

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**SHELLEY EVERS, CHRISTINA PATRAS, RITA
MELKONIAN, DEBORA CASTRO, and TRICIA
WILLARD,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:22-cv-11895 -ADB

**JULIE BLOCK, NERISSA BURKE, KAREN
ENSLEY, and DONNITA REIMAN,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:22-cv-12194-ADB

**DENICE CHAMBERS, CYNTHIA KRESCH,
JOYE RISHELL, KIMBERLY TAYLOR, and
KATY WHARTON,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-10260-ADB

**REBECCA SHIRKEY, ANN THALMAN, PAMELA
MAZZANTI, BETH DEUEL, and DIANE
ANDERSON,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-10579-ADB

TINA STINE, PAMELA GIBSON, DELLA DEBBAS, DIANE LYON, and JOANNA PEREZ,

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-10599 -ADB

NICOLE BAKER, CONNIE SANTILLANES, BETTINA SOPKE, and JEWEL OWEN,

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-10717-ADB

MICHELLE SLATER, GINA BRADFORD, SUSAN PARRINELLO, MICHELE STAFFORD, and HEATHER SMITH,

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-10888-ADB

MARIA RIVERA, MARY MUNNEY GRIFFITHS, MARTHA GOTTSCHALK, SHARON HICKS, and DELORES GOODSON,

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-11012-ADB

**LISA ENGLISH, RENEE LEONARD,
MONICA ZAPATA-BOLTON, DEANA
JACOBS, and RHONDA WILLIAMS,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-11512-ADB

**SUSIE PRICE, DANA WHITE, MIGDALIA
NEGRON, SUSAN MCCOY, and DOROTHY
LANEADER,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-12011-ADB

**SHIRLEY WEBB, NANCY BARKER, TWILA
ROBERTS, DENISE BURKS-SCOTT, and MARY
MCKNIGHT,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-11823-ADB

**TINA HEFFNER, CHERYL KING, SUE TRENT,
VIRGINIA HORGAN, and THERESE KICKBUSH,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-12278-ADB

**MELISSA BLANCHENAY, SHEILA BOISVERT,
KIM HORN, TARA PASH, and ROXANNE
SMITH,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-12458-ADB

**KIMBERLY AUSTIN, CORINNA ALANDT,
SANDRA ICKOVITS, KIMBERLY EVERETT, and
EVELYN RYAN,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-12651-ADB

**TINA HEFFNER, CHERYL KING, SUE TRENT,
VIRGINIA HORGAN, and THERESE KICKBUSH,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-12278-ADB

**MELISSA BLANCHENAY, SHEILA BOISVERT,
KIM HORN, TARA PASH, and ROXANNE
SMITH,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-12458-ADB

**KIMBERLY AUSTIN, CORINNA ALANDT,
SANDRA ICKOVITS, KIMBERLY EVERETT, and
EVELYN RYAN,**

Plaintiffs,

-vs.-

HOLOGIC, INC.,

Defendant.

Case No. 1:23-cv-12651-ADB

ORDER REGARDING A BELLWETHER PLAN

Plaintiffs in these and other related cases pending before this Court bring personal injury claims related to their implantation of the BioZorb® 3D bioabsorbable marker device (the “BioZorb Device”). To date, including the above-captioned matters, Plaintiffs’ counsel have filed 17 complaints on behalf of 84 plaintiffs in the District of Massachusetts.¹ *See Chambers et al. v. Hologic, Inc.*, No. 1:23-cv-10260 (D. Mass.); *Shirkey et al. v. Hologic, Inc.*, No. 1:23-cv-10579 (D. Mass.); *Stine et al. v. Hologic, Inc.*, No. 1:23-cv-10599 (D. Mass.); *Baker et al. v. Hologic, Inc.*, No. 1:23-cv-10717 (D. Mass.); *Rivera et al. v. Hologic, Inc.*, No. 1:23-cv-11012 (D. Mass.);

¹ Plaintiff Debra Castro is voluntarily dismissing her case, which will bring the total number of BioZorb Plaintiffs in federal court to 83. *See Evers v. Hologic, Inc.*, No. 1:22-cv-11895-ADB.

Slater et al. v. Hologic, Inc., No. 1:23-cv-10717 (D. Mass.); *English et al. v. Hologic, Inc.*, No. 1:23-cv-11512 (D. Mass.); *Webb et al. v. Hologic, Inc.*, No. 1:23-cv-11823 (D. Mass.); *Price et al. v. Hologic, Inc.*, No. 1:23-cv-12011 (D. Mass.); *Heffner et al. v. Hologic, Inc.*, No. 1:23-cv-12278 (D. Mass.); *Blanchenay et al. v. Hologic, Inc.*, No. 1:23-cv-12458 (D. Mass.); *Austin et al. v. Hologic, Inc.*, No. 1:23-cv-12651 (D. Mass.); *Swafford et al. v. Hologic, Inc.*, No. 1:23-cv-12687 (D. Mass.); *Bonvillain et al. v. Hologic, Inc.*, No. 1:23-cv-12833 (D. Mass.); *Ciers et al. v. Hologic, Inc.*, No. 1:23-cv-13215 (D. Mass.) (collectively, the “BioZorb Device Litigation”). All 17 of the BioZorb Device Litigation cases pending in this Court are related pursuant to Local Rule 40.1(g)(1) because they involve the same defendant and the same or substantially similar issues of fact.

In furtherance of the effective and efficient case management of these related actions, and to maintain consistency in discovery among the related matters, the Court hereby ORDERS as follows:

I. Modifications to the Existing Discovery Deadlines

The Parties shall continue with Phase I deposition discovery in accordance with the applicable scheduling orders for Track A and B, subject to the extensions set forth below. The Parties shall meet and confer in good faith regarding a Plaintiff Fact Sheet or standard form of written discovery, including an agreed set of authorizations for the collection of core medical records, for all other tracks. Discovery for all cases contained in Tracks C through F, and any other cases deemed related, shall otherwise be stayed until further Order of the Court.

Based on the status of discovery to date, and the Parties’ experience in collecting medical records and scheduling depositions of third-party witnesses in this litigation, the Court hereby modifies certain deadlines in Tracks A and B as follows. All Phase I discovery of Tracks A and B

shall be completed before the Parties proceed with selection of a bellwether pool pursuant to Section II.

<u>Track A</u>		
Event	Current Deadline	New Deadline
Depositions of Plaintiffs and implanting physicians	February 1, 2024	March 31, 2024
Last Day to file Motions for Summary Judgment on the basis of learned intermediary doctrine for any case wherein the implanting physician was deposed after February 1, 2024 ²	February 22, 2024	April 26, 2024
<u>Track B</u>		
Depositions of Plaintiffs and implanting physicians	March 29, 2024	June 7, 2024
Last Day to file Motions for Summary Judgment on the basis of learned intermediary doctrine	May 31, 2024	June 28, 2024

II. Bellwether Pool

The Parties agree that the development of a bellwether plan will help to move the BioZorb Device Litigation forward efficiently and effectively. Based on the number of cases filed thus far, the Parties have agreed to a bellwether pool of ten cases, chosen equally by the Parties selecting five Plaintiffs each.

A. Eligibility

All Plaintiffs from Tracks A and B shall be eligible to be selected as a Trial Pool Plaintiff. These eligibility requirements may be modified upon agreement of the Parties.

B. Selection

On June 14, 2024, Counsel for Plaintiffs and Defendant must each exchange the names of

² Oppositions to learned intermediary motions filed in either Track A or B will be due 30 days from service; replies will be due 14 days thereafter.

5 Plaintiffs (for a total of 10 Plaintiffs) who they propose as Discovery Pool Plaintiffs.

Each plaintiff who is identified and selected shall participate in core fact discovery, which shall commence immediately following selection of the Discovery Pool Plaintiffs and shall be completed for all Discovery Pool Plaintiffs no later than December 16, 2024.

Unless otherwise agreed to by the Parties, the following core fact discovery may be taken for each Plaintiff identified as a Discovery Pool Plaintiff:

1. Deposition of Plaintiff's spouse (if any).
2. Depositions of three third-party fact witnesses, to include, but not limited to, Plaintiffs' healthcare providers, or other third-party fact witnesses. Defendant may choose two witnesses and Plaintiffs may choose one. The Parties should meet and confer to see if there is agreement on which witnesses to depose. If a party desires to take more than their allotment of depositions during the initial phase of discovery and prior to trial pool selections, the Parties will meet and confer and seek the Court's guidance as necessary.
3. Deposition of one sales representative identified by the Parties as having been in contact with Plaintiffs' implanting physicians prior to or around the time of Plaintiffs' surgeries, or otherwise identified by Defendant as having been assigned to the territory covering Plaintiffs' implanting physicians. The Parties will meet and confer as to whether any such deposition is necessary.

Nothing in this order shall prohibit a party from objecting to a proposed case-specific deposition and promptly raise their objections to the Court. No party waives any right to depose a fact witness who is not identified as part of the initial fact depositions or other discovery. Further discovery in cases identified for trial is subject to Section III, below.

If a Discovery Pool Plaintiff (including any Trial Pool Plaintiff, as defined below) selected by either party is dismissed with or without prejudice during the initial discovery phase or later, the selecting party shall be permitted to identify an additional Plaintiff to fill the selection of the Plaintiff whose claim was dismissed. To the extent the discovery deadlines for any replacement Plaintiff need to be adjusted, the Parties agree to meet and confer and seek Court guidance as necessary.

III. Bellwether Trial Cases

A. Selection

1. No later than December 16, 2024, each side shall be permitted to strike three such Plaintiffs (a total of six strikes). The remaining four Plaintiffs will comprise the Plaintiffs who are eligible to participate in a bellwether trial (the “Trial Pool Plaintiffs”).
2. The Parties will meet and confer, and will submit to the Court by December 19, 2024, a Case Management Order identifying the four Trial Pool Plaintiffs and proposing a method for trial selection and/or structure. Both Parties reserve all rights and positions concerning how the bellwether trial or trials will be ordered, selected, and/or structured and if the Parties cannot agree, will submit any such dispute to the Court by this same date.

B. Additional Fact Discovery:

All remaining non-core fact discovery in the four Trial Pool cases shall be completed by April 25, 2025.

C. Expert Discovery

For the four Trial Pool cases, the Parties shall serve expert reports pursuant to the following schedule:

1. Plaintiffs' expert reports are due February 7, 2025
2. Defendant's expert reports are due March 7, 2025
3. Plaintiffs shall make their experts in a field of discipline or subject matter available first for deposition to be followed by the depositions of Defendant's expert in the same field or subject matter.
4. Expert discovery will close on April 25, 2025.

IV. Summary Judgment Motions

The last date for a party to file a summary judgment motion in a Trial Pool case is May 16, 2025. Nothing in this order precludes a party from filing a summary judgment motion in any other case, including intermediate summary judgment motions on the basis of the learned intermediary doctrine. For any such motion, filed in the Trial Pool cases or otherwise, oppositions are due 30 days from the date the motion for summary judgment is filed and replies are due 14 days from the date the opposition is filed.

V. Pretrial Motions, Including Experts and Motions in Limine

In the first case selected for trial, the Parties shall file motions to exclude expert witnesses and motions *in limine* no later than June 2, 2025. Oppositions are due on June 16, 2025. Replies are due on June 30, 2025.

The Parties will meet and confer regarding a proposed schedule for further pre-trial deadlines applicable to the first case selected for trial and submit such proposed schedule to the Court no later than May 23, 2025.

VI. Trial


A trial date for the first case selected for trial will be scheduled in or around July 2025.

VII. Mediation

The Parties will participate in an early mediation with a private mediator to be agreed upon by the Parties. The mediation will take place no later than May 1, 2024.

IT IS SO ORDERED.

Dated: 2/26/2024



The Honorable Allison D. Burroughs
United States District Judge