

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE: GADOLINIUM-BASED  
CONTRAST AGENTS PRODUCTS  
LIABILITY LITIGATION

Case No. 1:08-GD-50000

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. 19:  
QUALIFICATION OF DOCUMENTS GENERATED BY A PARTY AS AUTHENTIC  
OR BUSINESS RECORDS IN BELLWETHER TRIALS**

**1. Scope and Intent of Order**

This Order shall apply to the bellwether trial cases in MDL No. 1909 as described in Case Management Order No. 12, and to any state court case in which the plaintiff is represented by any lawyer or firm who also is a member of the PSC in the MDL. Nothing in this Order shall be construed to limit the operation of the other Case Management and Pretrial Orders entered in MDL No. 1909.

**2. Presumed Authenticity and Application of the Business Records Exception to Hearsay (Rule 803(6)) of Documents Provided or Generated By A Party**

Documents produced by any Party during the course of this litigation that bear production bates numbers and purport to be copies of documents prepared or received by the Party, or by an officer, director, employee, or agent of the Party, shall be presumed to be a faithful and authentic reproduction of the original and, subject to other applicable rules of evidence, admissible as such, unless any Party asserts an objection, through a motion *in limine* or otherwise, that the document is not authentic or is inadmissible on other grounds. Further, all such documents shall be presumed to fall under the business records exception to hearsay as stated in Rule 803(6), such that the party presenting a document need not lay foundation that a subject document meets

the requirements hearsay exception under Rule 803(6) or applicable analogous state court rules, unless any Party asserts an objection through a motion *in limine* or otherwise, that the document constitutes inadmissible hearsay or is inadmissible on other grounds. The parties reserve the right to challenge this presumption prior to or during trial with respect to specific documents should the occasion arise. All other evidentiary objections are preserved.

**3. Authentication of and Objections to Documents Previously Marked as Exhibits at Depositions**

Each Party shall undertake a prompt review of all documents produced and/or purportedly generated by that Party that have been placed into the record as deposition exhibits in any deposition in those coordinated and consolidated proceedings through the date of this Order, and shall advise the Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel in writing within 30 days after entry of this Order (unless agreed to otherwise by the parties), of: (a) the deposition and exhibit number, as well as the bates numbers, of any exhibit where the producing or purportedly generating Party claims lack of authenticity and/or failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state court rules; and (b) a detailed statement (including if appropriate reference to other pertinent documents and knowledgeable persons) of the grounds for the claim of lack of authenticity and/or the failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state court rules. Any objection shall be deemed to have been made for all depositions in which the exhibit is or was used. Any such exhibits (to the extent such exhibit is produced and/or purportedly generated by a Party) not so identified within that time shall be deemed faithful and authentic reproductions of the original and/or (as the case may be) business records within the meaning of Rule 803(6) or applicable analogous state court rules.

**4. Objections to Documents Marked as Exhibits in Future Depositions**

Within 30 calendar days of the receipt of the transcript of a deposition hereafter taken in the coordinated and consolidated proceedings, any Party wishing to contest the presumptive authenticity of any document(s) previously produced and/or purportedly generated by that Party that were placed into the record of that deposition as deposition exhibits shall advise Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel in writing of: (a) the deposition and exhibit number, as well as the bates numbers, of any exhibit where the producing or purportedly generating Party claims lack of authenticity and/or failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state court rules; and (b) a detailed statement (including if appropriate references to other pertinent documents and knowledgeable persons) of the grounds for the claim of lack of authenticity and/or the failure to qualify as a business record within the meaning of Rule 803(6) or applicable analogous state court rules. Any objection shall be deemed to have been made for all depositions for which the exhibit is used in the future. Any such exhibits not so identified within that time shall be deemed faithful and authentic reproductions of the original and/or (as the case may be) business records within the meaning of Rule 803(6) or applicable analogous state court rules.

**5. Documents Provided By Non Parties**

Documents produced and/or purportedly generated by a non-Party shall be presumed to be a faithful and authentic reproduction of the original, unless any Party asserts an objection, through a motion *in limine* or otherwise, that the document is not authentic and/or fails to qualify as a business record of the non-Party within the meaning of Rule 803(6) or applicable analogous state court rules. Documents produced and/or purportedly generated by a non-Party that have been or, hereafter, are placed into the record as deposition exhibits in any deposition in the

coordinated and consolidated proceedings shall be deemed to be faithful and authentic reproductions of the original and/or (as the case may be) business records within the meaning of Rule 803(6) or applicable analogous state court rules unless any Party raises an objection within the requisite time frames set forth above in paragraph 3 and 4.

**6. Documents Provided Pursuant to Federal Rule of Evidence 902(11) or 902 (12)**

Documents produced by a non party that are accompanied by a certification in compliance Federal Rule of Evidence 902 (11) or 902(12) shall be presumed to be a faithful and authentic reproduction of the original and, subject to other applicable rules of evidence, admissible as such, unless any Party asserts an objection, through a motion *in limine* or otherwise, that the document is not authentic. All other evidentiary objections other than authenticity are preserved.

**7. Remedies After Notification of any Objection to Authenticity and/or Status as Business Record**

Upon being notified that an exhibit or document is claimed to be inauthentic and/or fails to qualify as a business record, after meeting and conferring with opposing Liaison Counsel, either Liaison Counsel may, with consent of opposing Liaison Counsel or with leave of Court, initiate appropriate discovery limited to seeking to further establish authenticity and/or the status of the document as a business record. Any deposition noticed solely to establish the authenticity or business record status of a document shall be limited strictly to that purpose for the specific document at issue and shall not address any other issues.

**8. Limitations of Order**

A. *No Effect on Other Rules of Evidence.* This Order addresses only the authenticity and/or business record status of any particular document, and is without prejudice to application of any other rule of evidence that may be implicated by a particular document.

B. *No Waiver of Objections to Similar Documents.* The failure of any Party to object to any document shall not constitute an admission or concession by that Party that similar documents to which the Party does object are authentic and/or qualify as business records under applicable federal or state laws. For example, the failure to object to each email being treated as authentic and/or a business record does not foreclose such an objection to any individual email.

C. *Product Identification Documentation.* No presumption of authenticity shall attach to any product identification documentation produced by Plaintiffs, unless that documentation was otherwise produced by a facility where Plaintiff was allegedly exposed to a GBCA under a subpoena or request for production of documents propounded in accordance with the Federal Rules of Civil Procedure or applicable analogous state court rules.

**9. Parties to Meet and Confer on Authentication and Business Record Status**

The Parties shall make good faith, cooperative efforts, through the meet and confer process or otherwise, to resolve any issues concerning the authenticity and/or business record status of documents subject to this Order so as to minimize the time and resources of the parties and of the Courts devoted to such matters.

SO AGREED:

/s/ Peter J. Brodhead

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*Counsel for Defendant GE Healthcare Inc.*

**IT IS SO ORDERED.**

Dated: March 3, 2010

s/Dan A. Polster

Honorable Dan Aaron Polster

United States District Judge