

**Subpoena in a Civil Case - Attorney Issued**  
**UNITED STATES DISTRICT COURT**

DISTRICT OF MASSACHUSETTS

DISTRICT

1 Courthouse Way, Boston MA 02210

LISA SYKES, et.al.

**SUBPOENA IN A CIVIL CASE**

V.

BAYER CORPORATION

Case Number:<sup>1</sup> 3:07 CV 660

TO: Marie McCormick

EASTERN DISTRICT OF VIRGINIA  
 Richmond Division

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Conway, Homer & Chin-Caplan 64 Shawmut, Boston, MA 02116	DATE AND TIME 4/29/2008 10:00 am
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 See attached.

PLACE Conway, Homer & Chin-Caplan 64 Shawmut, Boston, MA 02116	DATE AND TIME 4/29/2008 10:00 am
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) Clifford J. Shoemaker	DATE 3/21/2008
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Clifford J. Shoemaker, SHOEMAKER & ASSOCIATES, 9711 Meadowlark Road, Vienna, VA 22182 Phone: 703-281-6395 Fax: 703-281-5807 Email: cliff@attorneyaccess.net
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(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**PROOF OF SERVICE**

DATE	PLACE
<b>SERVED</b>	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

**Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:**

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## DOCUMENTS AND THINGS TO PRODUCE

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(1) All documents, including but not limited to correspondence, emails, memos, hand written notes, recordings (electronic or otherwise) in regards to the setup, financing, running, research of the US National Academy of Sciences' Institute of Medicine's Immunization Safety Review Committee and Staff Members (including Marie C. McCormick, Ronald Bayer, Alfred Berg, Rosemary Casey, Joshua Cohen, Betsy Foxman, Constantine Gatsonis, Steven Goodman, Ellen (Abby) Horak, Michael Kaback, Gerald Medoff, Rebecca Parkin, Bennett Shaywitz, Christopher Wilson, Richard B. Johnston, Vernice Davis-Anthony, Kathleen Stratton, Theresa Wizemann, Donna Almario, Kysa Christie, Katrina Lawrence, Amy Grossman, Rose Marie Martinez) related to any or all of the following reports (Immunization Safety Review: Vaccines and Autism, Immunization Safety Review: Thimerosal – Containing Vaccines and Neurodevelopmental Disorders, Immunization Safety Review: Measles-Mumps-Rubella Vaccine and Autism), including but not limited to any prior to, during or after the public and/or private hearings with regards to meetings, considerations, charges, votes, funding, requests, conflict of interest discussions, rules, and suggestions.

(2) All documents, including but not limited to correspondence, emails, memos, hand written notes, recordings (electronic or otherwise) in regards to any association (financial or otherwise) between Immunization Safety Review Committee and Staff Members (including Marie C. McCormick, Ronald Bayer, Alfred Berg, Rosemary Casey, Joshua Cohen, Betsy Foxman, Constantine Gatsonis, Steven Goodman, Ellen (Abby) Horak, Michael Kaback, Gerald Medoff, Rebecca Parkin, Bennett Shaywitz, Christopher Wilson, Richard B. Johnston, Vernice Davis-Anthony, Kathleen Stratton, Theresa Wizemann, Donna Almario, Kysa Christie, Katrina Lawrence, Amy Grossman, Rose Marie Martinez) and the funding/requesting agencies (including by not limited to the Centers for Disease Control and Prevention and the US National Institutes of Health) related to any topics reviewed by the Immunization Safety Review Committee and Staff Members.

(3) All documents, including but not limited to correspondence, emails, memos, hand written notes, recordings (electronic or otherwise) in regards to any association (financial or otherwise) between Immunization Safety Review Committee and Staff Members (including Marie C. McCormick, Ronald Bayer, Alfred Berg, Rosemary Casey, Joshua Cohen, Betsy Foxman, Constantine Gatsonis, Steven Goodman, Ellen (Abby) Horak, Michael Kaback, Gerald Medoff, Rebecca Parkin, Bennett Shaywitz, Christopher Wilson, Richard B. Johnston, Vernice Davis-Anthony, Kathleen Stratton, Theresa Wizemann, Donna Almario, Kysa Christie, Katrina Lawrence, Amy Grossman, Rose Marie Martinez) and the pharmaceutical industry or any other private persons or companies with financial interest in any topics reviewed by the Immunization Safety Review Committee and Staff Members.

(4) All documents related to any closed door transcript discussions (including but not limited to hand written notes, hand-out materials, typed transcripts, or recordings) by the Immunization Safety Review Committee and Staff Members (including Marie C.

McCormick, Ronald Bayer, Alfred Berg, Rosemary Casey, Joshua Cohen, Betsy Foxman, Constantine Gatsonis, Steven Goodman, Ellen (Abby) Horak, Michael Kaback, Gerald Medoff, Rebecca Parkin, Bennett Shaywitz, Christopher Wilson, Richard B, Johnston, Vernice Davis-Anthony, Kathleen Stratton, Theresa Wizemann, Donna Almario, Kysa Christie, Katrina Lawrence, Amy Grossman, Rose Marie Martinez) related to any or all of the following reports (Immunization Safety Review: Vaccines and Autism, Immunization Safety Review: Thimerosal – Containing Vaccines and Neurodevelopmental Disorders, Immunization Safety Review: Measles-Mumps-Rubella Vaccine and Autism).

(5) All documents related to any discussions (open or closed door) including but not limited to hand written notes, hand-out materials, typed transcripts, or recordings by the Immunization Safety Review Committee and Staff Members (including Marie C. McCormick, Ronald Bayer, Alfred Berg, Rosemary Casey, Joshua Cohen, Betsy Foxman, Constantine Gatsonis, Steven Goodman, Ellen (Abby) Horak, Michael Kaback, Gerald Medoff, Rebecca Parkin, Bennett Shaywitz, Christopher Wilson, Richard B, Johnston, Vernice Davis-Anthony, Kathleen Stratton, Theresa Wizemann, Donna Almario, Kysa Christie, Katrina Lawrence, Amy Grossman, Rose Marie Martinez) related to any or all of the following reports (Immunization Safety Review: Vaccines and Autism, Immunization Safety Review: Thimerosal – Containing Vaccines and Neurodevelopmental Disorders, Immunization Safety Review: Measles-Mumps-Rubella Vaccine and Autism), and or any other activities related or findings by the Immunization Safety Review Committee and Staff Members with regards to conflicts of interest, either apparent, potential or real.

(6) All documents relating to the rules, regulations, and laws relating to the US National Academy of Science's Institute of Medicine on how the Institute of Medicine operates including but not limited to the Institute of Medicine's special exemption from the "Sunshine Laws." This should include any materials, evidence, notes of any potential violations by the Immunization Safety Review Committee and Staff Members with regards to the actions by the committee in reference to the above request materials.

(7) All documents, including but not limited to correspondence, emails, memos, hand written notes, recordings (electronic or otherwise) in regards to the presentation made by Dr. Polly Sager regarding Dr. Burbacher's work with regards to the substantial errors made in the presentation and later, pointed out, and corrected by the Immunization Safety Review Committee and Staff Members and others concerning the hearings held by the Committee in these matters. Also, provide any documents, including but not limited to correspondence, emails, memos, hand written notes, recordings (electronic or otherwise) in regards any other presentations that the Immunization Safety Review Committee and Staff Members were aware of that may have been made by Dr. Polly Sager or others that containing these substantial mistakes.

(8) All documents, including but not limited to correspondence, emails, memos, hand written notes, recordings (electronic or otherwise) in regards to any statements made to the press or any one by the Immunization Safety Review Committee and Staff Members

(including Marie C. McCormick, Ronald Bayer, Alfred Berg, Rosemary Casey, Joshua Cohen, Betsy Foxman, Constantine Gatsonis, Steven Goodman, Ellen (Abby) Horak, Michael Kaback, Gerald Medoff, Rebecca Parkin, Bennett Shaywitz, Christopher Wilson, Richard B. Johnston, Vernice Davis-Anthony, Kathleen Stratton, Theresa Wizemann, Donna Almario, Kysa Christie, Katrina Lawrence, Amy Grossman, Rose Marie Martinez) that may have conflicted with findings or recommendations made in the following reports (Immunization Safety Review: Vaccines and Autism, Immunization Safety Review: Thimerosal – Containing Vaccines and Neurodevelopmental Disorders, Immunization Safety Review: Measles-Mumps-Rubella Vaccine and Autism). This is to include but not limited to statements by Dr. Marie McCormick stating that she and the Committee members recommend and preference for Thimerosal-free vaccines despite the official recommendations by the Committee to state no preference for Thimerosal-free vaccines.

(9) In addition to the general requests above, the following documents should be produced: (1) the charge or any instructions by the Centers for Disease Control and Prevention to the Immunization Safety Review Committee and Staff Members; (2) the documents related to a specific break down of any and all votes conducted by the Immunization Safety Review Committee and Staff with regards to the following reports (Immunization Safety Review: Vaccines and Autism, Immunization Safety Review: Thimerosal – Containing Vaccines and Neurodevelopmental Disorders, Immunization Safety Review: Measles-Mumps-Rubella Vaccine and Autism); (3) the closed-door transcript from the January 12, 2002 meeting by the Immunization Safety Review Committee and Staff prior to any public evidence being presented, in which Dr. Stratton stated that the Immunization Safety Review Committee would not find a Category 5 causal relationship between vaccines and adverse reactions and Dr. McCormick stated that there would slim, if any association between vaccines and autism.