

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: Carla Marie Bartlett v. E. I. du Pont de Nemours and Company,
Case No. 2:13-cv-170.

John M. Wolf v. E. I. du Pont de Nemours and Company,
Case No. 2:14-cv-095.

CASE MANAGEMENT ORDER NO. 9

Pretrial Schedule For Initial Two Trial Cases

In furtherance of Case Management Order No. 7 ¶ D, the Court hereby issues the following final pretrial schedule for the initial two trials:

I. WITNESS LISTS

1. Plaintiffs shall serve separate witness lists in the *Bartlett* and *Wolf* cases by May 29, 2015.
2. Defendant shall serve its separate witness lists in the *Bartlett* and *Wolf* cases by June 12.
3. Witnesses not included on a party's witness list shall not be called at trial absent agreement by the parties or a showing of good cause as to why the witness was not included on the witness list. The parties will use good faith efforts to list persons whom they actually intend to call at trial (live or by deposition) based upon on a good faith best current intentions "will call" list, and persons whom they currently believe are unlikely to be called but may be called on

a “may call” list. The parties shall also use good faith efforts to state whether each proposed witness will be called live, or by deposition.

4. If either party discloses a fact witness who has not previously been deposed in this multi-district litigation, *Leach*, *Tennant*, *Rowe/Scott*, *Rhodes*, or *Little Hocking* litigation, the opposing party shall be permitted to depose that witness. 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 the Court. To the extent either side designates more than three fact witnesses who have not been previously deposed, the time limit shall be increased to 60 days or later by agreement of counsel or order of the Court.

5. The ability to call rebuttal or sur-rebuttal witnesses will be governed by the Federal Rules. Nothing in paragraph 1-4 shall prohibit plaintiffs from calling any witness during rebuttal or defendant from calling any witness during sur-rebuttal as may be necessary provided that said witness has been deposed in this multi-district litigation, *Leach*, *Tennant*, *Rowe/Scott*, *Rhodes*, or *Little Hocking* litigation.

II. DEPOSITION DESIGNATIONS

6. Plaintiffs shall serve page/line designations of deposition testimony for the *Bartlett* trial by June 22, 2015, and page/line designations of deposition testimony for the *Wolf* trial by July 8, 2015.

7. Defendant shall serve (a) page/line counter-designations of deposition testimony; (b) objections to plaintiffs' page/line deposition designations; and (c) affirmative page/line designations of deposition testimony in the *Bartlett* case by July 17, 2015, and (a) page/line counter-designations of deposition testimony; (b) objections to plaintiffs' page/line deposition

designations; and (c) affirmative page/line designations of deposition testimony in the *Wolf* case by July 31, 2015.

8. Plaintiffs shall serve (a) page/line counter-designations of deposition testimony; (b) objections to defendant's page/line deposition counter-designations; and (c) objections to defendant's affirmative page/line designations in the *Bartlett* case by July 31, 2015, and (a) page/line counter-designations of deposition testimony; (b) objections to defendant's page/line deposition counter-designations; and (c) objections to defendant's affirmative page/line designations in the *Wolf* case by August 14, 2015.

9. Defendant shall serve objections to plaintiffs' page/line counter designations in the *Bartlett* case by August 14, 2015, and objections to plaintiffs' page/line counter-designations in the *Wolf* case by August 28, 2015.

10. All page/line designations, counter-designations, and objections shall be exchanged by the parties in an Excel format to be agreed on by the parties.

III. EXHIBIT LISTS

11. Plaintiff shall serve an exhibit list in the *Bartlett* case, in a format to be agreed by the parties, which shall include all document production numbers (*i.e.*, all known bates numbers, if applicable) and/or a description of the document (if there is no bates number) by June 12, 2015. An electronic copy of the exhibits shall also be provided on or before June 17, 2015, in a format to be agreed by the parties. Plaintiff shall serve an exhibit list in the *Wolf* case, which shall include all document production numbers (*i.e.*, all known bates, if applicable) and/or a description of the document (if there is no bates number) on or before June 26, 2015. An electronic copy of the exhibits in the *Wolf* case shall also be provided on or before June 26,

2015, to the extent that the exhibit was not already provided as part of the *Bartlett* exhibits. Demonstrative exhibits are exempt from this paragraph. Demonstrative exhibits shall be shown to opposing counsel before being displayed to the jury.

12. Defendant shall serve its exhibit list in the *Bartlett* case, in a format to be agreed by the parties, which shall include all document production numbers (*i.e.*, all known bates numbers, if applicable) or a description of the document (if there is no bates number), by July 10, 2015. An electronic copy of the exhibits shall also be provided by July 10, 2015, in a format to be agreed by the parties. Defendant shall serve any objections to plaintiff's exhibit list in the *Bartlett* case by July 8, 2015. Defendant shall serve its exhibit list in the *Wolf* case, which shall include all document production numbers (*i.e.*, all known bates numbers, if applicable) or a description of the document (if there is no bates number), by July 17, 2015. An electronic copy of the exhibits shall also be provided by July 17, 2015. Defendant shall serve any objections to plaintiff's exhibit list in the *Wolf* case by July 31, 2015, in a format to be agreed by the parties. Demonstrative exhibits are exempt from this paragraph. Demonstrative exhibits shall be shown to opposing counsel before being displayed to the jury.

13. Plaintiff may serve any objections to defendant's exhibit list in the *Bartlett* case by August 7, 2015, in a format to be agreed by the parties. Plaintiff may serve any objections to defendant's exhibit list in the *Wolf* case by August 21, 2015, in a format to be agreed by the parties.

14. The parties shall have the right to supplement their exhibit list(s) in light of any and all ongoing discovery.

15. Hearings and/or arguments on evidentiary issues, including exhibit objections, deposition designation objections, motions *in limine*, and other trial issues the parties wish to raise with the Court, will be held on or before September 1st and 2nd, 2015

IV. MOTIONS IN LIMINE

16. Motions *in limine* shall be filed in the *Bartlett* case by July 20, 2015

17. Responses in opposition to motions *in limine* shall be filed in the *Bartlett* case by August 10, 2015

18. No reply is permitted without leave of Court, and only then for good cause. The parties will formulate a procedure and timeline for motions *in limine* in *Wolf* at a later date, and will be guided by the applicable rulings from *Bartlett*.

19. The following apply to all *in limine* motions:

a) Index to Motions *in Limine*: All Parties filing more than one *in limine* motion shall submit to the Court and to the opposing party an "Index to Motions *in Limine*."

b) Attachments to Motions *in Limine*: Any Party filing an *in limine* motion seeking an evidentiary ruling on a category of documents, testimony, or argument shall attach to the *in limine* motion document(s) or testimony on which it seeks a pre-trial ruling. A Party responding shall attach any document or testimony that it deems is necessary for the Court to fully consider the evidentiary issue presented.

c) Page Limitation: Individual *in Limine* motions and responses shall be limited to 10 double-spaced pages; replies shall be limited to 6 double-spaced pages absent agreement of the parties or leave of Court.

V. JURY QUESTIONNAIRE, VOIR DIRE AND INSTRUCTIONS

20. The parties will exchange proposed voir dire questionnaires for the Bartlett case on July 24, 2015. The parties shall submit their proposed voir dire questionnaires to the Court one week prior to the final pretrial conference.

21. The timing for exchange and submission of Jury Instructions and a Jury Verdict Sheet by the parties shall be governed and memorialized in a subsequent Case Management Order.

VI. TRIAL GUIDELINES

22. Given the nature of this trial, including the extraordinary amount of documents and preparation, the parties agree that disclosure of live witnesses to be called to testify, and expected order, shall be made 48 hours in advance of the witness testifying. Any new witness for a Monday shall be disclosed on Friday before 9:00 p.m. (Eastern Standard Time). Parties shall use good faith efforts to notify opposing counsel of witnesses to be presented by deposition designations 24 hours in advance of their use at trial, but the intent of this is not to preclude a party from utilizing a deposition designation if time allows for such use during the natural progression of the trial.

23. Either party shall be permitted to divide its opening statement and/or closing argument by and between its co-counsel.

IT IS SO ORDERED.

5 - 20 - 2015
DATE



CHIEF JUDGE EDMUND A. SARGUS, JR.