

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
)	
Defendant.)	

SCHEDULING ORDER

On (date), pursuant to Fed. R. Civ. P. 16(b), the court conducted a scheduling conference in this case with the parties.¹ Plaintiff appeared [[in person][through its representative (insert name)] and] [without counsel] [through counsel (list attorneys)]. Defendant appeared [[in person][through its representative (insert name)] and] [without counsel] [through counsel (list attorneys)]. After consultation with the parties, the court now enters the following scheduling order in this case:

1. Alternative Dispute Resolution.

a. By (date), plaintiff shall submit to defendant a good faith proposal to settle the case. By (date), defendant shall make a good faith response to plaintiff’s proposal, either accepting the proposal or submitting defendant’s own good faith proposal to settle the case.

¹As used in this scheduling order, the term “plaintiff” includes plaintiffs as well as counterclaimants, cross-claimants, third-party-plaintiffs, intervenors, and any other parties who assert affirmative claims for relief. The term “defendant” includes defendants as well as counterclaim defendants, cross-claim defendants, third-party-defendants, and any other parties who are defending against affirmative claims for relief.

By (date), the parties shall submit independently, by way of e-mail or letter (preferably the former), addressed to the magistrate judge (but not the district judge), their confidential statements concerning settlement efforts, current evaluations of the case, and views concerning future settlement negotiations. These reports need not be served upon opposing parties and **shall not** be filed with the Clerk's Office. The court may thereafter order participation in an alternative dispute resolution process.

b. Settlement may be enhanced by use of (insert chosen process of alternative dispute resolution). [The parties have selected (insert name) to conduct the (chosen process).] [Counsel shall provide the name of an agreed-upon mediator or other neutral to the court, and the scheduled date of the mediation, no later than _____, **2003**.] If they are unable to jointly agree upon a mediator, each shall suggest a mediator and then the court will select a mediator. [(The process) shall be held no later than (date), before (the mediator or other neutral chosen by the parties or selected by the court).] [An ADR report, on the form located on the district's Internet website, must be filed by defense counsel **w i t h i n f i v e d a y s o f t h e s c h e d u l e d m e d i a t i o n** (<http://www.ksd.uscourts.gov/attorney/adr/adrreport.pdf>)] [A settlement conference is scheduled for (date) in the magistrate judge's courtroom (insert Courtroom #, building, street, and city).]

2. Discovery.

a. The parties [have exchanged] [shall exchange by (date)] the information required by Fed. R. Civ. P. 26(a)(1). [Optional: In order to facilitate settlement negotiations and to avoid unnecessary expense, the parties have agreed that, without any need for formal requests for production, copies of the various documents described in the parties' respective Rule 26(a)(1)-disclosures shall be [exchanged] [made available for inspection and copying] by (date).] The parties are reminded that, although Rule 26(a)(1) is now keyed to disclosure of information that the disclosing party "may use to support its claims or defenses, unless solely for impeachment," as made clear by the advisory committee notes to the 2000-amendments to that rule, this also requires a party to disclose information it may use to support its denial or rebuttal of the allegations, claim, or defense of another party. In addition to other sanctions that may be applicable, a party that without substantial justification fails to disclose information required by Fed. R. Civ. P. 26(a) or Fed. R. Civ. P. 26(e)(1) is not, unless such failure is harmless, permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. *See* Fed. R. Civ. P. 37(c)(1).

b. All discovery shall be commenced or served in time to be completed by (date).
Discovery on (issue for early discovery) shall be completed by (date).

c. The parties [intend][do not intend] to serve disclosures and discovery electronically, as permitted by this court's General Order No. 03-1, Exhibit 1, Rules 5.4.2 & 26.3.

d. The court [considered][resolved] the following discovery problem(s) raised by one or more of the parties: (List problem(s) and resolution(s), if any).

e. No party shall serve more than ___ interrogatories, including all discrete subparts, to any other party.

f. There shall be no more than ___ depositions by plaintiff and ___ by defendant.

g. Each deposition shall be limited to ___ hours, except for the deposition(s) of _____ which shall be limited to ___ hours. All depositions shall be governed by the written guidelines that are available on the district's Internet website.

(<http://www.ksd.uscourts.gov/attorney/depoguidelines.pdf>)

h. Disclosures required by Fed. R. Civ. P. 26(a)(2), including reports from retained experts, shall be served by plaintiff by (date), and by defendant by (date).
[Option 1: The parties have stipulated that rebuttal experts will not be permitted in this case.]

[Option 2: Disclosures and reports by any rebuttal experts shall be served by _____, **2003.**] The parties shall serve any objections to such disclosures (other than objections pursuant to Fed. R. Evid. 702-05, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law), within 11 days after service of the disclosures upon them. These objections should be confined to technical objections related to the sufficiency of the written expert disclosures (e.g., whether all of the information required by Rule 26(a)(2) has been provided, such as lists of prior testimony and publications). These objections need not extend to the

admissibility of the expert's proposed testimony. If such technical objections are served, counsel shall confer or make a reasonable effort to confer consistent with requirements of D. Kan. Rule 37.2 before filing any motion based on those objections. As noted below, any motion to compel discovery in compliance with D. Kan. Rules 7.1 and 37.2 must be filed and served within 30 days of the default or service of the response, answer, or objection which is the subject of the motion, unless the time for filing such a motion is extended for good cause shown; otherwise, the objection to the default, response, answer, or objection shall be deemed waived. *See* D. Kan. Rule 37.1(b).

i. The parties shall complete all Fed. R. Civ. P. 35 physical or mental examinations by (date). If the parties disagree about the need for or the scope of such an examination, a formal motion shall be filed sufficiently in advance of this deadline in order to allow the motion to be fully briefed by the parties and decided by the court before the examination deadline.

j. Supplementations of disclosures under Fed. R. Civ. P. 26(e) shall be served at such times and under such circumstances as required by that rule. In addition, such supplemental disclosures shall be served (insert dates or intervals), and in any event 40 days before the deadline for completion of all discovery. The supplemental disclosures served 40 days before the deadline for completion of all discovery, which are intended to replace what this court traditionally has called "final witness and exhibit lists," must identify the universe of all witnesses and exhibits that probably or even might be used at trial. The

rationale for the mandatory supplemental disclosures 40 days before the discovery cutoff is to put opposing counsel in a realistic position to make strategic, tactical, and economic judgments about whether to take a particular deposition (or pursue follow-up “written” discovery) concerning a witness or exhibit disclosed by another party before the time allowed for discovery expires. Counsel should bear in mind that seldom should anything be included in the final Rule 26(a)(3)-disclosures, which as explained below usually are filed 20 days before trial, that has not previously appeared in the initial Rule 26(a)(1)-disclosures or a timely Rule 26(e) supplement thereto; otherwise, the witness or exhibit probably will be excluded at trial. *See* Fed. R. Civ. P. 37(c)(1).

k. [Optional] The parties shall serve preliminary witness and exhibit disclosures pursuant to Fed. R. Civ. P. 26(a)(3)(A) & (C) by (date). These disclosures shall provide a realistic listing of the witnesses and exhibits that actually are anticipated to be used during trial of the case instead of merely repeating the initial disclosures under Fed. R. Civ. P. 26(a)(1)(A) & (B).

l. At the final pretrial conference after the close of discovery, the court will set a deadline, usually 20 days prior to the trial date, for the parties to file their final disclosures pursuant to Fed. R. Civ. P. 26(a)(3)(A), (B) & (C). As indicated above, if a witness or exhibit appears on a final Rule 26(a)(3)-disclosure that has not previously been included in a Rule 26(a)(1)-disclosure (or a timely supplement thereto), that witness or exhibit probably will be excluded at trial. *See* Fed. R. Civ. P. 37(c)(1). D. Kan Rule 16.2(e), entitled

“Witness and Exhibit Lists and Disclosures,” which the court is in the process of amending, will not be applied in this case.

m. [Optional] Discovery in this case may be governed by a protective order. If the parties agree concerning the need for and scope and form of such a protective order, their counsel shall confer and then submit a jointly proposed protective order by (date). Such jointly proposed protective orders shall include, in the first paragraph, a concise but sufficiently specific recitation of the particular facts in this case that would provide the court with an adequate basis upon which to make the required finding of good cause pursuant to Fed. R. Civ. P. 26(c). If the parties disagree concerning the need for, and/or the scope or form of a protective order, the party or parties seeking such an order shall file an appropriate motion and supporting memorandum by (date).

n. To avoid the filing of unnecessary motions, the court encourages the parties to utilize stipulations regarding discovery procedures. However, this does not apply to extensions of time that interfere with the deadlines to complete all discovery, for the briefing or hearing of a motion, or for trial. *See* Fed. R. Civ. P. 29; D. Kan. Rule 6.1(a). Nor does this apply to modifying the requirements of Fed. R. Civ. P. 26(a)(2) concerning experts’ reports. *See* D. Kan. Rule 26.4(b).

3. Motions.

a. Any motion for leave to join additional parties or to otherwise amend the pleadings shall be filed by (date).

b. Provided that such defenses have been timely preserved, any motions to dismiss for lack of personal jurisdiction, venue, propriety of the parties, or failure to state a claim upon which relief may be granted shall be filed by (date).

c. All other potentially dispositive motions shall be filed by (date). All motions to exclude testimony of expert witnesses pursuant to Fed. R. Evid. 702-05, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law, shall be filed by the deadline set for dispositive motions.

d. Any motion to compel discovery in compliance with D. Kan. Rules 7.1 and 37.2 shall be filed and served within 30 days of the default or service of the response, answer, or objection which is the subject of the motion, unless the time for filing such a motion is extended for good cause shown. Otherwise, the objection to the default, response, answer, or objection shall be waived. *See* D. Kan. Rule 37.1(b).

4. Other Matters.

a. By (date), any party asserting comparative fault shall identify all persons or entities whose fault is to be compared. [The parties agree that principles of comparative fault do not apply to this case.]

b. [Optional] Pursuant to Fed. R. Civ. P. 16(a), a status conference is scheduled for (date) [by telephone conference call, to be initiated by the magistrate judge] [in the magistrate judge's courtroom (insert Courtroom #, building, street, and city).]

c. Pursuant to Fed. R. Civ. P. 16(d), a final pretrial conference is scheduled for _____, 200_, at _____ .m., in the U.S. Courthouse, Room _____, _____, Kansas. Unless otherwise notified, the undersigned magistrate judge will conduct the conference. No later than _____, 200_, defendant shall submit the parties' proposed pretrial order (formatted in WordPerfect 9.0, or earlier version) as an attachment to an Internet e-mail sent to ksd_[judge]_chambers@ksd.uscourts.gov. The proposed pretrial order shall not be filed with the Clerk's Office. It shall be in the form available on the court's website (www.ksd.uscourts.gov), and the parties shall affix their signatures according to the procedures governing multiple signatures set forth in paragraphs II(C)(2)(a) & (b) of the *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases*.

d. The parties expect the trial of this case to take approximately (days or weeks). [This case is set for trial on the court's docket beginning on _____, 200_, at _____. Unless otherwise ordered, this is not a "special" or "No. 1" trial setting. Therefore, during the month preceding the trial docket setting, counsel should stay in contact with the trial judge's courtroom deputy to determine the day of the docket on which trial of the case actually will begin. The trial setting may be changed only by order of the judge presiding over the trial.] [The court will subsequently set the case for trial.]

e. The parties are [are not] prepared to consent to trial by a magistrate judge [at this time] [or as a backup if the district judge determines that his or her schedule is unable to accommodate the scheduled trial date].

f. The arguments and authorities section of briefs or memoranda submitted shall not exceed 30 pages, absent an order of the court.

This scheduling order shall not be modified except by leave of court upon a showing of good cause.

IT IS SO ORDERED.

Dated this ____ day of _____, 200_, at _____, Kansas.

U.S. Magistrate Judge

SUMMARY OF DEADLINES AND SETTINGS

Event	Deadline/Setting
Plaintiff's settlement proposal	
Defendant's settlement counter-proposal	
Confidential settlement reports to magistrate judge	
Identification of agreed-upon mediator or other ADR neutral to magistrate judge	
ADR process completed	
Settlement conference with court	
Initial disclosures exchanged	
All discovery completed	
Early discovery completed	
Experts disclosed by plaintiff	
Experts disclosed by defendant	
Rebuttal experts disclosed	
Independent medical examinations	
Supplementation of disclosures	
Preliminary witness and exhibit disclosures	
Jointly proposed protective order submitted to court	
Motion and brief in support of proposed protective order (only if parties disagree about need for and/or scope of order)	
Motions to join additional parties or otherwise amend the pleadings	
Motions to dismiss for lack of personal jurisdiction, venue, propriety of the parties, or failure to state a claim	
All other potentially dispositive motions (summary judgment, challenges to admissibility of expert testimony, etc.)	
Comparative fault identification	
Status conference	
Final pretrial conference	
Proposed pretrial order due	
Trial	