

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division

In re:) Master File No. 92-P-10000-S
SILICONE GEL BREAST IMPLANTS) THIS DOCUMENT RELATES TO:
PRODUCTS LIABILITY LITIGATION) ALL CASES
(MDL 926))

**ORDER GOVERNING EXPEDITED DISCOVERY AND
THE TAKING OF A VIDEOTAPE DEPOSITION
FOR PRESERVATION OF TESTIMONY FOR TRIAL**

This Order is intended to and shall supplement the provisions in Pretrial Management Order No. 5 relating to the taking of depositions. IT IS ORDERED:

(1) Approval of expedited discovery. Expedited discovery of plaintiff is granted in certain cases where all the following conditions exist:

(A) The plaintiff is terminally ill;

(B) Because of the gravity of plaintiff's illness, there is an urgent need to record and preserve plaintiff's testimony; and

(C) Plaintiff has fully answered Defendants' Joint Questionnaire and provided and fully complied with the execution of the medical authorization as required by the Questionnaire and Defendant has had an opportunity to conduct reasonable informal discovery prior to the taking of the Plaintiff's deposition.

(2) Depositions. The notice of deposition shall state whether the noticing party intends to videotape the deposition.

(A) Videotaped depositions. By indicating in its notice of deposition that it wishes to record the deposition by videotape and by identifying the proposed videotape operator, a party shall

be deemed to have moved for such an order under Fed.R.Civ.P. 30(b)(4). Unless an objection is filed and served within seven (7) days after such notice is received, the court shall be deemed to have granted the motion pursuant to the following terms and conditions:

(1) Stenographic recording. An independent certified court reporter shall simultaneously stenographically record all deposition proceedings and testimony. The court reporter shall on camera administer the oath or affirmation to the deponents. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of Fed.R.Civ.P. 30(e) (submission to the witness) and 30(f) (filing, exhibits). The court reporter will also furnish computer disks in text-readable form to the Document Depository in Cincinnati, Ohio.

(2) Cost. The noticing party shall bear the expense of both the videotaping and the stenographic recording. Any party may at its own expense obtain a copy of the videotape and the stenographic transcript. Requests for taxation of these costs and expenses may be made at the conclusion of the litigation in accordance with applicable law.

(3) Videotape operator. The video camera shall be operated by an experienced video camera operator who shall

swear or affirm prior to the deposition to record proceedings accurately and objectively. The operator shall be subject to the provisions of Fed.R.Civ.P. 28 (c).

(4) Attendance. Unless otherwise ordered under Fed.R.Civ.P. 26(c), depositions may be attended by counsel of record, members and employees of their firms and any person who is assisting counsel in the litigation and whose presence is reasonably required, attorneys specially engaged by a party for the purposes of the deposition, the parties or the representative of a party, and counsel for the deponent. At the commencement of the deposition, each witness, attorney, and other person attending the deposition shall be identified. Thereafter, the camera shall be focused on only the deponent and any demonstrative materials used during the deposition.

(5) Interruptions. No attorney or party shall direct instructions to the video camera operator as to the method of operating the equipment. The video camera operation will be suspended during the deposition only upon stipulation by counsel and "off the record" discussions shall not be videotape recorded. The video camera operator shall record on camera the time of suspension and any subsequent reconvening of the deposition.

(6) Standards. The deposition will be conducted in a manner designed 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 recordings. 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.

(7) Examination: exhibits: re-reading. The provisions of this order regarding exhibits and examination of deponents apply to videotaped depositions. Re-reading of questions or answers, when needed, will be done off camera by the stenographic court reporter.

(8) 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, at which objections are made and examination resumes, at which exhibits are identified, and at which any interruption of continuous tape-recording occurs, whether for recesses, "off the record" discussion, mechanical failure, or otherwise.

(9) Filing. After the deposition is completed,

the video operator shall certify on camera the correctness, the completeness, and accuracy of the videotape recording in the same manner as a stenographic court reporter, and shall file the original notice with the Defendants' Liaison Counsel and a true copy with Plaintiffs' Liaison Counsel.

(10) Objections. Even in depositions taken primarily for use at trial, it is rarely necessary to state objections to questions during the deposition. Most objections can -- and should -- be made for the first time at trial when a deposition is offered. Any objections that are made during the deposition must be stated concisely and in a non-argumentative and non-suggestive manner, such as would be appropriate if the examination was conducted before a judicial officer. A party may instruct a deponent not to answer a question only when necessary to preserve a privilege, to enforce a limitation on evidence imposed by the court, or to present a motion under Rule 30(d). 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 the objection involves matters peculiar to the videotaping, a copy of the videotape and equipment for viewing the tape shall also be provided to the court.

(11) Use at trial. A party desiring to offer a videotape deposition at trial shall be responsible for having available appropriate playback equipment and a trained operator.

(12) Technical data. Technical data, such as recording speeds and other information needed to replay or copy

the tape, shall be included on copies of the videotaped deposition.

Dated: April 22, 1993

/s/ Sam C. Pointer, Jr.
United States District Judge