



"I will stand for my client's rights.
I am a trial lawyer."
-Ron Motley (1944-2013)

28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
o. 843.216.9000 f. 843.216.9450

Fred Thompson III
Licensed in South Carolina
direct: 843.216.9118
fthompson@motleyrice.com

April 29, 2022

VIA ECF

Hon. Richard Mark Gergel
U.S. District Court for the District of South Carolina
J. Waites Waring Judicial Center
83 Meeting Street
Charleston, South Carolina 29401

Re: *In re AFFF Products Liability Litigation*, MDL No. 2:18-mn-2873-RMG

Dear Judge Gergel:

The Plaintiff’s Executive Committee (“PEC”) writes with respect to a scheduling issue the Parties cannot resolve regarding proposed amendments to Case Management Order (“CMO”) 19-B [ECF No. 2241].

By way of background, the Parties agreed that expert discovery, summary judgment, and *Daubert* briefing deadlines in CMO 19-B should be extended by 28 days.

Despite the above agreements, the Parties were at an impasse with respect to three other matters in the proposed new CMO 19-C:¹ (1) the timing and deadline to select the first case for trial; (2) the deadlines for motions *in limine*; and (3) adjustments to the date for which the first case would be trial ready.

However, during the course of extensive meet and confers, the PEC first agreed to split the difference in the deadliness for (1) and (2) above but maintain the date for which the first case would be ready for trial; meaning extend these dates by two weeks rather than 28 days. The Defense Coordinating Committee (“DCC”) rejected this out of hand. The PEC next offered to agree to the full 28 days extensions for items (1) and (2) above but maintain the trial readiness date in CMO 19-B. The DCC rejected this too.

The DCC has had one consistent position from day one of this litigation – delay, delay, delay. This mantra persists even when discussing the most-simple trial scheduling. This history of delay has been evident, including extending the discovery response deadlines, the incredibly slow rate of document productions by certain Defendants, the prolonged process to start the bellwether development protocol, the negotiation process for the bellwether protocol (in addition to the re-

¹ Proposed CMO 19-C is attached hereto as Exhibit A with the Parties’ varying positions in redline.



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negotiating of the bellwether process due to certain DCC member firms changing their position),² and the ill-preparedness by the DCC's prosecuting counsel in the initial bellwether discovery (thereby requiring numerous extensions to the Tier One and then Tier Two discovery schedules).

While the Parties are in agreement that additional time is needed for expert discovery, the PEC does not agree that should necessarily mean that either the date for selecting the first trial case should be moved, or that a revised motion in *limine* deadline is necessary, nonetheless, in the spirit of compromise, the PEC agreed to these adjustments in the schedule.³

However, there is simply no need to move a trial readiness date at this point. Again, this date can certainly be moved at some point in the future, if necessary, but doing so at this point is ill-advised. This is because, again, there is no need to, and, if a necessity arises in the future, the Parties and the Court can always move the trial date at that time. Further, moving the trial date now could incentivize Defendants to cause other delays, if they think that failure to compromise on scheduling issues simply results in a potential further adjournment of the trial. In short, there is no urgent reason to move this trial date at this time, and the PEC requests that the date set forth in CMO 19-B should remain.

We thank the Court for its continued time and courtesies.

Respectfully submitted,

s/ Fred Thompson
Fred Thompson
28 Bridgeside Blvd.
Mt. Pleasant, South Carolina 29464
Ph: 843-216-9000

Encl.

cc: All Counsel of Record (by ECF)
Blaise N. Barber, Esq. (via email) (Blaise_Niosi@scd.uscourts.gov)
Cary Kotcher, Esq. (via email) (Cary_Kotcher@scd.uscourts.gov)

² See DuPont December 7, 2020 letter from counsel for Defendant E. I. du Pont de Nemours & Co. to Your Honor objecting to be a part of the bellwether process. [ECF No. 1001].

³ The PEC submits that while the deadlines for summary judgment and *Daubert* briefing is linked to conclusion of expert discovery, and, therefore, should move equally (or close to equally with expert discovery extensions), there is no similar rational reason for moving the trial case selection timing and deadlines, nor the motions *in limine* deadlines. Notwithstanding the PEC acquiesced to moving these dates. The PEC, however, does not agree to move the trial readiness for the reasons set forth above.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

IN RE: AQUEOUS FILM- FORMING FOAMS PRODUCTS LIABILITY LITIGATION	MDL No. 2:18-mn-2873-RMG CASE MANAGEMENT ORDER NO. 19-__ This Document Relates to All Actions
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Amended Scheduling Order Governing First Water Provider Bellwether Trial

This CMO 19-C amends the schedule set forth in CMO 19-B for the Water Provider Bellwether Trial Pool cases. Specifically, this CMO 19-C allows for some additional time for Tier Two fact discovery, and amends certain remaining deadlines accordingly. The resulting schedule is as follows:

1. Tier Two discovery: The parties shall complete Tier Two discovery by February 21, 2022.
2. Expert disclosures: Plaintiff shall submit its expert disclosures by March 18, 2022. Defendants shall submit their expert disclosures by April 29, 2022. Rebuttal expert reports shall be submitted by May 13, 2022.
3. Expert discovery: The parties shall complete expert depositions by July 28, 2022.
4. Summary judgment and Daubert motions: The parties shall file motions for summary judgment and Daubert motions by August 15, 2022. Response in opposition briefs shall be filed by September 12, 2022. Reply in support briefs shall be filed by September 27, 2022.
5. Recommendation of first bellwether case for trial: The parties shall file their recommendation, with supporting memoranda, of the first bellwether case for trial by September 14, 2022 versus October 14, 2022.
6. Designation of first bellwether case for trial: The Court will designate the first bellwether case for trial by September 28, 2022 versus October 28, 2022.
7. Pretrial motions: The parties shall file pretrial motions and motions *in limine* by October 14, 2022 versus November 11, 2022. Response in opposition briefs shall be filed by October 21, 2022 versus November 18, 2022.

8. Pretrial disclosures: The parties shall file and exchange Fed. R. Civ. P. 26(a)(3) pretrial disclosures twenty-one (21) days prior to the date of jury selection. Within fourteen (14) days thereafter, a party shall file and exchange Rule 26(a)(3) objections, any objections of a deposition designation by another party, and any deposition counter-designations, pursuant to Rule 32(a)(4).
9. Pretrial briefs: The parties shall furnish the Court with and serve their pretrial briefs ten (10) business days prior to the date of jury selection (Local Civil Rule 26.05). At least five (5) business days prior to this deadline to submit pretrial briefs, counsel shall meet to exchange and mark all exhibits (Local Civil Rule 26.07).
10. Trial: This case is subject to being called for jury selection and/or trial on or after January 1, 2023 versus February 1, 2023.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Judge

April __, 2022
Charleston, South Carolina