

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 plaintiffs

- ▶ 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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