

0000UNITED 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:

---

**CASE MANAGEMENT ORDER NO. 24:  
FOURTH BELLWETHER TRIAL SCHEDULE (MARINO)**

For the convenience of the Court and parties, Paragraphs 1 through 6 of this Order (and certain other subparagraphs) are intentionally left blank so that the various deadlines for the fourth bellwether trial track the corresponding deadlines contained in Case Management Order No. 12, as amended.

7. Schedule For Fourth Bellwether Trial Case: The *Marino* case, which is the fourth bellwether trial case, shall be subject to the following pretrial case-specific schedule:

- a. Remaining Fact Discovery: Case-Specific fact discovery shall be completed on or before June 8, 2011, unless otherwise agreed to by the parties or subsequent order of the Court.
- b. Corporate Witness Identification:
  - i. Defendant in the fourth Bellwether Trial case shall disclose to Plaintiff the identity of its corporate witnesses it intends to call at trial who have not yet been deposed, on or before April 13, 2011.
  - ii. If Defendant intends to call a corporate witness, who has already been deposed, to provide case-specific testimony at trial about

which he or she has not yet been deposed, the identity of that witness shall be disclosed to Plaintiff on April 13, 2011 and shall be subject to the case-specific fact discovery cut off set in ¶ 7(a) above.

b. Plaintiff Fact Witness Identification

- i. Plaintiff in the fourth Bellwether Trial case shall disclose to the Defendant the identity of any fact witness he or she intends to call at trial who has not previously been identified and has not yet been deposed, on or before April 13, 2011.

c. Case Specific Expert Discovery:

- i. The deadline for Plaintiff in the fourth Bellwether Trial to submit Rule 26(a)(2) expert reports shall be May 9, 2011;
- ii. The deadline for Defendants in the fourth Bellwether Trial to submit Rule 26(a)(2) expert reports shall be June 9, 2011;
- iii. Depositions of case-specific experts shall be completed on or before July 15, 2011. Depositions of Plaintiff's experts shall occur before Defendant's experts that are disclosed within the same discipline;
- iv. Treating physicians are not subject to this provision and a Rule 26(a)(2) report is not required for these witnesses. Discovery from treating physicians is subject to the deadline for remaining fact discovery in Paragraph 7(a) above.

8. This paragraph intentionally left blank.
9. Case-Specific *Daubert* and Dispositive Motions on the fourth Bellwether Trial case:
  - a. Any *Daubert* or dispositive motions relating to case-specific issues in the fourth Bellwether Trial shall be filed on or before August 8, 2011;
  - b. Opposition to any *Daubert* or dispositive motions relating to case-specific issues in the fourth Bellwether Trial shall be filed on or before August 29, 2011;
  - c. Any reply in further support of any *Daubert* or dispositive motions relating to case-specific issues in the fourth Bellwether Trial shall be filed on or before September 9, 2011;
  - d. Oral argument, if any, on *Daubert* or dispositive motions directed at case-specific expert or other issues will be set by subsequent Order of this Court;
  - e. All other aspects of any *Daubert* or dispositive motions directed at case-specific expert or other issues shall be governed by the Local Rules of this District.
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 September 1, 2011;

- ii. Any objections to deposition designations shall be served on the other party on or before September 12, 2011;
  - iii. Counter-designations shall be served on the other party on or before September 12, 2011;
  - iv. Objections to counter-designations shall be served on the other party on or before September 19, 2011;
  - 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 October 3, 2011.
- 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 fourth 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 October 3, 2011. 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 October 10, 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

d. 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 October 5, 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 fourth Bellwether Trial case:

- a. Any motions *in limine* shall be filed on or before September 8, 2011;
- b. Opposition to any motions *in limine* shall be filed on or before September 22, 2011;
- c. Any reply in further support of any motions *in limine* shall be filed on or before September 29, 2011;
- 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 fourth Bellwether trial case October 19, 2011, and consider 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 by September 26, 2011 (with any objections to witness or exhibits being due by October 10, 2011) instead of the time frames in the standing Trial Order. Stipulations of fact, the joint preliminary statement and trial briefs shall be submitted by October 5, 2011, 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 Fourth Trial shall commence on October 31, 2011. Two weeks shall be allotted for this fourth trial, excluding voir dire, opening statements, closing arguments, and jury deliberations, unless otherwise agreed to by the parties or by subsequent Order of this Court.

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. To the extent that the deadlines set in the attached table are inconsistent with this CMO, the deadlines in the table shall modify the terms of this CMO.

**IT IS SO ORDERED.**

Dated: April 25, 2011

s/Dan A. Polster

---

Honorable Dan Aaron Polster  
United States District Judge



**ATTACHMENT A TO CMO #24**

<b>Event</b>	<b>Deadline</b>
<b>Fourth Bellwether Trial Discovery Plan and Trial Order:</b>	
<b>Case Specific Fact Discovery Cutoff</b>	June 8, 2011 (Wednesday)
Defendants shall disclose to Plaintiff the identity of <b>Corporate Witnesses</b> (current or former employees and consultants) who may be called at trial who have not been previously deposed	April 13, 2011 (Wednesday)
Plaintiffs shall disclose to Defendants the identity of <b>Fact Witnesses</b> (family, friends and medical providers) who may be called at trial who have not been previously deposed.	April 13, 2011 (Wednesday)
<b>Case-Specific Expert Discovery</b>	
Deadline for Plaintiff to submit R 26(a)(2) expert reports.	May 9, 2011 (Monday)
Deadline for Defendant to submit R 26(a)(2) expert reports.	June 9, 2011 (Thursday)
Expert Discovery Deadline (case specific and any supplemented generic expert)	July 15, 2011 (Friday)
<b>Case-Specific/Supplemented Generic Expert Daubert /Dispositive Motions Deadline</b>	August 8, 2011 (Wednesday)
Opposition Briefs	August 29, 2011 (Monday)
Reply Briefs	September 9, 2011 (Friday)

<b>Deposition Designations</b>	September 1, 2011 (Thursday)
Objections and Counter designations	September 12, 2011 (Monday)
Objections to Counter designations	September 19, 2011 (Monday)
Submissions to Court regarding primary unresolved objections	October 3, 2011 (Monday)
<b>Motions in Limine</b>	September 8, 2011 (Thursday)
Opposition Briefs	September 22, 2011 (Thursday)
Reply Briefs	September 29, 2011 (Thursday)
<b>Witness Lists and Exhibit Lists</b>	September 26, 2011 (Monday)
Objections to Witness and Exhibit Lists	October 10, 2011 (Monday)
<b>Jury Instructions</b>	
Exchange among parties	October 3, 2011 (Monday)
Initial Joint submission (incl. summary of top 5 disputes)	October 10, 2011 (Monday)
<b>Proposed Questionnaire and Court Voir Dire Questions</b>	October 5, 2011 (Wednesday)
<b>Stipulations and Joint Preliminary Statement and Trial Briefs</b>	October 5, 2011 (Wednesday)
<b>Final Pretrial Conference</b>	October 19, 2011 (Wednesday)
<b>Trial</b>	October 31, 2011 (Wednesday)