

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

IN RE: 3M COMBAT ARMS
EARPLUG PRODUCTS
LIABILITY LITIGATION

Case No. 3:19md2885

This Document Relates to All Cases

Judge M. Casey Rodgers
Magistrate Judge Gary R. Jones

PRETRIAL ORDER NO. 2

The 3M Combat Arms Earplug Product Liability Litigation has been centralized and transferred to this Court by the Judicial Panel on Multidistrict Litigation (“the Panel”). Accordingly, the Court hereby **ORDERS** as follows:

I. Applicability of Order

Prior to the initial case management conference and entry of a comprehensive case management order governing all further proceedings in this case, the provisions of this Order will govern practice and procedures in the actions transferred to this Court by order of the Panel dated April 3, 2019 and in all related actions that have been or will be filed in, removed to, or transferred to this Court.

II. Consolidation

The actions listed on Schedule A are hereby consolidated for pretrial purposes. Any tag-along actions later filed in, removed to, or transferred to this Court, or directly filed in the Northern District of Florida, will automatically be consolidated with this proceeding without the necessity of future motions or orders.

This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

III. Initial Case Management Conference

An initial case management conference will be held in this matter on **Wednesday, April 17, 2019 at 9:00 a.m. (CST)** in Courtroom 2 of the Winston E. Arnow Federal Building, 100 N. Palafox St., Pensacola, FL 32502.

A. Purpose and Agenda: The conference will be held for the purposes specified in Fed. R. Civ. P. 16(a), 16(b), 16(c), and 26(f). Counsel are expected to familiarize themselves with the Manual for Complex Litigation (4th ed.) (“MCL”) and be prepared at the conference to suggest procedures that will facilitate the expeditious, economical, and just resolution of this litigation. The items listed in §§ 22.6, 22.61, 22.62, 22.63, and 22.7 of the MCL will, to the extent applicable, constitute a tentative agenda for the conference. Additional items to be discussed include: (1) the appropriate leadership structure; (2) establishment of a centralized document repository and ESI protocol; (3) stipulations regarding service of process; (4) coordination with related state court litigation; (5) the appropriateness of “master” and “short form” pleadings; (6) the need for bifurcated proceedings, if any; and (7) whether “bellwether” discovery and trials would advance the litigation.

Interim lead counsel for the plaintiffs and counsel for the defendants are directed to confer and seek consensus on these tentative agenda items, to the extent possible. Should the parties wish to suggest additions to the agenda, they must jointly email their suggestions to chambers at flnd_rodgers@flnd.uscourts.gov, by close of business on **Monday, April 15, 2019**.

B. Appearance at the Conference: Interim lead counsel for the plaintiffs will be expected to represent the interests of all plaintiffs at the initial case management conference. All other plaintiffs' counsel and *pro se* plaintiffs are invited to attend the conference, but are not required to do so. Counsel and *pro se* plaintiffs who cannot attend the conference in person may attend by telephone.¹ Appearance at the initial conference will not constitute a waiver of objections to jurisdiction, venue, or service.

C. Position Statements: Plaintiffs and Defendants must each submit, by **Friday, April 12, 2019**, a brief written statement (not to exceed 25 pages) outlining their views on the primary facts, claims, and defenses involved in this litigation, as well as the critical factual and legal issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered in evidence against a party in later proceedings. The statements also must identify: (1) the status of motions, decisions, and other important events in the

¹ Instructions for attending the conference by telephone will follow.

litigation, if any; and (2) the status of any related cases pending in state or federal court, including discovery taken to date, to the extent known. The parties' statements should be emailed to chambers at fldn_rodgers@fldn.uscourts.gov.

D. Contact List: Plaintiffs and Defendants must also jointly submit a list of all known counsel of record and *pro se* plaintiffs, along with their addresses, work and cell phone numbers, and email addresses. This submission should be emailed to Courtroom Deputy Susan Simms at susan_simms@fldn.uscourts.gov by close of business on **Monday, April 15, 2019**.

IV. Appointment of Interim Lead and Liaison Counsel

The Court hereby appoints Bryan F. Aylstock of Aylstock, Witkin, Kreis & Overholtz, PLLC, 17 E. Main St., Pensacola, FL 32502, to serve as *interim* lead and liaison counsel for the plaintiffs. Mr. Aylstock is well-qualified to carry out the responsibilities of these positions on an interim basis, given his extensive experience in complex litigation, including a leadership role in a prior MDL before this Court, and his local presence. Applications for leadership positions will be solicited once a leadership structure is established.

Due to the limited number of defendants involved in this litigation, the Court does not see a need to appoint interim lead or liaison counsel for defendants at this time. Until the Court establishes docketing and filing procedures for the MDL, notice will be sent to the defense counsel identified in Schedule B, who either

appeared before the JPML or appeared in the related actions that were originally filed in this district.

V. Extension, Discovery & Pending Motions

Each defendant is granted an extension of time for responding by motion or answer to the complaint(s) until a date to be set following the initial conference. Pending the initial conference and further orders of this Court, all outstanding discovery proceedings are stayed and no further discovery may be initiated.

Any motion that was pending before a case was removed or transferred to this Court is no longer pending. A schedule for refileing such motions will be set by separate order. Any orders previously entered by this Court, a transferor court, or state court before removal—including preservation orders—will remain in effect until this Court orders otherwise.

VI. Communication with the Court

Unless otherwise ordered, all substantive communication with the Court must be in writing, with copies to opposing counsel. Interim liaison counsel is responsible for disseminating information from the Court to other plaintiffs' counsel and *pro se* plaintiffs, as appropriate.

The Court recognizes that cooperation among counsel and parties is essential for the orderly and expeditious resolution of this litigation. To that end, the sharing of information in connection with this MDL among and between plaintiffs' counsel,

or among and between defendants' counsel, will not, standing alone, be deemed a waiver of the attorney-client privilege, the protection afforded by the work-product doctrine, the protection afforded to material prepared for litigation, or any other privilege to which a party may be entitled. Moreover, cooperative efforts between the parties and counsel may not be: (1) used against any party; (2) cited as evidence of a conspiracy, wrongful action, or wrongful conduct; or (3) communicated to the jury at the trial of any individual case. Nothing in this paragraph will in any way affect the applicability of any privileges or protection against disclosure otherwise available under the law.

VII. Docketing and Filing Procedures

The Court will establish docketing and filing procedures by separate order. Docketing and filing questions may be directed to Donna Bajzik, MDL Coordinator for the Clerk's Office, at (850) 470-8188 or donna_bajzik@flnd.uscourts.gov.

DONE and **ORDERED** on this 5th day of April 2019.

s/ M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE

SCHEDULE A

Central District of California

Kennedy v. 3M Company, et al., Case No. 5:19-00128

Northern District of Florida

Butler v. 3M Company, Case No. 3:19cv313

Sams v. 3M Company, Case No. 3:19cv324

Vinogradov v. 3M Company, Case No. 3:19cv354

Matteson v. 3M Company, Case No. 3:19cv355

Robinson v. 3M Company, Case No. 3:19cv383

Allen v. 3M Company, Case No. 3:19cv391

Marston v. 3M Company, Case No. 3:19cv410

Arnett v. 3M Company, Case No. 3:19cv410

Douglas v. 3M Company, Case No. 3:19cv463

Motley v. 3M Company, Case No. 3:19cv475

District of Minnesota

Ciaccio v. 3M Company, et al., Case No. 0:19-00179

Peek v. 3M Company, et al., Case No. 0:19-00192

Larkin v. 3M Company, et al., Case No. 0:19-00194

Pullium v. 3M Company, et al., Case No. 0:19-00603

Western District of Oklahoma

Stine v. 3M Company, Case No. 5:19-00058

Werner v. 3M Company, Case No. 5:19-00059

Western District of Texas

Rowe v. 3M Company, Case No. 6:19-00019

SCHEDULE B

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