

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:08-MD-01928-MIDDLEBROOKS/JOHNSON

_____)
IN RE TRASYLOL PRODUCTS)
LIABILITY LITIGATION — MDL-1928)
)
This Document Relates To All Actions)
)
_____)

**PRETRIAL ORDER NO. 22 ESTABLISHING PRETRIAL DISCLOSURES AND
MOTIONS SCHEDULE FOR CASES TO BE TRIED BY THIS COURT**

This Order revises certain pretrial submissions schedules in MDL-1928. This Order applies to all Parties as defined in Pretrial Order No. 4 (“PTO 4”) (May 22, 2008).

**I. *LEXECON* AND VENUE WAIVERS AND TRIAL SCHEDULE FOR
REMAINING CASES IN THE INITIAL TRIAL POOL AND GROUPS 1 AND 2.**

PTO 4, Pretrial Order No. 6 (“PTO 6”) (Sept. 19, 2008), Pretrial Order No. 7 (“PTO 7”), and Pretrial Order No. 16 (“PTO 16”) (Nov. 13, 2009), are amended as follows:

A. *Trial Schedule for Remaining Initial Trial Pool Case. Dodson v. Bayer Corp. et al.*,

No. 9:08-cv-80770. The Plaintiff in *Dodson* has declined to waive his venue/*lexicon*

objections. *Dodson* has three pending motions. If *Dodson* is not resolved by rulings on these motions, then case shall be ready for transfer back to the Northern District of Alabama for trial.

B. *Trial Schedule for Cases Assigned to Groups 1 and 2 Filed in Florida.* Section I.B.

of PTO 16, Exhibit A to PTO 7 is modified to provide that the following schedule shall apply to the remaining cases assigned to Groups 1 and 2, and that were filed in a Florida state or federal

court: *Deborah Bakan v. Bayer Corp. et al.*, No. 9:08-cv-80423, shall be set for trial on **October 18, 2010**; *Sandra Boxrud v. Bayer Corp. et al.*, No. 9:08-cv-80404, shall be set for trial on **November 8, 2010**; and *Judy Sherman v. Bayer Corp. et al.*, No. 9:08-cv-80403, shall be set for trial on **December 6, 2010**.

C. Venue/Lexecon Waivers and Trial-ready Schedule for Cases Assigned to Groups 1 and 2 Filed Outside of Florida. Section I.B of PTO 16 and Exhibit A to PTO 7 are modified to provide that the parties in cases filed in or removed to United States District Courts outside of Florida that are assigned to Groups 1 and 2 by PTO 16 must file and serve a notice of whether they agree to waive venue objections and objections based on *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), on or before July 12, 2010. These cases shall be deemed ready for trial in this Court or remand to the appropriate transferor court according to the following schedule:

i. Earliest Filed Four Cases. The following cases shall be trial-ready on **January 10, 2011**: *Michael O'Connor v. Bayer Corp. et al.*, No. 9:08-cv-80435; *Lupe De Leon v. Bayer Corp. et al.*, No. 9:08-cv-80395; *Crystal Fast v. Bayer Corp. et al.*, No. 9:08-cv-80613; *David Wease v. Bayer Corp. et al.*, No. 9:08-cv-80387.

ii. Next Earliest Filed Five Cases. The following cases shall be trial-ready on **February 14, 2011**: *Sheila Ware v. Bayer Corp. et al.*, No. 9:08-cv-80428; *Thomas Durkin v. Bayer Corp. et al.*, No. 9:08-cv-80419; *Sherry Shaw v. Bayer Corp. et al.*, No. 9:08-cv-80386; *Willard Chappell v. Bayer Corp. et al.*, No. 9:08-cv-80639; *Evelyn Savenelli v. Bayer Corp. et al.*, No. 9:08-cv-80639. The *Chappell* plaintiff and the *Savenelli* plaintiffs were joined in the same action. In accordance with PTO 4, these plaintiffs shall be severed and proceed as separate actions.

iii. Next Earliest Filed Five Cases. The following cases shall be trial-ready on **March 14, 2011**: *Matthew Eannarino v. Bayer Corp. et al.*, No. 9:08-cv-80640; *Linda Knighten v. Bayer Corp. et al.*, No. 9:08-cv-80640; *Marilise Baker v. Bayer Corp. et al.*, No. 9:08-cv-80595; *Helen Reedy v. Bayer Corp. et al.*, No. 9:08-cv-80588; *Jodi Booterbaugh v. Bayer Corp. et al.*, No. 9:08-cv-80552. The *Eannarino* plaintiff and the *Knighten* plaintiffs were joined in the same action. In accordance with PTO 4, these plaintiffs shall be severed and proceed as separate actions.

iv. Most Recent Filed Six Cases. The following cases shall be trial-ready on **April 18, 2011**: *Ruth Kahr v. Bayer Corp. et al.*, No. 9:08-cv-80551; *Clarence Walker v. Bayer Corp. et al.*, No. 9:08-cv-80642; *Thadio Wilson v. Bayer Corp. et al.*, No. 9:08-cv-80642; *James Watters v. Bayer Corp. et al.*, No. 9:08-cv-80833; *Rosalie Carr v. Bayer Corp. et al.*, No. 9:08-cv-80834; *Patrick Brickman*, No. 9:08-cv-80771. The *Walker* plaintiff and the *Wilson* plaintiffs were joined in the same action. In accordance with PTO 4, these plaintiffs shall be severed and proceed as separate actions.

II. PRETRIAL SUBMISSIONS SCHEDULE FOR REMAINING CASES IN THE DODSON CASE AND GROUPS 1 AND 2.

Section V.B of Pretrial Order No. 6 ("PTO 6") (Sept. 19, 2008) is modified to provide that the following schedule shall apply to the pretrial submissions for the cases identified above (including the *Dodson* case) and any other case in which this Court has set a trial date or trial ready date (any due date falling on a weekend or holiday shall be adjusted to the next business day):

The parties shall engage in mediation at least 60 days before the scheduled trial date.

Each plaintiff must serve his/her witness list, consistent with the requirements of Federal Rule of Civil Procedure 26(a)(3)(A)(i) and (ii), 56 days before the scheduled trial date or trial-ready date, including, without limitation, separate identification of those witnesses

plaintiff expects to present and those plaintiff may call if the need arises, as well as those witnesses plaintiff expects to present by deposition and those witnesses plaintiff expects to call live at trial.

Defendants must serve their witness list, consistent with the requirements of Federal Rule of Civil Procedure 26(a)(3)(A)(i) and (ii), 10 days after service of the applicable plaintiff's witness list, including, without limitation, separate identification of those witnesses defendants expect to present and those defendants may call if the need arises, as well as those witnesses defendants expect to present by deposition and those witnesses defendants expect to call live at trial.

Witnesses not included on a party's witness list shall not be called at trial absent agreement of the parties or a showing of good cause as to why the witness was not included on the witness list.

Each plaintiff must serve any page/line designations of deposition testimony 56 days before the scheduled trial date or trial-ready date.

Defendants must serve any page/line counter-designations of deposition testimony, objections to plaintiff's deposition designations and affirmative page/line designations of deposition testimony 35 days before the scheduled trial date or trial-ready date.

Each plaintiff must serve any page/line counter-designations of deposition testimony and objections to defendants' deposition designations 17 days before the scheduled trial date or trial-ready date.

Defendants must serve any objections to plaintiff's deposition counter-designations 7 days before the scheduled trial date or trial-ready date.

Each plaintiff must serve his/her exhibit list, including a description of each document or other exhibit, document production number (if applicable) and an electronic copy of the exhibits (except demonstrative exhibits), as required by Federal Rule of Civil Procedure 26(a)(3)(A)(iii), 49 days before the scheduled trial date or trial-ready date.

Defendants must serve objections to plaintiff's exhibits, and serve their exhibit list, including a description of each document or other exhibit, document production number (if applicable) and an electronic copy of the exhibits (except demonstrative exhibits), consistent with the requirements of Federal Rule of Civil Procedure 26(a)(3)(A)(iii), 28 days before the scheduled trial date or trial-ready date.

Each plaintiff must serve objections to defendants' exhibit list 7 days before the scheduled trial date or trial-ready date.

Exhibits not included on a party's exhibit list (except exhibits used for impeachment) shall not be received into evidence absent agreement of the parties or a showing of good cause as to why the exhibit was not included on the exhibit list.

Any motions in limine must be filed and served at least 35 days before the scheduled trial date or trial-ready date.

Responses to motions in limine must be filed and served 14 days after service of the corresponding motion in limine.

Replies in support of a motion in limine must be filed and served 7 days after service of a response to the corresponding motion in limine.

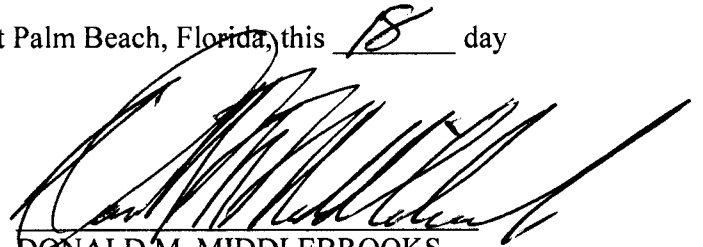
The schedule for any hearings on motions in limine and other pretrial motions will be determined by the Court.

The parties shall file a pretrial stipulation as required by S.D. Fla. L.R. Civ. P. 16.1(E) 10 days before the scheduled trial date or trial-ready date.

Proposed jury instructions must be submitted 14 days before the scheduled trial date or trial-ready date.

The schedule for the final pretrial conference will be determined by the Court.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 18 day
of June, 2010.


DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE