

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
DIVISION

)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
)	
)	
Defendant.)	

SCHEDULING AND TRIAL ORDER

Pursuant to Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure, and upon consideration of the parties' views in the matter, the following schedule is hereby established:

1. Any motion to join additional parties shall be filed on or before _____.
2. Any motion to amend the pleadings shall be filed on or before _____.
3. The plaintiff shall designate any expert witnesses it intends to call at trial on or before _____, and the defendant shall designate any expert witnesses it intends to call at trial on or before _____. This paragraph applies to all witnesses from whom expert opinions will be elicited, regardless of whether or not the witness was specially retained to provide trial testimony.
4. All discovery disputes shall be raised with the Court on or before _____. The Court will not entertain any discovery motions absent full compliance with Local Rule 37.1. If the discovery dispute involves electronically stored information, the parties shall consult the Principles for the Discovery of Electronically Stored Information available on the Court's website. In the event a telephone conference is needed, the requesting party shall contact Chambers at 816-512-5645. A memorandum of the discovery dispute, not to exceed one page in length, shall be electronically submitted to Chambers by each party no later than twenty-four hours prior to the telephone conference. The memorandum shall not be filed on ECF but shall be shared with opposing counsel.

5. All pretrial discovery authorized by the Federal Rules of Civil Procedure shall be completed on or before _____. This means all discovery shall be completed, not simply submitted, on the date specified by this paragraph. All discovery requests and depositions shall be submitted and/or scheduled prior to the date specified in this paragraph and shall allow sufficient time for completion within the time specified by the Federal Rules of Civil Procedure, the Local Court Rules, and/or orders of this Court. The Court reserves the right to exercise control over the taking of depositions.

6. Along with each party's designation of expert witnesses, each party shall provide the other parties with a written report from each expert witness designated pursuant to paragraph 3 above. See Fed. R. Civ. P. 26(a)(2)(B). The report shall include a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, the qualifications of the witness (including a list of all publications authored by the witness within the preceding ten years), the compensation to be paid for the study and testimony, and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The expert's testimony will be limited to opinions and information contained in the report and in any depositions that might be taken.

7. With respect to treating physicians, the requirements of paragraph 6 above and Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure may be satisfied by providing a copy of all the treating physician's files, records, and notes relating to the treating physician's patient to the opposing party. For the purpose of this paragraph, a "treating physician" is a doctor (including psychiatrist, dentist or other practitioner of the healing arts) retained by a party for the primary purpose of providing care and treatment and not retained for the primary purpose of providing testimony at trial. Any testimony offered by a treating physician will be limited to information appearing in his/her files, records and notes relating to the patient unless additional opinions are disclosed in an affidavit or in the physician's deposition as described in paragraph 6 above.

8. All motions to strike expert designations or preclude expert testimony premised on Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), shall

be filed on or before _____. The deadline for filing motions in limine does not apply to these motions. Failure to file a Daubert motion prior to this deadline will constitute a waiver of any arguments based on Daubert.

9. All dispositive motions, except those under Rule 12(h)(2) or (3) of the Federal Rules of Civil Procedure, shall be filed on or before _____. All motions for summary judgment shall comply with Local Rule 56.1.

10. All motions for extension of time must state:

- a. The date when the pleading, response, or other action is/was first due;
- b. The number of previous extensions and the date the last extension expires;
- c. The cause for the requested extension, including a statement as to why the action due has not been completed in the allotted time; and
- d. Whether opposing counsel consents or objects to the requested extension (agreement or lack of objection by counsel is not binding on the Court).

11. A final pretrial conference in this case will be held at _____ a.m./p.m. on _____, at the United States Courthouse in Kansas City, Missouri. Lead trial counsel shall participate in this conference. The agenda for this conference will include:

- a. Stipulations by the parties;
- b. Identification of legal and factual issues to be tried, if necessary;
- c. Estimate length of trial;
- d. Trial schedule;
- e. Exclusion of witnesses;
- f. Ascertain need for special equipment and advise counsel of availability of needed equipment as well as coordination with IT personnel;
- g. Establish order of trial if multiple parties;
- h. Legal questions to be resolved prior to trial;
- i. Suggestions by counsel to simplify and expedite the trial;
- j. Disposition of pending motions; and
- k. Referral of case for mediation.

12. The following documents shall be filed prior to the pretrial conference:

- a. Motions in Limine: Motions in limine shall be filed at least fourteen (14) days prior to the pretrial conference. Responses to motions in limine shall be filed at least seven (7) days prior to the pretrial conference. Each party shall file its motions in limine in a single document on ECF, designating separate evidentiary issues by numbered headings within the document.
- b. Stipulation of Uncontroverted Facts: At least seven (7) days prior to the pretrial conference, the parties shall file a stipulation of any uncontroverted facts. If no stipulated facts can be agreed upon, including facts related to the Court's subject matter or personal jurisdiction, the parties shall file a joint statement to that effect. Notwithstanding that discovery will have closed, a request to stipulate, if preserved in the record, will constitute a request for admission under Rule 36 of the Federal Rules of Civil Procedure and failure to stipulate may be subject to sanctions under Rule 37(c) of the Federal Rules of Civil Procedure.
- c. Stipulation as to Foundation: At least seven (7) days prior to the pretrial conference, the parties shall file a stipulation as to the foundation for the admissibility of evidence (specifically, identification and authenticity), when the foundation for the exhibit is not to be contested.
- d. Stipulation as to Admissibility: At least seven (7) days prior to the pretrial conference, the parties shall file a stipulation as to the *admissibility* of exhibits. The Court urges the parties to pre-admit all exhibits to which there is not a legitimate objection.
- e. Witness List: At least seven (7) days prior to the pretrial conference, each party shall file a list of all witnesses who may be called at trial. If a witness is not listed by a party, that witness will not be permitted to testify absent leave of Court and then only for the purpose of unanticipated rebuttal or impeachment. After the time for filing lists of witnesses has expired, no supplemental or amended list will be filed without leave of Court and for good cause.
- f. Exhibit List: At least seven (7) days prior to the pretrial conference, each party shall file a list of all exhibits that may be offered at trial. The list shall be prepared on the form provided by the Court. See <http://www.mow.uscourts.gov/forms.html#district>. Each exhibit will be designated as either "Plaintiff's" or "Defendant's," numbered with an Arabic numeral, and described. If an exhibit consists of more than one page or part, the number of pages or parts shall be included in the description. The exhibit number must be marked on each exhibit. It is not necessary to list exhibits to be used only for impeachment or rebuttal purposes. Except by leave of Court and for good cause, no exhibit will be received in evidence which is not listed by the counsel offering the exhibit. After the time for filing

exhibit lists has expired, no supplemental or amended exhibit list will be filed without leave of Court and for good cause.

- g. Designation of Deposition Testimony: At least fourteen (14) days before the pretrial conference, each party asserting an affirmative claim or claims for relief (plaintiff, third-party plaintiff, counter-claiming defendant, cross-claiming defendant, etc.) shall file and serve a designation, by page and line number, of any deposition testimony to be offered in evidence as a part of that party's case.
- h. Objections to Designated Deposition Testimony and Counter Designations: At least seven (7) days prior to the date the pretrial conference, each party defending against an affirmative claim for relief shall file and serve:
 - i. Any objections to proposed deposition testimony designated by any other party; the Court will not consider objections to deposition designations unless counsel have met and conferred in a good faith effort to settle the objections;
 - ii. A designation, by page and line number, of any deposition testimony to be offered as cross-examination to deposition testimony designated by other parties; and
 - iii. A designation, by page and line number, of any deposition testimony to be offered in evidence as part of that party's case-in-chief in connection with such defense.
- i. Objections to Counter-Designations: At least three (3) days before the date of the pretrial conference, each party asserting an affirmative claim or claims for relief shall file and serve:
 - i. Any objections to proposed deposition testimony designated by any other party; the Court will not consider objections to deposition designations unless counsel have met and conferred in a good faith effort to settle the objections; and
 - ii. A designation, by page and line number, of any deposition testimony to be offered as cross-examination to deposition testimony designated by other parties.

13. This case is scheduled for a bench trial, commencing at **9:00 a.m.** on _____, in Courtroom 8C at the United States Courthouse in Kansas City, Missouri.

- 14. The following documents shall be filed prior to trial:
 - a. Trial Brief: At least ten (10) days prior to trial, counsel for each party may, but is not required to, file a trial brief stating the factual and legal contentions for the party for whom the trial brief is filed.

- b. Proposed Findings of Fact and Conclusions of Law: At least ten (10) days prior to trial, counsel for each party must file proposed findings of fact and conclusions of law. Parties must also e-mail their proposed findings of fact and conclusions of law in Word format to Renea_Mitra@mow.uscourts.gov.

15. The Court may place time limits on opening statements, and direct and cross-examination of all witnesses. You should be prepared to support your representations as to the length of trial.

16. In order to ensure the efficient use of time during trial, the following rules of Court will be imposed:

- a. All legal issues must be raised in advance of trial by written motions and in accordance with the scheduling order of this Court;
- b. Motions will not be heard during trial without a strong showing that counsel could not, by due diligence, have raised them sooner;
- c. Testimony will not be interrupted to deal with evidentiary matters that could have been heard in advance of trial. The Court will consider those matters during recess, at noon break, or at the end of the day. Counsel should be prepared with written authority for their positions; and
- d. Witnesses who will be testifying from exhibits or about exhibits should review them immediately prior to their testimony.

IT IS SO ORDERED.

/s/ Ortrie D. Smith
ORTRIE D. SMITH, SENIOR JUDGE
UNITED STATES DISTRICT COURT

DATE: