

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS :
(PHENTERMINE, FENFLURAMINE, :
DEXFENFLURAMINE) PRODUCTS : MDL DOCKET NO. 1203
LIABILITY LITIGATION :
: :
SHARON WISH :
: :
v. :
: CIVIL ACTION NO. 98-20594
INTERNEURON PHARMACEUTICALS, :
INC. :
: :
THIS DOCUMENT RELATES TO ALL :
ACTIONS :
: :
: :

PRETRIAL ORDER NO. 349

AND NOW, TO WIT, this 3rd day of November, 1998, upon consideration of the Plaintiffs' Management Committee's ("PMC") motion for the court to preliminarily enjoin the prosecution of claims against defendant Interneuron Pharmaceuticals, Inc. ("Interneuron"), the opposition thereto and oral argument at a conference held before the court on October 22, 1998, IT IS HEREBY ORDERED that said motion is GRANTED as follows.

In Pretrial Order No. 297, the court conditionally certified a limited fund class under Federal Rule of Civil Procedure 23(b)(1)(B) and in Pretrial Order No. 270, it entered a stay of all federal cases against Interneuron. The court did not address a stay of state court cases. At the conference held October 22, 1998 and in the filings with the court, the PMC and Interneuron requested that this court enjoin all pending state actions against Interneuron so as to reduce Interneuron's litigation costs and preserve the assets which the PMC and Interneuron

contend should be the subject of a limited fund settlement under Federal Rule of Civil Procedure 23(b)(1)(B). The court will enter the stay, as outlined below.

The court must first determine whether it has subject matter jurisdiction over the Complaint and personal jurisdiction over the parties. Carlough v. Amchem Products, Inc., 10 F.3d 189, 198 (3d Cir. 1993) (noting "the application of the Anti-Injunction and All-Writs Acts should have been preceded by the satisfaction of jurisdictional prerequisites."). The court finds that it has diversity jurisdiction pursuant to 28 U.S.C. § 1332. According to the Complaint, the named Plaintiff is a citizen of Pennsylvania and Interneuron, the sole defendant, is a citizen of Massachusetts. Furthermore, the amount in controversy as alleged in the Complaint exceeds \$75,000.00. The court also finds that it has personal jurisdiction over the named parties. Plaintiff's domicile is in Levittown, Pennsylvania, within this court's jurisdiction.¹ Interneuron conducts business in Pennsylvania, including the promotion and sale of its product which Plaintiff ingested, thus establishing the minimum contacts required to satisfy jurisdiction. The more difficult issue is whether the court may exercise jurisdiction over the absent class members. However, because the named parties agree that a limited fund exists under Federal Rule of Civil Procedure 23(b)(1)(B), the

1. While the instant action was filed in the District Court for the Eastern District of Pennsylvania, this court has jurisdiction over all pending federal diet drug civil actions which have been transferred to this court as part of MDL 1203.

court has in rem or quasi in rem jurisdiction over the limited fund. See In re Asbestos Litigation, 90 F.3d 963, 987 (5th Cir. 1996) (noting the "view of a limited-fund class action as similar to an action in rem makes particular sense because, although limited-fund actions often involve unknown or unavailable claimants who cannot expressly consent to jurisdiction, the court in such an action has before it for disposition all the assets in which class members could claim an interest."), vacated sub nom Ortiz v. Fibreboard Corp., 117 S. Ct. 2503 (1997), reaffirmed 134 F.3d 668 (5th Cir. 1998).² Thus, personal jurisdiction over the absent class members is not required because the action is equitable in nature.

Having preliminarily answered the question of jurisdiction, the court must next determine whether the court may grant the injunctive relief requested. Under the Anti-Injunction Act, 28 U.S.C. § 2283, "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." Under the first provision of the All-Writs Act, 28 U.S.C. § 1651, "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages

2. The Fifth Circuit's decision is pending before the Supreme Court. Ortiz v. Fibreboard Corp., 118 S. Ct. 2339 (1998) (granting petition for writ of certiorari).

and principles of law." The Third Circuit has stated that "[a] court may need to act promptly to safeguard its jurisdiction in the face of interference by parallel actions brought in a state court." Carlough, 10 F.3d at 201. As the court has jurisdiction over the claims in the Complaint, the court must then determine whether a stay of pending state actions against Interneuron is necessary in aid of its jurisdiction.

The court finds that a stay of pending state court actions is necessary to preserve this court's jurisdiction. The parties have represented to the court that Interneuron's assets would be dissipated in a short period of time if Interneuron were to continue its defense of the federal and state actions, particularly in light of Interneuron's limited assets and self-consuming insurance policies. (Pl.'s Mot. Class Cert. at 12.) Accepting the preliminary information provided to the court, the limited fund over which the court exercises jurisdiction should be protected from further depletion by the costs of litigation until the court makes a final determination as to the viability of a limited fund class settlement. See 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc. v. Nobers, 968 F.2d 401, 407 (3d Cir. 1992) (noting that a court may enjoin state litigation "in in rem cases (where, under the traditional view, only one court can entertain jurisdiction over a particular physical res)"). Thus, the stay is necessary to preserve the court's jurisdiction over the proposed limited fund, as well as to protect the interests of the proposed class members.

The court also finds that the absent class members will not be prejudiced by the stay. According to the parties, no pending state court actions have been scheduled for trial before February 25, 1999, the date this court set for the fairness hearing in Pretrial Order No. 279. The stay will not interfere with the filing of a lawsuit or third party claims. Additionally, discovery regarding information which Interneuron may possess as to other defendants' liability will continue through the procedure established previously by this court. Any discovery disputes involving Interneuron shall be presented to this court through that procedure.

The court notes that it has contacted those state court judges which the parties informed the court as having pending diet drug litigation. A number of those judges responding have consented to a stay by this court and some have already entered a stay regarding Interneuron in their courts. The court awaits further contact from certain judges regarding the stay and the court may modify the stay if necessary. The court understands that the parties will contact those state courts which will be affected by the stay and facilitate an implementation of the stay.

IT IS ORDERED THAT:

1. all pending and future state and federal proceedings regarding the Released Claims against Interneuron and the Released Parties, as defined in the Agreement of Compromise and Settlement attached to Pretrial Order


No. 297.1 (the "Settlement Agreement"), are hereby stayed, including claims for contribution and indemnity and subrogation claims, with such stay being subject to the following provisions;

2. the stay shall not enjoin the filing of a lawsuit or third-party action, the filing of a cross-claim or counterclaim, or service of process upon Interneuron or the Released Parties in any federal or state court, including claims for contribution and indemnity and subrogation claims, provided that the stay shall be immediately effective after such filing and/or notice;
3. the stay shall not enjoin any proceedings against any other non-released defendant and shall not operate to stay proceedings against Released Parties other than Interneuron that arise out of claims other than Released Claims;
4. the stay shall not prevent the entry of a stipulation or order of dismissal, removal to federal court and proceedings related to the determination of federal jurisdiction, transfer of any federal actions to MDL 1203, or motions seeking severance of Released Claims against Released Parties and proceedings related to the resolution of such motions;
5. the stay shall not enjoin discovery from Interneuron or Released Parties of documents or information which involves the liability of defendants other than

Interneuron or Released Parties;

6. the stay shall not enjoin the discovery process relating to issues involving the limited fund status of Interneuron and such discovery shall be conducted within the parameters to be developed and set forth by this court;
7. any dispute arising from the implementation of this stay or the conduct of discovery thereunder, shall be presented to this court through the existing procedures, including the resolution of discovery issues through the Special Master process where appropriate;
8. the stay shall continue until further order of the court.

BY THE COURT:



BECHTLE, J.