

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re _____) Chapter ____
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)
)
 Debtor(s) _____) Case No. _____ (JTD)

SCHEDULING ORDER*

The Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Local Rule 7016-1 on _____, 20___, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. Rule 7026(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Bankruptcy Rule 7026(a)(1) within five days of the date of this Order. If they have not already done so, the parties are to review Local Rule 7026-3, Discovery of Electronic Documents, which is incorporated herein by reference.

2. Joinder of other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings shall be filed on or before _____, 20___.

3. Discovery.

a. The parties are expected to conduct discovery consistent with Local Rule 7026-1 and Federal Rules of Civil Procedures 26 through 37.

* This Order is not applicable to preference cases. See the Court's separate procedures.

b. Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before _____, 20 ____.

c. Document Production. Document production shall be substantially complete by _____, 20 ____.

d. Requests for Admission. A maximum of ____ requests for admission are permitted for each side.

e. Interrogatories.

i. A maximum of ____ interrogatories, including contention interrogatories, are permitted for each side.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers shall be judged by the level of detail each party provides; i.e., the more detail a party provides, the more detail a party shall receive.

f. Depositions.

i. Limitation on Depositions. Each side is limited to a total of ____ depositions per side unless otherwise ordered by the Court.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this Court must ordinarily be required, upon request, to submit to a deposition

at a place designated within this district. Exceptions to this general rule may be made by agreement of the parties or by order of the Court. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

g. Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before _____, 20____. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before _____, 20____. Reply expert reports from the party with the initial burden of proof are due on or before _____, 20____. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

ii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth

herein, unless otherwise ordered by the Court.

h. Discovery Disputes.

- i. Del. Bankr.L.R. 9013-1(b) notwithstanding, the parties shall not file discovery motions unless the Court requests briefing. Should counsel find they are unable to resolve a discovery dispute following an appropriate meet and confer, the party seeking the relief shall contact chambers at (302)533-3169, extension 3 to schedule a telephone conference. The Court will attempt to resolve the dispute before the need to engage in motion practice. If the dispute cannot be resolved during the initial teleconference, the Court will set appropriate briefing based upon the issues to be addressed.

4. Motions to Amend.

- a. Any motion to amend (including a motion for leave to amend) a pleading shall NOT be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the proposed amended pleading as well as a "blackline" comparison to the prior pleading.

- b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

- c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to amend.

5. Motions to Strike.

a. Any motion to strike any pleading or other document shall NOT be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the document to be 5 stricken.

b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to strike.

6. Application to Court for Protective Order. In the event it is necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten days from the date of this Order. If counsel is unable to reach an agreement on a proposed form of order, counsel must first follow the provisions of Paragraph 3(h) above.

Any proposed order should include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

7. Papers Filed Under Seal. When filing papers under seal, counsel shall also file a redacted version and provide Chambers with electronic copies in .pdf format of both versions.

8. Courtesy Copies. Hand deliveries of courtesy copies will not be accepted. Counsel shall provide to Chambers electronic copies, sent via zip file, of all briefs and any other document(s) filed in support thereof (i.e., appendices, declarations, affidavits etc. as well as any exhibits to be offered into evidence).

9. Interim Status Report. On or before _____, 20___, counsel shall file and submit to Chambers an interim report on the nature of the matters in issue and the progress of discovery to date. Thereafter, if the Court deems it necessary, it will schedule a status conference.

10. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before _____, 20___. Briefing will be presented pursuant to Del. Bankr. L.R. 7007-1.

11. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion filed with the Clerk. Any non-dispositive motion should comply with Del. Bankr. L.R. 7007-1 through 7007-4.

12. Pretrial Conference. The Court will hold a Final Pretrial Conference on _____, 20__, beginning at _____ .m. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Bankruptcy Rule 7026(a)(3). The parties shall file with the Court the joint proposed final pretrial order with the information required by the Court's form of Final Pretrial Order no later than five (5) business days prior to the Final Pretrial conference.

13. Motions in Limine. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three (3) pages of argument and may be opposed by a maximum of three (3) pages of argument, and the party making the *in limine* request may add a maximum of one (1) additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three (3) page submission (and, if the moving party, a single one (1) page reply), unless otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

14. Pre-Trial Briefs. The parties may jointly agree to file pre-trial briefs not to exceed thirty (30) pages. Pre-trial briefs shall be filed no later than five (5) business days prior to trial. The Court may also order pre-trial briefing.

15. Trial. The Court will set a trial date for this matter during the Final Pre-Trial Conference.

Dated: _____ 20__

JOHN T. DORSEY, U.S.B.J.