

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**FILED**  
04 DEC 10 PM 3:23  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re WELDING ROD PRODUCTS )  
LIABILITY LITIGATION )  
\_\_\_\_\_)  
THIS DOCUMENT RELATES TO )  
ALL ACTIONS )  
\_\_\_\_\_)

Case No. 1:03-CV-17000  
MDL Docket No. 1535  
  
JUDGE O'MALLEY

**THIRD CASE MANAGEMENT ORDER**

IT IS HEREBY ORDERED that the Case Management Order (“CMO”) and Second Amended Supplemental Case Management Order (“Supp. CMO”) entered in this proceeding on December 9, 2003 and August 31, 2004, respectively, shall be supplemented and amended as follows:

**I. PARKINSON’S DISEASE MOTION**

1. The schedule for briefing on the defendants’ pending “Motion To Exclude All Testimony That Exposure To Welding Fumes Causes Parkinson’s Disease” (the “PD Motion”), as set forth in Paragraph II of the Supp. CMO is modified as follows:

a. On or before December 17, 2004, plaintiffs will file their opposition to the PD Motion, including designations and Rule 26(a)(2) reports for any experts plaintiffs intend to use in opposition to defendants’ motion, as well as all materials relied upon by such experts and any materials relating to any studies conducted and/or relied upon by such experts. At that time, plaintiffs will also provide all studies, articles, records, data, videos, photos, or any other materials that plaintiffs claim support their opposition. On this date, the defendants may

commence discovery from plaintiffs regarding their PD Motion opposition, and the parties may commence depositions of each others' experts designated in their PD Motion briefing.

b. On or before January 18, 2005, defendants will file their reply brief in support of their PD Motion, including designations and Rule 26(a)(2) reports for any experts defendants rely upon in their reply, as well as all materials relied on by such experts and any materials relating to any studies conducted and/or relied upon by such experts. At that time, defendants will provide all studies, articles, records, data, videos, photos, or any other materials that defendants claim support their reply. On this date, plaintiffs may commence further discovery from defendants regarding their PD Motion reply, including depositions of experts designated in the reply.

c. On or before February 7, 2005, plaintiffs may file a surrebuttal brief including any reports and materials in support thereof, in opposition to the PD Motion.

d. On April 19, 2005, the Court will conduct a hearing on the PD Motion. Prior to that date, the Court will confer with the parties about the format and content of that hearing. Consistent with Paragraph VI of the CMO and Paragraph I.3 of the Supp. CMO, the Court will endeavor to coordinate its hearing on the PD Motion with those state courts with welding rod cases which involve the issues raised by the PD Motion.

## **II. INITIAL TRIAL DATES**

1. By agreement of the parties, the Court intends to schedule three initial trials in this MDL proceeding, each to be selected with an eye to providing opportunities for educating the Court and the parties regarding the science and other issues that are likely to recur in litigating individual cases. The parties and the Court have agreed that the *Ruth* case shall be the first case to be tried in the MDL proceeding. The trial of that case shall commence on July 18,

2005, with the Court reserving three to four weeks for the completion of that proceeding. The parties will discuss whether they can agree to time limits for the conduct of the trial once they are in a position to assess the parties who will be participating in the trial and the issues to be tried.

2. The parties shall confer and, in consultation with the Court, shall make the designation of the other two cases to be tried before this Court on or before January 7, 2005. The second trial is scheduled to commence on October 31, 2005, and the third trial is scheduled to commence on February 6, 2006, with the Court reserving three to four weeks for each of those trials.

3. At the time that the second and third cases are selected for trial, the parties shall submit a proposal for the scheduling of the proceedings necessary to prepare those cases for trial.

### **III. DISCOVERY CUT-OFF DATES**

1. Paragraph XI.G of the existing CMO, as modified by Paragraph V of the Supp. CMO, is hereby amended as follows:

a. All core fact discovery – that is, all general fact discovery that may be relevant to more than one case in this proceeding – shall be completed by March 14, 2005.

b. On or before February 4, 2005, the parties shall exchange lists of those fact witnesses they intend to call at trial in the initial MDL trial case.

c. All case-specific fact discovery in the first case to be tried before the Court in this proceeding shall be completed by March 14, 2005.

d. All case-specific fact discovery in the second and third cases to be tried before the Court in this proceeding shall be completed pursuant to the schedule to be submitted by the parties after the cases are selected.

e. All case-specific fact discovery (other than the “fact sheets” discussed in Section III of the Supp. CMO) in all other cases in this MDL proceeding shall be deferred, subject to further scheduling orders by this Court.

#### **IV. CORE *DAUBERT* MOTIONS**

The dates set forth in Sections I.A and I.B.1 & 2 of the Supp. CMO are modified as follows:

1. The core expert depositions authorized in Paragraph XIII.B.5 of the existing CMO shall be completed on or before March 1, 2005.
2. The provisions of Paragraph XIII.B.6 of the existing CMO related to the length of core expert depositions are modified as follows: The discovery deposition of any core expert as to those opinions that are generally applicable to multiple cases shall be limited to eight (8) hours, excluding time taken for breaks, meals and other reasons. The entire eight (8) hours shall be allocated to the party or parties requesting the deposition. Depositions under this paragraph shall be completed in one day, unless otherwise agreed to by the parties. Parties shall use reasonable efforts to avoid duplicating prior discovery. To the extent that a core expert is also offering case-specific opinions in the initial MDL trial (*Ruth*), the parties will discuss coordinating the core and case-specific depositions of that expert to determine if additional time will be needed for the case-specific deposition. The party offering the expert may schedule a separate deposition at a later date to be used in lieu of presenting the expert at trial or hearing, provided that the opposing party or parties shall be permitted to cross-examine the expert at any such deposition. Such subsequent trial depositions need not be completed by the March 1, 2005 deadline set forth above. The Court has a strong preference that expert testimony be presented live at the scheduled PD Motion and *Daubert* hearings referenced herein in Paragraphs I.1.d and

IV.4, as well as at the three MDL trials referenced herein in Paragraph II. Either party has the right to videotape any such live expert in-court testimony with the understanding that it may be offered in subsequent federal or state court proceedings.

3. Motions regarding the admissibility of any testimony proposed by any core experts identified pursuant to Paragraphs XIII.A.1 or XIII.A.2 of the existing CMO (*Daubert* motions) shall be filed on or before March 14, 2005. Oppositions to any such motions shall be filed on the earlier of: (a) the date 30 days after the motion is filed; or (b) on April 14, 2005. Reply briefs in support of such motions shall be filed on the earlier of: (a) the date 15 days after the response is filed; or (b) on April 29, 2005.

4. Following the completion of the hearing on the PD Motion referenced above in Section I.1.d, the Court will conduct a hearing on all pending motions regarding the admissibility of testimony proposed by core experts. Prior to that date, the Court will confer with the parties about the format and content of those hearings. The Court is presently reserving the period from April 19, 2005 through the end of May 2005 for the PD Motion hearing and the *Daubert* hearing.

**V. CASE-SPECIFIC EXPERTS IN INITIAL MDL TRIAL CASE**

1. Paragraph VI of the Supp. CMO is modified as follows:
  - a. On or before February 4, 2005, Plaintiffs shall identify and provide Rule 26(a)(2) reports for case-specific experts expected to testify in the initial MDL trial case .
  - b. On or before March 7, 2005, Defendants shall identify and provide Rule 26(a)(2) reports for case-specific experts expected to testify in the initial MDL trial case.
  - c. Discovery of the parties' case-specific experts shall be completed by April 11, 2005.

d. On or before April 25, 2005, the parties shall file any *Daubert* motions regarding case-specific experts in the initial MDL trial case.

e. On or before May 23, 2005 the parties shall file oppositions to any *Daubert* motions regarding case-specific experts in the initial MDL trial case.

f. On or before June 6, 2005, the parties shall file their replies in support of any *Daubert* motions regarding case-specific experts in the initial MDL trial case.

g. Commencing on June 20, 2005 the Court shall conduct a hearing on any *Daubert* motions filed as to case-specific experts in the initial MDL trial case.

#### **VI. CASE-SPECIFIC DISPOSITIVE MOTIONS IN INITIAL MDL TRIAL CASE**

The dates set forth in Section VI of the Supp. CMO are modified as follows:

1. On or before April 6, 2005, the parties shall file any dispositive motions in the initial MDL trial case.

2. On or before May 6, 2005 (or 30 days after the filing of a motion), the parties shall file their oppositions to any dispositive motions in the initial MDL trial case.

3. On or before May 23, 2005 (or 15 days after the filing of any opposition), the parties shall file replies in support of any dispositive motions in the initial MDL trial case.

#### **VII. DEFENDANTS' LIAISON COUNSEL**

1. Defendants' Liaison Counsel shall have authority to enter into scheduling and procedural agreements with Plaintiffs' Lead Counsel on behalf of all defendants in the MDL proceeding. Defendants' Liaison Counsel shall notify all other defendants of any such agreements by electronic mail as soon as possible. Any defendant who objects to such an agreement shall notify Defendants' Liaison Counsel of their objection within three business days of such notice being sent, or shall be deemed bound by the agreement.

**IT IS SO ORDERED.**

*Kathleen M. O'Malley*  
KATHLEEN MCDONALD O'MALLEY  
UNITED STATES DISTRICT JUDGE