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Transaction ID 54366264

Case No. MC 77C-ASB-2



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

IN RE: ASBESTOS LITIGATION :

C.A. No. 77C-ASB-2

GENERAL SCHEDULING ORDER NO. 1 – Amended October 10, 2013

INTRODUCTION AND SCOPE: This Order shall apply to all asbestos personal injury cases scheduled for trial. This order provides the procedures to be followed for all asbestos cases for the orderly preparation of that litigation for trial. The actual dates and time periods by which the required procedures and duties are to be completed shall be provided by the Court from time to time in a TRIAL SCHEDULE ABSTRACT which shall be part of the MASTER TRIAL SCHEDULING ORDER issued and revised by the Court from time to time as establishing the Court's asbestos litigation trial docket. The MASTER TRIAL SCHEDULING ORDER shall designate the Trial Groups, the plaintiffs, and Plaintiffs' counsel, assigned to each particular trial date provided by the Court. The TRIAL SCHEDULE ABSTRACT section of the MASTER TRIAL SCHEDULING ORDER shall also list the actual dates and time periods by which the various provisions of this Order are to be completed. Accordingly, this Order and the MASTER TRIAL SCHEDULING ORDER shall be construed as an integrated order, with case specific variations found in the MASTER TRIAL SCHEDULING ORDER to control over this Order. It is the duty of all counsel to observe and effect these provisions by timely compliance or timely notifying the Court of a problem. It is also the duty of counsel to attempt to correct any perceived problems with opposing counsel in good faith prior to approaching the Court for relief. The provisions of this Order, in conjunction with the TRIAL SCHEDULE ABSTRACT, the MASTER TRIAL SCHEDULING ORDER, and STANDING ORDER NO. 1 may be modified by the Court upon a showing of good cause.

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1. Approximately four hundred thirty (430) days prior to the date set for trial, there shall be a date known as *DATE FOR PLAINTIFFS TO FILE PRELIMINARY WITNESS AND EXHIBIT LISTS IDENTIFYING ALL MEDICAL, FACTUAL, PRODUCT IDENTIFICATION, AND OTHER WITNESSES WHO WILL OFFER TESTIMONY ESTABLISHING EXPOSURE TO ANY PARTICULAR DEFENDANT'S ASBESTOS OR ASBESTOS CONTAINING PRODUCTS(S), AND EXHIBITS*. By that date, Plaintiffs shall designate:

(a) A preliminary list of exhibits and witnesses intended to be used or introduced at trial and against which Defendant or Defendants each exhibit will be used.

(b) The identity of medical, factual, product identification, and other exposure witnesses, including full name, last known address, and last known telephone number. In listing witnesses, Plaintiffs shall designate whether the witness is expected to testify in person or by deposition. For each witness expected to testify by deposition, the deposition transcript shall be identified by date, jurisdiction, case name and civil action number and a copy shall be made available upon request. The Defendant or Defendants against whom each witness will be used shall be specifically designated. "Product Identification" or "Product Nexus" witnesses shall be identified specifically as to the Defendants against whom they will testify, and in cases involving exposures at multiple sites or locations, the site or location about which the witness will testify.

(c) The above designations shall not be construed to require the listing and disclosure of evidence when proceeding for use in cross-examination. Instead, the above requirements are directed at the parties' case-in-chief and, if permitted, their rebuttal case.

2. Approximately four hundred (400) days prior to the date set for trial, there shall be a date known as *DATE TO HAVE COMPLETED THE DEPOSITION OF PLAINTIFFS ALLEGING EXPOSURE*. By that date, the deposition of any Plaintiff alleging to have been exposed to asbestos with such allegations being the grounds for the instant action shall have been deposed.

3. Approximately three hundred forty (340) days prior to the date set for trial, there shall be a date known as *DATE TO HAVE COMPLETED THE DEPOSITIONS OF ALL PLAINTIFFS' COWORKER, PRODUCT IDENTIFICATION, AND OTHER WITNESSES WHO WILL OFFER TESTIMONY ESTABLISHING EXPOSURE TO ANY PARTICULAR DEFENDANT'S ASBESTOS OR ASBESTOS CONTAINING PRODUCT(S)*. By that date, the deposition of any witness who will offer testimony establishing plaintiff's exposure to any particular defendant's asbestos or asbestos containing product shall have been recorded.

4(a). Approximately three hundred twenty (320) days prior to the date set for trial, there shall be a date known as *DATE FOR FILING MOTIONS TO ADD OR AMEND THE PLEADINGS*. By that date, any motions to amend the pleadings or add additional parties shall have been filed.

4(b). Approximately three hundred twenty (320) days prior to the date set for trial, there shall be a date known as *DATE FOR EXIGENT PLAINTIFFS TO JOIN*. On or before that date, any exigent Plaintiff having completed the requirements of paragraphs 1 through 3 of this Order and wishing to be added to the trial schedule in less than 430 days shall request to do so by notifying Coordinating Counsel and attempt to reach an agreement on the trial setting in which to place the case. In the event an agreement

cannot be reached within two (2) business days of the request, a motion may be filed with the Court.

5. Approximately three hundred (300) days prior to the date set for trial, there shall be a date known as *DATE FOR INDIVIDUAL DEFENDANTS TO FILE SUMMARY JUDGMENT WITNESS AND EXHIBIT LISTS IDENTIFYING WITNESSES AND EXHIBITS TO BE RELIED ON FOR SUMMARY JUDGMENT PURPOSES, PRODUCT IDENTIFICATION OR OTHERWISE*. By that date, Defendants shall designate :

(a) Each individual exhibit intended to be used in support of a motion for summary judgment;

(b) The identity of all witnesses intended to be used in support of a motion for summary judgment, including full name, address, and last known telephone number. In listing such witnesses, Defendants shall identify and produce any existing affidavits and/or transcripts that will be used to support the motion.

(c) The basic grounds to be asserted for summary judgment.

6(a). Approximately two hundred twenty (220) days prior to the date set for trial, there shall be a date known as *DATE TO COMPLETE SUMMARY JUDGMENT FACT DISCOVERY (PLAINTIFF AND DEFENDANT)*. On or before that date, the parties shall have completed all summary judgment fact discovery including the depositions of any defense summary judgment witnesses. All fact summary judgment discovery shall have been propounded such that it would be expected to be complete by this date.

6(b). Approximately two hundred twenty (220) days prior to the date set for

trial, there shall be a date known as *DATE FOR PLAINTIFF'S UPDATED DESIGNATIONS OF APPLICABLE STATE SUBSTANTIVE LAW(S)*. On or before that date, Plaintiff shall file an updated clear and concise statement designating the substantive law(s) which Plaintiff believes is applicable to its claims. Consistent with Delaware law, Plaintiff's designation of substantive law(s) shall designate the jurisdiction Plaintiff believes to have the most significant relationship to the occurrence and the parties. If Plaintiff believes in good faith that multiple jurisdictions' laws should be applied to different issues in the case, the designation statement shall set forth the substantive law(s) designated as to each issue, as well as a brief explanation of the basis for Plaintiff's designations.

7. Approximately two hundred ten (210) days prior to the date set for trial, there shall be a date known as *DATE FOR DEFENDANTS' RESPONSES TO UPDATED DESIGNATION OF APPLICABLE SUBSTANTIVE LAW(S)* and *DATE FOR FILING OF ANY MOTIONS TO ESTABLISH APPLICABLE LAWS*. In the event that any Defendant, for whatever reason, disagrees with Plaintiff's designation, then Defendant shall by this date file a response to Plaintiff's updated designation and, further, file a motion seeking to establish the substantive law applicable to the matter. Defendants shall, to the extent possible, consolidate and coordinate the filing of such motions. The Motion shall be noticed for hearing on the next available Routine Motions Agenda. Assisting the Court in determining the applicable substantive law(s) is a burden shared equally by Plaintiffs and Defendants and all parties are expected to cooperate and work in good faith in that regard.

8. Approximately one hundred ninety (190) days prior to the date set for

trial, there shall be a date known as *DATE FOR MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT THEREOF*. By that date, all parties shall file all motions and supporting memoranda permitted under Superior Court Rule 56 and Standing Order No. 1. Nothing in this Order shall preclude the filing of motions for summary judgment prior to the date contained herein. In the event of such earlier filed motion, memoranda in support shall be filed with the motion. Memoranda in opposition to said earlier filed motion, shall be filed twenty (20) days thereafter, and reply memoranda in support of the motion shall be filed ten (10) days thereafter.

9(a). Approximately one hundred seventy (170) days prior to the date set for trial, there shall be a date known as *DATE FOR ANSWERING MEMORANDUM OR WRITTEN NOTICE NOT TO OPPOSE SUMMARY JUDGMENT*. By that date, the party against whom a summary judgment has been filed shall serve all answering memoranda. Alternatively, by this date the non-moving party shall notify the moving party of its intention not to oppose the pending motion. Nothing prohibits the parties from notifying the moving party of their intention not to oppose the motion prior to this date.

9(b). Approximately one hundred seventy (170) days prior to the date set for trial, there shall be a date known as *DATE FOR PLAINTIFFS' WRITTEN SETTLEMENT DEMANDS TO DELAWARE COUNSEL*. Not later than that date, Plaintiffs shall issue written settlement demands to each defendant in each case. Written demands are to be directed to Delaware Counsel for each defendant. To the extent that Plaintiff entered into settlement negotiations prior to this deadline with defense counsel other than Delaware counsel for any particular defendant and those discussions remain active and on-going, then in lieu of a written settlement demand, Plaintiff may send written notice to Delaware

counsel for each such defendant and shall identify (by name and telephone number) the individual with whom Plaintiff has been negotiating.

9(c). Approximately one hundred seventy (170) days prior to the date set for trial, there shall be a date known as there shall be a date known as *DATE TO INITIATE ADR WITH COURT APPOINTED ADR MANAGER*. On or before that date, the parties shall discuss and schedule a mutually agreeable form of alternative dispute resolution and attempt to agree upon an ADR Practitioner. Unless alternative arrangements are agreed upon the parties shall proceed with mediation with the Court-Appointed ADR Manager.

10(a). Approximately one hundred sixty (160) days prior to the date set for trial, there shall be a date known as *DATE FOR REPLY MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT*, the moving party shall serve all reply memoranda in support of any timely filed summary judgment application.

10(b). Approximately one hundred sixty (160) days prior to the date set for trial, there shall be a date known as *DATE FOR DEFENDANTS' WRITTEN RESPONSES TO SETTLEMENT DEMANDS*.

11. Approximately one hundred forty (140) days prior to the date set for trial, there shall be a date known as *DATE FOR PLAINTIFFS TO FILE WITNESS AND EXHIBIT LISTS NOT PREVIOUSLY DISCLOSED AND TO PRODUCE ALL EXPERT REPORTS OR RULE 26 DISCLOSURES*. By that date, Plaintiffs shall designate:

(a) Each individual exhibit intended to be used or introduced at trial in conjunction with any expert testimony as contemplated by Superior Court Civil Rule 26(b)(4) and, as to each exhibit, shall further designate which defendant or defendants against which each exhibit will be used.

(b) The identity of all fact witnesses not previously disclosed and all expert witnesses not previously designated, including full name, last known address, and last known telephone number. For each witness expected to testify by deposition, the deposition transcript(s) shall be identified by date, jurisdiction, case name and civil action number. In the event a witness is designated against individual or specific defendants as opposed to all defendants, Plaintiffs shall designate the defendant or defendants against whom each witness shall be used.

(c) Case specific reports or disclosure of testimony expected from each expert witness is to be provided pursuant to the Rules of Civil Procedure.

(d) All designations shall be considered designated by all opposing parties, subject to questions of admissibility. The above required designations shall not be construed to require the listing and disclosure of evidence when proceeding for use in cross-examination. Instead, the above requirements are directed at the parties' case-in-chief and, if permitted, their rebuttal case.

12. Approximately one hundred twenty (120) days prior to the date set for trial, there shall be a date known as there shall be a date known as *DATE FOR DELIVERY OF MOTIONS FOR SUMMARY JUDGMENT*. By that date, movants shall coordinate the single delivery of all pending motions for summary judgment. Coordinating Counsel shall publish a listing of Motions for Summary Judgment so delivered and shall update that listing as necessary to keep the Court fully informed as to the status of the matters.

13. Approximately one hundred (100) days prior to the date set for trial, there shall be a date known as *DATE FOR ORAL ARGUMENTS ON MOTIONS FOR SUMMARY JUDGMENT*. Oral argument on motions for summary judgment shall be



held at the Court's discretion.

14. Approximately ninety (90) days prior to the date set for trial, there shall be a date known as there shall be a date known as *DATE FOR DEFENDANTS TO FILE WITNESS AND EXHIBIT LISTS NOT PREVIOUSLY DISCLOSED AND TO PRODUCE ALL EXPERT REPORTS OR RULE 26 DISCLOSURES*. By that date, Defendants shall designate:

(a) Each individual exhibit intended to be used or introduced at trial.

(b) The identity of all fact witnesses not previously disclosed and all expert witnesses not previously designated. Witness designations shall include the full name, address, and telephone number of each witness. In listing witnesses, Defendant shall designate whether the witness is expected to testify in person or by deposition and a copy shall be made available upon request. For each witness expected to testify by deposition, the deposition transcript shall be identified by date, jurisdiction, case name and civil action number. In the event a witness is designated against individual or specific plaintiffs as opposed to all plaintiffs, Defendants shall designate the plaintiff or plaintiffs against whom each witness shall be used.

(c) Case specific reports or disclosure of testimony expected from each expert witness is to be provided pursuant to the Rules of Civil Procedure.

(d) All designations shall be considered designated by all opposing parties, subject to questions of admissibility. The above required designations shall not be construed to require the listing and disclosure of evidence when proceeding for use in cross-examination. Instead, the above requirements are directed at the parties' case-in-chief and, if permitted, their rebuttal case.

15. Approximately eighty five (85) days prior to the date set for trial, there

shall be a date known as *DATE FOR PLAINTIFFS AND DEFENDANTS TO TENDER FOR DEPOSITION ALL EXPERT WITNESSES AND FACT WITNESSES DISCLOSED PURSUANT TO PARAGRAPHS 11 AND 14*. By that date, each party will submit to their respective Coordinating Counsel a listing of all expert witnesses expected to testify at trial or upon whom the party intends to rely at trial. For each witness, the listing is to include:

- (a) The cases the witness is being identified in;
- (b) The witness' full name;
- (c) The individual Plaintiff or Defendant against whom the witness is expected to testify, and;
- (d) Dates when the witness will be available to testify and, as to each date, a specific time and address when and where the deposition can take place.

All tendered dates shall fall within the period seventy five (75) days before trial and forty five (45) days before trial. Within three (3) days of receipt of such lists, Coordinating Counsel will coordinate the submissions, attempt to resolve any conflicts, and compile and produce one comprehensive and complete tender of witnesses to opposing Coordinating Counsel. Within two (2) days of receipt of such tenders, Coordinating Counsel will advise which tenders are accepted and which are declined. Any plaintiff may elect to bypass its Coordinating Counsel for purposes of witness tendering but must otherwise comply with the provisions herein. Any negotiations for new or different tenders will be undertaken and completed without delay, in good faith so as to maintain the spirit and intent of this Order. The acceptance of a particular tender shall serve as sufficient notice to the tendering party such that arrangements required for the taking of the deposition should be immediately undertaken. Actual Notices of depositions should

be fully and properly filed no later than five days before each deposition.

16(a). Approximately thirty (30) days prior to the date set for trial, there shall be a date known as *DATE FOR LINES AND PAGES DESIGNATIONS*. By this date, any party intending to introduce any testimony at trial through previously recorded deposition or trial testimony shall specifically designate the transcript by date and shall further designate by reference to specific pages and lines those portions of the transcript sought to be introduced.

16(b). Approximately thirty (30) days prior to the date set for trial, there shall be a date known as *DATE FOR FILING MOTIONS IN LIMINE*. Any party wishing to file any Motions in Limine shall do so by this date. Individual parties are limited to five (5) Motions in limine in any given case. Responses in opposition to Motions in Limine shall be filed within 10 days. There shall be no reply submissions.

17. Approximately twenty-five (25) days prior to the date set for trial, there shall be a date known as *PLAINTIFFS' PORTION OF PRETRIAL STIPULATION COMPLETED AND SUBMITTED TO DEFENDANTS*. By that date, Plaintiff shall provide counsel for each individual Defendant with an electronic copy of the approved Pretrial Memorandum for Asbestos Litigation (copy attached) which will have been fully completed by Plaintiff. A separate Pretrial Memorandum for each case shall be provided and any and all attachments or exhibits referred to in each Pretrial Memorandum shall be provided as well.

18. Approximately twenty (20) days prior to the date set for trial, there shall be a date known as *DEFENDANTS' PORTIONS OF PRETRIAL STIPULATION COMPLETED AND RETURNED TO PLAINTIFFS*. By that date, counsel for each

individual Defendant shall provide counsel for Plaintiffs with their submissions for inclusion in to the Joint Pretrial Stipulation. Plaintiffs' counsel shall combine the submissions so that a single Joint Pretrial Stipulation is created for each case and shall provide such single Joint Pretrial Stipulation to counsel for all Defendants in each case before the Preliminary Pretrial Conference set forth in Paragraph 20 below.

19. Approximately twenty (20) days prior to the date set for trial, there shall be a date known as *DATE FOR LINES AND PAGES COUNTER DESIGNATIONS* and *DATE FOR RESPONSES TO MOTIONS IN LIMINE*. By this date, all line and page counter designations and all responses in opposition to any motions in limine are to be filed. Separate counter designations and motion responses must be provided for each case.

20. No later than fifteen (15) days prior to the date set for trial, there shall be a *PRELIMINARY PRETRIAL CONFERENCE*. Counsel for remaining parties in each case shall meet and confer to narrow issues and refine the Joint Pretrial Stipulation, including any remaining objections to page and line presentations, trial exhibits, witnesses and their proposed testimony, or other issues which may impede an orderly and efficient trial process.

21. Ten (10) days prior to the date set for trial, there shall be dates known as follows:

(a) *DATE FOR DELIVERY OF FINAL JOINT PRETRIAL STIPULATION TO COURT*. Counsel for Plaintiffs shall file the Final Joint Pretrial Stipulation and provide a paper copy, along with copies of all exhibits and materials referred to therein, to the Court. The delivery of the Final Joint Pretrial Stipulation shall include copies of all

pre-marked trial exhibits from each party and copies of the designated deposition transcripts that are objected to by each party, including the basis for the objection and the response thereto.

(b) *DATE FOR DELIVERY OF MOTIONS IN LIMINE TO COURT.*

Copies of all papers (motions, responses, and all appendices) shall be delivered to the Court by the moving party by this date.

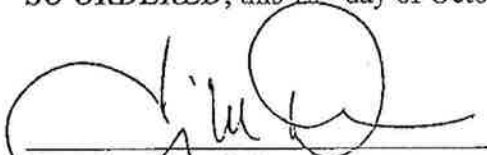
22. Approximately five (5) days prior to the date set for trial, there shall be a date known as *FINAL PRETRIAL CONFERENCE AND HEARING ON MOTIONS IN LIMINE*. By this date, all video depositions shall have been completed and counsel for Plaintiffs in each case shall provide the Court and the Defendants with a list of first week witnesses. Also by this date, counsel for each party shall submit proposed jury instructions and proposed verdict sheets to opposing parties and the Court. All depositions to be read to the jury at trial or played by video or other electronic means shall be reasonable in length.

23. Approximately three (3) days prior to the date set for trial, there shall be a date known as *JURY SCREENING DATE*. At least two (2) days before the Jury Screening Date, Counsel for plaintiffs in each case shall submit to the Special Master, in electronic format, a single consolidated list of witnesses (fact, expert, medical, etc.), law firms and individual trial counsel, and all Defendants (including settled and dismissed Defendants). Counsel for individual Defendants in each case shall submit information required for Plaintiff's counsel to fulfill this requirement no later than three (3) days prior to the Jury Screening Date. At least two (2) days before Jury Screening, any proposed and/or stipulated amendments to the Juror Questionnaire shall be submitted to the Special

Master for consideration. In the absence of stipulated amendments, the existing Juror Questionnaire form (copy attached hereto) will be utilized.

24. Trial and final jury selection shall commence on a date known as TRIAL DATE.

*SO ORDERED*, this 10<sup>th</sup> day of October, 2013.

  
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Superior Court Judge

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	EVENT	DAYS FROM TRIAL
1.	Date for plaintiffs to file preliminary Witness and Exhibit Lists identifying all medical, factual, product identification, and other exposure witnesses who will offer testimony establishing exposure to any particular defendant's asbestos or asbestos containing product(s), and exhibits	430
2.	Date to have completed the depositions of all plaintiffs alleging exposure	400
3.	Date to have completed the depositions of all plaintiffs' coworker, product identification, and other witnesses who will offer testimony establishing exposure to any particular defendant's asbestos or asbestos containing product(s)	340
4.	Date for filing Motions to Add or Amend the pleadings Date for exigent plaintiffs to join	320
5.	Date for individual defendants to file Summary Judgment Witness and Exhibit Lists identifying witnesses and exhibits to be relied on for summary judgment purposes, product identification or otherwise	300
6.	Date to complete summary judgment fact discovery (plaintiffs and defendants) Date for plaintiffs to file updated designations of applicable substantive law(s)	220
7.	Date for defendants' responses to updated designation of applicable substantive law(s) Date for filing of any motions to establish applicable state laws	210
8.	Date for Motions for Summary Judgment and Memoranda in support	190
9.	Date for Answering Memorandum or written notice not to oppose Summary Judgment Date for plaintiffs' written settlement demands to Delaware counsel Date to initiate ADR with Court Appointed ADR Manager	170
10.	Date for Reply Memorandum in support of Motion for Summary Judgment Date for defendants' written responses to settlement demands	160
11.	Date for plaintiffs to file Witness and Exhibit Lists not previously disclosed and to produce all expert reports or Rule 26 disclosures	140
12.	Date for delivery of Motions for Summary Judgment and certifications to the Court	120
13.	Oral arguments on Motions for Summary Judgment	100
14.	Date for defendants to file Witness and Exhibit lists not previously disclosed and to produce all expert reports or Rule 26 disclosures	90
15.	Date for plaintiffs and defendants to tender for deposition all expert witnesses and fact witnesses disclosed pursuant to paragraphs 11 and 14 (depositions to occur after day 75 but before day 45)	85
16.	Date for lines and pages designations Date for motions in limine	30
17.	Plaintiffs' portion of Pretrial Stipulation completed and submitted to Defendants	25
18.	Defendants' portions of Pretrial Stipulation completed and returned to Plaintiffs	20
19.	Date for lines and pages counter designations Date for responses to Motions in Limine	20
20.	Preliminary Pretrial Conference -- Counsel to meet and confer	15
21.	Date for delivery of Final Joint Pretrial Stipulation to Court Date for delivery of Motions in Limine to Court	10
22.	Final Pretrial Conference and hearing on Motions in Limine	X-5

	<b>EVENT</b>	<b>DAYS FROM TRIAL</b>
23.	Jury Screening Date	X-3
24.	TRIAL DATE (Final Jury Selection and Opening Statements)	X

APPROVED PRETRIAL STIPULATION FORM