

Rule 212. Use of Depositions

(a) Purposes for Which Discovery Depositions May Be Used. Discovery depositions taken under the provisions of this rule may be used only:

- (1) for the purpose of impeaching the testimony of the deponent as a witness in the same manner and to the same extent as any inconsistent statement made by a witness;
- (2) as a former statement, pursuant to Illinois Rule of Evidence 801(d)(2);
- (3) if otherwise admissible as an exception to the hearsay rule;
- (4) for any purpose for which an affidavit may be used; or
- (5) upon reasonable notice to all parties, as evidence at trial or hearing against a party who appeared at the deposition or was given proper notice thereof, if the court finds that the deponent is not a controlled expert witness, the deponent's evidence deposition has not been taken, and the deponent is unable to attend or testify because of death or infirmity, and if the court, based on its sound discretion, further finds such evidence at trial or hearing will do substantial justice between or among the parties.

(b) Use of Evidence Depositions. The evidence deposition of a physician or surgeon may be introduced in evidence at trial on the motion of either party regardless of the availability of the deponent, without prejudice to the right of either party to subpoena or otherwise call the physician or surgeon for attendance at trial. All or any part of other evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the court finds that at the time of the trial:

- (1) the deponent is dead or unable to attend or testify because of age, sickness, infirmity or imprisonment;
- (2) the deponent is out of the county, unless it appears that the absence was procured by the party offering the deposition, provided, that a party who is not a resident of this State may introduce his or her own deposition if he or she is absent from the county; or
- (3) the party offering the deposition has exercised reasonable diligence but has been unable to procure the attendance of the deponent by subpoena; or finds, upon notice and motion in advance of trial, that exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(c) Partial Use. If only a part of a deposition is read or used at the trial by a party, any other party may at that time read or use or require him or her to read any other part of the deposition which ought in fairness to be considered in connection with the part read or used.

(d) Use After Substitution or Refiling. Substitution of parties does not affect the right to use depositions previously taken. If any action in any court of this State is dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former action may be used as if taken in the later action.

(e) Depositions Taken in Other Jurisdictions. A deposition taken in any action in another jurisdiction of the United States that involves the same subject matter and the same parties or their representatives or successors in interest as an action brought in this State may be used as if taken

in the action brought in this State. If the deposition was or would be admissible as substantive evidence at trial in the other jurisdiction, the deposition is deemed an evidence deposition. If not, the deposition is deemed a discovery deposition. By pretrial order, the court may require a party to give other parties reasonable notice of its intent to use a deposition taken in another jurisdiction.

Amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended March 1, 2001, effective immediately; amended March 28, 2002, effective July 1, 2002; amended December 8, 2010, effective January 1, 2011; amended Sept. 26, 2019, eff. Oct. 1, 2019; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Committee Comments
(January 1, 2011)

Paragraph (a)

The Committee was prompted to examine this issue by the decision in *Berry v. American Standard, Inc.*, 382 Ill. App. 3d 895 (5th Dist. 2008). The Committee believes that a trial court should have the discretion under subparagraph (a)(5) to permit the use of a party's discovery deposition at trial. It appears that there may be rare, but compelling, circumstances under which a party's discovery deposition should be permitted to be used. In the Committee's view, *Berry* presents such circumstances. Given that in most cases counsel will have the opportunity to preserve a party's testimony via an evidence deposition, it is expected that the circumstances that would justify use of a discovery deposition would be extremely limited.

This amendment applies to cases filed on or after the effective date.