

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LATEX GLOVES : MDL Docket No. 1148
PRODUCTS LIABILITY :
LITIGATION : This Document Relates
: To All Cases

CASE MANAGEMENT ORDER No. 6
DEPOSITION GUIDELINES

AND NOW, this 29th day of May, 1997, upon conference, the following is ordered:

1. **Cooperation.** Counsel will cooperate with each other and exercise civility in all aspects of this litigation.

2. **Waiver Stipulations.** Unless contrary to an order of the Court, the parties (and when appropriate, a nonparty witness) may stipulate, in a suitable writing, to alter, amend, or modify any practice relating to noticing, conducting, or filing a deposition. Stipulations for the extension of discovery cutoffs and deadlines set by the Court are not valid, however, until Court approved.

3. **Scheduling.** Except in extraordinary circumstances, noticing counsel shall consult in advance with counsel for the deponent, if any, and with opposing liaison counsel, so as to schedule depositions at mutually convenient times and places.

4. **Attendance.**

(a) **Who May Be Present.** Unless otherwise ordered under Fed. R. Civ. P. 26(c), depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purposes of the deposition, the parties or the representative of a party, including in-house counsel, counsel for the deponent, and expert consultants or witnesses. During examination of a deponent about any document stamped "Confidential - M.D.L. No. 1148" or its confidential contents, persons to whom disclosure is not authorized under an applicable MDL Confidentiality Order shall be excluded.

(b) **Unnecessary Attendance.** Unnecessary attendance by counsel is discouraged and may not be compensated in a fee application to the Court. Counsel having only marginal interest in a proposed deposition or who expect their interest to be adequately represented by other counsel should not to attend. In such event, upon court approval, they may conduct supplemental interrogation of the deponent should a review of the deposition transcript justify doing so.

(c) **Cross-Noticing.** A party may cross-notice a deposition in any latex glove case pending in any federal or state court. Such deposition shall be conducted and the transcript and exhibits from such deposition shall be maintained in accordance with applicable MDL Confidentiality Order(s). The cross-notice shall be served at least 10 days prior to the date noticed for the deposition unless otherwise provided by applicable rules.

5. **Conduct.**

(a) **Examination.** Ordinarily, each side should designate one attorney to conduct the principal examination of the deponent. Examination by other attorneys should be limited to matters not previously or adequately covered. Counsel should cooperate in the allocation of time so that any time limits set by the Court are satisfied.

(b) **Objections and Directions Not to Answer.** Counsel shall comply with Fed. R. Civ. P. 30(d)(1). When a claim of privilege is made, the witness should nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, including the date of a communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement, unless such information is itself privileged.

(c) **Time Limitations.** Depositions must be concluded within a reasonable time limit and subject to the provisions of Fed. R. Civ. P. 30(b). At the time of notification, the noticing party will estimate the reasonable time needed for the deposition. In the event any other party considers the proposed amount of time to be unreasonable, the dispute, if unresolved, may be referred to the Special Master. See E.D. Pa. Local R. 26.1(f).

(d) **Continuation of Deposition.** If a deposition is not finished by the end of the business day, it will continue on the

following business day and each business day thereafter, subject to the availability of the witness and time limitations otherwise set by agreement or Court order. Prior planning shall include avoidance of having to resume a deposition on a newly noticed date.

6. Documents.

(a) **Production of Documents.** Nonparty witnesses subpoenaed to produce documents should be served at least 20 days before the scheduled deposition. Arrangements should be made to permit inspection of the documents before the deposition begins.

(b) **Confidentiality Order.** A copy of the applicable Confidentiality Order(s) shall be provided to the deponent or non-party witness prior to the deposition if the deponent is to produce or may be asked about documents that may contain confidential information. In the case of a non-party witness, the applicable Confidentiality Order(s) shall be provided to the witness prior to the date of the deposition. Counsel shall comply with the provisions of MDL Confidentiality Order(s) when examining a deponent about confidential information.

(c) **Copies.** Extra copies of documents about which counsel expects to question the deponent should be provided to opposing counsel and the deponent. Deponents should be shown a document before being examined about it except when counsel are attempting to impeach deponent or test deponent's recollection.

(d) **Marking of Deposition Exhibits.** Documents shall be referred to by the Bates number.

7. **Depositions of Witnesses Who Have No Knowledge of the Facts.** An officer, director, or managing agent of a corporation or a government official may be served with a notice of a deposition or subpoena regarding a matter about which such person has no knowledge. If so, such person may submit to the noticing party an affidavit so stating and identifying a person within the corporation or government entity believed to have such knowledge. The affidavit shall be delivered a reasonable time in advance. Notwithstanding such affidavit, the noticing party may apply for an order requiring the deposition of the noticed witness.

8. **Videotaped Depositions.** By so requesting in its notice of a deposition, a party may record a deposition by videotape under Fed. R. Civ. P. 30(b)(2), (3). If appropriate under the Rules, a discovery deposition may be conducted before a video deposition.

(a) **Video Operator.** The operator(s) of the videotape recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

(b) **Attendance.** Each witness and each examining attorney shall be identified on camera at the commencement of the

deposition. All others present at the deposition shall be identified off-camera. Thereafter, generally speaking, only the deponent (and demonstrative materials used during the deposition) will be videotaped.

(c) **Standards.** The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a trial. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box other than when reviewing or presenting demonstrative materials for which a change in position is needed. The deposition should be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponents or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. No eating or smoking by deponents or counsel should occur during the deposition.

(d) **Interruptions.** The videotape shall run continuously throughout the active conduct of the deposition. Videotape recording will be suspended during agreed "off the record" discussions.

(e) **Index.** The videotape operator shall use a counter on the recording equipment and, after completion of the deposition shall prepare a log, cross-referenced to counter numbers. The log

shall identify the following on the tape: where examination by different counsel begins and ends; objections are made and examination resumes; record certifications are requested; exhibits are identified; and any interruption of continuous tape recording occurs, whether for recesses, "off the record" discussions, mechanical failure, or otherwise.

(f) **Filing.** The operator shall preserve custody of the original videotape in its original condition until further order of the Court. No part of a videotaped deposition shall be released or made available to any member of the public or to anyone outside the scope of the MDL Confidentiality Order(s) unless authorized by the Court.

(g) **Objections.** Requests for pretrial ruling on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. A joint submission as to each issue will be submitted. If needed for a ruling, a copy of the videotape and equipment for viewing the tape (if necessary) shall also be made available to the Court.

(h) **Use at Trial; Edited Tapes.** A party desiring to offer a videotape deposition at trial shall be responsible for having appropriate playback equipment and a trained operator. After the designation by all parties of the portions of a videotape to be used at trial, a copy of the tape, edited of unnecessary portions (and any portions to which objections have been sustained), shall be prepared by the offering party to facilitate

continuous playback. A copy of the edited tape shall be made available to other parties at least 10 days before it is to be used, and the unedited original of the tape shall also be available at the trial.

(i) **Resolution of Objections before Trial.** Every effort shall be made to resolve depositions objections before trial. Any remaining objections shall be submitted at least seven days before trial.

9. **Telephonic Depositions.** By stating in the deposition notice that it wants to conduct the deposition by telephone, a party shall be deemed to have moved for an order under Fed. R. Civ. P. 30(b)(7). Notice of a telephonic deposition shall be served at least 20 days before the deposition. Unless an objection is filed and served within 10 days before the deposition, the motion shall be deemed to have been granted. Other parties may examine the deponent telephonically or in person. All persons present with the deponent shall be identified in the deposition and shall not by word, or otherwise, coach or suggest answers to the deponent.

10. **Use; Supplemental Depositions.**

(a) **Use.** Under the conditions prescribed in Fed. R. Civ. P. 32(a)(1) to (4) or as otherwise permitted by the Federal Rules of Evidence, depositions may be used against any party including parties later added and parties in cases subsequently

filed in, removed to, or transferred to this Court as part of this litigation -

(1) who was present or represented at the deposition;

(2) who had reasonable notice of the deposition and who, within 30 days after the filing of the deposition (or, within 60 days after becoming a party in this Court in any action that is a part of this litigation), does not show just cause why such deposition should not be usable against such party.

(b) **Supplemental Depositions.** Any party not noticed of a deposition held in a latex glove case in either federal or state court that was cross-noticed in the MDL litigation may move for a supplemental deposition. Such motion shall be made for good cause shown within 30 days after the filing of the deposition (or, within 60 days after becoming a party in this Court in any action that is a part of this litigation). If permitted, the deposition shall be treated as the resumption of the deposition previously taken. Each deponent shall, at the conclusion of the initial deposition, be advised by the noticing party that nonattending parties may request a resumption of such deposition, subject to the right of the deponent to apply for a protective order. Supplemental depositions shall not be repetitive of prior examination, and repetition of substantially the same examination as previously conducted may result in imposition of monetary and other sanctions.

11. **Rulings.**

(a) **Immediate Presentation.** During depositions, disputes that cannot be resolved by agreement and, if not immediately resolved, will significantly disrupt the discovery schedule or require a rescheduling of the deposition, may be presented by telephone or otherwise to the Special Master. If the Special Master is not available, the Court may be contacted. If the Special Master is not readily available and the dispute is not considered by the Court, the dispute shall be noted for the record and the deposition shall continue with respect to all other issues. The disputed issue shall then be presented to the Special Master at the earliest practicable opportunity. Any additional testimony shall be taken in the manner directed by the Special Master or, if necessary, by the Court. All rulings will be recorded as part of the deposition.

(b) **Extraterritorial Jurisdiction.** The undersigned will exercise, by telephone, the authority granted under 28 U.S.C. § 1407(b) to act as district judge in the district in which the deposition is taken.

12. **Federal Rules of Civil Procedure.** Unless specifically modified herein, nothing in this order shall be construed to abrogate the Federal Rules of Civil Procedure.

Edmund V. Ludwig, J.