

1. The case of Rana Terry v. McNeil-PPC, Inc., et al., Civil Action No. 2:12-cv-07263 (“the Terry case”), is selected as the first bellwether case to proceed to trial from the Tylenol liver injury cases pending in MDL No. 2436.
2. The trial of the Terry case shall commence on **Monday, June 22, 2015**, with the reporting of the venire for completion of jury questionnaires. Pre-trial proceedings in the Terry case shall be completed in accordance with the below schedule:¹

EXPERT DEADLINES

Plaintiffs’ Identification of Expert Witnesses and Disclosure of Expert Reports	Monday, February 16, 2015
Defendants’ Identification of Expert Witnesses and Disclosure of Expert Reports	Friday, March 27, 2015
Expert Deposition Deadline	Friday, April 24, 2015

No deposition of a Plaintiffs’ Expert shall occur prior to Defendants’ Experts’ Disclosures with regard to the corresponding Expert of Defendants. The scope of expert depositions shall be consistent with the guidance that the Court provided to the parties as expressed during the May 20, 2014 status conference in this case. (*See, May 20, 2014 status conference transcript as pgs. 26-36*). Accordingly, the parties shall in good faith

¹ The previously-entered Case Management Order (CMO) 18 set a partial pre-trial schedule while the parties and this court worked to resolve outstanding disputes regarding parties’ submissions of pre-trial motions and deposition designations. This Order serves to supplement information already provided in CMO 18. The information contained in the previous Order regarding trial date and expert deadlines remains unchanged. This shall be considered the complete Scheduling Order for the first Bellwether trial.

not unnecessarily seek to undertake duplicative questioning of an expert whose deposition was taken in the Lyles proceeding. Expert depositions will proceed to the extent feasible in accommodation of the schedules of the experts, with the deposition of the Plaintiffs' Expert on a particular subject or issue to occur first, followed by the deposition of the corresponding Defendants' Expert. This does not change the presumptive limitation of 7 hours of deposition time of an expert.

MOTIONS PRACTICE

Dispositive and <u>Daubert</u> Motions Due	Friday, May 8, 2015
Dispositive and <u>Daubert</u> Oppositions Due ²	Friday, May 22, 2015
Motions <i>in Limine</i> Filed	Wednesday, May 27, 2015
Motions <i>in Limine</i> Oppositions	Wednesday, June 10, 2015
Pre-Trial Conference & Oral Argument on Dispositive & Non-Dispositive Motions	Wednesday, June 17, 2015

JURY INSTRUCTIONS

Proposed Jury Instructions	Friday, June 5, 2015
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² The parties may move for leave of court to file Reply briefing. Motions for leave to file Reply briefing shall be filed on or before May 29, 2015.

TRIAL WITNESS LISTS

Plaintiffs' & Defendants' Identification of Trial Witnesses (Live & Via Deposition)	Tuesday, May 26, 2015
Identification of Rebuttal Witnesses	Tuesday, June 2, 2015

Plaintiffs' & Defendants' Preliminary Exhibit Lists	Monday, June 1, 2015
Meet and Confer Among Counsel Concerning Case-Specific Exhibits	Week of Monday, June 15, 2015

JURY QUESTIONNAIRES

Exchange of Parties' Proposed Jury Questionnaires	Thursday, June 11, 2015
Submission of Proposed, Agreed Upon, Jury Questionnaire to the Court	Thursday, June 18, 2015

3. DEPOSITION DESIGNATIONS

The Court appreciates and understands that certain witness' testimony may be presented to the Jury in this case by previously preserved videotaped testimony that has

been taken in these MDL proceedings. In order to help streamline the process of determining which previously preserved videotaped testimony may be admissible at trial, the Court will begin to review the parties' designations of which deposition testimony is relevant to this case.³

Protocol for Submission of Deposition Designations⁴

1. The parties shall submit to the Court a "Deposition Package" for each of the following witnesses: Dr. Kenneth Kwong, Dr. Anthony Temple, Dr. Edward Kuffner, Ashley McEvoy, Kathy Fallon, and Sherrie Cathcart.
2. A "Deposition Package" shall consist of:
 - a. A notebook with two sections:
 - 1) A single color-coded transcript (hereinafter, "Transcript") containing the Plaintiffs' deposition designations (red font), Defendants counter-designations and objections (green font), Plaintiffs' rebuttal designations (red font), Plaintiffs' objections to Defendants' counter-designations (red font), and Defendants' objections to any rebuttal designations by the Plaintiffs (green font).
 - 2) Paper copies of all documents exhibited during the deposition in the order that they are identified.

³ After two telephone conferences with counsel for the parties and this Court, I determined that early review of certain designations would be the most efficient way to proceed.

⁴ This is the protocol to which the parties have agreed and proposed to the court.

- b. A flash drive containing electronic copies of all exhibits and the deposition video cuts for the witness with exhibit call-outs.
3. The Deposition Packages shall be completed on a rolling-basis according to the following timeline⁵:
- a. Defendants shall serve Plaintiffs with witness Transcripts⁶ containing Plaintiffs' initial designations and Defendants' counter-designations and objections as follows:
- Dr. Anthony Temple and Dr. Edward Kuffner on **February 27, 2015**;
 - Dr. Kenneth Kwong and Ashley McEvoy on **March 5, 2015**;
 - Kathy Fallon on **March 13, 2015**.
- b. Plaintiffs shall provide their counter-designations and objections to the Defendants initial designations (which Defendants shall incorporate into a Transcript) as follows:
- Sherrie Cathcart on **March 13, 2015**.
- c. Following their receipt of a Transcript, Plaintiffs shall insert their rebuttal designations, objections to Defendants' designations and responses to Defendants' objections. Plaintiffs will then prepare a deposition video containing all of the parties' designations with exhibit call-outs. The finalized Transcript and deposition video shall be submitted to the Defendants for review as follows:

⁵ Service of all submissions described herein shall occur no later than 1:00 p.m. EST on the date identified.

⁶ Defendants shall submit all Transcripts in native format so that the Plaintiffs can add any rebuttal designations, objections and responses to Defendants' objections.

- Dr. Anthony Temple and Dr. Edward Kuffner on **March 3, 2015**;
 - Dr. Kenneth Kwong and Ashley McEvoy on **March 10, 2015**;
 - Kathy Fallon and Sherrie Cathcart on **March 17, 2015**.
- d. Following receipt of the finalized Transcript and deposition video, Defendants shall notify the Plaintiffs of any objections or corrections to the finalized Transcript and deposition video as follows:
- Dr. Anthony Temple and Dr. Edward Kuffner on **March 5, 2015**;
 - Dr. Kenneth Kwong and Ashley McEvoy on **March 12, 2015**;
 - Kathy Fallon and Sherrie Cathcart on **March 19, 2015**.
- e. Following the resolution of any objections or corrections identified by the Defendants, Plaintiffs shall submit the final Deposition Package to the Court with a service copy to Defendants.
- f. Defendants shall submit, on or before **March 5, 2015**, a single letter brief providing a short summary (not to exceed 8 pages in total) in support of their evidentiary objections referenced in the Transcripts. Plaintiffs shall submit a responsive letter brief in opposition (not to exceed 8 pages in total) on or before **March 12, 2015**.

BY THE COURT:

/s/ Lawrence F. Stengel

LAWRENCE F. STENGEL, J.