

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

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: IN RE: NEW YORK DIET DRUG LITIGATION :
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: :
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Index No. 700000/98

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: THIS DOCUMENT APPLIES TO ALL DIET DRUG :
: CASES VENUED IN NEW YORK COUNTY :
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**ORDER WITH
NOTICE OF ENTRY**

PLEASE TAKE NOTICE that the attached is a true and correct copy of Case Management Order No. 14 which was signed by the Honorable Helen E. Freedman on January 10, 2001 and entered in the Office of the New York County Clerk on January 23, 2001.

Dated: New York, New York
January 24, 2001

SIMPSON THACHER & BARTLETT

By 

Thomas C. Rice

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

Defendants' Liason Counsel

To: All counsel of record on the Master Service List in effect as of January 1, 2001.

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

Sub #
164

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IN RE: NEW YORK DIET DRUG LITIGATION

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CASE MANAGEMENT
ORDER NO. 14
January 19, 2001

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TRIAL SCHEDULING AND PRE-TRIAL DISCLOSURES

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 coordinate discovery in these cases and to address case management issues. The Plaintiffs' and Defendants' Steering Committees have reached agreement regarding a protocol for selecting cases for trial and a schedule for pre-trial disclosures. This Order and the protocol and schedule contained herein apply to all diet drug cases which are presently or hereafter assigned to the undersigned for pre-trial purposes. The Steering Committees expect that all cases filed in New York Supreme Court in counties outside of New York City will be transferred for purposes of trial to the Supreme Court of the county in which the case was filed. This Order will be presented to the courts to which cases are transferred for trial.

FILED

JAN 23 2001

NEW YORK
COUNTY CLERK'S OFFICE

I. Filing of Note of Issue and Scheduling of Cases for Trial

1. The parties shall serve and file Notes of Issue and Certificates of Readiness in accordance with Case Management Order No. 12 ("CMO 12"). Any motions to vacate a Note of Issue shall be made in accordance with the Uniform Rules for the New York State Trial Courts § 202.21.

2. Within twenty days of the filing of a Note of Issue and Certificate of Readiness, plaintiff shall file and serve a notice indicating the identities of all defendants against whom plaintiff intends to proceed at trial.

3. Cases for which a Note of Issue and Certificate of Readiness have been filed and for which no motion to vacate the Note of Issue is outstanding ("Eligible Cases") will be scheduled for trial on a modified first in, first out basis, considering: (i) the date the action was commenced; (ii) the action's cluster date; (iii) the date the Note of Issue and Certificate of Readiness were filed; (iv) whether a case has been expedited pursuant to CMO 10; (v) the law firm which commenced the case (*i.e.*, to attempt to ensure that scheduling of trials is done fairly as among plaintiff's counsel); and (vi) such other issues as may be raised in the interest of fairness to all parties.

4. Prior to a meeting with the undersigned at which there are Eligible Cases to be placed on the calendar and assigned trial dates, Plaintiffs' and Defendants' Steering Committees will meet (either in person or telephonically) to attempt to agree on the order in which the Eligible Cases will be placed on the trial calendar and on trial dates. Any unresolved issue related to the placement of Eligible Cases on the Court's trial calendar or trial dates may be raised with the Court by the Plaintiffs' or Defendants' Steering Committee. In addition, any

party in any Eligible Case shall have the right to contest the agreement of the Steering Committees as to trial scheduling.

5. Trial dates for Eligible Cases will be assigned during the Court's regularly scheduled meetings with the parties. Trial dates shall be scheduled to take into account the schedules for dispositive motions, as set forth in CMO 12, and for pre-trial activities, as set forth in Section II herein. The scheduled trial date ("T") shall indicate the day on which jury selection will commence. The cases shall be calendared so that no two trial dates are scheduled to commence within a forty-five day period.

6. For Eligible Cases to be tried in counties outside New York County, the trial date set by the undersigned shall not be binding on the court, but shall indicate the date by which all parties must be prepared for trial, in accordance with the pre-trial procedures described in Section II of this Order.

II. Pre-Trial Procedures for Expedited and Clustered Cases

A. Pre-Trial Deadlines

1. The following pre-trial schedule of disclosures shall apply to all Eligible Cases. For each deadline, "T" indicates the trial date, as set by the undersigned according to section I, herein. A hyphen followed by a figure and the word "weeks" or "week" or "days" means the specified amount of time prior to the trial date. For example, assuming that a trial is set for Tuesday, September 11, 2001, "T-8 weeks" means the last day for filing and/or service is eight weeks prior to September 11, or July 17, 2001.

A. T-8 weeks DEPOSITION TESTIMONY DESIGNATIONS. Parties shall file and serve page line designations, along with any accompanying deposition exhibit designations, for all deposition testimony they intend to offer in their affirmative case at trial, other than counterdesignations. A party's deposition designations at this time shall include all designations of Product Defendants

taken in other diet drug cases throughout the country, as provided for in CMO 11. To the extent that any depositions in the case are taken on or after T-11 weeks, all parties shall file and serve their deposition page/line and exhibit designations for those depositions no later than three weeks after the date of the deposition.

- B. T-7 weeks **PLAINTIFF'S EXHIBIT AND WITNESS LISTS.** Plaintiff shall serve on all parties his or her list of fact witnesses and a marked and numbered exhibit list for Plaintiff's affirmative case. The exhibit list need not include any demonstrative exhibits. Plaintiff shall make reasonable efforts to distinguish on the witness list between witnesses who are expected to testify and those who may testify.
- C. T-6 weeks **INTER-DEFENDANT EXCHANGE OF EXHIBIT AND WITNESS LIST.** Each Defendant remaining in the case based on Plaintiff's notice identifying defendants (*see* Section 1, ¶2, *supra*) shall serve on all other Defendants who remain in the case a draft list of fact witnesses and a draft marked and numbered exhibit list for that Defendant's affirmative case. The exhibit list need not include demonstrative exhibits. Defendants shall make reasonable efforts to distinguish between witnesses who are expected to testify and those who may testify.
- D. T-5 weeks **DEFENDANTS' EXHIBIT AND WITNESS LISTS.** Defendants shall serve on all parties their lists of fact witnesses and marked and numbered exhibit lists for their affirmative cases. The exhibit list need not include demonstrative exhibits. Defendants shall make reasonable efforts to distinguish on the witness lists between witnesses who are expected to testify and those who may testify.
- E. T-4 weeks **DEPOSITION DESIGNATION OBJECTIONS AND COUNTERDESIGNATIONS.** Parties shall file and serve page/line designation objections, as well as objections to designated deposition exhibits, and counterdesignations. A party's deposition counterdesignations at this time shall include counterdesignations of Product Defendants taken in other diet drug cases throughout the country, as provided for in CMO 11. To the extent that particular deposition page/line or exhibit designations are due to be delivered to a party on or after T-8 weeks because particular depositions take place on or after T-11 weeks, said party shall file and serve objections to those designations and counterdesignations no later than ten business days following the delivery to that party of those deposition designations.

- F. T-3 weeks PRETRIAL MOTIONS. Parties shall file and serve pretrial motions for which the filing deadline has not already passed, including, but not limited to, all motions *in limine* and motions to exclude expert testimony or evidence.
- G. T-2 weeks RESPONSES TO PRETRIAL MOTIONS. All responses to pretrial motions shall be filed and served. Any replies to the responses shall be filed and served on the third business day following the date on which the response was filed.
- H. T-10 days OPPORTUNITY TO VIEW DEMONSTRATIVE EXHIBITS. The parties shall make available to each other demonstrative exhibits they intend to use during their affirmative case at trial.
- I. T-10 days EXHIBIT STIPULATION. The parties shall file a stipulation indicating the exhibits which the parties have agreed will be admissible as evidence, as set forth in Subsection B herein.
- J. T-1 week HEARING AND PRETRIAL CONFERENCE. At this time, the trial court may choose to hear argument on any pretrial motions, objections to deposition designations, or objections to particular exhibits and witnesses or any other pretrial matters.
- K. T TRIAL. Jury selection commences.

2. In making deposition designations and counterdesignations, parties shall designate only the particular excerpts of the depositions that they actually intend to offer at trial. Prior to designating deposition testimony, each party shall carefully review the transcripts and shall endeavor in good faith to eliminate (i) irrelevant, immaterial or unnecessarily cumulative material; (ii) attorney colloquy and objections; (iii) any portions of the transcript that the party does not actually intend to play or read to the jury. When the parties meet and confer about their objections to deposition testimony designated by another party, they shall attempt in good faith

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to eliminate material that is inadmissible as evidence under New York law, so that the evidentiary issues that will need to be addressed by the trial court will be minimized.

3. All pleadings, motions and documents required by this Order must be delivered to opposing counsel no later than 5 p.m. on the date indicated for service. Unless otherwise agreed among the parties, delivery of the documents via facsimile is permissible, provided that a hard copy of the document is delivered by opposing counsel by 10:30 a.m. on the calendar day following the date indicated for service.

4. Failure to comply with the above deadlines without good cause shown will result in the preclusion of deposition testimony, witnesses and exhibits that are designated after the scheduled designation date.

5. Case Management Order No. 12 and, with respect to expedited cases, Case Management Order No. 10, govern the designation of all expert witnesses and the protocols regarding the service of expert reports and expert discovery, and the foregoing schedule of pre-trial disclosures in no way affects the schedule set forth in those Orders.

B. Exhibit Stipulations

1. The Court expects the parties to come to agreement on the admissibility of as many exhibits, including plaintiff's medical records, as possible prior to commencement of Trial. Once all parties have served their lists of proposed exhibits, the parties shall meet and confer (either in person or telephonically) and draw up a stipulation of exhibits ("Exhibit Stipulation") as to which there is no objection. The Exhibit Stipulation shall be filed with the Court ten days prior to the commencement of Trial. Any unresolved objections to exhibits may be addresses by the Court at the Hearing and Pre-Trial Conference, to take place at T-1 week, or at trial.

2. Once the parties have come to agreement on the Exhibit Stipulation, the Court expects that the parties will not need to call certain witnesses whose purpose is solely to authenticate exhibits. Thus, the Exhibit Stipulation shall include, as appendices thereto, a list by each party of the witnesses that party will not call to testify as part of its affirmative case in light of the agreements in the Exhibit Stipulation.

3. In the parties' Exhibit Stipulation, the parties shall indicate which medical records have been stipulated to in their entirety. The statements and particular records subject to objections shall be listed in an appendix to the stipulation. Any resolved objections may be addressed by the Court at the hearing and pre-trial conference, to take place at T-1 week, or at trial.

III. Other Matters

1. This order does not deal with trial of purported class actions.

2. Defendants' Liaison Counsel is hereby directed to serve a copy of this order with notice of entry on all counsel listed on the Master Service list filed in these cases pursuant to CMO No. 1.

SO ORDERED

Dated: January 10, 2001
New York, New York

FILED
JAN 23 2001
NEW YORK
COUNTY CLERK'S OFFICE

H.E.F.

Helen E. Freedman, J.S.C.