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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

02-CV-1543

MDL NO. 1407

This document relates to all
actions

ORDER DENYING MOTION FOR
CONTINUANCE OF DAUBERT
HEARING ON CARDIAC INJURY
ISSUES BUT GRANTING
PLAINTIFFS LEAVE TO SUBMIT
NEW EXPERT REPORT AND
TESTIMONY

cc: counsel: BTR

On October 1, 2002, the MDL Plaintiffs' Steering Committee ("PSC") identified general causation experts and submitted expert reports. The court allowed plaintiffs' counsel two weeks following the PSC deadline to submit additional general causation expert reports. Within that time frame, plaintiffs' counsel submitted the report of Dr. William Shell as an expert on cardiac injuries. Defendants deposed Dr. Shell following receipt of his report. Another expert report, from a Dr. Enrique Calle, was later submitted, but then withdrawn following defendants' request to schedule a deposition.

On April 7, 2003, the court held a status conference regarding the Daubert hearing scheduled to commence on April 28, 2003. In that conference, the parties identified the experts to be

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1 proffered at the Daubert hearing. However, plaintiffs declined
2 to identify a cardiac injury expert at that time, indicating
3 their belief that the individual plaintiffs with cardiac injuries
4 were no longer proposing Dr. Shell as an expert. Apparently, Dr.
5 Shell's medical license has been revoked or his credentials
6 otherwise called into question. The court denied a proposal to
7 allow cardiac injury testimony by Dr. Gary P. Zaloga, a PSC-
8 identified expert, given that Dr. Zaloga is an internist, rather
9 than a cardiologist.

10 The court ordered plaintiffs to provide, by no later than
11 April 11, 2003, the name of a cardiac injury expert for the
12 Daubert hearing. The PSC thereafter provided all plaintiffs with
13 notice that individuals with cases attributing cardiac injuries
14 to PPA would be responsible for the presentation of expert
15 testimony on that subject at the Daubert hearing.

16 Following the court's order and the PSC's notice, plaintiff
17 Linda Willis, Willis v. Thompson Medical Co., No. C02-1543, filed
18 a motion for continuance of the Daubert hearing on cardiac injury
19 issues. Willis also sought the court's consideration of a
20 supplementary expert report from Dr. Zaloga, as well as the
21 opportunity to identify additional general causation experts
22 within her May 7, 2003 deadline for filing those reports. Prior
23 to filing this motion, plaintiff's counsel confirmed with the
24 court that the only cardiac injury general causation experts
25 planned for identification in that case were Drs. Zaloga and
26 Calle. The court later learned that this plaintiff had previ-

1 ously withdrawn Dr. Calle's report.

2 The court also received a request filed on behalf of MDL
3 plaintiffs with cardiac injury cases. Plaintiffs seek to provide
4 Dr. Irvin Goldenberg, a board certified cardiologist, as plain-
5 tiffs' cardiac injury general causation expert at the Daubert
6 hearing. Although Dr. Goldenberg has not yet submitted an expert
7 report or appeared for a deposition, plaintiffs indicate his
8 availability to promptly submit a report, provide his exhibits by
9 April 18, 2003, appear for a deposition on April 22, 2003, and
10 testify at the Daubert hearing.

11 Defendants object to both the Willis motion and plaintiffs'
12 proposal regarding Dr. Goldenberg. They assert that plaintiff
13 already declined the opportunity to rely on Dr. Calle's report
14 and argue that the court should not permit Dr. Zaloga to testify
15 on an issue outside his area of expertise. Defendants also
16 object to allowing the introduction of a new expert at this late
17 date, particularly given the fact that Dr. Shell was identified
18 as the cardiac injury expert and timely deposed.

19 The court sees no reason to continue the Daubert hearing on
20 cardiac injury issues. However, although not in the court's
21 usual practice, the court will allow plaintiffs to belatedly
22 provide Dr. Goldenberg as a general causation expert on cardiac
23 injuries. The court finds the addition of Dr. Goldenberg appro-
24 priate given the unusual circumstances surrounding Dr. Shell, and
25 based on the court's interest in providing plaintiffs with
26 cardiac injuries the opportunity to present expert testimony on

ORDER

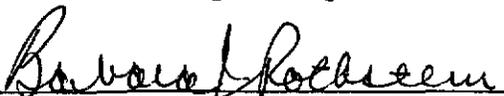
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1 this issue. As such, plaintiffs shall provide Dr. Goldenberg's
2 expert report and exhibits, and shall coordinate with defendants
3 on Dr. Goldenberg's April 22, 2003 deposition.

4 Because Dr. Goldenberg will be considered plaintiffs'
5 cardiac injury expert, the court sees no need for additional
6 expert reports on this subject from plaintiff Linda Willis. The
7 court will consider the report from Dr. Zaloga submitted by the
8 PSC, but will not consider either Dr. Zaloga's supplementary
9 report or the already withdrawn report of Dr. Calle.

10 For the reasons described above, the motion to continue the
11 Daubert hearing and consider additional expert reports is hereby
12 DENIED, while the request to provide Dr. Goldenberg as plain-
13 tiffs' cardiac injury general causation expert is hereby GRANTED.

14 DATED at Seattle, Washington this 16th day of April, 2003.

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16 BARBARA JACOBS ROTHSTEIN
17 UNITED STATES DISTRICT JUDGE
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