

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

IN RE: DICAMBA HERBICIDES
LITIGATION

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MDL No. 2820
ALL CASES

**FOURTH AMENDED CROP DAMAGE
CASE MANAGEMENT ORDER**

It is Hereby Ordered that the following deadlines set forth in the Third Amended Crop Damage Case Management Order shall be amended as follows:¹

I. PRE-TRIAL DEADLINES

A. Discovery

1. All discovery shall be completed by **March 30, 2020 or the date the last expert witness is deposed, whichever is later.**

2. The Parties shall work with the Special Master to develop discovery deadlines so that all discovery may be complete by this deadline. As part of the negotiation of the revised deadlines set forth below, the parties have agreed that any depositions taken in this MDL on or before October 1, 2019 may be used in the related Bader action as if they had been taken in a timely manner in that action, except they may not be used to oppose summary judgment if taken after the deadline for filing of initial summary judgment motions in Bader unless the depositions have been noticed prior to such deadline and they are completed before the filing of response to summary judgment motions, absent a showing of good cause and with leave of court. Also, as part of the same negotiation, the parties have agreed to a non-exclusive schedule of depositions of Defendants that will be taken through September, 2019. The agreed dates for those depositions will be presented to and approved by the Special Master. The dates of those depositions shall not be altered absent good cause shown or agreement of the parties. If any deposition on the schedule is moved beyond the deadline for responses to summary judgment motions in Bader, that deposition shall be allowed to be used for any purpose in Bader by any party that did not move the deposition. Finally, as part of the

¹ All other provisions of the previously entered Case Management Orders shall remain in place, except for past deadlines previous amended by agreement of counsel and/or order of the Court.

negotiation of this agreement, no additional discovery related to Master Complaint Named Plaintiffs, other than depositions already scheduled and requested of each class representative and document subpoenas (and if Defendants can show good cause, deposition subpoenas) to nonparties, shall be conducted until after the Court rules on class certification. Defendants have reserved the right to seek to take additional discovery, on good cause shown, of Master Complaint Named Plaintiffs after the class certification hearing. In addition, pursuant to the Court's April 12, 2019 Order and the agreement of the parties, Defendants may depose 14 plaintiffs who have not been named in the Crop Damage Master Complaint, of which three may be dismissed plaintiffs, with the exclusions presented to the Special Master and agreed to by the parties. Those depositions will be limited to four hours each. Defendants have reserved the right to seek to continue such depositions for cause if class certification is denied.

3. The presumptive limits on the depositions of Defendants' fact witnesses shall apply as specified in the Court's April 12, 2019 Order.

B. Class Certification

1. **Briefing.** All Parties shall file any *Daubert* challenges to any expert relied upon for class certification no later than **July 1, 2019**. All Parties shall file responses to any *Daubert* challenges to any expert relied upon for class certification no later than **July 31, 2019**. All Parties shall file replies to any *Daubert* challenges to any expert relied upon for class certification no later than **August 15, 2019**. Any motion for class certification relating to any Crop Damage Master Complaints shall be filed **14 days after the date this Court rules** on the class certification *Daubert* motions. Defendants shall file any response thereto **five weeks** after the motion for class certification is filed. Plaintiffs shall file any replies within **10 days** thereafter.

2. **Hearings.** The Court will schedule a class certification hearing relating to any Crop Damage Class Claims following the completion of briefing.

C. Expert Disclosures

1. Plaintiffs shall disclose all class expert witnesses relating to any Crop Damage Class Claims and shall provide the reports required by Rule 26(a)(2), Fed. R. Civ. P., no later than **February 14, 2019**, and shall make those experts available for depositions, and have depositions completed, no later than **March 18, 2019**.

2. Defendants shall disclose all class expert witnesses relating to any Crop Damage Class Claims and shall provide the reports required by Rule 26(a)(2), Fed. R. Civ. P., no later than **April 19, 2019**, and shall make those experts available for deposition, and have depositions completed, no later than **May 20, 2019**.

3. Subject to the provisions below regarding bellwether scheduling, Plaintiffs shall disclose all expert witnesses on topics other than those related to class certification of any Crop Damage Class Claims and individual damages and provide reports as required by Rule 26(a)(2), Fed. R. Civ. P., **30 days after the Court's Order on class certification**; and shall make those plaintiffs' experts available for deposition no later than **30 days after the date of disclosure**.

4. Subject to the provisions below regarding bellwether scheduling, Defendants shall disclose all expert witnesses on topics other than those related to class certification of Crop Damage Class Claims and individual damages and provide reports as required by Rule 26(a)(2), Fed. R. Civ. P., no later than **30 days after the deadline for completion of depositions of plaintiffs' experts**; and shall make those defendant experts available for deposition no later than **30 days after the date of disclosure**.

5. Plaintiffs shall designate any rebuttal expert witnesses and provide reports as required by Rule 26(a)(2), Fed. R. Civ. P., no later than **30 days after the deadline for completion of depositions of defendants' experts**; and shall make those rebuttal experts available for deposition no later than **30 days after the date of disclosure**.

D. Dispositive and Daubert Motions

1. Summary judgment and *Daubert* motions are due 30 days after the completion of expert discovery.

E. Bellwether Trial Plaintiffs' Scheduling In The Event That No Class Is Certified.

In the event that no class is certified, the following schedule shall apply to bellwether plaintiff selection, individual expert reports for bellwether plaintiffs, any appropriate additional discovery from the bellwether plaintiffs and trials for the bellwether plaintiffs.

Within thirty (30) days after the Court rules on the motion for class certification, the parties shall meet and confer on a process for the identification of bellwether trial plaintiffs, individual expert reports for those plaintiffs, any additional discovery needed from those plaintiffs, a schedule for completing all of the above and proposing trial months for those trials and serve a Joint Report to the Court with such recommendations. To the extent the parties are not able to agree upon a bellwether selection process or

schedule for bellwether discovery and trials, the parties shall serve a report of their respective competing proposals.

Upon receipt of the parties joint or individual proposals, the Court may schedule a Status Conference to consider the proposed bellwether selection process and discovery and trial schedules for bellwether trials if it believes doing so would be helpful.

1. Within thirty (30) days after the Court issues its revised scheduling order including selection of initial bellwether trial plaintiffs, plaintiffs shall produce expert reports for each of the bellwether trial plaintiffs.

2. Within thirty (30) days after production of those expert reports, plaintiffs shall make those experts available for deposition and provide any additional discovery from the bellwether plaintiffs as agreed to by the parties or ordered by the Court.

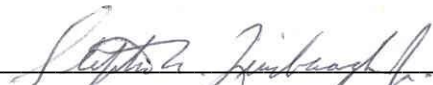
3. Within thirty (30) days thereafter, defendants shall produce any expert reports related to individual bellwether plaintiffs, and shall produce them for deposition with within thirty (30) days after the reports are produced.

4. *Daubert* deadlines for individual damage reports shall be scheduled consistent with these revisions.

II. ORDER RELATING TO TRIAL

First trial set to begin in the month of August, 2020. The Court will issue a pretrial order at an appropriate time.

SO ORDERED this 3rd day of July, 2019.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE