



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: RALEIGH HEART CLINIC LITIGATION

CIVIL ACTION NO. 18-C-5000

THIS DOCUMENT APPLIES TO ALL CASES

SECOND AMENDED CASE MANAGEMENT AND SCHEDULING ORDER

I. BELLWETHER SELECTION AND FACT WITNESS DISCLOSURES

The parties shall exchange three (3) bellwether selections each made from the 40 plaintiffs chosen for deposition as bellwether selections by 2 p.m. EDT on September 20, 2019. The parties shall file and serve one list identifying all six (6) cases to be tried no later than **September 25, 2019**.

In addition, each party shall exchange its specific list of intended fact witnesses for trial by **October 4, 2019**. Any further depositions of the six plaintiffs selected for the first bellwether trial to address new or non-duplicative information, or of other witnesses specific to the bellwether trial, shall be completed by October 31, 2019. There will be no objections to the deposition on the basis that it was noticed less than 30 days in advance as long as notice was served in advance by October 11, 2019.

II. DISCOVERY

REMAINING PLAINTIFF DEPOSITIONS SHALL BE COMPLETED BY: October 11, 2019. All Plaintiffs shall be deposed by October 11, 2019, in preparation for mediation.

ALL FACT DISCOVERY SHALL BE COMPLETED BY: October 31, 2019. All written discovery requests must be served at least forty-five (45) days prior to October 31, 2019. Fact discovery responded to must be supplemented, if necessary, by October 31, 2019.

ALL EXPERT DEPOSITIONS SHALL BE COMPLETED BY: February 10, 2020.

EXPERT WITNESS DISCLOSURES:

Each party shall produce expert disclosures containing the requirements of Rule 26(b)(4)(A)(1) by the deadlines set forth below:

Plaintiffs' Experts: October 14, 2019

Defendants' Experts: October 31, 2019

All objections or motions related to expert witnesses shall be filed **no later than February 24, 2020.**

EXPERT DEPOSITIONS:

Parties' experts shall be deposed within the following periods, with Plaintiffs making their experts available before Defendants' experts, unless otherwise agreed by the parties, and such agreement is not to be unreasonably withheld, so long as all expert discovery is completed no later than **February 10, 2020.**

Plaintiffs' Experts: November 8, 2019 through December 13, 2019

Defendants' Experts: January 7, 2020 through February 10, 2020

III. PRETRIAL AND TRIAL SCHEDULE

THE PARTIES SHALL CONDUCT MEDIATION: At a date convenient for the Panel. The parties also are free to work with a third-party mediator if they so choose and shall keep the Panel fully apprised of any changes. Mediation shall not take place until at least two weeks after all Plaintiffs are deposed, unless otherwise agreed by the parties.

The Resolution Judges will enter a separate order regarding scheduling of mediation.

DEADLINE FOR DISPOSITIVE MOTIONS: February 28, 2020. Defendants may move for summary judgment on issues Defendants deem are appropriate for summary judgment at any time prior to February 28, 2020.

DEADLINE FOR RESPONSES TO DISPOSITIVE MOTIONS: Responses are due within fourteen (14) calendar days after the filing date of the motion, not including the date on which the motion is filed, but shall not be due before February 24, 2020. Cardinal Health's response to Plaintiffs' Motion for Partial Summary Judgment on Liability against Defendant Cardinal Health 414, LLC, filed September 6, 2019 (Transaction 64170886), shall not be due until Monday, February 24, 2020.

DEADLINE FOR REPLIES TO DISPOSITIVE MOTIONS: Replies are due within seven (7) calendar days after the filing date of the response, not including the date on which the response is filed. Dispositive motions will be heard during the pretrial conference on April 20, 2020, or at any other time as scheduled by the Court.

DEADLINE FOR MOTIONS IN LIMINE: March 9, 2020.

DEADLINE FOR RESPONSES TO MOTIONS IN LIMINE: March 23, 2020.

DEADLINE FOR REPLIES TO MOTIONS IN LIMINE: April 2, 2020.

Motions in limine will be heard during the pretrial conference **on April 20, 2020.**

EXHIBITS AND DEPOSITION DESIGNATIONS EXCHANGED: February 18, 2020.

Parties shall exchange full and complete copies of all exhibits intended to be introduced into evidence at trial and all deposition designations. All exhibits shall be pre-marked.

OBJECTIONS TO EXHIBITS, WITNESSES AND DEPOSITION DESIGNATIONS:
February 24, 2020.

All parties shall meet and confer **no later than March 2, 2020**, to resolve objections to witnesses, exhibits and deposition designations.

DEADLINE FOR PRETRIAL CONFERENCE MEMORANDA: April 3, 2020.

All parties shall file and serve their pretrial conference memoranda and deliver their pretrial conference memoranda to the Presiding Judges and the Mass Litigation Manager. The pretrial conference memoranda shall contain:

- | | |
|--|--------------------------------------|
| a. Statement of the Case | f. Specific List of Witnesses |
| b. Issues of Fact | (No reservations authorized) |
| c. Issues of Law | g. Pending Motions |
| d. Proposed Stipulations | h. Proposed Verdict Form |
| e. Specific Schedule of Exhibits
(No reservations authorized) | i. Deposition Designation Objections |

The witness list shall be a bona fide list of intended trial witnesses. Names of witnesses shall be specified and shall include contact information for each witness and a statement of intended testimony. Unnamed/unlisted witness reservations are not authorized.

DEADLINE FOR PROPOSED JURY INSTRUCTIONS AND VOIR DIRE: April 3, 2020.

All parties shall file and serve their proposed jury instructions and voir dire and shall deliver their proposed jury instructions and voir dire to the Presiding Judges and the Mass Litigation Manager.

Parties shall also provide the Mass Litigation Manager with their proposed jury instructions and voir dire in Microsoft Word format via electronic mail **on April 3, 2020**. The Mass Litigation Manager's electronic mail address is kim.fields@courtswv.gov.

PRETRIAL CONFERENCE: At 9:00 a.m. on April 20, 2020, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia. **LEAD COUNSEL TRYING THE CASE**

SHALL APPEAR.

TRIAL DATE AND STRUCTURE

There will be an all-issues trial of six (6) cases, beginning at **9:00 a.m. on May 18, 2020**, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia. The Court expects trial to take no more than two (2) weeks. Plaintiffs shall select three (3) cases for trial and Defendants shall select three (3) cases for trial from the 40 potential Plaintiffs for bellwether selection jointly designated by the parties.

MODIFICATION: The dates and requirements of this Scheduling Order are **FINAL**. No additional evidence developed as a result of deviations from this Scheduling Order will be admissible at trial. The Scheduling Order shall not be modified, except by leave of the Court.

It is so **ORDERED**.

ENTERED: September 18, 2019.

/s/ Jay M. Hoke
Lead Presiding Judge
Raleigh Heart Clinic Litigation