

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

**IN RE: DICAMBA HERBICIDES) 1:18-md-2820 SNLJ
LITIGATION) ALL CASES**

ANTITRUST CASE MANAGEMENT ORDER

Pursuant to the Civil Justice Reform Act Expense and Delay Reduction Plan and the Differentiated Case Management Program of the United States District Court for the Eastern District of Missouri, the Initial Scheduling Conferences held on March 28, 2018, April 18, 2018, and June 1, 2018, and the Court's May 8, 2018, Order Allowing Amended Consolidated Master Complaints,

IT IS HEREBY ORDERED that the following scheduling shall apply to the Antitrust Claims in this multidistrict litigation, and will be modified only upon a showing of good cause.

I. SCHEDULING PLAN

A. Pleadings and Motions

1. Court-appointed Plaintiffs' Leadership Counsel shall file a Master Antitrust Complaint by August 1, 2018. Only plaintiffs who originally filed in an appropriate district (*i.e.*, in the district in which they farm or the home district of the defendant against whom they are pursuing claims) will be permitted to be named plaintiffs in the Master Antitrust Complaint. Any current plaintiff in the MDL who is not named in the Master Antitrust Complaint, but who asserts antitrust claims, shall be provided an opportunity to dismiss without prejudice or conform their operative pleading to a Master Antitrust Complaint by filing a Notice of Dismissal or Notice to Conform by August 31, 2018. Any plaintiff whose case is transferred into this MDL after the deadline shall file any such notice by the established deadline or within thirty (30) days of transfer into the MDL, whichever is later.

2. Defendants named in the Master Antitrust Complaint shall answer or file Rule 12(b) motions within thirty (30) days after the Master Antitrust Complaint is filed.

3. Oppositions to any Rule 12(b) motion shall be due thirty (30) days after any such motion is filed; replies shall be due fifteen (15) days after the date the opposition is filed.

4. Motions in General: Local Rule 7-4.01 shall govern motion practice for all motions absent a Court order to the contrary regarding any specific motion. Memoranda in support of Rule 12(b) motions directed to the Master Antitrust Complaint, and oppositions to such motions, may be thirty-six (36) pages in length, and a party may seek leave should it reasonably believe additional pages are required. Reply briefs in further support of such Rule 12(b) motions may be fifteen (15) pages in length, and a party may seek leave should it reasonably believe additional pages are required.

5. Joinder of Parties: Except for good cause shown, motions to join additional parties must be filed no later than December 7, 2018.

B. Disclosures and Discovery

1. Discovery

a) Discovery shall not be bifurcated; the parties may pursue class and merits discovery at the same time.

b) **Overlapping Antitrust Topics:** Any disputes related to discovery that overlaps with or is duplicative of crop damage discovery are referred to the Special Master.

c) **Non-Overlapping Antitrust Topics:** Non-overlapping discovery relating to the Antitrust Claims (“Antitrust Discovery”) will not commence unless the Court denies, in whole or part, any Rule 12(b) motions to dismiss the Master Antitrust Complaint. If the Court issues such a decision (“MTD Decision”), Antitrust Discovery shall begin immediately.

d) Antitrust Plaintiffs collectively may serve up to twenty-five (25) interrogatories, twenty-five (25) requests for production, and twenty-five (25) requests for admission on the defendants named in the Master Antitrust Complaint. Defendants named in the Master Antitrust Complaint collectively may serve up to ten (10) interrogatories, ten (10) requests for production, and ten (10) requests for admission on each plaintiff named in the Master Antitrust Complaint. The parties shall produce documents and privilege logs on a rolling basis, rather than waiting until all responsive documents have been gathered. Within thirty (30) days after receipt of a request for production of documents, the parties shall state their best estimate of when each category of requested documents will be produced.

e) At this time, the Court will not impose limits on the number of depositions the parties may take, but if requested to do so, will consider doing so at a later time. Depositions noticed in the master actions are automatically noticed in any remaining individual actions and may be cross-noticed in any related state court action. Plaintiffs' court-appointed leadership will coordinate and take the lead on depositions of defendants and third-party witnesses noticed by plaintiffs. Plaintiffs and defendants shall work cooperatively to prioritize production of documents relevant to scheduled deponents such that the documents are produced in sufficient time before the deposition to allow adequate preparation time. To the extent documents relevant and important to a particular deponent's deposition are produced after the deposition, the deposing party shall be entitled to reopen the deposition to inquire about any such documents.

f) Absent agreement or leave of Court, no witness should be deposed more than once in the antitrust claims; however, persons designated as Rule 30(b)(6) representatives may be separately deposed as individual fact witnesses. Supplemental depositions will be permitted only upon motion demonstrating (a) a compelling need for the information sought, (b) compelling reasons why the desired lines of questioning could not have been pursued in the original deposition, and (c) why the information cannot be obtained from any persons available for future depositions. If permitted, a supplemental deposition shall be treated as the resumption of the deposition originally noticed. Examination in any supplemental deposition shall not be repetitive of any prior interrogation and will not exceed two (2) hours, unless the Court determines that more or less time should be allowed.

g) Depositions should be noticed pursuant to Rule 30 at least fourteen (14) days in advance of the proposed deposition date, unless a shorter notice period is agreed to. Absent extraordinary circumstances, counsel shall consult in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually convenient times and places.

h) With respect to specific objections made during a deposition, such objection shall be deemed to be on behalf of all parties who could have made the same objection. Counsel for other parties need not repeat the objection in order to preserve it.

i) For any depositions conducted pursuant to Rule 30(b)(6), counsel for the noticing party shall serve counsel for opposing party with a set of proposed Areas of Inquiry and shall within seven (7) days thereafter meet and confer about any objections to the Areas of Inquiry, the identity of the corporate representative(s) who will testify, and the schedule on which counsel may take the corresponding depositions.

j) All discovery – both class certification and merits – shall be completed no later than 375 days after the MTD Decision.

k) In accordance with Rule 53, Fed. R. Civ. P., the Court appointed a Special Master for Discovery. The Special Master for Discovery shall work with the parties to develop streamlined procedures to ensure prompt and efficient resolution of any discovery disputes.

C. Expert Disclosures

1. If the Court issues a decision denying any Rule 12(b) motions to dismiss the Master Antitrust Complaint (the “MTD Decision”), the schedule for completion of class certification discovery, merits discovery, and motions practice relating to the Antitrust Claims shall be as follows:

a) Plaintiffs shall disclose all antitrust expert witnesses—class and otherwise—and shall provide the reports required by Rule 26(a)(2) no later than 165 days after the MTD Decision, and shall make those experts available for depositions, and have depositions completed no later than 200 days after the MTD Decision.

b) Defendants shall disclose all antitrust expert witnesses—class and otherwise—and shall provide the reports required by Rule 26(a)(2) no later than 220 days after the MTD Decision, and shall make those experts available for deposition, and have depositions completed no later than 255 days after the MTD Decision.

c) Plaintiffs shall disclose any antitrust class rebuttal expert witnesses and shall provide the reports required by Rule 26(a)(2) no later than 280 days after the MTD Decision, shall make those rebuttal experts available for depositions, and have depositions completed no later than 315 days after the MTD Decision.

D. Class Certification, Summary Judgment and Daubert Motions

1. Briefing: Any motion for class certification, summary judgment and *Daubert* issues pertaining to the Antitrust Claims shall be filed by 375 days after the MTD Decision. Defendants shall file any response thereto by 435 days after the MTD Decision. Plaintiffs shall file any reply by 465 days after the MTD Decision.

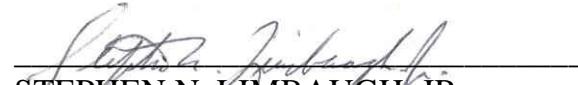
2. Hearing: The Court will schedule a class certification hearing related to the Antitrust Claims after the completion of briefing.

II. TRIAL SCHEDULE

A. First Trial

1. First trial set to begin in the month of **July 2020**.

SO ORDERED this 29th day of June 2018.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE