

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SCOTT D. MCCLURG, et al.,)
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 Plaintiffs,)
)
 v.) No. 4:12-CV-00361-AGF
)
 MALLINCKRODT, INC., et al.,)
)
 Defendants.)

CASE MANAGEMENT ORDER No. 1 – TRACK 3: COMPLEX

As discussed with counsel at the hearing on the parties' proposed scheduling plans held on the record on April 16, 2015, because of the complexity of these consolidated cases, including the number of plaintiffs and the expected legal and factual issues, it is not realistic to establish a schedule at this time for the entire case. The cases have been assigned to Track 3 (Complex). The following schedule governs the initial stages of discovery, and additional Case Management Orders will be entered as needed.

IT IS HEREBY ORDERED that the following schedule shall apply regarding the initial stages of discovery in these consolidated cases:

1. The majority of Plaintiffs have produced preliminary expert reports regarding exposure, Plaintiff questionnaires, medical records, and signed authorizations for the release of medical and employment records. The remaining Plaintiffs shall supplement with this material by **May 15, 2015**.

2. Any motion for joinder of additional Plaintiffs or consolidation of additional cases with this case shall be filed no later than **June 29, 2015**.

3. Plaintiffs in any newly-filed cases shall provide preliminary expert reports, completed Plaintiff questionnaires, medical records, and signed authorizations for the release of medical and employment records (with similar substance and detail as those

provided to date as described above) within **60 days** of filing suit, and no later than **August 30, 2015**.

4. On January 12, 2015, Defendants served initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1).

5. The parties shall attempt to reach agreement regarding the manner of production of documents and electronic discovery, and any appropriate protective order. No later than **April 27, 2015**, the parties shall file a (1) joint proposed order regarding the manner of production and (2) any joint proposed protective order. If it appears that the parties cannot reach agreement, each side's proposed orders regarding these issues shall be filed by **April 22, 2015**.

6. **Identification of Common Issues:** Common issues that may be applicable to all or a substantial number of Plaintiffs and that shall be the subject of the initial stages of discovery and expert designations and, if applicable, *Daubert* and summary judgment motions are:

(A.) The manner in which the radioactive material alleged to have caused Plaintiffs' injuries was transported from the St. Louis FUSRAP Sites to the locations where the Plaintiffs were allegedly exposed;

(B.) The type, amount, and level of radioactive material attributable to Defendants at the locations where Plaintiffs were allegedly exposed, and whether such level is sufficient to support a claim;

(C.) Whether each Defendant breached a standard of a duty of care;

(D.) In what geographic areas were residents exposed to radioactive dust as the result of Defendants' conduct; and

(E.) Whether each Defendant knew or had reason to know of a high probability that its actions would result in injury.

(F.) The parties may identify additional common issues as discovery proceeds.

7. **Discovery and Motions Related to Common Issues:** The following schedule shall apply to discovery and motions related to the common issues:

(A.) Discovery on the common issues may commence immediately following the parties' agreement or the Court's orders on the manner of production and any appropriate protective order, except that discovery requests may be served within **seven (7) days** of the date of this Case Management Order.

(B.) Defendants' answers to Plaintiffs' complaints are due **April 27, 2015**. (Doc. Nos. 268 & 269.) No later than **30 days** following the filing Defendants' answers, Plaintiffs shall inform Defendants of any common issues upon which they believe Defendants bear the burden of proof and which are likely to require expert discovery.

(C.) The parties bearing the burden of proof on a common issue shall identify and provide Rule 26(a) reports for any expert they intend to call at trial to address these common issues by **November 1, 2015**, and make these experts available for deposition with agreement of opposing counsel by **December 15, 2015**.

(D.) The parties not bearing the burden of proof on a common issue shall identify and provide Rule 26(a) reports for any expert they intend to call at trial to address these common issues by **January 15, 2016**, and make these experts available for deposition with agreement of opposing counsel by **February 26, 2016**.

(E.) To the extent a party desires to disclose any rebuttal experts regarding any common issues, the party shall file a motion for leave to do so by **March 11, 2016**. Rebuttal experts shall be permitted only upon good cause shown or agreement of the parties. To the extent any rebuttal experts are permitted, depositions of the rebuttal experts shall be completed within **21 days** of the Court's ruling.

(F.) The parties shall complete all discovery in this case related to common issues no later than **May 13, 2016**.

(G.) Any motions related to *Daubert* or similar motions related to expert witnesses identified to testify regarding common issues must be filed on or before **June 15, 2016**. Responses shall be filed within **28 days** of any motions, and any reply shall be filed within **14 days** of any response.

(H.) Any motions for summary judgment and/or for a ruling on any common issues must be filed within **21 days** of the ruling on the last *Daubert* motion, if not filed sooner. Responses shall be filed within **28 days** of any motions, and any reply shall be filed within **14 days** of any response.

8. **Science Day**: The Court will hold a science day in chambers on **August 28, 2015 at 1:30 p.m.** Each side shall have 1.5 hours to present technical or scientific background information to the Court. The parties shall confer and reach agreement on the format.

9. **Mediation**: On or before **March 31, 2016**, the parties shall designate an agreed mediator and file a proposed schedule for conducting the mediation conference(s).

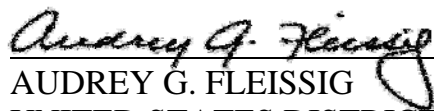
10. **Status Conferences**: The following status conferences will be held:

- (A) **Wednesday, July 1, 2015 at 1:30 p.m.**
- (B) **Friday, August 28, 2015 at 12:30 p.m.**
- (C) **Wednesday, October 28, 2015 at 1:30 p.m.**

The August 28, 2015 conference will be held in the courtroom before the science day. Any party not participating in the science day may participate in the August 28, 2015 status conference by telephone, if counsel notifies the office of the undersigned of his or her intent to do so, and provides his or her contact information, at least 24 hours in advance.

All other status conferences will be held by telephone and will be on the record. Plaintiffs' lead counsel shall set-up a conference call dial-in number and inform the Court and all counsel who wish to participate of the dial-in number and any participant code(s).

One week in advance of each status conference, lead counsel shall file a joint status report setting out the current status of the work and any topics they wish to address during the conferences.



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 17th day of April, 2015.

General Information

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| Court | United States District Court for the Eastern District of Missouri; United States District Court for the Eastern District of Missouri |
| Federal Nature of Suit | Personal Injury - Other[360] |
| Docket Number | 4:12-cv-00361 |