

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

IN RE: DIET DRUGS (Phentermine/ :
Fenfluramine/Dexfenfluramine) : MDL Docket No. 1203
PRODUCTS LIABILITY LITIGATION :

PRETRIAL ORDER NO. 419
(Class Certification)

This Order will govern all pending motions for class certification which have been timely filed or which the Court otherwise permits to proceed in MDL 1203 (hereafter "the Motions for Class Certification").

I. DEVELOPMENT OF JOINT STATEMENT OF CONTESTED AND UNCONTESTED FACTS.

A. **Plaintiffs' Proposed Facts.** By January 27, 1999, the PMC and non-PMC Plaintiffs shall serve on opposing parties:

1. A narrative statement listing all facts proposed to be proved by them in support of their Motion for Class Certification;
2. A precise and objective class definition based upon the type of class and subclass the Plaintiffs seek to certify under Fed. R. Civ. P. 23(b); and
3. A detailed description of the relief sought on behalf of each class or subclass.

B. **Defendants' Response and Proposed Facts.** By February 12, 1999, Defendants shall serve on opposing parties a statement:

1. Indicating separately as to each numbered statement of fact whether they contest or do not contest it; and

2. Stating all additional facts proposed to be proved by them at the hearing in opposition to, or in defense against, the plaintiffs' claim.

C. Plaintiffs' Response. By February 22, 1999, the PMC and non-PMC Plaintiffs shall serve a statement indicating separately as to each of the Defendants' numbered statements of proposed fact whether they contest or do not contest such proposed fact.

D. Joint Statement of Contested and Uncontested Facts. By March 3, 1999, the parties shall file with the Court a joint statement separately listing the facts that are not contested and those that are contested, indicating as to the latter the precise nature of their disagreement. These facts, both contested and uncontested, will to the extent practicable be organized and collected under headings descriptive of the claim or defense to which they may be relevant (and, where appropriate, subdivided into factual categories descriptive of particular parties and time periods).

E. Defendants' Brief. By March 3, 1999, the Defendants shall file with the Court a Consolidated Brief in response to all pending class certifications motions. No Sur Reply Brief will be permitted.

F. Plaintiffs' Reply Brief. By March 15, 1999, Plaintiffs may file a Reply Brief.

G. Hearing. On March 17, 1999, the parties will submit such evidence and arguments the Court deems necessary to resolve adequately the class certification issues.

II. DIRECTIONS.

A. Narration of Proposed Facts. In stating facts proposed to be proved, counsel shall do so in brief, simple, declarative, self-contained, fact specific, consecutively numbered sentences, avoiding all “color words,” labels, argumentative language, and legal conclusions. If a fact is to be offered against fewer than all parties, counsel shall indicate the parties against which the fact will (or will not) be offered.

B. Agreement and Disagreement. Counsel shall indicate that they do not contest a proposed fact if at the hearing they will not controvert or dispute that fact. In indicating disagreement with a proposed fact, counsel shall do so by deletion or interlineation of particular words or phrases so that the nature of their disagreement (and the extent of any agreement) will be clear.

C. Objections. Objections to the admissibility of a proposed fact (either as irrelevant or on other grounds) may not be used to avoid indicating whether or not the party contests the truth of that fact. Counsel shall, however, indicate any objections, both to the facts which they contest and those which they do not contest.

D. Individual Positions. To the extent feasible, counsel with similar interests are expected to coordinate their efforts and express a joint position with respect to the facts they propose to prove and to the facts other parties propose to prove. Subject to the time limits set forth in paragraph 1, each party may, however, list additional proposed facts relating to positions unique to it.

III. ANNOTATIONS.

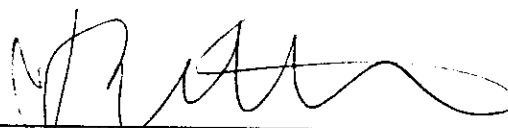
Each party shall identify in parentheses at the end of each of its proposed fact, the paragraph and page within the deposition, affidavit, document or other record which supports the truth of the proposed fact. No party, however, will be required to admit or deny the accuracy of such references.

IV. EFFECT.

A. Elimination of Proof. The uncontested facts shall be taken at the hearing as established, for purposes of class certification only, without the need for independent proof. Independent proof of uncontested facts will be allowed only if relevant to the issue of class certification and necessary for the Court's determination.

B. Preclusion of Other Facts. Except for good cause shown, the parties shall be precluded at the hearing from offering proof of any fact not disclosed in their listing of proposed facts.

BY THE COURT:



BECHTLE, J.

1/6/99

ENTERED: _____ 1-7-99

CLERK OF COURT

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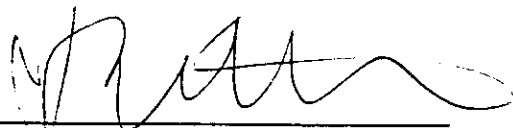
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