

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.

This document relates to:

Travis and Julie Abbott v. E. I. du Pont de Nemours and Company, et al., Case No. 2:17-cv-998

CASE MANGEMENT ORDER NO. 27

Pretrial and Trial Schedule

Travis and Julie Abbott's case is the second scheduled for trial in the newly-filed, post-settlement cases in this multidistrict litigation ("MDL").

I. TRIAL AND FINAL PRETRIAL CONFERENCES

A. Trial

1. The Abbott's case is scheduled for trial on Tuesday, January 21, 2020, at 9:00 a.m. in Courtroom 2.
2. Trial counsel shall meet in the chambers of Chief Judge Sargus at 8:30 a.m. on each day of the trial.

B. Final Pretrial Conferences

1. The first final pretrial conference shall be held on Monday, January 6, 2020, at 9:00 a.m. in the chambers of Chief Judge Sargus.
 - a. The Court will resolve the objections to the deposition designations and objections to the exhibits.
 - b. All trial counsel must appear.
2. The second final pretrial conference shall be held on Wednesday, January 15, 2020 at 9 a.m. in the chambers of Chief Judge Sargus.

- a. The Court will rule on the motions *in limine*.
- b. All trial counsel must appear.
- c. Attached to this CMO is the Court's Final Pretrial Order ("CMO 12-A"). The parties shall jointly submit CMO 12-A on or before **Friday, January 17, 2020.**

II. EXPERT WITNESSES

A. Expert Designations

1. On or before **May 21, 2019**, Plaintiff shall designate, pursuant to Fed. R. Civ. P. 26, his expert witnesses.
2. On or before **May 31, 2019**, Defendant shall designate, pursuant to Fed. R. Civ. P. 26, its expert witnesses.
3. On or before **June 6, 2019**, Plaintiff shall designate its rebuttal expert witnesses, if any.

B. Expert Discovery

1. Depositions of expert witnesses shall be completed by **June 20, 2019**. The parties have indicated that it is their intention that the depositions of Plaintiff's expert witnesses be taken before Defendant's expert witnesses addressing the same subject matter. Nothing in this Order requires that all of Plaintiff's expert depositions must be completed before any Defendant expert depositions are undertaken.
2. If any of Plaintiff's treating or diagnosing doctors who are deposed during the bellwether discovery period are later designated as testifying experts, then the designating party will be required to make timely expert disclosures for such witness and the other party may take that doctor's deposition as an expert witness.
3. The limitations on expert discovery set-forth in Fed. R. Civ. P. 26, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply.

III. SUMMARY JUDGMENT AND *DAUBERT* MOTIONS

A. Court's Previous Decisions

The parties shall indicate in any summary judgment or *Daubert* 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.

B. Deadlines

1. Plaintiff and Defendant shall file any motions for summary judgment, partial summary judgment, and/or *Daubert* motions on or before July 9, 2019.
2. The parties shall file any response to these motions by July 16, 2019.
3. Reply briefs, if any, shall be filed on or before July 23, 2019.

IV. WITNESS LISTS

A. Deadlines

1. Plaintiff shall serve his witness list by October 21, 2019.
2. Defendant shall serve its witness list by October 28, 2019.

B. Procedures

1. 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.
2. If either party discloses a fact witness who has not previously been deposed in this MDL, *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 an agreed upon time period within the framework of the existing deadlines and trial schedule.
3. The ability to call rebuttal or sur-rebuttal witnesses will be governed by the Federal Rules. Nothing in this section shall prohibit Plaintiff 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 MDL, *Leach, Tennant, Rowe/Scott, Rhodes, or Little Hocking* litigation.

V. DEPOSITION DESIGNATIONS

A. Deadlines

1. Plaintiff shall serve page/line designations of deposition testimony by October 18, 2019.
2. Defendant shall serve (a) page/line counter-designations of deposition testimony; (b) objections to Plaintiff's page/line deposition designations; and (c) affirmative page/line designations of deposition testimony October 25, 2019.
3. Plaintiff 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 by November 1, 2019.
4. Defendant shall serve objections to Plaintiff's page/line counter designations by November 8, 2019.
5. 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.

B. Due to Court

All unresolved objections must be submitted to the Court by December 16, 2019, at 9:00 a.m..

VI. EXHIBIT LISTS

A. Deadlines

1. Plaintiff shall serve an exhibit 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 November 18, 2019. An electronic copy of the exhibits shall also be provided on or before November 18, 2019, in a format to be agreed by the parties. Demonstrative exhibits shall be shown to opposing counsel before being displayed to the jury.
2. Defendant shall serve its exhibit list 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 November 25, 2019. An electronic copy of the exhibits shall also be provided by November 25, 2019, in a format to be agreed by the parties. Defendant shall serve any objections to plaintiff's exhibit list by December 2,

2019.

3. Plaintiff may serve any objections to Defendant's exhibit list by **December 9, 2019**, at 9:00 a.m..
4. The parties shall have the right to supplement their exhibit list(s) in light of any and all ongoing discovery.

B. Due to Court

All unresolved objections must be submitted to the Court by **December 20, 2019**, at 9:00 a.m..

VII. MOTIONS *IN LIMINE*

A. Deadlines

1. Motions *in limine* shall be filed by **January 3, 2020**.
2. Responses in opposition to motions *in limine* shall be filed by **January 8, 2020**.
3. No reply is permitted without leave of Court, and only then for good cause.

B. Procedures

1. The following apply to all *in limine* motions:
 - a. **Index to motions *in limine*:** If filing more than one *in limine* motion the party shall submit to the Court and to the opposing party an "Index to Motions *in Limine*."
 - b. **Attachments to motions *in limine*:** If filing an *in limine* motion seeking an evidentiary ruling on a category of documents, testimony, or argument the party 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.
2. The parties shall indicate in any *in limine* 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.

VIII. VOIR DIRE

The parties shall exchange proposed voir dire questions on January 6, 2020. The parties shall submit their proposed voir dire questions to the Court by January 10, 2020.

IX. 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 January 10, 2020.
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 **January 15, 2020**.

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.

X. MODIFICATION

The parties may by agreement modify the dates within this CMO that affect only the parties. All deadlines established for submissions to the Court may only be modified for good cause and with the permission of the Court.

XI. ADDITIONAL GUIDELINES


The parties have agreed that, given the nature of this trial, including the extraordinary amount of documents and preparation, 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.

The parties shall address questions about this Order to the Court's Career Law Clerk, Penny Barrick, who can be reached at (614) 719-3240 or Penny_Barrick@ohsd.uscourts.gov. When calling or emailing, please have counsel for all parties participating or with fewer than all counsel participating with express permission of non-participating counsel.

IT IS SO ORDERED.

12-11-2018
DATE



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