

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE: TAXOTERE (DOCETAXEL)) MDL No. 2740
PRODUCTS LIABILITY LITIGATION)
) SECTION: "H" (5)
)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

CASE MANAGEMENT ORDER NO. 14
(TRIAL SCHEDULING ORDER)

The Court hereby Orders as follows:

1. Applicability of Order. The following procedures and schedules will govern the identification and selection of the initial Plaintiffs (as defined below) whose claims will be adjudicated in a succession of trials. The Federal Rules of Civil Procedure shall apply to these proceedings, subject to provisions permitting Court orders or stipulations by the Parties to make appropriate modifications. The procedures, provisions and schedules set forth in Case Management Order Nos. 3, 4, 6, 8, 8A, 8B, 10, and 11 are no longer in effect and are hereby replaced and superseded by this Case Management Order.

2. Trials. The Court believes that conducting successive trials will further the efficient progress of this litigation. The Court sets initial trials for the following dates:

- a.** May 13-24, 2019 (for a case involving only alleged use of Taxotere sold by sanofi)
- b.** September 16-27, 2019
- c.** January 27-February 7, 2020
- d.** May 11-22, 2020
- e.** September 14-25, 2020

The selection of a trial pool and the locations for the trials is subject to whether (i) in the discretion of the Court, the Court determines after input from the Parties that trial of a Plaintiff's

case in another venue is appropriate, (ii) the Parties agree to waive *Lexecon* permitting the trial of a non-Louisiana Plaintiff's case in the Eastern District of Louisiana, or (iii) the Court, after input from the Parties, is interested in and able to obtain a temporary assignment to try a case in another district pursuant to 28 U.S.C § 292. Absent the above, all parties preserve all *Lexecon* rights and arguments as to jurisdiction and venue for trial, including all rights preserved under Pretrial Order No. 5, and cases involving any non-Eastern District of Louisiana plaintiff shall be remanded for trial in their transferor courts or the appropriate jurisdiction and venue after pre-trial proceedings are completed.

3. First Trial Plaintiff Selection. The trial selections for the first sanofi-only trial ("First Trial") were established in Case Management Order No. 13 (Rec. Doc. 1819):

1. Durden, Antoinette 2:16-cv-16635
2. Earnest, Barbara 2:16-cv-17144
3. Francis, Tanya 2:16-cv-17410
4. Tuyes, Lisa 2:16-cv-15473

Any additional fact witness depositions necessary for the First Trial shall be concluded by November 7, 2018.

4. Expert Discovery. The following schedule shall apply to expert discovery for the First Trial:

a. Plaintiff General and Specific Expert Reports. On or before **November 7, 2018**, Plaintiffs shall designate and provide reports for general causation and liability experts and, for each expert, provide at least three dates the expert is available for deposition before December 10, 2018.

b. Sanofi Defendant General and Specific Expert Reports. On or before **December 10, 2018**, sanofi Defendants shall designate and provide reports for general causation and liability experts and, for each expert, provide at least three dates the expert is available for deposition before

January 25, 2019.

c. Rebuttal Reports. Rebuttal expert reports shall be submitted, if necessary and for good cause shown, to address only new issues raised in the Defendant expert reports, within fourteen (14) days of receipt of the expert report to which the rebuttal report is addressed. Rebuttal expert reports shall not be duplicative of the initial expert reports.

d. Depositions. At least ten (10) days prior to an expert's deposition, any party may notify the party producing the expert that it was unable to obtain materials listed on an expert's "materials relied upon" list, pursuant to FRCP, Rule 26(a)(2)(B)(ii-iv), and request that said materials be provided. In response to such request, the producing party shall provide the requested documents or materials, or excerpts therefrom, to the requesting party within 72 hours of the deposition.

- (i) The limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply to all cases subject to this Order.

Nothing in paragraphs 4(a) – (b) above preclude the parties from taking any expert's deposition after the deadline by which the producing party is to make them available.

5. Briefing Schedule for Dispositive/*Daubert* Motions for the First Trial.¹

- a. Motions and Briefs:** February 8, 2019
- b. Response in Opposition Briefs:** March 8, 2019

¹ The parties acknowledge that Defendants who were not parties to earlier trials may have different or additional legal, factual, and/or expert arguments and defenses than Defendants in earlier trials. Those non-party Defendants shall be deemed to preserve all such arguments and defenses.

- c. **Reply Briefs:** March 15, 2019
 - d. **Hearing and Argument:** Week of March 25, 2019
- 6. Schedule for Trial Preparation Documents for the First Trial.**
- a. **Jury Questionnaire:** April 1, 2019
 - b. **Final Witness List:** April 5, 2019
 - c. **Exhibit Lists and Deposition Designations:** April 12, 2019
 - d. **Motions *in Limine*:** April 15, 2019
 - e. **Plaintiffs’ and Defendants’ Counter Deposition Designations:** April 26, 2019
 - f. **Plaintiffs’ and Defendants’ Objections to Exhibits and Deposition Designations:** May 3, 2019
 - g. **Plaintiffs’ and Defendants’ Jury Charges:** May 3, 2019
 - h. **Oppositions to Motions *in Limine*:** April 26, 2019
 - i. **Reply Briefs Regarding Motions *in Limine*:** May 6, 2019
 - j. **Final Pretrial Conference:** Week of May 6, 2019
 - k. **Trial Date: May 13, 2019**
- 7. Second, Third, Fourth, and Fifth Trial Case Selection and Discovery.**

a. **Trial Pool.** The Trial Pool for the first five trial dates shall consist of forty (40) Plaintiffs. The parties have already submitted to the Court the following sixteen (16) Plaintiffs, which remain in the eligible trial pool and are otherwise subject to the additional dates set forth herein:

1. Durden, Antoinette 2:16-cv-16635	9. Addelson, Barbara 2:16-cv-16041
2. Earnest, Barbara 2:16-cv-17144	10. Bland, Keri 2:17- cv-06059
3. Francis, Tanya 2:16-cv-17410	11. Crayton, Shelia 2:17-cv-05923
4. Tuyes, Lisa 2:16-cv-15473	12. Gahan, Kelly 2:16-cv-15283
5. Martin, Della 2:16-cv-15678	13. Kinderdine, Christine 2:17-cv-00348
6. Thibodeaux, Cynthia 2:16-cv-15859	14. Mills, Jacqueline 2:17-cv-02689

7. Johnson, Deborah 2:16-cv-15607	15. Phillips, June 2:16-cv-15397
8. Kahn, Elizabeth 2:16-cv-17039	16. Sylvest, Lisa 2:16-cv-15841

b. Final Plaintiff Selection for the Second Trial. By **January 4, 2019**, the Parties shall submit briefing in which they each propose representative Plaintiffs from the previously selected sixteen (16) cases, identified in paragraph 7(a) *supra*, for the Second Trial. Each Party shall propose three (3) Plaintiffs for the trial setting. Plaintiffs and Defendants will each submit via email to the Court a letter brief no longer than five (5) pages in length describing: (i) the names and ranking in order of preference the plaintiffs that party is nominating, (ii) the reasons supporting these selections and suggested rankings, and (iii) the reasons why the other potential candidates are not appropriate selections. These memoranda shall be submitted simultaneously on an *ex parte* basis at 5:30 p.m., and each party shall serve the other with a copy of their submission no later than 5:45 p.m. that day. After considering the Parties' submissions, the Court shall select one (1) trial Plaintiff and one (1) alternate Plaintiff for the Second Trial, with such selection to occur no later than **January 11, 2019**. In order to facilitate preparedness for trial, both the selected trial Plaintiff and alternate trial Plaintiff for each trial setting will involve the same, single Defendant.

c. Trial Pool Nomination. By **November 1, 2018**, twenty-four (24) additional Plaintiffs shall be selected for inclusion in the Trial Pool for the third, fourth, and fifth trials as follows:

Plaintiffs: 12 Selections

Defendants (Collectively): 12 Selections

Of them, the parties will each identify select six (6) plaintiffs (for a total of twelve (12)), who will be subject to Phase I discovery between **November 1, 2018** and **June 1, 2019**. The remaining twelve (12) plaintiffs shall be subject to Phase I discovery between **June 1, 2019** and **September 30, 2019**. For the additional twenty-four (24) Plaintiffs, the Court expects the Parties to select

Plaintiffs whose claims are representative of the characteristics of claims in the litigation overall. Plaintiffs nominated for the Trial Pool must have product identification as defined in Case Management Order No. 12 (Rec. Doc. 1506). The Parties disagree on whether cases without single-defendant product ID should be selected for the Trial Pool and will address that issue with the Court prior to November 1, 2018. The Parties will each send their nominations in list format (including Plaintiff name and MDL Docket No.) to one another and the Court.

d. Initial Case-Specific Depositions in Trial Pool Cases. Absent good cause shown, or unless otherwise agreed upon, discovery in each of the Trial Pool cases shall be limited to the following: Defendant(s) may depose the Plaintiff and select three (3) additional witnesses to depose, and Plaintiffs may select two (2) witnesses to depose. The deadline for completing Phase 1 depositions in the Trial Pool cases for the second trial shall be **December 14, 2018**. The deadline for completing Phase 1 depositions in the Trial Pool cases for the third trial shall be **April 19, 2019**. The deadline for completing Phase 1 depositions in the Trial Pool cases for the fourth and fifth trials will be **September 30, 2019**.

8. Schedule for Second, Third, Fourth, and Fifth Trials. All other corresponding dates for the second, third, fourth, and fifth trials, not specifically defined in the paragraphs hereinabove, are outlined in Table 1 attached hereto.



HON. JANE T. MILAZZO
UNITED STATES DISTRICT COURT JUDGE

Deadlines	Trial 1 May 13, 2019	Trial 2 September 16, 2019	Trial 3 January 27, 2020	Trial 4 May 11, 2020	Trial 5 September 14, 2020
Trial Pool Nomination ¶ 7(a)	Completed	Completed	November 1, 2018	November 1, 2018	November 1, 2018
Phase I Discovery in Trial Pool Cases ¶ 7(d)	Completed	December 14, 2018	April 19, 2019	Per paragraph 7(c) and (d)	Per paragraph 7(c) and (d)
Final Plaintiff Selection - Parties' Nomination ¶ 7(b)	Completed	January 4, 2019	May 17, 2019	August 30, 2019	December 28, 2020
Final Plaintiff Selection - Court's Selection ¶ 7(b)	Completed	January 11, 2019	May 24, 2019	September 6, 2019	January 3, 2020
Phase II Discovery in Selected Trial Pool Cases	November 7, 2018	March 4, 2019	July 15, 2019	October 21, 2019	February 14, 2020
Plaintiff General Expert Reports ¶ 4(a)	November 7, 2018	March 22, 2019	August 2, 2019	November 8, 2019	March 6, 2020
Defendant General Expert Reports ¶ 4(b)	December 10, 2018	April 19, 2019	September 6, 2019	December 6, 2019	April 10, 2020
Plaintiff Expert depositions ¶ 4(a)	December 10, 2018	April 19, 2019	September 6, 2019	December 6, 2019	April 10, 2020
Defendant Expert Depositions ¶ 4(b)	January 25, 2018	May 17, 2019	October 7, 2019	January 6, 2020	May 11, 2020
Motions and Briefs ¶ 65(a)	February 8, 2019	May 31, 2019	November 1, 2019	February 7, 2020	June 5, 2020
Opposition Briefs ¶ 5(b)	March 8, 2019	July 19, 2019	November 22, 2019	March 6, 2020	July 10, 2020
Reply Briefs ¶ 5(c)	March 15, 2019	July 26, 2019	November 29, 2019	March 13, 2020	July 17, 2020
Hearing and Argument ¶ 5(d)	Week of March 25, 2019	Week of July 29, 2019	Week of December 9, 2019	Week of March 23, 2020	Week of July 27, 2020
Jury Questionnaire ¶ 6(a)	April 1, 2019	August 5, 2019	December 16, 2019	March 30, 2020	August 3, 2020
Final Witness List ¶ 6(b)	April 5, 2019	August 9, 2019	December 20, 2019	April 3, 2020	August 7, 2020
Exhibit Lists and Deposition Designations ¶ 6(c)	April 12, 2019	August 16, 2019	December 27, 2019	April 10, 2020	August 14, 2020
Motions in Limine ¶ 6(d)	April 15, 2019	August 19, 2019	December 30, 2019	April 13, 2020	August 17, 2020
Counter Designations ¶ 6(e)	April 26, 2019	August 30, 2019	January 10, 2020	April 24, 2020	August 28, 2020
Oppositions to Motions in Limine ¶ 6(h)	April 26, 2019	August 30, 2019	January 10, 2020	April 24, 2020	August 28, 2020
Objections to Designations ¶ 6(f)	May 3, 2019	September 6, 2019	January 17, 2020	May 1, 2020	September 4, 2020
Plaintiffs' and Defendants' Jury Charges ¶ 6(g)	May 3, 2019	September 6, 2019	January 17, 2020	May 1, 2020	September 4, 2020
Final Pretrial Conference ¶ 6(j)	Week of May 6, 2019	September 11, 2019	January 22, 2020	May 6, 2020	September 9, 2020