

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: BAYCOL PRODUCTS LITIGATION

MDL No. 1431

(MJD/JGL)

This Document Relates to All Actions

Pretrial Order No. 22

IT IS HEREBY ORDERED:

1. To facilitate coordination of deposition scheduling, defendants Bayer Corporation and Bayer AG (hereinafter the “Bayer defendants”) and defendants GlaxoSmithKline and GlaxoSmithKline plc (hereinafter the “GSK defendants”) will notify the MDL plaintiffs of any state court depositions of employees and former employees of the Bayer and GSK defendants (other than regional or local sales personnel) in Baycol-related cases filed in any jurisdiction in the United States. The Bayer defendants and GSK defendants agree that they will have no objection to a representative of the MDL plaintiffs observing such state court depositions without the necessity for a cross-notice. Such observation will not prejudice the right of the MDL plaintiffs to notice a subsequent deposition in accordance with paragraph four below.

2. The parties agree that testimony at state court depositions subject to Paragraph 1 will be treated as if taken in the MDL proceedings and will be admissible pursuant to the Federal Rules of Evidence.

3. Both the MDL plaintiffs and the Bayer and GSK defendants shall be entitled to cross notice any such state court depositions in the MDL, except where the MDL plaintiffs, or the Bayer and GSK defendants are each separately prohibited by state court order or rule. Any party seeking to serve such a cross-notice must first meet and confer with the other MDL parties.

4. If the state court deposition of a witness has been cross-noticed pursuant to paragraph 3 above, then the MDL plaintiffs may not take a subsequent deposition of that witness. If the state court deposition of a witness has not been cross-noticed pursuant to paragraph 3 above, then the MDL plaintiffs shall be limited to one subsequent deposition of that witness. During any such subsequent deposition, the MDL plaintiffs may not ask questions that seek the same information as questions posed in the state court deposition(s), but may ask follow-up questions reasonably necessary to clarify an answer or follow-up questions which were not pursued during the state court deposition; and, if documents have been produced after the date of the state court deposition, the MDL plaintiffs may ask overlapping questions in connection with the documents.

Dated: June 4, 2002

BY THE COURT

 /s/
Michael J. Davis
United States District Court