

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

In re: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION	* MDL Docket No. 2328 * * SECTION "R" (2) *
THIS DOCUMENT RELATES TO ALL CASES	* JUDGE VANCE * MAG. JUDGE WILKINSON *
* * * * *	

**PRETRIAL ORDER CONCERNING
DEPOSITION AND SUBPOENA GUIDELINES**

This Order shall govern (a) all cases transferred to this court by the Judicial Panel on Multidistrict Litigation, pursuant to its order of April 17, 2012; (b) any tag-along actions subsequently transferred to this court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.4 of the Rules of Procedure of that Panel; and (c) all related cases originally filed in this court or transferred or removed to this court.

I. GENERAL PROVISIONS

A. Timing

Depositions in cases may commence immediately.

B. Cooperation

Counsel must cooperate with and be courteous to each other and deponents in both scheduling and conducting depositions.

C. Attendance

1. Who May Be Present. Pursuant to In re Terra, Inc., 134 F.3d 302, 306 (5th Cir. 1998), and Fed. R. Civ. P. 26(c)(1)(G), the court finds that "good cause" has been established to restrict appearances at depositions, based upon the anticipated extensive use during witness examination of proprietary and commercially sensitive information designated by

the parties as confidential and subject to the court's previously entered protective order. Record Doc. No. 139. Accordingly, depositions may be attended only 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 deponent, in-house counsel for any party, court reporters, videographers, the deponent, a disclosed expert or any member of the expert's staff, and counsel for the deponent. Upon motion and order, the court may permit attendance at depositions by persons who do not fall within any of the categories set forth in the preceding sentence. While the deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under an MDL - 2328 Revised Stipulated Protective Order [Record Doc. No. 139], dated August 3, 2012, shall be excluded from the deposition. Any portion of the deposition transcript containing confidential information shall be sealed so as not to waive confidentiality, and its subsequent use in court is subject to Local Rule 5.6 of this court.

2. Unnecessary Attendance. Unnecessary attendance by plaintiffs' counsel is discouraged and may not be compensated in any fee application to the court. Plaintiffs' counsel who have only marginal interest in a proposed deposition or who expect their interests to be adequately represented by other counsel should not attend.

3. Notice of Intent to Attend a Deposition. In order for counsel to make arrangements for adequate deposition space, counsel who intend to attend a deposition noticed in this MDL must advise the e-mail distribution list for all counsel set up for this purpose not fewer than three (3) business days prior to the deposition. Notices pursuant to this section shall be given via e-mail.

II. CONDUCT OF DEPOSITIONS

A. Examination and Making Objections

Questioning and objections must be by only one attorney for each party. Counsel who have individual or divergent positions may examine a deponent limited to matters not previously covered. This limitation shall be strictly construed against the examining attorney.

B. Duration

Counsel must consult prior to a deposition to agree upon the time required to depose a particular witness. Absent agreement of the parties or order of this court based on a showing of good cause, the length of depositions shall be controlled by Fed. R. Civ. P. 30(d)(1). Absent agreement of the parties or order of this court, examination time for non-party witnesses shall be divided as follows: 50% to the Direct and Indirect Purchaser Plaintiffs to be allocated as they desire among themselves, and 50% to the Defendants to be allocated as they desire among themselves.

C. Scheduling

Absent extraordinary circumstances, counsel must consult in advance with opposing counsel and counsel for proposed deponents in an effort to schedule depositions at mutually convenient times and locations. Counsel must cooperate and coordinate the scheduling of depositions. Unless otherwise agreed upon by the parties, witnesses shall be deposed within 100 miles of where they reside or work.

Although the parties will try to avoid multi-tracking of depositions, there may be multi-tracking of depositions. The parties shall meet and confer on the establishment of a reasonable schedule for the multi-tracking of those depositions. To the extent that the parties cannot agree on a proposed schedule for such multi-tracking, the parties shall file a motion with

the court attaching their separate proposed schedules so that the court may enter an order imposing a schedule.

D. Notices and Subpoenas

The parties shall meet and confer to establish a reasonable return date for any subpoena, including for testimony and production of documents. The parties must schedule any testimony on a date convenient for the parties and the deponent. Counsel must cooperate and coordinate the scheduling of depositions.

Any party that desires to subpoena a non-party shall circulate (the “circulating party”) to the other parties a draft of the subpoena, including any subpoena duces tecum. The other parties shall, within seven (7) calendar days of receipt of the draft subpoena, provide comments to the circulating party, including any additions or suggested amendments to the subpoena duces tecum. A subpoena duces tecum to non-parties shall include a single set of definitions and instructions. A party who has circulated a draft subpoena duces tecum shall not be required to revise the specific document requests it previously circulated. Recipients of the draft subpoena duces tecum may add document requests as they deem appropriate, which shall be included in the subpoena duces tecum that is served.

The parties must refrain from making cumulative, duplicative, or inconsistent document requests. If a party has objections to any of the documents, categories of documents, definitions or instructions provided in subpoenas to third parties, that party must note in writing its objections, and the parties must seek to resolve the objections before the subpoena is served. Any objection not resolved before service is preserved for further consideration after service, and if not then resolved in a meet and confer process, may be presented for a hearing with Magistrate Judge Wilkinson.

Only a single subpoena shall issue which shall be enforceable by any one or more parties. Meet and confer sessions (or other negotiations) with a subpoenaed person regarding any matter arising from the subpoena, including any subpoenas previously issued, shall be conducted jointly with attorneys for all sides and the subpoenaed person represented. All objections that any party may have are reserved and may be presented to the court by appropriate motion. The combined subpoena shall indicate which party is requesting which documents or subjects of testimony are being requested by which party. The circulating party is responsible for service of the subpoena.

The return date for production of documents shall be set at least fifteen (15) calendar days prior to the scheduled date of any deposition of a non-party so that parties shall be provided ample opportunity to receive and review documents to be produced by any non-party pursuant to a subpoena duces tecum. Documents to be produced by a non-party pursuant to a subpoena duces tecum shall be provided by the producing entity fully in advance of the deposition date either to Liaison Counsel or their designees through an .ftp site. Liaison Counsel shall immediately make available to all other parties copies of all documents produced from any non-party so that all parties have access to the materials timely in advance of any scheduled deposition.

The circulating attorney is responsible for arranging the office location (subject to agreement as to the city location) in which the deposition is to be taken and for the court reporter and reporting service used for the deposition.

E. Deposition Day

Subject to the witness's availability, a deposition day shall commence no earlier than 8:00 a.m. local time and terminate no later than 6:30 p.m. local time. Modest variations in

this schedule may be made by agreement of counsel who noticed the deposition and counsel for the witness.

F. Depositions of Non-Party Witnesses Who Have Knowledge of the Facts

An officer, director, or managing agent of a corporation, a government official or any other non-party witness served with a notice of a deposition or subpoena shall be provided a copy of this pre-trial order at the time it is served. Any objections to a notice of deposition or subpoena shall be filed with this court at least fifteen (15) days prior to the scheduled date of any deposition. The right of the responding witness to seek a protective order or other appropriate relief during or following the deposition is reserved.

G. Objections and Directions Not to Answer

1. Counsel shall comply with Fed. R. Civ. P. 30(c), (d)(1) and (3). When a privilege is claimed, the witness must nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, such as 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. Any objection made at a deposition shall be deemed to have been made on behalf of all other parties. All objections, except those as to form and privilege, are reserved until trial or other use of the depositions.

2. Counsel shall refrain from engaging in colloquy during deposition. The phrase "objection as to form" or similar language shall be sufficient to preserve all objections as to form until the deposition is sought to be used. If requested, the objecting party shall provide a sufficient explanation for the objection to allow the deposing party to rephrase the question.

3. Counsel shall not make objections or statements which might suggest an answer to a witness.

4. Counsel shall not direct or request that a witness refuse to answer a question, unless that counsel has objected to the question on the ground that the question seeks privileged information, information that the court has ordered may not be discovered, or a deponent seeks to present a motion to the court for termination of the deposition on the ground that it is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass or oppress the party or deponent.

5. Private consultations between deponents and their attorneys during the actual taking of the deposition are improper and prohibited, except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the court for good cause shown, conferences may be held during normal recesses, adjournments, or if there is a break in the normal course of interrogation and no questions are pending.

H. Telephonic and Internet Participation

Telephonic and Internet Participation. Telephone and Internet facilities shall be provided, where practicable, so that parties wishing to participate in the depositions by telephone or Internet may do so. However, technical or Internet difficulties with telephonic or Internet participation shall not constitute grounds for continuing the deposition or for rendering a deposition inadmissible that would otherwise be admissible in evidence. Counsel attending a deposition in person may terminate telephonic or Internet participation in a deposition if technical problems with the telephonic or Internet facilities create disruptions in the deposition.

I. Disputes During Depositions

Disputes between or among the parties must be addressed to this court rather than the district court in the district in which the deposition is being conducted. Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, shall be presented to the magistrate judge or his designee by telephone (504-589-7630). If the magistrate judge is not available, the deposition shall continue with full reservation of rights of the examiner for a ruling at the earliest possible time. Nothing in this order shall deny counsel the right to suspend a deposition pursuant to Fed. R. Civ. P. 30(d)(3), file an appropriate motion with the court at the conclusion of the deposition, and appear personally before the court.

J. Documents Used in Connection with Depositions

1. Marking of Deposition Exhibits. All documents previously produced and used as deposition exhibits shall be identified by referring to the unique alpha-numeric identifiers appearing on the documents or in the name of the document, in the case of native files.

2. Objections to Documents. Objections to the relevance or admissibility of documents used as deposition exhibits are not waived, and are reserved for later ruling by the court or by the trial judge.

K. Video Depositions

By so indicating in its notice of a deposition, a party, at its expense, may record a deposition by videotape or digitally-recorded video pursuant to Fed. R. Civ. P. 30(b)(3) subject to the following rules:

1. Real-Time Feed. All video depositions will be stenographically recorded by a court reporter with "real-time feed" transcription capabilities.

2. Video Operator. The operator(s) of the video recording equipment shall be subject to all applicable provisions of Fed. R. Civ. P. 28. At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

3. Attendance. Each witness, attorney, and other person attending the deposition live or by telephone or the Internet shall be identified on the record at the commencement of the deposition.

4. Standards. Unless physically incapacitated, the deponent shall be seated at a table, except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will 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 deponent. Only the deponent and any exhibits or demonstrative aids used in the examination will be video recorded. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent.

L. Telephone Depositions

By indicating in its notice of deposition that it wishes to conduct the deposition by telephone, a party shall be deemed to have moved for such an order under Fed. R. Civ. P. 30(b)(4). Unless an objection is filed and served within seven (7) calendar days after such notice is received, the court shall be deemed to have granted the motion. Other parties may examine

the deponent telephonically or in person. However, all persons present with the deponent shall be identified in the deposition and shall not by word, sign, or otherwise coach or suggest answers to the deponent. The court reporter shall be in the same room with the deponent.

III. FEDERAL RULES OF CIVIL PROCEDURE APPLICABLE

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

A copy of this pre-trial order shall be attached to any notice of deposition or subpoena issued to a third-party, so that the third-party shall have an opportunity to review this order and comply with the orders of the court, in particular with respect to production of documents and attendance at depositions. All notices of depositions and subpoenas shall reference this pre-trial order.

New Orleans, Louisiana, this 7th day of March, 2013.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

CLERK TO NOTIFY
MAGISTRATE JUDGE WILKINSON