

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

IN RE: VALSARTAN N-
NITROSODIMETHYLAMINE (NDMA),
LOSARTAN, and IRBESARTAN PRODUCTS
LIABILITY LITIGATION

Civil No. 19-2875 (RBK/JS)

ORDER

It is hereby ORDERED this 30th day of December 2020, that the attached Consent Addendums to the Fact Witness Deposition Protocol [Doc. No. 632] are hereby APPROVED and ENTERED:

1. Exhibit 1 - Supplemental Protocol Governing Depositions of Chinese Nationals Residing in Mainland China.
2. Exhibit 2 - Supplemental Protocols Governing Depositions of Indian Nationals Residing in India.

s/ Joel Schneider
JOEL SCHNEIDER
United States Magistrate Judge

Exhibit 1

ADDENDUM

SUPPLEMENTAL PROTOCOLS GOVERNING DEPOSITIONS OF CHINESE NATIONALS RESIDING IN MAINLAND CHINA

A. Scope

1. This Addendum shall govern certain aspects of the depositions of Chinese nationals residing in mainland China.

2. Defendants' position is that any Chinese National who agrees to be deposed in this litigation is being deposed on a voluntary basis as a result of the restrictions imposed by the Hague Evidence Convention and China's Civil Procedure Law, as well as this Court's limited subpoena power over Chinese nationals residing in mainland China. Plaintiffs disagree.

3. This Addendum supplements and incorporates the provisions of the Deposition Protocol (CMO No. 20), including the COVID-19 Protocols set forth therein, to which it is appended. In the event of a conflict between the Deposition Protocol and this Addendum, the Addendum shall control.

4. The Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Local Rules of the District of New Jersey shall apply to all depositions of Chinese nationals residing in mainland China.

5. Defendants' position is that China's privacy and state secret laws are also applicable to the testimony of any witness deposed pursuant to this Addendum. Plaintiffs disagree.

6. Nothing in this Addendum shall be construed as a waiver of any witness' or party's defense of lack of personal jurisdiction.

B. Restrictions Affecting Deposition Location

7. Defendants represent that Chinese nationals traveling from mainland China to another country for a deposition generally require a visa or permit issued by the destination country to enter the destination country; this includes Hong Kong.¹

8. Defendants represent that from time-to-time Chinese nationals residing in mainland China may have to abide by certain intra-China travel restrictions imposed by the Chinese government due to COVID-19.²

9. In addition, Defendants represent that countries have imposed travel restrictions, including entry bans, on Chinese nationals seeking entry from mainland China due to COVID-19.³ For example, as of December 21, 2020, Chinese nationals traveling from mainland China to Hong Kong are required to quarantine for at least 14 days upon arrival to Hong Kong and for at least 14 days upon return to mainland China.⁴

C. Protocols Applicable to Depositions Hereunder

10. **Location:** Unless otherwise agreed, a Chinese national residing in mainland China will travel from mainland China to Hong Kong for the deposition, including for a deposition taken via videoconference.

¹ See Immigration Department of the Government of the Hong Kong Special Administrative Region, *Arrangements for Entry to the Hong Kong Special Administrative Region (HKSAR) from the Mainland China*, available at <https://www.immd.gov.hk/eng/services/visas/overseas-chinese-entry-arrangement.html#a>.

² See U.S. Embassy & Consulates in China, Covid-19 Information, U.S. Dep't of State (last updated Dec. 8, 2020), available at <https://china.usembassy-china.org.cn/covid-19-information/> (noting “[i]f an area of China has resurgence of cases, local authorities may restrict intercity and interstate travel.”).

³ See, e.g., *Interactive Map of Travel Restrictions*, Kayak (last accessed Dec. 20, 2020), available at <https://www.kayak.com/travel-restrictions>; *U.S. Restrictions*, Centers for Disease Control and Prevention (last accessed Dec. 20, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/from-other-countries.html> (noting ban on Chinese nationals from entering the United States).

⁴ See U.S. Consulate General Hong Kong & Macau, COVID-19 Information, U.S. Dep't of State (last updated Oct. 19, 2020), available at <https://hk.usconsulate.gov/covid-19-information/>.

11. **Length:** Unless otherwise agreed or ordered, a deposition taken pursuant to this Addendum will last for seven (7) hours in accordance with the time zone in which the witness is located for the deposition, as provided for under the Federal Rules of Civil Procedure. The length of a deposition subject to this Addendum that utilizes translation services may be increased by 75% in accordance with the Deposition Protocol (*see* CMO No. 20). The length of a deposition subject to this Addendum may be increased due to delays caused by technical problems, for example resulting from videoconference connectivity interruptions, by the amount of time of such delays, which shall be recorded by the stenographer and videographer. In the event translation services and/or technical problems cause the deposition to extend beyond the time block agreed for a deposition, or to be delayed for a significant length of time, the witness and examining counsel may elect to extend the deposition to a consecutive day.

12. **Notice:** After counsel, through consultation in accordance with this Addendum, have made good faith efforts to agree upon a date and mutually convenient location for the deposition(s), the Noticing Party shall serve a Notice or an amended Notice reflecting the agreed upon date(s), location(s), and start time(s) based on Hong Kong Standard Time, or the time zone of the other agreed location. The Parties acknowledge that sufficient notice is necessary so the witness and all other attendees, including counsel, translators, and stenographers/videographers may make the necessary travel arrangements and obtain the necessary travel documentation, as applicable.

13. **Observance of China's Holidays:** Depositions pursuant to this Addendum shall not be noticed for dates during periods Chinese are holidays observed, including the Chinese New Year, for which the period of observance is from February 8, 2021 through February 26, 2021.

Exhibit 2

ADDENDUM

SUPPLEMENTAL PROTOCOLS GOVERNING DEPOSITIONS OF INDIAN NATIONALS RESIDING IN INDIA

A. Scope

1. This Addendum shall govern certain aspects of the depositions in this litigation of Indian nationals residing in India.

2. Defendants' position is that any Indian National (other than an individual testifying pursuant to Rule 30(b)(6)) who agrees to be deposed in this litigation is being deposed on a voluntary basis as a result of the restrictions imposed by the Hague Evidence Convention, as well as this Court's limited subpoena power over Indian nationals residing in India. Plaintiffs disagree.

3. This Addendum supplements and incorporates the provisions of the Deposition Protocol (CMO No. 20), including the COVID-19 Protocols set forth therein, to which it is appended. In the event of a conflict between the Deposition Protocol and this Addendum, the Addendum shall control.

4. The Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Local Rules of the District of New Jersey shall apply to all depositions of Indian nationals residing in India.

5. Nothing in this Addendum shall be construed as a waiver of any witness' or party's defense of lack of personal jurisdiction.

B. Restrictions Affecting Deposition Location

6. Where an Indian national residing in India is designated to testify in a corporate representative capacity, Plaintiffs may depose the Indian national pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure.

7. Counsel are expected to cooperate and coordinate the scheduling of depositions on a good faith basis, taking into account that Indian nationals residing in India may be subject to travel restrictions, both internal and external and including entry bans, as well as mandatory quarantine measures, due to COVID-19.¹

C. Protocols Applicable to Depositions Hereunder

8. **Location:** Unless otherwise agreed, an Indian National residing in India who is appearing for deposition will be deposed in the location in which they work and/or reside. Depositions may be conducted remotely pursuant to the Deposition Protocol (CMO No. 20).

9. **Length:** Unless otherwise agreed, or ordered, a deposition taken pursuant to this Addendum will last for seven (7) hours in accordance with the time zone in which the witness is located for the deposition, as provided for under the Federal Rules of Civil Procedure. The length of a deposition subject to this Addendum that utilizes translation services may be increased by 75% in accordance with the Deposition Protocol (*see* CMO No. 20). The length of a deposition subject to this Addendum may be increased due to delays caused by technical problems, for example resulting from videoconference connectivity interruptions, by the amount of time of such delays, which shall be recorded by the stenographer and videographer. In the event translation services and/or technical problems cause the deposition to extend beyond the time block agreed for a deposition, or to be delayed for a significant length of time, the witness and examining counsel may elect to extend the deposition to a consecutive day.

¹ See, e.g., U.S. Embassy & Consulates in India, Covid-19 Information, U.S. Dep't of State (last updated Aug. 11, 2020), available at <https://in.usembassy.gov/covid-19-information/>; *Interactive Map of Travel Restrictions*, Kayak (last accessed Oct. 22, 2020), available at <https://www.kayak.com/travel-restrictions/>; *U.S. Restrictions*, Centers for Disease Control and Prevention (last accessed Oct. 22, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/from-other-countries.html>.

10. **Notice:** After counsel, through consultation in accordance with this Addendum, have made good faith efforts to agree upon a date and mutually convenient location for the deposition(s), the Noticing Party shall serve a Notice or an amended Notice reflecting the agreed upon date(s), location(s), and start time(s) based on India Standard Time, or the time zone of the other agreed location. The Parties acknowledge that sufficient notice is necessary so the witness and all other attendees, such as counsel, a translator and a stenographer may make the necessary travel arrangements and obtain the necessary travel documentation, as applicable.

11. **Language:** Even where the witness speaks English, all witnesses shall have the right to conduct the deposition in his/her native language and to have an interpreter present in accordance with Deposition Protocol § K.1 and K.2. Notice shall be provided by counsel for the witness in advance of the deposition to the extent an interpreter will be used.