

SUPREME COURT OF THE STATE OF NEW YORK
ALL COUNTIES OF NEW YORK

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IN RE: NEW YORK STATE LATEX GLOVE PRODUCTS LIABILITY
LITIGATION

X

THIS DOCUMENT APPLIES TO ALL LATEX GLOVE
PRODUCTS LIABILITY ACTIONS FILED IN
THE SUPREME COURT OF THE STATE OF NEW YORK

Index No. 751000/99

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CASE MANAGEMENT ORDER NO. 3

Revisions to Discovery and Scheduling Order Governing Merits Discovery

This Case Management Order serves to revise, amend and supersede portions of Case Management Order No. 2 ("CMO No. 2"), entered on September 8, 2000. Except for the revisions noted herein, all other provisions of CMO No. 2 remain in full force and effect, and serve to control the procedures regarding the remaining discovery to be conducted in this litigation on the issues of liability, causation, damages and defenses ("merits discovery"). Along with CMO No. 2, this CMO is intended to follow-up and finalize discovery activity which took place during the first phase, consisting of product identification discovery, which is the subject of New York State Court Latex Glove Products Liability Litigation Case Management Order No. 1 ("CMO No. 1"), entered on February 4, 2000.

Written Discovery

1. No later than November 3, 2000 for cases referenced on Exhibit A attached to CMO No. 1 ("Schedule A Cases"), or (ii) in all other cases, 150 days from the Start Date in each case, as defined in Section VII. 2, n.2 of CMO No. 1, the plaintiff shall respond to the following sets of discovery

propounded by the defendants to plaintiffs in MDL 1148: Revised Defendants' Merits Interrogatories to All Plaintiffs - First Set and the Revised Defendants' Merits Requests For Production of Documents to All Plaintiffs - First Set, Defendants' Second Set of Merits Interrogatories Concerning Plaintiffs' Alternative Theories of Liability and Defendants' Second Set of Requests for Production of Documents Concerning Plaintiffs' Alternative Theories of Liability. Copies of these discovery requests are attached as Exhibit A to CMO No. 2. Plaintiffs answers to this discovery shall comply with the guidelines set forth in MDL 1148 CMO No. 58, insofar as it does not require answers that are inconsistent with New York law, and except as the Court otherwise directs upon application by a plaintiff. A copy of MDL 1148 CMO No. 58 is attached as Exhibit B to CMO No. 2. This paragraph serves to revise, amend and supersede paragraph 2 of CMO No. 2.

2. Any Schedule A Case in which a plaintiff fails to comply with the November 3, 2000 discovery deadline shall be excluded from case selection consideration, as more fully set forth in paragraph 6 herein.

3. No later than (i) November 3, 2000 for the Schedule A Cases, or (ii) in all other cases, 150 days from the Start Date in each case, as defined in Section VII. 2, n. 2 of CMO No. 1, each manufacturer defendant shall respond to the following sets of discovery propounded by the plaintiffs to the defendants in MDL 1148: Merits Interrogatories of Plaintiffs Addressed to All Defendants - First Set and the Merits Request for Production of Documents of Plaintiffs Addressed to All Defendants - First Set, Plaintiffs' Revised Interrogatories (Contention) To All Defendants - Second Set, and Merits Interrogatories of Plaintiffs Addressed to All Defendants - Third Set. Copies of these discovery requests are attached as Exhibit C to CMO No. 2. This paragraph serves to revise, amend and supersede paragraph 3 of CMO No. 2.

4. No later than (i) November 3, 2000 for the Schedule A Cases, or (ii) in all other cases, 150 days from the Start Date in each case, as defined in Section VII. 2, n. 2 of CMO No. 1, each

distributor defendant shall also respond to the following sets of discovery propounded by the plaintiffs to the defendants in MDL 1148: Merits Interrogatories and Requests for Production of Documents of Plaintiffs Addressed to Distributor Defendants. Copies of these discovery requests are attached as Exhibit D to CMO No. 2. This paragraph serves to revise, amend and supersede paragraph 4 of CMO No. 2.

5. On or before November 3, 2000, each manufacturer and distributor defendant shall serve all parties with written responses to the questions set forth at MDL 1148 CMO No. 41. A copy of MDL 1148 CMO No. 41 is attached as Exhibit E to CMO No. 2. This paragraph serves to revise, amend and supersede paragraph 5 of CMO No. 2.

Case Selection

6. On November 13, 2000, by the close of business, Plaintiffs' and Defendants' Liaison Counsel will each submit the names of four cases from Schedule A to be trial ready on May 4, 2001. In the alternative, if the pool of Schedule A Cases is reduced by a number greater than eight cases as per operation of paragraph 2 of this CMO, Plaintiffs' and Defendants' Liaison Counsel will each submit the names of two cases taken from the remaining list of Schedule A Cases to be trial ready on May 4, 2001. The respective case selections are to be forwarded via facsimile, only by each respective Liaison Counsel to the respective opposing Liaison Counsel and to the Court. This paragraph serves to revise, amend and supersede paragraph 34 of CMO No. 2.

Depositions

7. The depositions of the plaintiffs in the cases referenced in paragraph 6 herein shall be completed on or before December 15, 2000. This paragraph serves to revise, amend and supersede paragraph 19 of CMO No. 2.

8. The depositions of the plaintiffs in the remaining Schedule A Cases, excluding the cases referenced in paragraph 6 herein, shall be completed on or before **February 16, 2001**. This paragraph serves to revise, amend and supersede paragraph 20 of CMO No. 2.

Expert Discovery

9. (a) Plaintiffs in the cases referenced in paragraph 6 herein shall designate all of his or her experts no later than **January 5, 2001**, by serving upon each defendant in the case, by facsimile or by personal service, an expert's report and expert material for each expert in the case. On or before **March 2, 2001**, plaintiffs in the aforementioned cases shall make available and present their designated expert witnesses for depositions. This paragraph serves to revise, amend and supersede paragraph 29(c) of CMO No. 2.

(b) Defendants in the cases referenced in paragraph 6 herein shall designate their experts no later than **February 15, 2001**, by serving upon plaintiff and each co-defendant in the case, by facsimile or by personal service, an expert's report and expert material for each expert in the case. On or before **April 16, 2001**, defendants in the aforementioned cases shall make available and present their designated expert witnesses for depositions. This paragraph serves to revise, amend and supersede paragraph 29(d) of CMO No. 2.

(c) Plaintiffs in all the remaining Schedule A Cases, excluding the cases referenced in paragraph 6 herein, shall designate all of their experts no later than **March 5, 2001**, by serving upon each defendant in the case, by facsimile or by personal service, an expert's report and expert material for each expert in the case. On or before **May 14, 2001**, plaintiffs in the aforementioned cases shall make available and present their designated expert witnesses for depositions. This paragraph serves to revise, amend and supersede paragraph 29(e) of CMO No. 2.

(d) Defendants in all the remaining Schedule A Cases, excluding the cases referenced in paragraph 6 herein, shall designate their experts no later than **April 9, 2001**, by serving

upon plaintiff and each co-defendant in the case, by facsimile or by personal service, an expert's report and expert material for each expert in the case. On or before **June 15, 2001**, defendants in the aforementioned cases shall make available and present their designated expert witnesses for depositions. This paragraph serves to revise, amend and supersede paragraph 29(f) of CMO No. 2.

(e) Any party may serve, upon plaintiff and each co-defendant in the case, supplemental expert report(s) from an expert previously designated as provided for in the CPLR. On or before **March 2, 2001**, any party in the cases referenced in paragraph 6 herein shall submit its supplemental expert reports. On or before **April 23, 2001**, any party in all the remaining Schedule A Cases, excluding the cases referenced in paragraph 6 herein, shall submit his, her or its supplemental expert reports. If the expert for whom the supplemental expert report has been served has already been deposed, he or she may be deposed a second time only on new material contained within such supplemental expert report. Said deposition shall taken place within 15 days of the receipt of the supplemental expert report. If the expert has not been previously deposed in this litigation, he or she may be deposed within 20 days of receipt of the supplemental expert report. This paragraph serves to revise, amend and supersede paragraph 29(g) of CMO No. 2.

Discovery Deadline, Pleadings and Pretrial Matters

10. Motions relating to appropriate trial venue for any of the cases selected by the parties and referenced in paragraph 6 herein shall be made returnable **February 26, 2001** and the Court shall hear oral arguments on any such motions on **March 8, 2001**. This paragraph serves to revise, amend and supersede paragraph 35 of CMO No. 2.

11. On **March 5, 2001**, plaintiffs shall file Notes of Issue in the cases selected by the parties and referenced in paragraph 6 herein. This paragraph serves to revise, amend and supersede paragraph 36 of CMO No. 2.

12. On **March 12, 2001**, the Court shall set trial dates, beginning with **May 7, 2001**, for those of the cases selected by the parties and referenced in paragraph 6 that are properly venued for trial in New York County or in any county under this Court's jurisdiction. This paragraph serves to revise, amend and supersede paragraph 37 of CMO No. 2.

13. On **June 4, 2001**, plaintiffs shall file Notes of Issue in the remaining Schedule A Cases, excluding the cases referenced in paragraph 6 herein. This paragraph serves to revise, amend and supersede paragraph 38 of CMO No. 2.

Dated: November 3, 2000

SO ORDERED,



JUSTICE HELEN E. FREEDMAN