

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division**

In re: : Master File No.
: CV 92-P-10000-S
SILICONE GEL BREAST IMPLANTS :
PRODUCTS LIABILITY LITIGATION : This Document Relates To:
(MDL-926) : All Cases

ORDER No. 11
(Re: Deposition Guidelines)

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ORDER No. 11
(Re: Deposition Guidelines)

It is ORDERED that depositions be conducted in accordance with the Federal Rules of Civil Procedure, Order No. 5 (Revised Case Management Order), Order No. 7 (Modification/Clarification of Order No. 5), this Order, and such other orders as shall be entered in these proceedings.

1. Deposition Notices.

(a) All depositions in MDL-926, except pursuant to court order, will be noticed and conducted pursuant to Fed. R. Civ. P. 30 and this Order No. 11 (Re: Deposition Guidelines), and may be cross-noticed in any action pending in a state court. This Order No. 11 (Re: Deposition Guidelines) will be placed on the Breast Implant MDL Bulletin Board System ("MDL Bulletin Board"), (205) 252-6710, and will be placed in the Cincinnati document depository. Posting of deposition notices on the MDL Bulletin Board is also required, but is not a substitute for or prerequisite to deposition notice under the Federal Rules of Civil Procedure.

(b) A "Statement of Deposition Procedures," summarizing the terms of this Order, shall be attached to each notice of deposition, except that this Order in its entirety shall be attached to any non-party subpoena or deposition notice.

(c) Each deposition notice shall include the name and, if known, the general occupational description of each deponent, a general description of the topic(s) for examination, the name of the primary examiner designated by the party noticing the deposition, and the date, time, and place of the deposition. If the examiner cannot be

identified at the time the notice of deposition is served, a "1-800" number will be set forth in the notice so that interested counsel may obtain information regarding the deposition, if required.

(d) In order for counsel to make arrangements for adequate deposition space, whenever feasible counsel who intend to attend a deposition noticed by MDL-926 plaintiffs should provide notice of their intention to attend to Francis H. Hare, Jr., Esquire, Hare, Wynn, Newell & Newton, Suite 800, Massey Building, 290 North 21st Street, Birmingham, Alabama 35203. Counsel who intend to attend a deposition noticed by the MDL-926 non-healthcare provider defendants should send notice of their intention to attend to Frank C. Woodside, III, Esquire, Dinsmore & Shohl, 1900 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio 45202. Counsel who intend to attend a deposition noticed by the MDL-926 healthcare provider defendants should send notice of their intention to attend to Franklin M. Tatum, II, Esquire, Wright, Robinson, McCammon, Osthimer & Tatum, 411 East Franklin Street, Richmond, Virginia 23219.

(e) Deposition notices shall state whether the deposition is to be videotaped and, if so, the name, firm and address of the videotape recorders. All videotape depositions shall proceed pursuant to the provisions of section 12, infra.

(f) Any counsel in any related federal or state action may suggest matters for inquiry in any deposition noticed in MDL-926, by providing to the primary examiner a written list and brief explanation of such matter or matters. If the primary examiner is not identified in the deposition notice, letters concerning any deposition may be sent to the appropriate Liaison Counsel. For plaintiffs -Francis H. Hare, Jr., Esquire, Hare, Wynn, Newell & Newton, Suite 800, Massey Building, 290 North 21st Street, Birmingham, Alabama 35203. For the non-healthcare provider defendants -Frank C. Woodside, III, Esquire, Dinsmore & Shohl, 1900 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio 45202. For the healthcare provider defendants -Franklin M. Tatum, II, Esquire, Wright, Robinson, McCammon, Osthimer & Tatum, 411 East Franklin Street, Richmond, Virginia 23219.

2. Cooperation. Counsel are expected to cooperate with, and be courteous to, each other and deponents.

3. Scheduling.

(a) 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 at the locations set forth in section (4), below. It is contemplated and expected that there will be multi-tracking of depositions, and that more than one deposition will be taking place in MDL-926 at the same time. Nevertheless, the parties must use their best efforts to prevent multi-tracking of depositions involving fact

witnesses in a single case. No more than three (3) employees of a single defendant may be scheduled for deposition on the same day. Any deposition, except pursuant to Court order, must be noticed under Fed. R. Civ. P. 30 and placed on the MDL Bulletin Board thirty (30) calendar days in advance.

(b) Given the large number of attorneys involved in this litigation, the unavailability of counsel shall not be grounds for postponing a deposition if another attorney from the same firm who is familiar with the case or one who represents a party with similar interests is available to attend. If a motion is made to permit the rescheduling of a deposition on the grounds of unavailability of counsel, the moving party shall certify to the Court that neither an attorney from the same firm who is familiar with the case nor one who represents a party with similar interests is able to attend the scheduled deposition.

(c) Consistent with the Court's Order No. 5, ¶7(f)(6), to facilitate depositions in state court actions involving entities that are not and may never be parties in the federal cases, the parties are encouraged to issue cross-notices of depositions in the additional state court actions.

4. Locations for Taking Depositions.

(a) Unless otherwise agreed, depositions of plaintiffs will take place in each plaintiff's home district.

(b) Unless otherwise agreed, depositions of physician defendants will take place in each physician defendant's home district.

(c) Unless otherwise agreed by counsel noticing the deposition and counsel for the deponent, and for good cause, all depositions of the non-healthcare defendants will take place in one of the following locations:

- Albany, New York;
- Chicago (or Deerfield), Illinois;
- Cincinnati, Ohio;
- Corning, New York;
- Houston, Texas;
- Las Vegas, Nevada;
- Los Angeles, California;
- Midland, Michigan;
- Milwaukee, Wisconsin;

- Minneapolis, Minnesota;
- New York, New York;
- Philadelphia, Pennsylvania;
- San Francisco, California;
- Santa Barbara, California; or
- Washington, D. C.

(d) Unless otherwise agreed by the parties prior to the noticing of an expert deposition, the deposition of an expert witness shall take place in the expert witness' home district.

(e) The location of the deposition shall be as consistent as possible within each city, so that videotape equipment, if being used, can be left in place.

5. Deposition Week. In any week in which depositions will be taken, such depositions shall commence no earlier than noon on Monday and end no later than 1:00 p. m. on Friday of that week.

6. Deposition Day. A deposition day shall commence at 9:30 a. m., and terminate no later than 5:30 p. m. (except Monday when depositions begin no earlier than noon and Friday when depositions end no later than 1:00 p. m.), local time. On Tuesday through Thursday there should be a one hour and fifteen minute (1-1/4 hour) lunch break. Modest variations in this schedule may be made by agreement of counsel who noticed the deposition and counsel for the witness, but may not be unilaterally changed without approval of the Court.

7. Continuance of Deposition. If a deposition is not finished on Friday of a deposition week, subject to the availability of the witness, the deposition will recommence on the following Monday. If the witness is not available for deposition on the following Monday, the deposition will continue on a newly-noticed date. In such circumstances, the party noticing the deposition will not be subject to the thirty (30) day requirement of section 3(a), above. Ten (10) day notice will be sufficient to notice a continued deposition.

8. Attendance.

(a) Who May be Present. Unless otherwise agreed to by the parties, depositions may be attended only by the parties, the deponent, the deponent's attorney, attorneys of record in MDL-926 or state cases, in-house counsel for the parties, court reporters, videographers, and any person who is assisting in the litigation and whose presence is reasonably required by counsel. Upon application, and for good cause shown, the Court may permit attendance by a person who does not fall within any of the categories set forth in the previous sentence. While a deponent is being examined about any document that

the parties have agreed, or the Court has ordered, is confidential, attendance at that portion of the deposition by persons to whom disclosure is not authorized by agreement of the parties or by order of the Court shall be prohibited. Any portion of the deposition transcript containing confidential information shall be sealed so as not to waive confidentiality when the transcript, videotape or disk is placed in the Cincinnati document depository.

(b) Unnecessary Attendance. Unnecessary attendance by counsel is discouraged and may not be compensated in any fee application to the Court. Counsel who have only marginal interest in a proposed deposition or who expect their interests to be adequately represented by other counsel may elect not to attend and may later conduct, pursuant to paragraph 14 of this Order, supplemental interrogation of the deponent, should a review of the deposition reveal the need for such examination.

9. Conduct of the Deposition. Except by order of the Court, the following will apply at all depositions:

(a) Selection of Attorneys to Conduct Examination.

(1) One attorney will conduct the principal examination of the deponent on behalf of the MDL-926 PSC.

(2) The attorney designated to conduct the principal examination by the MDL-926 PSC will coordinate with other counsel for plaintiffs reasonably in advance of the date scheduled for the deposition to select one additional attorney who may examine the deponent on non-redundant matters after the principal examiner has concluded.

(3) The MDL-926 non-healthcare provider defendants shall designate one primary and one secondary attorney examiner.

(4) The MDL-926 healthcare provider defendants shall designate one primary and one secondary attorney examiner.

(5) For expert depositions, two (2) additional attorney examiners may be designated.

(6) In some depositions there may be sufficient divergence of positions among various parties such that additional examiners may be appropriate on non-redundant matters. Therefore, other attorneys will be permitted to examine deponents on non-redundant matters. The non-redundant requirement will be

strictly construed.

(7) Any party who believes that, due to a divergence of interest, it may be necessary to examine the deponent on non-redundant matters shall designate one attorney to conduct such non-redundant examination after the primary and secondary examiners have concluded.

(b) Objections.

(1) No speaking objections shall be allowed. All objections as to relevance and admissibility shall be preserved for later ruling of the Court or at time of trial. Objections as to the form of the question shall be stated by any one opposing counsel using the single word "objection". Only if the examining attorney asks for a clarification as to the basis of the objection, shall any additional words be spoken by the objecting attorney concerning the basis of the objection. Even then, the basis of the objection shall be stated as succinctly as possible, e.g., "argumentative" or "ambiguous".

(2) Objections to the responsiveness of the answer shall be stated by the examining attorney, or by counsel for parties other than the witness, with the single word "objection" following the answer. Only if the attorney representing the witness requests it shall an additional explanation of the basis of the objection to the responsiveness of the answer be given.

(3) As soon as any one attorney representing a party to this litigation states the word "objection" following a question, then all parties have preserved all possible objections to the form of the question. Counsel for other parties need not repeat their objections in order to preserve them for the record. Only if the questioning attorney asks for a brief explanation of the basis of the objection shall the objecting attorney state the basis. Similarly, if the examining attorney states the word "objection" following the answer, then all parties' objections to the responsiveness of the answer are preserved without their counsel having to state them on the record. Counsel are instructed to follow this rule, and not to make unnecessary objections on the record if another attorney has already stated an objection.

(c) Directions Not to Answer; Suspension of a Deposition.

(1) Directions to the deponent not to answer are improper except on the ground of privilege, or to enable a party or deponent to present a motion to the

Court for termination of the deposition on the grounds that it is being conducted in bad faith, or in such a manner as to unreasonably annoy, embarrass, or oppress the party or the deponent. Instructions not to answer a question given to a witness by counsel shall be kept to the bare minimum. Counsel providing such instruction may be assessed the entire cost of any resulting second deposition, including attorney's fees and expenses for all other parties, if the instruction is found by the Court to be unreasonable. All grounds for an instruction not to answer a question must be stated at the time the instruction is given, or be waived. When a privilege is claimed, the witness should nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, such as the date of a communication, who made the statement, to whom and in whose presence the statement was made and the identity of other persons to whom the contents of the statement have been disclosed.

(2) If a deposition is suspended on the grounds that it is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress a party or deponent, the person who suspended the deposition shall file and serve a motion for a protective order under Fed. R. Civ. P. 26(c) within five (5) days of suspension of the deposition. If no motion for a protective order is filed, within ten (10) days of the suspension of the deposition, a motion to compel and for sanctions under Fed. R. Civ. P. 37 may be filed and served. Prior to suspending a deposition, the procedures set forth in section 17, below, must be followed.

(d) Objections to Documents. Objections as to the relevance of documents are not waived, and are reserved for later ruling by the Court or by the trial judge. All parties shall cooperate as necessary so that the Court may issue a ruling on any objection to a document prior to trial or prior to any remand of cases for trial in the transferor courts.

(e) Sequence of Examination -Depositions on Behalf of Plaintiffs. Questioning at the depositions to be taken on behalf of plaintiffs will be conducted in the following sequence:

1. the primary examiner selected by the MDL-926 PSC to conduct the examination;

2. the secondary attorney, who shall be jointly agreed upon by the MDL-926 PSC primary examiner and by other plaintiffs' counsel, on matters not previously covered by the primary examiner;

3. the primary examiner selected by the MDL-926 non-healthcare provider defendants;

4. the secondary attorney selected by the MDL-926 non-healthcare provider defendants, on matters not previously covered;

5. the primary examiner selected by the MDL-926 healthcare provider defendants;

6. the secondary attorney selected by the MDL-926 healthcare provider defendants, on matters not previously covered;

7. individual counsel for the deponent. if any;

8. any other attorneys on matters not previously covered; and

9. any redirect and recross by 1-8, above.

(f) Sequence of Examination -Depositions on Behalf of Non-Healthcare Provider Defendants. Questioning at the depositions to be taken on behalf of non-healthcare provider defendants shall be conducted in the following sequence:

1. the primary examiner selected by the MDL-926 non-healthcare provider defendants to conduct the examination;

2. the secondary attorney selected by the MDL-926 non-healthcare provider defendants, on matters not previously covered by the primary examiner;

3. the primary examiner selected by the MDL-926 healthcare provider defendants;

4. the secondary attorney selected by the MDL-926 healthcare provider defendants, on matters not previously covered;

5. the primary examiner selected by the MDL-926 PSC;

6. the secondary attorney, who shall be jointly agreed upon by the MDL-926 PSC primary examiner and by other plaintiffs' counsel, on matters not previously covered;

7. individual counsel for the deponent, if any;

8. any other attorneys on matters not previously covered; and

9. any redirect and recross by 1-8, above.

(g) Sequence of Examination -Depositions on Behalf of Healthcare Provider Defendants. Questioning at the depositions to be taken on behalf of the healthcare provider defendants shall be conducted in the following sequence:

1. the primary examiner selected by the MDL-926 healthcare provider defendants to conduct the examination;
2. the secondary attorney selected by the MDL-926 healthcare provider defendants, on matters not previously covered by the primary examiner;
3. the primary examiner selected by the MDL-926 non-healthcare provider defendants;
4. the secondary attorney selected by the MDL-926 non-healthcare provider defendants, on matters not previously covered;
5. the primary examiner selected by the MDL-926 PSC;
6. the secondary attorney, who shall be jointly agreed upon by the MDL-926 PSC primary examiner and by other plaintiffs' counsel, on matters not previously covered;
7. individual counsel for the deponent, if any;
8. any other attorneys on matters not previously covered; and
9. any redirect or recross by 1-8, above.

(h) Sequence of Examination -Depositions of Non-Party Witnesses Noticed by Plaintiffs. Questioning at the depositions of non-party witnesses noticed by plaintiffs will be conducted in the following sequence:

1. the primary examiner selected by MDL-926 PSC to conduct the examination;
2. the secondary attorney, who shall be jointly agreed upon by the MDL-926 PSC primary examiner and by other plaintiffs' counsel, on matters not previously covered by the primary examiner;

3. the primary examiner selected by the MDL-926 non-healthcare provider defendants;

4. the secondary attorney selected by the MDL-926 non-healthcare provider defendants, on matters not previously covered;

5. the primary examiner selected by the MDL-926 healthcare provider defendants;

6. the secondary attorney selected by the MDL-926 healthcare provider defendants, on matters not previously covered;

7. individual counsel for the deponent, if any;

8. any other attorneys on matters not previously covered; and

9. any redirect and recross by 1-8, above.

(i) Sequence of Examination -Depositions of Non-Party Witnesses Noticed by Non-Healthcare Provider Defendants. Questioning at the depositions of non-party witnesses noticed by the non-healthcare provider defendants shall be conducted in the following sequence:

1. the primary examiner selected by the MDL-926 non-healthcare provider defendants to conduct the examination;

2. the secondary attorney selected by the MDL-926 non-healthcare provider defendants, on matters not previously covered by the primary examiner;

3. the primary examiner selected by the MDL-926 healthcare provider defendants;

4. the secondary attorney selected by the MDL-926 healthcare provider defendants, on matters not previously covered;

5. the primary examiner selected by the MDL-926 PSC;

6. the secondary attorney, who shall be jointly agreed upon by the MDL-926 PSC primary examiner and by other plaintiffs' counsel, on matters not previously covered;

7. individual counsel for the deponent, if any;
8. any other attorneys on matters not previously covered; and
9. any redirect and recross by 1-8, above.

(j) Sequence of Examination -Depositions of Non-Party Witnesses Noticed by Healthcare Provider Defendants. Questioning at the depositions of non-party witnesses noticed by the healthcare provider defendants shall be conducted in the following sequence:

1. The primary examiner selected by the MDL-926 healthcare provider defendants to conduct the examination:
2. the secondary attorney selected by the MDL-926 healthcare provider defendants, on matters not previously covered by the primary examiner;
3. the primary examiner selected by the MDL-926 non-healthcare provider defendants;
4. the secondary attorney selected by the MDL-926 non-healthcare provider defendants, on matters not previously covered;
5. the primary examiner selected by the MDL-926 PSC;
6. the secondary attorney, who shall be jointly agreed upon by the MDL-926 PSC primary examiner and by other plaintiffs' counsel, on matters not previously covered;
7. individual counsel for the deponent, if any;
8. any other attorneys on matters not previously covered; and
9. any redirect or recross by 1-8, above.

(k) Consultation With Witness. During a deposition a witness may consult with counsel, but not while a question is pending. If a question is pending the witness must first answer the question before consulting with counsel.

(l) Smoking. Use of Other Tobacco Products and Eating. There shall be no smoking or use of other tobacco products or eating in any room in which a deposition is being

conducted, including before, during, or after a deposition, or in the deposition room during deposition recesses. Beverages will be permitted.

10. Documents.

(a) Production of Documents. Witnesses subpoenaed or noticed to testify and to produce documents shall be noticed and served with the subpoena or deposition notice and document request at least thirty (30) days before the scheduled deposition. The subpoena or deposition notice and the document request will be placed on the MDL Bulletin Board. Depending upon the quantity of documents to be produced, some time may be needed for inspection of the documents before the interrogation commences. Responsive documents which are identical to those already produced to the Cincinnati document depository do not have to be produced by the deponent.

(b) Copies. Extra copies of documents about which counsel expect to examine the deponent should ordinarily be provided to primary counsel for the parties and the deponent during the course of the deposition. Deponents and their counsel should be shown a copy of the document at the deposition before being examined about it, except when counsel seek to impeach or test the deponent's recollection. However, when counsel seek to impeach or test the deponent's recollection the deponent need not be shown the document.

(c) Marking of Deposition Exhibits. All documents previously produced to the Cincinnati document depository and used as exhibits with witnesses from a particular defendant or non-party witnesses shall be referred to by the Bates stamp numbers appearing on the documents submitted to the Cincinnati document depository. Documents that have not been submitted to the Cincinnati document depository shall have sequential exhibit numbers. The first time such a document is introduced as an exhibit at a deposition, it shall be marked with the deponent's surname and a number. For example, if the deponent's name is "John Smith" the first document used as an exhibit without a Cincinnati document depository Bates stamp number shall be marked "Smith No. 1". To the extent that a document not previously submitted to the Cincinnati document depository has already been marked as a deposition exhibit in MDL-926, all counsel should avoid marking that document with a different exhibit number at a subsequent deposition. If "Smith No. 1" is used at "Harry Jones" deposition, it will still be referred to as "Smith No. 1".

11. Depositions of Witnesses Who Have No Knowledge of the Facts. An officer, director, or managing agent of a corporation or a government official served with a notice of a

deposition or subpoena regarding a matter about which such a person has no knowledge may submit to the noticing party within fifteen (15) days before the date noticed an affidavit so stating and identifying a person within the corporation or government entity believed to have such knowledge. Notwithstanding such affidavit, the noticing party may proceed with the deposition, subject to the right of the witness to seek a protective order or other appropriate relief.

12. Videotaped Depositions. The provisions of this order regarding examination of deponents apply to videotaped depositions. Any deposition may be videotaped at the request of any party pursuant to the following terms and conditions:

(a) Stenographic Recording. A certified court reporter shall simultaneously stenographically record all deposition proceedings and testimony. The court reporter shall on camera administer the oath or affirmation to the deponent. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of Fed. R. Civ. P. 30(e) (submission to the witness) and 30(f) (filing, exhibits). The noticing party shall be responsible for the court reporter furnishing computer disks (ASCII 3.5 or 5.25") in text-readable form and hard copy in Min-U Script format, as well as any videotapes, to the Cincinnati document depository.

(b) Cost of Deposition. The noticing party shall bear the expense of both videotaping and stenographic recording. Requests for taxation of these costs and expenses may be made at the conclusion of the litigation in accordance with applicable law.

(c) Videotape Operator. The video camera shall be operated by an experienced video camera operator. The operator shall be subject to the provisions of Fed. R. Civ. P. 28(c).

(d) Identification of Persons in Attendance. Before commencement of the deposition, each witness, attorney, and any other person attending the deposition shall submit to the court reporter in writing his or her name, the name of his or her firm, business address, and the name of the client he or she represents. The list of these people shall be included at the beginning of the deposition transcript. In addition, at the commencement of the deposition, each witness, attorney, and any other person attending the deposition shall be identified on camera.

(e) Interruptions. No attorney or party shall direct instructions to the video camera operator as to the method of operating the equipment. The video camera operation will be suspended during the deposition only upon stipulation by counsel and "off the record" discussions shall not be videotape recorded. The video camera operator shall record on camera the time of suspension and any subsequent reconvening of the deposition.

(f) Standards. Depositions will be conducted in a manner designed to replicate, to the extent feasible, the appearance of a presentation of evidence at a trial.

(g) Index. The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends, at which objections are made and examination resumes, at which exhibits are identified, and at which any interruption of continuous tape recording occurs, whether for recesses, "off the record" discussion, mechanical failure, or otherwise.

(h) Filing. After the deposition is completed, the video operator shall certify on camera the correctness, completeness, and accuracy of the videotape recording in the same manner as a stenographic court reporter, and file a true copy of the videotape, the transcript, and certification with Liaison Counsel for whomever noticed the deposition and simultaneously submit a copy to the Cincinnati document depository.

(i) Objections. Objections and instructions not to answer at videotape depositions are subject to the provisions of section 9(b)-(d) of this Order. If the objection involves matters peculiar to the videotaping, a copy of the videotape and equipment for viewing the tape shall also be provided to the Court.

(j) Technical Data. Technical data, such as recording speeds and other information needed to replay or copy the tape, shall be included on copies of the videotaped deposition.

(k) Video Camera System. During the videotaping of a deposition the questioner may use a two video camera system with monitors available for use by counsel.

(l) Editing Videotape deposition For Use At Trial. It is anticipated that any party in editing a videotape deposition for use at trial would be permitted to use split screen technology to show portions of any exhibit used at the deposition which has also been admitted for use at trial, whereby the image of the exhibit appears on the same screen as the image of the witness while the witness is discussing the exhibit. Counsel representing the witness (and counsel representing the party being deposed if different from counsel representing the witness) will have an opportunity prior to trial to review and object to matters relating to the editing, use of split screen technology, and other issues relating to the replay of a videotape.

13. Obtaining copies of Transcripts and Videotapes. Any party may at its own expense

obtain a copy of the videotape and the stenographic transcript by contacting the Liaison Counsel for the party noticing the deposition. Liaison Counsels' names and addresses are set forth at section 1(e), page 2 of this Order.

14. Supplemental Depositions.

(a) Each party not present at a deposition may order, as provided in section 13, a copy of the transcript or videotape of that deposition from Liaison Counsel for the party who noticed the deposition and within ninety (90) business days after the transcript is placed in the Cincinnati document depository may, upon a good faith determination that further inquiry of the deponent is necessary, notify the other parties that it will move the MDL-926 Court for an order allowing resumption of the deposition of the deponent. In addition, any party in a recently transferred action may, as provided in section 13, obtain within sixty (60) days of such Transfer Order a copy of the transcript of any deposition and may, within sixty (60) business days thereafter and upon a good faith determination that further inquiry of the deponent is necessary, notify the other parties that it will move the MDL-926 Court for an order allowing resumption. The motion shall identify areas where the movant believes further examination is necessary and state how the MDL-926 deposition did not adequately develop or address the areas where further examination is sought and that further examination would be relevant.

(b) Within ten (10) days of the filing of any such motion, any party may file an opposition to the motion and seek a protective order prohibiting the supplemental deposition on the grounds that the MDL-926 deposition fully covered the area or areas sought to be explored in the supplemental deposition or that the testimony sought is not relevant.

(c) No further deposition by any party having received notice of the original deposition will be permitted, except upon order of the MDL-926 Court on good cause shown. A showing by the moving party that a supplemental deposition is reasonably calculated to lead to the discovery of admissible evidence necessary to protect the interests of the moving party shall constitute good cause.

(d) Assuming the movant has met this burden, and if no opposition or motion for a protective order is filed, or the opposition or motion for a protective order is denied, the supplemental deposition may be taken within such time as may be authorized by the Court.

(e) The supplemental deposition shall be treated as the resumption of the deposition originally noticed. During the resumed deposition, any other party may conduct further

examination of the witness only with regard to new subject areas authorized by the order allowing the resumed deposition. There shall be no unnecessary repetition at such resumed deposition. The resumed deposition shall be taken at the same location as the initial deposition unless otherwise agreed to by the parties and the deponent.

15. Correction and Signing Depositions. The transcript of a deposition shall be submitted to the deponent for correction and signature within thirty (30) days after the end of the deposition, unless the Court allows a supplemental deposition pursuant to section 14. If a supplemental deposition is allowed, the transcript shall be submitted to the deponent as soon as it is available for distribution. The deposition may be signed by the deponent before any notary within thirty (30) days after the transcript is submitted to the deponent. If no corrections are made during this time, the transcript will be presumed accurate.

16. Use of Depositions.

(a) Under the conditions prescribed in Fed. R. Civ. P. 32(a)(1)-(4) or as otherwise permitted by the Federal Rules of Evidence, depositions may be used against any party (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this Court as part of this litigation) who:

(1) was represented at the deposition; or

(2) had reasonable notice thereof; or

(3) within ninety (90) days after the deposition is taken or within one hundred and twenty (120) days after becoming a party in MDL-926, fails to show just cause why such deposition should not be used against such party.

(b) Depositions may be used in any state court action to the extent permitted by state law and rules of the various states' courts.

(c) Notwithstanding the appearance or involvement of any MDL-926 healthcare provider defendant, these Deposition Guidelines are not intended to require the appearance or involvement of any non-MDL-926 healthcare provider, and no waiver is intended if no appearance or involvement occurs by non-MDL-926 healthcare providers. The discovery effect and use at trial in any state court proceeding of any discovery obtained under these Deposition Guidelines is reserved to each individual state.

17. Rulings Concerning Disputes at Depositions.

(a) Disputes arising during depositions that cannot be resolved by agreement and that if not immediately resolved will significantly disrupt the deposition schedule, would require a rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, may be presented to the undersigned or Magistrate Judge Elizabeth Campbell by telephone. In the first instance, the parties are directed to negotiate such disputes in good faith. In the event agreement cannot be reached after such negotiation, any party seeking a ruling from the Court shall arrange a telephone conference call with the undersigned's or the Magistrate's law clerk at the Court's earliest convenience. Facilities shall be provided so that counsel attending the deposition and the deposition reporter can hear the proceedings. The deposition reporter shall make a transcript of the conference call proceedings, which shall be transcribed immediately and bound separately. During such proceedings, counsel shall have the opportunity to argue to the Court and the Court will, whenever possible, resolve the dispute during the conference call proceedings.

(b) Alternatively, the parties may present the dispute to the Court in writing. Each side must submit on one (1) page a summary of its position and any authority relevant to the dispute. The Court will issue a prompt ruling, as its schedule permits. The undersigned's telephone and telecopier numbers are (205)731-1709 and (205)731-2243, respectively, and Magistrate Judge Elizabeth Campbell's telephone number is (205)731-0364. These numbers should be used with discretion, not as a matter of course.

(c) In the event the Court is unavailable by telephone or telecopier to resolve disputes arising during the course of a deposition, the deposition shall nevertheless continue to be taken as to matters not in dispute.

(d) None of the provisions in this paragraph shall deny counsel the right to continue the deposition, file an appropriate motion with the Court at the conclusion of the deposition, and appear personally before the Court if counsel deems it necessary.

(e) The Court will exercise the authority granted under 28 U. S. C. § 1407(b) to act as District Judge in any district in which a deposition is being taken.

This the 29th day of June, 1993.

/s/ Sam C. Pointer, Jr.
United States District Judge