

# 4 STEPS TO SETTING UP BELLWETHER TRIAL VICTORIES

## FACING A DRUG OR DEVICE MDL?

Settlement isn't the only option. Four other S-words might lead to a series of bellwether trial outcomes that protect the product's legacy and save the company millions.

### 1. STOCK



#### Stock up on plaintiff info

- ▶ Plaintiff Fact Sheet (PFS) should require production of all plaintiff medical records and authorizations to collect records
- ▶ Court order should include a penalty for plaintiffs who fail to timely and fully comply with the PFS
- ▶ Ensure you know everything important about the plaintiff that his or her counsel knows

### 2. SCREEN



#### Screen to dismiss meritless cases

- ▶ Ask the Court to ensure all cases available for bellwether selection have threshold levels of merit
- ▶ If a common injury is alleged, ask the Court to require plaintiffs to present objective evidence that they suffered that injury
- ▶ If the product's alleged risks only occur in the presence of a certain factor, ask the Court to require plaintiffs to present evidence supporting the presence of that factor

### 3. STEER



#### Steer toward a plan that allows control over case selection

- ▶ Ensure the parties maintain some control over which cases are selected and tried
- ▶ If the Court insists on random selection, propose the use of strikes to eliminate outliers
- ▶ Harness data to show the Court the makeup of the MDL based on products, injury categories or patient demographics
- ▶ Include a provision in the bellwether plan that requires plaintiffs to try cases in the MDL court, unless jury pool is unfavorable

### 4. SUBSTITUTE



#### Substitute your own cause of injury for the plaintiff's

- ▶ Substitute competing reasons for injuries in specific plaintiffs
- ▶ Dig into the medical history and pursue every plausible alternative cause
- ▶ Understand the nuances of the product and major related literature

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