

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

IN RE NUVARING® PRODUCTS ) 4:08 MDL 1964 RWS  
LIABILITY LITIGATION )  
) ALL CASES  
)  
) Honorable Rodney W. Sippel

**CASE MANAGEMENT ORDER**

**ORDER REGARDING THE PRESERVATION OF DOCUMENTS AND  
ELECTRONICALLY STORED INFORMATION**

This matter, having been opened to the Court by counsel for the Parties, it is hereby **ORDERED** as follows:

**I. GENERAL**

This Order governs the preservation of potentially relevant documents, data, and tangible things within the Parties' possession, custody and/or control relevant to allegations and defenses and/or that may lead to the discovery of admissible evidence, in cases filed in or consolidated before this Court in *In re Nuvaring® Products Liability Litigation* Eastern District of Missouri, MDL No. 1964, and to every action that is or will in the future become a part thereof (collectively "the Litigation").

**II. DEFINITIONS**

A. As used herein, "*Documents, Data, and Tangible Things*" shall be interpreted broadly to include hard copy documents and electronically stored information ("ESI") on hard drives, USB or thumb drives, databases, computers, handheld devices, floppy disks, CD-ROM, magnetic tape, optical disks, or other devices for digital data storage or transmittal. The Parties shall have no obligation to preserve voicemails.

B. As used herein, “*Preservation*” shall be interpreted to accomplish the goal of maintaining the integrity of potentially relevant documents, data, and tangible things and shall include taking reasonable steps to prevent the partial or full destruction, alteration, shredding, or deletion of such materials.

C. As used herein the term “*NuvaRing*” means Defendants’ contraceptive vaginal ring product containing etonogestrel and ethinyl estradiol known as NuvaRing®. Defendants are not obligated to preserve documents and/or ESI relating to any other products.

### III. **PRESERVATION OBLIGATIONS – ALL PARTIES**

All Parties shall take reasonable steps, including the dissemination by Defendants of Legal Hold Notices to all employees and/or departments likely to possess information relating to *NuvaRing*® and the defenses and the claims at issue in this action, and the mailing of preservation letters to individual plaintiffs by their counsel, to ensure the preservation of documents, data, and tangible things that are reasonably likely to be the subject of discovery in the Litigation. The Parties’ obligation to preserve documents exists with regard to previously created documents and newly created documents. The preservation obligations of this Order are not intended to lessen any Party’s preservation obligation imposed upon them pursuant to a duty of law or rule of procedure.

The following methods of preserving Documents, Data, and Tangible things shall satisfy a Party’s duty to preserve in the Litigation:

#### A. **E-mail**

The Parties shall take steps to preserve potentially relevant e-mail communications (including associated attachments) of employees and/or departments receiving a Legal Hold Notice by either:

- (1) Maintaining one set of back-up tapes for implicated servers; or
- (2) Maintaining email files on a server or within an electronic archive that is not subject to an auto deletion schedule.

Individual plaintiffs may preserve ESI in electronic form by moving e-mails to a separate folder that will not be deleted or downloading e-mails to a CD.

**B. Databases**

The Parties shall take steps to preserve potentially relevant data maintained in databases by either:

- (1) Maintaining such data in accessible electronic systems that are not subject to a deletion schedule;
- (2) Preserving an electronic snapshot of implicated servers; or
- (3) Maintaining one set of back-up tapes for relevant database servers.

**C. Electronic documents contained in Shared or Home Directories**

Where potentially relevant electronic documents in shared or home directories (e.g., word processing documents, spreadsheets, and PowerPoint presentations) are subject to a deletion schedule, the Parties shall take steps to preserve potentially relevant documents contained in shared and home directories by either:

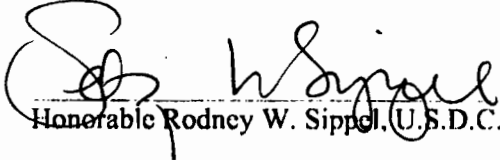
- (1) Maintaining such directories and files contained therein in accessible electronic systems that are not subject to a deletion schedule; or
- (2) Maintaining one set of back-up tapes for relevant servers.

**IV. RESERVATION OF RIGHTS**

The Parties do not concede that any of the information subject to this Consent Order is discoverable, relevant, or admissible, and the Parties expressly reserve the right to challenge any specific discovery request concerning any such information. The Parties also reserve the right to challenge the competency, relevance, materiality, privilege, and/or

admissibility into evidence of such documents, information, or material in these or any subsequent proceedings or at the trial of these or any other actions, in this or any other jurisdiction. The failure of any party to have preserved, prior to the entry of this Consent Order, every potentially relevant "document, data and tangible thing," as defined above, is not in and of itself the basis for a finding of spoliation. Nothing in this order shall limit the parties' abilities to meet and confer, as may be necessary, to discuss modifications to this Order.

**IT IS SO ORDERED.**

  
Honorable Rodney W. Sippel, U.S.D.C.

Dated February 19, 2010