

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 16 2002

IN RE: VITAMINS ANTITRUST
LITIGATION

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Misc. No. 99-197 (TFH)
MDL No. 1285

THIS DOCUMENT APPLIES TO:
ALL ACTIONS

ORDER

Re: Depositions of Witnesses Who Intend to Assert the Fifth Amendment

At the January 9, 2002 status conference in the above captioned case, the Defendants made an oral motion to clarify the Court's December 21, 2001 Order Re: Depositions of Witnesses Who Intend to Assert the Fifth Amendment.¹ The Defendants argued that the Court had no legal basis to require that their former employees participate in the protocol established in the Court's Memorandum Opinion and Order, and that, therefore, the protocol must at least be voluntary with respect to such former employees. The Court accepts this argument as clarified. The Court recognizes that it does not have the power to compel the participation of true former employees who are not themselves parties and who are not under the control of the Defendants. As a result, a non-party former employee who is not under the control of a Defendant is not required to follow the protocol. The former employee may choose, however, to comply with the

¹ The December 21, 2001 Order established a protocol for streamlining the depositions of all witnesses who intend to assert the Fifth Amendment privilege. The Court ordered the protocol based on its reading of the underlying Motion for a Protective Order made by the Defendants on September 28, 2001 and the Defendants' Rule 53 Objections to the Special Master's December 4, 2001, Report. The Court read that motion as made by Defendants on behalf of all current and former employees. As a result, the protocol made provisions for its applicability to former employees. The Court also rejected the Defendants' request that the protocol be an optional procedure - the protocol applied to all witnesses intending to assert the Fifth Amendment.

protocol's streamlined procedures. Therefore, upon consideration of the Defendants' oral motion for clarification and the arguments made thereon, it is hereby

ORDERED that the protocol established in the December 21, Memorandum Opinion and accompanying Order is voluntary with respect to all former employees who are no longer under the control of the Defendants. It is further hereby

ORDERED that, as stated by the Court at the January 9, 2002 status conference, in fairness to the Plaintiffs in light of the wording of Defendants' underlying motion, repeated in the Rule 53 objections, the Defendants shall, within 21 days of service of a notice of deposition for a former employee or 14 days of this Order, whichever is later:

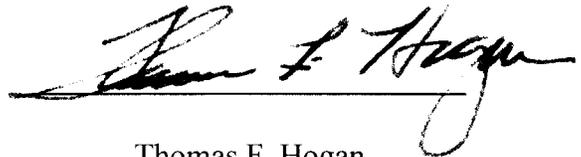
- (1) Contact each such former employees for whom they have a current addresses or can reasonably access such information, and request that the former employees cooperate with the deposition notice and, as appropriate, the Plaintiffs' request for an affidavit or declaration respecting the employee's intent to assert the Fifth Amendment;
- (2) Provide Plaintiffs with evidence that they have complied with the Court's Order to request former employees cooperate with the protocol, including a copy of any request(s) sent.

ORDERED that the Plaintiffs must properly notice all non-party former employees who are not cooperating with the Defendants.

ORDERED that the Defendants' oral motion with respect to the issues of recant deadlines and translation of questions under the protocol is **DENIED**.

So ORDERED

January 16th, 2002

A handwritten signature in black ink, appearing to read "Thomas F. Hogan", written over a horizontal line.

Thomas F. Hogan
Chief Judge