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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE: INCRETIN-BASED  
THERAPIES PRODUCTS  
LIABILITY LITIGATION

CASE NO. 13md2452-AJB (MDD)  
ORDER ON DISCOVERY  
DISPUTE REGARDING  
DEPOSITION PROTOCOLS  
[ECF NO. 225]

On December 19, 2013, the parties filed a Joint Motion For Determination of Deposition Protocol Disputes. (ECF No. 225). There are three disputes regarding the deposition protocol generally and a related dispute regarding depositions of Defendants Amylin Pharmaceuticals (“Amylin”) and Eli Lilly and Company (Lilly) under Fed.R.Civ.P. 30(b)(6). The disputes are:

1. Length of Depositions - Plaintiffs want to be able to have depositions extend for up to 2 days of 7 hours each. Defendants want to stay within the 1 day, 7 hour presumptive limit of the Federal Rules.

2. Witness Restrictions - To the extent that a witness is designated by a Defendant to provide testimony under Rule 30(b)(6) and may also be identified as a fact witness, Defendants want Plaintiffs to conduct the fact and corporate examination during a single deposition. Plaintiffs will not agree to that proposal.



1 additional time is needed. In that way, the Court can determine whether  
2 the questioning was properly focused by the party taking the deposition  
3 and whether the party defending the deposition caused unnecessary  
4 delay during the deposition.

5       2.     Witness Restrictions

6       This amounts to a “what if?” dispute. What if a Defendant  
7 designates a witness to provide testimony under Rule 30(b)(6) and that  
8 witness also is a fact witness in this litigation? Defendants want  
9 Plaintiffs to agree to take the deposition of such a witness at one sitting,  
10 if possible, because it is efficient and cost-effective. Plaintiffs refuse to  
11 agree to that arrangement arguing that a fact deposition and a 30(b)(6)  
12 deposition are birds of a different feather and that it would be unfair to  
13 compel Plaintiffs to conduct the two examinations, even of the same  
14 person, during a single deposition.

15       Fed.R.Civ.P. 30(b)(6) permits a party to name an entity, such as a  
16 corporation, as a deponent and describe with reasonable particularity the  
17 matters for examination. The entity must then designate one or more  
18 persons to testify on its behalf. The designee(s) must testify about  
19 information known or reasonably available to the entity. By its terms,  
20 Rule 30(b)(6) does not require the entity to designate someone with  
21 personal knowledge of the matters for examination. Witnesses with  
22 discoverable information who may be used by a party to support its  
23 claims or defenses, that is, “fact witnesses” must be disclosed by a party  
24 under Rule 26(a)(1)(A) and are subject to deposition on those facts.

25       Both parties make good points. The Court agrees with Plaintiffs  
26 that they should not be required to conduct the fact and designee  
27 examinations during a single deposition. The Court agrees with  
28 Defendants that it would be more cost-effective and efficient to conduct

1 the examinations during a single deposition whenever possible. The  
2 Court finds that the parties should endeavor to have a deponent appear  
3 for deposition just one time even if the deponent is both a fact witness  
4 and a corporate designee. The Court, however, finds that there may be  
5 some situations where Plaintiffs may be justified in wanting a second,  
6 purely factual, deposition of a witness who also is a corporate designee.  
7 Where the parties cannot agree, the Court will hear the dispute in  
8 advance of the deposition. The burden will be on Plaintiffs to convince  
9 the Court that a single deposition of the witness is not appropriate.

10 3. Effect of Prior Depositions

11 There is related litigation, ongoing since 2009, in the California  
12 state courts. The *Byetta Cases* litigation involve pancreatitis. (JCCP No.  
13 4574). The instant MDL involves pancreatic cancer. There is substantial  
14 identity between counsel. Judge Highberger of the Superior Court for  
15 Los Angeles County has participated in hearings in this MDL. (ECF No.  
16 200).

17 Discovery has been ongoing in the JCCP. Plaintiffs assert that the  
18 MDL is a different case involving a different disease so that they can  
19 notice the depositions of persons whose depositions have been taken in  
20 JCCP and ask whatever proper questions they choose. Defendants assert  
21 that there is substantial overlap in the cases and that Plaintiffs should  
22 not be able to re-depose witnesses without some showing of good cause.  
23 Defendants assert that it is unduly burdensome to have their employees  
24 re-prepare and be asked the same questions as were asked and answered  
25 previously. Plaintiffs, in turn, assert that it is not in their interests to  
26 repeat the questioning but do not believe that they should have to show  
27 good cause merely to notice the depositions.

28 The Court finds that it cannot resolve this dispute in a vacuum.

1 Plaintiffs have the right to notice depositions as they see fit within the  
2 Rules. Defendants may object to certain notices on the grounds that the  
3 witness previously was deposed in the JCCP. If the parties cannot  
4 resolve their differences, the Court will require Plaintiffs to identify the  
5 areas for questioning of the witness and, to the extent that these areas  
6 previously were covered, provide good cause for the re-examination.  
7 Defendants will be required specifically to respond to the good cause  
8 proffered by Plaintiffs. If necessary, the Court will review the initial  
9 deposition to determine whether re-examination is appropriate and the  
10 extent of that re-examination.

11 Conclusion

12 As presented in the instant Joint Motion, Plaintiffs' motion to  
13 extend the time limits for all depositions is **DENIED**. Defendants'  
14 motion to require Plaintiffs to conduct fact and designee depositions  
15 involving the same person at a single deposition is **DENIED**.  
16 Defendants' motion to restrict Plaintiffs from noticing depositions of  
17 persons previously deposed in the JCCP is **DENIED**. In each instance,  
18 regarding the subject matter of each of these Motions, the Court will  
19 address disputes on a witness-by-witness basis. In that regard, the  
20 parties are reminded that Fed.R.Civ.P. 1 requires the Federal Rules be  
21 construed and administered "to secure the just, speedy, and inexpensive  
22 determination of every action and proceeding."

23  
24 IT IS SO ORDERED.

25 DATED: January 6, 2014

26   
27 Hon. Mitchell D. Dembin  
28 U.S. Magistrate Judge