

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CUYAHOGA COUNTY, OHIO, et al.,)	Case No.: 1:17-OP-45004
)	
Plaintiffs,)	JUDGE DAN AARON POLSTER
)	
v.)	
)	<u>CIVIL JURY TRIAL ORDER</u>
PURDUE PHARMA LP, et al.,)	
)	
Defendants.)	
_____)	
SUMMIT COUNTY, OHIO, et al.,)	Case No. 1:18-OP-45090
)	
Plaintiffs,)	JUDGE DAN AARON POLSTER
)	
v.)	
)	<u>CIVIL JURY TRIAL ORDER</u>
PURDUE PHARMA LP, et al.,)	
)	
Defendants.)	
_____)	

On April 23, 2019, the Court held a closed conference with Track One trial counsel in the above-captioned consolidated cases scheduled for trial on October 21, 2019. At present, there are 11 claims asserted against approximately 23 Defendant Families¹ in the consolidated cases. Due to the number of claims and Defendants, the primary purpose of the conference was to discuss trial management issues such as the length of the trial, a limitation on the number of pretrial motions that may be filed, and jury selection.

I. PRETRIAL MOTIONS

Trial counsel for both sides acknowledged at the April 23rd conference that, in order to hold a manageable trial, the number of claims and Defendants must be substantially reduced

¹For example, the Purdue Family includes Purdue Pharma, LP, Purdue Pharma, Inc. and The Purdue Frederick Company, Inc.

before the beginning of trial—via rulings on pretrial motions, settlements, and/or voluntary dismissals.

To conserve the parties' and the Court's resources, the Court **DIRECTS** trial counsel to meet, confer, attempt to reach agreement, and email to chambers² **no later than 12:00 p.m. on Wednesday, May 15, 2019**, a single document proposing reasonable numerical and page limits on each *type* of motion, such as Daubert, summary judgment and in limine. Trial counsel agreed that they will file, where possible, *consolidated* motions, responses and replies—and will take this into consideration when proposing numerical and page limits on the various types of motions. If trial counsel cannot reach agreement on *reasonable* limits by that deadline, the Court will impose its own.

The deadline for filing dispositive and Daubert motions is **12:00 p.m. on Friday, June 28, 2019**, and, as will be addressed in Section III.b.4, the deadline for filing motions in limine is **12:00 p.m. on Wednesday, September 25, 2019**.

II. FINAL PRETRIAL CONFERENCE

The Court has scheduled a Final Pretrial Conference in the consolidated cases beginning at **12:00 p.m. on Tuesday, October 15, 2019**. Pursuant to Local Rule 16.3(e), the parties and lead counsel of record must be present and prepared with full authority to discuss all aspects of the case, including any pending motions, witness and exhibit lists, scheduling, and settlement. Counsel must confer with their clients and with each other regarding their final settlement posture no later than two (2) business days before the Final Pretrial Conference.

III. TRIAL

The consolidated cases are scheduled for a Jury Trial beginning at **9:00 a.m. on Monday, October 21, 2019**, in the courtroom of the Honorable Dan A. Polster, Courtroom 18B of the Carl B. Stokes United States District Courthouse, 801 W. Superior Ave., Cleveland, Ohio.

²The chambers' email address is polster_chambers@ohnd.uscourts.gov.

Opening statements and the presentation of evidence will begin at **9:00 a.m. on Monday, October 21, 2019**, and will conclude with closing arguments and final jury instructions **no later than 5:30 p.m. on Friday, December 13, 2019**, with jury deliberations to follow. When the number of parties and claims have been reduced and finally resolved, the Court will determine the number of hours to allot each party with which to conduct its direct and cross examinations, rebuttal, and sur-rebuttal.³ Counsel are directed to plan their trial strategy accordingly.

Trial days begin at 9:00 a.m. and continue until approximately 5:30 p.m., unless circumstances dictate otherwise, and will include a one (1) hour lunch break and two (2) fifteen minute breaks. Counsel shall be present in the courtroom at 8:30 a.m. on trial days in order to address matters outside the presence of the jury. All parties are to be present in the courtroom at all times when the jury is seated.

a. Jury Selection

1. Jury Questionnaire Form

Approximately (4) four weeks before trial, the Jury Department will email to prospective jurors a Jury Questionnaire prepared by trial counsel that prospective jurors can complete online. (The Jury Department will also mail hard copies to prospective jurors in the event they either have no access to a computer or have difficulty completing the questionnaire online.) The Court **DIRECTS** trial counsel to meet, confer, reach agreement, and email to Special Master Cohen **no later than 12:00 p.m. on Wednesday, August 28, 2019**, a reasonably concise Jury Questionnaire. Special Master Cohen will resolve any issues the parties cannot agree on. Trial counsel shall take into consideration the questions on the Jury Department's form questionnaire, located at https://www.ohnd.uscourts.gov/sites/ohnd/files/CivilRules_AppendixC.pdf.

³Depending upon the final number of claims and Defendants, the Court may impose time limits such that the trial may conclude well before December 13, 2019.

2. Jury Selection Process and Deliberation

The Court expects to conduct jury voir dire the week preceding trial—beginning at **9:00 a.m. on Wednesday, October 16, 2019** and continuing through **no later than 5:30 p.m. on Friday, October 17, 2019**. The Court expects to voir dire approximately 50 prospective jurors each day until such time as the parties agree on 12 jurors. Any juror remaining on the panel at the conclusion of the trial will participate in deliberations.

b. Trial Documents

1. Joint Preliminary Statement

Trial counsel must meet, confer, and prepare a *single* Joint Preliminary Statement (not to exceed 2 pages, double-spaced) describing the cases in an impartial, easily understood, and concise manner for use by the Court at the outset of its voir dire and at the time the jury is impaneled. This statement will set the context of the trial for the jury and must be emailed to chambers **no later than 12:00 p.m. on Wednesday, September 25, 2018.**

2. Stipulations of Fact

Given the length and complexities of the trial, trial counsel acknowledged at the April 23rd conference the need to work together to prepare written stipulations as to *all uncontested facts* to be presented at trial. Stipulations must be filed with the Court **no later than 12:00 p.m. on Wednesday, September 25, 2019.** A signed copy of the stipulations must be submitted to the Court at the Final Pretrial Conference.

3. Voir Dire

The Court will conduct initial voir dire of the venire and of individual venire members. The Court will thereafter allow one counsel for each party to question the venire *briefly* on issues not addressed by the Court. Plaintiffs collectively and Defendants collectively (2 total documents) shall file proposed questions for the Court's voir dire **no later than 12:00 p.m. on Wednesday, September 25, 2019.** The Court will decide which questions to include in its own voir dire after which it will email its final voir dire questions to trial counsel.

4. Motions in Limine

The Court reiterates its direction to trial counsel to file, where possible, *consolidated* motions in limine, responses, and replies—and to meet, confer, and email to chambers, **no later than 12:00 p.m. on Wednesday, May 15, 2019**, a single document proposing reasonable numerical and page limits on in limine motions. *Supra*, Section I. Again, if the parties cannot agree on reasonable limits by this deadline, the Court will impose its own limits.

As with all other trial documents, the motions in limine must be filed **no later than 12:00 p.m. on Wednesday, September 25, 2019**. The deadline for filing responses is **12:00 p.m. on Wednesday, October 2, 2019**, and the deadline for filing replies is **12:00 p.m. on Monday, October 7, 2019**.

5. Witness Lists and Exhibit Lists

Trial counsel shall exchange witness lists and proposed exhibits **no later than 12:00 p.m. on Wednesday, September 11, 2019**.

Trial counsel must file witness lists and exhibit lists must be filed **no later than 12:00 p.m. on Wednesday, September 25, 2018**.

Witness lists must provide a *brief* description and purpose of each witness.

Regarding exhibit lists, the Court recognizes that, due to the number of exhibits involved in a seven-week trial, the Court's attached exhibit-list form may not be practical. The Court **DIRECTS** trial counsel to meet, confer, and agree upon an exhibit-list form that includes the columns on the attached form (i.e., Exhibit No., Description, I.D., Offered, Obj., Admitted, Not Admitted) and email it to chambers for the Court's review **no later than 12:00 p.m. on Wednesday, September 4, 2019**. **Joint exhibits are strongly encouraged.** Trial counsel shall meet, confer, and agree on a protocol for the marking of exhibits, and mark those exhibits before trial.

i. Objections to Witnesses or Exhibits

Parties should be mindful that the Court has limited time and resources to address a large number of objections to exhibits and witnesses. Due to the large number of exhibits and

witnesses expected to be produced at trial, counsel must make every effort to resolve objections before seeking the Court's assistance. Only those objections to a proposed witness or exhibit that have not been resolved among counsel must be filed **no later than 12:00 p.m. on Monday, October 7, 2019.** Such objections must include a succinct statement setting forth the reasons why the proposed witness or exhibit should not be permitted or admitted, as well as citations to legal authority.

ii. Continuing Obligation

Each attorney has a continuing obligation to supplement its client's witness and exhibit lists immediately upon learning of any additional witness or exhibit. Absent a showing of good faith, witnesses not included on the witness list or added to the list *well before the trial starts* will not testify at trial, and exhibits not listed on the exhibit list or added to the list *well before the trial starts* will not be introduced at trial. This rule applies to lay and expert witnesses.

6. Trial Briefs

Trial counsel must file trial briefs no later than **no later than 12:00 p.m. on Wednesday, September 25, 2018.**

A complete trial brief includes: (a) a statement of the facts; (b) a complete discussion of the controlling law together with citations to statutes and case law; and (c) a discussion of any evidentiary issues likely to arise at trial.

7. Jury Instructions, Verdict Forms, and Interrogatories

Counsel must provide jury instructions to the Court *only on the issues of law* that are the subject of the trial. To that end, the Court will email its boilerplate instructions to liaison counsel in short order.

Counsel must exchange proposed jury instructions, verdict forms, and interrogatories **no later than 12:00 p.m. on Wednesday, September 11, 2019.** Counsel must then meet, confer, and make *diligent efforts* to reach agreement on their respective proposals prior to the below September 25th filing deadline.

Counsel shall file **no later than 12:00 p.m. on Wednesday, September 25, 2019**, a single joint submission of (1) agreed upon instructions, verdict forms, and interrogatories; (2) instructions and/or interrogatories proposed by plaintiffs but opposed by defendants; and (3) instructions and/or interrogatories proposed by defendants but opposed by plaintiffs. The joint submission must be filed as *one document*, divided by the above-described sections. All proposed instructions must be supported by citations to legal authority. *Any and all objections* to proposed jury instructions must be accompanied by a **concise statement explaining why the Court should not give the instruction and citing legal authority**. A mere statement of “objection” is not sufficient and will not be considered.

8. Deposition Testimony

Whenever depositions (videotape or written) are intended to be used as evidence at trial, counsel proposing to use such deposition testimony must provide opposing counsel with pertinent transcript references **no later than 12:00 p.m. on Wednesday, September 11, 2019**. Counsel must confer with each other in an effort to resolve any objections they may have to planned deposition testimony.

As with objections to witnesses and/or exhibits, the Court has neither the time nor resources to address a large number of objections to deposition testimony. Counsel shall file only those objections that have been raised and not resolved by counsel **no later than 12:00 p.m. on Wednesday, October 2, 2019**. The brief shall contain citations to applicable legal authority.

No later than 12:00 p.m. on Thursday, October 10, 2019, counsel is instructed to notify the Courtroom Deputy, in writing, of those deposition transcripts that will be read into the record. The parties are responsible for providing transcripts to the Court.

When videotape depositions will be presented in lieu of live testimony, counsel must file a complete written transcript of the videotape deposition prior to its use and follow Local Civil Rule 32.1.

9. Emailing Trial Documents to Chambers

The following trial documents must, in addition to being filed, be emailed to Chambers in both WordPerfect *and* Word format **no later than 12:00 p.m. on Wednesday, September 25, 2019**: the joint preliminary statement, stipulations, proposed *voir dire* questions, witness lists, exhibit lists, and the single joint submission of jury instructions, verdict forms, and interrogatories.

IT IS SO ORDERED.

/s/ Dan A. Polster May 1, 2019
Dan Aaron Polster
United States District Judge

TIMELINE OF TRIAL DEADLINES

12:00 p.m. on Wednesday, May 15, 2019

Email to chambers a single document with proposed limitations on number and pages of various types of pretrial motions (i.e., Daubert, summary judgment, in limine)

12:00 p.m. on Friday, June 28, 2019

Dispositive Motions deadline
Daubert Motions deadline

12:00 p.m. on Wednesday, August 28, 2019

Email to SM Cohen a joint Proposed Jury Questionnaire

12:00 p.m. on Wednesday, September 4, 2019

Email to chambers a proposed Exhibit Chart

12:00 p.m. on Wednesday, September 11, 2019

Exchange jury instructions, verdict forms, jury interrogatories, exhibits, witness lists, and deposition testimony. Meet and confer with goal of resolving differences and filing joint jury instructions, verdict forms and jury interrogatories in a single document. Meet and confer to resolve objections to witnesses, exhibits, and deposition testimony.

12:00 p.m. on Wednesday, September 25, 2019

Email to chambers a Joint Preliminary Statement (no more than 2 pages, double-spaced)
Deadline to file Stipulations of Fact, Proposed Voir Dire Questions (2 documents), Proposed Jury Instructions, Verdict Forms and Jury Interrogatories (1 document), Motions in Limine, Trial Briefs, Witness Lists, Exhibit Lists
Email to chambers trial docs, Section III.b.8, in both WordPerfect and Word formats

12:00 p.m. on Wednesday, October 2, 2019

Deadline for filing Opposition briefs to Motions in Limine
Deadline for filing Objections to deposition testimony

12:00 p.m. on Monday, October 7, 2019

Deadline for filing Objections to exhibits, witnesses
Deadline for filing Replies to Motions in Limine

12:00 p.m. on Thursday, October 10, 2019

Notify the Courtroom Deputy, in writing, of deposition transcripts that will be read into the record in order that the original transcripts be made available for the Court

12:00 p.m. on Tuesday, October 15, 2019

Final Pretrial Conference
Bring signed Stipulations to chambers

9:00 a.m. on Wednesday, October 16, 2019

Begin Jury Selection

9:00 a.m. on Monday, October 21, 2019

Trial