

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**IN RE NUVARING PRODUCTS
LIABILITY LITIGATION**) **4:08 MDL 1964 RWS**
)
) **ALL CASES**
)
) **STIPULATED CASE**
) **MANAGEMENT ORDER**
) **REGARDING THE TAKING OF**
) **DEPOSITIONS**
)
) **Honorable Rodney W. Sippel**

Counsel for Plaintiffs and Defendants jointly stipulate and propose the following order governing the taking of depositions:

A. Deposition Notices

1. This Order applies to all depositions in MDL-1964, which will be noticed and conducted pursuant to Fed. R. Civ. P. 30 and this Order.

2. This Order in its entirety shall be attached to any non-party subpoena or deposition notice.

3. The parties have agreed to use Veritex National Court Reporting Service for all depositions taken in the litigation, both for stenographic reporting and for video taping depositions.

4. In order for counsel to make arrangements for adequate deposition space, whenever feasible counsel who intend to attend a deposition noticed by MDL-1964 plaintiffs should provide notice to Plaintiffs' Liaison Counsel of their intention to attend. Counsel who intend to attend a deposition noticed by the MDL-1964 defendants should send notice of their intention to Defendants' Liaison Counsel.

5. Deposition notices shall state whether the deposition is to be videotaped. The videotaping shall be conducted by Veritex National Court Reporting Service.

B. Scheduling

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 locations. Counsel are expected to cooperate and coordinate the scheduling of depositions. Only one deposition of a current or former employee of the defendants shall be taken per day until such time as there is a demonstrated need to multi-track depositions of the employees of the defendants. At that time the parties shall meet and confer on the establishment of a reasonable schedule for the multi-tracking of depositions of employees of the defendants.

For depositions which are not case-specific, each side shall be notified at least twenty (20) days in advance of a deposition, absent an extraordinary situation and leave of court.

C. Cross-Notices Between State Court NuvaRing® Cases and These Proceedings

In order to avoid duplicative discovery and to prevent the unnecessary expenditure of judicial resources and the resources of the parties, steps should be taken to encourage counsel in related state court proceedings to coordinate their depositions with MDL-1964 depositions. All depositions of current or former employees of the defendants shall be cross-noticed in all state court actions alleging injury arising out of the use of NuvaRing.

If counsel cannot agree on the order of questioning at a deposition, these rules shall apply: if the deposition was originally noticed in this MDL, whether or not later cross-noticed in state court proceedings, MDL counsel shall go first in the deposition. If a deposition was originally noticed in a state court proceeding and is later cross-noticed in the MDL proceeding, the state court counsel shall go first in the deposition. Regardless of which counsel conducts the initial examination of the deponent, subsequent questioning shall not be redundant or repetitive,

although clarification of prior testimony may be sought if reasonably calculated to elicit testimony that adds to the substance of prior testimony.

Nothing in this provision shall be construed as an injunctive or equitable order affecting state court proceedings. Rather, this provision is intended to reflect this Court's desire for voluntary state-federal coordination. However, all counsel with cases in this MDL proceeding shall adhere to the guidelines articulated in this Order in all depositions regardless of whether originally noticed in one of the cases in this MDL proceeding or in a state court action.

D. Postponements

Once a deposition has been scheduled, it shall not be taken off calendar, postponed, rescheduled, or relocated less than five (5) calendar days in advance of the date it is scheduled to occur, except upon agreement of counsel or by leave of Court for good cause.

E. Locations for Taking Depositions

1. Unless otherwise agreed, depositions of all fact witnesses, including plaintiffs and non-U.S. company witnesses, will take place in the federal district or city where the witness resides.

2. 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 federal district where the expert witness lives or works.

F. Conduct

Except by order of the Court, the following shall apply at all depositions:

1. Examination
 - a) Each side should ordinarily designate no more than two attorneys for the MDL and two attorneys for the state cases to participate in the deposition and conduct non-duplicative questioning.

b) Each witness produced pursuant to a Federal Rule of Civil Procedure 30(b)(6) notice of deposition will be subject to no more than seven (7) hours of deposition in his or her capacity as a 30(b)(6) witness.

c) Each witness who is being deposed both as a Rule 30(b)(6) witness and in an individual capacity will be presented for deposition once to cover both capacities, first for the Rule 30(b)(6) portion of the deposition and then for the individual portion of the deposition. The depositions will continue on consecutive days, the witness's scheduling permitting and subject to the other scheduling guidelines set forth in this Order.

d) A witness presented in both a Rule 30(b)(6) capacity and in his or her individual capacity may be subject to up to a total of seven (7) hours of deposition and up to another seven (7) hours of deposition for the individual portion of the deposition. In such instances, counsel will make every effort not to conduct duplicative or repetitive questioning of the witness.

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. Further, even if there is no divergence of position, if a state court attorney has non-redundant questioning he or she deems necessary or appropriate, that further questioning by that state court lawyer may proceed, subject to overall time limits.

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 initial examination has concluded.

Counsel should cooperate in the allocation of time in order to comply with the time limits set by the Court.

2. Objections and Directions Not to Answer

Unless otherwise agreed by the parties, and noted on the record, the following stipulations shall apply to all discovery depositions in this action:

- a) Objections must be limited to (1) those that would be waived if not made pursuant to Fed. R. Civ. P. 32(d)(3); and (2) those necessary to assert a privilege, enforce a limitation on evidence directed by the Court or present a motion under Fed. R. Civ. P. 30(d)(3). No other objections can be raised during the course of the deposition. In the event privilege is claimed, examining counsel may make appropriate inquiry about the basis for asserting privilege.
- b) Speaking objections that refer to the facts of the case or suggest an answer to the deponent are improper and must not be made in the presence of the deponent.

3. Disputes During Depositions

Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, shall be presented to Judge Sippel by telephone. In the event Judge Sippel is not available, the deposition shall continue with full reservation of rights of the interrogation for a ruling at the earliest possible time.

If the nature of the dispute would not stop the deposition from going forward, the parties may elect to either present the matter to Judge Sippel by telephone, or to present the dispute to the Court in writing. If the parties elect to present the dispute to the Court in writing, each side

must submit a one (1) page summary of its position and any authority relevant to the dispute.

The Court will issue a prompt ruling, as its schedule permits.

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

None of the provisions in this Section 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.

Disputes between the parties should be addressed to this Court rather than to the District Court in which the deposition is being conducted.

IT IS SO ORDERED.

February 26, 2010
DATE


RODNEY W. SIPPEL, United States District Judge