

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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IN RE: NEW YORK DIET DRUG LITIGATION

Index No. 700000/98

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THIS DOCUMENT APPLIES TO ALL DIET DRUG
CASES VENUED IN NEW YORK COUNTY

**ORDER WITH
NOTICE OF ENTRY**

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PLEASE TAKE NOTICE that the attached Case Management Order No. 4 of
which the within is a true copy was signed by the Honorable Helen E. Freedman on October 14,
1998.

Dated: New York, New York
October 30, 1998

SIMPSON THACHER & BARTLETT

By: 

Thomas C. Rice

Office and Post Office Address
425 Lexington Avenue
New York, New York 10017-3954
(212) 455-2000

Defendants' Liaison Counsel

To: All Counsel of Record on the Master Service List in effect as of October 30, 1998.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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CASE MANAGEMENT
ORDER NO. 4
October 14, 1998

Confidentiality Order

Pursuant to Case Management Order No. 1 ("CMO No. 1") entered in these coordinated cases on May-28, 1998, this Court, *inter alia*, established steering committees, and joint subcommittees, of plaintiffs' and defendants' counsel to develop uniform pleadings and discovery requests to be used in these cases. The committees have jointly developed the attached Protective Order Concerning Certain Confidential Material (the "Confidentiality Order"). This Order, which adopts this Confidentiality Order, applies to all diet drug cases which are presently or hereafter assigned to the undersigned.

A. Confidentiality Order

1. Attached hereto as Appendix A and made a part hereof is an Order governing the manner in which defendants may designate documents as confidential and the procedures by which such documents shall be treated.

2. The entry of the Confidentiality Order does not constitute a finding by the Court, or an agreement of the parties that Confidential Discovery Material is entitled to be filed under seal. Any party wishing to have Confidential Discovery Material filed under seal

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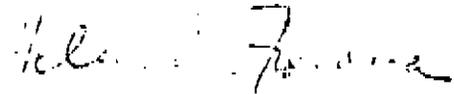
must make an application to the Court pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts (22 NYCRR § 216.1).

B. Other Matters

1. Plaintiffs' and Defendants' Liaison Counsel are hereby directed to mail a copy of this Order to all counsel who have appeared in these actions for plaintiffs and defendants, respectively.

SO ORDERED.

Dated: October 14, 1998
New York, New York



Helen E. Freedman, J.S.C.

PRESENT: HONORABLE HELEN E. FREEDMAN
Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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**ORDER CONCERNING
CERTAIN CONFIDENTIAL
DISCOVERY MATERIAL**

1. This Order applies to the confidential treatment of documents and other products of discovery, all information derived therefrom and including, but not limited to, all copies, excerpts of summaries thereof, obtained by the plaintiffs or defendants in these cases pursuant to the requirements of any court order, responses to notices for discovery and inspection, responses to requests to admit, interrogatory answers, and depositions and deposition exhibits ("Discovery Material").

2. (a) Prior to giving any person access to Discovery Material designated as confidential pursuant to paragraph 3 of this Order, counsel for the party intending to disclose such confidential Discovery Material shall furnish a copy of this Order to the person being given access. The person being given access shall execute a Confidentiality Agreement in the form annexed hereto as Exhibit A. Counsel for the party disclosing confidential material shall retain the executed Confidentiality Agreements during the pendency of this litigation and, upon the termination of this litigation, those Agreements shall be filed with the Court. The requirement to

execute a Confidentiality Agreement shall not apply to the Court, counsel of record for a party, members or employees of counsel's law firm, or in-house counsel for a party.

(b) The parties have agreed that Discovery Material produced in the New York Diet Drug Litigation designated as confidential under paragraph 3 hereof will be used only for the purposes of this litigation, and any litigation in any other state or federal court relating to the health effects of the Diet Drugs (phentermine, fenfluramine and dexfenfluramine), provided that the court and parties in any such state or federal court litigation agree to be bound with respect to such Discovery Material by the terms of this Order or by the terms of a protective order entered in such state or federal court litigation providing equal or greater protection to Discovery Material.

3. Persons producing Discovery Material may designate as confidential Discovery Material, or portions thereof, containing or disclosing trade secrets or other confidential research, development or commercial information ("Confidential Discovery Material"). The information subject to such designation shall be limited to the producing party's:

- i. Customer names;
- ii. Proprietary licensing, distribution, marketing, design, development, research and manufacturing information regarding products, whether previously or currently marketed or under development;
- iii. Ongoing clinical studies (to the extent produced);
- iv. Information concerning competitors;
- v. Production information;
- vi. Financial information not publicly filed with any federal or state regulatory authorities; and

vii. Information submitted to the FDA or other governmental agency, that under applicable regulations is exempt from disclosure under the Freedom of Information Act.

4. Confidential Discovery Material, if a writing, shall have the following language (or similar language provided by the terms of a protective order of comparable scope entered into in the litigation described in paragraph 2(b) hereof) stamped on the face of the writing, or shall otherwise have such language clearly marked:

SUBJECT TO PROTECTIVE ORDER,
IN RE NEW YORK DIET DRUG
LITIGATION
N.Y. County Index No. 700000/98

or

SUBJECT TO PROTECTIVE ORDER
MDL NO. 1203 (EDPA)

Such stamping or marking will take place prior to production by the producing person, or subsequent to selection by the receiving party for copying but prior to the actual copying if done expeditiously. The stamp shall be affixed in such manner as not to obliterate or obscure any written matter. In the case of deposition testimony, confidentiality designations shall be made within thirty (30) days after the transcript has been received by counsel for the deponent, and shall specify the testimony being designated confidential by page and line number(s). Until the expiration of such 30 day period, the entire text of the deposition, including all testimony therein, shall be treated as confidential under this Order. In the event that the producing person inadvertently fails to designate Discovery Material as confidential in this or any other litigation, it may make such a designation subsequently by notifying all parties to whom such Discovery

Material was produced, in writing as soon as practicable. After receipt of such notification, the parties to whom production has been made will treat the designated Discovery Material as confidential, subject to their right to dispute such designation in accordance with paragraph 8 hereof.

5. In the event that any question is asked at a deposition which a party or nonparty asserts calls for confidential information, such question shall nonetheless be answered by the witness fully and completely, to the extent required by law. Counsel for the deponent shall, either at the deposition or within 30 days after receipt of the transcript thereof by said counsel, notify all counsel on the record or in writing, that the information provided in such answer is confidential.

6. Confidential Discovery Material may not be used by any person receiving such Discovery Material for any business or competitive purposes and shall be used solely for the purposes of this litigation, and such other state or federal court litigations as authorized by paragraph 2(b) hereof, and for no other purpose without prior written approval from the Court or the prior written consent of the producing person. All persons receiving or given access to Confidential Discovery Material in accordance with the terms of this Order consent to the continuing jurisdiction of the Court for the purposes of enforcing this Order and remedying any violations thereof.

7. (a) Subject to subparagraphs (b), (c) and (d) below, Confidential Discovery Material shall not be disclosed to anyone other than the outside and in-house attorneys engaged in the conduct of the litigation described in paragraph 2(b) hereof, and to the employees of such outside attorneys directly involved in the conduct of such litigation. Notwithstanding anything to the contrary contained in this paragraph, given the fact that co-defendants may be commercial

competitors, defense attorneys shall not disclose to their clients, or to any of their clients' employees except in-house counsel, any Discovery Material produced by any other defendant and designated as confidential, without first obtaining the consent of the producing party or leave of Court for good cause shown.

(b) For purposes of this litigation, outside attorneys may disclose Confidential Discovery Material to retained experts (including persons directly employed by such experts) and to any person expected to testify at trial or at a deposition to the extent that the Discovery Material relates to his/her proposed testimony. When so doing, the disclosing outside attorneys and the recipients of the Confidential Discovery Material shall comply with the terms of paragraph 2(a) hereof.

(c) For purposes of this litigation outside and in-house counsel may disclose Confidential Discovery Material to agents and employees of services involved in one or more aspects of organization, filing, converting, storing, retrieving or coding Confidential Discovery Material, but only if disclosure is necessary for the performance of such services. When so doing, the disclosing outside attorneys and the recipients of the Confidential Discovery Material shall comply with the terms of paragraph 2(a) hereof.

(d) All outside and in-house counsel and the employees and assistants of outside counsel receiving discovery shall take all steps reasonably necessary to prevent the disclosure of Confidential Discovery Material other than in accordance with the terms of this Order. Such Confidential Discovery Material shall be made available only to those persons outside counsel deems necessary in the conduct of the litigation.

(e) Disclosure of Confidential Discovery Material other than in accordance with the terms of this Order may subject the disclosing person to such sanctions and remedies as the Court may deem appropriate.

8. (a) If at any time a party wishes for any reason to dispute a designation of Discovery Material as confidential hereunder, such party shall notify the designating party of such dispute in writing, specifying the Discovery Material in dispute and the nature of the dispute. If the parties are unable amicably to resolve the dispute, the disputing party may apply by motion to the Court for a ruling as to whether the designated Discovery Material may, in accordance with the law of New York and this Order, properly be treated as confidential. The designating party shall have the burden of proof on such motion to establish the propriety of its confidentiality designation. Disputed Discovery Material shall continue to be treated as confidential hereunder until such dispute is resolved either amicably by the parties, or by order of the Court.

(b) All Discovery Material designated as confidential under this Order, whether or not such designation is in dispute pursuant to subparagraph 8(a) above, shall retain that designation and be treated as confidential in accordance with the terms hereof unless and until:

(i) The producing party agrees in writing, that the material is no longer confidential and subject to the terms of this Order; or

(ii) This Court enters an Order that the matter shall not be entitled to confidential status and that Order is not timely appealed.

9. The parties shall negotiate in good faith before filing any motion relating to this Order.

10. This Order shall not prevent any persons bound hereby from making use of information or documents obtained from some source other than Discovery Material produced in the New York Diet Drug Litigation without the restrictions of this Order if the information or documents are lawfully in their possession and/or lawfully obtained through discovery in this litigation or in any other litigation in which such information was not designated as "confidential" or subject to confidential treatment.

11. (a) The entry of this Order does not constitute a finding by the Court, or an agreement of the parties that Confidential Discovery Material is entitled to be filed under seal. Any party wishing to have Confidential Discovery Material filed under seal must make an application to the Court pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts (22 NYCRR § 216.1).

(b) Any party seeking to submit Confidential Discovery Material to the Court with motion papers shall notify opposing counsel and the producing party, no later than at the time of service of the motion, that the motion contains Confidential Discovery Material.

(i) If the motion is noticed pursuant to CMO No. 1 Section VIII, the motion shall not be filed with the Court at the time it is served, but shall be filed no sooner than seven (7) days after the date on which the motion was served. After the motion is served, but before it is filed, the producing party may make an application to the Court pursuant to Section 216.1 to have the motion filed under seal.

(ii) If the motion is brought on by an order to show cause, the motion papers may refer to, but shall not contain, Confidential Discovery Material. After the motion is served, but on or before the return date, the producing party may make an application to the

Court pursuant to Section 216.1 to have the motion filed under seal. Any Confidential Discovery Material referred to in the motion papers may be filed with the Court on the return date.

(c) Any party seeking to submit Confidential Discovery Material to the Court with pleadings or papers other than motion papers shall provide the producing party at least ten (10) days advance, written notice of such intended filing specifying which Confidential Discovery Materials will be submitted, in order to permit the producing party an opportunity to obtain an Order from the Court sealing the Court records pursuant to Section 216.1.

(d) Any Confidential Discovery Material filed with the Court, and any pleading, motion or other paper filed with the Court containing or disclosing any such Confidential Discovery Material which is the subject of an application to seal the record, or an Order granting such application, shall be filed under seal. Any pleading, motion or other paper filed under seal shall bear the legend: "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION COVERED BY A CONFIDENTIALITY ORDER OF THE COURT AND IS SUBMITTED UNDER SEAL PURSUANT TO THAT ORDER. THE CONFIDENTIAL CONTENTS OF THIS DOCUMENT MAY NOT BE DISCLOSED WITHOUT EXPRESS ORDER OF THE COURT." Said Confidential Discovery Material and/or other papers shall be kept under seal and maintained by the Clerk of the Court separate from the public records in this litigation until further order of the court; however, said Confidential Discovery Material and other papers filed under seal shall be available to the Court and counsel of record, and to all other persons entitled to receive the confidential information contained therein under the terms of this Order.

12. (a) Nothing in this Order shall prevent or restrict counsel for any party in any way from inspecting, reviewing, using or disclosing any Discovery Material produced or provided by that party.

(b) Nothing shall prevent disclosure beyond that required under this Order if the producing party consents in writing to such disclosure, or if the Court, after notice to all affected parties, orders such disclosure and that Order is not timely appealed.

(c) No disclosure pursuant to this paragraph 12 shall waive any rights or privileges of any party granted by this Order.

13. This Order shall not enlarge or affect the proper scope of discovery in this or any other litigation, nor shall this Order imply that Discovery Material designated as confidential under the terms of this Order is properly discoverable, relevant or admissible in this or any other litigation. Without limiting the generality of the foregoing, this order is without prejudice to the right of the producing party to object to the production of the information or to withhold information on the ground that it constitutes highly confidential trade secrets that should not be produced even pursuant to the protections contained in this Order. In the event a party withholds documents or other information on the ground that it constitutes a highly confidential trade secret, the party withholding information shall produce a log specifying in reasonable detail what has been withheld and the basis therefor and the requesting party reserves the right to challenge by appropriate motion the withholding of such information.

14. The entry of this Order shall be without prejudice to the rights of the parties, or any one of them, or of any non-party to assert or apply for additional or different protection at their discretion.

15. All counsel of record in this litigation shall make a good faith effort to comply with the provisions of this Order and to ensure that their clients do so. In the event of a change in counsel, retiring counsel shall fully instruct new counsel of their responsibilities under this Order.

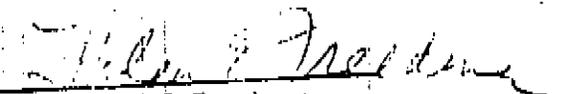
16. The terms of this Order shall survive and remain in effect after the termination of In re New York Diet Drug Litigation and all lawsuits which now or hereafter are consolidated therein. The parties shall take such measures as are necessary and appropriate to prevent the public disclosure of Confidential Discovery Material, through inadvertence or otherwise, after the conclusion of such litigation.

17. This Order does not restrict or limit the use of Confidential Discovery Material at any hearing or trial. Nothing in this Order, however, shall prevent any party from seeking an appropriate protective order to govern such use of Confidential Discovery Material at a hearing or trial.

IT IS SO ORDERED

DATED: OCT 14 1998

ENTER:


Honorable Helen E. Freedman
Justice of the Supreme Court

PRESENT: HONORABLE HELEN E. FREEDMAN
Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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IN RE: NEW YORK DIET DRUG LITIGATION :

Index No. 700000/98

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THIS DOCUMENT RELATES TO ALL :
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NEW YORK COUNTY :

CONFIDENTIALITY AGREEMENT

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The undersigned agrees:

I hereby attest to my understanding that information or documents designated confidential are provided to me subject to the Order Concerning Certain Confidential Material, dated _____, 1998 (the "Confidentiality Order"), in the above-captioned litigation; that I have been given a copy of and have read the Confidentiality Order, and that I agree to be bound by its terms. I also understand that my execution of this Confidentiality Agreement, indicating my agreement to be bound by the Confidentiality Order, is a prerequisite to my review of any information or documents designated as confidential pursuant to the Confidentiality Order.

I further agree that I shall not disclose to others, except in accord with the Confidentiality Order, any Confidential Discovery Material, as defined therein, or any information contained in such Confidential Discovery Material, in any form whatsoever, and that

such Confidential Discovery Material and the information contained therein may be used only for the purposes authorized by the Confidentiality Order.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such Discovery Material and information will continue even after this litigation concludes.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Confidentiality Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the Supreme Court of the State of New York, New York County, for the purposes of any proceedings relating to enforcement of the Confidentiality Order.

I further agree to be bound by and to comply with the terms of the Confidentiality Order as soon as I sign this Agreement, whether or not the Confidentiality Order has yet been signed by the Court.

Date: _____

By: _____

Subscribed and sworn to before me this
day of _____, 1998

Notary Public

