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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

IN RE ACTOS (PIOGLITAZONE) PRODUCTS LIABILITY LITIGATION This Document Applies to All Cases	6-11-md-2299 JUDGE DOHERTY MAGISTRATE JUDGE HANNA

SECOND AMENDED SCHEDULING ORDER:
PILOT BELLWETHER PROGRAM (*FIRST TRIAL*)[1]

This Court having considered the scope of these proceedings, the number of plaintiffs, the amount of discovery that will be required, and the time necessary to complete pre-trial preparations, hereby establishes a Pilot Bellwether Program ["PBP"]. The PBP establishes a stream-lined trial preparation schedule for a minimum of two Pilot Bellwether trials. This Court is aware that the schedule established herein will place extraordinary burdens on this Court, counsel, and the parties. Nonetheless, this abbreviated schedule is imposed so as to serve the very important goal of moving these proceedings toward completion of this Court's responsibilities in a reasonable timeframe.

PLEASE NOTE: THE DEADLINES ESTABLISHED HEREIN SHOULD BE CONSIDERED HARD AND FAST. *THEY WILL NOT BE EXTENDED, CONTINUED, OR DELAYED BY THE COURT IN ANY WAY ABSENT EXTRAORDINARILY GOOD CAUSE SHOWN.*[2]

[1] Based upon recent developments including, plaintiffs dismissing two (2) of five (5) cases nominated by Defendants in the ***Pilot Bellwether Discovery Pool***, and one (1) case not providing a ***Lexecon* or venue waiver**, this Court has modified the ***Pilot Bellwether Discovery Pool*** process. This Court, also, has issued Case Management Order: Bellwether Nominations on May 3, 2013, containing the updated details.

[2] As to deadlines that impact this Court's ability to complete its tasks – tasks such as briefing deadlines – the parties are expected to comply with all deadlines or obtain extensions from the Court. However, with regard to deadlines that do not have an immediate impact on the Court's ability to perform its tasks, the parties are permitted to grant extensions to each other, but should be advised that such extensions will not be enforced by this Court.

Trial Date (1st Pilot Bellwether Trial): *January 27, 2014*
Pre-Trial Conference: *January 13, 2014, 10:00 am*

Trial Date (2nd Pilot Bellwether Trial): *April 14, 2014*
Pre-Trial Conference: *March 31, 2014, 10:00 am*[3]

DEADLINES

2/28/2013: Plaintiffs shall provide a complete set of all ***requests for production*** of documents to Defendants.

3/25/2013: The Court shall establish a ***schedule for anticipated motions and briefing of legal issues.***

4/1/2013: Each side shall nominate ***Pilot Bellwether Discovery Pool*** participants, as follows.

- Each side will nominate 5 plaintiffs to participate in discovery.
- The only plaintiffs eligible to be included in the discovery pool will be plaintiffs who submitted Plaintiff Fact Sheets to the Defendants by December 31, 2012.
- To the extent that a plaintiff wishes to participate in the discovery pool but has not complied with the December 31, 2012 deadline, he or she may participate if, and only if, a completed fact sheet and authorizations, together with a complete set of medical records, can be produced to the Defendants no later than ***March 8, 2013***.

The following additional limitations shall apply to the Pilot Bellwether Discovery Pool nominees:

(a) No plaintiff who has asserted a class action is eligible for participation as a member of the Pilot Bellwether Discovery Pool.

(b) No plaintiff may be a nominee unless he or she: (i) actually consumed Actos; (ii) has been diagnosed with diabetes; and (iii) has been diagnosed with bladder cancer (no fear of cancer case).

- Nominating counsel shall certify, with regard to every Pilot Bellwether Discovery Pool nominee, that: (i) counsel has reviewed all available information about the nominee; (ii) counsel believes that the nominee's case can be ready for trial by January 27, 2014 (or, in the case of Defendants' nominees, April 14, 2014); (iii) counsel intends to try the

[3] A separate Scheduling Order providing deadlines for the second Pilot Bellwether trial has been issued.

nominee's case, if accepted by this Court; (iv) counsel does not intend to dismiss the nominee's case; and (v) counsel has no reason to believe that the nominee's case will be settled individually prior to trial.

4/8/2013: With regard to the Pilot Bellwether Discovery Pool nominees, Defendants shall notify this Court and Co-Lead Counsel whether or not they waive their right, as applicable, to venue or to have non-Louisiana cases remanded to transferor courts for trial (***the Lexecon issue***).

4/8/2013: Defendants shall notify the PSC, with regard to the Pilot Bellwether Discovery Pool nominees, of any gap in the ***essential preliminary discovery*** required by this Court's Case Management Order: Plaintiff Fact Sheets (Rec. Doc. 1355).

4/22/2013: Plaintiffs shall ***cure any deficiencies*** in essential preliminary discovery on Pilot Bellwether Discovery Pool nominees.

4/23/2013: Pilot Bellwether Discovery Pool Nominees may ***move for leave to amend their complaints***.[4]

5/3/2013: Parties to exchange first ***witness and exhibit lists***.[5] "Witnesses" shall include factual witnesses as well as experts, identified by area of expertise (deadline for identifying experts by name is separate). ***Updates due the first day of each month thereafter***. No witness or exhibit may be added without leave of Court once the discovery deadline has passed; however, witnesses and exhibits may be removed through January 2, 2014. Counsel are cautioned that, in creating witness and exhibit lists, good faith is expected at all times.

6/3/2013: Defendants must ***certify good-faith belief*** that all documents requested by the Plaintiffs, agreed by the Defendants to be produced, and/or ordered by this Court, have been produced or will be produced within ten (10) days of this date.

7/15/2013: Plaintiffs' shall ***identify their nominee*** for the first trial. Defendants shall ***identify their nominee*** for the second trial.

8/1/2013: ***Expert-Related Deadlines*** Begin

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[4] In filing any motion for leave to amend, counsel are cautioned to comply with Local Rule 7.6.

[5] This requirement is imposed in lieu of the Fed. R. Civ. Pro. 26(f) reporting requirement.

Plaintiffs' Deadlines	Defendants' Deadlines
8/1: Plaintiffs to identify experts and produce background information (*See* Fed. R. Civ. Pro. 26(a)(1)(B)(iv-vi))	**8/26**: Defendants to identify experts and produce background information (*See* Fed. R. Civ. Pro. 26(a)(1)(B)(iv-vi))
8/7: Plaintiffs to produce expert reports	**9/3**: Defendants to produce expert reports
9/5 through 10/4: Plaintiffs' expert depositions[6]	**9/5 through 10/4**: Defendants' expert depositions

10/11/2013: Deadline for ***supplementation, if any, of expert reports and completion of supplemental expert depositions***, if any. In light of the fact that expert reports must be produced prior to the completion of discovery, supplementation of reports and depositions will be permitted (pursuant to Fed. R. Civ. Pro. 26(a)(1)(D)) in order to respond to factual information discovered after an original report is issued.

10/1/2013: ***Discovery*** Deadline[7]

10/14/2013: Motions Deadline Begin (***limine, any remaining dispositive motions***)

Motions: **10/14**
Oppositions: **11/1**
Replies: **11/8**[8]

10/17/2013: ***Deposition Excerpt Designations*** Deadlines Begin

Plaintiffs' Deadlines	Defendants' Deadlines
10/17: Plaintiffs to produce excerpt designations, if any	**10/28**: Defendants to produce excerpt designations, if any
11/11: Plaintiffs' objections to Defendants' designations and counter-designations	**10/31**: Defendants' objections to Plaintiffs' designations and counter-designations

[6] Depositions of Plaintiffs' experts shall occur before depositions of Defendants' experts within the same discipline.

[7] Counsel are expected to schedule and sequence discovery so as to permit all deadlines to be met. This Court's Special Masters, as well as Magistrate Judge Hanna, will be available to assist the parties in such scheduling should it prove necessary. Moreover, if a separate Order is necessary, counsel should notify this Court, through the Special Masters.

[8] The parties shall have 10 days following "service" of all reply briefs to resolve any matters concerning privilege or confidentiality pursuant to paragraph 10 of the Protective Order (*i.e.*, Case Management Order: Protecting the Confidentiality of Discovery Materials).

No replies will be permitted. This Court will determine whether and, if so, when argument will be heard on the admissibility of deposition excerpts.

10/21/2013: Motions Deadline Begin (***Daubert*** motions)

Motions: **10/21**
Oppositions: **11/18**
Replies: **11/25**[9]

12/11/2013: ***Expert evidentiary hearing*** (to address *Daubert,* all other expert-related objections, and all expert-related pre-trial issues)

1/2/2014: Final *identification* of **will-call witnesses** (and the substance of their testimony) and *identification and exchange of* all **exhibits** (and the purpose for which they are offered).

1/6/2014: Deadline for completing ***Trial Depositions***

In an effort to streamline trial preparation as much as possible, the ***Court expects the parties to make significant efforts to produce witnesses for trial*** rather than relying on deposition testimony. To the extent that trial depositions are necessary, they must be completed by this date.

1/6/2014: ***Pre-trial order***

Attached to this Order is a modified version of this Court's standard pre-trial order form, together with instructions on completing the PreTrial Order. Counsel are strongly encouraged to consult with the Special Masters for guidance, instructions, and assistance in preparing the PreTrial Order.

1/13/2014: ***Pre-trial conference***

1/22/2014: ***Bench books***
Glossary
Training for electronic courtroom[10]

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[9] The parties shall have 10 days following "service" of all reply briefs to resolve any matters concerning privilege or confidentiality pursuant to paragraph 10 of the Protective Order (*i.e.*, Case Management Order: Protecting the Confidentiality of Discovery Materials).

[10] This is the deadline by which training must be completed, but counsel are encouraged to schedule such training earlier than January 22, 2014. Counsel must bring to the training the laptops that they intend to use for the presentation of exhibits.

1/27/2014: ***Trial*** of the first bellwether case.

SO ORDERED, this 3 day of April, 2013.

REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE