
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: BAYCOL PRODUCTS LITIGATION

MDL No. 1431

This Document Relates to All Actions:

Pretrial Order No. 68

STIPULATION AND ORDER AMENDING PRE-TRIAL ORDERS 7 AND 63 REGARDING
BAYER A.G. DEPOSITION PROTOCOL

The parties and lawyers in the MDL Baycol Litigation and in many state court cases have continued their cooperative work to agree to the protocol for taking the depositions of Bayer AG representatives in Europe and America. Members of the Liaison Advisory Committee of this Court have submitted revisions to Pretrial Orders 7 and 63. This Court has reviewed and approves those changes and incorporates them in this order.

IT IS HEREBY ORDERED:

Plaintiffs and Defendants (the “Parties”) have agreed to the following protocol (“Deposition Protocol”) for the depositions of the witnesses listed in Appendix A (“Bayer AG Witnesses”). To the extent that this deposition protocol is inconsistent with Pretrial Orders No. 7 and No. 63 in the MDL Proceedings (MDL No. 1431) or applicable orders in the Philadelphia and California coordinated proceedings, the procedures set forth in this Deposition Protocol shall govern the depositions of the Bayer AG Witnesses.

1. Location & Schedule: The depositions will be held at the Triple Ace World Trade Center located at Strawinskylaan 77, 1077 XW Amsterdam, Netherlands or at such other location on

which the Parties may agree, in accord with the schedule set forth in Appendix A. All attorneys who are in Amsterdam conducting the depositions shall meet with Judge Michael Davis and the Special Master at 3:00 p.m. on Sunday, March 23, 2003, at the World Trade Center location.

2. Logistics & Scheduling: The Parties agree to arrange for a room for each deposition that will accommodate approximately 40 to 50 people. Matters of seating arrangement for the witness and counsel shall be decided by agreement of the principal attorney conducting the examination of the witness and counsel for the witness. Two breakout rooms will also be available for each side (that is, plaintiffs side and defendant's side) to hold private meetings; and one room shall be available for the Judge/Special Master.

The depositions will take place in one session, commencing on March 24, 2003 and concluding on April 9, 2003.

3. Time Allocation, Format and Order of Depositions: Each deposition will take no more than eight and one-half (8 1/2) hours per day commencing at 9:00 a.m. and ending around 5:30 p.m. (GMT), with a (1) one hour lunch break at or around 12:00 noon and breaks totaling about 30 to 45 minutes per day, for a three-day period. The depositions will proceed in the following order and format:

- Segment 1: Discovery examination – Plaintiffs Side (8 hours)
- Segment 2: Direct examination – Bayer Defendants Side (6 hours)
- Segment 3: Further examination – Plaintiffs Side (8 hours)

Segment 1 will commence at 9:00 a.m. on the first day and shall continue until 5:30 p.m. that day as well as for one (1) hour at the beginning of the second day. Segment 2 will commence at the conclusion of Segment 1 and shall proceed no longer than six (6) hours. Segment 3 shall commence

at the conclusion of Segment 2 and shall proceed until 5:30 p.m. on the second day and on into the third day for the time remaining from the Plaintiff's Further Examination allotment of time. Out of the time allotted to a Side per segment, each Side may reserve time for examination of a witness at the completion of any segment.

To ensure that each deposition adheres to the allotted time, each side may employ no more than two attorneys per examination segment. However, both attorneys will have the right to examine the witness provided that the questioning is not duplicative and that each examining attorney questions the witness only for one period of time during the segment. In the instance where a deposition requires translation for the witness, although the Parties agree to use their best efforts to complete the depositions in accord with the schedule set forth in Appendix A, the Parties recognize that extra time to complete the deposition may be necessary to compensate for time needed in translation. Accordingly, the Bayer AG Witnesses testifying in German will be available for examination, if requested, for two additional days as scheduled in Appendix A or to be scheduled upon mutual agreement of the Parties during the Session. Counsel for GSK shall be given a reasonable opportunity to conduct such examination(s) of each witness as may be appropriate at such time(s) as may be appropriate under the circumstances, subject to rulings by the Judge or Special Master.

4. Court Reporters: The plaintiffs will choose a certified court reporting service to record each deposition and will rotate a different court reporter at the "half-way mark" (April 1, 2003) during the Session. The court reporter will utilize a real time transcription displayed on video or computer monitors.

5. Interpreters/Translators: In those instances where a witness chooses to respond to questions in his or her native language (other than English), a neutral translator will be employed to interpret and translate from the foreign language to English. Each translator will swear under oath prior to each deposition to provide honest and truthful translations.

Three translators will be available for each deposition during the Session, on an as-needed basis, for those witnesses testifying in their native language other than English. The translators will rotate as necessary during the course of the depositions. A monitor displaying “real time” transcription will be placed in front of the translator to assist in the translation.

Translators will be compensated on a daily basis for those days spent actually translating. Translators will also be reimbursed for ordinary and necessary expenses. Defendants and plaintiffs will share the fees and costs of the translators equally.

6. Advance Notice of Documents Used in a Deposition: Each party will provide to the other party advance notice of all German documents each reasonably anticipates using in an examination (except for impeachment), by serving such documents 72 hours in advance of a deposition. Each party representing a witness will bring to the deposition any document reviewed by the witness in preparation for the deposition. Each party will appoint a liaison to receive such documents.

7. Advance Notice of Language of Witnesses: Defendants will notify plaintiffs of all witnesses who will be deposed in German and therefore, who will require the assistance of translators, no later than March 18, 2003.

8. Objections: All objections shall be reserved for trial, other than objections to the form of the question (which also encompasses leading questions) or responsiveness of the answer.

This paragraph is not intended to preclude any party from seeking a ruling in accord with paragraph 9 or asserting an objection based on privilege.

9. Court Intervention to Resolve Disputes: The Parties agree to request the Court in the MDL proceedings to appoint a Special Master to preside at the depositions of the Bayer AG Witnesses and rule on any matters arising at the depositions, including but not limited to the application of the provisions of this and other applicable Pretrial Orders and rulings on any objections and instructions not to answer. The Parties agree to share equally the costs incurred by the Special Master in attending the depositions.

10. Deposition Notices and Cross Notices: Plaintiffs will notice all depositions and serve such notices on all parties in cases pending in the MDL and the Philadelphia and California coordinated proceedings (“State Coordinated Proceedings”) pursuant to the procedures currently being followed prior to all Baycol AG depositions. Defendants may cross notice depositions in any other cases involving Baycol. The parties agree that the procedures for noticing the depositions of the Bayer AG Witnesses shall be in accord with the procedures used by the MDL and the State Coordinated Proceedings in noticing Bayer Corp. witnesses and that the parties need not institute proceedings under the Hague Convention for the taking of these depositions.

11. Evidentiary Form of Questions: In the event the parties seek to use at any trial the deposition testimony of any witness offering an opinion, the parties agree not to raise at such deposition or trial the objection that the deposition questions asked or the answers given regarding such expert opinion do not conform to the evidentiary form typically required by the jurisdiction whose law would control the case being tried. For example, if one jurisdiction requires an opinion to be expressed to a “reasonable degree of certainty,” the defendants shall not object to an opinion

given to a “reasonable degree of probability.”

12. Party Liaison: Each party will appoint a liaison to serve at each session of the depositions to ensure proper compliance with the protocol in seeking intervention of the Special Master to resolve disputes, to assist with the logistics of the protocol, and to ensure that decorum is met in the overall deposition process.

13. Telephone Participation: Telephone facilities will be provided so that parties wishing to participate in the depositions by telephone may do so. However, in the event that there are technical difficulties or interference with the conduct of the deposition, the Parties may, upon the agreement of the Special Master, discontinue telephonic participation for such periods of time as necessary.

14. Good Faith. The parties agree to attempt to resolve all issues arising during the course of the depositions of the Bayer AG Witnesses amicably and in good faith.

15. Costs. Plaintiff federal and state court parties and Bayer each agree to share all costs associated with the depositions equally, including the translators’ costs at the depositions, the cost of the use of facilities and services provided by the World Trade Center, the travel and lodging costs of the Court Reporters, other costs referred to in this and other applicable orders, and any other unanticipated incidental costs associated with the depositions.

16. Other Locations. With regard to the depositions listed in Appendix A that are to be taken at locations other than in Amsterdam, Netherlands, the provisions of this Order apply with the exception of the different deposition locations and durations.

Dated: March 18, 2003

By the Court:

Michael J. Davis
United States District Court

APPENDIX A

SCHEDULE FOR BAYER AG DEPOSITIONS IN AMSTERDAM

DATES	TRACK 1	TRACK 2
March 24-26	Kraemer	Mueck
March 27-29, 31, April 1	Sprenger	Zeigler
April 1-3		Von Keutz
April 2-4, 6-7	Weidmann	
April 3-5, 7-8		Ippen
April 5-6, 8-9		Ahr
April 7-9	Plischke	

SCHEDULE FOR OTHER BAYER AG DEPOSITIONS

DATE	DEPONENT	LOCATION
April 15-17	Shannon	New Haven, CT
May 12-13	Granzer	London
May 14-16	Armstrong	London
May 14-15	Conrad	New York City
May 19-20	Ebsworth	London