

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

IN RE ST. JUDE MEDICAL, INC., :
SILZONE HEART VALVES PRODUCTS :
LIABILITY LITIGATION : MDL DOCKET NO. 1396

PRETRIAL ORDER NO. 21

The parties having stipulated thereto, the Court orders that:

PROTOCOL FOR DESIGNATION AND DEPOSITION OF GENERIC EXPERTS

I. SCOPE AND PURPOSE

The parties and the Court recognize that certain expert witnesses may be required to testify on multiple occasions in these proceedings. It is also recognized that, given the diversity of the parties as well as the dissimilarity of underlying medical facts and conditions in each MDL case, multiple depositions of these witnesses are unavoidable. The purpose of this pretrial order is to reduce the scope, and thus the time necessary for depositions of an identifiable segment of the expert witness population disclosed in the MDL cases by scheduling "generic" depositions of such witnesses so that clearly generic areas of subject matter need not be covered at case-specific proceedings.

II. DEFINITIONS

A "generic" expert is an expert witness retained by a party, other than a "treating" health care provider, who will only provide opinions at trial which are

not contingent on the facts or records of the case at issue, or who will provide both generic and case-specific opinions at trial, and who has been previously deposed as to his or her generic opinions in an MDL case. A party who relies on this order so as to limit or preclude further deposition of a generic expert witness in a particular case, shall be limited at trial to eliciting only those opinions, and the bases thereof, which were identified in the expert designation, and the transcripts of testimony listed therein, unless the party offers said expert for an additional deposition that will be completed before the discovery cutoff on new opinions not previously covered or which were the subject of additional depositions taken in the case by operation of this pretrial order.

III. INITIAL DISCLOSURE OF GENERIC EXPERT WITNESSES

A. Plaintiffs' Identification of Generic Expert Witnesses: On or before March 3, 2003, Plaintiffs' Liaison Counsel shall serve the disclosures required by Fed.R.Civ.P 26(A)(2) for those retained experts who plaintiffs believe will give testimony in multiple MDL cases and should be the subject of generic depositions.

B. Defendants' Identification of Generic Expert Witnesses: On or before April 3, 2003, Defendants' Liaison Counsel shall serve the disclosures required by Fed.R.Civ.P 26(A)(2) for those retained experts who defendants believe will give testimony in multiple MDL cases and should be the subject of generic depositions.

C. Submission of Joint List: On or before April 18, 2003, the parties shall submit to the court a joint list identifying those experts who, by stipulation, qualify for generic depositions. In addition, the parties shall jointly list any experts

whose qualifications for a generic deposition is disputed, along with a brief synopsis of the nature of the dispute. As soon as practicable, the court shall make a determination with respect to the applicability of this pretrial order to disputed experts. The scheduling of depositions of undisputed generic experts may go forward subsequent to the submission of the joint list.

IV. DEPOSITIONS OF GENERIC EXPERTS

A. Scope: Generic depositions may include any area of testimony which is not applicable, directly or as a foundational matter, only to the facts of one particular case.

Subject to the caveats stated above, examiners at depositions of generic experts subsequent to a generic deposition proceeding may not inquire into the areas stated below. Counsel may, at their discretion, enlarge the scope of a generic deposition so that subject matter in addition to those areas outlined below are included. However, in so doing, the party on whose behalf the examination is conducted will be bound by this protocol in that further examination of the witness at case-specific depositions will be appropriately limited. Generic depositions will include, but are not necessarily limited to the following areas:

- The generic opinions offered by the witness
- General background (e.g. name, age, birth place, residence, employment, etc.
- Formal education
- Internships

- Residencies
- Fellowships
- Specialties and subspecialties
- Licensures
- Board certifications
- Hospital privileges
- Disciplinary actions and lawsuits
- Professional associations
- Post-graduate continuing education
- Publications (generic inquiry into this area will not limit the ability of counsel in case-specific depositions to question a witness with regard to a paper or article that bears directly on the witness' case specific opinion)
- Research (generic inquiry into this area will not limit the ability of counsel in case-specific depositions to question a witness with regard to research that bears directly on the witness' case specific opinion)
- Academic appointments
- Governmental appointments
- Industry involvement
- Industry involvement

- Involvement with "support groups" and litigation-oriented groups
- Solicitation (e.g. advertisements)
- Academic presentations
- General clinical experience
- Participation in litigation-oriented seminars and symposia
- Consultation and testimony in litigation (any type)
- Consultation and testimony in Silzone heart valve litigation
- Income derived from involvement in litigation
- Other information contained in the witness' Curriculum Vitae

B. Case-Specific Depositions

It is not the intent of this order to limit the ability of the litigants from noticing and taking the depositions of generic experts on a case-specific basis. It will be presumed that counsel involved in the case-specific deposition of an expert who has previously been the subject of a generic deposition will have reviewed the generic transcript and will forgo further examination with respect to those areas covered therein with the following exceptions:

1. An expert who has previously given a generic deposition may be asked at a case-specific deposition for any changes, corrections, or updates with respect to his or her generic testimony (e.g. whether the witness has authored any new articles, completed ongoing research, etc.).

2. A case-specific examiner may inquire into an area which, although theoretically "generic," was neither contemplated specifically pursuant to this order, nor was the subject of examination at the witness' generic deposition.

3. An expert who has been the subject of a generic deposition may be asked follow-up questions with regard to generic items at a case-specific deposition to the extent that such examination is based on information discovered or disclosed after the date of the witness' generic deposition. Testimony elicited during such an examination shall effectively constitute a "supplemental generic deposition" and shall operate to limit inquiry into the same generic areas in subsequent "case-specific" depositions of the expert.

C. Disputes As To The Scope Of Generic Expert Depositions: Disputes as to the scope of any generic deposition, or with regard to the propriety of generic examination conducted during the course of a case-specific deposition shall be adjudicated by the Court as soon as is practicable under the circumstances. In the face of such a dispute, the deposition should proceed with regard to all other undisputed areas of testimony pending resolution of the matter.

V. DEPOSITIONS OF GENERIC EXPERTS WHOSE OPINIONS HAVE BEEN COVERED IN PREVIOUS DEPOSITIONS

If a party designates an expert as generic, and indicates that the opinions he or she is to give at trial have been covered in prior testimony, and has otherwise complied with the designation procedure articulated in Section III of this order or Section I, G-I of Pre-Trial Order No. 20, the opposing party is precluded from

deposing the expert without stipulation of counsel, or leave of court based upon a showing of good cause. "Good cause" includes, but is not limited to, the following:

(1) That there are generic issues which were not covered in the expert's prior testimony.

(2) That certain generic issues were inadequately covered in the expert's prior testimony.

(3) That there is a need for updating the bases for an expert's previously stated generic opinions.

VI. DEPOSITIONS OF GENERIC EXPERTS WHOSE OPINIONS HAVE NOT BEEN COVERED IN PREVIOUS DEPOSITIONS

If a designating party desires to have a generic expert render generic opinions at trial beyond those covered in prior designated testimony, or testify as to new information as a basis for opinions previously given by the expert in the MDL, the party must so indicate in the expert designation by outlining the nature of any new opinions, or additional bases for opinions previously given. The expert shall subsequently be made available for further depositions to be completed before the expert deposition cutoff date which will be limited to covering those new matters. If, subsequent to expert designation, a party determines that a generic expert will provide opinions at trial beyond those covered in prior designated testimony, the party shall immediately provide opposing counsel with a supplemental designation specifying such new opinions and tender the expert for deposition, limited to those

items, which shall be completed by the expert deposition cutoff date. A party who determines after the discovery cutoff that a generic expert will be asked to testify at trial as to opinions not previously covered in designated transcripts or further depositions may, unless otherwise agreed to by the parties, seek leave of court to supplement the expert designation and tender the expert for a deposition as provided above. If, at any time after the expert designation or further deposition of an expert, as outlined above, a party determines that the expert will rely on new data or material in support of his or her opinions, the party shall specify to opposing counsel in writing such new data or material. If the opposing party then deems it necessary to redepose the expert on this new material, they shall request that the expert be produced for a supplemental deposition for this purpose. If the parties do not agree as to whether a supplemental deposition is appropriate, the party seeking the deposition may seek leave of Court to redepose the expert on the new material. If the parties are unable to stipulate to the amount of time necessary for a further deposition pursuant to this section in advance of the deposition, the dispute shall be resolved through the procedure outlined in Section III(C) of this order.

VII. DEPOSITIONS OF GENERIC EXPERTS WHO WILL ALSO GIVE CASE-SPECIFIC OPINIONS

If a party anticipates that an otherwise generic expert will give case-specific opinions at trial in addition to generic testimony or will rely on case-specific facts

as a basis for generic opinions, the party shall make the expert available for a case-specific deposition.

IT IS SO ORDERED:

Honorable John R. Tunheim

ENTERED: September 9, 2002