



01-MD-01407-ORD

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OCT 14 2003

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

This document relates to:

See Appendix A

ORDER GRANTING DEFENDANTS'
SCHERING PLOUGH CORPORATION
AND SCHERING PLOUGH
HEALTHCARE PRODUCTS, INC.'S
MOTION FOR DISMISSAL WITH
PREJUDICE

THIS MATTER comes before the court on a motion for dismissal with prejudice pursuant to Case Management Order ("CMO") 13 by Defendants' Schering Plough Corporation ("SPC") and Schering Plough Healthcare Products, Inc ("SPHCP").¹ Having reviewed the pleadings filed in support of and in opposition to this motion, the court finds and rules as follows:

I. BACKGROUND

On May 2, 2003, the court entered CMO 13 requiring counsel for plaintiffs naming more than one manufacturing defendant in their complaint to file and serve an affirmation setting forth

¹ This motion was filed on August 11, 2003.

1 the PPA product or products allegedly ingested by each plaintiff
2 and the defendant or defendants whom the plaintiff claims is the
3 manufacturer of those products. Under CMOs 13 and 13A, which the
4 court entered on June 21, 2003, a defendant who is not named in
5 the affirmation can move to dismiss the claims against it.

6 Defendants SPC and SPHCP now move to dismiss the plaintiffs
7 in the cases identified in Appendix A of this order for either
8 failing to file affirmations or Plaintiffs Fact Sheets ("PFS"),
9 pursuant to CMO 6, or for failing to identify defendant or
10 defendant's products in the affirmations or PFS that were filed.
11 Various plaintiffs represented by the same counsel filed a
12 collective opposition contending that dismissal is not appropri-
13 ate.

14 II. DISCUSSION

15 Plaintiffs allege that CMO 15A renders this motion moot and
16 supercedes CMOs 13 and 13A. CMO 15A, along with CMO 15, requires
17 plaintiffs in mass joinder cases to file individually severed
18 complaints. CMO 15A provides a means by which plaintiffs who
19 fail to file such timely severed complaints will be dismissed.
20 Accordingly, nothing in CMO 15 or 15A supercedes CMOs 13 and 13A.
21 Furthermore, plaintiffs' argument that the present motion be
22 denied because it "is possible that Plaintiffs identified Defen-
23 dants' PPA-containing products in the individual new Complaints
24 and not Affirmations," makes no sense given that the newly
25 severed complaints cannot include any new allegations. If
26

1 plaintiffs failed to identify SPC and SPHCP or any SPC and SPHCP
2 products in their affirmations, which were based on their origi-
3 nal complaints, the newly severed complaints cannot now identify
4 SPC and SPHCP or SPC and SPHCP products.

5 Given that the plaintiffs at issue fail to provide any other
6 substantive basis for opposing defendant's motion - for instance,
7 plaintiffs do not assert that they have properly filed affirma-
8 tions or that the affirmations do in fact name defendant or
9 defendant's products - the court finds that dismissal under CMOs
10 13 and 13A is appropriate. As such, SPC and SPHCP's motion for
11 dismissal with prejudice pursuant to CMOs 13 and 13A is GRANTED.
12 The claims against SPC and SPHCP in the cases listed in Appendix
13 A are DISMISSED with prejudice.

14 DATED at Seattle, Washington this 14 day of OCTOBER, 2003.

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BARBARA JACOBS ROTHSTEIN
18 UNITED STATES DISTRICT JUDGE

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ATTACHMENT A

MDL DOCKET NO.	DISTRICT CT. CAUSE NO.	CASE NAME	PLAINTIFF NAME
02-2375	02-CV-1195	Adams	Foster, Lorna
02-2375	02-CV-1195	Adams	George, Mamie
02-2375	02-CV-1195	Adams	Johnson, Melvine
02-541	02-CV00119	Brock	Sakowksi, Debra
02-541	02-CV00119	Brock	Stechman, Catherine
02-032	01-CV-2280	Toombs	Toombs, Bennie