

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: GADOLINIUM BASED)
CONTRAST AGENTS PRODUCTS) Case No. 1:08 GD 50000
LIABILITY LITIGATION) MDL No. 1909
)
) Judge Dan Polster
_____)
)
)
THIS DOCUMENTS APPLIES TO ALL)
CASES)
)

STIPULATION AND CASE MANAGEMENT ORDER NO. 13
REGARDING EXPERT DISCOVERY

Pursuant to Rule 29 of the Federal Rules of Civil Procedure, the parties hereby stipulate, and the Court hereby approves the following protocol for the exchange and discovery of information regarding all expert witnesses identified in this MDL:

1. This Stipulation applies to all cases in this MDL, and to any state court case in which the plaintiff is represented by any lawyer who also is a member of the PSC in this MDL.
2. Except as otherwise provided by this Stipulation, in federal court cases the parties will comply with the requirements of Fed. R. Civ. P. 26(a)(2). In state court cases, the parties will comply with the requirements of the applicable state's laws. Nothing in this Stipulation shall require a party in a state court case to create, produce or exchange any expert report if the law of that state does not have such requirements. Nothing in this Stipulation is intended to

expand obligations in state court including the form, substance or timing of state court expert disclosures.

3. Drafts of the reports prepared by testifying experts and their assistants shall not be subject to discovery. This limitation applies regardless of whether such draft reports have been disclosed or otherwise transmitted to in-house or outside counsel for the party or parties retaining such expert
4. Communications among the testifying expert, his or her assistants, clerical or support staff, and/or any outside firm retained to assist the expert shall not be subject to discovery unless the expert relies on such communications as a basis for his or her opinion.
5. Communications between (a) the testifying expert, his or her assistants, clerical or support staff, any outside firm retained to assist the expert, and (b) in-house or outside counsel, including notes or other written materials that reveal work product or deliberative communications between the expert and the attorneys, shall not be subject to discovery.
6. Except as otherwise provided in paragraphs 3-5 of this Stipulation, notes prepared by the testifying expert and/or his or her assistant(s) shall be discoverable to the extent that the expert relied on such notes to form his or her opinions.
7. This Stipulation does not prevent any party from asking a testifying expert about the opinions expressed in his or her report, including alternative theories, methodologies, variables, data, production documents, or assumptions that the expert may have considered. Experts may be

- questioned at deposition about the contents of their final reports, their methodology and the information and materials supporting their opinions, but not about draft reports or discussions with counsel about reports or draft reports.
8. Notwithstanding the foregoing, the parties may discover (i) the total amount of fees and expenses billed by each testifying expert, (ii) the total amount paid and payable to each testifying expert, and (iii) the number of hours billed, per person by each testifying expert and his or her staff. Invoices and retention letters are not subject to discovery.
 9. Except as otherwise provided in paragraphs 3-8 of this Stipulation, consistent with Rule 26(a)(2) of the Federal Rules of Civil Procedure, the parties' testifying experts will identify in their expert reports the data and other information received or reviewed in connection with the formation of his or her opinion(s).
 10. Except as otherwise provided in paragraphs 3-8 of this Stipulation, this Stipulation does not prevent any party from seeking production of, or asking questions about, the data and other information the testifying expert received or reviewed in connection with the formation of his or her opinion(s), whether or not he or she relied on that data or information. To the extent that the testifying expert creates discoverable information or data processed or modeled by computer, an electronic version of the data shall be produced in the electronic format that it was created by the testifying expert. If data used by testifying experts are derived from electronic data produced by any party to

this action, copies of that original electronic data produced by any party to this action in the format that it was received by the testifying expert shall be produced. All productions made pursuant to this CMO shall be in accordance with and subject to CMO 6 and CMO 7 in this proceeding.

11. These rules govern discovery regarding experts regardless of the person or entity to whom the discovery is directed.
12. Depositions of experts shall be limited to seven (7) hours on the record per expert, except by agreement or leave of court. The parties agree to work cooperatively and exercise flexibility concerning the length of time allotted for expert depositions, particular where the expert is offering opinions regarding multiple plaintiffs or defendants. If an expert is questioned by counsel for the party presenting the expert, counsel for the party noticing the deposition shall have an opportunity to re-examine the witness for an equal period of time.
13. The parties may modify the terms of this Stipulation by mutual agreement.

IT IS SO ORDERED.

Dated: May 15, 2009

s/Dan A. Polster
Honorable Dan Aaron Polster
United States District Judge