

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

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This Document Applies to All Cases:

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**CASE MANAGEMENT ORDER NO. 18:  
SECOND BELLWETHER TRIAL SCHEDULE**

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 second bellwether trial track the corresponding deadlines contained in Case Management Order No. 12, as amended.

7. Schedule For Second Bellwether Trial Case: The *Kono* case, which is the second 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 7, 2010, unless otherwise agreed to by the parties or subsequent order of the Court.
- b. Corporate Witness Identification:
  - i. Defendant in the second 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 22, 2010.
  - 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 22, 2010 and shall be subject to the case-specific fact discovery cut off set in ¶ 7(a) above.

c. Plaintiff Fact Witness Identification:

- i. Plaintiff in the second 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 May 21, 2010.

d. Case Specific Expert Discovery:

- i. The deadline for Plaintiff in the second Bellwether Trial to submit Rule 26(a)(2) expert reports shall be March 1, 2010;
- ii. The deadline for Defendants in the second Bellwether Trial to submit Rule 26(a)(2) expert reports shall be April 12, 2010;
- iii. Depositions of case-specific experts shall be completed on or June 7, 2010. 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. Generic Expert Discovery and *Daubert* Motions

- a. This paragraph intentionally left blank.

- b. Generic expert depositions<sup>1</sup>:
    - i. This paragraph intentionally left blank.
    - ii. This paragraph intentionally left blank.
    - iii. Depositions of generic experts shall be completed on or before December 7, 2009.
  - c. Motions directed at Generic experts:
    - i. Any *Daubert* motion relating to generic expert issues in the second Bellwether Trial shall be filed on or before February 5, 2010;
    - ii. Opposition to any *Daubert* motion relating to generic expert issues in the second Bellwether Trial shall be filed on or before March 1, 2010;
    - iii. Any reply in further support of any *Daubert* motion relating to generic expert issues in the second Bellwether Trial shall be filed on or before March 19, 2010.
  - d. Oral argument, if any, on *Daubert* motions directed at generic experts will be set by subsequent Order of this Court;
  - e. All other aspects of any *Daubert* motion directed at generic experts shall be governed by the Local Rules of this District
9. Case-Specific *Daubert* and Dispositive Motions on the second Bellwether Trial case:
- a. Any *Daubert* or dispositive motions relating to case-specific issues in the second Bellwether Trial shall be filed on or before July 5, 2010;

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<sup>1</sup> Generic expert reports were previously served on counsel for plaintiffs and defendants.

- b. Opposition to any *Daubert* or dispositive motions relating to case-specific issues in the second Bellwether Trial shall be filed on or before July 26, 2010;
- c. Any reply in further support of any *Daubert* or dispositive motions relating to case-specific issues in the second Bellwether Trial shall be filed on or before August 9, 2010;
- 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 July 26, 2010;
  - ii. Any objections to deposition designations shall be served on the other party on or before August 9, 2010;
  - iii. Counter-designations shall be served on the other party on or before August 9, 2010;
  - iv. Objections to counter-designations shall be served on the other party on or before August 19, 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 August 24, 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 second 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 twenty-one (21) 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 fourteen (14) calendar days prior to the Final Pretrial, 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 seven (7) calendar days prior to the Final Pretrial;
- 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 second Bellwether Trial case:

- a. Any motions *in limine* shall be filed on or before July 26, 2010;
- b. Opposition to any motions *in limine* shall be filed on or before August 13, 2010;
- c. Any reply in further support of any motions *in limine* shall be filed on or before August 27, 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 second Bellwether trial case on September 8, 2010, 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 14 days prior to the Final Pretrial (with any objections to witnesses or exhibits being due seven 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 diskette as the Proposed Jury Instructions and Proposed *Voir Dire* questions.

13. The Second Trial shall commence on September 20, 2010. Two weeks shall be allotted for this second trial, excluding 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. 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: November 17, 2009

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



**ATTACHMENT A TO CMO #18**

<b>Event</b>	<b>Deadline</b>
<b>Second Bellwether Trial Discovery Plan and Trial Order:</b>	
<b>Case Specific Fact Discovery Cutoff</b>	June 7, 2010 (Monday)
Defendants identify <b>Corporate Witnesses</b> to be called at trial who have not been deposed and Defendants identify <b>Corporate Witnesses</b> who have been deposed to provide case-specific testimony about which (s)he has not been deposed.	April 22, 2010 (Thursday) April 22, 2010 (Thursday)
Plaintiffs identify <b>Fact Witnesses</b> to be called at trial who have not previously been identified and deposed.	May 21, 2010 (Friday)
<b>Case-Specific Expert Discovery</b>  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	March 1, 2010 (Monday)  April 12, 2010 (Monday)  June 7, 2010 (Monday)
<b>Case-Specific <i>Daubert</i> / Dispositive Motions Deadline</b>  Opposition Briefs  Reply Briefs	July 5, 2010 (Monday)  July 26, 2010 (Monday)  August 9, 2010 (Monday)

<b>Generic Expert Discovery</b>	
Deadline for Generic Expert Depositions	December 7, 2009 (Monday)
Deadline for Generic Expert <i>Daubert</i> Motions	February 5, 2010 (Friday)
Opposition Briefs	March 1, 2010 (Monday)
Reply Briefs	March 19, 2010 (Friday)
<b>Deposition Designations</b>	July 26, 2010 (Monday)
Objections and Counter designations	August 9, 2010 (Monday)
Objections to Counter designations	August 19, 2010 (Thursday)
Submissions to Court regarding unresolved objections	August 24, 2010 (Tuesday)
<b>Motions in Limine</b>	July 26, 2010 (Monday)
Opposition Briefs	August 13, 2010 (Friday)
Reply Briefs	August 27, 2010 (Friday)
<b>Witness Lists and Exhibit Lists</b>	August 25, 2010 (Wednesday)
<b>Jury Instructions</b>	
Exchange among parties	August 18, 2010 (Wednesday)
Joint submission	August 25, 2010 (Wednesday)
<b>Proposed Voir Dire Questions</b>	September 1, 2010 (Wednesday)
<b>Stipulations and Joint Preliminary Statement and Trial Briefs</b>	September 3, 2010 (Friday)
<b>Final Pretrial Conference</b>	September 8, 2010 (Wednesday)
<b>Trial</b>	September 20, 2010 (Monday)