

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION)	MDL 2804
OPIATE LITIGATION)	
)	Case No. 1:17-md-2804
THIS DOCUMENT RELATES TO:)	
)	Judge Dan Aaron Polster
<i>Track One Cases</i>)	
)	<u>ORDER</u>

Before the Court is Defendants¹ Emergency Motion to Reconsider Orders Setting Expert Discovery Schedule. **Doc. #: 1552**, and Plaintiffs' Response in Opposition. Doc. #: 1557. Although styled a motion to reconsider its Orders Regarding Expert Depositions, Doc. #: 1537, 1540, Defendants, in fact, request an extension of the current case management deadlines for the *Track One* cases, which now consist only of Plaintiffs Cuyahoga County and Summit County.² Defendants request that the Court:

amend CMO 8 to extend the deadline to complete depositions of Plaintiffs' experts to at least May 31, 2019. Defendants further respectfully request that the deadline for the disclosure of their experts be extended to July 1, 2019, that the date for completing depositions of Defendants' experts be extended to September 2, 2019,

¹ Actavis Elizabeth LLC, Actavis Kadian LLC, Actavis LLC, Actavis Laboratories FL, Inc., Actavis Laboratories UT, Inc., Actavis Mid Atlantic LLC, Actavis Pharma, Inc., Actavis Pharma, Inc., Actavis South Atlantic LLC, Actavis Totowa LLC, Actavis, Inc., Allergan Finance LLC, Allergan PLC, Allergan Sales, LLC, Allergan USA, Inc., AmerisourceBergen Corporation, Anda, Inc., Bi-Mart Corporation, CVS Indiana, L.L.C., CVS RX Services, Inc., Cardinal Health, Inc., Cephalon, Inc., Endo Health Solutions Inc., Endo Pharmaceuticals, Inc., H. D. Smith Holding Company, H. D. Smith Holdings, LLC, Henry Schein Medical Systems, Inc., Henry Schein, Inc., Insys Therapeutics, Inc, Janssen Pharmaceutica, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc., Janssen Pharmaceuticals, Inc., Johnson & Johnson, Mallinckrodt LLC, Mallinckrodt PLC, Manufacturer Defendants' Liaison Counsel, McKesson Corporation, Miami-Luken, Inc., Noramco, Inc., ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. N/K/A/ JANSSEN PHARMACEUTICALS INC., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Par Pharmaceutical Companies, Inc., Par Pharmaceutical Holdings, Inc., Par Pharmaceutical, Inc., Purdue Pharma L.P., Purdue Pharma, Inc., Rite Aid of Maryland, Inc., SpecGX LLC, Teva Pharmaceutical Industries Ltd., Teva Pharmaceuticals USA, Inc., The Purdue Frederick Company, Walgreen Co., Walgreen Eastern Co., Inc., Walmart, Inc., Warner Chilcott Company, LLC.

² Pursuant to the Court's February 25, 2019 Order Regarding Track One Trial Plaintiffs, Doc. #: 1392.

and that the deadline for submitting *Daubert* and dispositive motions be extended to October 15, 2019.

Doc. #: 1552 at 1.

The Court first notes that Case Management Order 8 (“CMO-8”) was issued less than three months ago as a response to a Joint Motion to Modify CMO-7. Doc. #: 1303. Before agreeing to and joining the Motion to Modify, Defendants had individually requested 45-day extensions to the deadlines set by CMO-7. *See* Defendants’ Response to Plaintiffs’ Mot. to Modify Case Management Schedule, Doc. No. 1291 (“Defendants respectfully request that . . . the Court grant a 45-day extension to all remaining deadlines, so as to avoid any unfair prejudice to Defendants.”); *see also* Plaintiffs’ Mot. to Modify Case Management Schedule, Exh. C, Doc. No. 1285-4 (containing Defendants’ proposed case management deadlines). The Court thus granted, for nearly every deadline, at least a 45-day extension, and in every case, the parties’ jointly proposed date. This included a postponement of the trial from September 3 to October 21, 2019 (48 days). Defendants now complain that “the schedule is compressed to the point of being unworkable and fundamentally unfair,” Doc. #: 1552 at 2, however, this is the schedule Defendants proposed at the end of January, and nothing significant has changed since then. If anything, the case is simpler as the *Track One* case now involves only two plaintiffs rather than four.³

Second, Defendants’ proposal for an extension of expert discovery deadlines would have the Court approve an October 15, 2019 deadline for submitting *Daubert* and dispositive motions (a 109-day extension of the current deadline, and a mere 6 days prior to the current trial date). Defendants have not even suggested what the Court should do about the remaining deadlines on the schedule (*i.e.* responses to *Daubert* and dispositive motions, replies, the hearing on *Daubert*

³ In January, when Defendants requested the 45-day extension, the trial also encompassed the claims of the Cities of Cleveland and Akron. *See* Doc. #: 1392.

and dispositive motions, and the trial itself). The Court can only conclude that Defendants are proposing an indefinite postponement of the trial. No Court would take such a proposal seriously.

Accordingly, Defendants Emergency Motion to Reconsider Orders Setting Expert Discovery Schedule, **Doc. #: 1552**, is **DENIED**.

IT IS SO ORDERED.

/s/ Dan Aaron Polster April 18, 2019
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE