

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

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

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THIS DOCUMENT RELATES TO: :  
ALL ACTIONS :

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FILED MAR 18 1999

PRETRIAL ORDER NO. 518

AND NOW, TO WIT, this 18<sup>th</sup> day of March,  
1999, upon consideration of the Plaintiffs' Management Committee's  
(PMC) Petition for an Order Appointing J. Michael Papantonio,  
Esquire to the PMC and the Docketing of An Agreement Entered Into  
on February 15, 1999 Between the PMC and Levin, Middlebrooks,  
Thomas, Mitchell, Green, Echsner, Proctor and Papantonio, P.A.  
Concerning the PMC Work Product and the Establishment of An  
Amicable Working Relationship with the PMC for the Mutual Benefit  
of the Clients of Levin, Middlebrooks, Thomas, Mitchell, Green,  
Echsner, Proctor and Papantonio, P.A., it is hereby ORDERED,  
ADJUDGED and DECREED that:

1. J. Michael Papantonio, Esquire is appointed as an  
additional member of the Plaintiffs' Management Committee, with all  
the rights, duties and responsibilities held by the original  
members of the PMC;

2. The Agreement dated February 15, 1999 between the PMC  
and the law firm of Levin, Middlebrooks, Thomas, Mitchell, Green,

Echsner, Proctor and Papantonio, P.A. (the "Levin Middlebrooks law firm") is hereby docketed and approved by the Court to establish an amicable working relationship between the PMC and the Levin Middlebrooks Law Firm and the clients of that law firm.

3. The approval of this agreement shall be on the terms set forth in PTO 467, including the accompanying Memorandum and Order, in particular paragraphs 1 through 9 inclusive of Pretrial Order No. 467 relating to the Set Aside For Counsel Fees and Costs in MDL 1203 and paragraph 13 through 21 inclusive of Pretrial Order No. 467 relating to State-Federal Coordination.

BY THE COURT:



Louis C. Bechtle  
Chief Judge Emeritus

ENTERED: 3-18-99

CLERK OF COURT

AGREEMENT

FILED MAR 18 1999

This Agreement is made this 15 day of Feb, 1999 by and between the Plaintiffs' Management Committee ("PMC") appointed by the United States District Court for the Eastern District of Pennsylvania in MDL Docket No. 1203 and Levin, Middlebrooks, Thomas, Mitchell, Green, Echsner, Proctor and Papantonio, P.A. (hereinafter "the State Attorneys").

WHEREAS, the United States District Court for the Eastern District of Pennsylvania has appointed Arnold Levin, John J. Cummings, III, Stanley M. Chesley, Roger Brosnahan, Elizabeth J. Cabraser, Michael Hausfeld, William S. Kemp, Dianne Nast, and Darryl J. Tschirn to serve as members of the PMC to facilitate the conduct of pretrial proceedings in the federal actions relating to the use of diet drugs; and

WHEREAS, the PMC, in association with other attorneys working for the common benefit of plaintiffs have developed or in the process of developing work product which will be valuable in the litigation of state court proceedings involving diet drug induced injuries which includes:

- a. CD-ROMs reflecting images of the key documents selected by the PMC from the document productions of the defendants and third-parties in MDL 1203;
- b. a bibliographic database providing a "coded" index of such key documents;
- c. the depositions of each generally applicable fact witness taken in MDL 1203 and in the state-court actions coordinated pursuant to this Order in the form of paper transcripts, text searchable computer disks and CD-ROMs and videotapes of videotaped depositions;
- d. timelines, "casts of characters" and other work product relating to the facts at issue in MDL 1203; and

- e. the testimony of generic experts developed by the PMC in connection with MDL 1203 as reflected in videotaped depositions of such experts taken to preserve their testimony for trial.

which will collectively be referred to as the "PMC Work Product"; and,

WHEREAS, the State Attorneys are desirous of acquiring the PMC Work Product and establishing an amicable, working relationship with the PMC for the mutual benefit of their clients;

NOW, THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. For each client who they represent in connection with a diet drug related claim, other than clients with claims filed or pending in any Federal court, each of The State Attorneys shall deposit or cause to be deposited in an MDL Fee and Cost Account established by the District Court in the MDL a percentage proportion of the gross amount recovered by each such client which is equal to two-thirds of the percentage assessment awarded by the Court against all federal cases in MDL 1203, which in no event will exceed six percent (6%) of the gross amount of recovery of each such client. For purposes of this Agreement, the gross amount of recovery shall include the present value of any fixed and certain payments to be made to the plaintiff or claimant in the future.

2. With respect to each client who they represent in connection with a diet drug related claim which is filed or pending in any Federal court, each of the State Attorneys shall deposit or cause to be deposited in an MDL Fee and Cost Account established by the District Court in the MDL, a percentage proportion of the gross amount recovered by each such client which is equal to the percentage assessment awarded by the Court against all federal cases in MDL 1203 which

in no event will exceed nine percent (9%) of the gross recovery by each such client. For purposes of this Agreement, the gross amount of recovery shall include the present value of any fixed and certain payments to be made to the plaintiff in the future.

3. In all cases held by the State Attorneys, other than those filed or pending in any Federal Court, a percentage proportion of the gross amount recovered by each such client, in addition to the amounts deposited and paid pursuant to paragraphs 1 & 2 of this Agreement, which is equal to one-third (1/3) of the percentage assessment awarded by the Court against all federal cases in MDL 1203 shall be withheld for payment to a Common Benefit Fund to be established by the State Attorneys. The State Attorneys reserve the right to apply to a Court of competent jurisdiction to distribute this Common Benefit Fund to the State Attorneys and others associated with them without objection from or involvement of the PMC or Judge Bechtle under any agreements made by the State Attorneys regarding the use of discovery in all cases held by its group of lawyers.

4. The State Attorneys, on behalf of themselves, their affiliated counsel, and their clients, hereby grant and convey to the PMC a lien upon and/or a security interest in any recovery by any client who they represent in connection with any diet drug induced injury, to the full extent permitted by law, in order to secure payment in accordance with the provisions of paragraphs 1 and 2 of this Agreement. The State Attorneys will undertake all actions and execute all documents which are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

5. The amounts deposited in the MDL Fee and Cost Account shall be available for distribution to attorneys who have performed professional services for the benefit of the plaintiffs in MDL 1203 and the coordinated state court litigation pursuant to written authorization from the

Chairpersons of the PMC. Such sums shall be distributed only upon an Order of the Court in MDL 1203 which will be issued in accordance with applicable law governing the award of fees and costs in cases involving the creation of a common benefit. Appropriate consideration will be given to the experience, talent and contribution made by all of those authorized to perform activities for the common benefit, including the State Attorneys.

6. As the litigation progresses and work product of the same type and kind continues to be generated, the PMC will provide State Attorneys with such work product and will otherwise cooperate with the State Attorneys to coordinate the MDL litigation and the state litigation for the benefit of the plaintiffs.

7. No assessment will be paid by the State Attorneys on any recovery resulting from a medical malpractice claim against a treating physician.

8. It is understood and agreed that the PMC and Common Benefit Attorneys may also apply to the Court for class action attorneys' fees, if appropriate, and this Agreement is without prejudice to the amount of fees to which the PMC and Common Benefit Attorneys may be entitled to in such an event.

9. Upon execution of this agreement, the PMC will provide the State Attorneys with the following materials:

- a. CD-ROMs reflecting images of the key documents selected by the PMC from the document productions of the defendants and third-parties in MDL 1203;
- b. a bibliographic database providing a "coded" index of such key documents;
- c. the depositions of each generally applicable fact witness taken in MDL 1203 and in the state-court actions coordinated pursuant to this Order in the form

of paper transcripts, text searchable computer disks and CD-ROMs and videotapes of videotaped depositions;

- d. to the extent developed by the PMC, timelines, "casts of characters" and other work product relating to the facts at issue in MDL 1203; and
- e. the testimony of generic experts developed by the PMC in connection with MDL 1203 as reflected in videotaped depositions of such experts taken to preserve their testimony for trial.

10. The State Attorneys shall have one seat on the PMC in MDL 1203 and the person selected to fill that seat will have all the rights, duties and responsibilities held by the original members of the PMC. The seat will be held by J.M. Papantonio, subject to approval by Judge Bechtle.

11. The State Attorneys shall have the following rights:

- a. Full participation in discovery matters and appropriate committee assignments with full recognition of the participation of the State Attorneys;
- b. Appropriate participation and consultation in settlement negotiations;
- c. Appropriate participation in trials, class matters, management, fund administration and allocation of fees and costs.

12. Both the PMC and the State Attorneys recognize the importance of individual cases and the relationship between case-specific clients and their attorneys. Regardless of the type of settlement or conclusion eventually made in either state or federal matters, the PMC will recommend to Judge Bechtle that appropriate consideration will be given to individual case contracts between attorneys and their clients and to work that has been performed by attorneys in their individual cases.

13. The PMC agrees that, should there be a global settlement against any defendant(s), with the possibility of opt-outs under Rule 23(b)(3), the PMC will complete discovery against any such defendant(s) and will not agree to or seek a stay of discovery against any such defendant(s).

14. It is understood that at the conclusion of each MDL deposition, a designee of State Attorneys will be permitted to ask the deponent additional non-duplicative questions.

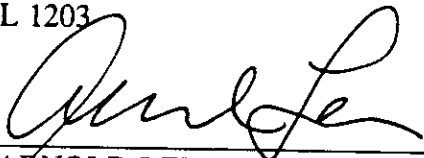
15. The State Attorneys represent that the list appended hereto as Exhibit "A" correctly sets forth the name of each client represented by them who has filed a civil action arising from the use of diet drugs together with the Court and docket number of each such case and that the list attached hereto as Exhibit "B" contains the name and social security number of each client represented by them who has not yet filed a civil action arising from the use of diet drugs.

16. The State Attorneys shall supplement the lists appended hereto as Exhibit "A" and "B" on a quarterly basis.

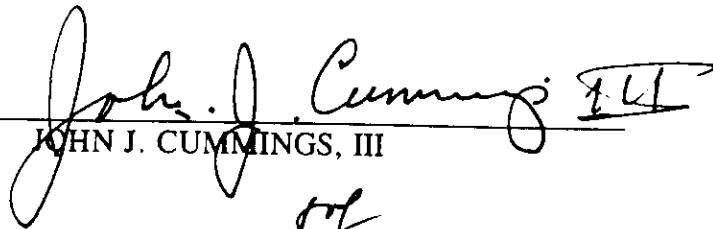

17. This Agreement shall apply to each and every claim or action arising from the use of diet drugs in which the State Attorneys have a right to a fee recovery.

PLAINTIFFS' MANAGEMENT COMMITTEE  
IN MDL 1203

Date: 2-15-99

By   
ARNOLD LEVIN

Date: 2-15-99

  
JOHN J. CUMMINGS, III  


Date: 2-15-99

Stanley M. Chesley  
STANLEY M. CHESLEY

CO-CHAIRS OF PLAINTIFFS' MANAGEMENT  
COMMITTEE IN MDL 1203

and

LEVIN, MIDDLEBROOKS, THOMAS,  
MITCHELL, GREEN, ECHSNER,  
PROCTOR AND PAPANTONIO, P.A.

Date: Feb 10 1999

By J. Michael Papantonio  
J. MICHAEL PAPANTONIO

**CERTIFICATE OF SERVICE**

I, Arnold Levin, hereby certify that on this 16th day of February, 1999, I caused a true and correct copy of the Plaintiffs' Management Committee's (PMC) Petition for an Order Appointing A. Michael Papantonio, Esquire to the PMC and the Docketing of An Agreement Entered Into on February 15, 1999 Between the PMC and Levin, Middlebrooks, Thomas, Mitchell, Green, Echsner, Proctor and Papantonio, P.A. Concerning the PMC Work Product and the Establishment of an Amicable Working Relationship With the PMC for The Mutual Benefit of the Clients of Levin, Middlebrooks, Thomas, Mitchell, Green, Echsner, Proctor and Papantonio, P.A. to be served upon the following persons as follows:

**VIA HAND DELIVERY:**

Edward W. Madeira, Jr., Esquire  
PEPPER, HAMILTON & SCHEETZ  
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18th and Arch Streets  
Philadelphia, PA 19103-2799

Michael T. Scott, Esquire  
REED, SMITH, SHAW & McCLAY  
2500 One Liberty Place  
Philadelphia, PA 19103-7301

Gregory P. Miller, Esquire  
MILLER, ALFANO & RASPANTI, PC  
1818 Market Street  
Suite 3402  
Philadelphia, PA 19103

**VIA FIRST CLASS MAIL:**

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399 Park Avenue  
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**ARNOLD LEVIN, ESQUIRE**