

**IN THE COURT OF COMMON PLEAS OF PENNSYLVANIA
PHILADELPHIA COUNTY**

IN RE TRASYLOL PRODUCTS : JUNE TERM 2008
LIABILITY LITIGATION :
 : NO. 5229
This Document Relates to All Cases :
 :

ORDER

AND NOW, this _____ day of _____, 2009, it is hereby ORDERED and DECREED that Case Management Order #2 and any other relevant Case Management Orders are revised as follows:

- a. Plaintiffs' generic expert reports are due on October 1, 2009.
- b. Deposition of Plaintiffs' generic experts are due on October 16-November 16, 2009.
- c. Defendants' generic expert reports are due on December 1, 2009.
- d. Defendants' generic expert depositions will occur between December 16, 2009 and February 5, 2010.
- e. Plaintiffs' case specific expert reports are due on November 16, 2009.
- f. Deposition of Plaintiffs' case specific experts will occur between December 1, 2009 and January 15, 2010.
- g. Defendants' case specific expert reports are due on February 1, 2010.
- h. Deposition of Defendants' case specific experts will occur between February 15, 2010 and March 15, 2010.
- i. Selection of cases from trial pool by Court will occur on March 31, 2010.
- j. The remaining cases outside the trial pool of six cases, case specific expert reports will be due four months before the trial date (for example, October, 2010 would be due in June, 2010).

Hon. Sandra Moss

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PLAINTIFFS' MOTION PROPOSING SCHEDULING REVISIONS

AND NOW, come the Plaintiffs, through liaison counsel, James R. Ronca, and respectfully request the Court revise the existing scheduling in the combined Trasylol mass tort proceeding as follows:

1. At the last case management conference, there was a discussion with the Court regarding alteration of the schedule and the order in which the cases would be tried. At that time, Plaintiffs and Defendants suggested a schedule, and it was clear that the proposal did not meet the Court's approval. At that time, the parties were advised that they should further confer regarding the schedule and submit a new proposal to the Court. Primary in the Court's concern was (a) completion of as many cases as reasonably possible in 2010 and (b) trial of all cases currently filed by the end of 2011. The Court specifically indicated that all 2007 cases should be completed by the end of 2010, along with an unspecified number of 2008 cases.

2. The parties have conferred regarding a new schedule on several occasions and have been unable to come to an agreement. Therefore, Plaintiffs respectfully request that the Court consider the following proposal, which provides for (a) trial of all 2007 cases and thirteen 2008 cases by the end of 2010 and (b) resolution of all currently filed cases by the end of 2011.

A. History of Schedule in Case Management Orders

3. Case Management Order #1 was entered by Judge Tereshko on July 15, 2008 based upon an agreement of the parties. At the time, there were approximately 30 cases filed in Pennsylvania. Case Management Order #1 provided that fact discovery in the coordinated actions be completed by July 15, 2009, except for case specific discovery for cases filed after July 15, 2008. With regard to later filed cases the order said, "Completion of case specific fact discovery in any such later filed case shall be completed within 18 months of the date of the initial service of the complaint upon defendant." Case Management Order #1 also called upon all the parties to submit a proposed schedule for expert discovery by August 18, 2008.

4. Case Management Order #2, again submitted by agreement of the parties, provided the following dates for discovery:

- a. Plaintiffs' generic expert reports by July 31, 2009 (depositions to be taken August 17, 2009 to October 16, 2009).
- b. Defendants' generic expert reports by November 2, 2009 (depositions between November 16, 2009 and January 2, 2010).
- c. Cases eligible for the expert discovery pool (the initial pool of cases for trial) must have been filed by July 15, 2008 and needed to be selected by June 1, 2009.
- d. Plaintiffs' case specific expert reports for trial pool cases by September 18, 2009 (depositions between October 12, 2009 and December 18, 2009).
- e. Defendants' case specific expert reports for trial pool cases by January 8, 2010 (depositions January 18, 2010 to March 16, 2010).
- f. Selections for the two primary cases from the initial trial pool by the Court March 24, 2010.
- g. Trials were to begin August 1, 2010, starting with the first selection and proceeding one case at a time after that (under this order one case for one plaintiff would be tried each month from August 2010 through November 2010).
- h. Case specific fact discovery was to be completed by July 15, 2009.

5. Because of the important activity with Health Canada regarding the BART study and the various challenges to the BART study, the parties have, by agreement and with notice to the Court, extended the date for selection of trial pool cases to July 28, 2009 and Plaintiffs' expert reports to August 18, 2009 (the case selection date was moved to July 15, 2009 by Order of Judge Moss dated May 5, 2009 and after agreement by the parties).

B. Plaintiffs' Proposed Changes Regarding Selection of Cases for the Initial Trial Pool

6. At present, the pool of cases for selection to the initial trial pool of six involves only cases filed prior to July 15, 2008 (approximately 30 cases). Plaintiffs propose that the pool of cases from which the selection is made should be expanded to all cases filed in 2008. In order to facilitate this, the case selection date should be extended until August 31, 2009.

7. Plaintiffs' counsel believes that it is important for the Court to find and try the most representative cases in the initial trial pool. Plaintiffs believe that, by expanding the number of cases eligible for such treatment, the Court and the parties would get a better understanding of merits and risks of continued litigation. Plaintiffs believe that no one is prejudiced by extending these dates, as both parties propose that the trials begin in August, 2010, a full 12 months from now.

C. Plaintiff's Proposed schedule for Trial of Cases in 2010 and 2011

8. Plaintiffs propose a method by which 24 cases would be tried, or otherwise resolved, by the end of December, 2010. This would mean that all 2007 cases and thirteen 2008 cases would be resolved by the end of 2010. Plaintiffs propose a start date for these trials of August, 2010, because the federal trials, which will involve all of the principal counsel, will continue into July, 2010. The federal MDL trial extending into July 2010 will make it very difficult to start trials in Pennsylvania during July. Neither Plaintiffs nor defense counsel are

opposed to working hard and working each month of the year, but none of the principal counsel can be in two courtrooms at one time. In addition, there will be a very definitive overlap of experts, which would make a scheduling nightmare if cases were being tried in both the federal and state actions at the same time. In the first cases, it is essential to have live witnesses, while in later cases, videotape testimony may be a possibility. Plaintiffs believe that, because of the aggressive proposed schedule and the number of cases that would be resolved in 2010, this proposed schedule should merit approval from the Court.

9. Plaintiffs propose the following schedule:

- a. August 2010 - two cases (Judge's selection from trial pool).
- b. September 2010 – four cases (remaining cases in the initial trial pool).
- c. October 2010 – six cases (three selected by Plaintiffs and three by Defendants).
- d. November 2010 – six cases of the remaining 2007/2008 cases by earliest filing date.
- e. December 2010 – six cases of the remaining 2007/2008 cases by earliest filing date.
- f. 2011 six cases per month by earliest filing date.

10. The above schedule would account for all of the cases currently in the Court's inventory.

11. **Plaintiffs believe that, in order to accomplish the above, it is necessary to have multiple Plaintiffs tried in the same case.** Plaintiffs propose that the two cases for August, 2010 be tried at the same time. Plaintiffs propose that the September trials be divided into two separate cases, each with two Plaintiffs. Plaintiffs propose that the remaining trials be divided into two separate trials, three Plaintiffs each, for each of the remaining months from October, 2010 through December, 2011. It is only by combinations of Plaintiffs in these trials,

which have many generic overlaps, that both the parties and the Court's resources can be preserved and most effectively and efficiently used.

D. Plaintiffs' Proposed Revision of Discovery Schedule

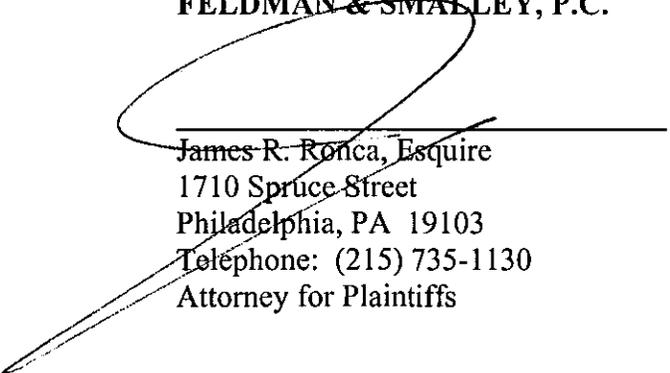
12. In order to accommodate the proposal above, Plaintiff's propose that the discovery schedule be changed as follows.

- a. Plaintiffs' generic expert reports – October 1, 2009.
- b. Deposition of Plaintiffs' generic experts – October 16-November 16, 2009.
- c. Defendants' generic expert reports – December 1, 2009.
- d. Defendants' generic expert depositions – December 16, 2009-February 5, 2010.
- e. Plaintiffs' case specific expert reports – November 16, 2009.
- f. Deposition of Plaintiffs' case specific experts – December 1, 2009-January 15, 2010.
- g. Defendants' case specific expert reports – February 1, 2010.
- h. Deposition of Defendants' case specific experts – February 15-March 15, 2010.
- i. Selection of cases from trial pool by Court – March 31, 2010.
- j. The remaining cases outside the trial pool of six cases, case specific expert reports will be due four months before the trial date (for example, October, 2010 would be due in June, 2010).

WHEREFORE, Plaintiffs respectfully request the Court to revise Case Management Order #2 and any other relevant Case Management Orders to reflect the above changes.

Respectfully submitted,

**ANAPOL, SCHWARTZ, WEISS, COHAN,
FELDMAN & SMALLEY, P.C.**



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