

Attachment 5
10/05/2026 Order

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
DEBRA MCANDREW BARNETT,	)	C/A No.: 2026-CP-40-01257
	)	
Plaintiff,	)	In re:
	)	Asbestos Personal Injury Litigation
v.	)	Coordinated Docket
	)	
JOHNSON & JOHNSON, et al.,	)	
	)	
Defendants.	)	
<hr/>		C/A No.: 2023-CP-40-06111
ANDREW T. GERKEN, as Personal	)	
Representative of the Estate of ANNA	)	
MARIE L. GERKEN, Deceased,	)	ORDER (1) GRANTING IN PART
	)	AND DENYING IN PART
Plaintiff,	)	DEFENDANTS JOHNSON & JOHNSON
	)	(J&J AND KENVUE INC.)’S
v.	)	MOTION TO QUASH PLAINTIFF’S
	)	NOTICES OF 30(b)(6) DEPOSITION
	)	AND CERTAIN 30(b)(6) TOPICS
AVON PRODUCTS, INC., et al.,	)	NOTICED FOR INQUIRY; (2) DENYING
	)	DEFENDANT’S MOTION FOR A
Defendants.	)	PROTECTIVE ORDER AS TO CERTAIN
	)	BILLING RECORDS NOT PERTAINING
	)	TO EXPERT WITNESSES NOTICED
	)	FOR THESE LAWSUITS; (3) DENYING
	)	DEFENDANT’S MOTION FOR A
	)	PROTECTIVE ORDER RELATING TO
	)	TOPICS PREVIOUSLY COVERED BY
	)	DEPOSITIONS IN THE <i>GERKEN</i> CASE;
	)	AND (4) GRANTING IN PART
	)	PLAINTIFF’S MOTION TO COMPEL
	)	

INTRODUCTION

On September 2, 2026, Defendants filed the above referenced Motion to Quash and for a Protective Order in two cases in which Plaintiff served 30(b)(6) Deposition Notices on J&J Defendants on August 17, 2026. J&J did not make any substantive response to Plaintiff’s Notice and so on September 2, 2026, Plaintiff served Amended Deposition Notices. Two weeks later, J&J responded that they intended to move for protection. J&J made no attempt to meet and confer or provide any substantive explanation as to their objections. Defendant contends that Plaintiffs are seeking discovery on “various fringe topics that have no relevance of their case,

would invade the attorney-client privilege and would – at most – generate facially inadmissible evidence.”

Defendants contend that Plaintiff’s latest corporate deposition notice:

seeks testimony and documents pertaining to a variety of irrelevant topics, including: (1) recent regulatory actions (foreign and domestic) that have not resulted in any final agency action and occurred long after Plaintiffs were allegedly injured by their use of talc products; (2) payments to experts who are not retained to testify in these lawsuits; and (3) topics that have already been exhaustively covered in a prior corporate representative deposition in the *Gerken* case just last year.

(4) The J&J Defendants also argue that the 30(b)(6) deadline in the *Gerken* case was August 8, 2025, discovery is closed, and Plaintiff’s notice was untimely. The *Gerken* case was originally set for trial in 2025 but was not reached for trial. *Gerken* was reset for trial for November 9, 2026, when the Court reset *Gerken* for trial it reset the deadlines associated with the case. The new deadline to complete 30(b)(6) depositions was September 5, 2026, 40 days before November 9, 2026, when the case is scheduled for trial. Therefore, the Plaintiff’s 30(b)(6) deposition notice of August 17, 2026, was not untimely. Plaintiffs, on September 29, 2026, filed a response to J&J’s Motion to Quash and for a Protective Order and also filed Plaintiff’s Amended Motion to Compel.

RULINGS

I. DEFENDANT’S MOTION TO QUASH AND FOR A PROTECTIVE ORDER

First, Defendant objects to Plaintiff’s requests “for discovery on various fringe topics . . . which would invade the attorney client privilege.” Plaintiffs contend that this Motion to Quash is an attempt to prevent Plaintiffs from requesting information on Defendant’s recent lobbying efforts regarding potential Congressional action relating to the cosmetics industry. Defendant has not made any specification of what attorney-client privilege and work product is associated with its request to quash. Defendants cite the *Noerr-Pennington* Doctrine as support for its contention

that Plaintiff is seeking information concerning its activities to influence federal legislation on talc-containing products. It contends that the discovery sought is protected by its First Amendment right of free speech. South Carolina Courts have not adopted the *Noerr-Pennington* Doctrine, but the United States Circuit Court having jurisdiction over South Carolina has issued an opinion which states “*Noerr-Pennington* is by definition an exemption from antitrust liability, and not a bar to the discovery of evidence.” *North Carolina Elec. Membership Corp. v. Carolina Power and Light Co.*, 666 F.2d 50, 52-53 (4th Cir. 1981). It is certainly understandable that a corporation could not be subject to antitrust liability for the exercise of its First Amendment right of free speech. However, this First Amendment right would not bar Plaintiff from seeking information concerning its lobbying activities. This Court therefore declines to issue any Protective Order or to Quash discovery inquiries regarding recent lobbying efforts of J&J and Kenvue. Defendant has not specifically pointed to any attorney-client communications for which it asserts the attorney-client or work product privilege; therefore, Defendant’s Motion to Quash is **DENIED**.

Second, Defendants object to Plaintiff’s request for testimony and documents related to billing and the amount of payments to experts who have not been retained to testify in the *Gerken* and *Barnett* lawsuits. This Court will quash this topic in Plaintiff’s 30(b)(6) Deposition Notice. Therefore, this Court **GRANTS** Defendant’s Motion to Quash Plaintiff’s Request for Production of billing information and payments related to non-retained experts as outlined in Plaintiff’s 30(b)(6) Deposition Notice.

Third, Defendants seek to quash Plaintiff’s additional noticed topics on the grounds that they were “extensively probed in another corporate representative deposition in the *Gerken* case just one year ago.” This Court **DENIES** Defendant’s Motion to Quash these deposition requests inasmuch as they are completely proper.

All other Defendant Motions to Quash or for a Protective Order are **DENIED**.

II. PLAINTIFF'S MOTION TO COMPEL

First, Plaintiff has moved that Johnson & Johnson and Kenvue, Inc. be required to provide the previously identified list of J&J's approximately 100 retained experts identifying the name of the expert and a summary of the basis for payment. This Court **DENIES** Plaintiff's Motion to Compel with regard to any retained experts who are not designated as potential experts in the *Barnett* or *Gerken* cases. With respect to experts who have been identified for possible testimony in these cases, within five days of this order, this Court **COMPELS** J&J Defendants to provide the name of these experts and a summary of the basis of payment and the amounts thereof.

Second, this Court **GRANTS** Plaintiff's Motion requiring the J&J Defendants to provide all other responsive documents, except for those documents that have been protected or quashed by the above Order by October 14, 2026.

Third, this Court **GRANTS** Plaintiff's Motion to Compel J&J to produce a 30(b)(6) witness fully prepared to discuss all noticed deposition topics, except those deposition topics which have been quashed, on October 23, 2026, or October 29, 2026.

AND IT IS SO ORDERED.



Richland Common Pleas

Case Caption: Andrew T Gerken , plaintiff, et al vs Bayer Healthcare Llc ,
defendant, et al
Case Number: 2023CP4006111
Type: Order/Other

So Ordered

Jean H. Toal
