

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: GADOLINIUM-BASED
CONTRAST AGENTS PRODUCTS
LIABILITY LITIGATION

Case No. 1:08GD50000

MDL No. 1909

Judge Dan Aaron Polster

This Document Applies to All Cases:

**AMENDED CASE MANAGEMENT ORDER NO. 22:
THIRD BELLWETHER TRIAL SCHEDULE (KNASE)**

All provisions of Case Management Order No. 22 (MDL ECF No. 835) remain in force except that the Paragraphs set forth below supersede the corresponding Paragraphs of Case Management Order No. 22:

10. Pretrial Disclosures:

a. Deposition Designations:

- i. Deposition designations sought to be used in either party's affirmative case shall be disclosed to the other party on or before October 15, 2010;
- ii. Any objections to deposition designations shall be served on the other party on or before November 30, 2010;
- iii. Counter-designations shall be served on the other party on or before November 30, 2010;
- iv. Objections to counter-designations shall be served on the other party on or before December 10, 2010;

- v. The parties shall meet and confer to attempt to resolve objections to deposition designations or counter-designations. In the event that agreement cannot be reached, each party shall submit objections to the Court for ruling by no later than 3 p.m. on December 22, 2010.
- b. Witness Lists shall be handled in accordance with ¶ 12 below.
- c. Exhibit Lists shall be handled in accordance with ¶ 12 below. The parties to the third Bellwether trial shall confer and attempt to submit a list of joint exhibits to the Court. To the extent that exhibits cannot be agreed upon, each side shall submit a separate exhibit list on date consistent with ¶ 12 below.
- d. Proposed Jury Instructions:
 - i. Counsel are required to provide jury instructions to the Court only on the issues of law that are the subject of the trial. The Court will provide general boilerplate instructions on issues such as credibility, *etc.* Counsel shall also provide proposed jury interrogatories and verdict forms;
 - ii. Counsel shall exchange proposed jury instructions and interrogatories no later than fourteen (14) calendar days prior to the Final Pretrial. Counsel shall then confer regarding their respective proposals and make diligent efforts to reach agreement upon a set of joint jury instructions;

- iii. No later than January 6, 2011, a single joint submission shall be filed and delivered (or faxed) to the Court providing: (1) agreed upon instructions and interrogatories; (2) instructions and/or interrogatories and/or verdict form proposed by the plaintiffs, but opposed by defendants; and (3) instructions, interrogatories, and/or verdict form proposed by the defendants, but opposed by plaintiffs. The joint submission shall be provide to the Court as *one document*, divided by the above-described sections;
 - iv. All proposed instructions shall be supported by citations to legal authority. Any and all objections to proposed jury instructions must be accompanied by a statement or reasoning why the Court should not give such instruction. The objection must similarly be accompanied by a citation to legal authority. A mere statement of “objection” is not sufficient and will not be considered;
 - v. The single joint submission of jury instructions, interrogatories, and verdict form to the Court shall be made in writing *as well as produced on a 3.5” computer diskette*. The diskette should be formatted for an IBM compatible computer. The Court is equipped with WordPerfect 8.0. The diskette shall be delivered to chambers at the Final Pretrial.
- e. Voir Dire:
- i. The Court will conduct initial *voir dire* of the panel and of the individual panel members. The Court will thereafter allow one

counsel for each party to question the panel briefly on issues not addressed by the Court;

ii. Proposed *voir dire* questions for the Court's questioning are to be exchanged and a copy delivered (or faxed) to chambers no later than January 10, 2011;

iii. Proposed *voir dire* questions shall be provided to the Court on the same diskette as the Proposed Jury Instructions or the files shall be e-mailed to the Court at the time of filing.

11. Motions *in Limine* on the third Bellwether Trial case:

a. Any motions *in limine* shall be filed on or before October 15, 2010;

b. Opposition to any motions *in limine* shall be filed on or before October 29, 2010;

c. Any reply in further support of any motions *in limine* shall be filed on or before November 12, 2010;

d. Oral argument, if any, on motions *in limine* will be set by subsequent Order of this Court;

e. All other aspects of any motion *in limine* shall be governed by the Local Rules of this District.

12. Final Pretrial. Consistent with this Court's standing order, the Court will hold a Final Pretrial Conference for the third Bellwether trial case January 12, 2011, and in consideration of any motions then pending. Stipulations of fact, a joint preliminary statement (which is to be a neutral statement of the case), trial briefs, and witness and exhibit lists shall be filed in accordance with this Court's standing Trial Order with the modification that all Witness

and Exhibit lists shall be submitted nineteen days prior to the Final Pretrial (with any objections to witnesses or exhibits being due five days before the Final Pretrial) instead of the time frames in the standing Trial Order.

- a. The Joint Preliminary Statement and Witness List shall also be provided to the Court on the same type of diskette as the Proposed Jury Instructions and Proposed *Voir Dire* questions.

13. The Third Trial shall commence on January 24, 2011.

14. This paragraph intentionally left blank.

15. This paragraph intentionally left blank.

For the convenience of the Court and the parties, the table attached as Attachment A summarizes the deadlines set in this Case Management Order. This table is intended for informational purposes only, and the descriptions associated with the deadlines do not in any way modify the terms of this CMO.

IT IS SO ORDERED.

Dated: October 29, 2010

s/Dan A. Polster
Honorable Dan Aaron Polster
United States District Judge

ATTACHMENT A TO CMO #22

Event	Deadline
Third Bellwether Trial Discovery Plan and Trial Order:	
Case Specific Fact Discovery Cutoff	August 3, 2010 (Tuesday)
Defendants identify Corporate Witnesses to be called at trial who have not been deposed and Defendants identify Corporate Witnesses who have been deposed to provide case-specific testimony about which (s)he has not been deposed.	June 11, 2010 (Friday) June 11, 2010 (Friday)
Plaintiffs identify Fact Witnesses to be called at trial who have not previously been identified and deposed.	June 11, 2010 (Friday)
Case-Specific Expert Discovery Deadline for Plaintiff to submit R 26(a)(2) expert reports. Deadline for Defendant to submit R 26(a)(2) expert reports. Case Specific Expert Discovery Deadline	June 1, 2010 (Tuesday) July 8, 2010 (Thursday) August 10, 2010 (Tuesday)
Case-Specific <i>Daubert</i> / Dispositive Motions Deadline Opposition Briefs Reply Briefs	September 8, 2010 (Wednesday) September 28, 2010 (Tuesday) October 12, 2010 (Tuesday)

Generic Expert Discovery	
Deadline for Generic Expert Depositions	December 7, 2009 (Monday)
Deadline for Generic Expert <i>Daubert</i> Motions	February 12, 2010 (Friday)
Opposition Briefs	March 12, 2010 (Friday)
Reply Briefs	March 26, 2010 (Friday)
Deposition Designations	October 15, 2010 (Friday)
Objections and Counter designations	November 30, 2010 (Tuesday)
Objections to Counter designations	December 10, 2010 (Friday)
Submissions to Court regarding unresolved objections	December 22, 2010 (Wednesday)
Motions in Limine	October 15, 2010 (Friday)
Opposition Briefs	October 29, 2010 (Friday)
Reply Briefs	November 12, 2010 (Friday)
Witness Lists and Exhibit Lists	December 22, 2010 (Wednesday)
Objections to Witness and Exhibit Lists	January 10, 2011 (Monday)
Jury Instructions	
Exchange among parties	December 22, 2010 (Wednesday)
Joint submission	January 6, 2011 (Thursday)
Proposed Voir Dire Questions	January 10, 2011 (Monday)
Stipulations and Joint Preliminary Statement and Trial Briefs	January 10, 2011 (Monday)
Final Pretrial Conference	January 12, 2011 (Wednesday)
Trial	January 24, 2011 (Monday)