

**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

This Document Applies to All Cases:

**STIPULATION AND
CASE MANAGEMENT ORDER NO. 23:
USE OF EXHIBITS IN ALTERNATIVE FORMAT IN
DEPOSITIONS, TRIALS OR FILINGS WITH THE COURT**

1. Scope and Intent of Order.

Nothing herein shall be construed to amend the provisions of the other Case Management and Pretrial Orders entered in MDL No. 1909, including, but not limited to Case Management Order No. 6: Protective Order, Case Management Order No. 7: Format of Production Order, and Case Management Order No. 19: Qualification of Documents Generated By a Party as Authentic or Business Records in Bellwether Trials.

The parties agree upon a method for producing electronic files and presenting them as exhibits to depositions, court testimony, filings or as otherwise used in this litigation. The following protocol is meant to allow the parties to guard against the theoretical possibility that content of electronic files might be altered to reflect inaccurate or incomplete content.

2. Production of Electronic Documents.

Electronic files produced by a party shall be named with a unique identifying number (i.e., "GEHC 012345678").

3. Consent and Use of Exhibits Prepared From Electronic Documents.

The parties shall not alter documents or electronically stored information (within the meaning of FRCP 34) offered as exhibits to change their content or manner of presentation except as set forth herein. If a party wishes to change the content or manner of presentation of an electronic document, the party intending to use such document as an exhibit must first provide the following to the producing party of the electronic document four (4) business days in advance of use:

- (a) the exhibit, with the pages numbered sequentially, using a format which references the electronic file from which it is prepared, i.e. “PLS/KNASE 01234 (from GEHC 01234567).”
- (b) a copy of the electronic file from which the exhibit was prepared; and
- (c) a written statement setting forth the exact changes made to the document.

If the producing party of the electronic file objects to use of the exhibit on the grounds that content of the electronic file has been altered, the parties shall immediately confer, and both parties shall use best efforts to resolve any dispute. If the producing party of the electronic file does not consent to the use of the exhibit, the parties agree to jointly seek intervention from the Court within 48 hours of receipt of the above.

4. Disclosure of the Means of Preparing the Exhibit is Required.

The party presenting the exhibit must provide express, specific and contemporaneous disclosure of each alteration to the document to the witness or Court at the time of use or offer. By way of example, if the party “hid” certain columns of a spreadsheet where such columns were not hidden in the original, the party must fully disclose the hiding of the columns at the time the spreadsheet is first used with a witness or the court.

5. Parties Shall Not Alter Documents in a Prejudicial or Confusing Manner.

A prepared exhibit shall not misrepresent the contents or distort the meaning of the electronic file, nor create a potential for confusion or prejudice. This is one of the bases for objecting to use of the exhibit, but not limited thereto. This does not preclude a party from deleting entirely empty columns, rows or other blank space which are devoid of content and field headers. A party is expressly precluded from deleting, altering or editing particular words/sentences within any given field and it will be deemed prejudicial should a party attempt to do so.

6. Electronic Files Retain the Same Confidentiality Designation as the Original Produced Document.

Electronic files will have the same confidentiality designation as the .tif version of the document, and for those without a .tif version, the designation as made by the producing party. Each party shall include such designation at the end of the file name or number, i.e. “GEHC – 01234567 – Confidential” or “KNASE 01234 – (from GEHC 01234567) - Confidential.” The presenting and receiving party of the exhibit must agree to abide by the terms of the Protective Order with regard to these confidentiality designations.

7. Application of Rule 1006.

The parties agree to treat exhibits prepared and used in accordance with the provisions of this Order as summaries subject to Federal Rule of Evidence 1006. The producing party will not claim that the underlying data produced is not authentic or not a business record. No sworn testimony shall be required as to the method of preparation of the exhibit.

Respectfully submitted,

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Dated: August 18, 2010

SO ORDERED:

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