

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

<b>In Re:</b>  <b>DISPOSABLE CONTACT LENS ANTITRUST LITIGATION</b>	<b>Case No. 3:15-md-2626-J-20JRK</b>  <b>Judge Harvey E. Schlesinger</b>
<b>THIS DOCUMENT RELATES TO:</b>  <b>ALL CASES</b>	

**ORDER**

**THIS CAUSE** is before the Court upon the Parties' Joint Notice (Doc. 1178). As a threshold matter, the Parties' request for a discovery extension is granted; the Parties shall have until June 1, 2020 to complete discovery as to the UPP Violations Facebook Group. The Court also accepts the Parties' remote expert deposition stipulation, which was attached to the notice as Exhibit A.

In addition, the Parties have requested guidance regarding upcoming court dates. The Court intends to be extraordinarily flexible<sup>1</sup> regarding scheduling but the Court believes that it would be inadvisable to conduct a pretrial in May before discovery has closed and the Court is seriously considering canceling this hearing. Also, as will be discussed below, because of the number of attorneys that attend the hearings in this case, the Court has doubts that current social distancing guidelines can be met even at the pretrial conference.

On March 11, 2020 the World Health Organization characterized COVID-19, also known as the new coronavirus, as a pandemic. Two days later, on March 13, 2020, the President of the

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<sup>1</sup> At the undersigned's Senate confirmation hearing in 1991, the record will reflect that I promised the late Strom Thurmond that I would not make any lawyer cry.

United States officially declared a national emergency due to the virus. Significantly, the Centers for Disease Control and Prevention (CDC) has advised precautions to reduce exposure and slow the spread of the virus including social distancing, defined as keeping at least a six-foot distance from other individuals and not gathering in groups of more than ten people. These guidelines were initially slated to expire after fifteen days. However, they have already been extended by the President until April 30, 2020. As of April 2, 2020, the coronavirus has spread to at least 180 different countries, infecting close to a million people worldwide. The virus has infected well over 200,000 people in the United States alone. <https://coronavirus.jhu.edu/map.html>.

Vulnerable people, defined as individuals over the age of sixty, have been advised to shelter in place. At least 5,000 people in this country have died due to the pandemic and the death toll here may eventually surpass 200,000 even with the current mitigation strategies.<sup>2</sup> Thus, there presently is an actual life or death crisis in the United States.

In response, across the country public officials have closed schools, cancelled public events, and cautioned against any type of group gathering. Indeed, to manage the risk of potential exposure to the virus, courts around the country are postponing jury trials in civil and criminal cases. On March 20, 2020, Judge Timothy J. Corrigan, on behalf of the entire Jacksonville Division, entered an extendable Order that continued all jury trials scheduled on or before May 31, 2020.

Even jury selection raises two obvious concerns. First, as noted, the CDC has defined vulnerable persons as those over sixty but the jury pool may include older individuals; potential jurors may not be excused due to age until they are seventy years old. And, second, the process

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<sup>2</sup> During World War I, there were 53,402 battle deaths; in World War II, the number was 291,557. [https://www.va.gov/opa/publications/factsheets/fs\\_americas\\_wars.pdf](https://www.va.gov/opa/publications/factsheets/fs_americas_wars.pdf)

of selecting jurors is in contravention of the CDC's advice recommending events of ten or more people be cancelled.

As to the trial itself, lawyers, parties, witnesses and other involved individuals are all at risk of contracting a deadly virus spread through air-born contact. Many of these individuals are slated to travel from areas of the country that are considered so-called coronavirus "hot spots." Not to mention that the undersigned's courtroom is not spacious enough, nor is any other courtroom in the courthouse, to place all involved in compliance with the CDC's social distancing rules.

The travel involved to try a case like this fosters additional concerns. As the parties in this case are aware, on March 20, 2020, Judge Corrigan issued a Memorandum regarding Jacksonville Division Protocol for Proceedings During Current National Emergency related to COVID-19. The Memorandum states that, *inter alia*, "[t]ravel for purposes of litigation is strongly discouraged." Additionally, Jacksonville Mayor Lenny Curry has issued an Executive Order prohibiting all hotels, motels and other commercial lodging establishments from accepting or extending reservations for any person not deemed an "essential lodger" such as health care professionals, first responders and National Guard members. As lovely as they may be, the Court doubts that Mayor Curry would find that the lawyers or witnesses in this case meet the "essential lodger" definition.

Even if this lodging limitation, as well as any current or future air travel restrictions, did not preclude the possibility that this trial could be conducted in the immediate future, the state is now operating checkpoints on Interstate 95 directing residents from New York to self-quarantine for fourteen days after arrival in Florida. New York's death toll recently doubled in 72 hours to more than 1,900. The infection rate there is not predicted to peak until the end of April, with the

rest of the country following later. Some of the lawyers in this case reside and work in New York City as well as Seattle Washington, another coronavirus hot spot.

The Parties should note that the undersigned entered Senior Status more than fourteen years ago and is nearing his eightieth birthday which places me in the CDC's category of "vulnerable people." Because of the difficulty in making travel arrangements and securing lodging, it is unlikely that a visiting judge will be available as a trial replacement in the near future.

If all of these considerations were not enough, the Parties should also note that on April 1, 2020, Florida Governor Ron DeSantis issued Executive Order Number 20-91, a thirty-day stay-at-home order directing residents to severely limit contact with others.

[http://ctsfl.us/index\\_htm\\_files/Governors%20Order%20EO20-91.pdf](http://ctsfl.us/index_htm_files/Governors%20Order%20EO20-91.pdf)

In sum, the undersigned is a compassionate individual more concerned about the health and safety of everyone currently involved in this case, as well as those who in the future may become involved in this case, than meeting deadlines set long before this world crisis came upon us. Due to the State of Emergency and ongoing medical crisis in this country, the Court will not jeopardize the health of the individuals needed to conduct the previously scheduled hearings and trial and, in all likelihood, they will have to be postponed.

In the past, the lawyers here have been very successful in assisting the Court by suggesting mutually agreeable hearing dates. The Court would be appreciative of counsel, as a group, discussing replacement dates should the Court reschedule the pretrial and trial. During this consultation, the lawyers should consider whether any rescheduling should be done immediately or after the passage of some additional time period as we wait out the ongoing crisis, i.e. at the end of April, end of May, etc. The Parties are directed to notify the Court of their

progress on this issue within fourteen days.

Notwithstanding the paragraph above, because of this life and death crisis, the Court sincerely urges the Parties to earnestly confer with each other in a deliberate attempt to reach an agreement that completely resolves this litigation. Specifically, the Court implores the remaining Defendants to have their corporate executives seriously consider this request and the basis for it.

**DONE AND ENTERED** at Jacksonville, Florida, this 2nd day of April, 2020.

  
**HARVEY E. SCHLESINGER**  
UNITED STATES DISTRICT JUDGE

Copies to:  
Counsel of Record