

**Deposition Protocol Regarding Tender & Payment of
Expert Witnesses in CVLO MDL 875 Cases
Effective July 3, 2012**

1. This protocol shall apply to the depositions of expert witnesses in all CVLO MDL 875 cases referred to Magistrate Judge Strawbridge. Other than as provided in this protocol, the depositions will be conducted pursuant to the Federal Rules of Civil Procedure.
2. Pursuant to Rule 26(b)(4)(E), the Court shall require the party or parties seeking to depose an expert witness to pay the expert a reasonable fee for time spent by the expert in connection with his/her participation in the deposition. This shall include time spent preparing for the deposition (not including time spent conferring with counsel), actual time spent in the deposition, and travel time to and from the place where the deposition is conducted.
3. Plaintiff(s) shall be responsible for reasonable expert fees in connection with depositions of defense experts. Each of the defendants who participate in the deposition of an expert retained by a plaintiff, either in person or by telephone, shall pay its pro rata share of the expert's fee.
4. Each invoice for an expert's fee shall be considered due and owing within a period of thirty (30) days from the date of receipt by counsel responsible for payment. Each party owing all or part of an expert's deposition fee shall have a fifteen (15) day grace-period for payment after the initial thirty (30) days expires.
5. In the case of expert witnesses retained by plaintiff, CVLO will provide the invoices for the expert's deposition to Forman Perry. Forman Perry will then have five (5) business days to determine the defendants participating in the depositions and to determine each defendant's pro rata share. Forman Perry will then provide a copy of the expert's invoice along with a spreadsheet detailing the pro rata share to the participating defendants and to CVLO. The fees and expenses for the expert depositions shall be considered due and owing thirty (30) days from the date Forman Perry provides the expert's invoice and the accompanying spreadsheet. Payment will be made by each defendant to CVLO.
6. Once an expert's fee is due and owing, interest shall accrue at a rate of 3.5% per month for the length of time the invoice remains unpaid. No party who has failed to pay its pro rata share of an expert's deposition fee may utilize the transcript of that deposition in any motion.
7. If a party notices an expert deposition and later withdraws the notice, that party shall pay a reasonable fee for the expert's time reserved for preparing for the deposition and the time reserved for participation in the deposition. In the event of a dispute as to the reasonableness of the time reserved for the deposition, the expert's standard cancellation fee will apply. Any such cancellation fees shall be disclosed by the tendering party at the time the witness is tendered.

8. The fact that a party is dismissed from any action, either voluntarily or by order of the court, does not relieve the party from its obligation to pay a reasonable expert witness fee for a deposition taken in that action. Such costs shall remain the obligation of the party even if a stipulated order states that each party shall bear its own costs.
9. Any party disputing the reasonableness of an expert's deposition fee shall bring a motion before the court within thirty (30) days upon receipt of the expert's invoice. Failure to bring such a motion within thirty days (30) shall result in the party's objection to the amount of the fee to be deemed waived.
10. In the event that it is necessary for a party to file a motion to compel payment of expert witness fees, and to the extent that the motion proves successful, at the discretion of the court the moving party may be entitled to assess from the delinquent party the costs of collection including reasonable attorney fees.
11. Tenders for expert witnesses will be made in writing. The opposing party will have a minimum of three (3) business days to accept or reject a tender of an expert witness.
12. Notice of deposition: Depositions will occur when the expert is available. The parties will strive to have the expert witnesses deposed on more than a single case at a time.