UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE: 3M COMBAT ARMS EARPLUG PRODUCTS LIABILITY LITIGATION This Document Relates to All Cases	Case No. 3:19md2885 Judge M. Casey Rodgers Magistrate Judge Gary R. Jones

PRETRIAL ORDER NO. 4
Plaintiff Leadership Structure

This Order sets forth the schedule and procedure for appointing the plaintiff leadership structure for this litigation.

Any attorney who has filed a case in this MDL, or who is attorney of record in a case that has been or will be removed or transferred to this MDL, may apply for a leadership position. The Court will be assisted in the leadership appointment process by Magistrate Judge Gary R. Jones, Ellen Reisman of Reisman Karron Greene LLP, and Orran Brown of BrownGreer PLC ("Panel Members"). Counsel may not contact any of the Panel Members, directly or indirectly, about this MDL until after the appointment decisions are made.

All leadership applications must be submitted to chambers for an *in camera* review at flnd_rodgers@flnd.uscourts.gov, by close of business on **Friday, May 3, 2019**. Attorneys are welcome to attach a curriculum vitae to the application. Each submission should be no longer than **10 pages**. Given the sensitive nature of the information on the application, these materials will be kept confidential and

reviewed only by the Panel Members. After an initial review of the submissions, some number of attorneys will be invited to make an oral presentation on their qualifications for the position(s) they are seeking and to answer questions about the skills and experience they would bring to the litigation. The oral presentations will take place on **May 20 and 21, 2019** in Pensacola. A specific schedule for the presentations will be provided once the initial application review is complete. Thereafter, the Court will enter an order appointing the plaintiff leadership team for the MDL.

The Court intends to establish a balanced leadership team that reflects diversity of all types and which has the synergy to capably steer this litigation to its resolution. Given the complex substantive issues inherent in large-scale litigation such as this, the leadership team must include attorneys with demonstrated capacity, skill, reputation, and financial resources to fairly, effectively, and efficiently lead an MDL. It is equally important for leadership to reflect the diversity of legal talent within the plaintiffs' bar, in terms of education, background, experience, and demographics. Finally, attorneys should have a demonstrated willingness and ability to successfully work with others, build consensus, and amicably manage disagreements.

The plaintiffs' leadership will be comprised of the following positions.

A. Lead Counsel

Lead Counsel will have the following responsibilities:

1. Serve as spokesperson for all plaintiffs during these coordinated pretrial proceedings in response to any inquiries by the Court or opposing counsel, subject to the right of any plaintiff's counsel to present non-repetitive individual or different positions, as long as the presentation does not unduly delay the proceedings.

2. Make or submit any oral or written motions to the Court on behalf of the plaintiffs, as well as oppose, when necessary, any motions submitted by the defendants involving matters within the Lead Counsel's sphere of responsibilities (except as to matters specifically directed to individual plaintiffs and their counsel).

3. Negotiate and enter into stipulations with the defendants regarding the litigation. All stipulations entered into by Lead Counsel, except for strictly administrative details such as scheduling, must be submitted for Court approval and will not be binding until the Court has ratified the stipulation.

4. Chair the Executive Committee.

5. Convene meetings of the Executive Committee for the purpose of proposing joint action and discussing and resolving matters of common concern.

6. Coordinate discovery on behalf of the plaintiffs, consistent with the requirements of Fed. R. Civ. P. 26, and in conjunction with the Steering Committee and the Joint Discovery/ESI Committee.

7. Consult with and employ expert witnesses.

8. Delegate specific tasks to other counsel or designated committees, in a manner that ensures that the plaintiffs' pretrial preparation is conducted effectively, efficiently, and economically. Monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided.

9. Explore, develop, and pursue all settlement options pertaining to any claim or portion thereof in any case filed in this litigation.

10. Attend status and case management conferences, including preconference meetings with the Court and opposing counsel.

11. Ensure that court orders are followed, schedules are met, discovery is conducted consistent with the requirements of Fed. R. Civ. P. 26, unnecessary expenditures of time and funds are avoided, and any negotiations are reasonably efficient and productive.

12. Perform any task necessary to carry out the functions of Lead Counsel to properly coordinate the plaintiffs' pretrial activities.

13. Perform any other functions as may be expressly authorized and/or required by this Court.

No generic discovery or other common action or work in this litigation will be taken on behalf of the Steering Committee except at the direction, or with permission, of Lead Counsel; provided, however, that any attorney aggrieved by any refusal of permission may seek Court review of the refusal.

B. Liaison Counsel

Liaison Counsel will have the following responsibilities:

1. Maintain and distribute an up-to-date, comprehensive service list of all plaintiffs' attorneys involved in this MDL and promptly advise the Court of any changes.

2. Serve as the point of contact between the Court and the plaintiffs' leadership.

3. Keep *pro se* litigants apprised of the status and progress of the litigation.

4. Ensure that all Orders entered by this Court and all papers filed by the defendants are timely distributed to all plaintiffs' attorneys in the MDL.

5. Receive and distribute to plaintiffs' counsel, as appropriate, correspondence and pleadings not filed through CM/ECF.

6. Maintain adequate files of all pretrial matters, including establishing and maintaining a document or exhibit depository, and, under reasonable terms and conditions, have those documents available for examination by all plaintiffs and/or their attorneys.

7. Attend status and case management conferences, including preconference meetings with the Court and opposing counsel.

8. Assist Lead Counsel and the Court in promoting a just and efficient MDL.

9. Perform any other functions as may be expressly authorized and/or required by this Court.

C. Executive Committee

The Executive Committee will be chaired by Plaintiffs' Lead Counsel and will have the following responsibilities:

1. Coordinate and oversee the activities of plaintiffs' counsel during these consolidated pretrial proceedings, as well as monitor and ensure that work conducted by plaintiffs' counsel is reasonably necessary and avoids unnecessary costs and duplication of effort.

2. Determine (after consultation with the Steering Committee and other plaintiffs' counsel, as appropriate) the plaintiffs' position on all matters arising during pretrial proceedings.

3. Coordinate the selection and management of any common issue and/or bellwether discovery and trials.

4. Schedule meetings of counsel for plaintiffs, committees, and subcommittees for any appropriate purpose, including coordinating responses to

questions of other parties or of the Court. Maintain minutes or transcripts of these meetings.

5. Maintain adequate time and disbursement records covering common benefit work of designated counsel and establish guidelines, for approval by the Court, as to the keeping of time records and expenses.

6. Perform any other task deemed necessary and proper for the Executive Committee to accomplish its responsibilities as defined by the Court's orders.

D. Steering Committee

The Steering Committee will coordinate and conduct discovery for this litigation with the defendants' representatives. The main criteria for membership on the Steering Committee will be: (a) willingness and availability to commit to a long-term, time-consuming project; (b) ability to work cooperatively with others; and (c) professional experience in complex litigation. At the request and under the supervision of the Executive Committee, the Steering Committee will have the following responsibilities:

1. Initiate, coordinate, and conduct all pretrial discovery on behalf and for the benefit of all plaintiffs in the actions consolidated in this MDL.

2. Develop and propose schedules for the initiation, conduct, and completion of all discovery on behalf of all plaintiffs, together with the Joint Discovery/ESI Committee.

3. Cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial discovery of relevant issues found in the pleadings of this litigation.

4. Schedule meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the Court. Maintain minutes or transcripts of these meetings.

5. Prepare periodic status reports summarizing the Steering Committee's work and progress. These reports must be submitted to Liaison Counsel, who will promptly distribute copies to co-counsel and the Court.

6. Assemble and prepare "trial packages" that can be used in future cases, including cases that are remanded to transferor courts for trial.

7. Perform any other task deemed necessary and proper for the Steering Committee to accomplish its responsibilities as defined by the Court's orders.

No generic discovery or other common action or work in this litigation will be taken on behalf of the Steering Committee except at the direction, or with permission, of Lead Counsel; provided, however, that any attorney aggrieved by any refusal of permission may seek Court review of the refusal.

E. Subcommittees

1. Electronically Stored Information ("ESI") Subcommittee

The ESI Subcommittee will work with the plaintiffs' data management firm to manage the receipt, production, organization, and review of ESI. Attorneys with specialized knowledge of, or experience with, information and database management systems, electronic discovery, predictive coding/technology-assisted review (TAR), privilege and confidentiality protocols, and the legal frameworks applicable to these matters are strongly encouraged to apply.

2. Early Vetting Subcommittee

The Early Vetting Subcommittee will oversee the process of collecting and producing certain basic information about each plaintiff's claims. To that end, this Subcommittee will be required to engage with all individual plaintiffs' attorneys and *pro se* plaintiffs to ensure that profile forms and/or fact sheets are properly filled out and timely submitted, that adequate records authorizations and supporting documentation are provided (when required), and that core deficiencies (if any) are timely cured.

3. Law and Briefing Subcommittee

The Law and Briefing Subcommittee will—in consultation with Lead Counsel, Liaison Counsel, and the Executive and Steering Committees—plan, research and prepare the plaintiffs' pleadings, motions, responsive briefs, proposed

orders, and other written materials during this litigation. Attorneys with exceptional legal writing skills are strongly encouraged to apply.

F. Common Benefit Fund Committee

The Common Benefit Fund Committee will be responsible for administering the Common Benefit Fund and overseeing plaintiffs' counsels' time and expense submissions, together with the Executive Committee.

E. Joint Committees

The following committees will be comprised of both plaintiff and defense attorneys.

A. Joint Discovery/ESI Committee

The Joint Discovery/ESI Committee will be responsible for developing and proposing to the Court schedules for the initiation, conduct, and completion of discovery under a framework to be established by the Court. This Committee will also develop a meaningful ESI Protocol for the litigation and coordinate all other discovery during the course of these consolidated pretrial proceedings.

B. Joint Armed Services Committee

The Joint Armed Services Committee will be responsible for managing and navigating the unique challenges involved in obtaining discovery from the armed services, individual servicemembers, and related federal agencies.

C. Joint Statutes of Limitations Committee

The Joint Statutes of Limitations Committee will develop and maintain a spreadsheet for the benefit of counsel and the Court regarding the applicable statutes of limitations in this MDL. The Court will discuss the intended scope of this Committee's work in more detail once the leadership team is appointed.

D. Joint Settlement Committee

The Joint Settlement Committee will be responsible for working collaboratively and cooperatively to explore, develop, and pursue settlement options pertaining to any claim in any case filed in this litigation, as well as to identify any factual or legal issues that may impede the settlement of any case(s).

DONE and **ORDERED** on this 19th day of April, 2019.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE

IN RE: 3M COMBAT ARMS EARPLUG PRODUCTS LIABILITY LITIGATION
Case No. 3:19md2885/MCR/GRJ

Application for Plaintiff Leadership Position

A. Applicant Information

Please provide your name, law firm, years of practice, and a list of cases in which you are attorney of record in this MDL and/or cases that have been or will be removed or transferred to this MDL.

B. Position(s) Sought

Please identify the position(s) and/or committee(s) for which you would like to be considered.

- ☐ Lead Counsel
- ☐ Liaison Counsel
- ☐ Executive Committee
- ☐ Steering Committee
  - ☐ ESI Subcommittee
  - ☐ Early Vetting Subcommittee
  - ☐ Law and Briefing Subcommittee
- ☐ Common Benefit Fund Committee

- ☐ Joint Discovery/ESI Committee
- ☐ Joint Armed Services Committee
- ☐ Joint Statutes of Limitations Committee
- ☐ Joint Settlement Committee

C. MDL Experience

Please describe your MDL experience, including: (1) all MDLs in which you or your law firm represented clients in the past five years; (2) the subject matter and current status of those MDLs; (3) any MDL leadership roles held by you or members of your firm (*e.g.*,

lead or liaison counsel; service on plaintiff committees or subcommittees); and (4) any "unofficial" roles you have played in an MDL.

D. Mass Tort Experience

Please describe your professional experience in complex litigation and, in particular, your experience with mass tort litigation. This response should approximate the number and nature of depositions you have taken and/or defended (*e.g.*, treating physicians, defense experts, corporate representatives), as well as highlight your experience with federal practice and procedure, handling electronic discovery and voluminous document productions, briefing and presenting oral arguments on multifaceted legal and factual issues, and managing the various stages of complex litigation.

E. Trial Experience

Please summarize your trial experience. Your response should specify the number, length and dates of any jury trials, the nature of those cases, the subject matter of any expert witness testimony you have presented, and any unique litigation issues in which you were involved.

F. Settlement Experience

Please summarize your settlement experience in the area of complex litigation. Your response should specify the nature of the litigation, the length of time that the cases were pending before settlement, your level of involvement in the settlement process, the number of involved parties, the year of any settlement, and the jurisdiction. Please also describe any specialized education, training, or certifications you have obtained in alternative dispute resolution and indicate whether you have any personal experience working with a settlement master (regardless of the outcome).

G. Issue-Specific Experience

Please describe any education, training, or experience you have involving audiology, the military, or another specialized field relevant to this MDL.

H. Other Commitments

Please address your willingness and ability to immediately commit to time-consuming litigation. Your response should specifically address any additional commitments that may interfere with your ability to commit the time necessary to effectively and efficiently serve on leadership for this MDL.

I. Financial Disclosure

Please explain your plan to finance this litigation and disclose all financial arrangements that you have made, or anticipate making, to fund your firm's financial contributions (*e.g.*, arrangements between plaintiffs' attorneys, banks, vendors, or third-party financiers).

J. Additional Information

1. Please provide the names of any judges or special masters who are familiar with your work.

2. Is there anyone, other than yourself, that you feel would be especially effective in a particular leadership role? If so, please explain.

3. Is there anyone whom you would object to serving in a leadership role? If so, please explain.

4. Please provide any additional information about your professional background you would like the Court to consider.