

FILED _____ ENTERED _____
LODGED _____ RECEIVED _____

FEB 7 2003

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

ORDER RE: PLAINTIFFS'
MOTION TO COMPEL RESPONSES
TO DISCOVERY REQUESTS FROM
SCHERING-PLOUGH

This document relates to all
actions

cc: Counsel: BTR

I. INTRODUCTION

Plaintiffs filed a motion to compel responses to plaintiffs' master first set of interrogatories and requests for production of documents ("discovery requests") from defendants Schering-Plough Corporation, Schering-Plough Healthcare Products, Inc., and/or their related companies ("Schering-Plough"). Having reviewed the papers filed in support of and in opposition to this motion, the court rules as follows:

II. BACKGROUND

Two aspects of Schering-Plough's responses and objections to plaintiffs' discovery requests prompted plaintiffs' motion to compel. First, Schering-Plough informed plaintiffs that a March 1997 fire at its Iron Mountain storage facility resulted in the destruction of many Schering-Plough documents, some of which, Schering-Plough admits, may have been relevant to this litiga-



1410

1 tion. Second, Schering-Plough objected to the request for
2 production of documents and information in the possession of
3 their international subsidiaries. See Affidavit of Donald
4 Cravins, Jr., Ex. 3 at 3 ("Defendants object to plaintiffs'
5 Requests to the extent they seek information or materials from or
6 concerning PPA products sold outside the United States. . . .
7 [However,] defendants will produce relevant documents originating
8 with or pertaining to PPA products sold outside of the United
9 States which are physically located in its United States facili-
10 ties.")

11 Schering-Plough did produce a number of documents on a
12 rolling basis, including some documents related to their interna-
13 tional subsidiaries to the extent those documents were physically
14 located in the United States. Schering-Plough also provided
15 plaintiffs with a 925 page list of documents destroyed in the
16 Iron Mountain fire. Despite repeated attempts, the parties were
17 unable to resolve the question of whether Schering-Plough must
18 produce documents in the possession of its international subsid-
19 iaries.¹

20 III. DISCUSSION

21 Schering-Plough argues that plaintiffs fail to establish the
22 relevance of the documents sought, given that plaintiffs' claims
23

24 ¹The parties disagree on the extent to which other
25 defendants in this multi-district litigation have produced these
26 types of documents. However, neither party provides any specific
details on this issue.

1 do not stem from PPA-containing products sold by Schering-
2 Plough's international subsidiaries and because none of those
3 subsidiaries are named as defendants. They also object to the
4 requests as overly broad, unreasonably cumulative and duplica-
5 tive, and unduly burdensome. Schering-Plough points to documents
6 already produced and responsive to these requests, including some
7 related to international subsidiaries, and describes the complex-
8 ity and expense of collecting, translating, and producing docu-
9 ments from over fifty different countries worldwide.

10 Plaintiffs assert the relevance of the requests, in that
11 they seek documents relating to the safety and regulation of PPA.
12 They argue that the requested documents, in the possession of
13 Schering-Plough's wholly-owned subsidiaries, are in Schering-
14 Plough's control and appropriate for production. Plaintiffs note
15 that Schering-Plough, in pointing to international subsidiary-
16 related documents already produced, appears to concede the
17 relevance of these documents, but only so long as the documents
18 are located within the United States. They describe Schering-
19 Plough's objections as consisting of mere boilerplate language,
20 noting the failure to itemize or specify expenses and asserting
21 that mere trouble and expense is not alone sufficient grounds for
22 objection.

23 Federal Rule of Civil Procedure 26(b) allows discovery broad
24 in scope, including that "regarding any matter, not privileged,
25 that is relevant to the claim or defense of any party[.]" Fed.
26 R. Civ. P. 26(b)(1). "Relevant information need not be admissi-

ORDER

Page - 3 -

1 ble at the trial if the discovery appears reasonably calculated
2 to lead to the discovery of admissible evidence." Id. Limita-
3 tions on discovery may result where, inter alia, "the discovery
4 sought is unreasonably cumulative or duplicative, or is obtain-
5 able from some other source that is more convenient, less burden-
6 some, or less expensive," or where "the burden or expense of the
7 proposed discovery outweighs its likely benefit[.]" Fed. R. Civ.
8 P. 26(b)(2).

9 Pursuant to Rule 34, a party may request the production of
10 documents which are "in the possession, custody or control of the
11 party upon whom the request is served[.]" Fed. R. Civ. P.
12 34(a)(1). "A Corporation must produce documents possessed by a
13 subsidiary that a parent corporation owns or wholly controls."
14 United States v. International Union of Petroleum & Indus.
15 Workers, AFL-CIO, 870 F.2d 1450, 1452 (9th Cir. 1989). See also
16 Soto v. City of Concord, 162 F.R.D. 603, 619 (N.D. Cal. 1995) ("A
17 party may be ordered to produce a document in the possession of a
18 non-party entity if that party has a legal right to obtain the
19 document or has control over the entity who is in possession of
20 the document.") Schering-Plough did not dispute plaintiffs'
21 contention that the documents located abroad remain within the
22 company's control.

23 The court finds that the circumstances warrant granting
24 plaintiffs' motion to compel. Plaintiffs seek documents relating
25 to the safety and regulation of PPA - issues relevant and, in
26 fact, central to the PPA litigation. The mere fact that docu-

1 ments are located abroad does not dictate whether or not the
2 documents are relevant. Indeed, to limit production to documents
3 within the United States would unreasonably allow a multi-
4 national corporation to evade document requests by simply storing
5 their documents abroad. See, e.g., Cooper Indus., Inc. v.
6 British Aerospace, Inc., 102 F.R.D. 918, 920 (S.D.N.Y. 1984)
7 ("[D]efendant cannot be allowed to shield crucial documents from
8 discovery by parties with whom it has dealt in the United States
9 merely by storing them with its affiliate abroad. . . . If
10 defendant could so easily evade discovery, every United States
11 company would have a foreign affiliate for storing sensitive
12 documents.") Moreover, given that Schering-Plough concedes
13 relevant documents may have been destroyed in the Iron Mountain
14 fire, the international subsidiaries may be the only sources from
15 whom those documents may be obtained.

16 However, the court also recognizes the difficulty and
17 expense of conducting document collection and production on an
18 international basis. In order to streamline this process and
19 reduce the burden on Schering-Plough, the court orders the
20 parties to abide by the following guidelines. First, plaintiffs
21 should utilize the list of documents destroyed in the Iron
22 Mountain fire to identify documents potentially relevant to this
23 litigation. Second, the parties should confer in order to
24 determine the precise document requests forming the basis for
25 defendants' document collection efforts abroad. Any requests not
26 touching upon the safety and regulation of PPA should be excluded

ORDER

Page - 5 -

1 from the search, as should any requests which would result in
2 merely duplicative or cumulative document production. Also, if
3 possible, the parties should attempt to limit the scope of the
4 search to locations in which it would be reasonable to conclude
5 that relevant documents may be found. Finally, in an effort to
6 reduce costs, plaintiffs should be afforded an opportunity to
7 inspect potentially responsive documents prior to production.

8 IV. CONCLUSION

9 For the reasons stated above, the court hereby GRANTS
10 plaintiffs' motion to compel. The parties shall abide by the
11 court's direction in conducting the document production addressed
12 within this order. However, the court does not find that the
13 circumstances warrant granting plaintiffs' request for expenses
14 incurred with respect to their motion to compel, nor Schering-
15 Plough's request for expenses incurred in collecting and produc-
16 ing the documents at issue. As such, both parties' requests for
17 expenses are hereby DENIED.

18 DATED at Seattle, Washington this 7th day of February, 2003.

19 
20 _____
21 BARBARA JACOBS ROTHSTEIN
22 UNITED STATES DISTRICT JUDGE
23
24
25
26