

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. 5 of
which the within is a true copy was signed by the Honorable Helen E. Freedman on November
23, 1998.

Dated: New York, New York
December 15, 1998

SIMPSON THACHER & BARTLETT

By: 

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Defendants' Liaison Counsel

To: All Counsel of Record on the Master Service List in effect as of December 1, 1998.

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CASE MANAGEMENT
ORDER NO. 5
November 2, 1998

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Uniform Discovery of American Home Products Corporation

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 Plaintiffs' Discovery Subcommittee has reached agreement regarding written discovery with American Home Products Corporation ("AHP") and its affiliates (the "AHP Defendants"). This Order and the matters set forth herein pertaining to the production of documents and answers to interrogatories by the AHP Defendants shall apply to and be binding on all parties in the New York Diet Drug Litigation cases which are presently or hereafter assigned to the undersigned.

I. Documentary Discovery of the American Home Products Corporation Defendants

1. For purposes of this Case Management Order, the AHP Defendants shall be defined as including the following business entities: American Home Products Corporation (including its unincorporated Wyeth-Ayerst Laboratories Division), the former A.H. Robins

Company, Incorporated¹, Wyeth-Ayerst Laboratories Company, Wyeth Laboratories Incorporated and any other present or former division, subsidiary or affiliate of the aforementioned corporations.

A. Discovery and Production of Documents

1. The AHP Defendants have produced documents in the In Re: Pennsylvania Diet Drugs Litigation pending in the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania ("Pennsylvania State Cases"). The AHP Defendants have agreed to produce in these cases, as set forth herein, all documents that have been produced in the Pennsylvania State Cases.

2. The AHP Defendants will produce one set of the documents to be produced to the Plaintiffs' Steering Committee in the New York Diet Drug Litigation along with a log of documents withheld on the basis of privilege or other protection. The Plaintiffs' Steering Committee shall pay the reasonable costs of copying (including copying to compact disc as set forth herein). Additional copies of documents and the privilege log will be provided to any plaintiff or other party who requests it and pays the reasonable costs of copying, provided that any such additional copies will be provided within a reasonable time taking into account, among other things, demands for production being made on the AHP Defendants in other jurisdictions.

3. Many of the documents being produced pursuant to this Order have been imaged by the AHP Defendants in single page TIFF format and stored on compact disc ("CD ROM") in a computer readable form. All documents which have been imaged and stored on CD ROM shall be produced by the AHP Defendants to the Plaintiffs' Steering Committee in CD

¹ As of August 3, 1998, A.H. Robins Company, Incorporated was merged into American Home Products Corporation and ceased to exist as a separate entity.

ROM form only. All documents produced by the AHP Defendants which are not available in CD ROM form will be produced in hard copy (paper) form.

4. The AHP Defendants have agreed to, and shall, provide to the Plaintiffs' Steering Committee objective bibliographic coding, where applicable, for any document produced that the AHP Defendants have coded for their own purposes. This objective bibliographic coding shall solely consist of: (i) bates number range, (ii) number of pages, (iii) date, (iv) custodian, (v) author, (vi) recipients, (vii) copyees, (viii) actual title, (ix) document type, (x) document condition and (xi) attachment ranges. The AHP Defendants are not obligated to objectively code any additional documents. Additional copies of the objective coding will be provided to any plaintiff or other party who requests it and pays the reasonable costs of copying, provided that any such additional copies will be provided within a reasonable time taking into account, among other things, demands for production being made on the AHP Defendants in other jurisdictions. For all objective coding provided, AHP may redact the coded information to remove the names of persons redacted from the underlying documents and other information that is not properly discoverable.

5. The entry of this Order is without prejudice (i) to the rights of the parties or any one of them to challenge by appropriate motion the withholding or redaction of such information by the AHP Defendants as provided for in paragraph D.4 herein or (ii) the rights of the AHP Defendants or any of them to oppose any such motion.

6. The objective coding is being provided solely to assist the parties in these cases in reviewing the underlying documents. By producing bibliographic coding for such use by the parties, the AHP Defendants do not represent that the coded information is complete and accurate. In addition, such information shall not constitute a waiver of any privilege or work

product protection for any document, nor shall the provision of such coding constitute an admission of any kind by the AHP Defendants. Without limiting the generality of the foregoing, the coding provided shall not be admissible in any case subject to this Order.

B. Clinical Drug Safety Surveillance System Data

1. AHP maintains a computer database for the input of information regarding spontaneous adverse events reports, called the Clinical Drug Safety Surveillance System ("CDSSS"). The AHP Defendants will produce to the Plaintiffs' Steering Committee one set of data from the CDSSS System relating to adverse events for Pondimin and Redux through September 15, 1997, in an electronic form that can be uploaded into a software program. The AHP Defendants will also provide to the Plaintiffs' Steering Committee translations of codes which appear in the data and a listing of the fields and tables used therein. Additional copies of the downloaded information and translation of codes will be provided to any plaintiff or other party who requests it and pays the reasonable costs of copying, provided that any such additional copies will be provided within a reasonable time taking into account, among other things, demands for production being made on the AHP Defendants in other jurisdictions. The AHP Defendants will not produce certain fields and tables that they have determined will contain information submitted to the FDA or other governmental agency, which under applicable regulations is exempt from disclosure under the Freedom of Information Act. The information redacted from these fields and tables which is not exempt from disclosure will be produced in the 3500A forms or the CDSSS Worksheets produced by the AHP Defendants in redacted form.

2. The entry of this Order is without prejudice (i) to the rights of the parties or any one of them to challenge by appropriate motion the withholding or redaction of such

information by the AHP Defendants as provided for in paragraph D.4 herein or (ii) the rights of the AHP Defendants or any of them to oppose any such motion.

C. Interrogatories

1. Promptly after entry of this Order, the AHP Defendants' responses to interrogatories served by plaintiffs in cases pending in the courts of the State of New Jersey shall be filed in the Master File created for these cases by CMO No. 1 and shall be deemed made in each of the cases to which the Master File and this Order now or hereafter applies. The AHP Defendants are not required to respond to these interrogatories by providing narrative responses, segregating documents, or listing specific Bates ranges of documents, except to the extent that they have already done so. If further answers are served on plaintiffs in cases pending in the courts of the State of New Jersey, such further answers shall be filed in the Master File and served on the Plaintiffs' Steering Committee.

2. The entry of this Order is without prejudice to (i) the rights of the parties or any one of them to challenge by appropriate motion the withholding or redaction of such information by the AHP Defendants as provided for in paragraph D.4 herein, or (ii) the rights of the AHP Defendants or any of them to oppose any such motion.

D. Other Matters

1. Any and all prior written discovery requests directed to the AHP Defendants, including any interrogatories and notices for discovery and inspection, are deemed withdrawn and of no force and effect whatsoever.

2. The AHP Defendants and the Plaintiffs' Steering Committee anticipate that a demand for a bill of particulars addressed to the AHP Defendants' affirmative defenses

shall be negotiated and incorporated in a future CMO. Plaintiffs' Steering Committee also intends to serve a similar bill of particulars as well as discovery requests upon other defendants.

3. The foregoing discovery shall apply to and be binding on all parties in the New York Diet Drug Litigation as the discovery of the AHP Defendants in the nature of document requests, interrogatories and the like. If any party desires to propound additional limited, non-repetitive interrogatories pertaining to matters about which discovery cannot be obtained by other means and/or discovery which is specific in nature to New York, such party must first consult with its respective steering committee (to avoid duplicative or otherwise inappropriate requests) and the AHP Defendants. Unless such party's respective steering committee and the AHP Defendants agree, such additional requests may not be served without leave of the Court for good cause shown on motion made in accordance with CMO No. 1. The AHP Defendants in any event reserve the right to object to such discovery on any and all grounds. To the extent the AHP Defendants respond or are ordered to respond to any such additional interrogatories or requests for documents, they may do so by reference to documents and are not required to provide specific Bates ranges.

4. The AHP Defendants intend to withhold or redact certain information on the basis of privilege or other protection. 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 such information by the AHP Defendants. In the event a party wishes to dispute the withholding or redaction of information, such party shall notify the AHP Defendants in writing, specifying the nature of the 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 law of New York, properly be withheld or

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redacted. The AHP Defendants shall have the burden of proof on such motion of establishing the propriety of the withholding or redaction. Disputed information shall continue to be withheld or redacted by the AHP Defendants until the dispute is resolved either amicably or by order of the Court.

5. Defendants' Liaison Counsel is hereby directed to serve a copy of this Order with notice of entry on all counsel who have appeared in these actions.

SO ORDERED.

Dated: November 23, 1998
New York, New York

Helen E. Freedman

Helen E. Freedman, J.S.C.