

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

IN RE RED DUST CLAIMS

MASTER CASE NO.  
SX-15-CV-000620

**DEFENDANTS' PROPOSED DISCOVERY ORDER**

Defendants respectfully submit the following proposed Order which is designed to accommodate the various suggested resolutions of the discovery issues presented in the parties' February 5, 2018 Joint Report to Court Re: Discovery Order:

IT IS HEREBY ORDERED AS FOLLOWS:

1. All individual Plaintiffs shall complete the attached Questionnaire (Exhibit A) within two hundred (200) days of this Order. Plaintiffs' counsel shall produce each completed Questionnaire to Defendants' counsel within ten (10) days of its execution.

2. Any Plaintiff whose completed Questionnaire has not been provided to Defendants within 210 days of this Order will be placed in Group C (discussed below). Defendants may also request other relief as to any Plaintiff whose completed Questionnaire has not been provided to Defendants within 210 days of this Order.

3. Within 30 days after this Order, the parties shall agree on, and utilize, a neutral computer program to randomly assign a number, 1-1426 (or whatever the total number of plaintiffs is), to each plaintiff. The first 130 Plaintiffs on the list shall constitute Group A, and the remaining Plaintiffs shall constitute Group B. If more than 2 plaintiffs from any single complaint appear in Group A, the member(s) with the highest numbers shall be replaced by the next eligible plaintiff(s) from Group B so that no more than two plaintiffs from each complaint will be in Group A.

4. Discovery of Group A Plaintiffs will proceed as follows: Upon assignment of a Plaintiff to Group A, Defendants will be entitled to obtain complete medical records. Defendants' counsel shall provide to Plaintiffs' counsel a blank medical records release form. For each Group A Plaintiff, Plaintiffs' counsel shall provide to Defendants' counsel, together with the completed Questionnaire, a signed medical records release for each health care provider identified in the completed Questionnaire (*i.e.*, in response to questions nos. 33(i)-(l) and 37). If a signed release is not provided for any health care provider identified in the completed Questionnaire for any Group A Plaintiff, Plaintiffs' counsel shall provide it within ten days of a request by counsel for Defendants. When at least 20 Questionnaires from Group A have been produced to Defendants, Defendants may commence additional discovery of a Group A Questionnaire

respondent as follows: conduct an initial one-hour deposition (exclusive of objections and breaks) of each Group A Questionnaire respondent.

5. If any Group A Plaintiffs fail to respond to the questionnaire within 210 days, they will be placed in Group C. Additional Plaintiffs will be added to Group A (from those who have returned questionnaires), in the order they appear on the initial random list to replace the plaintiffs who have been shifted to Group C.

6. Likewise, if any Group A Plaintiffs are dismissed for any reason, additional Plaintiffs will be added, in the order they appear on the initial random list, to keep the number moving through the discovery process at 130 Plaintiffs.

7. With respect to the initial one-hour depositions of Group A Plaintiffs, the parties shall make good faith efforts to schedule five (5) such depositions per day, three (3) days a week at least one week every six weeks, until completed. Off-island Plaintiffs will be allowed to appear by video conferencing.

8. When the initial depositions have been completed as to all Group A Plaintiffs, the parties and the Court shall meet to discuss mediation procedures and procedures to select cases to be set for trial. For any Plaintiffs moving forward for dispositive motions or trial, a full deposition may be taken by Defendants, as well

as treating (and expert) physician depositions, witness and fact depositions, medical examinations, property inspections, and other discovery.

9. Discovery schedule: For purposes of the following schedule, “DOED” shall be the date that the Court enters the Discovery Order.

**Group A Plaintiffs:**

- a. Questionnaires shall be due 200 days from the DOED.
- b. One hour depositions of Group A Plaintiffs shall be completed one year and 200 days from the DOED.
- c. An initial conference to discuss a methodology for the selection of individual members of Group A Plaintiffs to serve as bellwether plaintiffs for trial shall be held approximately 400 days from the DOED.<sup>1</sup>
- d. Within 30 days of the completion of the one-hour depositions of all Group A Plaintiffs, or 30 days after the entry of a Court Order establishing the method for selecting bellwether plaintiffs, whichever is later, the parties shall make their selections of bellwether plaintiffs in the manner specified by that Order.
- e. Upon the completion of selection of bellwether plaintiffs, full discovery related to those plaintiffs shall commence and be completed within a

---

<sup>1</sup> This initial conference will occur before all Group A plaintiffs have been deposed but after a sufficient number have been deposed such that the parties should be able to reasonably anticipate difficulties that might arise with the selection of bellwether plaintiffs.

time schedule to be established by the Court in connection with the selection of the bellwether plaintiffs.

f. The non-bellwether plaintiffs remaining in Group A shall be designated as Group A-1. Depositions of the Group A-1 plaintiffs shall commence upon the completion of the depositions of the bellwether plaintiffs and be completed by a deadline to be set by the Court at the time that the selection of the bellwether plaintiffs is completed.

**Group B Plaintiffs:**

a. Questionnaires shall be due 200 days from the DOED.

b. Full depositions of Group B Plaintiffs shall commence no later than the completion of the full depositions of the Group A-1 plaintiffs. Depositions of Group B plaintiffs shall be completed by a deadline to be set by the Court at the time that the selection of the bellwether plaintiffs is completed.

**Group C Plaintiffs:**

There will be no deadline set for completion of depositions of Group C plaintiffs; however, any Group C plaintiff who finally completes a questionnaire shall be eligible to apply to the Court to be shifted to Group B, subject to whatever conditions the Court may apply to ensure that the parties have an adequate time to complete discovery of such plaintiffs.

9. Plaintiffs shall provide the information required by Rule 26(a) with their Questionnaires. Defendants shall make their Rule 26(a) disclosures within 45 days of receiving completed Questionnaires from fifty percent (50%) of the Plaintiffs.

**SO ORDERED.**

Dated: February\_\_\_\_, 2019

---

ROBERT A. MOLLOY  
Judge of the Superior Court