

Order Re: Disputed Issues In Case Management Order No. 1 12/21/2001

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE (PPA)
PRODUCTS LIABILITY
LITIGATION,

MDL No. 1407

ORDER RE: DISPUTED ISSUES IN
CASE MANAGEMENT ORDER NO. 1

THIS MATTER comes before the court to resolve disputed issues regarding proposed Case Management Order No. 1. Having reviewed the proposals filed by plaintiffs and defendants, and having heard argument on the disputed issues, the court rules as follows:

I. Document Production Schedule

Defendants identified as Group 1 defendants shall produce all discoverable documents maintained in hard copy, paper format on or before February 28, 2002. Group 1 defendants shall produce all discoverable documents maintained in electronic format on or before March 30, 2002. Defendants shall produce documents on a rolling basis as soon as available. The court is granting defendants this time to produce documents in the expectation that document production will be completed by the deadlines and that no further extensions will be necessary.

II. Objective Databases

Any defendant that has created an objective database of documents shall produce the database to plaintiffs. Defendants are permitted to redact database fields that contain subjective work product material. If a defendant seeks to withhold the database because it cannot redact the subjective materials, the defendant must first show good cause to the court why it cannot segregate objective and subjective data. The same procedure will apply to plaintiffs' databases if sought by defendants during discovery. Plaintiffs will not be assessed costs for producing databases that defendants have prepared. However, if a defendant must incur additional costs to remove subjective material from the database, plaintiffs will bear the responsibility for those additional costs.

III. Initiation of Depositions

Plaintiffs may begin depositions of fact witnesses on January 20, 2002, thirty (30) days from the date of this order. If a deposition

occurs before document production is completed, and documents received after the deposition raise additional questions for the witness, plaintiffs may renew the deposition upon a showing good cause.

IV. Length of Depositions

Examinations of fact witnesses will be limited to seven (7) hours of examination time per witness. The court expects that if a deposition requires additional time the parties will make a good faith effort to agree on an extension before coming to the court for resolution.

V. Deposition Exhibits

Parties will disclose to the deponent's counsel at least ten (10) days before a deposition the documents they expect to use during examination. As with issues regarding the length of depositions, the court expects that if a party fails to disclose documents, the parties will make a good faith effort to agree how to proceed with the deposition before coming to the court for resolution.

VI. Economic Injury Class Certification

As of the date of this order, the court lifts the stay imposed on potential class certification proceedings. The defendants and plaintiffs shall meet and confer regarding potential stipulations, a discovery plan, and a briefing schedule for the economic injury class certification issue. Counsel shall contact the court on or before January 7, 2002, to inform the court of the agreed schedule or, if agreement cannot be reached, to present separate proposals.

VII. Personal Injury Class Certification

Defendants shall file a motion to strike class allegations on or before January 25, 2002. If plaintiffs contend discovery is necessary before they can respond to defendants' motion, plaintiffs shall file their motion for discovery by February 1, 2002. The motion should include the specific areas of discovery required and the reason discovery is needed, as well as proposed dates for discovery. Defendants may file a response to the discovery motion by February 8, 2002. No reply will be filed.

If the court denies the motion for discovery, plaintiffs shall file their opposition to defendants' motion to strike class allegations within seven (7) days of receiving the court's decision. The defendants' reply shall be filed within fourteen (14) days of receiving the opposition, and any sur-reply by the plaintiffs shall be due fourteen (14) days after receiving the reply. If the court grants the motion for discovery, the parties shall follow the

briefing schedule provided by the court in that order.

If plaintiffs do not bring a motion for discovery, plaintiffs shall file their opposition to the motion to strike class allegations on February 28, 2002. Defendants shall file their reply on March 15, 2002, and plaintiff shall file any sur-reply by March 29, 2002.

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VIII. Expert Discovery

The Joint Science Committee shall meet and shall report to the court on or before January 11, 2002, twenty-one (21) days from the date of this order. At that time, the committee shall provide the court with a recommended expert discovery schedule, including an expert discovery cutoff date. If the committee cannot reach an agreement, it shall report the disagreement to the court on January 11, 2002, and shall submit separate proposals by January 18, 2002.

IX. Production of Documents From Prior Litigation

The parties shall meet and confer to resolve disputes over the extent of discovery of documents from prior litigation and shall provide the court with an agreement by January 11, 2002. If the parties are unable to agree on the extent of discovery, they shall submit separate proposals by January 18, 2002.

X. Stay of Individual Cases

All individual cases are stayed and shall remain stayed other than for matters described in the Case Management Order No. 1 and in subsequent orders. The court will rule on motions to remand cases to state court.

XI. Additional Matters

Lead counsel for plaintiffs and defendants will meet and confer with counsel from New Jersey regarding potential changes to the proposed preservation and confidentiality orders. If the parties decide to revise the orders, they shall inform the court within seven (7) days of this order, by December 28, 2001, and shall inform the court of when the parties intend to submit the revised proposed orders.

The parties also shall provide the court within seven (7) days of this order, by December 28, 2001, with potential times for a conference call regarding technological issues during the week of January 13, 2002.

Finally, the court notes that many issues remain unresolved and would be appropriate material for a later order. Plaintiffs and defendants shall draft a proposed order regarding trial dates, motion schedules, a list of anticipated motions, and a settlement

negotiation schedule no later than thirty (30) days from the date of this order.

DATED at Seattle, Washington this 21st day of December, 2001.

/s/

BARBARA JACOBS ROTHSTEIN
UNITED STATES DISTRICT JUDGE