

PRESENT:

Honorable Helen E. Freedman, J.S.C.

Sub # 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
IN RE: NEW YORK REZULIN
PRODUCT LIABILITY LITIGATION X

Index No. 752,000/00

THIS DOCUMENT APPLIES TO ALL REZULIN CASES
IN THE SUPREME COURT OF THE STATE OF
NEW YORK

CASE MANAGEMENT
ORDER NO. 3
November 27, 2000

----- X
Standard Consolidated Disclosure

I. Disclosure of Plaintiffs

A. Promulgation of Uniform Requests

1. Pursuant to Case Management Order No. 1 entered in these coordinated cases on November 27, 2000, this Court, *inter alia*, appointed committees of plaintiffs' and defendants' counsel to develop uniform pleadings and discovery requests to be used in these cases. To date, these committees have jointly developed a uniform procedure for discovery that will include a uniform set of interrogatories, document requests, bills of particulars and requests for authorizations entitled Plaintiffs' Fact Sheet, which is discussed below (the "Fact Sheet").

2. The Fact Sheet, which will be filed under the Rezulin Master File index number 752,000/00, will be applicable to each and every case that is or becomes subject to this Order. To the extent that any plaintiff has served Answers to Interrogatories and Responses to Notices of Discovery and Inspection propounded by the corporate defendants prior to the date of

COUNTY CLERK'S OFFICE
NEW YORK
NOV 29 2000
FILED

this Order, those Answers and Responses shall be treated as the service of a Fact Sheet pursuant to paragraph 1 of Section B herein and all of the other provisions relating thereto shall apply.

B. Responding to the Uniform Requests

1. Plaintiffs shall serve their completed Fact Sheets within the time provided for in this Order upon all defendants in the individual actions to which the responses pertain, providing the particulars demanded, the information, documents and authorizations requests, and the verification and sworn declaration as indicated. The completed Fact Sheet, including the original authorizations, shall be sent to Glenn Pogust, Kaye, Scholer, Fierman, Hays & Handler, LLP, who shall be responsible for obtaining records pursuant to the authorizations and provide copies of the records received to the appropriate defense counsel. In cases involving a health care provider, an additional set of original authorizations shall be sent to counsel for such health care providers.

2. The parties shall continue to meet and confer with respect to the form that the Fact Sheet will take and either present the Court with a Consent Order adopting the form of Fact Sheet or shall present their alternate proposed forms to the Court by December 5, 2000.

3. For the purposes of this Order service of a completed Fact Sheet means the service of a Fact Sheet in which responses are provided to all of the questions and requests for information. For these purposes a good faith representation that the plaintiff “does not know” or “does not recall” shall be a response that shall not render the Fact Sheet incomplete.

4. To the extent that any plaintiff has served Answers to Interrogatories and Responses to Notices of Discovery and Inspection propounded by defendant Warner-Lambert

Company prior to the date of this Order, those Answers and Responses shall be treated as the service of a Fact Sheet pursuant to paragraph 1 of this Section B and all of the other provisions relating thereto shall apply.

5. Plaintiffs' responses to the Fact Sheet shall be served in accordance with the following schedule:

a. For each of the Rezulin cases that is presently before this Court, plaintiffs' responses shall be served within sixty (60) days of the date of this Order or 60 days from the date of the defendants' Answer, whichever is later.

b. With respect to cases commenced in this Court after the date of the order, plaintiffs' responses shall be served within sixty(60) days of the date of the defendants' answer.

c. With respect to cases transferred to this Court from other courts within the State after the date of this Order, plaintiffs' responses shall be served within thirty (30) days from the date that the case is docketed in this Court or sixty (60) days from the date of the defendants' Answer, whichever is later.

6. After receipt of the responses of the plaintiff in any individual case, any defendant may seek additional written discovery from the plaintiff upon leave of Court for good cause shown and only to the extent that such additional discovery is material, necessary and not repetitive of the Fact Sheet and cannot be obtained through deposition.

C. Compliance with Disclosure of Plaintiffs

1. No sooner than thirty (30) days after the date on which a Fact Sheet is due, a defendant may serve a notice on counsel for those plaintiffs who they believe have failed to

comply with Section B herein either by failing to provide a Fact Sheet or by providing a Fact sheet that is incomplete, including, without limitation, a Fact Sheet that fails to provide all required authorizations to obtain records. To the extent that such notice is based on a claim that a plaintiff has failed to comply with Section B herein by providing a Fact sheet that is incomplete, including, without limitation, a Fact Sheet that fails to provide all required authorizations to obtain records, defendants shall delineate the deficiencies of plaintiffs' disclosure in a manner sufficient to permit plaintiff to comply with the requirements of this Section.

2. Within thirty (30) days of receipt of such notice, plaintiff shall serve a completed Fact Sheet or, in the case of an incomplete Fact Sheet, a supplemental Fact Sheet, as well as all required authorizations on all parties entitled to service of the original Fact Sheet.

3. In the event that plaintiff fails to serve a completed Fact Sheet as defined in this Order, including all required authorizations, pursuant to paragraph 1 of this Section C, within the thirty-day period, a defendant may serve an additional notice on counsel for plaintiff informing plaintiff's counsel of the continuing breach of this Order and further advise that if this breach is not corrected, an application may be made to the Court for the appropriate relief.

4. No sooner than twenty (20) days after the service of notice pursuant to paragraph 3 of this Section C, a defendant may make an application to the Court for the appropriate relief.

D. Demand for Verified Bills of Particulars

1. Nothing in this Order shall prevent any defendant from seeking leave of Court for good cause shown to serve a Demand for a Verified Bill of Particulars from any or all plaintiffs. With respect to any such application for leave of Court, nothing in this Order shall

prevent any party from seeking the adoption by the Court of a Uniform Demand for a Verified Bill of Particulars in lieu of the use of individual Demands for Verified Bills of Particulars if circumstances warrant.

2. Unless otherwise agreed, any health care provider who is a defendant in any action to which this Order applies may serve a Demand for a Verified Bill of Particulars on any plaintiff pursuant to the CPLR.

E. Noticing and Scheduling Depositions Regarding Plaintiffs

1. Within sixty (60) days of receipt by defendants of a completed Fact Sheet for any plaintiff, together with the required authorizations, defendants shall Notice the Deposition of that plaintiff to be taken not more than ninety (90) days from the date that the defendants receive the completed Fact Sheet and required authorizations.

2. The adjournment of any deposition noticed pursuant to paragraph 1 of this Section E, or the extension of the ninety (90) day limit for the date of such deposition, can only be made by the written consent of all of the parties to that action, or upon the Order of this Court.

3. Notwithstanding the provisions of Section 1 of this paragraph E, not more than seventy (70) days after the receipt of a completed Fact Sheet for any plaintiff together with the required authorizations, any defendant shall notify counsel for that plaintiff of any reason that the deposition of the plaintiff can not proceed within the ninety (90) day time period set forth in paragraph 1 of this Section E, including without limitation, the inability of defendants to receive copies of material and necessary records, and requesting an adjournment of a noticed deposition and/or an extension of said ninety (90) day period.

4. The failure of any plaintiff to provide a completed Fact Sheet in response to a notice sent by defendants pursuant to the procedures set forth in Section C herein shall also be a basis for a defendant to seek an adjournment of a noticed deposition or an extension of the ninety (90) day period referred to herein.

5. Written consent to adjourn a noticed deposition or to extend said ninety (90) day period pursuant to a request made pursuant to paragraph 3 of this Section E shall not be unreasonably refused.

6. Nothing in this Order shall prejudice the right of defendants to Notice, or of the plaintiffs to seek leave of Court upon good cause shown to object to, the supplemental deposition of any plaintiff if a deposition of a plaintiff is taken pursuant to this Section E before defendants have received pertinent records pursuant to authorizations, or for any other reason permitted under the CPLR.

7. Depositions of other fact witnesses with respect to the claims of any plaintiff, including without limitation, the depositions of that plaintiff's treating physicians and the depositions of any named plaintiffs in an action who assert claims derivative of or as representative of the primary plaintiff who alleges treatment with Rezulin, shall be completed within one-hundred fifty (150) days of receipt by defendants of a completed Fact Sheet for that plaintiff, together with the required authorizations, except that there shall be no more than five (5) depositions of treating physicians of a particular plaintiff absent leave of Court for good cause shown.

8. Nothing in this Order shall prevent any party from serving an objection to any Notice of Deposition of a non-party fact witness, provided however, that service of such a

Notice shall stop the one hundred fifty (150) day period set forth in paragraph 6 of this Section E from running until said objection is resolved either on consent or by Order of the Court.

II. Disclosure of Defendants

The defendants have agreed to provide access to documents contained in their document depository to plaintiffs upon the entry of a protective Order of Confidentiality from this Court. Once that Order is entered, counsel may contact Glenn Pogust, Kaye, Scholer, Fierman, Hays & Handler, LLP, to either arrange a time to visit the depository or to request CD-ROMS of document images.

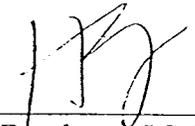
2. With respect to any further discovery required of defendants in addition that provided for in paragraphs 1 of this Section II, the Court will consider the entry of additional Case Management Orders regarding the procedures for such discovery.

III. Other Matters

1. Plaintiffs' and Defendants' Liaison Counsel are hereby directed to mail a copy of this Order to all counsel who have appeared in these actions for plaintiffs and defendants, respectively.

SO ORDERED.

Dated: November 22, 2000
New York, New York



Helen E. Freedman, J.S.C.

NOV 29 2000
NEW YORK
COUNTY CLERK'S OFFICE