

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: LEVAQUIN PRODUCTS
LIABILITY LITIGATION

MDL No. 08-1943 (JRT)

**PRETRIAL ORDER #5
ON EXPERT DISCOVERY**

This Document Relates to All Actions

Pursuant to Rule 29 of the Federal Rules of Civil Procedure, the parties hereby stipulate, and the Court hereby approves the following protocol for the exchange and discovery of information regarding all expert witnesses identified in this MDL:

1. This Stipulation applies to all cases in this MDL.
2. Except as otherwise provided by this Stipulation, in federal court cases the parties shall comply with the requirements of Fed. R. Civ. P. 26(a)(2).
3. Drafts of the reports prepared by testifying experts and their assistants shall not be subject to discovery.
4. Communications among the testifying expert, his or her assistants, clerical or support staff, and/or any outside firm retained to assist the expert shall not be subject to discovery unless the expert relies on such communications as a basis for his or her opinion.
5. Communications between the testifying expert and counsel, including notes or other written materials that reveal work product or deliberative communications between the expert and the attorneys, shall not be subject to discovery.

6. This Stipulation does not prevent any party from asking a testifying expert about the opinions expressed in his or her report, including alternative theories, methodologies, variables, date, production documents, or assumptions that the expert may have considered. Experts may be questioned at deposition about the contents of their final reports, their methodology and the information and materials supporting their opinions, but not about draft reports or discussions with counsel about reports or draft reports.
7. Notwithstanding the foregoing, the parties may discover (i) the date of retention; (ii) the total amount of fees and expenses billed by each testifying expert, (iii) the total amount paid and payable to each testifying expert, and (iv) the number of hours billed, per person by each testifying expert and his or her staff. Invoices and retention letters are not subject to discovery.
8. Except as otherwise provided in paragraphs 3-8 of this Stipulation, consistent with Rule 26(a)(2) of the Federal rules of Civil Procedure, the parties' testifying experts will identify in their expert reports the data and other information received or reviewed in connection with the formation of his or her opinions(s).
9. Except as otherwise provided in paragraphs 3-8 of this Stipulation, this Stipulation does not prevent any party from seeking production of, or asking questions about, the data and other information the testifying expert received or reviewed in connection with the formation of his or her opinion(s), whether or not he or she relied on that data or information. To the extent that the testifying

expert creates discoverable information or data processed or modeled by computer, an electronic version of the data shall be produced in the electronic format that it was created by the testifying expert. If data used by testifying experts are derived from electronic data produced by any party to this action, copies of that original electronic data produced by any party to this action in the format that it was received by the testifying expert shall be produced.

10. These rules govern discovery regarding experts regardless of the person or entity to whom the discovery is directed.
11. The parties agree to work cooperatively and exercise flexibility concerning the length of time allotted for expert depositions, particular where the expert is offering opinions regarding multiple plaintiffs or defendants. If an expert is questioned by counsel for the party presenting the expert, counsel for the party noticing the deposition shall have an opportunity to re-examine the witness for an equal period of time.
12. The parties may modify the terms of this Stipulation by mutual agreement.

IT IS SO ORDERED.

DATED: October 7, 2009
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge