

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: GADOLINIUM-BASED  
CONTRAST AGENTS PRODUCTS  
LIABILITY LITIGATION

Case No. 1:08GD50000

MDL No. 1909

Judge Dan Aaron Polster

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This Document Applies to All Cases:

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**CASE MANAGEMENT ORDER NO. 17:  
SUBSEQUENT DESIGNATIONS OF  
GENERIC EXPERTS IN NON-BELLWETHER CASES**

Defendants and the PSC on behalf of plaintiffs (the “Parties”) hereby stipulate to, and the Court approves, the following protocol for use of generic expert reports and depositions.

1. This Stipulation applies to all cases in this MDL, 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, and to any other state court case(s) to which the Parties agree (subject to Paragraphs 2 and 6 below).

2. This Stipulation and Case Management Order only applies to the specific Party or Parties (a) against which a generic expert was designated at the time that expert’s report was served and (b) which participated in that expert’s deposition in these proceedings. Pursuant to the provision of the Court’s Case Management Orders, and as agreed among the Court and the Parties, the ten generic experts designated by plaintiffs pursuant to the Court’s Minute Order of August 3, 2009 (ECF No. 462) and the nine generic experts designated by GE Healthcare were designated in and such designations apply only to the first four bellwether trials. (*See, e.g.*, CMO 8 (ECF No. 180), at ¶ 6.) This Stipulation and Case Management Order also applies only to these generic expert reports and corresponding depositions.

3. Notwithstanding any other Order of the Court, a Party may designate the report and corresponding deposition of any of its own generic experts to apply in any other case now pending in or later filed or transferred to this MDL. If the generic expert is designated in any case other than the first four bellwether trials as to a Party not included within the scope of Parties to which this Stipulated Case Management Order applies as set forth in Paragraph 2 above, such Party shall have the unfettered right to take the deposition of such generic expert(s).

4. Notwithstanding any other provision of this Stipulation and Case Management Order, but subject to the provisions of Case Management Order No. 13 (ECF No. 366) and in particular Paragraph 2 of Case Management Order No. 13,<sup>1</sup> a generic expert designated for the bellwethers may not rely upon, offer, or testify regarding new opinions at trial if that expert is re-designated in a subsequent trial case, unless a supplemental written report is produced and that expert is subject to a subsequent deposition, which deposition must be limited in scope to the new generic opinions. Otherwise, a Party may not re-depose a previously deposed generic expert on the generic opinions on which that expert was previously deposed.

5. Nothing in this Stipulation and Case Management Order prevents any Party from re-deposing a previously designated generic expert who was deposed on generic issues, but subsequently offers case-specific opinions. The scope of the subsequent deposition will be limited to inquiry with respect to case-specific opinions.

6. Notwithstanding any provision of this Stipulation and Case Management Order, Case Management Order No. 13 remains in full force and effect.

**IT IS SO ORDERED.**

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<sup>1</sup> Paragraph 2 of Case Management Order No. 13 provides, in relevant part: “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.”

Dated: November 19, 2009

s/Dan A. Polster

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Honorable Dan Aaron Polster  
United States District Judge