

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: FLUOROQUINOLONE PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2642 (JRT)

This Document Relates to All Actions

**THIRD 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: January 26, 2018.

The parties have agreed that this extension of the non-expert fact discovery deadline is based on agreement that no additional Bayer & Merck Defendant fact witnesses -- beyond those previously agreed to by the parties, or specifically set forth in this Order -- may be deposed absent agreement of the parties or for good cause shown.

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 February 16, 2018. Together with the disclosures, the PSC shall provide dates for Plaintiffs' experts' depositions, to take place between March 19, 2018 and April 6, 2018.
- (2) Defendants' expert disclosures due on or before March 16, 2018. Together with the disclosures, Defendants shall provide dates for their experts' depositions, to take place between April 9, 2018 and April 27, 2018.
- (3) Rebuttal expert disclosures due on or before March 28, 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 30, 2018 and May 4, 2018.
- (4) Expert discovery shall be completed no later than May 4, 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 May 23, 2018.
- (2) Any response shall be filed and served on or before June 19, 2018.
- (3) Any reply brief shall be filed and served on or before July 2, 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 AND CIPRO ONLY CASES

The definitions of "Avelox Only cases" and "Cipro Only cases" are set forth in the Second Amended Pretrial Order No. 13.

A. These cases have previously been selected pursuant to the terms of the Second Amended Pretrial Order No. 13, which shall continue to govern the dismissal and replacement procedures. Case-Specific Discovery Deadline For Discovery Cases

Case specific fact discovery for the Avelox Only Discovery Cases and Cipro Only Discovery Cases, including the depositions of each Plaintiff, their prescribing physician(s), no more than four (4) treating physician(s), and no more than two (2) sales representatives/managers per case, and any other case-specific fact witnesses, shall be completed no later than January 19, 2018. Additional fact witnesses may be deposed only upon agreement of the parties or for good cause shown.

B. Bellwether Trial Case Selection

Following the completion of case-specific fact discovery in each of the Avelox Only Discovery Cases and Cipro Only Discovery Cases, Plaintiffs and the Bayer

Defendants will submit simultaneous briefing on February 2, 2018, identifying the cases they believe should serve as the Avelox Only Bellwether Trial Cases, the Cipro Only Bellwether Trial case, and the reasons therefor. The Court will select four (4) cases to serve as the Avelox Only Bellwether Trial Cases and one (1) Cipro Only Bellwether Trial cases by the date set for the February 2018 Case Management Conference (or by February 16, 2018 if no February 2018 conference is to be held).

C. Expert Witnesses

For the Avelox Only Bellwether Trial Cases and the Cipro Only Bellwether Trial Case, 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 March 30, 2018. Together with the disclosures, the PSC shall provide dates for Plaintiffs' experts' depositions, to take place between May 3, 2018 and May 18, 2018.
- (2) Defendants' expert disclosures due on or before April 27, 2018. Together with the disclosures, Defendants shall provide dates for their experts' depositions, to take place between May 21, 2018 and June 1, 2018.
- (3) Rebuttal expert disclosures due on or before May 16, 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 June 4 and June 14, 2018.

- (4) Expert discovery shall be completed no later than June 14, 2018.

D. Dispositive Motions

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

- (1) Motion papers shall be filed and served on or before June 29, 2018.
- (2) Any response shall be filed and served on or before July 27, 2018.
- (3) Any reply brief shall be filed and served on or before August 10, 2018.

The parties shall confer with the Court and the Court's Courtroom Deputy before filing any Avelox Only or Cipro Only motions on the above schedule until such time as the Court has determined which of the Avelox Only or Cipro 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 and Cipro Only Bellwether Trial Case were originally filed, and how many Avelox Only Bellwether Trial Cases and Cipro Only Bellwether Trial Case 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.

E. Trial Schedule

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

- (1) November 5, 2018 (Avelox Only Bellwether Trial Case)
- (2) January 8, 2019 (Avelox Only Bellwether Trial Case)
- (3) March 4, 2019 (Cipro Only Bellwether Trial Case)
- (4) June 10, 2019 (Avelox Only Bellwether Trial Case)
- (5) August 5, 2019 (Avelox Only Bellwether Trial Case)

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 or Cipro Only Bellwether Trial Case.. 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 and Cipro Only Bellwether Trial Case were originally filed and courtroom availability.

F. Remaining Avelox and Cipro Cases

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

IV. 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: October 12, 2017
at Minneapolis, Minnesota

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