

Date	Action
Between October 16, 2015, and October 20, 2015	The parties shall meet for the purpose of exchanging images of designated exhibits, marking exhibits, and conferring on (1) objections to and the admissibility of trial exhibits, (2) objections to deposition designations, and (3) motions <i>in limine</i> , to try to narrow the issues for the Court's resolution. Pursuant to Local Civil Rule 26.07, where possible, the parties shall agree on the admissibility of trial exhibits.
Wednesday, October 21, 2015	The parties shall submit resolved and unresolved differences on objections to exhibits and deposition designations to the Court.
Wednesday, October 21, 2015	Deadline for replies to motions <i>in limine</i> .
Friday, October 23, 2015	Deadline for the parties to file joint or competing set of jury instructions and proposed verdict forms.
Monday, October 26, 2015	Deadline for the parties to furnish the Court pretrial briefs pursuant to Local Civil Rule 26.05.
Wednesday, October 28, 2015	Pretrial conference.
Friday, October 30, 2015	The parties must submit a joint Strikes for Cause form to chambers by 8 a.m. (<i>See</i> paragraph 3, below).
Tuesday, November 3, 2015	Jury selection.
Wednesday, November 4, 2015	Trial.

In addition, the Court adopts the following provisions and deadlines to facilitate the orderly selection of a jury and disclosure of witnesses, deposition designations, and exhibits during trial:

1. Additional Questions for Juror Questionnaire. The parties have submitted additional questions that that they would like on the Jury Questionnaire. The Court will have the following questions asked in a supplemental questionnaire:

- a. Have you or any members of your immediate family members (you, your spouse, parents, or children) been diagnosed with any of the following?
(Mark all that apply.)

I have been diagnosed with:	One or more of my immediate family members has been diagnosed with:
<input type="checkbox"/> Diabetes	<input type="checkbox"/> Diabetes
<input type="checkbox"/> Chronic high blood pressure	<input type="checkbox"/> Chronic high blood pressure
<input type="checkbox"/> Heart disease	<input type="checkbox"/> Heart disease
<input type="checkbox"/> Stroke	<input type="checkbox"/> Stroke
<input type="checkbox"/> High cholesterol	<input type="checkbox"/> High cholesterol

- b. Do you or any members of your immediate family members (you, your spouse, parents, or children) take a drug to lower cholesterol?

Yes, I do.

Yes, one or more members of my immediate family does.

No.

If so, which one(s)? (If you do not know, write "unknown.")

- c. Do you feel that you can be fair to both sides in a lawsuit that involves an individual on one side and a pharmaceutical company on the other?

Yes No

- d. Have you ever developed a serious side effect from a drug that you were not warned about?

Yes No

- e. One of the cases for which a jury will be selected on November 3, 2015, is scheduled to begin on November 4, 2015, the day after jury selection, and may possibly run 4 weeks (up until December 4, 2015). However, the Courthouse will be closed on Thanksgiving, November 26, 2015, and trial will *not* take place on Thursday, November 26, 2015, or on Friday, November 27, 2015. If you have

conflicts during this particular time (November 4, 2015, to December 4, 2015), please list them here. The term “personal conflicts” means personal vacation plans, travel plans that cannot be rescheduled or significant business or employment-related conflicts. Personal conflicts does not mean mere inconvenience, such as the normal inconvenience of being away from work. If you have any personal conflicts during this particular time, please describe the nature of any conflict and the dates of the conflict.

2. Jury Lists and Juror Questionnaires. Jury Lists and Juror Questionnaires will be available through Broad Street Printing seven (7) days prior to jury selection. Pursuant to Local Rule 47.02, attorneys and parties must comply with the following procedure for inspecting or purchasing Juror Questionnaires and Jury Lists. Counsel must make their request on a “Juror Questionnaire List Request Form,” available on the Court’s website at www.scd.uscourts.gov. This form must be submitted to the Clerk’s Office for a deputy clerk’s approval. Counsel must then present this approved form to Broad Street Printing, located in Summerville, South Carolina, via fax at (843) 873-0483. The information contained within these documents shall be used solely for evaluating potential jurors for jury service and is not to be used or distributed for any other purpose. Any questions about this procedure should be directed to the Jury Administrator, Jeff Cargile, at (803) 253-3198. Any questions asked in the Juror Questionnaire or Supplemental Questionnaire will not be repeated at Jury Selection.
3. Jury Selection. Attorneys are required to confer and submit a joint list of potential strikes for cause using the attached Strikes for Cause form. **This form must be submitted to**

chambers by e-mail to gergel_ecf@scd.uscourts.gov by 8 a.m. on Friday, October 30, 2015. If chambers does not receive this form, the parties waive their option to strike for cause. Requests for voir dire shall be submitted to the Court with the pretrial brief in accordance with Local Civil Rule 26.05.

4. Marking Exhibits. When the parties meet to exchange exhibits, they will also mark exhibits. The parties shall not renumber their exhibits after the exhibit list is prepared and the meeting to exchange and mark exhibits has occurred. If items are later deleted, they should simply be struck through and marked, "WITHDRAWN."
5. Disclosure of Witnesses. The parties shall provide 48-hours advance disclosure of witnesses (whether live or by deposition) they intend to call at trial and the order in which they intend to call the witnesses (*e.g.*, by 9:00 a.m. Monday for a witness to be called on Wednesday).
6. Presentation of Deposition Testimony. Where a de bene esse deposition has been taken of a witness, the deposition testimony will be played in the order that it was given at deposition. Where a de bene esse deposition has not been taken and a party offers portions of the deposition testimony in its case in chief, the other party may counter designate testimony to be played at the same time that should, in all fairness, be included with the parts introduced. *See* Fed. R. Civ. P. 32(a)(6); Fed. R. Evid. 106. For example, the opposing party may counter designate portions of the testimony that explain or clarify the portions designated by the offering party, to be played at the same time. However, this rule is not intended to allow the opposing party to take over the presentation of testimony, and the opposing party must wait until its opportunity for cross-examination or its case in chief to offer other parts of the deposition testimony.

7. Exhibit Disclosures. The parties shall disclose exhibits and demonstrative exhibits (“demonstratives”) to be used in direct examination the night before they are to be used at trial. The exhibits to be used shall have been previously identified pursuant to the schedule and procedure set forth above. The disclosing party will use best efforts to disclose every exhibit and demonstrative by 7:30 p.m. of the night before they will be used. To the extent the Court has not already ruled on those exhibits and demonstrative exhibits, the parties shall notify the Court of any objections to those exhibits to be used on direct examination by 8:30 a.m. A party may also object to the use of a particular exhibit with a particular witness. The parties should be prepared to address the objections at the Court’s convenience either before the trial day begins or at the Court’s convenience during the trial day.
8. Opening Statements. The parties shall disclose exhibits and demonstratives to be used in opening statements by 7:30 a.m. on the morning of the day opening statements are to be given. The parties shall attempt in good faith to reach agreement on any objections they have to the other side’s opening statement exhibits and demonstratives. To the extent that they cannot agree on one or more exhibits or demonstratives, the parties shall bring the matters at issue to the Court’s attention for a ruling before opening statements commence.
9. Business Records Introduced in Depositions. A document produced by a party and introduced as an exhibit during a deposition in these proceedings that purports to be a copy of a memorandum, report, record, or data compilation in any form of acts, events, conditions, opinions, or diagnoses presumptively shall be considered a business record of

that party within the meaning of Federal Rule of Evidence 803(6), subject to the following paragraphs.

10. Objections to Documents Marked as Exhibits in Depositions. Within 30 calendar days of this Order or the receipt of the transcript of a deposition hereafter taken in this MDL, any party wishing to contest the presumptive authenticity of any document(s) previously produced and/or purportedly generated by that Party that were marked as deposition exhibits shall advise Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel in writing of: (a) the deposition and exhibit number, as well as the Bates numbers, of any exhibit where the producing or purportedly generating party claims lack of authenticity and/or failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state court rules; and (b) a detailed statement (including if appropriate references to other pertinent documents and knowledgeable persons) of the grounds for the claim of lack of authenticity and/or the failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state court rules. Any objection shall be deemed to have been made for all depositions for which the exhibit has been used or is used in the future. Any such exhibits not so identified within 30 days of the date of this Order or receipt of the transcript of a deposition hereafter taken in this MDL shall be deemed faithful and authentic reproductions of the original and/or (as the case may be) business records within the meaning of Rule 803(6) or applicable analogous state court rules.

11. Documents Provided By Non-Party Medical Providers and Employers. All medical records, including medical bills, obtained in the course of discovery from Plaintiff's healthcare providers who saw, treated, or cared for Plaintiff shall be presumed to be

authentic business records under the Federal Rules of Evidence. The parties further stipulate that all employment records obtained in the course of discovery from Plaintiff's employers shall be presumed to be authentic business records under the Federal Rules of Evidence. The parties reserve their objections to the admissibility of these medical and employment records on grounds other than authenticity and that they are not business records. Any party may raise an objection to medical records and employment records being authentic business records by following the procedure for asserting such objections set forth in paragraph 10 above.

12. Remedies After Notification of any Objection to Authenticity and/or Status as Business Record. Upon being notified that an exhibit is claimed to be inauthentic and/or fails to qualify as a business record, after meeting and conferring with opposing Liaison Counsel, either Liaison Counsel may, with consent of opposing Liaison Counselor or with leave of Court, initiate appropriate discovery limited to seeking to further establish authenticity and/or the status of the document as a business record. Any deposition noticed solely to establish the authenticity or business record status of a document shall be limited strictly to that purpose for the specific document at issue and shall not address any other issues.
13. Parties to Meet and Confer on Authentication and Business Record Status. The parties shall make good faith, cooperative efforts, through the meet-and-confer process or otherwise, to resolve any issues concerning the authenticity and/or business record status of documents subject to this Order so as to minimize the time and resources of the parties and of the Court devoted to such matters.

//

//

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'RM Gergel', written over a horizontal line.

Richard Mark Gergel
Judge, United States District Court

August 14, 2015
Charleston, South Carolina

