

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**IN RE DIGITEK®
PRODUCT LIABILITY LITIGATION**

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER #38
(Revised Scheduling Order)**

This Order shall amend Pretrial Order #16 (“PTO #16”) which, in pertinent part, sets forth procedures for selecting groups of cases for trial pools and their related scheduling orders. This order replaces sections VII(D) through VII(F) of PTO #16 in their entirety as follows:

VII. DISCOVERY DATES AND ORDER

D) Division of Cases and Trial Pool Cases

To efficiently manage discovery for all currently pending and future cases in the MDL, the cases will be divided into groups, with each group having a separate scheduling order. The Court held a hearing July 22, 2009 for purposes of selecting the initial trial pool of cases (“Group 1”). Five (5) days before the hearing, the Plaintiffs selected fifteen (15) cases and the Defendants selected fifteen (15) cases. In PTO #35 the Court selected ten (10) of the proposed trial pool cases to constitute Group 1. The twenty (20) cases not selected shall constitute the waiting list for Group 1, and shall have priority for trial selection in Group 2.

The parties and the Court will determine a schedule for choosing the remaining groups with the intent to make selections in a timely fashion and to allow enough time for discovery in each group, as set forth below.

E) Discovery Initiation Date

Discovery will begin for each group as set forth herein. The Discovery Initiation Date (“DID”) will be two days after entry of a court Group Selection Order for each group. For example, the court issued a Group Selection Order for Group 1 on August 5, 2009 (PTO #35); therefore, the DID for that group will be August 7, 2009.

F) Scheduling Orders

Each group will have its own scheduling order based upon its DID. The orders will proceed as follows.

1. Fact Discovery

- a) The parties shall complete basic fact discovery, including but not limited to the depositions of plaintiffs, plaintiffs’ physicians who prescribed Digitek® to them, physicians who treated Plaintiffs for alleged digoxin toxicity, and pharmacists who filled plaintiffs’ prescriptions for Digitek® no later than 90 days after the DID.
- b) After completion of basic fact discovery outlined in paragraph 1(a), the parties will appear before the court for a Case Management Conference. At that time, each party will present to the court their choice of five (5) cases that they believe to be representative plaintiffs for trial. No later than 105 days after the DID, the court will determine which five (5) cases will be selected for trial.
- c) The parties shall complete fact discovery in the five (5) trial cases no later than 150 days after the DID.

2. Expert Discovery

- a) The five (5) trial plaintiffs shall serve their general and case-specific expert report(s) on causation and damages no later than 150 days after the DID.
- b) The parties shall complete the depositions of plaintiffs’ experts in the five (5) trial cases no later than 210 days after the DID.
- c) Defendants shall serve their general and case-specific expert report(s) on causation and damages in the five (5) trial cases no later than 240 days after the DID.

- d) The parties shall complete the depositions of defendants' experts in the five (5) trial cases no later than 270 days after the DID.

3. Filing of Dispositive and *Daubert* Motions

- a) All dispositive motions and *Daubert* motions shall be filed and served no later than 310 days after the DID.
- b) All responses to dispositive motions and *Daubert* motions shall be filed and served no later than 340 days after the DID.
- c) All replies in support of dispositive motions and *Daubert* motions shall be filed and served no later than 370 days after the DID.
- d) A hearing will be scheduled by this court for disposition of all dispositive and *Daubert* motions no later than 400 days after the DID.

4. Pretrial Conference

The court will schedule a pretrial conference no later than 415 days after the DID at which time the court will schedule the trial dates for the five (5) trial cases with the first trial to begin no later than 450 days after the DID.

The court **DIRECTS** the Clerk to file a copy of this memorandum opinion and order in 2:08-md-1968 which shall apply to each member Digitek-related case previously transferred to, removed to, or filed in this district, which includes counsel in all members cases up to and including civil action number 2-09-cv-924. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsd.uscourts.gov.

Enter: August 13, 2009


Joseph R. Goodwin, Chief Judge