

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. 28

To facilitate the administration of this litigation, expedite discovery, and conserve judicial resources, the Court hereby enters the following Case Management Order with respect to individual actions filed after the 2017 MDL Global Settlement.

I. Scope and Effect of Order

This Order applies to all C8 personal injury actions related to the *Leach* Settlement Agreement that are transferred to *In re: E. I. du Pont de Nemours & Company C-8 Personal Injury Litigation* (“MDL 2433”) by the Judicial Panel on Multidistrict Litigation (“JPML”), and all related C8 personal injury actions related to the *Leach* Settlement Agreement that are originally filed in or removed to this Court.

II. Selection, Discovery, Pretrial, and Trial Schedule for the Post Settlement Filed Cases

A. The PSC and DuPont have each selected four cases to be worked up for trials. As set forth in Pretrial Order No. 48 (“PTO 48”) [ECF No. 5178] and the parties’ correspondence with the Court in response thereto, four cases have been set for trial in the following order:

- i. *Angela & Teddy Swartz v. E. I. du Pont de Nemours & Co., et al.*, Case No. 2:18-cv-136 (trial start date Oct. 21, 2019);
 - ii. *Travis & Julie Abbott v. E. I. du Pont de Nemours & Co., et al.*, Case No. 2:17-cv-998 (trial start date Jan. 21, 2020);
 - iii. *James & Lori Jean Swaney v. E. I. du Pont de Nemours & Co.*, Case No. 2:18-cv-149 (trial to start approximately 10 weeks after *Abbott*);
and
 - iv. *Josiah Leggett v. E. I. du Pont de Nemours & Co.*, Case No. 2:18-cv-153 (trial to start approximately 10 weeks after *Swaney*).
- B. Nothing herein prevents or precludes the parties from seeking adjustments to trial dates or the setting of additional trials for other filed cases, for good cause shown.
- C. For each of these trials, the Court will issue its own standing order for pretrial deadlines. *See, e.g.*, Case Management Order No. 26 (“CMO 26”) [ECF No. 5185] (“Pretrial and Trial Schedule” for *Swartz*); Case Management Order No. 27 (“CMO 27”) [ECF No. 5186] (“Pretrial and Trial Schedule” for *Abbott*).
- D. To the extent that there is a foundational issue that may be dispositive of any case set for trial, DuPont may file an initial dispositive motion once it has gathered the necessary discovery to support the motion. If DuPont files a motion on an initial foundational issue, it will not preclude DuPont from filing a subsequent dispositive motion in the same case on other issues at a later time.

III. Scope of Discovery in Trial Cases

- A. During the fact discovery period, 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 8.
- B. 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 3 "will call" witnesses may be further enlarged.
- C. For any Case-Specific Expert, the first deposition of that witness 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 2 hours for each case, and will be limited to new (previously undisclosed) opinions and/or new information referenced or relied upon in any subsequent report by and such expert that was not covered at a prior deposition(s) of that expert in this MDL.
- D. 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 or earlier trial pool cases in this MDL. Subsequent depositions will be allowed only on new (previously undisclosed) opinions 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(s) of that expert in this MDL.

IV. Scope of Discovery in Non-trial Cases

- A. Parties are permitted to conduct discovery in non-trial cases related to legal issues, including *Leach* class membership, bar to recovery based upon workers compensation laws, statute of limitations, no Probable Link disease, prior release or Master Settlement Agreement bar. The Parties may move for early summary judgment, if they desire, on those issues.
- B. Any deposition taken of a Plaintiff, the Plaintiff's treating medical provider, and/or other case-specific witness should be taken in full with respect to that particular case during the initial deposition sitting. A subsequent deposition of said deponent(s) with respect to that case will not be permitted without agreement of the parties or leave of Court upon a showing of good cause.
- C. If DuPont files a motion on an initial foundational issue, it will not preclude DuPont from filing a subsequent dispositive motion in the same case on other issues at a later time, and nothing herein precludes plaintiff or DuPont from seeking costs and/or sanctions in connection with any summary judgment motion filed on an initial foundational issue.

V. Ancillary Matters

A. As noted above, the schedule for additional pre-trial matters such as motions *in limine*, deposition designations, exhibit lists, witness lists, jury instructions, jury charges, final pre-trial dates, and any other pre-trial matters, shall be addressed by subsequent orders. *See, e.g.*, CMO 26 & CMO 27.

B. Should either party request to preserve one of its own witness's testimony via video tape for use at trial, the other party shall meet and confer and make reasonable efforts to reach agreement on such a request. If the testimony to be preserved is of a new witness who has not previously been deposed or testified at trial in any Prior Action (as defined in this Court's prior Orders), 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.

C. With respect to any motions to reargue and/or reconsider issues that have previously been litigated and adjudicated in prior cases, the moving party should note the prior ruling and explain the basis for modifying or changing the Court's ruling. In addition, any party may preserve for appeal their objections to one or more of the Court's prior rulings, and their prior arguments regarding the same, by making a short filing that notes the prior ruling(s) and incorporates by reference their prior arguments and support.

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.

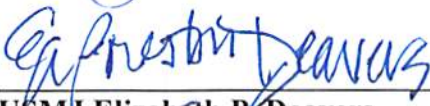
IT IS SO ORDERED.

1-4-2019

Date

1-7-2019

Date

USDJ Edmund A. Sargus, Jr.


USMJ Elizabeth P. Deavers