

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**IN RE: BIOZORB PRODUCT LIABILITY
LITIGATION**

This document relates to: Evers v. Hologic, No. 1:22-cv-11895-ADB; Block v. Hologic, No. 1:22-cv-12194-ADB; Chambers v. Hologic, No. 1:23-cv-10260-ADB; Stine v. Hologic, 1:23-cv-10599-ADB; and Shirkey v. Hologic, No. 1:23-cv-10579-ADB

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

**JOINT SUBMISSION OF PROPOSED CASE MANAGEMENT ORDER
REGARDING BELLWETHER TRIALS**

Pursuant to the Court’s February 26, 2024 order establishing a bellwether plan for the BioZorb litigation (*see* ECF No. 84, the “Bellwether Order”), and the discussion at the December 4, 2024 status conference, the Parties respectfully submit the proposed case management order attached hereto as **Exhibit A**, which (1) identifies the four Trial Pool Plaintiffs selected by the Parties; (2) proposes a method for trial selection; and (3) sets a date certain for the first two trials.

As set forth below, through further meet and confer efforts following the last status conference, the Parties have largely reached agreement but have one remaining disagreement concerning the setting of later bellwether trials.

I. Trial Pool Plaintiffs

Pursuant to the Bellwether Order, on December 16, 2024, the Parties exercised their strikes to narrow the pool of ten Track A and B bellwether plaintiffs down to four plaintiffs for trial (the “Trial Pool Plaintiffs”). Bellwether Order at 9. The Trial Pool Plaintiffs are:

1. Cynthia Kresch (*Chambers*, No. 1:23-cv-10260) -- Plaintiff pick
2. Kimberly Taylor (*Chambers*, No. 1:23-cv-10260) -- Plaintiff pick

3. Beth Deuel (*Shirkey*, No. 1:23-cv-10579) -- Hologic pick
4. Pamela Gibson (*Stine*, No. 1:23-cv-10599) – Hologic pick

II. Trial Selection

The Parties jointly propose the following system for selecting the plaintiffs for individual-plaintiff bellwether trials. The Parties respectfully submit that this procedure is fair to each Party and will help to ensure that trial candidates are representative of the broader inventory of cases.

Specifically, the Parties propose that they randomly select (using an agreed-upon randomization or “coin flip” tool) whether a Plaintiff-pick case or a Hologic-pick case is tried first. The opposing party will then select which of the other Party’s cases will be tried in that first trial slot. For example, if Plaintiffs were to win the “coin toss” such that a Plaintiff-pick is tried first, Hologic will choose which Plaintiff from among those two Trial Pool Plaintiffs will be tried.¹

This process will then alternate. In other words, the next bellwether trial will involve a Trial Pool Plaintiff selected from the side whose case was not chosen for the first trial, and the opposing Party will pick which case is tried from between the two eligible Trial Pool Plaintiffs. Using the example above, assuming Plaintiffs won the initial “coin toss,” a Hologic-pick case will be tried second and the Plaintiffs will choose which of the two Trial Pool Plaintiffs who were Hologic-picks will be the subject of the trial. The Parties shall complete the random selection and pick process outlined in the preceding paragraphs by January 17, 2025.

III. Trial Dates

The Parties estimate that each trial will take approximately three weeks, although they continue to meet and confer on trial length. Based on the Court’s comments at the status

¹ If any case scheduled for trial is dismissed, the Parties will meet and confer on how to address the dismissal. To the extent the Parties are unable to reach agreement, the Court will adjudicate such disputes in a manner that preserves the overall fairness and intent of the bellwether system.

conference regarding juror availability and to avoid conflicts, and of course subject to the Court's availability, the Parties propose that juror selection begin late in the week of September 1, 2025, and that the first trial commence on September 8, 2025. The Parties also respectfully request that the Court set a date certain for the second bellwether trial, and (subject to Court availability) propose that the second bellwether trial commence in January 2026.

While the Parties agree on the foregoing scheduling proposals for the first two bellwether trials, they disagree as to whether any further trials should be set at this time, as set forth below.

Plaintiffs' Position. Considering the Court's concerns regarding juror participation in the summer months, Plaintiffs believe that the four bellwether trials should be completed prior to the summer of 2026. As such, the Plaintiffs are requesting trial dates for the final two bellwether plaintiffs in March and May of 2026 (subject to Court availability) so that all bellwether trials will be completed prior to June 2026.

Hologic's Position. Hologic believes that the Parties and the Court will gain important information concerning the cases and trials, including the amount of time and resources needed to try them, after experience trying the initial cases. Hologic accordingly believes it is premature to set further trial dates at this time, and suggests that additional trial settings be addressed at a future time with the benefit of such further trial experience.

* * *

The Parties would be pleased to address any aspect of the proposal set forth herein at the status conference scheduled for January 15, 2025. Given the Parties' agreement on most of the issues before the Court, the Parties are requesting a virtual status conference for January 15, 2025 but will make themselves available in person if the Court prefers.

Respectfully submitted,

Dated: December 19, 2024

HOLOGIC, INC.,
By its attorneys,

/s/ Daniel P. Tighe

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CERTIFICATE OF SERVICE

I, Pietro A. Conte, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) and paper copies will be sent to those indicated as non-registered participants on December 19, 2024.

/s/ Pietro A. Conte
Pietro A. Conte

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**IN RE: BIOZORB PRODUCT LIABILITY
LITIGATION**

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

**JOINT PROPOSED CASE MANAGEMENT ORDER
REGARDING BELLWETHER TRIALS**

Upon consideration of the Parties' joint submission dated December 19, 2024, and in the interests of the fair and efficient adjudication of the instant litigation, the Court hereby ORDERS the following procedures and schedule for bellwether trials.

Trial Pool Plaintiffs. The Court having been advised by the Parties of their respective "strikes" which have narrowed the pool of ten Track A and B bellwether plaintiffs to a smaller Trial Pool, the following Trial Pool Plaintiffs are eligible for bellwether trials:

1. Cynthia Kresch (*Chambers*, No. 1:23-cv-10260) -- Plaintiff pick
2. Kimberly Taylor (*Chambers*, No. 1:23-cv-10260) -- Plaintiff pick
3. Beth Deuel (*Shirkey*, No. 1:23-cv-10579) -- Hologic pick
4. Pamela Gibson (*Stine*, No. 1:23-cv-10599) -- Hologic pick

Selection of Trial Plaintiffs. The bellwether trials will proceed as individual-Plaintiff trials, with the trial Plaintiffs selected through the following procedures:

1. The Parties will randomly select whether a "Plaintiff-pick" case or "Hologic-pick" case will be chosen for the first trial.

2. The opposing party (*i.e.*, the party who “lost” the random selection), will then pick which of the other side’s two eligible Trial Pool Plaintiffs will be the subject of the first trial.
3. This process will then alternate. The second bellwether trial will accordingly involve a Trial Pool Plaintiff selected from the side whose case was not chosen for the first trial; and the opposing Party (*i.e.*, the party who “won” the initial random selection) will pick which case is tried from between those two eligible Trial Pool Plaintiffs.
4. The Parties shall complete the random selection and pick process outlined in Paragraphs 1-3 above no later than January 17, 2025.

Trial scheduling. The first bellwether trial will commence on September 8, 2025, with jury selection to take place the preceding week. The second bellwether trial will commence on January ____, 2026.

The Parties have a dispute concerning the setting of additional bellwether trials at this time. In consideration of their respective positions, the Court ORDERS:

IT IS SO ORDERED.

Dated: _____

The Honorable Allison D. Burroughs
United States District Judge