

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: FLUOROQUINOLONE PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2642 (JRT)

This Document Relates to All Actions

**SECOND AMENDED
PRETRIAL ORDER NO. 13
ON BELLWETHER
DISCOVERY AND TRIALS**

The Court hereby enters the following Order pertaining to case-specific discovery and bellwether trials.

I. AMENDMENT TO PRE-TRIAL ORDER NO. 5, ¶¶3(e)(v), 3(f)(v)

Non-expert fact discovery deadline pertaining to Avelox and Cipro: October 27, 2017.

II. GENERAL CAUSATION AND LIABILITY DEADLINES FOR EXPERT WITNESSES AND DISPOSITIVE MOTIONS

Expert discovery and pretrial motions regarding general causation and liability issues that are not specific to a particular case shall proceed according to the following schedule:

A. Expert Witnesses

For experts regarding general causation and liability, disclosure of the identity of each witness under Rule 26(a)(2)(A) and the full disclosures required by Rule 26(a)(2)(B), accompanied by written reports prepared and signed by each expert witness, shall be made as follows:

- (1) Plaintiffs' expert disclosures due on or before November 17, 2017. Together with the disclosures, the PSC shall provide dates for Plaintiffs' experts' depositions, to take place between December 11, 2017 and December 29, 2017, except that no dates shall be offered between December 22 and December 26, 2017 absent consent from counsel for Defendants.
- (2) Defendants' expert disclosures due on or before December 8, 2017. Together with the disclosures, Defendants shall provide dates for their experts' depositions, to take place between January 3, 2018 and January 19, 2018.
- (3) Rebuttal expert disclosures due on or before December 20, 2017. Rebuttal experts may only be named for issues raised for the first time by Defendants' experts and not previously addressed. Together with the rebuttal disclosures, the PSC shall provide dates for Plaintiffs' rebuttal experts' depositions (including dates for deposition on any rebuttal opinions provided by previously deposed experts), to take place between January 22, 2018 and January 26, 2018.
- (4) Expert discovery shall be completed no later than January 26, 2018.

B. Dispositive Motions

All dispositive motions and Daubert motions regarding general causation or liability shall be filed and served as follows:

- (1) Motion papers shall be filed and served on or before February 23, 2018.
- (2) Any response shall be filed and served on or before March 23, 2018.
- (3) Any reply brief shall be filed and served on or before April 6, 2018.

The parties shall confer with the Court and the Court's Courtroom Deputy as to the date for a hearing on any of the motions.

III. AVELOX ONLY CASES

The "Avelox Only cases" shall be comprised of all cases assigned to MDL 2642 as of April 21, 2016, in which the plaintiff has served a substantially complete Plaintiff Fact Sheet and the plaintiff's Short Form Complaint alleges (1) the plaintiff's injuries are peripheral neuropathy or symptoms of peripheral neuropathy only and (2) the plaintiff alleges injury only from branded Avelox product usage. No cases wherein the plaintiff's Short Form Complaint alleges injury from any product in combination with other fluoroquinolones can be included as an Avelox Only case.

A. Selection of Avelox Only Discovery Cases

By January 20, 2017, Plaintiffs and the Bayer Defendants shall identify four (4) bellwether candidates per side which shall be chosen from the Avelox Only cases to serve as the "Avelox Only Discovery Cases."

- (1) In the event Plaintiffs' counsel moves to withdraw as counsel from an Avelox Only Discovery Case, the case shall be removed from the Avelox Only Discovery Cases.

- (2) In the event a Plaintiff-selected case in the Avelox Only Discovery Cases is voluntarily dismissed (and thus removed from the Avelox Only Discovery Cases), there shall be no replacement pick.
- (3) In the event a case in the Avelox Only Discovery Cases selected by the Bayer Defendants is voluntarily dismissed, or removed from the Avelox Only Discovery Cases pursuant to sub-paragraph (1), *supra*, the Bayer Defendants may select a replacement case of their choosing from the Avelox Only cases.

B. Case-Specific Discovery Deadline For Discovery Cases

Case specific fact discovery for the Avelox Only Discovery Cases, including the depositions of each Plaintiff, their prescribing and treating physician(s), sales representatives, and any other case-specific fact witnesses, shall be completed no later than October 2, 2017.

C. Bellwether Trial Case Selection

Following the completion of case-specific fact discovery in each of the Avelox Only Discovery Cases, Plaintiffs and the Bayer Defendants will submit simultaneous briefing on November 3, 2017, identifying the cases they believe should serve as the Avelox Only Bellwether Trial Cases and the reasons therefor. The Court will select four (4) cases to serve as the Avelox Only Bellwether Trial Cases by the date set for the November 2017 Case Management Conference (or by November 17, 2017 if no November 2017 conference is to be held).

D. Expert Witnesses

For the Avelox Only Bellwether Trial Cases, disclosure of the identity of each case-specific expert witness under Rule 26(a)(2)(A) and the full disclosures required by Rule 26(a)(2)(B), accompanied by written reports prepared and signed by each expert witness, shall be made as follows:

- (1) Plaintiffs' expert disclosures due on or before December 29, 2017. Together with the disclosures, the PSC shall provide dates for Plaintiffs' experts' depositions, to take place between February 19 and March 2, 2018.
- (2) Defendants' expert disclosures due on or before February 14, 2018. Together with the disclosures, Defendants shall provide dates for their experts' depositions, to take place between March 5 and March 16, 2018.
- (3) Rebuttal expert disclosures due on or before March 2, 2018. Rebuttal experts may only be named for issues raised for the first time by Defendants' experts and not previously addressed. Together with the rebuttal disclosures, the PSC shall provide dates for Plaintiffs' rebuttal experts' depositions (including dates for deposition on any rebuttal opinions provided by previously deposed experts), to take place between March 26 and April 6, 2018.
- (4) Expert discovery shall be completed no later than April 6, 2018.

E. Dispositive Motions

Any case-specific dispositive motions and case-specific Daubert motions in any of the Avelox Only Bellwether Trial Cases to be decided by this Court shall be filed and served as follows:

- (1) Motion papers shall be filed and served on or before April 23, 2018.
- (2) Any response shall be filed and served on or before May 21, 2018.
- (3) Any reply brief shall be filed and served on or before June 4, 2018.

The parties shall confer with the Court and the Court's Courtroom Deputy before filing any Avelox Only motions on the above schedule until such time as the Court has determined which of the Avelox Only bellwether trials will be subject to approval of the intracircuit and/or intercircuit assignment of this Court to conduct the trials in the judicial districts where the Avelox Only Bellwether Trial Cases were originally filed, and how many Avelox Only Bellwether Trial Cases the Court will decide motions in. The parties shall confer with the Court and the Court's Courtroom Deputy as to the date for a hearing on any of the motions.

F. Trial Schedule

The trials for the Avelox Only Bellwether Trial Cases shall begin on the following dates:

- (1) August 6, 2018
- (2) October 8, 2018
- (3) February 4, 2019
- (4) June 10, 2019

This trial schedule is subject to further modification if, among other reasons, summary judgment is granted for Defendants in some but not all of the Avelox Only Bellwether Trial Cases. The Bayer Defendants have indicated their intent to not waive *Lexecon* for any case in the MDL. Therefore, the above-trial schedule will also be subject to approval of the intracircuit and/or intercircuit assignment of this Court to conduct the trials in the judicial districts where the Avelox Only Bellwether Trial Cases were originally filed and courtroom availability.

G. Remaining Avelox Cases

After completion of all discovery in the Avelox Only Bellwether Trial Cases, the parties shall meet and confer regarding a scheduling order for expert discovery and trial in the remaining Avelox Only cases.

IV. CIPRO ONLY CASES.

The “Cipro Only cases” shall be comprised of all cases assigned to MDL 2642 as of April 21, 2016 in which the plaintiff has served a substantially complete Plaintiff Fact Sheet and the plaintiff’s Short Form Complaint alleges (1) the plaintiff’s injuries are peripheral neuropathy or symptoms of peripheral neuropathy only and (2) the plaintiff alleges injury only from branded Cipro product usage. No cases wherein the plaintiff’s Short Form Complaint alleges injury due to any product in combination with other fluoroquinolones can be included as a Cipro Only case.

A. Selection of Cipro Only Discovery Cases

By January 20, 2017, Plaintiffs and the Bayer Defendants shall identify two (2) bellwether candidates per side which shall be chosen from the Cipro Only cases to serve as the “Cipro Only Discovery Cases.”

- (1) In the event Plaintiffs’ counsel moves to withdraw as counsel from a Cipro Only discovery case, the case shall be removed from the Cipro Only Discovery Cases.
- (2) In the event a Plaintiff-selected case in the Cipro Only Discovery Cases is voluntarily dismissed (and thus removed from the Cipro Only Discovery Cases), there shall be no replacement pick.
- (3) In the event a case in the Cipro Only Discovery Cases selected by the Bayer Defendants is voluntarily dismissed, or removed from the Cipro Only Discovery Cases pursuant to sub-paragraph (1), *supra*, the Bayer Defendants may select a replacement case of their choosing from the Cipro Only cases.

B. Case-Specific Discovery Deadline For Discovery Cases

Case specific fact discovery for the Cipro Only Discovery Cases, including the depositions of each Plaintiff, their treating physician(s), sales representatives, and any other case-specific fact witnesses, shall be completed no later than October 30, 2017.

C. Bellwether Case Selection

Following the completion of case-specific fact discovery in each of the Cipro Only Discovery Cases, Plaintiffs and the Bayer Defendants will submit simultaneous briefing

on November 30, 2017, identifying the cases they believe should serve as the Cipro Only Bellwether Trial Cases and the reasons therefor. The Court will select two (2) cases to serve as the Cipro Only Bellwether Trial Cases by the date set for the December 2017 Case Management Conference (or by December 15, 2017 if no December 2017 conference is to be held).

D. Expert Witnesses

For the Cipro Only Bellwether Trial Cases, disclosure of the identity of each case-specific expert witness under Rule 26(a)(2)(A) and the full disclosures required by Rule 26(a)(2)(B), accompanied by written reports prepared and signed by each expert witness, shall be made as follows:

- (1) Plaintiffs' expert disclosures due on or before January 29, 2018.
Together with the disclosures, the PSC shall provide dates for Plaintiffs experts' depositions, to take place between March 5 and March 16, 2018.
- (2) Defendants' expert disclosures due on or before February 26, 2018.
Together with the disclosures, the Defendants shall provide dates for their experts' depositions, to take place between March 19 and March 30, 2018.
- (3) Rebuttal expert disclosures due on or before March 15, 2018.
Rebuttal experts may only be named for issues raised for the first time by Defendants' experts and not previously addressed. Together with the rebuttal disclosures, the PSC shall provide dates for

Plaintiffs' rebuttal experts' depositions (including dates for deposition on any rebuttal opinions provided by previously deposed experts), to take place between April 2 and April 13, 2018.

- (4) Expert discovery shall be completed no later than April 13, 2018.

E. Dispositive Motions

Any case-specific dispositive motions and case-specific Daubert motions in any of the Cipro Only Bellwether Trial Cases to be decided by this Court shall be filed and served as follows:

- (1) Motion papers shall be filed and served on or before May 11, 2018.
- (2) Any response shall be filed and served on or before June 8, 2018.
- (3) Any reply brief shall be filed and served on or before June 22, 2018.

The parties shall confer with the Court and the Court's Courtroom Deputy before filing any Cipro Only motions on the above schedule until such time as the Court has determined which of the Cipro Only Bellwether Trial Cases will be subject to approval of the intracircuit and/or intercircuit assignment of this Court to conduct the trials in the judicial districts where the Cipro Only Bellwether Trial Cases were originally filed, and how many Cipro Only Bellwether Trial Cases the Court will decide motions in. The parties shall confer with the Court and the Court's Courtroom Deputy as to the date for a hearing on any of the motions.

F. Trial Schedule

Subject to the Court's calendar, and subject to approval for any intracircuit or intercircuit assignments of this Court, the trials for the Cipro Only Bellwether Trial Cases shall begin on the following dates:

- (1) December 3, 2018
- (2) April 8, 2019

This trial schedule is subject to further modification if, among other reasons, summary judgment is granted for Defendants in some but not all of the Cipro Only Bellwether Trial Cases. The Bayer Defendants have indicated their intent to not waive *Lexecon* for any case in the MDL. Therefore, the above-trial schedule will also be subject to approval of the intracircuit and/or intercircuit assignment of this Court to conduct the trials in the judicial districts where the Cipro Only Bellwether Trial Cases were originally filed and courtroom availability.

G. Remaining Cipro Cases

After completion of all discovery in the Cipro Only Bellwether Trial Cases, the parties shall meet and confer regarding a scheduling order for expert discovery and trial in the remaining Cipro Only cases.

V. FUTURE CASES

For all cases assigned to MDL 2642 that are not selected as Avelox Only or Cipro Only Discovery Cases, only fact sheet discovery and medical records collection shall occur until further order of the Court.

DATED: June 5, 2017

s/John R. Tunheim
JOHN R. TUNHEIM
Chief Judge
United States District Court