

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: TYLENOL
(ACETAMINOPHEN) MARKETING,
SALES PRACTICES AND
PRODUCTS LIABILITY
LITIGATION

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MDL NO. 2436

2:13-md-02436

HON. LAWRENCE F. STENGEL

This Document Relates to:

Civil Action No. 2:12-cv-07263

Rana Terry, as Personal Representative
and Administrator of the Estate of Denice
Hayes, Deceased,

Plaintiff,

v.

McNEIL-PPC, Inc., McNeil Consumer
Healthcare, and Johnson & Johnson, Inc.,

Defendants.

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CASE MANAGEMENT ORDER NO. 18(i)
(1st Bellwether Case Scheduling Order)

AND NOW, on this 29th day of February, 2016, after a telephone conference with counsel and upon consideration of correspondence from counsel regarding scheduling, it is hereby **ORDERED** that this Order **AMENDS** Case Management Order

18 (13-md-2436, Doc. No. 185; 12-cv-7263, Doc. No. 30 entered on January 29, 2015), and all pertinent subsequent revisions of Case Management Order 18,¹ as follows:

1. The case of Rana Terry v. McNeil-PPC, Inc., et al., Civil Action No. 2:12-cv-07263 (“the Terry case”), is selected as the first bellwether case to proceed to trial from the Tylenol liver injury cases pending in MDL No. 2436.
2. A final pre-trial conference will be held on **Wednesday, September 7, 2016** at **10:00 a.m. in Courtroom 14B**, U.S. Courthouse, 601 Market Street, Philadelphia, PA.
3. The trial of the Terry case shall commence on **Monday, September 19, 2016**, with the reporting of the venire for completion of jury questionnaires.
4. Pre-trial proceedings in the Terry case shall be completed in accordance with the below schedule:

A. MOTIONS PRACTICE²

The following schedule governs forthcoming motions:

¹ See CMO 18(a)(13-md-2436, Doc. No. 187; 12-cv-7263, Doc. No. 31 entered on February 25, 2015); CMO 18(b)(13-md-2436, Doc. No. 197; 12-cv-2463, Doc. No. 32 entered on April 13, 2015); CMO 18(c)(13-md-2436, Doc. No. 202; 12-cv-7263, Doc. No. 39 entered on May 5, 2015); CMO 18(d)(amendment regarding Deposition Designation Protocol and Schedule)(13-md-2436, Doc. No. 207; 12-cv-7263, Doc. No. 40 entered on May 18, 2015); CMO 18(e)(amendment regarding Dispositive Motion Deadlines)(13-md-2436, Doc. No. 210; 12-cv-7263, Doc. No. 43 dated May 20, 2015); CMO 18(f)(amendment regarding Dispositive Motion Deadlines)(13-md-2436, Doc. No. 213; 12-cv-7263, Doc. No. 44 dated May 26, 2015); CMO 18(g)(amendment regarding Dispositive Motion Deadlines)(13-md-2436, Doc. No. 232; 12-cv-7263, Doc. No. 84 entered on June 15, 2015); CMO 18(h)(continuing trial and vacating pre-trial items not already pending)(13-md-2436, Doc. No. 253; 12-cv-7263, Doc. No. 161 entered on July 14, 2015).

All other provisions of CMO 18 and its subsequent amendments not addressed in this Order remain unchanged.

² The parties are permitted to submit additional Daubert motions in accordance with the Order entered on January 21, 2016. Oral argument on outstanding Daubert motions will be scheduled in separate Orders, to be issued at a later time. The Court heard oral argument on Daubert motions pertaining to Dr. Cheryl Blume and Marvin Goldberg on December 16, 2015 and oral argument on Daubert motions pertaining to Dr. Judith Jones and Gerald Rachanow on February 17, 2016.

Parties' Motions Regarding Use of Confidential/Highly Confidential Information at Trial Due ³	Wednesday, March 30, 2016
Oppositions to Motions on Confidential/Highly Confidential Information Usage at Trial Due	Wednesday, April 13, 2016
Oral Argument on Confidential Information Motions	Wednesday, April 27, 2016 (at monthly status conference)

The parties may only file additional pretrial motions with leave of the Court.

B. DEPOSITION DESIGNATIONS⁴

The Court appreciates and understands that certain witnesses' testimony may be presented to the Jury in this case by previously preserved videotaped testimony that has been taken in these MDL proceedings.

Each party shall designate direct and re-direct testimony for each witness expected to be called at trial by video.	Friday, June 10, 2016
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³ The parties are expected to meet and confer before filing motions related to the use of confidential/highly confidential information at trial. If the parties cannot agree on how the information should be treated at trial, they should file motions on the areas that remain in dispute.

⁴ Service of all submissions described herein shall occur no later than 1:00 p.m. EST on the date identified.

<p>Each party shall serve objections to the opposing party’s direct and redirect designations and designate rebuttal cross and re-cross examinations for each witness.⁵ Objections shall be provided to FTI Consulting in page/line format for completion of deposition transcripts.</p>	<p>Friday, June 24, 2016</p>
<p>Each party shall serve objections to the opposing party’s designated cross and re-cross examinations. Objections shall be provided to FTI Consulting in page/line format for completion of deposition transcripts.</p>	<p>Friday, July 1, 2016</p>
<p>The parties shall meet and confer to attempt to resolve objections to deposition designations.</p>	<p>Friday, July 15, 2016</p>
<p>The parties shall coordinate finalizing deposition designation transcripts with objections which shall be submitted to the Court for review. Following this deadline, parties shall not be permitted to alter their designations without permission from the Court.⁶</p>	<p>Friday, July 22, 2016</p>

C. PROPOSED JURY INSTRUCTIONS AND VERDICT FORMS

<p>Each party to file its Proposed Jury Instructions and Verdict Form pursuant to Judge Stengel’s Procedure’s Manual ¶17.</p>	<p>Monday, August 29, 2016</p>
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⁵ As discussed on the January 27, 2016 telephonic conference with counsel, the Court reminds the parties to minimize unnecessary objections, such as “asked and answered,” “leading question,” “argumentative.” The parties shall endeavor to set forth substantive objections only, for the Court to consider.

⁶ The party initially designating from a deposition shall pay the expenses associated with the videos and production of the Deposition Packages for that witness. In the event both parties initially designate from the same witness, costs for the preparation of the Deposition Package shall be shared evenly.

D. TRIAL WITNESS LISTS AND EXHIBIT LISTS

Plaintiffs' & Defendants' Identification of Trial Witnesses (Live & Via Deposition)	Friday, July 29, 2016
Identification of Rebuttal Witnesses	Friday, August 5, 2016
Plaintiffs' & Defendants' Preliminary Exhibit Lists	Friday, August 12, 2016
Meet and Confer Among Counsel Concerning Case-Specific Exhibits	Week of August 15, 2016
The parties shall submit a proposed Final Pretrial Order in the form required by Local Rule 16.1(d)(2)(b) and Judge Stengel's Procedures Manual at page 9 ("Final Pretrial Memoranda"), which will include Witness and Exhibit Lists.	Wednesday, August 24, 2016

E. JURY QUESTIONNAIRES

Exchange of Parties' Proposed Jury Questionnaires	Tuesday, August 23, 2016
Submission of Proposed, Agreed Upon, Jury Questionnaire to the Court ⁷	Tuesday, August 30, 2016

BY THE COURT:

/s/Lawrence F. Stengel
LAWRENCE F. STENGEL, J.

⁷ In the event the parties are not able to agree to a Jury Questionnaire by August 30, 2016, the parties shall submit to the Court on that date their respective versions and the Court will then determine the content of the Jury Questionnaire.