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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

IN RE DIET DRUGS LITIGATION)	Judicial Council
_____)	Coordination Proceeding
)	No. 4032
THIS DOCUMENT RELATES TO:)	[
ALL ACTIONS)	GENERAL ORDER NO. <u>7</u>:
_____)	FEDERAL/STATE COORDINATION;
)	SET ASIDE FOR COUNSEL FEES
)	AND COSTS

This Order shall govern each case coordinated in Judicial Council Coordination Proceeding No. 4032 ("JCCP 4032") and all other cases brought by or on behalf of any person alleging injury due, either in whole or in part, to the use of fenfluramine, dexfenfluramine, and/or phentermine and which are subject to coordination in JCCP 4032.

A. Agreement to Coordinate Discovery

1. The terms of the agreement between the Plaintiffs' Management Committee ("PMC") in In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation MDL No. 1203 ("MDL 1203") and the Plaintiffs' Executive Committee ("PEC") in JCCP 4032 (the "Agreement") are approved as a fair, reasonable and equitable approach to the coordination of discovery and other matters between MDL 1203 and JCCP 4032. A copy of the Agreement is appended to this Order, as Exhibit A.

1 **B. Set Aside For Counsel Fees and Costs**

2 2. The Court believes that this litigation has advanced to the point that it is
3 appropriate to establish a fair system for the sequestration of a certain percentage of all payments by
4 defendant(s) to plaintiff(s) in fulfillment of obligations to settle claims of plaintiffs from time to time
5 as well as to satisfy judgments that may result in some instances (all such payments hereinafter
6 referred to as "claim payments"). The funds so sequestered are to be available to provide for
7 reimbursement of costs and payment of attorneys' fees to (1) the PMC and other common benefit
8 attorneys in MDL 1203, pursuant to order of the Honorable Louis C. Bechtle, acting as the
9 coordinating judge in MDL 1203; and (2) the PEC and other attorneys who have been authorized by
10 the PEC, pursuant to General Order No. 1, to perform work for the benefit of plaintiffs in JCCP 4032
11 ("California Common Benefit Attorneys"), subject to a proper showing in the future.

12 3. The Court shall establish in JCCP 4032 an insured, interest bearing escrow
13 account to receive and disburse funds as provided in this Order (the "JCCP 4032 Fee and Cost
14 Account"). The Court will, by future Order, designate an escrow agent to manage the account. All
15 funds in the account will be held as funds subject to the direction of the Court.

16 4. Upon approval of the Agreement by Judge Bechtle in MDL 1203, each action
17 involving diet drugs which is now or hereafter coordinated in JCCP 4032 shall be subject to this
18 Order to the following extent. Before making any claim payment to a plaintiff whose action has been
19 subject to coordinated pretrial proceedings in JCCP 4032, defendants shall (1) deduct from such
20 payments an amount equal to six percent (6%) of the aggregate of the amount being paid and any
21 amounts to be paid to the plaintiff in the future, and shall pay such sum as hereinafter provided for
22 deposit into the MDL 1203 Fee and Cost Account, established pursuant to Order of Judge Bechtle;
23 and (2) shall deduct from such payments an amount equal to three percent (3%) of the aggregate
24 amount being paid and any amounts to be paid to the plaintiff in the future, and shall pay such sum for
25 deposit into the JCCP 4032 Fee and Cost Account. In measuring the gross amount due or to become
26 due to any plaintiff as claim payments, the defendant shall include the present value of any fixed and

1 certain payments to be made in the future. Should the Court in MDL 1203 award a federal
2 assessment of less than nine percent (9%) in MDL 1203 cases, the amount of the deduction paid into
3 (1) the MDL Fee and Cost Fund shall be limited to two-thirds (2/3) of the percentage assessment
4 awarded by Judge Bechtle and (2) the amount of the deduction paid into the JCCP Fee and Cost
5 Fund shall be limited to one-third (1/3) of the percentage assessment awarded by Judge Bechtle. No
6 assessment shall be paid on any recovery resulting solely from a medical malpractice claim against a
7 treating physician.

8 5. The requirements of paragraph 4 shall apply regardless of whether a plaintiff's
9 case is disposed of during the time it is on the docket of the transferee court, or following remand or
10 transfer from the transferee court to another state court for trial. The obligation shall follow the case
11 to its final disposition in any California court or to any court having jurisdiction in bankruptcy.

12 6. Defendants shall have primary responsibility for withholding nine percent (9%)
13 of the claim payments, and tendering six percent (6%) of the claim payments to the MDL 1203 Fee
14 and Cost Account and three percent (3%) of the claim payments to the JCCP 4032 Fee and Cost
15 Account, pursuant to paragraph 4, above. If, however, a defendant fails to do so, in addition to the
16 Court's power generally, including the exercise of its powers to compel payment by defendant in
17 compliance with this Order, the Court, under appropriate circumstances, can be expected to seek
18 such payment from the plaintiff and/or his or her counsel under terms that are just and equitable.

19 7. All payments which defendants are required to make pursuant to this Order
20 shall, pursuant to paragraph 4, above, be paid directly to (1) the escrow agent appointed by Judge
21 Bechtle to administer the MDL 1203 Fee and Cost Account; and (2) the escrow agent appointed
22 pursuant to paragraph 3, above, to administer the JCCP 4032 Fee and Cost Account. Payment to the
23 escrow agents established in MDL 1203 and JCCP 4032 shall fully discharge the defendants'
24 obligation under this Order. The amount deposited into the MDL 1203 Fee and Cost Account will be
25 subject to Order from Judge Bechtle. The payments to be made to the MDL 1203 and JCCP 4032
26 Fee and Cost Accounts shall not be disclosed by the escrow agent except upon written order of the

1 Court. The purpose of maintaining confidentiality is to protect the defendants' legitimate concerns
2 regarding disclosure of the amounts that it deposits into the escrow fund inasmuch as knowledge of
3 such amounts would allow calculation of any sums defendants determine should be paid in
4 satisfaction of any obligation it has to a plaintiff covered by this Order. The escrow agent shall report
5 to the Court from time to time the sums that are deposited in the MDL 1203 and JCCP 4032 Fee and
6 Cost Accounts, together with the information supplied to the agent by the paying defendant at the
7 time of deposit that will be sufficient for the agent to determine if the amount deposited in the
8 MDL 1203 and JCCP 4023 Fee and Cost Accounts is the amount required to be paid under the terms
9 of this Order. The escrow agent shall confer with the defendants and the Court to determine the
10 appropriate form that should be completed and accompany any payment to be made to the escrow
11 agent to allow the escrow agent to verify the accuracy of any payment made.

12 8. Upon a proper showing, the California Common Benefit Attorneys will be
13 entitled to receive an award of counsel fees and reimbursement of out-of-pocket litigation expenses to
14 be paid from the JCCP 4032 Fee and Cost Account, in such amounts as are determined by the Court,
15 after a hearing, based on the appropriate and controlling law. In making such an award, the Court
16 will first determine the amount of costs for which reimbursement is appropriate. The amount
17 remaining in the JCCP 4032 Fee and Cost Account, after deducting the amount of costs awarded by
18 the Court, will be available for any award of counsel fees. In making an award of counsel fees to the
19 California Common Benefit Attorneys and in apportioning any fee award among those attorneys,
20 appropriate consideration will be given to the experience, talent, and contribution made by each
21 California Common Benefit Attorney who seeks to recover counsel fees from the JCCP 4032 Fee and
22 Cost Account, provided, however, that the Court will only consider compensation for those services
23 which were authorized by the PEC pursuant to General Order No. 1.

24 9. Any sum ordered to be paid by the Court pursuant to this Order as an award of
25 counsel fees shall be deducted from the total amount of counsel fees payable to individual plaintiff's
26 counsel, it being understood that the California Common Benefit Attorneys' portion shall not diminish

1 the portion of the recovery that any plaintiff would have been entitled to receive had there been no
2 participation by the California Common Benefit Attorneys. Any sum ordered to be paid by the Court
3 pursuant to this Order as reimbursement for out-of-pocket costs shall be prorated among the plaintiffs
4 whose claim payments were deposited, in part, in the JCCP 4032 Fee and Cost Account. Any fees
5 and costs awarded by Judge Bechtle in MDL 1203 from the MDL 1203 Fee and Cost Fund shall be
6 treated in a like manner.

7 10. Nothing in this Order will limit the amount of attorneys' fees and costs, in the
8 form of a percentage award or otherwise, which may be awarded by the Court in the event of
9 recovery in any action certified as a class action under Fed. R. Civ. P. 23 or California C.C.P. § 382.

10 11. The Court is not making the determination by this Order that the California
11 Common Benefit Attorneys shall receive any specific sum as payment of counsel fees and
12 reimbursement of litigation expenses. Rather, this Order is merely intended to develop a mechanism
13 for the creation of a fund from which the amount of fees and costs which the California Common
14 Benefit Attorneys are ultimately entitled may be awarded and paid with reliability.

15 12. At such time as the JCCP 4032 Fee and Cost Account contains balances that
16 are not necessary to be retained for the payment of fees and costs, the Court will, upon applicable
17 provisions of law, following a hearing, make refunds on an equitable basis, or if such balances are of
18 small amounts, enter such orders concerning the disposition of such funds as are appropriate under
19 the law.

20 **C. State-Federal Coordination**

21 13. It is understood that the PEC shall be entitled to receive the following
22 materials from the PMC, upon payment of the actual cost of providing copies of the materials:

- 23 a. CD-ROMs reflecting text searchable images of the key documents
24 selected by the PMC from the document productions of the defendants
and third-parties in MDL 1203;
- 25 b. a bibliographic database providing a "coded" index of such key
26 documents;

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- c. the depositions of each generally applicable fact witness taken in MDL 1203 and in the state-court actions coordinated pursuant to Pretrial Order No. 467 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.

14. When a notice of deposition is issued in MDL 1203, any party in JCCP 4032 may issue a notice which provides for the taking of such deposition in JCCP 4032 at the time and place stated in the original notice. When a notice of deposition is issued or cross-noticed in JCCP 4032, defendants and plaintiffs in JCCP 4032 shall not file or serve notices to take that deposition for use in any state court litigation or otherwise "cross-notice" depositions of the witness in any state-court proceeding except as provided in MDL 1203 Pretrial Order No. 467.

15. Copies of any record of any deposition taken in or cross-noticed in JCCP 4032 pursuant to the terms of this Order shall not be provided to any person except upon a request to purchase a copy of the transcript or other record of the deposition directed to the court reporter who stenographically recorded the proceedings at the deposition or the operator who made any video or audio recording of the proceedings at the deposition and payment of such person's proper fees. See C.C.P. § 2025(s)(2). Notice of each request shall be provided to all JCCP 4032 Liaison Counsel contemporaneously with the making of each such request.

16. This Order is issued in conjunction with MDL 1203 Pretrial Order No. 467, which is attached to this Order as Exhibit B.

IT IS SO ORDERED:

3-29-99

/s/ Daniel Solis Pratt
Honorable Daniel S. Pratt
Superior Court Judge