

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

MARY JULIA NORDBERG, Individually and as	:	MDL-875
Special Administrator of the Estate of	:	
EARL R. NORDBERG,	:	E.D. Pa. Case No.: 08-cv-90264
	:	
v.	:	
	:	
ACANDS, INC., et al.,	:	

ORDER

AND NOW, this 27th day of July, 2012, upon consideration of Defendant Mobil Oil Corporation's ("Mobil") Motion to Strike (Doc. No. 88), and the response (Doc. No. 101), it is hereby **ORDERED** that the motion is **GRANTED in part** in that, pursuant to paragraph six of the Deposition Protocol¹, any testimony taken during a deposition where Mobil was not listed on the deposition notice as being the subject of expected testimony shall not be used against Mobil. This prohibition likewise precludes the use of any expert opinions relying on such testimony.² All other relief requested, including the dismissal of the claims against Mobil, costs for bringing the motion, and the reopening of discovery, are **DENIED**.

It is hereby further **ORDERED** that Mobil's Motion for Leave to File a Reply (Doc. No. 102) is **GRANTED**. However, we will not consider the reply brief since it raises significant factual and legal issues which are not present in Mobil's motion to strike and greatly increases the relief requested. For example, in the motion to strike, Mobil asked the court to: (1) "strike the Kenoyer/Garza Report, and the deposition of Wilson Packley, as to Mobil"; (2) enter judgment in

¹ available at: [http://www.paed.uscourts.gov/documents/MDL/MDL875/5Malone-Cooper-sanctions - EX A.pdf](http://www.paed.uscourts.gov/documents/MDL/MDL875/5Malone-Cooper-sanctions-EX%20A.pdf)

² The use of an expert report or opinion for general purposes, unconnected with such testimony, is not prohibited.

its favor; and (3) award costs. (Doc. 88 at 4.) In the reply brief, Mobil, for the first time, attacks the sufficiency of the plaintiff's interrogatory answers, requests the court to prohibit the plaintiff from using certain types of evidence to combat Mobil's yet-to-be motion for summary judgment, and requests the additional relief of "Barring Plaintiff from offering any fact or expert witness testimony regarding Mobil for any purposes, including in connection with an Motion for Summary Judgment, expert reports and opinions, and at trial, [and] Barring Plaintiff from offering any evidence regarding Mobil for any purposes, including in connection with any Motion for Summary Judgment, expert reports and opinions, and at trial." (Doc. 102 at 5.) These new issues would be better addressed in a separate dispositive motion at a more appropriate time. United States v. Martin, 454 F. Supp.2d 278, 281 n.3 (E.D. Pa. 2006) (commenting that "[a] reply brief is intended only to provide an opportunity to respond to the arguments raised in the response brief; it is not intended as a forum to raise new issues").

BY THE COURT:

/s/ David R. Strawbridge
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE