

FILED IN CLERK'S
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DEC 9 1 34 PM '85

ANNE ANDERSON et al.,

Plaintiffs

v.

CRYOVAC, INC. et al.,

Defendants

) COURT
) OF
) THE DISTRICT
) MASSACHUSETTS
) Civil Action
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No. 82-1672-S

DOCKETED

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

Plaintiffs hereby move for an order prohibiting the defendants from deposing plaintiffs' expert Shirley Conibear, M.D., in the presence of Dr. Greene, a toxicologist who may be called as an expert witness for the defendants. The grounds for this motion are as follows:

1. The depositions of the parties' experts are by agreement entered as part of the Court's discovery order.
2. The plaintiffs have provided eight experts whose depositions have taken place over eighteen days. These depositions have taken place without the presence of any other witnesses who will testify at trial.

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Denied. 1-8-85
C. J. Shuman. C. J. S.

(3)

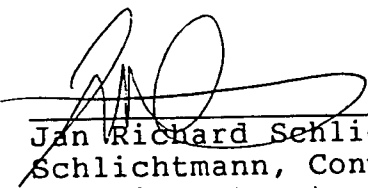
3. It was never the agreement of the parties that expert witnesses would be deposed in the presence of other experts.
4. On Monday, December 9, 1985 Dr. Shirley Conibear, plaintiffs' expert, was made available for her fourth day of deposition testimony. For the first time, unannounced to plaintiffs, Dr. Greene, a toxicologist, appeared with the defense attorneys. The defense attorneys stated that she would attend Dr. Conibear's deposition. Mr. Schlichtmann agreed to her presence, as long as Dr. Greene was not intended to be used as an expert witness in the trial. The defendant's attorneys stated that she might be used as an expert at the trial.
5. Plaintiffs do not object to the presence of any person who the defendants feel will aid their examination. However, plaintiffs do not agree to the presence at these depositions of experts who will testify for the parties.
6. The purpose of these depositions is to provide the opposing side with the opinion of the expert and the basis of the expert opinion. It is not to give an unfair tactical advantage to the other side nor to unnecessarily prolong these proceedings.

7. Transcripts of the experts' depositions are available to all opposing experts.
8. The defendants cannot have it both ways. Dr. Greene is either an expert witness who may herself be deposed or she is merely a tool for the defense's preparation, and protected by the attorney work-product privilege. The defendants must make this decision prior to Dr. Greene's attendance at any deposition.

WHEREFORE, plaintiffs request a protective order prohibiting the presence of Dr. Greene and other defense experts at the depositions of the plaintiffs' experts.

DATED: December 9, 1985

Respectfully submitted,



Jan Richard Schlichtmann
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