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IN RE

TRASYLOL PRODUCTS LIABILITY
LITIGATION

: COURT OF COMMON PLEAS
:
: PHILADELPHIA COUNTY
:
: JUNE TERM, 2008
:
: No. 5229

**CASE MANAGEMENT ORDER NO. 2 (AMENDED) RELATING TO
EXPERT DISCOVERY SCHEDULES, SELECTION OF CASES FOR
CASE-SPECIFIC EXPERT DISCOVERY AND TRIAL AND CASE-SPECIFIC
FACT DISCOVERY IN CASES NOT SELECTED FOR INITIAL TRIAL POOL**

The purpose of this Order is to provide for the sequencing of expert witness discovery and case specific fact discovery in the Trasylol personal injury actions in the Philadelphia Court of Common Pleas (“Coordinated Actions”), and to provide a procedure for the selection of a subset of plaintiffs’ actions to be given priority for case-specific expert witness discovery and trial. Except as otherwise provided herein, this Order applies to all parties as defined in Case Management Order No. 1.

I. GENERIC EXPERT DISCOVERY SCHEDULE.

A. Plaintiffs’ Generic Expert Witnesses. By July 31, 2009, Plaintiffs’ Liaison Counsel shall identify all expert witnesses who will offer opinions on issues of general applicability (“Generic Experts”) to the personal injury cases then pending in this Court, and serve the reports of those Generic Experts. On the same date, Plaintiffs’ Liaison Counsel shall provide a reasonable schedule of dates on which said expert witnesses are available for deposition. Depositions of plaintiffs’ Generic Experts shall take place between August 17, 2009 and October 16, 2009.

B. Defendants’ Generic Expert Witnesses. By November 2, 2009, Defendants’ Liaison Counsel shall identify all defendants’ Generic Experts and serve the reports of those

Generic Experts. On the same date, Defendants' Liaison Counsel shall provide a reasonable schedule of dates on which said expert witnesses are available for deposition. Depositions of Defendants' Generic Experts shall take place between November 16, 2009 and January 22, 2010.

Absent good cause, the parties shall be precluded from re-deposing Generic Experts who already have been deposed in other state-court Trasylol personal injury lawsuits and/or in the federal court Trasylol MDL proceedings. Material change in or addition to the opinions of a Generic Expert shall constitute good cause for the re-deposition of a Generic Expert.

II. SELECTION OF CASES FOR CASE-SPECIFIC EXPERT DISCOVERY POOL.

A. Applicability. The provisions in this Section II govern case-specific expert discovery for any plaintiff selected for case-specific expert discovery under this Order. This Order shall not affect the discretion of the Court or prejudice the rights of the parties with regard to the selection of additional plaintiffs for case-specific expert discovery.

B. Selection of Cases for the Case-Specific Expert Discovery Pool. The initial pool of cases eligible for case-specific expert discovery shall consist of six (6) individual plaintiffs (plus spouses of any of such plaintiffs who have sued for loss of consortium) whose actions have been filed in this Court by July 15, 2008. If the plaintiff selected is joined in an action with other plaintiffs, then the selected plaintiff's action shall be severed and shall proceed as a separate case. Three (3) of the plaintiffs shall be selected by the Bayer defendants ("Defendants' Selections") and three (3) of the plaintiffs shall be selected by the plaintiffs ("Plaintiffs' Selections"). These six (6) plaintiffs' cases shall constitute the pool of cases to be given priority for case-specific expert witness discovery ("the Expert Discovery Pool").

(1) Manner of Exchange of Selections. Liaison Counsel shall exchange their respective lists of three (3) selections by email at noon Eastern time on June 1, 2009. In their exchange, Liaison Counsel shall identify each plaintiff by full name, full case caption, case number, and an attorney (and that attorney's firm) designated as being the contact for case-specific expert discovery issues pertaining to that plaintiff.

(2) Replacement of Plaintiffs. Once a plaintiff has been selected for the Expert Discovery Pool by any party, any dismissal of that plaintiff within ninety (90) days of selection shall entitle the party selecting the plaintiff to select a replacement plaintiff. The replacement plaintiff shall be selected (and notification given to opposing Liaison Counsel as provided in Paragraph II.B(1)) within ten (10) business days of the dismissal. Failure to select a replacement plaintiff and to notify opposing Liaison Counsel of such selection within ten (10) business days will constitute a waiver of the right to select a replacement plaintiff. If a replacement plaintiff is selected, then the case-specific expert discovery schedule provided for below may be adjusted by agreement among the parties so long as case-specific expert discovery for the replacement plaintiff will be completed at the same time as for the other plaintiffs in the Expert Discovery Pool.

(3) Dismissal of Plaintiffs Selected by Either Party for the Expert Discovery Pool. The intent of this Order is that the plaintiffs and defendants shall have an equal opportunity to select cases for case-specific expert discovery and for the Trial Pool. To maintain that equality, if a plaintiff selected by either party for the Expert Discovery Pool dismisses his or her case more than ninety (90) days after the date of selection (i.e., 90 days after June 1, 2009), then the party that selected the dismissed plaintiff may (but need not) remove one of the other party's selections from the Expert Discovery Pool.

III. CASE-SPECIFIC EXPERT DISCOVERY SCHEDULE.

Case-specific expert discovery will commence following the initial selection of the Expert Discovery Pool.

A. Each plaintiff selected for the Expert Discovery Pool must identify case-specific expert(s), and serve reports for any such expert(s), by September 18, 2009. On the same date, Plaintiffs' Liaison Counsel shall provide a reasonable schedule of dates on which case-specific expert witnesses who offer opinions on issues other than damages are available for deposition. Depositions of these case-specific experts shall take place between October 1, 2009 and December 14, 2009.

B. Defendants must identify any case-specific experts, and serve reports for any such experts, by January 1, 2010. On the same date, Defendants' Liaison Counsel shall provide a reasonable schedule of dates on which case-specific expert witnesses who offer opinions on issues other than damages are available for deposition. Depositions of these case-specific experts shall take place between January 8, 2010 and March 1, 2010.

C. Case-specific experts shall be limited to opinions concerning the individual plaintiff (or such plaintiff's decedent or represented party). This Order does not prohibit a case-specific expert from offering testimony that may overlap with testimony from a Generic Expert, provided that (a) the Generic Expert's opinion has not been excluded under *Frye* or other rulings in the Coordinated Actions; and (b) the testimony of the case-specific expert (i) is no broader than the testimony of the Generic Expert permitted by the Court; (ii) does not introduce any new theories or additional bases for the opinions of the Generic Expert; (iii) is relevant to the issues

as to which the case-specific testimony is proffered; and (iv) is otherwise permissible under the Pennsylvania Rules of Evidence and applicable case law.

D. If a case-specific expert is deposed more than once in these Coordinated Actions (if, for example, the expert has offered case-specific liability opinions in multiple cases), the parties shall use their good faith efforts to avoid repetitive examinations and shall not repeat examinations of qualifications, compensation or bias issues.

IV. PROVISIONS APPLICABLE TO ALL EXPERT DISCOVERY.

A. Production of Expert Material. For both generic and case-specific experts, the party designating the expert shall produce to Liaison Counsel for the other party an index and one copy (paper or electronic) of all documents, articles, data compilations and other material that the expert considered in formulating his or her opinion. For those experts who will be deposed in these Coordinated Actions, this production shall take place no later than fourteen (14) days in advance of that expert's deposition. For those experts of whom no deposition is taken in these Coordinated Actions, this production shall take place no later than sixty (60) days following service of that expert's report. Nothing in this Order limits the ability of the parties to seek any additional discovery relating to such experts or to object to any such additional discovery.

B. Contents of Experts' Reports. As used in this Order, the "report" of an expert shall mean provision of a current, complete curriculum vitae and a written report including: (i) a reasonable statement of the opinions to be expressed and the bases and reasons therefor; (ii) the specification of the data and other information relied upon by the expert in forming the opinions, including a list of all documents relied upon by the expert in forming his or her opinion (those documents shall be produced to the opposing party as part of the production described in section

IV.A. above); (iii) the qualifications of the witness, including a list of all publications authored by the witness; (iv) the rate of all compensation paid or to be paid to the expert; and (v) 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.

V. SELECTION OF CASES FOR INITIAL TRIAL POOL.

A. Selection of Initial Trial Pool. Two (2) cases from the Expert Discovery Pool shall be selected by the Court for trial (the “Trial Pool”). One case shall be selected by the Court from the three cases in the Expert Discovery Pool that were identified by the plaintiffs and one case shall be selected by the Court from the three cases in the Expert Discovery Pool that were identified by the defendants.

On March 1, 2010, following the completion of case-specific expert discovery for the Expert Discovery Pool, the Court shall conduct a hearing to consider the views of the parties concerning the selection of the Trial Pool. The Court shall select the two cases for the Trial Pool by March 8, 2010.

The remaining cases in the Expert Discovery Pool shall be sequenced for subsequent trials as follows: The party whose Trial Pool selection is tried first (i.e., set for trial beginning June 1, 2010) shall select the case from the Expert Discovery Pool to be tried next after the two Trial Pool cases are tried or otherwise resolved. Thereafter, the parties shall alternate in selecting the remaining cases in the Expert Discovery Pool for trial until all such cases are tried or otherwise resolved. Dates, schedules and further provisions for the disposition of these remaining Expert Discovery Pool cases shall be determined by the Court on motion of the parties or on its own motion.

Upon selection by the Court of the two cases for the initial Trial Pool, the parties shall meet and confer in an attempt to arrive at a choice of law stipulation that will govern each Trial Pool case.

B. Pretrial Schedule for Trial Pool Cases. The following schedule shall apply to the pretrial submissions for the Trial Pool cases (any due date falling on a weekend or holiday shall be adjusted to the next business day):

Dispositive motions to be filed and served on or before April 8, 2010.

Oppositions to dispositive motions to be filed and served within 20 days of service of the motion.

Replies in further support of dispositive motions to be filed and served within 7 days of service of the opposition.

Oral argument and rulings on the dispositive motions to be determined by the Court.

The first of the Trial Pool cases (to be selected by the Court from the two Trial Pool cases) shall be deemed trial ready and set for trial on June 1, 2010. The remaining Trial Pool case shall be deemed trial ready and set for trial on August 1, 2010.

Plaintiff to serve page/line designations of deposition testimony 45 days before the scheduled trial date.

Defendants to serve page/line counter-designations of deposition testimony, objections to plaintiff's deposition designations and affirmative page/line designations of deposition testimony 30 days before the scheduled trial date.

Plaintiff to serve page/line counter designations of deposition testimony and objections to defendants' deposition designations 15 days before the scheduled trial date. Defendants to serve objections to plaintiff's counter-designations 3 days before the scheduled trial date.

Plaintiff to serve his or her exhibit list, including a description of each document or other exhibit, document production number (if applicable) and an electronic copy of the exhibits (except demonstrative exhibits) 45 days before the scheduled trial date.

Defendants to serve objections to plaintiff's exhibits and serve their exhibit list, including a description of each document or other exhibit, document production number (if applicable) and an electronic copy of the exhibits (except demonstrative exhibits) 30 days

before the scheduled trial date. Plaintiff to serve objections to defendants' exhibits 15 days before the scheduled trial date.

Exhibits not included on a party's exhibit list (except exhibits used for impeachment) shall not be received into evidence absent a showing of good cause as to why the exhibit was not included on the exhibit list.

Plaintiff to serve his or her witness list 45 days before the scheduled trial date.

Defendants to serve their witness list 30 days before the scheduled trial date.

Witnesses not included on a party's witness list shall not be called at trial absent a showing of good cause as to why the witness was not included on the witness list.

Frye motions to be filed and served on or before April 8, 2010.

Responses to *Frye* motions to be filed and served 20 days after service of the motion(s).

Replies in further support of *Frye* motions to be filed and served 7 days after service of the responses to the motions(s).

Hearings on *Frye* motions to be determined by the Court.

Motions in limine to be filed and served 30 days before the scheduled trial date.

Responses to motions in limine to be filed and served 14 days after service of the motions in limine.

Hearings on motions in limine and other pretrial motions to be determined by the Court.

Jury instructions to be submitted 7 days before the scheduled trial date.

Final pretrial conference to be determined by the Court.

VI. CASE-SPECIFIC FACT DISCOVERY—EXPERT DISCOVERY POOL CASES.

Case-specific fact discovery in cases selected for the Expert Discovery Pool shall proceed according to the schedule below. By virtue of this order, Section VIII.A of Case Management Order No. 1 (providing for completion of fact discovery) is modified as follows:

For the six cases selected for the Expert Discovery Pool, the parties shall complete case-specific fact discovery by July 15, 2009, except that case-specific depositions of fact witnesses

shall be limited to one witness from each of the following categories for each patient who allegedly received Trasylol:

- (1) the patient or the patient's representative; and
- (2) the patient's primary care physician prior to the time the patient allegedly was administered Trasylol; and
- (3) the patient's cardiologist; and
- (4) the patient's surgeon for the procedure in which Trasylol allegedly was administered; and
- (5) the doctor or other health care professional who allegedly prescribed Trasylol for the patient; and
- (6) the doctor or other health care professional who treated the patient for any alleged Trasylol-related injury.

If the identity of any physician or health care professional described in the foregoing sentence is not specified in the Plaintiff Fact Sheet, the plaintiff shall promptly identify them upon request from defendants. Additional depositions of case-specific fact witnesses related to a particular patient (for example, of multiple representative plaintiffs, or of any additional surgeon who performed a "take back" cardiac surgery following the surgery in which Trasylol was administered) may be taken prior to July 15, 2009, upon agreement of the parties or by Court order for good cause shown. In the cases selected for the Expert Discovery Pool, production of documents described in Section V.C(9) of Case Management Order No. 1 (pertaining to sales representatives), disclosures of case-specific fact witnesses, and depositions of case-specific fact witnesses not deposed prior to July 15, 2009 shall be undertaken and completed between June 1 and October 12, 2009. If any case-specific fact witness described in categories (1) through (6) above is not deposed before July 15, 2009, such witness may be deposed during the periods for completion of fact witnesses set forth above.

A separate order will be entered regarding case specific expert discovery and trial for cases not selected for the Expert Discovery Pool. Further, in the event that additional Coordinated Actions are filed after the entry of this Order, a separate Order will be entered regarding case specific fact and expert discovery and trial for such newly filed cases.

BY THE COURT



BY AGREEMENT

J.

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1/12/09

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Feb 13 2009

L. RYANT-DAVIS

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PURSUANT TO Pa.R.C.P. 236(b)

FEB 13 2009

FIRST JUDICIAL DISTRICT OF PA
USER I.D.: _____



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February 10, 2009

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COMPLEX LITIGATION CENTER

The Honorable Sandra Mazer Moss
Complex Litigation Center
Court of Common Pleas of Philadelphia County
City Hall, Room 622
Philadelphia, PA 19107

RE: In re: Trasyol Products Liability Litigation, June Term 2008 No. 5229

Dear Judge Moss:

As I mentioned during today's monthly meeting, the parties have agreed to amend Case Management Order 2 in order to accelerate the trial dates pursuant to Your Honor's request.

I enclose Case Management Order 2 (Amended) which incorporates those new dates.

If this Order meets with your approval, the parties respectfully request that you enter it of-record.

Respectfully,

Albert G. Bixler

AGB:jg

Enclosure

- cc: Stanley Thompson, Esquire (by hand delivery, with enclosure)
- Donna Candelora, Esquire (by hand delivery, with enclosure)
- James R. Ronca, Esquire (by facsimile, with enclosure)
- Sol Weiss, Esquire (by facsimile, with enclosure)