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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE (PPA) PRODUCTS LIABILITY LITIGATION,

This document relates to:

Hunnicut v. Novartis Corp., No. C02-792R

Riptoe, et al. v. Bayer Corp., et al., No. C02-355R

Bickham, et al. v. American Home Products Corp., et al., No. C02-907R

Myers, et al. v. Smithkline Beecham Corp., et al., No. C02-1170R

MDL NO. 1407

ORDER RE: PERSONAL INJURY CLASS ACTION CASES NOT ADDRESSED BY COURT'S JUNE 2002 ORDER DENYING CLASS CERTIFICATION

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cc: counsel: BJW

I. BACKGROUND

On June 5, 2002, the court issued an order denying certification in four nationwide and one Louisiana statewide personal injury class action cases.[1] In that order, the court noted its

[1] See MDL 1407 Order Granting Defendants' Motion to Strike Class Allegations and Deny Class Certification in Toombs v. Bayer Corp., et al., No. C02-32R; Fife, et al. v. American Home Products Corp., et al., No. C01-2144R; Ricks, et al. v. American Homes Products Corp., et al., No. C01-1408R; Havard v. Smithkline Beecham, Inc., et al., No. C01-1645R; and Burbel, et al. v.

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understanding that cases with similar proposed classes had been filed, but not yet transferred to the MDL court at the time of defendants' motion to strike class allegations and deny class certification. The court stated that, to the extent applicable, it would extend its holding on certification to cases with similar proposed classes transferred into the MDL. Defendants now request that the court extend its June 5, 2002 order denying certification to the four cases listed above.

II. DISCUSSION

Like the cases addressed in the court's June 2002 order, the four cases at issue here were all filed in Louisiana. These cases also similarly propose classes comprised of individuals who suffered injuries after ingesting PPA-containing products, and/or who may suffer such injuries, and/or who have sustained a justifiable fear of sustaining such injury in the future. As such, these cases appear to entail proposed classes similar, if not identical, to those proposed in the cases in which the court previously denied class certification.

"As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained." Fed. R. Civ. P. 23(c)(1).[2]

Slmithkline Beecham Corp., et al., No. C02-258R (June 5, 2002).

[2] The court's duty to promptly decide the question of class certification remains true even where the parties themselves have not moved for a determination on the issue. See 5 James Wm. Moore et al., Moore's Federal Practice § 23.61[4] (3d ed. 2002).

Here, defendants seek a certification ruling based on the similarity between these cases and those in which the court already denied certification.

Although the court noted its intention to extend its certification ruling to similar cases, it did not specifically take these cases into consideration at the time of its June 2002 order and has not yet received any response from plaintiffs with respect to defendants' request for a certification ruling. Given the significance of a class certification decision, the court believes that plaintiffs in these cases should be afforded an opportunity to address the court before an extension of the court's order denying class certification may be issued.[3]

However, due to the apparent similarity between these and the previously addressed cases, the court finds that extensive briefing on the issue would be both duplicative and unnecessary. As such, the court will allow plaintiffs in the above cases thirty (30) days from the date of this order in which to submit a brief response to defendants' request for a certification ruling,

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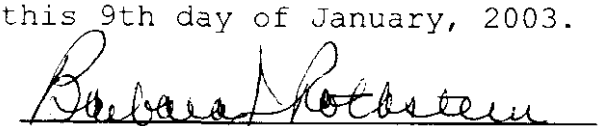
[3] Motions seeking class certification were filed in the transferor courts in two of the four cases at issue, although it appears as though only one of those motions was accompanied by a memorandum in support of certification. See Hunnicut, No. C02-792R and Riptoe, et al., No. C02-355R. The court recognizes that it extended its June 2002 order to a case in which a motion for certification had not yet been filed. See Burbel, No. 02-258. However, defendants had then argued the applicability of its motion to similar personal injury class actions and specifically pointed to Burbel in their reply briefing, after which plaintiffs, already represented by counsel for Burbel, were afforded the opportunity to file a sur-reply.

addressing if and how their proposed classes differ from those in which the court previously denied certification. The court warns plaintiffs against a reiteration of the arguments made in the briefing already taken into consideration. Instead, plaintiffs should limit their response to the differences, if any, between their proposed classes and those already considered by the court.[4] That is, plaintiffs should address why the court's order would not be equally applicable to their proposed classes. Defendants may jointly file a brief reply no later than fifteen (15) days after receipt of plaintiffs' response(s).

III. CONCLUSION

The court declines, at this time, to issue an order extending its June 5, 2002 order denying class certification to the above-described cases. The parties shall abide by the briefing schedule outlined above in submitting memoranda in support of their positions on this issue.

DATED at Seattle, Washington this 9th day of January, 2003.



BARBARA JACOBS ROTHSTEIN
UNITED STATES DISTRICT JUDGE

[4] If plaintiffs find the proposed classes indistinguishable, they should inform the court that no briefing will be forthcoming.