

## **Discovery — Expert Reports**

### **Local Rule 4002.1 Filing Discovery Material. Requests for Expert Reports in Professional Negligence and Product Liability Actions.**

All requests for production of expert reports made in professional negligence and product liability actions in accordance with Local Rule 4003.5 shall be filed with the Prothonotary. Expert reports furnished pursuant to Local Rule 4003.5 are discovery material that shall not be filed, except as provided by Pa.R.C.P. 4002.1.

**Note:** See also Local Rule 4003.5, relating to expert reports in professional negligence and product liability actions.

Editor's Note: Effective December 4, 2006.

### **Local Rule 4003.5 Requests For Expert Reports in Professional Liability and Product Liability Actions.**

#### **(1) Scope of the Rule.**

- (a) This local rule applies to any professional negligence case or any product liability case which has been placed at issue.
- (b) A professional negligence case includes any case with Code 006 (Trespass-Assault and Battery) in which it is claimed that the defendant provided medical treatment without obtaining an informed consent; any case with Code 007 (Trespass-Medical/Hospital Negligence); and any case with Code 009 (Trespass-Other) in which the defendant is an accountant, architect, attorney, engineer, hospital, physician or other professional person in which the gist of the case is that professional services failed to meet the accepted standards of the profession.
- (c) A product liability case is any action, whether based on tort or contract theories, claiming damages caused by a defective product, including any case with Code 004 (Trespass-Products Liability).

**Note:** This local rule creates additional requirements for the pre-trial production of expert reports for cases within the scope of this rule. The parties must also meet the requirements of the Pennsylvania Rules of Civil Procedure governing discovery and the Allegheny County Local Rules for the pre-trial production of expert reports.

#### **(2) Production of Plaintiff's Expert Reports.**

- (a) In any professional negligence or product liability case which has been placed at issue, any defendant against whom a claim of professional negligence or product liability has been made may serve on any plaintiff

making that claim a Defendant's Request to Plaintiff for Production of Expert Reports (FORM 4003.5A) (see subsection (10)(a) below). The request shall specify the plaintiff to whom it is directed and the party making the request. The request may not be made earlier than one hundred eighty (180) days after the defendant filed its original answer to the plaintiff's complaint.

**Note:** An additional defendant may serve a Defendant's Request to Plaintiff for Production of Expert Reports on a plaintiff pursuant to section (2)(a) of this rule if the plaintiff is actively pursuing a claim against the additional defendant.

(b) Any plaintiff to whom a request for production of expert reports has been directed pursuant to subsection (2)(a) of this rule shall within one hundred eighty (180) days after service of the request furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that plaintiff to support the claims of professional negligence or product liability made by that plaintiff against the requesting party.

(3) **Production of Defendant's and Additional Defendant's Expert Reports.**

(a) Any plaintiff who has furnished any defendant or additional defendant expert reports summarizing the expert testimony that will be offered by that plaintiff to support that plaintiff's claims of professional negligence or product liability made against that defendant or additional defendant may serve on that defendant or additional defendant a Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports (FORM 4003.5B) (see subsection (10)(b) below). The request shall specify the party to whom it is directed and the party shall specify the party to whom it is directed and the party making the request. The request may not be made earlier than one hundred eighty (180) days after the complaint was served on the party to whom the request is directed.

**Note:** Subsection (3)(a) of this rule applies to a plaintiff who has furnished expert reports to a defendant or additional defendant with or without a request for production of expert reports. Under subsection (3)(a) of this rule, the plaintiff must file a Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports in order to compel a defendant to submit expert reports.

(b) Any party to whom a request for production of expert reports has been directed pursuant to subsection (3)(a) of this local rule shall within sixty (60) days after service of the request furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that party to support the defenses to the requesting party's claims.

(c) If the defendant or additional defendant to whom a Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports has

been directed has raised claims against other parties pursuant to Pa.R.C.P. 2251 et seq. (Joinder of Additional Defendants), the expert reports shall also summarize the expert testimony that will be offered by that party in support of these claims against other parties.

- (d) The defendant or additional defendant who has furnished expert reports summarizing the expert testimony offered by that party in support of claims against other parties pursuant to subsection (3)(c) of this local rule may serve a Defendant's or Additional Defendant's Request to Other Defendant or Additional Defendant for Production of Expert Reports (FORM 4003.5C) (see subsection ((10)(c) below). The request shall specify the party to whom it is directed and the party making the request. The request may not be made earlier than one hundred eighty (180) days after the complaint was served on the party to whom the request is directed.
- (e)
  - (i) Any party to whom a request for production of expert reports has been directed pursuant to subsection (e)(d) of this local rule shall within sixty (60) days after service of the request furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that party supporting the defenses to the claims and any claims raised against the requesting party and any other parties joined pursuant to Pa.R.C.P. 2251 et seq.
  - (ii) If any defendant or additional defendant or any employee or other agent of any defendant or additional defendant is a professional person, this person shall furnish an expert report summarizing his or her testimony only if he or she intends to offer any expert testimony that is inconsistent with or beyond the fair scope of any testimony given in any deposition of this defendant. If this person was not deposed, this person must file an expert report if he or she intends to offer any expert testimony.

**(4) Contents of the Expert Reports. Responses to Requests for Production.**

An expert report required by this rule shall encompass all issues in the liability phase of the case for which expert testimony will be offered at trial, including issues of professional negligence, product defect, and causation of harm. The report shall be signed by the expert and shall fully comply with the requirements of Pa.R.C.P. 4003.5 (Discovery of Expert Testimony. Trial Preparation Material).

**(5) Compelling Production of Report.**

A party who has not received expert reports required to be produced under this local rule may file a motion to compel the production of a report and for sanctions pursuant to Pa.R.C.P. 4019. In ruling on a motion to compel, the Court shall give consideration to the complexity of the case, the diligence of the parties in making

and responding to discovery requests, and other relevant factors. A party who has proceeded with reasonable diligence shall be given a reasonable time in which to complete necessary discovery and to file an expert report.

**Note:** A party cannot justify the non production of an expert report required by this local rule simply by stating that discovery has not been completed or that the party failing to provide the report has not yet identified the experts whom he or she intends to call at trial. However, a party who has acted diligently should not be required to file expert reports if discovery of significant information has not been completed because of difficulties obtaining discovery from other parties or third persons or because of the complexity of the case.

**(6) Substitute/Additional/Supplemental Reports.**

Any expert report required by this local rule shall reflect the best information available to the party furnishing the report at the time it is furnished. Except as provided in subsection (7) of this local rule, a party may file substitute, additional and supplemental expert reports without leave of Court. These substitute, additional and supplemental reports may introduce new theories of liability or causation or new defenses. They may be prepared by other experts.

**(7) Listing Case for Trial.**

- (a) A plaintiff who has furnished expert reports summarizing all expert testimony that will be offered by that plaintiff to support his or her claims of professional negligence or product liability may file a praecipe requesting that the case be placed on the next available trial list (FORM 4003.5D) (see subsection (10)(d) below). The plaintiff shall serve a notice of the filing of the praecipe on all other parties (FORM 4003.5E)(see subsection (10)(e) below). This praecipe may not be filed earlier than one hundred eighty (180) days after the plaintiff served a copy of the original complaint on each defendant who continues to be a party in the case.

**Note:** Subsection (7)(a) is intended to give priority to those professional negligence and product liability cases that the plaintiff is ready to try. The product liability and professional negligence cases for which the plaintiff has not filed a praecipe pursuant to subsection (7)(a) of this local rule shall be listed for trial by the Court after the cases listed pursuant to this subsection have received priority.

- (b) After a plaintiff has filed a praecipe requesting that the case be placed on the next available trial list, the plaintiff's right to file additional/supplemental reports is subject to the provisions of subsection (7)(d) of this local rule.
- (c) After a plaintiff has filed a praecipe requesting that the case be placed on the next available trial list, each other party in the case shall file within

sixty (60) days expert reports summarizing all expert testimony that will be offered by that party to support the defenses to the plaintiff's claims and to support any claims and defenses involving other parties. After sixty (60) days, each other party's right to file additional/supplemental reports is subject to the provisions of subsection (7)(d) of this local rule.

- (d) (i) A party may file a supplemental expert report which responds to an opposing expert report within sixty (60) days after the opposing expert report was filed.
- (ii) Except as provided in subsection (7)(d)(i), a party may not file a supplemental expert report which introduces a new theory of liability of causation or a new defense without leave of Court for good cause shown.
- (iii) Except as provided in subsection (7)(d)(i), a party may not subsequently file an expert report prepared by a new expert without leave of Court for good cause shown.
- (iv) Except as provided for in subsection (7)(d)(v), any party may, without leave of Court, substitute another expert for the expert identified in expert reports produced under this local rule. Reasonable notice of the substitution shall be given to all other parties. The testimony of any substituted expert may not be inconsistent with or go beyond the fair scope of the testimony in the expert reports produced under this local rule.
- (v) A party may not substitute another expert for a party, employee or agent of a party who has been identified as an expert witness.
- (vi) The provisions of subsections (7)(d)(ii), (iii) and (v) of this local rule apply only after a plaintiff has filed a praecipe requesting that the case be placed on the next available trial list pursuant to subsection (7)(a) of this local rule.

**Note:** Subsection (7)(d) applies only to additional or supplemental expert reports covering issues in the liability phase of the case for which expert testimony will be offered at trial. Subsection (7)(d) applies to additional or supplemental expert reports that are included as part of a pre-trial statement filed pursuant to Local Rule 212.2.

(8) **Use of Reports/Summary Judgment.**

- (a) Reports provided pursuant to this local rule, responses to requests for production of expert reports, and the failure to provide expert reports when required by Court order entered pursuant to section (5) of this local

rule may be used in supporting or opposing motions for summary judgment.

- (b) In the absence of a Court order issued prior to the date of the argument on a motion for summary judgment, it shall not be necessary to file affidavits executed by the reporting expert in connection with summary judgment motions.

(9) **Service and Filing Requirements.**

All requests for the production of expert reports shall be served by the requesting party on all other parties and copies of all expert reports furnished pursuant to this local rule shall be served by the responding party on all other parties. All requests for the production of expert reports shall be filed with the Court. Expert reports furnished pursuant to this local rule are discovery material that shall not be filed except as provided by Pa.R.C.P. 4002.1

(10) Forms:

- (a)

**FORM 4003.5A Defendant’s Request to Plaintiff for Production of Expert Reports**

[CAPTION]

DEFENDANT’S REQUEST TO PLAINTIFF FOR PRODUCTION OF EXPERT REPORTS

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

Pursuant to Local Rule 4003.5 you are requested within one hundred and eighty (180) days of service of this request to furnish me expert reports summarizing the expert testimony that you will offer to support the claims of professional negligence or product liability that you have made against me. You shall serve copies of all expert reports on all other parties.

DATED: \_\_\_\_\_

\_\_\_\_\_  
ATTORNEY FOR DEFENDANT

- (b)

**FORM 4003.5B Plaintiff’s Request to Defendant or Additional Defendant for Production of Expert Reports**

[CAPTION]

PLAINTIFF’S REQUEST TO DEFENDANT OR ADDITIONAL DEFENDANT FOR PRODUCTION OF EXPERT REPORTS

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

I have furnished you expert reports summarizing the expert testimony that I will offer to support the claims of professional negligence or product liability that I have made against you.

Pursuant to Local Rule 4003.5, you are requested within sixty (60) days of service of this request to furnish me expert reports summarizing the expert testimony that you will offer to support your defenses top the claims of professional negligence or product liability that I have raised against you.

If you have raised claims against other parties pursuant to Pa.R.C.P. 2251 et seq. (Joinder of Additional Defendants), your expert reports shall also summarize the expert testimony that you will offer in support of these claims against those other parties.

You shall serve copies of all expert reports on all other parties.

DATED: \_\_\_\_\_ ATTORNEY FOR PLAINTIFF

(c) **FORM 4003.5C Defendant’s or Additional Defendant’s Request to Other Defendant or Additional Defendant for Production of Expert Reports**

DEFENDANT’S OR ADDITIONAL DEFENDANT’S REQUEST TO OTHER DEFENDANT OR ADDITIONAL DEFENDANT FOR PRODUCTION OF EXPERT REPORTS

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

I have furnished you expert reports summarizing the expert testimony that I will offer to support the claims that I have raised against you pursuant to Pa.R.C.P. 2251 et seq. (Joinder of Additional Parties).

Pursuant to Local Rule 4003.5, you are requested with sixty (60) days to furnish me expert reports summarizing the expert testimony that you will offer to support your defenses to my claims against you and to support any claims you have raised against me pursuant to Pa.R.C.P. 2251 et seq.

If you have raised claims against other parties pursuant to Pa.R.C.P. 2251 et seq., your expert reports will also summarize the expert testimony that you will offer in support of your claims against these other parties.

You shall serve copies of all expert reports on all other parties.

DATED: \_\_\_\_\_  
 \_\_\_\_\_  
 ATTORNEY FOR DEFENDANT

(d)

**FORM 4003.5D Plaintiff's Praecipe Requesting that the Case be Placed on the Next Available Trial List**

[CAPTION]

PLAINTIFF'S PRAECIPE REQUESTING THAT THE CASE BE PLACED ON THE NEXT AVAILABLE TRIAL LIST

This is a professional negligence or product liability case. I have furnished to the other parties expert reports summarizing all expert testimony that plaintiff will offer to support his or her claims of professional negligence or product liability. Pursuant to Local Rule 4003.5(7)(a), I request that the court list this case for trial on the next available trial list.

If it is anticipated that this case will take more than ten days to try, I have sent a letter to the Complex Case Judge (with copies to all other counsel) stating that I have requested that this case be listed for trial on the next trial list pursuant to Local Rule 4003.5(7)(a), that this case cannot be tried within ten (10) days, and that a pretrial conference should be scheduled.

DATED: \_\_\_\_\_  
 \_\_\_\_\_  
 ATTORNEY FOR PLAINTIFF

TO BE FILED IN ROOM 734 OF THE CITY COUNTY BUILDING

(e)

**FORM 4003.5E Plaintiff's Notice of Filing of Praecipe Requesting That the Case Be Placed on the Next Available Trial List**

[CAPTION]

PLAINTIFF'S NOTICE OF FILING OF PRAECIPE REQUESTING THAT THE CASE BE PLACED ON THE NEXT AVAILABLE TRIAL LIST

I have filed a praecipe pursuant to Local Rule 4003.5(7)(a) requesting that this product liability or professional negligence case be listed on the next available trial list.

Pursuant to Local Rule 4003.5(7)(a), each other party in the case is hereby given notice that they must within sixty (60) days furnish expert reports summarizing all expert testimony that will be offered by that party to support the defenses to the plaintiff's claims and to support any claims or defenses involving other parties. After sixty (60) days, the right to file additional/supplemental reports is subject to the provisions of Local Rule 4003.5(7)(d).

DATED: \_\_\_\_\_  
 \_\_\_\_\_  
 ATTORNEY FOR PLAINTIFF

Editor's Note: Effective December 4, 2006.

### **Local Rule 4009.12 Authorizations.**

Upon a request for production of documents, plaintiff may either produce the requested records or, if the records are of a type created and maintained by a healthcare provider, furnish written authorization to copy the records of any healthcare provider by whom plaintiff was treated for injuries or disabilities complained of, or prior injuries or disabilities, where the same may be relevant. If a plaintiff provides the records themselves, they shall be produced along with a certification as to completeness or, if not complete, an explanation of what has been deleted or removed.

**Note:** This procedure is affected by the following opinions: Greynolds v. McAllister, 130 P.L.J. 414 (1982) (Wettick, J.); Talarico v. Montefiore Hospital, 138 P.L.J. 210 (1990) (Wettick, J.); Bowser v. Ryder Truck Rental, Inc., 141 P.L.J. 316 (1993) (Wettick, J.).

Editor's Note: Effective December 4, 2006.

