

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:

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


CASE MANAGEMENT ORDER NO. 11

Pretrial Schedule for Wolf Trial

The Final Pretrial Conference is scheduled for November 25, 2015 at 12:00 p.m. (ECF No. 3552.) All trial counsel must attend the conference. Attached to this CMO is the Court's Final Pretrial Order for the trial of John M. Wolf. The parties shall jointly submit the attached Final Pretrial Order on or before November 9, 2015.

IT IS SO ORDERED.

10-16-2015
DATE



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

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FINAL PRETRIAL ORDER

The Court held a final pretrial conference in this case on November 10, 2015 at 10:00
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.)

CMO 9 (ECF No. 3549) established the dates on which the parties designated, exchanged, and lodged objections to trial depositions. Those procedures are complete. The parties shall provide to the Court any unresolved objections by **November 9, 2015**.

G. Exhibits

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.

CMO 9 (ECF No. 3549) governed the exchange of Exhibit Lists and objections to the exhibits between the parties. Any unresolved objections to the Exhibit Lists shall be submitted to the Court by **November 9, 2015**.

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. MOTIONS IN LIMINE

16. Motions *in limine* shall be filed by **October 26, 2015**. The parties shall indicate in the motion whether the Court ruled on the issue previously, whether they are moving to preserve, or whether they are asking for reconsideration because of new or different circumstances or other good cause.

17. Responses in opposition to motions *in limine* shall be filed by **November 5, 2015**.

18. No reply is permitted without leave of Court, and only then for good cause.

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*." The parties shall indicate in the index whether the Court ruled on the issue previously, whether they are moving to preserve, or whether they are asking for reconsideration.

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.

VI. 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.

VII. 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 **November 16, 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 **November 25, 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.

VIII. 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:

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

Trial Counsel for Plaintiff

Trial Counsel for Defendant