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

Index No.: 700000/98

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IN RE: NEW YORK DIET DRUG LITIGATION

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THIS DOCUMENT APPLIES TO ALL CASES

**CASE MANAGEMENT
ORDER NO. 9**

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Standard Consolidated Disclosure of Health Care Defendants

A. The Uniform Requests

1. Pursuant to Case Management Order 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. A Uniform Demand for Verified Bill of Particulars as to Affirmative Defenses of Health Care Provider Defendants is annexed hereto as Exhibit A (the "Bill") and a Uniform Set of Demands for Document Requests entitled Plaintiff's Demand for Discovery and Inspection of Health Care Provider Defendants, is attached hereto as Exhibit B (the "Demand").

2. The Bill and the Demand, filed as a part of this Order under the index number 700000/98, are applicable to each and every case that is or becomes subject to this Order.

B. Responding to Uniform Requests

1. Defendants shall serve their responses to the Bill and Demand within the time provided for in this Order upon each party in the individual actions to which the responses pertain, providing the particulars demanded, if applicable, the information and documents requested, and the

verification as indicated.

2. Defendants' responses to the Bill and Demand shall be served in accordance with the following schedule:

a. The Health Care Provider Defendants' responses to the Bill shall be served no sooner than thirty (30) days after the completion of plaintiff's deposition and no later than thirty (30) days after the filing of the Note of Issue.

b. The Health Care Provider Defendants' responses to the Demand shall be served within ninety (90) days of the Defendant Health Care Provider's Answer. In those cases in which that time has elapsed, Defendants' responses shall be provided within thirty (30) days of the signing of this Order or thirty (30) days after the case becomes subject to this Order, whichever is later.

3. Any plaintiff may seek additional discovery relating to the Bill upon leave of Court for good cause shown.

C. Other Matters

1. The entry of this Order is without prejudice to the right of any Health Care defendant to object to providing the information sought herein and in the attached Exhibits.

2. The entry of this Order is without prejudice to the rights of the parties or any one of them to challenge by appropriate motion the withholding or redaction of information by the Health Care provider defendants. In the event a party wishes to dispute the withholding or redaction of information, such party shall notify the Health Care provider defendants in writing, specifying the nature of dispute. If the parties are unable to amicably resolve the dispute, the disputing party may

apply by motion to the Court for a ruling as to whether the withheld or redacted information may, in accordance with the law of New York, properly be withheld or redacted. Disputed information shall continue to be withheld or redacted by the Health Care defendants until the dispute is resolved either amicably or by Order of this Court

3. Defendants' Liaison Counsel is hereby directed to serve a copy of this Order with Notice of Entry to all counsel who have appeared in these actions.

SO ORDERED.

Dated: New York, New York
March 15, 1999


Helen E. Freedman, J.S.C.

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

IN RE: NEW YORK DIET DRUG LITIGATION

EXHIBIT "A"

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

Index No. 700000/98

CMO. No. 9

**PLAINTIFFS' UNIFORM DEMAND FOR A VERIFIED BILL OF
PARTICULARS AS TO AFFIRMATIVE DEFENSES OF HEALTH
CARE PROVIDER DEFENDANTS**

Plaintiffs', Uniform Demand for a Verified Bill of Particulars as to Affirmative Defenses, must be completed by each of the Health Care Provider Defendants governed by Case Management Order No. 9.

1. With respect to any affirmative defense contained in the Answer of the defendant, which alleges culpable conduct on the part of the plaintiff(s), set forth the following:

- (a) Basis for the assertion of said affirmative defense, including, without limitation, a statement of each and every act of negligence, commission, or omission which you will claim as the basis of the alleged culpable conduct of the plaintiff herein; and
- (b) The injuries you allege plaintiff(s) suffered as a result of the alleged culpable conduct by plaintiff(s).

2. With respect to any affirmative defense alleged in the Answer of defendant which alleges assumption of risk, set forth the basis for such affirmative defense including:

- (a) The dangerous condition or conduct that the plaintiff(s) allegedly knew;
- (b) The statutory rule and section, if any, upon which defendant relies in the assertion of said defense; and

(c) The manner in which plaintiff voluntarily exposed himself to the risk or danger.

3. With respect to any affirmative defense contained in the Answer of the defendant, which alleges that this Court lacks in personam jurisdiction over the defendant, set forth the basis for said affirmative defense.

4. With respect to any affirmative defense contained in the Answer of the defendant which alleges that the damages suffered by plaintiff(s) (and the putative class members) were caused or proximately caused by some person or third party other than the answering defendant or its agents, servants, employees and/or assigns, set forth the basis upon which you allege said affirmative defense, including the identity of the person or third party you allege caused plaintiffs' injury.

5. With respect to any affirmative defense alleged in the Answer of defendant, which alleges that plaintiffs' causes of action are barred in whole or in part, by applicable Statutes of Limitation, and/or the doctrines of laches, waiver, and estoppel, set forth your basis for said affirmative defense, including:

(a) The rules, regulations, statutes, ordinances, or codes which preclude plaintiffs' claims, either in whole or in part by a Statute of Limitation.

6. With respect to any affirmative defense contained in the Answer of the defendant, which alleges that plaintiffs' claims for punitive damages are in contravention of the rights of the answering defendants under the United States Constitution and the Constitution of the State of New York, set forth your basis for said affirmative defense.

7. With respect to any affirmative defense contained in the Answer of the defendant, which alleges that plaintiffs' claims for punitive damages are barred in that no act or omission of the answering defendants was or were malicious, willful, wanton, reckless, or grossly negligent, set forth the basis for said affirmative defense.

8. With respect to any affirmative defense contained in the Answer of the defendant which alleges that plaintiffs' recoveries should be reduced by comparative negligence, fault, responsibility, or causation attributable to each defendant, set forth your basis for said affirmative defense, including:

- (a) A statement of each and every act of negligence, commission or omission which you will claim as the basis of the alleged culpable conduct of the individual defendants herein.

9. With respect to any affirmative defenses contained in the Answer of this defendant which defendant alleges is a defense to a cause of action for lack of informed consent pursuant to Public Health Law, set forth the basis for said affirmative defense, including:

- (a) The statutory rule and section, if any, upon which defendant relies in the assertion of said defense.

PLEASE TAKE FURTHER NOTICE, that upon your failure to comply with the foregoing demand, plaintiffs will move for an Order of Preclusion herein, pursuant to the rules of the Court.

Dated: New York, New York
March 5, 1999

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

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IN RE: NEW YORK DIET DRUG LITIGATION

EXHIBIT "B"

CMO No. 9

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

Index No. 700000/98

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**PLAINTIFFS' DEMAND OF HEALTH CARE
PROVIDERS FOR DISCOVERY AND INSPECTION**

The plaintiffs' Demand of Health Care Providers for Discovery and Inspection must be responded to by each Health Care Defendant who is a defendant in an action which is governed by Case Management Order No. 9.

DEMAND FOR MEDICAL RECORDS

Pursuant to CPLR Article 31, plaintiff hereby demands of the physician defendants for the following

1. Full and complete copies of any and all medical records maintained or received by the defendant in the course of treatment and relating to the plaintiff. Said medical records include, but are not limited to: admission sheets, CT Scan Reports, EKG reports, ECG reports, echocardiogram reports, videos and printouts, EEG reports and printouts, bills, diagnostic tests, history and physician examination, dates of treatment, medical records and reports, photographs, MRI reports, pathology reports, physician notes and progress notes, sonogram reports, x-ray reports and films, echocardiogram tapes and prescription sheets.

If no records exist, defendant will so state.

DEMAND FOR LITERATURE AND CORRESPONDENCE

Pursuant to CPLR Article 31, plaintiff hereby demands of the physician defendants the following, PROVIDED they were in existence and limited to the dates of treatment for each individual plaintiff:

1. True and correct copies of any written material or other documents given to or made available to plaintiffs by the medical defendant concerning said defendant's treatment of the plaintiff with diet drugs at issue.
2. True and correct copies of all handouts, literature, correspondence, warnings, pamphlets and any other printed matter, including but not limited to "Dear Doctor" letters and advertisements, given to the health care defendant by any of the manufacturing defendants relating to the diet drugs.
3. True and correct copies of all handouts, literature, correspondence, warnings, pamphlets and any other printed matter given to the health care defendant by the FDA relating to the diet drugs.
4. True and correct copies of any adverse reaction reports or other correspondence to the manufacturer or the manufacturer's representative pertaining to the diet drug(s) at issue prepared by the health care defendant, to the extent not protected by statute, and only up to the last date of treatment rendered to a given plaintiff, to the extent they exist.

DEMAND FOR ADVERTISING

Pursuant to CPLR Article 31, plaintiff hereby demands of the answering defendant:

True and correct copies of any and all advertising in whatever media prepared that pertains to the diet drugs, whether prepared by or on behalf of the defendant health care provider. If defendant does not possess any advertisements, defendant shall so state.

2. Disclose in reasonable detail the qualifications of each expert witness.
3. Disclose in reasonable detail the subject matter on which each expert is expected to testify.
4. Disclose in reasonable detail the substance of the facts and opinions on which each expert is expected to testify.
5. Disclose in reasonable detail a summary of the grounds for each expert's opinion.

To the extent this demand is broader than the discovery contemplated by CPLR 3101(d) in medical malpractice actions, and the applicable case law, defendant need not to respond to those parts of the demand.

DEMAND FOR STATEMENTS

Pursuant to CPLR 3101(e), you are hereby required to produce and permit discovery by the plaintiff any and all statements made by the plaintiff reduced to writing, to or by the answering defendant, his agents, servants or representatives.

If no such statement is in possession, custody or control of any parties you represent in this action, defendant shall so state.

DEMAND FOR INSURANCE INFORMATION

Pursuant to CPLR Article 3101(f), plaintiff hereby demands of the answering defendant:

1. The name of the insurer for any insurance policy, including excess, that covers the malpractice liability, professional negligence and all other applicable liability coverage, as they may apply to the underlying circumstances of the lawsuit and applicable to the period during which the answering defendant treated a given plaintiff.
2. The applicable dates of coverage.
3. The policy limits.
4. If the insurance carrier has issued a disclaimer, a copy of the professional liability insurance policy is to be provided.

DEMAND FOR SURVEILLANCE MATERIALS

Plaintiff hereby demands of the answering defendant:

1. All videotapes, films, movies, surveillance tapes, photographs, and/or recordings of the plaintiff made by or on behalf of, any and all defendants, their agents, representatives, employees, investigations, and/or their claims department, during the course of surveillance of the plaintiff(s) or any other surveillance materials as required by the CPLR and the applicable case law.

To the extent that this demand is broader than the discovery contemplated by the CPLR, and the applicable case law, defendant need not respond to those portions of the demand.

DEMAND FOR WITNESSES

PLEASE TAKE NOTICE, that pursuant to CPLR Article 31, you are hereby required to set forth in writing the name and address (if known) of each person claimed to be a witness to the occurrence alleged in the complaint or any acts or conditions which have been alleged as causing the occurrence alleged in the complaint.

PLEASE TAKE NOTICE, that these demands are continuing demands and that if any of the above items are obtained after the date of this demand, they are to be furnished pursuant to these demands.

Dated: New York, New York
March 11, 1999