

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division**

In re:)

SILICONE GEL BREAST IMPLANTS)
PRODUCTS LIABILITY LITIGATION) Case No. CV 92-P-10000-S
(MDL 926))

**ORDER 31K
(Protocol for Trial Perpetuation Depositions)**

The court hereby establishes (subject to revision as circumstances warrant) the following procedural protocol to govern the trial perpetuation depositions of the members of the National Science Panel, scheduled for April 20-27, 1999, at the Hugo L. Black United States Courthouse in Birmingham, Alabama.

1. By March 17, 1999, counsel for panelists, John Kobayashi and Ina Leonard, will submit to the court and to counsel for plaintiffs and defendants a list of the topics of inquiry they expect to pursue with each of the panelists by way of direct examination. The list of topics will include references to any documents that counsel plan to refer to or use during the examination.

2. By March 24, 1999, counsel for the defendants will submit to the court, to counsel for the panelists, and to counsel for plaintiffs a list of the topics of inquiry they expect to pursue with each of the panelists by way of cross examination (except matters in which surprise is needed for effective impeachment). Counsel for the defendants shall also submit a list of the documents they expect to use or may use, with the exception of documents to be used solely for impeachment. In submitting the lists, documents shall be identified by the Record No. as previously submitted to the panelists, and if the document has no Record No. counsel for the defendants shall supply a copy of the document.

3. By March 31, 1999, counsel for the plaintiffs will submit to the court, to counsel for the panelists, and to counsel for the defendants a list of the topics of inquiry they expect to pursue with each of the panelists by way of cross examination (except matters in which surprise is needed for effective impeachment). Counsel for the plaintiffs shall also submit a list of the documents they expect to use or may use, with the exception of documents to be used solely for impeachment. In submitting the lists, documents shall be identified by the Record No. as previously submitted to the panelists, and if the document has no Record No. counsel for the plaintiffs shall supply a copy of the document.

4. By April 7, 1999, counsel may submit to the court and exchange with other counsel additional topics of inquiry and additional documents in the manner set forth in paragraphs 2 and 3.

5. With respect to the submission of topics of inquiry and documents by the parties in

paragraphs 2, 3 and 4—

(a) The listing of topics of inquiry is intended to provide some guidance to the panelists, who were supplied by the parties with more than 2,000 documents for their consideration in preparing their report, and who therefore need some assistance in determining what is likely to be the subject of examination. The parties will not necessarily be precluded from asking questions that go beyond the topics of inquiry they have listed. However, the parties should recognize that (1) when faced with a question not within the listed topics, witnesses may respond that the subject matter was not fully considered because the question was not on the list of topics and therefore a proper answer cannot be provided, and (2) the Court may choose to comment, on the record, in a manner that recognizes the right of the witness to so respond.

(b) The listing of topics of inquiry should fairly indicate the nature and scope of the proposed inquiry so that the panelists may appropriately prepare themselves for the examination. For example, when referring to books, treatises or lengthy articles, it would normally be appropriate to refer to a particular part or section of the item.

(c) The Court recognizes that counsel may at times be surprised by the answer of a witness or that other circumstances may make it appropriate to interpret these procedures with flexibility to the end that justice is done and the truth ascertained.

6. By April 9, 1999, counsel shall submit motions in limine, to the extent reasonably anticipated, with respect to objections to topics of inquiry, documents, or any other matters. The court expects counsel for the parties and the panelists to confer promptly in a good-faith effort to resolve informally any disputes regarding such issues. Unresolved objections will be considered by the court at a hearing at 1:30 p.m. on April 13, 1999.

7. By April 9, 1999, counsel submit to the court and and exchange demonstrative exhibits, such as graphs, illustrations, and blow-ups of documents. The parties and counsel for the panelists shall raise any objections regarding demonstrative exhibits by April 13, 1999, and the court expects to rule on such objections as expeditiously as possible.

8. The court anticipates that the parties may cross notice these trial perpetuation depositions. The notice should attach a copy of this Order 31K. The notice should advise parties in such cases that the topics of inquiry listed by counsel under paragraphs 1-3 will be posted on the webpage (and will also be available through Plaintiffs' Liaison Office) and that they may submit additional topics of inquiry (with or without reference to documents) which they suggest should be asked of the panelists, as well as any other inquiries, to Ralph Knowles (on behalf of the plaintiffs) or Richard Eittreim (on behalf of defendants). The submission of such questions and documents are not subject to the time limitations of paragraphs 2, 3 and 4 above but they should be submitted as soon as possible so they may be fairly considered by counsel. The addresses, telephone numbers and fax numbers of Ralph Knowles and Richard Eittreim should be provided in the notices.

9. The trial perpetuation depositions will be conducted according to the following procedures:

(a) The depositions will be transcribed stenographically by a court reporter and will be videotaped in accordance with procedures to be established by the court in consultation with counsel for the panelists and for the parties.

(b) The undersigned will preside at the depositions and conduct the proceedings in accordance with procedures applicable at trial. While the objections and rulings on objections will be governed by the Federal Rules of Evidence and the procedures applicable in federal courts, the court anticipates that the state courts may need to make their own determinations with respect to rulings on objections if such depositions are offered in state court trials.

(c) Each panelist, in an order to be determined, will be examined first by counsel for the panelists, followed by counsel for the defendants, followed by counsel for the plaintiffs. Re-cross by counsel for the defendants and re-cross by counsel for plaintiffs shall be allowed subject to reasonable time limits, and the court may in its discretion allow additional examination thereafter. For each panelist to be deposed, there will be one principle examiner for the plaintiffs and one for the defendant. Any requests for additional non-repetitive examination by other counsel will be considered by the court for good cause shown.

(d) Each panelist will be permitted to be present while the other panelists are being examined.

This the 10th day of March, 1999.

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