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40.21 General

[caption]

Order No. _____
(Initial Case-Management Order)

Having considered the comments and proposals of the parties presented at the initial conference held _____ [date] _____, the court ORDERS:

1. *Pretrial Consolidation.* The cases listed on Attachment _____ are, until further order, consolidated for pretrial purposes. This order does not constitute a determination that these actions should be consolidated for trial, nor does it have the effect of making any entity a party to an action in which it has not been joined and served in accordance with the Federal Rules of Civil Procedure.
 - (a) *Master Docket and File.* The clerk will maintain a master docket and case file under the style "*In re* _____ LITIGATION," master file number _____. All orders, pleadings, motions, and other documents will, when filed and docketed in the master case file, be deemed filed and docketed in each individual case to the extent applicable.
 - (b) *Captions; Separate Filing.* Orders, pleadings, motions, and other documents will bear a caption similar to that of this order.¹ If generally applicable to all consolidated actions, they shall include in their caption the notation that they relate to "ALL CASES" and be filed and docketed only in the master file. Documents intended to apply only to particular cases will indicate in their caption the case number of the case(s) to which they apply, and extra copies shall be provided to the clerk to facilitate filing and docketing both in the master case file and the specified individual case files.
 - (c) *Discovery Requests and Responses.* Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses will not be filed with the court except when specifically ordered by the court or to the extent offered in connection with a motion.²

[(d) *Coordinated Actions*. The actions listed on Attachment _____ are not consolidated for pretrial purposes at the present time, but discovery in such cases shall be coordinated with that in the consolidated actions to prevent duplication and conflicts.³]

2. *Organization of Counsel*⁴

(a) *Plaintiffs*. To act on behalf of plaintiffs with the responsibilities prescribed in [Attachment _____] [see section 40.22], the court designates—

(1) as Liaison Counsel: _____ [name, address, telephone number]

(2) as Lead Counsel: _____ [name, address, telephone number]

(3) as additional members of Plaintiffs' Steering Committee:

_____ [names, addresses, telephone numbers]

(b) *Defendants*. To act as liaison counsel on behalf of all defendants [except defendant(s) _____] with the responsibilities prescribed in [Attachment _____] [see section 40.22, ¶4], the court designates _____ [name, address, telephone number].

(c) *Reimbursement*. If agreement cannot be reached on a method for periodically reimbursing attorneys for expenses incurred and paying them for services rendered as lead or liaison counsel, the matter will be presented to the court for resolution.

(d) *Time Records*. Counsel who anticipate seeking an award of attorney fees from the court shall comply with the directives contained in [Attachment _____] [see section 40.23] regarding the maintenance and filing of contemporaneous records reflecting the services performed and the expenses incurred.

3. *Service of Documents*

(a) *Orders*. A copy of each order will be provided to plaintiffs' liaison counsel and defendants' liaison counsel for distribution as appropriate to other counsel and parties. [A copy shall also be provided to counsel for defendant(s) _____.]

(b) *Pleadings, Motions, and Other Documents*. Plaintiffs' liaison counsel will be provided with _____ copies of each pleading, motion, or other document filed by a party; defendants' liaison counsel will be provided with _____ copies of each such document. [Pursuant to Fed. R. Civ. P. 5(b), service on liaison counsel constitutes service on other attorneys and parties for whom liaison counsel is acting.⁵]

[(c) *Service of Original Complaints; Amendments Adding Parties*. To eliminate disputes about service of process and to reduce the expense of such service, defendants _____ [name] and _____ [name] have agreed to waive service of process for claims filed in federal court that fall within the scope of the _____ [above-captioned] litigation, subject to the provisions of Rule 4(d). The

notice required by Rule 4(d) should be sent to _____ [name and address of representative/counsel to receive service] and _____ [name and address of representative/counsel to receive service]. Plaintiffs have 30 days from the date of this order or the date of filing, whichever is later, to provide notice of the original complaint or an amendment adding one or more of the above defendants to the complaint.^{6]}

4. Status Conferences

- (a) *Regularly Scheduled Conferences.* The court will convene a status conference in this litigation every _____ [insert scheduled time], subject to the court's calendar. Except for emergencies, motions should not be brought for hearing at any time other than a regularly scheduled status conference. To be heard at a status conference, motions must be fully briefed at least _____ [insert time period]. Lead counsel for the parties shall (1) confer at least _____ [insert time period] before each scheduled conference and attempt to resolve outstanding disputes and (2) provide the court at least _____ [insert time period] prior to the hearing a joint letter listing all motions and other matters the parties anticipate addressing at the conference. Parties should make every effort not to notice depositions for days on which status conferences are scheduled, and no deposition shall go forward on such days without prior leave of court.
- (b) *Telephone Conferences.* Telephone conferences may be scheduled at the court's discretion by prior arrangement through the court's chambers, if all necessary parties are available and receive at least 24 hours notice.

5. Refinement of Issues

- (a) *General Briefing Requirements.* Briefs in support of, or in opposition to, any motions may not exceed _____ [number of] pages without leave of court. Reply briefs must be limited to _____ [number of] pages without leave of court.
- (b) *Rule 12 Motions.* [Include rulings on pending Rule 12 motions if appropriate, or establish dates for filing, briefs, and arguments. For example, "The motions of defendants A.B. and C.D. to dismiss the complaint of plaintiff E.F. for failure to state a claim on which relief may be granted are, upon consideration, DENIED. A similar motion is hereby deemed filed by each other defendant, and the same order deemed made on each such motion."]
- (c) *Pleadings.* Each defendant shall have until _____ [date], to file its answer to the complaint, including any cross-claims or counterclaims. Answers to any cross-claims or counterclaims will be filed by _____ [date]. Except for good cause shown, no additional parties may be joined as plaintiff, defendant, or third-party defendant after _____ [date].
- (d) *Summary Judgment.* The following issues may be submitted for early resolution on motions under Fed. R. Civ. P. 56: _____

Subject to further order of the court, motions seeking summary judgment on these issues will be filed with supporting affidavits and briefs by _____ [date].

Opposing affidavits and briefs will be filed by ____ [date] ____, and any reply briefs by ____ [date] ____.

- (e) *Class Action.* Attorney ____ [name] ____ will serve as interim counsel to represent the proposed class until the court determines whether to certify the action as a class action. To pursue class action treatment, plaintiffs must file by ____ [date] ____, a single, consolidated, special master amended complaint.

[Note: In an MDL proceeding, the consolidated class action complaints should ordinarily be filed in the transferee district.] The parties shall meet and confer to determine what, if any, expedited discovery needs to be conducted to address the class issues and specify the date by which plaintiffs will file a motion seeking class certification.⁷

A motion for class certification must do the following: identify the class(es) and any subclass(es) for which they seek certification; detail the facts that show satisfaction of the requirements of Fed. R. Civ. P. 23(a) and (b), including the identity of named plaintiff(s) to represent each class and subclass, the qualifications of counsel for each class and subclass, and the rate, percentage, or other formula for calculating the amount of attorney fees counsel expect to request for representing the proposed class; present a plan for managing the litigation for trial; describe the forms, methods, and financing to be used to give notice to class members; and identify and include reports and affidavits of any experts to be used to support class certification.

Defendants will file by ____ [date] ____, any objections to class certification, specifying with particularity the factual and legal basis of their objection and identifying any facts on which an evidentiary dispute exists. Defendants must identify and include reports and affidavits of any experts to be used in opposition to class certification.

[Optional] A hearing will be conducted by the court, under Rule 23(c), on ____ [date] ____, at which time the parties may present affidavits and declarations, extracts of depositions, responses to interrogatories, and documentary evidence relevant to any factual disputes. Only on a showing of good cause will a party be permitted to call a witness to testify in person at the hearing. In any event, only an expert whose report has been provided in the motion or opposition will be permitted to testify.

6. *Discovery*

- (a) *Approval of Expedited Discovery.* Permission to take expedited discovery of a plaintiff and a plaintiff's health care provider is granted if all of the following conditions are present:
- (1) plaintiff or a member of plaintiff's family is terminally ill;
 - (2) there is an urgent need to record and preserve the testimony because of the gravity of the illness; and
 - (3) [if applicable] plaintiff has completed the Plaintiff Fact Sheet and provided the medical authorizations required by the fact sheet and defen-

dants have had an opportunity to conduct a reasonable amount of informal discovery prior to the taking of any deposition.

- (b) *Initial Disclosures.* Initial disclosures under Rule 26(a) shall be made unless a party objects prior to or during the Rule 26(f) conference that disclosures are inappropriate in the context of the litigation and the court reviews the objection and agrees not to require such disclosure. [Alternative, if agreed or the court orders: The parties have agreed:/The court orders: that in light of the discovery plan set forth below, the parties are relieved of the responsibility to provide initial disclosures under Rule 26(a)(1).]
- (c) *Schedule.* Discovery shall be conducted according to the schedule at Attachment _____ [see section 40.24]. All discovery [other than on the issue(s) of _____] shall be completed by ___ [date]__.
- (d) *General Limitations.* All discovery requests and responses are subject to the requirements of Fed. R. Civ. P. 26(b)(1), 26(b)(2), and 26(g). Discovery shall not, without prior approval of the court, be taken of members of the proposed class or of persons in countries outside the United States; and any request for such discovery shall indicate why the discovery is needed and the specific information or documents sought.
- (e) *Confidentiality Order.* See Attachment _____ [see section 40.27].
- (f) *Documents*
 - (1) *Preservation.* See Attachment _____ [see section 40.25].
 - (2) *Numbering System.* Counsel shall develop and use a system for identifying by a unique number or symbol each document produced or referred to during the course of this litigation. All copies of the same document should ordinarily be assigned the same identification number.
 - (3) *Rolling Production.* The parties must produce documents to which they have not raised an objection on a rolling basis rather than waiting until all documents responsive to a request have been gathered. The parties must meet and confer regarding a schedule for the orderly production of different categories of documents.
 - (4) *Document Depositories.* See Attachment _____ [see section 40.26].
 - (5) *Avoidance of Multiple Requests and Coordination of Document Production with Other Courts.* Counsel shall, to the extent possible, coordinate and consolidate their requests for production and examination of documents to eliminate duplicative requests from the same party in this proceeding or in similar proceedings in other courts. No party shall request documents available to it at a document depository or from its own liaison counsel.

[Alternative: Defendants have agreed [or “The court orders the parties”] to produce in these proceedings all documents and information that they produce in related litigation dealing with the same ___ [insert the product, event, or set of transactions that define the litigation] ___ in other state and

federal courts, on the same schedule or as close to the same schedule as practicable. Plaintiffs have agreed [or “The court orders”] that the sequence in which defendants produce the documents need not conform to the requirements of Rule 34(b).]

- (6) *Privilege.* A party who, relying on any privilege or on the work product doctrine, does not produce all relevant or requested documents in response to a request for production of documents or a subpoena must state that it is invoking a privilege and must specify which privilege or doctrine it is invoking. The parties are to confer to determine the format and time for production of privilege logs.

Where courts in other jurisdictions have ordered the production of any document initially withheld by defendant as privileged or work product, the party shall either produce the document in these proceedings or timely move for a protective order.

- (g) *Interrogatories.* Counsel shall, to the extent possible, combine their interrogatories to any party into a single set of questions. No question shall be asked that has already been answered in response to interrogatories filed by another party [or in response to a “fact sheet” submitted by the same party (as provided in section 40.52)] unless there is reason to believe that a different answer will be given. [Without leave of court, interrogatories shall not include more than _____ separate questions, including subparts.] Pursuant to Rule 26(e)(2), the parties must promptly amend answers to interrogatories to provide complete additional or corrective information.
- (h) *Depositions.* See Attachment _____ [see section 40.29].
- (i) *Special Agreements.* All parties shall be under a continuing duty to make prompt disclosure to the court (and, unless excused by the court for good cause shown, to other parties) of the existence and terms of all agreements and understandings, formal or informal, absolute or conditional, settling or limiting their rights or liabilities in this litigation. This obligation includes not only settlements, but also such matters as “loan receipt” and “Mary Carter” agreements, and insurance, indemnification, contribution, and damage-sharing agreements.
7. *Trial.* Subject to further order of the court, the parties are directed to be ready for trial on all issues [except _____] by _____ [date]_____.
[Counsel are advised that the court will require a listing in advance of trial of the factual contentions each party expects to prove at the trial, identifying the witnesses and documents to be presented in support of each such contention, and the court may preclude the presentation of any contention, witness, or document not so identified.]
8. [Optional: *Next Conference.* The next pretrial conference is [tentatively] scheduled for _____ [date]_____. See ¶ 4(a) above.]
9. *Later Filed Cases.* The terms of this order, including pretrial consolidation, shall apply automatically to actions later instituted in, removed to, or transferred to this

court (including cases transferred for pretrial purposes under 28 U.S.C. § 1407) that involve claims of _____.

Objections to such consolidation or other terms of this order shall promptly be filed, with a copy served on liaison counsel for plaintiffs and defendants.

Dated: _____

 United States District Judge

Attachments: [Attachments to this order can be found from sections 40.22 to 40.3.]

Notes:

1. See *supra* section 40.1.
2. As a means of keeping advised of the progress of discovery without unnecessarily burdening the clerks' offices, the court may wish to add this provision: "At the time of requesting or responding to discovery, the parties shall file with the clerk a one-page notice indicating the nature of the discovery request or response."
3. Coordination of discovery, including use of joint notices for common depositions, is often appropriate even if consolidation is not warranted.
4. This order provides for appointment of only liaison counsel for defendants while providing for appointment of liaison counsel, lead counsel, and a steering committee for plaintiffs. In many cases, of course, the same organizational structure for both plaintiffs and defendants will be appropriate.
5. To ensure that each liaison counsel has a complete file, copies of all documents should be served on both liaison counsel even if individual service is also to be made on other attorneys and parties. If the court directs under Fed. R. Civ. P. 5 that service on all opposing counsel may be made by serving liaison counsel, some additional time should be provided for liaison counsel to make distribution among those counsel and parties interested in a particular document.
6. The court should encourage the parties to discuss waiver of service of process as contemplated by Rule 4(d). If the parties agree, the court should include a version of the bracketed clause in an order.
7. Note that Rule 23(c)(1) provides that the class certification decision need only be made at "an early practicable time." The revised rule contemplates that the decision may come after rulings on Rule 12 motions and early motions for summary judgment.

40.22 Responsibilities of Designated Counsel

It is ORDERED:

1. *Plaintiffs' Lead Counsel.* Plaintiffs' lead counsel¹ shall be generally responsible for coordinating the activities of plaintiffs during pretrial proceedings and shall
 - (a) determine (after such consultation with other members of Plaintiffs' Steering Committee and other cocounsel as may be appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of the plaintiffs on all matters arising during pretrial proceedings;
 - (b) coordinate the initiation and conduct of discovery on behalf of plaintiffs consistent with the requirements of Fed. R. Civ. P. 26(b)(1), 26(2), and 26(g), including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;
 - (c) conduct settlement negotiations on behalf of plaintiffs, but not enter binding agreements except to the extent expressly authorized;
 - (d) delegate specific tasks to other counsel or committees of counsel,² as authorized by the court, in a manner to ensure that pretrial preparation for the plaintiffs is conducted efficiently and effectively;
 - (e) enter into stipulations with opposing counsel as necessary for the conduct of the litigation;
 - (f) prepare and distribute periodic status reports to the parties;
 - (g) maintain adequate time and disbursement records covering services as lead counsel;
 - (h) monitor the activities of cocounsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided; and
 - (i) perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further order of the court.

Counsel for plaintiffs who disagree with lead counsel (or those acting on behalf of lead counsel) or who have individual or divergent positions may present written and oral arguments, conduct examinations of deponents, and otherwise act separately on behalf of their clients as appropriate, provided that in doing so they do not repeat arguments, questions, or actions of lead counsel.

2. *Plaintiffs' Liaison Counsel.* Plaintiffs' liaison counsel shall
 - (a) maintain and distribute to cocounsel and to defendants' liaison counsel an up-to-date service list;
 - (b) receive and, as appropriate, distribute to cocounsel orders from the court [and documents from opposing parties and counsel];

- (c) maintain and make available to cocounsel at reasonable hours a complete file of all documents served by or upon each party [except such documents as may be available at a document depository]; and
 - (d) establish and maintain a document depository [see section 40.261].
3. *Plaintiffs' Steering Committee.* The other members of plaintiffs' steering committee shall from time to time consult with plaintiffs' lead and liaison counsel in coordinating the plaintiffs' pretrial activities and in planning for trial.
 4. *Defendants' Liaison Counsel.* Defendants' liaison counsel shall
 - (a) maintain and distribute to cocounsel and to plaintiffs' liaison counsel an up-to-date service list;
 - (b) receive and, as appropriate, distribute to cocounsel orders from the court [and documents from opposing parties and counsel];
 - (c) maintain and make available to cocounsel at reasonable hours a complete file of all documents served by or upon each party [except such documents as may be available at a document depository];
 - (d) establish and maintain a document depository [see section 40.261]; and
 - (e) call meetings of cocounsel for the purpose of coordinating discovery, presentations at pretrial conferences, and other pretrial activities.
 5. *Privileges Preserved.* No communication among plaintiffs' counsel or among defendants' counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

Dated: _____

 United States District Judge

Notes:

1. In litigation involving different types of claims, such as economic injury and personal injury claims, the court and counsel may wish to create parallel structures for the cases.
2. In litigation involving cases in state and federal courts, the court and counsel should consider appointing a state–federal liaison committee to coordinate pretrial and trial activity, particularly discovery.

40.23 Attorneys' Time and Expense Records

It is ORDERED:

1. *Maintenance of Contemporaneous Records.* All counsel shall keep a daily record of their time spent and expenses incurred in connection with this litigation, indicating with specificity the hours, location, and particular activity (such as “conduct of deposition of A.B.”). The failure to maintain such records will be grounds for denying court-awarded attorney fees, as will an insufficient description of the activity (such as “research” or “review of correspondence”).¹
2. *Filing.*² By the fifteenth day of each month, each firm that may seek an award (or approval) of a fee by the court shall file [under seal with the clerk] [with lead counsel or a budget/record/compensation committee established by lead counsel and the court] a report summarizing, according to each separate activity, the time and expenses spent by its members or associates during the preceding month (and the ordinary billing rates of such attorneys in effect during the month) and the accumulated total of the firm’s time, hourly rates, and expenses to date. [Lead Counsel shall file under seal with the clerk by the last day of the month a report summarizing, for all participating counsel, such time and expenses reports, arranged according to the particular activities.]

Dated: _____

 United States District Judge

Notes:

1. The court may wish to include more specific guidelines concerning staffing, hourly rates, reimbursable expenses, and required documentation. *See supra* sections 14.21–14.22.
2. In cases in which the court may award fees, time and expense records should ordinarily be submitted through lead counsel, if one has been appointed, in order to assist lead counsel in monitoring the activities of cocounsel and in preparing a single, consolidated report for filing with the court. *See supra* section 14.212.

40.24 Scheduling Order

It is ORDERED:

1. Discovery¹ shall be conducted according to the following schedule:

Discovery	Time ²
Interrogatories by all parties to ascertain identity and location of witnesses and documents, including computerized records	_____
Document production by all parties	_____
Lay-witness depositions	
• noticed by plaintiffs	_____
• noticed by defendants	_____
Expert(s):	
• plaintiffs:	
– submission of reports	_____
– depositions	_____
• defendants:	
– submission of reports	_____
– depositions	_____
Production of proposed computerized summaries and samples:	
• by plaintiffs	_____
• by defendants	_____

2. Except for good cause shown—
 - (a) relief from the above schedule shall not be granted and all discovery shall be completed by _____ [date] _____;³
 - (b) discovery shall be limited to matters occurring after _____ [date] _____ [and before _____ [date] _____];
 - (c) no more than _____ interrogatories (including subparts) may be propounded to any party (exclusive of interrogatories seeking the identity and location of witnesses and documents);
 - [(d) no more than _____ depositions may be taken by either plaintiffs or defendants, and no single deposition (other than of _____) may take more than _____ hours/days;⁴] and

- (e) no amendment of pleadings may be made after _____ [date]_____, and no additional parties may be joined as plaintiff, defendant, or third-party defendant after _____ [date]_____.
3. The parties are expected to be prepared for trial on all issues [except _____] by _____ [date]_____.

Dated: _____

 United States District Judge

Notes:

1. Where initial disclosure is appropriate, provision should be made in the order. *See also supra* section 40.21, ¶ 6(b). Note that the 2000 amendments to Rule 26(a)(1) contemplate that a party in a complex case may object during the Rule 26(f) conference that initial disclosures are “not appropriate in the circumstances of the action” and by such objection call for a judicial ruling on the question.

2. The time for undertaking or completing some aspect of discovery may be stated either by using specific dates or by reference to completion of discovery that should precede it. The listing in this sample order of certain forms of discovery is not intended to suggest that they should be undertaken in this sequence or that each item should be completed before other discovery is undertaken. For example, in many cases, depositions should be conducted by both sides during the same period of time, during which the parties may also be involved in preparing answers to interrogatories and responses to requests for admission.

3. The extent to which a schedule for all discovery can be established at the initial conference will depend on the circumstances of the litigation. In some complex cases it may be feasible to establish a timetable only for certain portions of discovery, leaving for subsequent conferences the setting of a schedule for other discovery and a final cutoff date for all discovery. In other cases, a comprehensive discovery schedule—which may even include dates for preparation and submission of a joint statement of contested and uncontested facts, and for identification of trial witnesses and documents—can be established at the initial conference.

4. Other restrictions on discovery may be added.

40.25 Preservation of Documents, Data, and Tangible Things

[Caption]

Interim Order Regarding Preservation

[The primary purpose of this order is to have the parties meet and confer to develop their own preservation plan. If the court determines that such a conference is unnecessary or undesirable, paragraph 3, Duty to Preserve, may be modified to serve as a stand-alone preservation order.]

1. Order to Meet and Confer

To further the just, speedy, and economical management of discovery, the parties are ORDERED to meet and confer as soon as practicable, no later than 30 days after the date of this order, to develop a plan for the preservation of documents, data, and tangible things reasonably anticipated to be subject to discovery in this action. The parties may conduct this conference as part of the Rule 26(f) conference if it is scheduled to take place within 30 days of the date of this order. The resulting preservation plan may be submitted to this Court as a proposed order under Rule 16(e).

2. Subjects for Consideration

The parties should attempt to reach agreement on all issues regarding the preservation of documents, data, and tangible things. These issues include, but are not necessarily limited to:

- (a) the extent of the preservation obligation, identifying the types of material to be preserved, the subject matter, time frame, the authors and addressees, and key words to be used in identifying responsive materials;
- (b) the identification of persons responsible for carrying out preservation obligations on behalf of each party;
- (c) the form and method of providing notice of the duty to preserve to persons identified as custodians of documents, data, and tangible things;
- (d) mechanisms for monitoring, certifying, or auditing custodian compliance with preservation obligations;
- (e) whether preservation will require suspending or modifying any routine business processes or procedures, with special attention to document-management programs and the recycling of computer data storage media;
- (f) the methods to preserve any volatile but potentially discoverable material, such as voicemail, active data in databases, or electronic messages;
- (g) the anticipated costs of preservation and ways to reduce or share these costs; and

- (h) a mechanism to review and modify the preservation obligation as discovery proceeds, eliminating or adding particular categories of documents, data, and tangible things.

3. Duty to Preserve

- (a) Until the parties reach agreement on a preservation plan, all parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things in the possession, custody and control of the parties to this action, and any employees, agents, contractors, carriers, bailees, or other nonparties who possess materials reasonably anticipated to be subject to discovery in this action. Counsel is under an obligation to exercise reasonable efforts to identify and notify such nonparties, including employees of corporate or institutional parties.
- (b) “Documents, data, and tangible things” is to be interpreted broadly to include writings; records; files; correspondence; reports; memoranda; calendars; diaries; minutes; electronic messages; voicemail; E-mail; telephone message records or logs; computer and network activity logs; hard drives; backup data; removable computer storage media such as tapes, disks, and cards; printouts; document image files; Web pages; databases; spreadsheets; software; books; ledgers; journals; orders; invoices; bills; vouchers; checks; statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic presentations; drawings; films; charts; digital or chemical process photographs; video, phonographic, tape, or digital recordings or transcripts thereof; drafts; jottings; and notes. Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, and metadata, is also included in this definition.
- (c) “Preservation” is to be interpreted broadly to accomplish the goal of maintaining the integrity of all documents, data, and tangible things reasonably anticipated to be subject to discovery under Fed. R. Civ. P. 26, 45, and 56(e) in this action. Preservation includes taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of such material, as well as negligent or intentional handling that would make material incomplete or inaccessible.
- (d) If the business practices of any party involve the routine destruction, recycling, relocation, or mutation of such materials, the party must, to the extent practicable for the pendency of this order, either
 - (1) halt such business processes;
 - (2) sequester or remove such material from the business process; or
 - (3) arrange for the preservation of complete and accurate duplicates or copies of such material, suitable for later discovery if requested.

- (e) Before the conference to develop a preservation plan, a party may apply to the court for further instructions regarding the duty to preserve specific categories of documents, data, or tangible things. A party may seek permission to resume routine business processes relating to the storage or destruction of specific categories of documents, data, or tangible things, upon a showing of undue cost, burden, or overbreadth.

4. Procedure in the Event No Agreement Is Reached

If, after conferring to develop a preservation plan, counsel do not reach agreement on the subjects listed under paragraph 2 of this order or on other material aspects of preservation, the parties are to submit to the court within three days of the conference a statement of the unresolved issues together with each party's proposal for their resolution of the issues. In framing an order regarding the preservation of documents, data, and tangible things, the court will consider those statements as well as any statements made in any applications under paragraph 3(e) of this order.

Entered this ____ day of ____, 20__

United States District Court Judge

40.26 Document Depositories

.261 Order to Meet and Confer to Establish Joint Document Depository 749

.262 Order to Establish Separate Document Depositories 751

40.261 Order to Meet and Confer to Establish Joint Document Depository

[Caption]

It is ORDERED:¹

1. Defendants, in consultation with plaintiffs, shall establish and maintain a document depository program (a “depository”) in a manner to be agreed on by the parties and/or ordered by the Court. The parties will propose to the court a formula for sharing the cost of maintaining the facility. The depository shall store all materials produced by parties and third-parties in this proceeding that may be needed for more than a single case, including documents, interrogatories, requests for admission, requests for production of documents, deposition transcripts, and similar materials. These materials shall be made available to any litigants in any case in the above-captioned litigation [and to any litigants in any related state court litigation].
2. Counsel must agree on computer hardware and software systems for scanning, viewing, downloading, and printing documents from remote locations. The parties must agree about allocating fees to operate the depository. The document depository must not be operated as a profit center. Each attorney/party seeking access to the depository must sign the agreement regarding rules of usage, protection of confidential documents, and payment of fees.
3. A party fully satisfies its obligation to produce documents to the parties in all cases in this litigation by placing those documents in the depository and serving notice of this placement on counsel in all affected cases. Such notice shall identify the documents produced, using a unique alphanumeric identifier, and notice shall be produced as documents are kept in the usual course of business or documents shall be organized and labeled to correspond with the categories in the request set forth in Fed. R. Civ. P. 34(b). This provision may be revised based on the parties’ submissions pursuant to paragraph 4 below.
4. Within _____ days of this order, plaintiffs’ lead counsel (or a designated representative) shall meet with defendants’ lead counsel (or a designated representative) to confer about the creation, financing, design, and operation of the depository and shall endeavor to present to the court a stipulation outlining a protocol for the depository, as well as the organization, categorization, and/or indexing of the defendants’ responses to plaintiffs’ document requests. The parties shall present to the

court by _____ [date] _____ a proposed stipulation regarding the depository protocol and, if necessary, a statement of any matters on which they disagree. In developing this protocol, the parties shall consider potential protocols that would efficiently use technologies (such as CD-ROM or Internet-based production) and that would facilitate the parties' prompt and effective access to the contents of the depository and reduce parties' need to travel to examine documents. Any technology used must permit a hard copy of the document to be produced by the recipient.

5. Each party shall be responsible for delivering to the depository any documents produced in this proceeding pursuant to Fed. R. Civ. P. 45. The party noticing a deposition shall be responsible for delivering to the depository any transcription (including videotape) of any deposition taken in any of the consolidated cases. The party serving any objection, answer, or response to an interrogatory, Rule 34 request, or request for admission in any of the consolidated cases shall be responsible for delivering a copy to the depository.
6. Plaintiffs' liaison counsel (or a designated representative) shall be responsible for monitoring the content of the depository and shall provide periodic notification to all plaintiffs' counsel of the addition of materials to the depository, with a basic description of the newly added materials.
7. Parties to the litigation may establish at their own expense private document depositories at other locations and make arrangements for obtaining documents for inclusion in those depositories as they see fit. The depository established pursuant to this order, however, shall be the official document depository for all consolidated cases.

Notes:

1. This order is derived primarily from an order issued in *In re Bridgestone/Firestone, Inc. ATX, ATX II, & Wilderness Tires Products Liability Litigation*, MDL No. 1373 (S.D. Ind. Jan. 2001). Paragraph 2 is derived from an order issued in *In re Serzone Products Liability Litigation*, MDL No. 1477 (S.D. W. Va. Oct. 17, 2002).

40.262 Order to Establish Separate Document Depositories

It is ORDERED:

1. *Establishment of Depositories.*¹ Document depositories shall be established in _____ [specify city] _____ at such locations as the parties may agree on. In the absence of agreement, the court upon motion shall designate such locations. Documents produced by plaintiffs pursuant to formal or informal request shall be placed in a plaintiff's depository maintained at the expense of plaintiffs; those produced by defendants pursuant to formal or informal request shall be placed in a defendant's depository maintained at the expense of defendants. Each depository will contain equipment for producing copies and separately counting the copies that are made for each party.
2. *Filing System.* The filing party shall place the documents in the depository in sequential order according to the document numbers, and the documents shall be organized in groups in accordance with the document identification prefixes. Documents without identification numbers shall be organized in an orderly and logical fashion. Existing English translations of all foreign-language documents shall be filed with the documents.²
3. *Access, Copying, Log.* Counsel appearing for any party in this litigation and the staffs of their respective law firms working on these cases shall have reasonable access during business hours to each document in any such depository and may copy or obtain copies at the inspecting party's expense. Such inspection shall not be subject to monitoring by any party. A log will be kept of all persons who enter and leave the depository, and only duplicate copies of documents may be removed from the depository except by leave of court. [Access to, and copying of, confidential documents is subject to the limitations and requirements of the order protecting against unauthorized disclosure of such documents.]
4. *Subsequent Filings.* After the initial deposit of documents in the depository, notice of all subsequent deposits shall be given to both liaison counsel.

Dated: _____

United States District Judge

Notes:

1. This order contemplates creation of separate depositories for each side of the litigation. Consider whether the needs of the parties for separate facilities can also be accomplished through electronic means within a single facility. *See* order at *supra* section 40.261.

2. Provision may be made for use of the most appropriate technology for storage, retrieval, and distribution of the documents, including electronic materials. *See supra* section 11.444.

40.27 Confidentiality Order

It is hereby ordered that the following provisions shall govern claims of confidentiality in these proceedings:

- (a) Review of the confidential documents and information by counsel, experts, or consultants for the litigants in the litigation shall not waive the confidentiality of the documents or objections to production.
- (b) The inadvertent, unintentional, or *in camera* disclosure of a confidential document and information shall not generally be deemed a waiver, in whole or in part, of any party's claims of confidentiality.
- (c) Only documents containing trade secrets, special formulas, company security matters, customer lists, financial data, projected sales data, production data, matters relating to mergers and acquisitions, and data which touch upon the topic of price may be designated confidential, provided such documents have not previously been disclosed by the producing party to anyone except those in its employment or those retained by it. Such documents or parts thereof will be designated after review by an attorney for the producing party by stamping the word confidential on each page. [Alternative for an MDL relating to product liability litigation: Discovery material containing trade secrets, or other confidential or proprietary research, development, manufacturing, or commercial or business information, may be designated as confidential. Without prejudice to a party's right to seek production of the following information or of a party to object to its production, the information subject to a confidentiality designation may include the following: customer names; proprietary licensing, distribution, marketing, design, development, research, and manufacturing information—not publicly filed with any federal or state regulatory authority—regarding products and medicines, whether currently marketed or under development; clinical studies not publicly filed with any federal or state regulatory authority; information concerning competitors; production information; personnel records and information; and financial information not publicly filed with any federal or state regulatory authority.]
- (d) If any party believes a document not described in the above paragraph should nevertheless be considered confidential, it may make application to the court or special master. Such application shall only be granted for reasons shown and for extraordinary grounds.
- (e) Documents designated confidential shall be shown only to the attorneys, the parties, parties' experts, actual or proposed witnesses, and other persons whom the attorneys deem necessary to review the documents for the prosecution or defense of this lawsuit. Each person who is permitted to see confidential documents shall first be shown a copy of this order and shall further be advised of the obligation to honor the confidentiality designation. The parties agree that any discovery material produced in this litigation may be used in all actions encompassed by this insert product or other litigation

name] [MDL/class action] litigation and in any other action brought by or on behalf of any other [insert product name] user who agrees to be bound by the terms of this order.

- (f) If a party believes that a document designated or sought to be designated confidential by the producing party does not warrant such designation, the party shall first make a good-faith effort to resolve such a dispute with opposing counsel. In the event that such a dispute cannot be resolved by the parties, either party may apply to the court or special master for a determination as to whether the designation is appropriate. The burden rests on the party seeking confidentiality to demonstrate that such designation is proper.
- (g) At the time of deposition or within 10 days after receipt of the deposition transcript, a party may designate as confidential specific portions of the transcript which contain confidential matters under the standards set forth in paragraph (a) above. This designation shall be in writing and served upon all counsel. No objection shall be interposed at deposition that an answer would elicit confidential information. Transcripts will be treated as confidential for this 10-day period. Any portions of a transcript designated confidential shall thereafter be treated as confidential in accordance with this order. In filing materials with the court in pretrial proceedings, counsel shall file under seal only those specific documents and that deposition testimony designated confidential, and only those specific portions of briefs, applications, and other filings that contain verbatim confidential data, or that set forth the substance of such confidential information.
- (h) In any application to the court or special master referred to or permitted by this order, the court or special master may exercise discretion in determining whether the prevailing party in such a dispute may recover the costs incurred by it and, if so, the amount to be awarded.

Dated: _____

United States District Judge

40.28 Referral of Privilege Claims to Special Master

It appearing that submission of claims of privilege to a special master¹ appointed under Fed. R. Civ. P. 53 is warranted by the expected volume of such claims and by the likelihood that *in camera* inspection may be needed to rule on these claims and should be accomplished, to the extent possible, by someone other than the judge to whom this litigation has been assigned, the court hereby [“with the consent of the parties” or “having notified the parties and provided an opportunity to be heard”] ORDERS:

1. *Appointment.* _____ is appointed under Rule 53 as special master for the purpose of considering all claims of privilege (including claims of protection against disclosure for trial preparation materials) that may be asserted during the course of discovery in this litigation and for such other matters as may be referred to such special master by the court, such as resolution of disputes under the Confidentiality Order.
2. *Procedures.* The special master shall have the rights, powers, and duties provided in Rule 53 and may adopt such procedures as are not inconsistent with that rule or with this or other orders of the court. Until directed otherwise by the special master or the court, any person asserting a privilege shall create a privilege log that will specifically identify the document or other communication sought to be protected from disclosure, including the date, the person making the statement, the persons to whom or in whose presence the statement was made, other persons to whom the contents were or have been revealed, the general subject matter of the communication (unless itself claimed to be privileged), the particular privilege(s) or doctrine(s) upon which protection against disclosure is based, and any other circumstances affecting the existence, extent, or waiver of the privilege. When appropriate, the special master may require that this documentation of claims of privilege be verified.
3. *Reports.* The special master shall make findings of fact and conclusions of law with respect to the matters presented by the parties and shall report expeditiously to the court pursuant to Rule 53(f) as applicable in nonjury actions. Unless directed by the court or believed advisable by the special master, the report shall not be accompanied by a transcript of the proceedings, the evidence, or the exhibits. Such parts of the report, if any, that may be confidential shall be filed under seal pending further order of the court.
4. *Fees and Expenses.* Compensation, at rates mutually agreeable to the special master and the parties, shall be paid to the special master on a periodic basis by the parties, together with reimbursement for reasonable expenses incurred by the special master. The special master may employ other persons to provide clerical and secretarial assistance; such persons shall be under the supervision and control of the special master, who shall take appropriate action to ensure that such persons preserve the confidentiality of matters submitted to the special master for review. Fi-

nal allocation of these amounts shall be subject to taxation as costs at the conclusion of the case at the discretion of the court.²

5. *Distribution.* A copy of this order shall be mailed by the clerk to the special master and to liaison counsel for the parties.

Dated: _____

United States District Judge

Notes:

1. *See supra* section 11.52.
2. The order may provide the specific compensation payable to the special master and specify the reimbursable expenses.

40.29 Deposition Guidelines

It is ORDERED¹ that depositions be conducted in accordance with the following rules:

1. *Cooperation.* Counsel are expected to cooperate with, and be courteous to, each other and deponents.
2. *Stipulations.* Unless contrary to an order of the court, the parties (and when appropriate, a nonparty witness) may stipulate in any suitable writing to alter, amend, or modify any practice relating to noticing, conducting, or filing a deposition. Stipulations for the extension of discovery cutoffs set by the court are not valid, however, until approved by the court.
3. *Scheduling.* All depositions in this litigation may be cross-noticed in any related action pending in state court. Liaison counsel representing the side initiating a deposition shall provide to all known state liaison counsel at least ___ days notice of all depositions filed by plaintiffs and defendants, respectively. Absent extraordinary circumstances, counsel shall consult in advance with opposing counsel and unrepresented-proposed deponents in an effort to schedule depositions at mutually convenient times and places. [That some counsel may be unavailable shall not, however, in view of the number of attorneys involved in this litigation, be grounds for deferring or postponing a deposition if another attorney from the same firm or who represents a party with similar interests is able to attend.]

Scheduling should take into account (a) the availability of documents from among those produced by the parties and third parties, (b) the objective of avoiding the need to subject any person to repeated depositions, and (c) the need to preserve relevant testimony. As a general rule, no witness should be deposed on the same subject more than once in this litigation. A party seeking to take a second deposition of a witness shall provide the opposing party its basis for an exception and a listing of the subjects for which it seeks to depose the witness. Second depositions on new subject matter shall be permitted only upon consent of the parties or an order of this Court issued for good cause shown.

4. *Location.* The location of depositions should be as consistent as possible within each city so that any videotape, videoconferencing, or other equipment can be left in place.
5. *Attendance*
 - (a) *Who May Be Present.* Unless otherwise ordered under Fed. R. Civ. P. 26(c), depositions may be attended 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 party, counsel for the deponent, and potential witnesses. While a deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under the Confidentiality Order shall be excluded.

- (b) *Unnecessary Attendance.* Unnecessary attendance by counsel is discouraged and may not be compensated in any fee application to the court. Counsel who have only marginal interest in a proposed deposition or who expect their interests to be adequately represented by other counsel may elect not to attend and to conduct, pursuant to paragraph 13 of this order, supplemental interrogation of the deponent should a review of the deposition reveal the need for such examination.
- (c) *Notice of Intent to Attend a Deposition.* To allow counsel to make arrangements for adequate deposition space, counsel who intend to attend a deposition noticed in the above-captioned litigation should advise counsel for the noticing party at least three days prior to the deposition, if feasible.

6. Conduct

- (a) *Examination.* Each side should ordinarily designate one attorney to conduct the principal examination of the deponent, and examination by other attorneys should be limited to matters not previously covered. Counsel should cooperate so examinations by multiple attorneys do not exceed the allotted time.
- (b) *Transmittal of Copies.* The attorney who conducts the principal examination for the noticing party is responsible for assuring that a copy of the deposition transcript, diskettes, and any videotapes are provided to the document depository and to liaison counsel.
- (c) *Objections and Directions Not to Answer.* Counsel shall comply with Fed. R. Civ. P. 30(d)(1). When a privilege is claimed, the witness should 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 relating to form and foundation, are preserved.

- (d) *Private Consultation.* Private conferences between deponents and their attorneys in the course of interrogation are improper except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the court for good cause shown, such conferences may be held during normal recesses and adjournments.
- (e) *Continuation of Deposition.* If a deposition is not finished on Friday of a deposition week, it will continue on the following Monday, subject to the availability of the witness. If the witness is unavailable, it will resume on a newly noticed date.

7. Documents

- (a) *Production of Documents.* Witnesses subpoenaed to produce documents should ordinarily be served at least 30 days before the scheduled deposition.

Arrangements should be made to permit inspection of the documents before the interrogation commences.

- (b) *Confidentiality Order.* A copy of the confidentiality order shall be provided to the deponent before the deposition commences if the deponent is to produce or may be asked about documents that may contain confidential information. [Counsel shall comply with the provisions of the confidentiality order when examining a deponent about confidential information.]
 - (c) *Copies.* Extra copies of documents about which counsel expect to examine the deponent should ordinarily be provided to opposing counsel and the deponent. Deponents should be shown a document before being examined about it except when counsel seek to impeach or test the deponent's recollection.
 - (d) *Marking of Deposition Exhibits.* Documents shall be referred to by the unique alpha-numeric identifier assigned by the document depository.
8. *Depositions of Witnesses Who Have No Knowledge of the Facts.* An officer, director, or managing agent of a corporation or a government official served with a notice of a deposition or subpoena regarding a matter about which such person has no knowledge may submit to the noticing party, a reasonable time before the date noticed, an affidavit so stating and identifying a person within the corporation or government entity believed to have such knowledge. Notwithstanding such affidavit, the noticing party may proceed with the deposition, subject to the right of the witness to seek a protective order.
9. *Recording Depositions by Nonstenographic Means*
- (a) *Tape-Recorded Depositions.* By so indicating in its notice of a deposition, a party may record the deposition by tape recording in lieu of stenographic recording pursuant to Fed. R. Civ. P. 30(b)(2) and (3). Other parties may at their own expense arrange for stenographic recording of the deposition, may obtain a copy of the tape and transcript upon payment of a pro rata share of the noticing party's actual costs, and may prepare and file their own version of the transcript of the tape recording.
 - (b) *Videotaped Depositions.* By so indicating in its notice of a deposition, a party may record the deposition by videotape pursuant to Fed. R. Civ. P. 30(b)(2) and (3).
 - (1) *Rules for Videotaped Reporting*
 - (i) *Video Operator.* The operator(s) of the videotape recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition the operator(s) shall swear or affirm to record the proceedings fairly and accurately.
 - (ii) *Attendance.* Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and demonstrative materials used during the deposition) will be videotaped.

- (iii) *Standards.* The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a trial. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box 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 or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Eating and smoking by deponents or counsel during the deposition will not be permitted.
- (iv) *Interruptions.* [The videotape shall run continuously throughout the active conduct of the deposition.] [Videotape recording will be suspended during all “off the record” discussions.]²
- (v) *Index.* The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends, objections are made and examination resumes at which exhibits are identified, and any interruption of continuous tape recording occurs, whether for recesses, “off the record” discussions, mechanical failure, or otherwise.
- (vi) *Filing.* [The operator shall preserve custody of the original videotape in its original condition until further order of the court.] [Subject to the provisions of paragraph 10 of this order, the original of the tape recording, together with the operator’s log index and a certificate of the operator attesting to the accuracy of the tape, shall be filed with the clerk.] No part of a videotaped deposition shall be released or made available to any member of the public unless authorized by the court.
- (vii) *Objections.* Requests for pretrial rulings on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. If needed for an informed ruling, a copy of the videotape and equipment for viewing the tape shall also be provided to the court.
- (viii) *Use at Trial; Purged Tapes.* A party desiring to offer a videotape deposition at trial shall be responsible for having available appropriate playback equipment and a trained operator. After the designation by all parties of the portions of a videotape to be used at trial, an edited copy of the tape, purged of unnecessary portions (and any portions to which objections have been sustained), [may] [shall] be pre-

pared by the offering party to facilitate continuous playback; but a copy of the edited tape shall be made available to other parties at least ____ days before it is used, and the unedited original of the tape shall also be available at the trial.

10. *Telephonic Depositions.* By indicating in its notice of a 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)(7). Unless an objection is filed and served within ____ 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.
11. *Waiver of Transcription and Filing.* The parties and deponents are authorized and encouraged to waive transcription and filing of depositions that prove to be of little or no usefulness in the litigation or to agree to defer transcription and filing until the need for using the deposition arises.
12. *Use.* Depositions conducted in this litigation may be used in related cases in any state court to the extent permitted by that state's laws and rules. Depositions may, under the conditions prescribed in Fed. R. Civ. P. 32(a)(1)–(4) or as otherwise permitted by the Federal Rules of Evidence, be used against any party (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this court as part of this litigation):
 - (a) who was present or represented at the deposition;
 - (b) who had reasonable notice thereof; or
 - (c) who, within 30 days after the filing of the deposition (or, if later, within 60 days after becoming a party in this court in any action that is a part of this litigation), fails to show just cause why such deposition should not be usable against such party.
13. *Supplemental Depositions.* Each party not present or represented at a deposition (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this court) may, within 30 days after the filing of the deposition (or, if later, within 60 days after becoming a party in this court in any action that is a part of this litigation), request permission to conduct a supplemental deposition of the deponent, including the right to take such deposition telephonically and by nonstenographic means. If permitted, the deposition shall be treated as the resumption of the deposition originally noticed; and each deponent shall, at the conclusion of the initial deposition, be advised of the opportunity of nonattending parties to request a resumption of such deposition, subject to the right of the deponent to seek a protective order. Such examination shall not be repetitive of the prior interrogation.
14. *Disputes During Depositions*
 - (a) Disputes between the parties that arise during a deposition should be addressed to this [MDL] court rather than the district court in which the depo-

sition is being conducted. The undersigned will exercise by telephone the authority granted under 28 U.S.C. § 1407(b) to act as district judge in the district in which the deposition is taken.²

- (b) *Immediate Presentation.* Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require a rescheduling of the deposition, should be presented by telephone to the court. If the judge is not available during the period while the deposition is being conducted, the dispute may be submitted to Magistrate Judge _____ by telephone or as the judge may direct.³ The presentation of the issue and the court's ruling will be recorded as part of the deposition.⁴

Dated: _____

 United States District Judge

Notes:

1. *See supra* section 11.45.
2. The power to exercise authority over nonparty deponents outside the district is available only in multidistrict litigation, unless the judge has been given an intracircuit or intercircuit assignment.
3. *See supra* section 11.456.
4. If a simultaneous stenographic transcript is being made, the court may prefer that "off the record" discussions be eliminated from the videotape.