

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: E. I. DU PONT DE  
NEMOURS AND COMPANY C-8  
PERSONAL INJURY LITIGATION,

Civil Action 2:13-md-2433  
CHIEF JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Elizabeth Preston Deavers

This document relates to:

*Bartlett v. E. I. du Pont de Nemours and  
Company*, Case No. 2:13-CV-0170

**CASE MANAGEMENT ORDER NO. 10**

**Pretrial Schedule for Bartlett Trial**

Attached to this Case Management Order is the Court's Final Pretrial Order for the trial of Carla Marie Bartlett, the first trial in this MDL. The parties shall jointly submit the attached Final Pretrial Order on or before September 3, 2015.

**IT IS SO ORDERED.**

8-19-2015  
DATE

  
\_\_\_\_\_  
EDMUND A. SARGUS, JR.  
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
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**FINAL PRETRIAL ORDER**

The Court held a final pretrial conference in this case on \_\_\_\_\_ at \_\_\_\_\_  
a.m., pursuant to Fed. R. Civ. P. 16.

**I. APPEARANCES**

For Plaintiff:

For Defendant:

**II. NATURE OF ACTION**

A. This is an action for:

B. The jurisdiction of the Court is invoked under Title \_\_\_\_, United States Code,  
Section \_\_\_\_\_.

C. The jurisdiction of the Court (is) (is not) disputed.

**III. TRIAL LENGTH**

The estimated length of trial is:

**IV. AGREED STATEMENTS AND LISTS**

**A. General Nature of the Claims of the Parties**

1. Plaintiffs' Claims:

The parties shall set out brief summary without detail; an itemized statement of special damages should be included.

2. Defendants' Claims:

The parties shall set out brief summary without detail.

**B. Uncontroverted Facts**

The parties shall set out uncontroverted or uncontested facts in chronological order. Suggested language: The following facts are established by admissions in the pleadings or by stipulations of counsel.

**C. Contested Issues of Fact and Law**

1. Contested Issues of Fact.

The parties shall set out a brief statement of the remaining contested issues of fact. Suggested language: The contested issues of fact remaining for decision are:

2. Contested Issues of Law.

The parties shall set out a brief statement of the remaining contested issues of law. Suggested language: The contested issues of law in addition to those implicit in the foregoing issues of fact, are:

OR There are no special issues of law reserved other than those implicit in the foregoing issues of fact.

**D. Witnesses**

1. Suggested language: In the absence of reasonable notice to opposing counsel to the contrary, plaintiff will call, or will have available at the trial:

OR Plaintiff may call: (provide a brief synopsis of each witness' testimony.)

2. Suggested language: In the absence of reasonable notice to opposing counsel to the contrary, defendant will call, or will have available at the trial:

OR Defendant may call: (provide a brief synopsis of each witness' testimony.)

3. Suggested language: In the absence of reasonable notice to opposing counsel to the contrary, \_\_\_\_\_ will call:

OR \_\_\_\_\_ may call: (provide a brief synopsis of each witness' testimony; use for third parties).

4. In the event other witnesses are to be called at the trial, a statement of their names and addresses and the general subject matter of their testimony will be served upon opposing counsel and filed with the Court at least five (5) days prior to trial.

5. There is reserved to each of the parties the right to call such rebuttal witnesses as may be necessary, without prior notice to the other party. Questions frequently arise as to whether a witness will offer rebuttal testimony or is more appropriately designated as part of the case-in-chief. If questions arise as to the nature of a witness' testimony, the Court will err on the side of required disclosure five (5) days prior to trial of rebuttal witnesses. If no disclosure is made, the Court shall not permit such witness to testify.

*Note: Only witnesses listed in the Final Pretrial Order will be permitted to testify at the trial, except witnesses called solely for the purpose of impeachment or for good cause shown.*

#### **E. Expert Witnesses**

Suggested language: Parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed to the other side.

1. Plaintiff: List all expert witnesses plaintiff intends to call at trial.
2. Defendant: List all expert witnesses defendant intends to call at trial.

Counsel have filed a resume or curriculum vitae of each expert's qualifications that may be found on the docket at: \_\_\_\_\_.

#### **F. Depositions**

During trial, reading of depositions frequently presents problems that can be eliminated by advance discussion and preparation. The pretrial order shall list depositions to be read into evidence and any objections thereto identifying the objecting party, portions objected to, and the basis for the objections. All irrelevant and redundant matter and all colloquy between counsel in the deposition must be eliminated when the deposition is read. See also the requirements of Fed. R. Civ. P. 26(a)(3)(B).

Suggested language: Testimony of the following witnesses will be offered by

deposition/videotape. (List all witnesses whose testimony will be offered by deposition or videotape. If none, so state.)

**G. Exhibits**

Needless Court time is taken up in the marking of exhibits during trial.

Accordingly, the exhibit list should be prepared prior to trial and set forth in the pretrial order. Exhibits that are to be admitted without objection should be listed first, then followed by a listing of exhibits to which there may be objections, noting by whom the objection is made (if there are multiple adverse parties), the nature of the objection, and the authority supporting the objection.

Exhibit markers should be attached to all exhibits at the time they are shown to opposing counsel during the preparation of the pretrial order. A supply of marking tags for exhibits may be obtained from the courtroom deputy clerk. They should be attached to the lower right-hand corner whenever possible. See also the requirements of Fed. R. Civ. P. 26(a)(3)(C).

Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in the pretrial order, with the exception of exhibits to be used solely for the purpose of impeachment.

Exhibit lists should be attached as appendices to the pretrial order as follows:

- Appendix B Joint Exhibits
- Appendix C Plaintiff Exhibits
- Appendix D Defendant Exhibits
- Appendix E Third-Party Exhibits

**H. Stipulations**

Counsel have made any and all stipulations pursuant to the Federal Rules.

**I. Completion of Discovery**

Except for good cause, all discovery shall be completed before the Final Pretrial Order is signed by the Court. If discovery has not been completed, the proposed pretrial order shall state what discovery is yet to be done by each side, when it is scheduled, when it will be completed, and whether any problems (e.g., objections or motions) are likely with respect to the uncompleted discovery.

Suggested language:

- \* Discovery has been completed.
- \* Discovery is to be completed by \_\_\_\_\_, 20\_\_.
- \* Further discovery is limited to \_\_\_\_\_.

- \* The following provisions were made for discovery:  
*Specify all such provisions.*

**V. MODIFICATION**

The Final Pretrial Order may be modified at or prior to the trial of this action to prevent manifest injustice. Such modification may be made by application of counsel or on motion of the Court.

**VI. JURY INSTRUCTIONS**

**A. Jury Instructions from the Court**

The Court will prepare preliminary and general jury instructions. The parties may obtain an example of the Court's general instructions from Debra Hepler, Chief Judge Sargus' Administrative Assistant. The parties shall concentrate their efforts on the case-specific instructions.

**B. Proposed Jury Instructions from the Parties**

The parties shall submit jointly one set of proposed jury instructions which contains the parties agreed upon case-specific instructions, and, in the event the parties cannot agree on an instruction, each party's own individual proposed case-specific instruction. To this end, counsel shall adhere to the following procedures:

1. The parties shall serve their proposed jury instructions on each other on or before **August 31, 2015**.
2. Counsel then shall meet, confer and agree on proposed case-specific jury instructions.
3. If, after concerted good faith effort, the parties are unable to agree upon a particular case-specific instruction, each party shall propose its own version. Plaintiff's version shall be presented first, immediately followed by Defendant's version of the jury instruction, complete with pinpoint citations to binding authority. Each version, Plaintiff's and Defendant's, shall appear together on one page for ready comparison. Versions of longer instructions (over one page) shall appear one after another. A party may indicate its general objection to the giving of the proposed instruction.
4. Proposed case-specific jury instructions shall be submitted to the Court on or before **September 7, 2015**.

All instructions shall be concise, understandable and neutral. Further, counsel shall at a minimum agree on a common index and the proposed instructions from all parties shall correspond to the index.

For jury instructions concerning federal law, the Court prefers that the parties use the latest edition of Hon. Edward J. Devitt, Hon. Charles B. Blackmar, Michael A. Wolff, and Kevin F. O'Malley, Federal Jury Practice and Instructions (West). For instructions on Ohio law, the Court prefers that the parties use the latest edition of Ohio Jury Instructions (Anderson). For instructions on West Virginia law, the Court prefers the latest version of the instructions published by Mathew Bender & Company. The Court, however, welcomes any effort by counsel to make the instructions from these sources more direct, understandable, and concise.

**VII. REMAINING ISSUES AND OTHER MATTERS**

The following legal issues must be resolved before the beginning of trial:

Counsel bring the following additional matters to the Court's attention:

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EDMUND A. SARGUS, JR.  
Chief United States District Judge

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Trial Counsel for Plaintiff

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Trial Counsel for Defendant