

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

PATRICK JOSEPH TURNER, ET. AL.	*	CIVIL ACTION NO. 05-4206
Plaintiffs	*	(ALL CASES)
	*	
VERSUS	*	SECTION "L"
	*	
MURPHY OIL USA, INC.	*	MAGISTRATE "2"
Defendant	*	
	*	

DISCOVERY PLAN FOR PHASE ONE: COMMON ISSUES OF LIABILITY AND GENERAL CAUSATION

The following plan is hereby entered as an Order of the Court to govern discovery activity in this litigation in advance of the scheduled Phase One trial of common issues.

I. SCOPE OF DISCOVERY AND GENERAL DISCOVERY PROTOCOL

Discovery may commence immediately on common issues of liability, sampling and cleaning protocols, methods and procedures, and general causation pursuant to this Court's approved trial plan dated March 3, 2006.

There shall be no discovery related to specific causation and compensatory damages (Phase Two trial issues) until the completion of the Phase One trial unless agreed to by all parties. As such, this discovery plan is specifically limited to the Court's Phase One trial plan.

Fee _____
 Process _____
 Dktd _____
 CtRmDep _____
 Doc. No. _____

Counsel shall develop and use a system of identifying, by unique number or symbol, each document produced or referred to in discovery, and throughout the course of this litigation. If documents are produced by persons or entities not parties to this action, and those documents are not already produced, the party that requested the production shall be responsible for numbering the documents in accordance with this Order.

If any discoverable information is withheld on the basis of a claim of privilege or other protection, the party claiming the privilege or other protection shall provide a "Privilege Log" setting forth, with specificity, the nature of the privilege or protection asserted, the author and date of the document, the identity of all intended recipients of the document, the subject matter of the document, and a description of how the withholding party contends the alleged privilege or other protection applies.

Counsel are expected to cooperate and be courteous to and with one another and all deponents. To the extent possible, counsel shall consult in advance with opposing counsel and proposed deponents, in an effort to schedule depositions at mutually-convenient times and locations. Notices of all depositions should be provided at least fourteen business days prior to the scheduled deposition date, unless the parties agree to shorter notice. Plaintiffs' class counsel will designate no more than one attorney to participate and ask questions in the conduct of each deposition.

The following schedule outlines the deadlines and requirements to be followed by the parties in completing their preparation for the Phase One trial with the understanding that the schedule, deadlines and requirements herein may be modified by and between the parties, assuming this can be done without jeopardizing the trial date herein. If any party

desires a modification or extension of a deadline and agreement cannot be reached, the matter should be submitted to the Court on written motion, in accordance with the local rules of this Court.

II. AMENDMENTS TO PLEADINGS

Any and all amendments to class-wide pleadings and/or any and all third-party claims, shall be filed no later than **March 31, 2006**.

III. FACT AND EXPERT WITNESS AND EXHIBIT LISTS

Written reports of experts, as defined by the Federal Rules of Civil Procedure 26(a)(2)(B), who may be witnesses for plaintiffs fully setting forth all matters about which they will testify and the basis therefore shall be obtained and delivered to counsel for defendant as soon as possible, but in no event later than **June 30, 2006**.

Written reports of experts, as defined by the Federal Rules of Civil Procedure 26(a)(2)(B), who may be witnesses for defendants fully setting forth all matters about which they will testify and the basis therefore shall be obtained and delivered to counsel for plaintiffs as soon as possible, but in no event later than **July 30, 2006**.

Both the parties simultaneously shall file a fact and expert witness list no later than **August 14, 2006**, and shall file a final exhibit list no later than **September 11, 2006**. The witnesses on this final list shall be designated either as "will call" witnesses, i.e., those whom the party reasonably anticipates calling at trial, and "may call" witnesses. The final witness list shall not only identify the witness by name, but provide a brief description of the expected subject matter of this or her testimony.

The exhibits appearing on the final exhibit list shall be only those which the party reasonably anticipates using as exhibits at trial. The title and description of each exhibit shall be provided in the list.

The reasonable hourly charges by an expert witness giving a deposition shall be borne and promptly paid by the party noticing said deposition. The charges by said expert for preparation, travel, or other expense in connection with the deposition, shall be borne by the party which designated such person as its expert witness, unless otherwise agreed upon by the parties.

IV. STIPULATIONS

The parties are encouraged and expected to enter into stipulations of all material and pertinent facts which are not seriously in dispute, in order to streamline trial proceedings. A joint, written stipulation of such matters shall be submitted to the Court no later than **August 21, 2006**.

V. DISCOVERY CUTOFF

All fact and expert discovery pertinent to the issues to be adjudicated in the Phase One trial shall end no later than **September 11, 2006**.

VI. TRIAL USE OF DEPOSITION TESTIMONY

No later than **September 11, 2006**, both parties simultaneously shall designate by page and line all deposition testimony intended to be presented at trial, as to deposed witnesses either not available or otherwise beyond the subpoena power of the Court.

Both parties simultaneously shall make counter-designations and/or written objections to the aforesaid deposition testimony, no later than **September 18, 2006**.

Both parties simultaneously shall make reply designations and/or written objections to counter-designations, no later than **September 25, 2006**.

Nothing herein shall preclude either party from taking depositions expressly for trial purposes, as to witnesses either not available or otherwise beyond the subpoena power of the Court. The week of **September 11-September 15, 2006** is to be reserved for any such trial depositions, in the event any such depositions are required after the above discovery cut-off date of **September 11, 2006**.

VII. MOTION PRACTICE

All motions based upon *Daubert* or the qualifications of experts under FRE 702 shall be filed in order to be heard no later than ~~Monday, August 14, 2006~~ ^{Thursday, August 17} at 9:00 a.m. If any party wishes to conduct an evidentiary hearing in connection with a *Daubert* motion, the Court and opposing counsel must be notified of this fact well enough in advance to allow for the calling of witnesses and presentation of evidence at the hearing.

All other motions *in limine* and all dispositive motions (not related to *Daubert* or expert qualifications) shall be filed in order to be set for hearing no later than ~~Monday, September 11, 2006~~ ^{Thursday, September 7} at 9:00 a.m.

VIII. FINAL PRETRIAL CONFERENCE AND TRIAL


The final pretrial conference in this matter shall be held on the ~~11th~~ ^{19th} day of **September, 2006** at 3:30 o'clock p.m.

A proposed verdict form and proposed jury charges shall be submitted by the parties no later than **September 11, 2006**.

The trial of this matter, by jury, shall commence on **Monday, October 2, 2006** at 8:30 a.m.

THUS DONE the 5th day of June, 2006, New Orleans,


Louisiana.



HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

LIAISON COUNSEL



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served upon plaintiffs' liaison counsel by hand, via e-mail and/or United States Mail, properly addressed and postage pre-paid on this 25 day of May, 2006.