

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

Case No. 2:13-md-2433

JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Elizabeth P. Deavers

This document relates to: ALL ACTIONS.

CASE MANAGEMENT ORDER NO. 17

Initial PreTrial Schedule for the 40 Cancer Trials to Begin in May 2017

Pursuant to the Court's directive in Pre-Trial Order No. 42, the parties submit the following pre-trial schedule for the initial 40 cancer cases to be tried beginning in May 2017.¹

I. Selection of the Initial 40 Cancer Cases

The parties will meet and confer and determine a methodology for selecting which of the pending cancer cases will be in the initial 40 cancer cases designated to have trials beginning in May, 2017. If the parties cannot agree on a methodology for selecting which cancer cases will comprise the initial 40 cancer cases to be tried, then the parties will simultaneously submit their respective proposals to the Court by 5:00 p.m. on April 8 and oppositions at 5:00 p.m. on April 12, 2016. Whatever the process for selecting the initial 40 cancer cases, they will be picked on or before May 2, 2016.

¹ The parties recognize that PTO 42 sets forth an April, 2017, start date for the first four trials of the group of 40. The parties are hopeful the Court will consider and approve a May 2017 start date for the first four trials as set forth in this proposal.

II. Grouping of Cases

The parties will prepare the 40 cases in 3 groups of 12 cases, and one group of 4 cases, to be referred to as Group 1, Group 2, Group 3, and Group 4. Each Group of cases will be staggered approximately 60-90 days behind the Group preceding it as set forth in more detail in Section IV below.

III. Trial Sequence

The sequence of the trials within each Group of cases will be decided by a subsequent Case Management Order that will either be by agreement of the Parties or based upon briefing to the Court. The trial sequence of each case within a Group shall be decided within 10 days following the close of fact discovery, as set forth below. Either at the time the sequence of the trials is determined by the Court, or no later than four (4) weeks thereafter, the Court will endeavor to determine and advise which federal district court judge will be assigned to which case(s).

IV. Discovery and Pretrial Trial Schedule

Discovery, expert disclosures, and motions for the four groups shall proceed on the following schedule:

Deadline	Group 1	Group 2	Group 3	Group 4
Case-Specific Fact Discovery Starts	5/2/2016	07/15/2016	10/03/2016	1/27/2017
Case-Specific Fact Discovery Ends	7/15/2016	10/14/2016	1/13/2017	4/28/2017
Plaintiffs Designate Expert Witnesses	8/15/2016	11/18/2016	2/13/2017	5/22/2017
Defendant Designates Expert Witnesses	9/16/2016	12/22/2016	3/13/2017	6/22/2017
Plaintiffs Designate Rebuttal Experts	9/26/2016	1/6/2016	3/23/2017	7/6/2017

Deadline	Group 1	Group 2	Group 3	Group 4
Expert Discovery Starts	9/28/2016	1/09/2017	3/24/2017	7/7/2017
Expert Discovery Ends	12/30/2016	4/15/2017	6/30/2017	9/29/2017
Daubert and Summary Judgment Motions	1/13/2017	4/28/2017	7/21/2017	10/20/2017
Oppositions to Daubert and Summary Judgment Motions	2/13/2017	5/28/2017	8/28/2017	11/18/2017
Reply to Daubert and Summary Judgment Motions	2/27/2017	6/19/2017	09/12/2017	12/02/2018
First Trial in Group to Begin	5/1/2017	9/5/2017	1/8/2018	5/7/2018

VI. Trial Schedule

A. It is anticipated that the first four trial cases in Group 1 will commence on or about May 1, 2017.² Thereafter the remaining Group 1 cases will continue to be tried through July and into August 2017(as may be needed).

B. It is anticipated that the first four trial cases in Group 2 will commence on or about September 5, 2017. Thereafter the remaining Group 2 cases will continue to be tried up into November, 2017, but mindful of the Court's direction in PTO 42 not to schedule any trials from the Thanksgiving through Christmas/New Year's holidays.

C. It is anticipated that the first four trial cases in Group 3 will commence on or about January 8, 2018. Thereafter the remaining Group 3 cases will continue to be tried through April, 2018.

D. It is anticipated that the final four trial 4 cases in Group 4 will commence on or about May 7, 2018.

² See footnote 1, above.

E. Absent agreement of the parties or directive of the Court, it is the current intent of this trial schedule that no more than 1 trial per week will begin for any case selected for inclusion in Group 1, 2, 3, or 4.

V. Scope of Discovery in Groups 1-4

A. Within 14 days after selection as a case in a Group, each selected plaintiff shall provide the Defendant: all records as required to be produced in accordance with the PFS; authorizations for records from their Primary Care Physician ("PCP") and all treating physicians for any Probable Link disease they are claiming; and any supplementation needed to their Plaintiff Fact Sheet ("PFS").

B. The Defendant shall be permitted to address PFS deficiencies, obtain records authorizations, and obtain medical or third party records beginning on May 2, 2016 and up until any time prior to the conclusion of the fact discovery period applicable to the specific plaintiff in his/her specific Group.

C. During the fact discovery period applicable to each Group, the Parties shall be permitted to take non-duplicative discovery as permitted by the Federal Rules of Civil Procedure. Nothing in this Order shall limit or modify the Court's Rulings in PTO No. 8.

D. Any individual named in good faith on a party's "will call" trial witness list who has not previously been deposed may be deposed prior to trial. Any deposition conducted pursuant to this provision must be completed within 45 days of the opposing party's receipt of the witness list, or later upon agreement of counsel, or with leave of Court. To the extent either side designates more than three (3) witnesses on its "will call" list who have not previously been deposed, the time limit shall be increased to 60 days. By agreement of counsel or order of the

Court, this 60 day period to depose more than three (3) “will call” witnesses may be further enlarged.

E. For any Case-Specific Expert, the first deposition shall be taken as provided by the Federal Rules of Civil Procedure. Following a case-specific expert’s first deposition, each such expert’s deposition shall be limited to 4 hours for each case, and will be limited to new (previously undisclosed) opinions and/ or new information not discussed at any prior deposition of that expert.

F. Absent agreement of the parties, or reasonable cause shown and permission from the Court, experts providing non-case specific expert opinions that will be used in multiple cases ("Non-Case Specific Experts") shall only be deposed one time, which includes any such depositions taken in connection with any of the bellwether cases in this MDL. Subsequent depositions will be allowed only on new (previously undisclosed) opinions, with respect to the application of the Non-Case Specific Expert’s opinion to the facts of a particular case, and/or on any new information referenced or relied upon in any subsequent report by any such expert that was not covered at either the first or prior deposition of that expert in this MDL.

V. Ancillary Matters

A. The schedule for additional pre-trial matters such as motions *in limine*, deposition designations, exhibit lists, witness lists, jury instructions, jury charges, and any other final pre-trial matters, shall be addressed by subsequent orders.

B. The parties shall work to provide a comprehensive list of all prior rulings and/or directives, and/or agreements regarding motions *in limine*, deposition designations, exhibit lists, witness lists, jury instructions, jury charges, and any other final pre-trial matters, to the trial judge assigned the given case(s).

C. The parties will work cooperatively to preserve and secure expert and/or fact witness testimony for use in multiple trials via video. The party seeking to offer such testimony may schedule a direct and cross examination of proposed trial testimony. If the testimony to be preserved is of a new witness who has not previously been deposed or testified at trial in any C8 related litigation, the other side will be allowed the opportunity to take a discovery deposition at least 30 days in advance of any preservation of trial testimony proceedings. The parties will also work within the Court's schedule to utilize the courthouse for such preservation of trial testimony and with the trial judge to oversee the examinations as may be needed. The fact that a preservation deposition has been taken will not prevent a party from calling the witness live at a subsequent trial.

D. For good reason shown, the parties may request modifications or changes to this Order if and as needed based on future developments or unanticipated circumstances.

IT IS SO ORDERED.

4-18-2016

DATE



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