

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

IN RE: DIET DRUGS (PHENTERMINE/
FENFLURAMINE/DEXFENFLURAMINE)
PRODUCTS LIABILITY LITIGATION

MDL DOCKET NO. 1203

PRETRIAL ORDER NO. 1049

On this 6th day of January, 2000, the Court adopts the following schedule with regard to the request by the Phentermine Defendants for a *Daubert* hearing to exclude the testimony of the generic experts, Paul J. Wellman, Ph.D. and Timothy Maher, Ph.D., who have been identified in certain cases as generic experts for plaintiffs against the Phentermine Defendants.

1. The Phentermine Defendants shall file their joint motion in limine, with brief and supporting declarations, by January 10, 2000.
2. Plaintiffs who have adopted Drs. Wellman and/or Maher as expert witnesses shall file their joint response to the Phentermine Defendants' motion and brief on or before February 18, 2000.
3. The Phentermine Defendants may file a joint reply brief on or before March 3, 2000.
4. The parties will confer with the Special Master to discuss the nature and extent of the hearing, if any, which the Court may hold.
5. Any such Daubert hearing held by the court shall be set for March 7, 2000 at 10 a.m. in the United States District Court, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania, Courtroom 17B, 17th Floor.
6. The Phentermine Defendants and plaintiffs may submit declarations of experts who will testify in support of their respective *Daubert* papers. For any expert who submits a declaration,

the party offering that expert's declaration shall, ten days prior to the deposition of that expert, provide to the other parties the documents responsive to the requests contained in the letter of Michael L. Williams, Esquire, dated November 11, 1999 (the "Williams Letter," pertinent portions of which are attached as Exhibit "A"), and shall make that expert available for deposition no later than thirty (30) days after service of the expert's *Daubert* declaration. The parties will make a good faith effort to complete an expert's deposition within thirty (30) days after service of the expert's *Daubert* declaration, subject to trial commitments and the expert's schedule.

7. All proceedings with regard to depositions of or documentary discovery from the Phentermine Defendants' generic experts not otherwise referred to herein are deferred with the Court rules on the Phentermine Defendants' *Daubert* motions.

8. The terms of the instant Pretrial Order shall also apply to Defendant American Home Products Corporation ("AHP"). See Exhibit "B" (AHP's December 17, 1999 letter). AHP shall have the opportunity to file a separate motion and participate in all *Daubert* proceedings with respect to Drs. Wellman and Maher.


Béchtle, J.

EXHIBIT "A"

Insofar as it is consistent with all existing MDL 1203 Pretrial Orders, the following documents will be produced:

1. All correspondence with any attorneys involved in the diet pill litigation, including all emails and notes of phone conversations or meeting notes.
2. All correspondence with any other scientists and physicians about diet pills or phentermine's role or the conduct of the phentermine companies, including emails, and notes of any phone conversations or meeting notes.
3. All time records and billing statements, including any expense statements, reflecting the time and work put in by the expert in this litigation, and any bills sent or paid.
4. Copies of every study, article, book chapter, or any other materials reviewed by the expert in preparation of his or her opinion, whether relied upon or not by the expert as a basis of the opinions proffered, including any new ones reviewed through today.
5. If the expert has conducted any research on phentermine or fenfluramine, please produce all raw data, lab notebooks, statistical analyses, and protocols for each such study. If your expert's opinions are based solely on his or her reading of the literature, and not on any personally conducted research, you may simply so state, but produce all notes taken on the articles read, while reading the articles, or summarizing the articles. Also include any bibliography list prepared by or used by the expert.
6. A detailed privilege log for any documents in the above categories which you have not produced.

EXHIBIT "B"

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December 17, 1999

VIA FACSIMILE

Gregory P. Miller, Esquire
Special Discovery Master
Miller, Alfano & Raspanti, P.C.
1818 Market Street, Suite 3402
Philadelphia, PA 19103

Re: In re: Diet Drugs Products Liability Litigation,
MDL Docket No. 1203 (E.D. PA)

Dear Mr. Miller:

At your request, I am writing on behalf of the American Home Products Corporation ("AHP") Defendants in the above-captioned litigation to inform you that AHP has no objection to the schedule in the proposed Pretrial Order prepared by counsel for Phentermine Defendants concerning Daubert motions to exclude the testimony of generic experts, Paul J. Wellman, Ph.D. and Timothy Maher, Ph.D. Further, AHP agrees that the terms of the Proposed Pretrial Order shall apply to it with the same force and effect as if AHP was identified as a separate party-defendant in the proposed Pretrial Order.

I understand from our discussion yesterday that you intend to attach this letter to the form of proposed Pretrial Order when it is submitted to the Court for approval so that it is clear that AHP will also have the opportunity to participate to the same extent as the Phentermine Defendants in all Daubert proceedings with respect to Drs. Wellman and Maher. A copy of the **DRAFT** proposed Pretrial Order is attached to this letter.

I trust that this letter is satisfactory for your purposes. If you need additional information, please do not hesitate to contact me.

Respectfully yours,

Paul B. Kerrigan
Paul B. Kerrigan

/pbk

cc: All Liaison and Lead Counsel
Ms. Deborah A. Hyland
Barbara Wrubel, Esquire
Karl E. Seib, Esquire
(All Via Facsimile)