

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

This document relates to: ALL CASES.

PRETRIAL ORDER NO. 37

July 22, 2015 Conference Order

This matter came before the Court for an in-person status conference on July 22, 2015. This Court issued an order memorializing that conference that was docketed at number 4116. That order incorrectly identifies itself as Pretrial Order No. 36, and it also exchanges the agreed upon plaintiffs for the third and fourth trials. This Order replaces that one in its entirety. This Order memorializes the results of the July 22, 2015 conference as follows:

Initially the Court addressed the selection of the plaintiffs whose cases will be tried as the third and fourth trials in this MDL. The Court suggested, and the parties agreed, that David Freeman's case will be tried third and Tina Dowdy will follow as the fourth trial. The Court has reserved early March and late April 2016 for these two trials, respectively.

The Court next discussed with the parties issues related to the first trial that will be held

on September 14, 2015, including the following:

*The trial is expected to last approximately four weeks. The trial will be conducted five days per week from 9:00 a.m. to 5:00 p.m.

*The Court will utilize supplemental preliminary jury questionnaires. The parties shall provide an agreed-upon supplemental questionnaire to the Court by the first week in August 2015.

*The parties will consider the number of jurors, either eight or nine, that they prefer and report their decision to the Court at the next conference.

*The parties shall provide to the Court approximately ten days before the trial their proposed voir dire questions. This modifies the date that is currently established in Case Management Order No. 9 (“CMO 9”), at paragraph 21.

*The parties will be permitted a maximum of one and one-half hours for their opening statements.

*Any exhibits that the parties plan to use during their opening statements should be exchanged and agreed upon. If the parties cannot come to agreement, the Court will resolve the dispute at the final pretrial conference.

Continuing to the following agenda item, the parties discussed their motions *in limine*, totaling forty, that they filed on July 20, 2015. The Court modified the previously established briefing schedule to provide for the memoranda in opposition to be filed on or before August 10, 2015. No replies are permitted. This briefing schedule modifies the one established in CMO 9, at paragraph 15. The Court scheduled an in-person hearing on the motions *in limine* for August 14, 2014, at 9:00 a.m.

Next, the parties addressed the issue of trial exhibits, on which they are still unable to come to agreement. The parties stated their respective positions on the main disagreement, which focused on authentication of a vast number of exhibits. The Court reminded to the parties that the issue of authentication is a separate one from admissibility. All were in agreement that

determination of the motions *in limine* will aid in resolving the current impasse on the exhibit issue. Consequently, the Court tabled the issue and will address it at the hearing on the motions *in limine*.

The Plaintiffs' Steering Committee ("PSC") next raised the issue of deposing witnesses from DuPont's trial witness list. The parties had previously agreed to permit the deposition of any witness who has not been previously deposed. The PSC requested permission to depose during the trial, on an evening or weekend, any witness who is ultimately chosen to testify. The parties agree that, similar to the exhibit issue, the Court's disposition of the motions *in limine* will assist in resolving this issue because a ruling will narrow the issues such that the parties will be in a better position to identify the witnesses they intend to call. Thus, the Court will confront this issue after resolution of the motions *in limine*.


The next agenda item was the *Lexecon* waiver issue. The parties indicated that their current expectation is that all of the individual cases in this MDL will remain in this Court for trial.

The Court subsequently questioned the parties about the PSC's request to expedite briefing on Plaintiffs' motion to compel that was filed on July 20, 2015. The Court, agrees that an expedited schedule is needed so that it will have the opportunity, if necessary, to address the motion at the August 14, 2015 hearing. DuPont's memorandum in opposition shall be filed on or before August 4, 2015, and Plaintiffs' reply in support of their motion shall be filed no later than August 10, 2015.

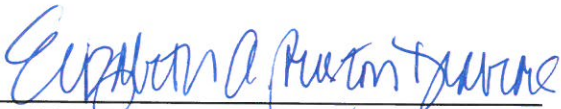
Finally, the date for the next status conference will be decided at the August 14, 2015 hearing on the motions *in limine*.

IT IS SO ORDERED.

8-3-2015
DATE



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



ELIZABETH A. PRESTON DEAVERS
UNITED STATES MAGISTRATE JUDGE