UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re WELDING ROD PRODUCTS LIABILITY LITIGATION	)	Case No. 1:03-CV-17000
	)	MDL Docket No. 1535
THIS DOCUMENT RELATES TO ALL ACTIONS	)	JUDGE O'MALLEY

SECOND AMENDED SUPPLEMENTAL CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the Case Management Order ("CMO") entered in this proceeding on December 9, 2003 shall be supplemented and amended as follows:

I. EXPERT DISCOVERY

A. Core Expert Discovery

1. The core expert depositions authorized in Paragraph XIII.B.5 of the existing CMO shall be completed on or before December 20, 2004.

B. *Daubert* Motion Process – Core Experts

1. Motions regarding the admissibility of any testimony proposed by any core experts identified pursuant to Paragraphs XIII.A.1 or XIII.A.2 of the existing CMO (*Daubert* motions) shall be filed on or before January 18, 2005. Oppositions to any such motions shall be filed on the earlier of (a) the date 40 days after the motion is filed or (b) on February 23, 2005. Reply briefs in support of such motions shall be filed on the earlier of (a) the date 21 days after the opposition is filed or (b) on March 11, 2005.

2. Commencing on April 18, 2005, the Court will conduct a hearing on all pending motions regarding the admissibility of testimony proposed by core experts. Prior to that date, the Court will confer with the parties about the format and content of those hearings. The Court is presently reserving a two-week period for those hearings.

3. With the concurrence of the Plaintiffs' Co-Lead Counsel and Defendants' Liaison Counsel, the Court intends to invite state courts with pending welding rod cases in which all or some of the core experts have been or are likely to be named to conduct their respective reviews of the admissibility of the testimony of those experts on a coordinated basis, possibly by conducting simultaneous hearings on those motions. The Court expects to confer with those state courts and with the parties about the protocols for those potential coordinated hearings.

II. PARKINSON'S DISEASE MOTION

1. On June 15, 2004, defendants filed a "Motion To Exclude All Testimony That Exposure To Welding Fumes Causes Parkinson's Disease" (the "PD Motion"). The schedule for the processing of that motion shall be as follows:

a. On or before July 22, 2004, plaintiffs may serve requests for written discovery regarding defendants' PD motion.

b. On or before August 23, 2004, defendants shall respond to those requests for written discovery (with the understanding that any objections to those requests will be served promptly after the requests are served), and shall produce all materials relied upon by the experts identified in defendants' PD Motion and any materials relating to any studies conducted and/or relied upon by such experts.

c. On or before September 29, 2004, plaintiffs will file their opposition to the PD Motion, including designations and Rule 26(a)(2) reports for any experts plaintiffs intend to use in opposition to defendants' motion, as well as all materials relied upon by such experts and any materials relating to any studies conducted and/or relied upon by such experts. At that time, plaintiffs will also provide all studies, articles, records, data, videos, photos, or any other materials that plaintiffs claim support their opposition. On this date, the defendants may commence discovery from plaintiffs regarding their PD Motion opposition, and the parties may commence depositions of each others' experts designated in their PD Motion briefing.

d. On or before November 15, 2004, defendants will file their reply brief in support of their PD Motion, including designations and Rule 26(a)(2) reports for any experts defendants rely upon in their reply, as well as all materials relied on by such experts and any materials relating to any studies conducted and/or relied upon by such experts. At that time, defendants will provide all studies, articles, records, data, videos, photos, or any other materials that defendants claim support their reply. On this date, plaintiffs may commence further discovery from defendants regarding their PD Motion reply, including depositions of experts designated in the reply.

e. On or before January 10, 2005, plaintiffs may file a surrebuttal brief in opposition to the PD Motion.

f. On February 1, 2005, the Court will conduct a hearing on the PD Motion. Prior to that date, the Court will confer with the parties about the format and content of that hearing. The Court is presently reserving a one-week period for that hearing.

III. PLAINTIFFS' "FACT SHEETS"

1. Plaintiffs' Co-Lead Counsel and Defendants' Liaison Counsel have agreed on the content of a "fact sheet" questionnaire that will be completed, without objections, by each plaintiff in this proceeding. (A copy of the "Fact Sheet" is attached as Tab A.) The purpose of the "Fact Sheet" is to provide basic factual information about each plaintiff's claims, so as to streamline the case-specific discovery process. Each plaintiff shall respond to the "Fact Sheet" as though it were standard discovery, providing responses in accordance with Fed. R. Civ. P. 33(b)(1) and (2) (as to interrogatory-type questions) and Fed. R. Civ. P. 34(b) (as to document requests).

2. Plaintiffs whose initial complaints were filed before May 1, 2004 shall serve their "Fact Sheet" responses on or before September 15, 2004. Plaintiffs whose initial complaints were filed between May 1, 2004 and May 31, 2004 shall serve their "Fact Sheet" responses on or before September 30, 2004. Plaintiffs whose initial complaints were filed after June 1, 2004 up to the date of entry of this Order shall serve their "Fact Sheet" responses on or before October 15, 2004. In cases filed after the date of entry of this Order, plaintiffs shall serve their "Fact Sheet" responses within 45 days of the date the case is filed in or transferred to this MDL proceeding.

3. The parties understand that logistical difficulties may be encountered in contacting plaintiffs and securing completion and execution of the "Fact Sheets," and they have agreed that they will make reasonable accommodations on the enforcement of the deadlines in the foregoing paragraph. However, the parties have agreed that plaintiffs will strive for substantial compliance with those deadlines, with most plaintiffs serving their responses on the designated deadlines.

IV. INITIAL TRIAL DATES

1. By agreement of the parties, the Court intends to schedule three initial trials in this MDL proceeding, each to be selected with an eye to providing opportunities for educating the Court and the parties regarding the science and other issues that are likely to recur in litigating individual cases. The parties shall confer and, in consultation with the Court, shall make the designation of the first case to be tried on or before September 15, 2004. The trial of that case shall commence on May 2, 2005, with the Court reserving three weeks for the completion of that proceeding.

2. The parties shall confer and, in consultation with the Court, shall make the designation of the other two cases to be tried before this Court on or before November 1, 2004. The Court expects to schedule the second trial to commence in the third quarter of 2005 and the third trial to commence in the fourth quarter of 2005, with the Court reserving three weeks for each of those trials.

3. At the time that the second and third cases are selected for trial, the parties shall submit a proposal for the scheduling of the proceedings necessary to prepare those cases for trial.

V. DISCOVERY CUT-OFF DATES

1. Paragraph XI.G of the existing CMO is hereby amended as follows:

a. All core fact discovery – that is, all general fact discovery that may be relevant to more than one case in this proceeding – shall be completed by October 22, 2004.

b. All case-specific fact discovery in the first case to be tried before the Court in this proceeding shall be completed by December 15, 2004.

c. All case-specific fact discovery in the second and third cases to be tried before the Court in this proceeding shall be completed pursuant to the schedule to be submitted by the parties pursuant to Section IV.3 above, as adopted by this Court.

d. All case-specific fact discovery (other than the "fact sheets" discussed in Section III above) in all other cases in this MDL proceeding shall be deferred, subject to further scheduling orders by this Court.

VI. CASE-SPECIFIC EXPERTS IN INITIAL MDL TRIAL CASE

1. On or before October 22, 2004, Plaintiffs shall identify and provide Rule 26(a)(2) reports for case-specific experts expected to testify in the initial MDL trial case .

2. On or before November 22, 2004, Defendants shall identify and provide Rule 26(a)(2) reports for case-specific experts expected to testify in the initial MDL trial case.

3. Discovery of the parties' case-specific experts shall be completed by January 21, 2005.

4. On or before February 21, 2005, the parties shall file any *Daubert* motions regarding case-specific experts in the initial MDL trial case.

5. On or before March 21, 2005 the parties shall file oppositions to any *Daubert* motions regarding case-specific experts in the initial MDL trial case.

6. On or before April 4, 2005, the parties shall file their replies in support of any *Daubert* motions regarding case-specific experts in the initial MDL trial case.

7. Commencing on April 18, 2005 the Court shall conduct a hearing on any *Daubert* motions filed as to case-specific experts in the initial MDL trial case.

VII. PENDING RULE 12 MOTIONS

1. If the Court determines it is appropriate, the Court will schedule a hearing on the pending Rule 12 motions filed by Caterpillar, General Electric and Deloro Stellite, and joined by other defendants, on October 13, 2004, at 10:00 A.M.

VIII. CASE-SPECIFIC DISPOSITIVE MOTIONS IN INITIAL MDL TRIAL CASE

1. On or before February 21, 2005, the parties shall file any dispositive motions in the initial MDL trial case.

2. On or before March 21, 2005 (or 30 days after the filing of a motion), the parties shall file their oppositions to any dispositive motions in the initial MDL trial case.

3. On or before April 4, 2005 (or 15 days after the filing of any opposition), the parties shall file replies in support of any dispositive motions in the initial MDL trial case.

IT IS SO ORDERED.

Kathleen M. O'Malley

KATHLEEN MCDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE