

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

W. R. GRACE & CO.-CONN.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 20-1098-GBW-JLH
)	
ELYSIUM HEALTH, INC.,)	
)	
Defendant.)	
)	

PROPOSED AMENDED SCHEDULING ORDER

This ~~18~~¹⁸th day of November, 2022, the parties, having received the Court’s Order dated October 28, 2022 (D.I. 180), hereby submit a joint proposed Amended Scheduling Order streamlined to account for events already completed;

IT IS HEREBY ORDERED that:

1. Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard. Initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) were exchanged on April 28, 2021 (D.I. 21, 22). Initial disclosures pursuant to paragraphs 3(a)-(c) of the Delaware Default Standard were exchanged on May 13, 2021 (D.I. 24, 25).

2. Joinder of Other Parties and Amendment of Pleadings. Defendant filed an amended answer on May 5, 2022 (D.I. 113), and Plaintiff filed a motion to dismiss for failure to state a claim on May 26, 2022 (D.I. 136). Briefing concerning Plaintiff’s motion to dismiss has been completed and Plaintiff’s motion remains pending.

3. Disclosures.

(a). Plaintiff served its preliminary infringement contentions and document production accompanying disclosure of asserted claims and preliminary infringement contentions on June 7, 2021 (D.I. 30).

(b). Defendant served its preliminary invalidity contentions on July 22, 2021 (D.I. 39).

(c). Pursuant to the Court's Order dated August 10, 2022, regarding the parties' joint motion for leave to amend contentions (D.I. 166), Defendant served amended invalidity contentions on August 10, 2022 (D.I. 167), and Plaintiff served first amended infringement contentions on August 10, 2022 (D.I. 168).

(d). Opening Expert Reports were served on August 17, 2022, Rebuttal Expert Reports were served on September 22, 2022, and Reply Expert Reports were served on October 13, 2022.

(e). Expert discovery is presently ongoing and will be completed by December 21, 2022.

4. Discovery. Unless otherwise ordered by the Court or agreed to by parties, the limitations on discovery set forth in the Federal Rules of Civil Procedure shall be strictly observed.

(a). Fact Discovery Cut Off. Fact discovery concluded on July 19, 2022, subject to the parties' duties to supplement written discovery pursuant to Fed. R. Civ. P. 26(e).

(b). Document Production. Document production was ordered to be substantially completed by December 14, 2021. Fact discovery concluded on July 19, 2022, subject to the parties' duties to supplement written discovery pursuant to Fed. R. Civ. P. 26(e).

(c). Requests for Admission. A maximum of 50 requests for admission were permitted for each side. Fact discovery concluded on July 19, 2022, subject to the parties' duties to supplement written discovery pursuant to Fed. R. Civ. P. 26(e).

(d). Interrogatories.

i. A maximum of 25 interrogatories, including contention interrogatories, were permitted for each side. Fact discovery concluded on July 19, 2022, subject to the parties' duties to supplement written discovery pursuant to Fed. R. Civ. P. 26(e).

(e). Depositions.

i. Limitation on Hours for Deposition Discovery. Each side was limited to a total of 70 hours of taking testimony by deposition upon oral examination (excluding expert depositions). Fact discovery concluded on July 19, 2022, subject to the parties' duties to supplement written discovery pursuant to Fed. R. Civ. P. 26(e).

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

(f). Disclosure of Expert Testimony.

i. Expert Reports. Expert reports have been exchanged.

ii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court. Briefing on such motions is subject to the page limits set out in connection with briefing of case dispositive motions.

iii. Expert Discovery Cut-Off. All expert discovery in this case shall be initiated so that it will be completed on or before December 21, 2022.

(g). Discovery Matters and Disputes Relating to Protective Orders.

i. Any discovery motion filed subsequent to this Order without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures.

ii. Should counsel find, after good faith efforts – including verbal communications among Delaware and Lead Counsel for all parties to the dispute – that they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall submit a joint letter in substantially the following form:

Dear Judge Williams:

The parties in the above-referenced matter write to request the scheduling of a discovery teleconference.

The following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party, participated in a verbal meet-

and-confer (in person and/or by telephone) on the following date(s): _____

Delaware Counsel: _____

Lead Counsel: _____

The disputes requiring judicial attention are listed below:

[provide here a non-argumentative list of disputes requiring judicial attention]

iii. On a date to be set by separate order, generally not less than forty-eight (48) hours prior to the conference, the party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but generally not less than twenty-four (24) hours prior to the conference, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition.

iv. Each party shall submit two (2) courtesy copies of its discovery letter and any attachments.

v. Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the conference.

5. Motions to Amend. See Paragraph 2 above.

6. Motions to Strike.

(a). Any motion to strike any pleading or other document shall **NOT** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to

exceed three (3) pages, describing the basis for the requested relief, and shall attach the document to be stricken.

(b). Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

(c). Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to strike.

7. Claim Construction. Claim construction briefing was completed. A hearing was held on April 14, 2022 (transcript available at D.I. 120) and the Court's claim construction order was entered on May 2, 2022 (D.I. 109).

8. Interim Status Report. Fact discovery concluded on July 19, 2022, subject to the parties' duties to supplement written discovery pursuant to Fed. R. Civ. P. 26(e), and unless the Court prefers otherwise, the parties do not believe there is any need to schedule an Interim Status Report at this time.

9. Supplementation. See Paragraph 3(d) and (e) above.

10. Case Dispositive Motions.

(a). All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before January 18, 2023. Answering papers shall be served and filed on or before February 22, 2023. Reply papers shall be served and filed on or before March 16, 2023. No case dispositive motion under Rule 56 may be filed more than ten (10) days before January 18, 2023 without leave of the Court.

(b). Concise Statement of Facts Requirement. Any motion for summary judgment shall be accompanied by a separate concise statement, not to exceed six (6) pages, which details each material fact which the moving party contends is essential for the Court's resolution of the summary judgment motion (not the entire case) and as to which the moving party contends there is no genuine issue to be tried. Each fact shall be set forth in a separate numbered paragraph and shall be supported by specific citation(s) to the record.

Any party opposing the motion shall include with its opposing papers a response to the moving party's concise statement, not to exceed six (6) pages, which admits or disputes the facts set forth in the moving party's concise statement on a paragraph-by-paragraph basis. To the extent a fact is disputed, the basis of the dispute shall be supported by specific citation(s) to the record. Failure to respond to a fact presented in the moving party's concise statement of facts shall indicate that fact is not in dispute for purposes of summary judgment. The party opposing the motion may also include with its opposing papers a separate concise statement, not to exceed four (4) pages, which sets forth material facts as to which the opposing party contends there is a genuine issue to be tried. Each fact asserted by the opposing party shall also be set forth in a separate numbered paragraph and shall be supported by specific citation(s) to the record.

The moving party shall include with its reply papers a response to the opposing party's concise statement of facts, not to exceed four (4) pages, on a paragraph-by-paragraph basis. Failure to respond to a fact presented in the opposing party's concise statement of facts shall indicate that fact remains in dispute for purposes of summary judgment.

(c). Page limits combined with Daubert motion page limits. Each party is permitted to file as many case dispositive motions as desired provided, however, that each *SIDE* will be limited to a combined total of 40 pages for all opening briefs, a combined total of 40 pages for all answering briefs, and a combined total of 20 pages for all reply briefs regardless of the number of case dispositive motions that are filed. In the event that a party files, in addition to a case dispositive motion, a Daubert motion to exclude or preclude all or any portion of an expert's testimony, the total amount of pages permitted for all case dispositive and Daubert motions shall be increased to 50 pages for all opening briefs, 50 pages for all answering briefs, and 25 pages for all reply briefs for each *SIDE*.¹

(d). Ranking of Summary Judgment Motions. Any party that files more than one summary judgment motion shall number each motion to indicate the order in which the party wishes the Court to review its pending motions. The first motion the party wishes the Court to consider shall be designated #1, the second motion shall be designated #2, and so on. The Court will review the party's summary judgment motions in the order designated by the party. If the Court decides to deny a motion filed by the party, barring exceptional reasons determined *sua sponte* by the Court, the Court will not review any lower ranked summary judgment motions filed by the party.

11. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

¹ The parties must work together to ensure that the Court receives no more than a total of 250 pages (*i.e.*, 50 + 50 + 25 regarding one side's motions, and 50 + 50 + 25 regarding the other side's motions) of briefing on all case dispositive motions and *Daubert* motions that are covered by this scheduling order and any other scheduling order entered in any related case that is proceeding on a consolidated or coordinated pretrial schedule.

12. Protective Order. A protective order was entered on August 5, 2021 (D.I. 42).

13. Papers Filed Under Seal. In accordance with section G of the Revised Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

14. Courtesy Copies. The parties shall provide to the Court two (2) courtesy copies of filings (*i.e.*, briefs, appendices, exhibits, declarations, affidavits etc.). Courtesy copies of appendices and exhibits should include hard tabs. This provision also applies to papers filed under seal.

15. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each *SIDE* shall be limited to three (3) *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three (3) pages of argument, may be opposed by a maximum of three (3) pages of argument, and the side making the *in limine* request may add a maximum of one (1) additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three (3) page submission (and, if the moving party, a single one (1) page reply), unless otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

16. Pretrial Conference. On Aug. 3, 2023 the Court will hold a pretrial conference in Court with counsel beginning at 3 pm. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement

of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the joint proposed final pretrial order in compliance with Local Rule 16.3(c) and the Court's Preferences and Procedures for Civil Cases not later than seven (7) days before the pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d)(1)-(3) for the preparation of the joint proposed final pretrial order.

The parties shall provide the Court two (2) courtesy copies of the joint proposed final pretrial order and all attachments. The proposed final pretrial order shall contain a table of contents and the paragraphs shall be numbered.

17. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1 the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms not later than seven (7) days before the pretrial conference. This submission shall be accompanied by a courtesy copy containing electronic files of these documents, in Microsoft Word format, which may be submitted by e-mail to gbw_civil@ded.uscourts.gov.

18. Trial. This matter is scheduled for a 5 day jury trial beginning at 9:30 a.m. on Aug. 21, 2023, with the subsequent trial days beginning at 9:30 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 5:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

19. Judgment on Verdict and Post-Trial Status Report. Within seven (7) days after a jury returns a verdict in any portion of a jury trial, the parties shall jointly submit a form of order to enter judgment on the verdict. At the same time, the parties shall submit a joint status report,

indicating among other things how the case should proceed and listing any post-trial motions each party intends to file.

20. Post-Trial Motions. Unless otherwise ordered by the Court, all **SIDES** are limited to a maximum of 20 pages of opening briefs, 20 pages of answering briefs, and 10 pages of reply briefs relating to any post-trial motions filed by that side, no matter how many such motions are filed.



The Honorable Gregory B. Williams
United States District Judge

Counsel Shall Provide a Chart of All Relevant Deadlines

Event	Deadlines
Rule 26(a)(1) Initial Disclosures	April 28, 2021
Delaware Default Standard Paragraph 3 Disclosures	May 13, 2021
Initial Infringement Contentions	June 7, 2021
Initial Invalidity Contentions	July 22, 2021
Protective Order Entered	August 5, 2021
Exchange List of Claim Term(s)/Phrase(s) and proposed constructions	October 21, 2021
Joint Claim Construction Chart	November 16, 2021
Opening Claim Construction Brief (Plaintiff)	December 9, 2021
Substantial Completion of Document Production	December 14, 2021
Joinder of Other Parties and Amendment of Pleadings	December 15, 2021
Answering Claim Construction Brief (Defendant)	January 20, 2022
Reply Claim Construction Brief (Plaintiff)	February 10, 2022
Sur-Reply Claim Construction Brief (Defendant)	March 3, 2022
Joint Claim Construction Brief	March 10, 2022
Meet and Confer on Claim Construction	March 17, 2022
Claim Construction Hearing	April 14, 2022
Fact Discovery Cut-off	July 19, 2022
Opening Expert Reports	August 17, 2022
Rebuttal Expert Reports	September 22, 2022
Reply Expert Reports	October 13, 2022
Expert Discovery Cut-off	December 21, 2022
Opening Case Dispositive/ <i>Daubert</i> Briefs	January 18, 2023
Rebuttal Case Dispositive/ <i>Daubert</i> Briefs	February 22, 2023
Reply Case Dispositive/ <i>Daubert</i> Briefs	March 16, 2023
Proposed Final Pretrial Order	July 10, 2023
Jury Instructions, Voir Dire, and Special Verdict Forms	July 10, 2023
Pretrial Conference	Aug. 3, 2023 at 3 PM
Trial (5 Days)	Aug. 21, 2023