended to conserve judicial and party resources, eliminate duplicate discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. The following protocol and limitations in this Pretrial Order (“PTO”) No. 5 shall apply to all cases in MDL 2642.

2. RULE 26 INITIAL DISCLOSURES

The parties agree that the requirements of Fed. R. Civ. P. 26(a)(1)(A) shall be hereby waived for all parties. However, in an effort to advance the litigation, each defendant currently served with a case in this MDL agrees to provide the following information within thirty (30) days of the filing of the Master Complaint:

- a.** An initial list of persons most knowledgeable (including the general subject matter of that knowledge) and potential document custodians;

- b. An initial general description of the location of documents, including, but not limited to specific databases and other document sources, containing potentially relevant and/or discoverable information; and
- c. The insurance information required pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iv).

Each Defendant in this MDL shall only be required to provide one set of the disclosures described in the preceding paragraph, notwithstanding their responses to other discovery. Service of these disclosures shall be made on the PSC's co-lead counsel.

3. DISCOVERY ON DEFENDANTS (BY PLAINTIFFS)

This Court's goal is to engage in a cooperative effort to coordinate, to the extent practicable, proceedings in the federal and state cases, in order to reduce costs and avoid unnecessary duplication of efforts. To that end, the PSC and counsel for Defendants shall, to the extent practicable, coordinate discovery in the MDL proceeding with discovery conducted in state court proceedings, consistent with case management orders and deadlines established on those proceedings.

There shall be no discovery served or propounded on the Defendants in this MDL except that which is from the co-leads of this MDL and as set for below, or future orders of the Court.

The Court sets the following timelines and deadlines with respect to non-expert fact discovery by Plaintiffs against Defendants:

- a. **PSC to propound initial FRCP Rule 33 Interrogatories and FRCP Rule 34 Requests for Production and initial 30(b)(6) deposition notices of non-substantive nature:**¹ As soon as practical.
- b. **Defendants shall serve any objections to the scope of the PSC's 30(b)(6) deposition notices of non-substantive nature and propose such dates for such depositions to take place:** 30 days from service of PSC's 30(b)(6) notices. The parties shall then meet and confer and attempt to resolve these non-substantive issues in a cost-efficient and practical manner. In the event that depositions are necessary, Defendants shall identify the witness(es) and propose at least two dates for each deposition notice that are within 60 days from the date the objections were served.
- c. **Defendants to serve responses to initial FRCP Rule 33 Interrogatories and FRCP Rule 34 Requests for Production:** 60 days from service of PSC's initial master FRCP Rule 33 Interrogatories and FRCP Rule 34 Requests for Production. The parties will meet and confer over any objections and negotiate an agreed set of search terms and a schedule for the rolling production of non-custodial documents.
- d. **Non-expert fact discovery pertaining to Levaquin**
 - i. **PSC to serve their initial request for custodial files**² **to be produced by J&J Defendants:** 7 days after J&J Defendants serve responses to initial

¹ The initial 30(b)(6) depositions will be limited to MIS/ESI Topics and Defendant's corporate organizational structure. Nothing in this PTO shall be deemed a limitation on the PSC's right to seek additional non-substantive depositions prior to the close of non-expert fact discovery. Non-substantive 30(b)(6) deponents may be re-deposed for their own factual or substantive knowledge.

² All requests for custodial files (against any Defendant) shall be made in good faith, and the parties shall meet and confer to discuss production schedules, and the priority of particular

master FRCP Rule 33 Interrogatories and FRCP Rule 34 Requests for Production.

- ii. **J&J Defendants to produce initially requested custodial files:** 90 days from the date of the request.
- iii. **Absent good cause shown, the deadline for the PSC to request additional custodial files to be produced by J&J Defendants pertaining to Levaquin:** December 16, 2016.
- iv. **Non-Expert Fact Discovery Deadline:** May 31, 2017.

e. Non-expert fact discovery pertaining to Avelox

- i. **Bayer Defendants to produce custodial files identified in initial disclosures:** Bayer defendants will use good faith efforts to produce custodial files identified in initial disclosures within 90 days after agreed set of search terms.
- ii. **PSC to serve their additional requests for custodial files to be produced by Bayer Defendants:** 7 days after Bayer Defendants serve responses to initial master FRCP Rule 33 Interrogatories and FRCP Rule 34 Requests for Production. The number of additional custodial requests requests shall be reasonable and the parties shall engage in meet and confer and negotiate a staggered production schedule in the event that there are a disproportionate number of requests at any given time.
- iii. **Bayer Defendants to produce additionally requested custodial files:** Bayer defendants will use good faith efforts to produce additionally requested

custodial files, in the event that the number of requests (or the anticipated size of the custodial files) may unduly impact the schedule in the Order.

custodial files on a rolling basis, beginning with a rolling production 90 days from the later of the date of the request or an agreed set of search terms and with the requested custodial production complete within 150 days from the date of the request.

iv. Absent good cause shown, the deadline for the PSC to request additional custodial files to be produced by Bayer Defendants pertaining to Avelox:

February 1, 2017. Bayer defendants will use good faith efforts to produce any custodial files requested on the last day of the deadline within 90 days of the deadline.

v. Non-Expert Fact Discovery Deadline: July 31, 2017.

f. Non-expert fact discovery pertaining to Cipro

i. Bayer Defendants to produce custodial files identified in initial disclosures: Bayer defendants will use good faith efforts to produce custodial files identified in initial disclosures within 90 days after agreed set of search terms.

ii. PSC to serve their additional requests for custodial files to be produced by Bayer Defendants: 7 days after Bayer Defendants serve responses to initial master FRCP Rule 33 Interrogatories and FRCP Rule 34 Requests for Production. The number of additional custodial requests shall be reasonable and the parties shall engage in meet and confer and negotiate a staggered production schedule in the event that there are a disproportionate number of requests at any given time.

iii. Bayer Defendants to produce additionally requested custodial files:

Bayer defendants will use good faith efforts to produce additionally requested custodial files on a rolling basis, beginning with a rolling production 90 days from the later of the date of the request or an agreed set of search terms and with the requested custodial production complete within 150 days from the date of the request.

iv. Absent good cause shown, the deadline for the PSC to request additional custodial files to be produced by Bayer Defendants pertaining to Avelox:

April 3, 2017. Bayer defendants will use good faith efforts to produce any custodial files requested on the last day of the deadline within 90 days of the deadline.

v. Non-Expert Fact Discovery Deadline: September 29, 2017.

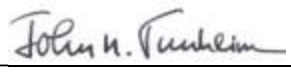
4. BELLWETHER SELECTION PROTOCOL, SCHEDULING AND TRIAL DATES

The Court will address at a later date the parties' positions regarding the following matters: (a) the nomination and selection of bellwether plaintiffs for trial; (b) the scheduling and/or deadlines pertaining to fact and expert discovery for such bellwethers; (c) the process and parameters for selecting such bellwethers; and (iv) proposed trial dates. The PSC may submit its proposal for a bellwether selection protocol prior to the May 18, 2016 status conference. As soon as practicable, but not later than September 1, 2016, the Defendants will submit their proposal for the most efficient manner to consider representative bellwethers.

5. OTHER DISCOVERY MATTERS

Seven days before the May 18, 2016, status conference, the parties will submit a joint proposed Pre-Trial Order or competing proposals for Pre-Trial Orders addressing ESI Protocol. The parties will meet and confer regarding the Defense Fact Sheet and Deposition Protocol, and submit joint or competing proposed Pre-Trial Orders three days prior to the June 21, 2016, status conference.

DATED: April 25, 2016
at Minneapolis, Minnesota.



JOHN R. TUNHEIM
Chief Judge
United States District Court