

RECEIVED

JAN 22 2001

Judge
THOMAS F. HOGAN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X
IN RE:
VITAMINS ANTITRUST LITIGATION

MDL No. 1285

Misc. No. 99-0197 (TFH)

-----X
THIS DOCUMENT APPLIES TO:

NBTY et al. v. F. Hoffmann-La Roche
Ltd, et al., 99CV2372 (E.D.N.Y.)

Perrigo v. F. Hoffmann-La Roche Ltd,
et al. 99CV2411 (W.D. Mich.)

Natural Alternatives Int'l Inc. et al. v. F.
Hoffmann-La Roche Ltd, et al. 99CV2682
(S.D. Cal.)

Leiner Health Products, Inc. v. F. Hoffmann-La
Roche Ltd, et al. 99-09832 (C.D. Cal.)

Conopco, Inc. v. F. Hoffmann-La Roche Ltd, et al. :
00 CIV 3572 (S.D.N.Y.)

FILED

JAN 29 2001

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

-----X
Proposed

STIPULATION AND ORDER REGARDING PERSONAL JURISDICTION

AND RE-FILING OF ACTIONS

WHEREAS pursuant to the June 7, 1999 order of the Judicial Panel on
Multidistrict Litigation, the above-captioned actions (the "Actions") have been transferred to the
United States District Court for the District of Columbia (the "D.C. Court") for consolidated and
coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407;

(11)

1/20/01

WHEREAS certain defendants, including the defendants listed on Exhibit A hereto (the “Stipulating Foreign Defendants”), have contested personal jurisdiction in some or all of the Actions and would, if jurisdiction were found, assert various defenses, including challenges to the venue for trial of remanded actions;

WHEREAS Lexecon Inc. v. Milberg Weiss Barshad Hynes & Lerach, 523 U.S. 26 (1998) may require that any Actions filed in courts outside the D.C. Court be remanded for trial to the court where filed pursuant to 28 U.S.C. § 1407;

WHEREAS plaintiffs in the Actions as of the date hereof (the “Stipulating Plaintiffs”) received permission from the D.C. Court to take certain jurisdictional discovery of defendants under the Federal Rules of Civil Procedure and are prepared to do so;

WHEREAS Stipulating Plaintiffs are willing, under the terms and conditions set forth below, to deem their actions re-filed in the United States District Court for the Central District of California (the “California Court”) against Stipulating Defendants, to the extent they have not already been filed there (or actually dismiss and re-file their Actions if necessary); and

WHEREAS certain defendants that did not interpose challenges to personal jurisdiction in the Actions (the “Other Stipulating Defendants,” listed on Exhibit B hereto and, together with the Stipulating Foreign Defendants, the “Stipulating Defendants”) are prepared, in exchange for a specific agreement with respect to the ultimate venue of the Actions, to consent to, inter alia, the deemed dismissal and re-filing of the Actions (or actual dismissal and re-filing of the Actions if necessary) as set forth in this Stipulation:

IT IS HEREBY STIPULATED AND AGREED among the Stipulating Plaintiffs and the Stipulating Defendants that:

1. For each Action, except any Action originally filed in the California Court (the "Original California Action"), Stipulating Plaintiffs hereby stipulate and agree that venue is proper in the California Court and that their claims against the Stipulating Defendants will be tried in the California Court. To this end, the Actions filed in courts other than the California Court (the "Non-California Actions") will be treated as if Stipulating Plaintiffs re-filed those Actions in the California Court and then dismissed the Stipulating Defendants without prejudice from all Non-California Actions. This Stipulation is not intended to preclude any Stipulating Plaintiff from subsequently moving to amend its Action or Actions nor to preclude any Stipulating Defendant from opposing such motion.

2. Except as expressly provided herein, each Action that is deemed dismissed and re-filed against the Stipulating Defendants in the California Court in compliance with paragraph 1 (a "Deemed Re-filed Action") shall be treated for all purposes as if it had been transferred to the California Court pursuant to 28 U.S.C. § 1404(a) and shall not be remanded to its originating district.

3. The transfer of the Actions to the U.S. District Court for the District of Columbia for consolidated and coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407 shall remain in effect for the Original California Action and the Deemed Re-filed Actions.

4. Stipulating Defendants agree that for all purposes, including any applicable statute of limitations, the date on which the Deemed Re-filed Action was filed originally shall govern the Action, such that no claim shall be deemed time-barred solely as a result of its deemed dismissal and re-filing. Any applicable tolling of statutes of limitations in any Deemed Re-Filed Action shall continue as to the claims in such Actions despite the deemed dismissal and re-filing of such Actions as provided in this Order.

5. In each of the Actions, Stipulating Defendants hereby withdraw or have withdrawn their motions to dismiss for lack of personal jurisdiction and notices of such motions to dismiss (if any).

6. In each of the Actions, Stipulating Plaintiffs hereby withdraw their requests for jurisdictional discovery as to Stipulating Defendants upon which requests for jurisdictional discovery were served, without prejudice to Stipulating Plaintiffs' right to seek discovery from the Stipulating Defendants on any other issue including, inter alia, discovery with a bearing on the jurisdictional position of non-stipulating defendants that are contesting jurisdiction, provided that any such discovery from Stipulating Defendants shall be coordinated with merits discovery against Stipulating Defendants to the extent practicable. Solely as to those Stipulating Defendants which raise a defense of lack of personal jurisdiction in answers filed pursuant to paragraph 13 hereof and solely as to California, the jurisdictional discovery approved by the D.C. Court shall be deemed automatically incorporated in subsequently approved merits discovery requests; and those Stipulating Defendants shall not object to the incorporation of those prior-approved requests and shall respond concurrently with their response to the merits requests into which they have been deemed incorporated. Nothing in this Stipulation is intended to preclude Stipulating Plaintiffs from participating in merits discovery from Stipulating Defendants, notwithstanding any Stipulating Defendant's defense of lack of personal jurisdiction.

7. Stipulating Defendants do not consent to the personal jurisdiction of the California Court and nothing in this Stipulation is intended to constitute or effect a waiver or serve as an estoppel of their jurisdictional arguments in the Actions or any other actions.

8. Except as expressly provided herein, Stipulating Defendants' agreements set forth herein shall be without prejudice to, and shall not constitute a waiver of, any rights or defenses, including but not limited to Stipulating Defendants' rights (a) to oppose personal jurisdiction in any action in any court; (b) to challenge the sufficiency of service of process in any action; (c) to oppose personal jurisdiction in any Action if Stipulating Defendants invoke paragraph 18 of this stipulation and Stipulating Plaintiffs fail to comply with that paragraph; (d) to oppose jurisdiction or venue with respect to any claim not asserted, or any claim by any plaintiff not named, in the Actions as of the date hereof; (e) to oppose the amendment of the complaint in any Action on any ground; and (f) to maintain that any discovery in any action (other than that which the Court determined in its preceding opinion and order could be taken in accordance with the Federal Rules of Civil Procedure), including merits discovery, must be obtained pursuant to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters or any other international treaty, convention or foreign law governing the taking of evidence abroad (the "Hague Convention and Other Laws"). The parties agree that this Stipulation does not affect, one way or the other, their respective rights or positions with regard to the merits of any request to seek an immediate appeal of any adverse ruling.

9. The Stipulating Defendants and Stipulating Plaintiffs agree that any objection on the ground that merits discovery in any Action must be taken in accordance with the Hague Convention or Other Laws shall be briefed on an expedited basis in light of the briefing on the procedures governing jurisdictional discovery that has already been presented to and ruled upon by the D.C. Court and the Special Master. The Stipulating Defendants and Stipulating Plaintiffs further agree that, in light of that briefing and those rulings, they will not file additional affidavits or other evidence regarding the effectiveness or ineffectiveness of procedures under

the Hague Convention and Other Laws nor on sovereign interests that may be implicated by those laws. Within five (5) business days after electronic service of Stipulating Plaintiffs' consolidated merits discovery requests, Stipulating Plaintiffs and Stipulating Defendants shall meet and confer to discuss such objections raised by Stipulating Defendants to said merits discovery. Should the parties be unable to resolve Stipulating Defendants' objections, the Stipulating Defendants, within 10 Calendar Days of the meet and confer, shall serve a consolidated motion for protective order and opening brief in support of their objections; within 10 Calendar Days of electronic service of the opening brief, Stipulating Plaintiffs shall serve a consolidated brief in opposition; within 5 Calendar Days of electronic service of the opposition brief, Stipulating Defendants shall serve their consolidated reply to Stipulating Plaintiffs' opposition; and within 5 Calendar Days of electronic service of the consolidated reply brief, Stipulating Plaintiffs may serve a consolidated surreply brief. The parties further agree that they shall jointly request an expedited ruling with respect to any such consolidated motion or objections by Stipulating Defendants. Stipulating Defendants further agree that, if their motion that discovery be conducted under the Hague Convention or Other Laws is denied, they will not thereafter raise the argument that discovery be conducted under the Hague Convention or Other Laws in response to any requests for discovery (including interrogatory answers, depositions or documents) by Stipulating Plaintiffs and any subsequent objections shall be raised as provided for in the Federal Rules of Civil Procedure, except that if (1) the Stipulating Defendants believe that the subsequent request so exceeds the scope of those prior requests that were the subject of the decision on the non-applicability of the Hague Convention or Other Laws as to call into doubt the proper application of that decision to the subsequent requests; and (2) the Special Master agrees with Stipulating Defendants, after reviewing position papers served by the parties

within 15 Calendar Days of Stipulating Defendants' notice that they believe the first condition set out above has been met, then the parties will work with the Special Master to modify the merits discovery at issue in such a manner that it can be conducted under the Federal Rules of Civil Procedure in accordance with previous rulings. The parties agree to ask the Special Master for an expedited ruling with respect to item (2) herein.

10. Stipulating Defendants' agreements herein shall in no way be construed as an admission of jurisdiction or of any of the allegations or contentions of the pleadings; nor shall they constitute or be deemed an admission of relevant jurisdictional facts or jurisdictional contacts in any jurisdiction; nor do they represent an agreement or recognition that any court has general or specific jurisdiction to hear claims of a general or related nature to the allegations in the Actions and Deemed Re-Filed Actions.

11. Notwithstanding paragraph 1 of this Stipulation, with respect to any state law claims in the Original California Action and the Re-filed Actions, this Court shall interpret and apply state law as if the Actions were not deemed dismissed and re-filed. The stipulation and, in particular, the deemed re-filing of various actions in California is not intended to in any way affect the application of any state law to claims brought pursuant to state law. Thus, for example, even if the original action was pending in the Central District of California, Michigan Law will govern any claims brought under Michigan law to the same extent it would have governed claims in the complaint as originally filed; and the same obtains for California law claims, Florida law claims and New York law claims.

12. Notwithstanding paragraph 1 of this Stipulation, this Court shall interpret and apply federal law as if the Actions were not deemed dismissed and re-filed.

13. Each Stipulating Defendant, to the extent it has not yet answered, shall serve answers in each Action within 60 days of the latest of (a) the entry of this Stipulation and Order; and (b) proper service of the Action on that Stipulating Defendant. Stipulating Defendants agree that once this Stipulation is Ordered by the Court, Stipulating Defendants will not assert lack of an Answer as a basis for refusing to respond to or delaying a response to merits discovery.

14. In each Action, the Stipulating Defendants shall be permitted to raise in their answers the defense of lack of personal jurisdiction unless they have already answered the complaint in the corresponding original action and did not raise the defense of lack of personal jurisdiction in that answer in which event they will not raise such defense.

15. In each Action in which a Stipulating Defendant raises in its answer the defense of lack of personal jurisdiction, that Stipulating Defendant may, on or before the deadline for dispositive motions, move to dismiss that Action for lack of personal jurisdiction. If the Court determines that the Stipulating Defendant is not subject to personal jurisdiction in the California Court, Stipulating Plaintiffs may re-file each Action against that Stipulating Defendant in the D.C. Court, (additional service of the re-filed complaint will not be required as to a Stipulating Defendant if that Stipulating Defendant was properly served with the Action replaced by the Deemed Re-filed Action and a copy of the re-filed complaint was posted on the Verilaw website in accordance with the procedures set forth in the Court's Order Regarding Electronic Service); any such Action may be continued in the California Court against all other defendants subject to personal jurisdiction. Except as expressly provided herein, each Action that is re-filed in the D.C. Court shall be treated for all purposes as if it had been transferred to the D.C. Court

pursuant to 28 U.S.C. § 1404(a) and shall be governed by the Stipulation and Order Regarding Personal Jurisdiction and Re-Filing of Actions entered in the D.C. Court.

16. To the extent permitted by law, nothing herein shall be construed as a waiver of any party's right to move the D.C. Court, the California Court, or any other Court to transfer any or all of the Actions to the D.C. Court for trial.

17. If any Stipulating Plaintiff continues to maintain a Non-California Action that contains one or more claims arising out of an alleged conspiracy regarding choline chloride ("Choline Claims") against defendants that are not Stipulating Defendants, then defendants BASF AG and BASF Corporation shall have the option, to be exercised at their discretion, to proceed with the trial of any Choline Claims asserted by such Stipulating Plaintiff against BASF AG or BASF Corporation in either (a) the California Court or (b) the court where such Choline Claims will be tried as to any other defendants. If BASF AG and BASF Corporation elect to proceed with the trial of any Choline Claim in any court other than the California Court, such election will not affect the venue for trial of any non-Choline Claim against BASF or any claim asserted in any Action against any other Stipulating Defendant, which shall remain in the California Court. Moreover, Stipulating Defendants agree that the exercise of such option shall not be asserted in any manner by Stipulating Defendants as a basis or justification for severing Stipulating Plaintiffs' claims in the Actions and shall not prejudice Stipulating Plaintiffs' right to seek, or any defendant's right to oppose, trials combining Choline Claims with claims arising out of an alleged conspiracy regarding other vitamins. Notwithstanding the foregoing, if BASF AG and BASF Corporation elect to proceed with the trial of any Choline Claim in any court other than the California Court, the Stipulating Plaintiff(s) in such Actions (i) shall not seek a judgment against BASF AG, BASF Corporation or any related person or entity, other than a

judgment arising out of plaintiffs' Choline Claim, as a result of any trial in any court other than the California Court; and (ii) shall not seek a judgment against BASF AG, BASF Corporation or any related person or entity arising out of plaintiffs' Choline Claims as a result of any trial in the California Court. To make an election to proceed with the trial of any Choline Claim in any court other than the California Court, BASF AG and BASF Corporation must notify the appropriate Stipulating Plaintiff of their election no later than 20 days before the date upon which a final pre-trial order governing the trial of the Choline Claims of such Stipulating Plaintiff must be filed either in the California Court or the court where the Non-California Action is pending. In the event that BASF AG and BASF Corporation provide such notification, then the parties hereto shall use their reasonable best efforts to effectuate the transfer of such Choline Claims to the appropriate court for trial, and in the event of such transfer no party shall object to venue or the exercise of personal jurisdiction by the Court where the Non-California Action is pending.

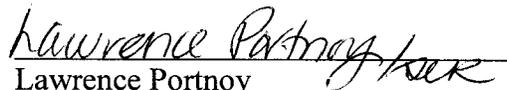
18. In the event that Stipulating Defendants determine in consultation with the Stipulating Plaintiffs that there is a risk that the Actions cannot be tried in the California Court without actually re-filing and dismissing those claims against the Stipulating Defendants, Stipulating Plaintiffs shall, within 60 days of such consultation but in no event less than 5 days prior to the commencement of any trial, voluntarily re-file in the California Court those Actions not originally filed in the California Court and shall dismiss Stipulating Defendants from the original Non-California Actions. In the event the Actions are re-filed pursuant to this paragraph, all provisions of this stipulation shall remain in full force and effect as if the Actions had proceeded as Deemed Re-Filed Actions. Failure to do so shall void the provisions of this

Stipulation and personal jurisdiction defenses in these Actions shall thereby be renewed notwithstanding the answers filed and actions taken in reliance on this stipulation.

19. Nothing in this Stipulation shall affect the actions filed by non-parties to this Stipulation.

20. This Stipulation may be signed in counterparts by Counsel for the Stipulating Parties.

Respectfully Submitted,



Lawrence Portnoy
Davis Polk & Wardwell
450 Lexington Ave.
New York, NY 10023
(212) 450-4000

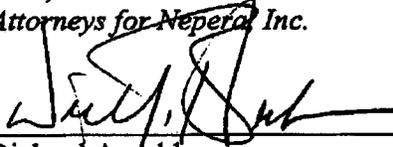
*Attorneys for F. Hoffmann-La Roche Ltd
and on behalf of Hoffmann-La Roche Inc.
and Roche Vitamins Inc. for purposes of this
stipulation*

Stephen Fishbein
Richard F. Schwed
Shearman & Sterling
599 Lexington Ave.
New York, NY 10022
(212) 848-4000

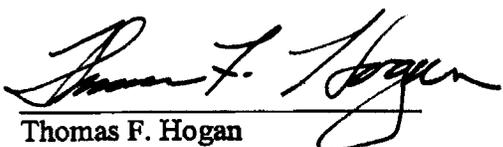
Attorneys for BASF AG

Dennis P. Orr
Thomas M. Mueller
Stefan W. Engelhardt
Mayer, Brown & Platt
1675 Broadway
New York, New York 10019-5820
(212) 506-2500
Attorneys for Lonza Inc. and Lonza AG

Gary W. Kubek
Debevoise & Plimpton
875 Third Avenue
New York, NY 10022
(212) 909-6000
Attorneys for Neperal Inc.


Richard Arnold
William J. Blechman
Kenny Nachwalter Syemour Arnold Chrichlow &
Spector
201 South Biscayne Blvd., Suite 1100
Miami, FL 33131
(305) 373-1000
*On behalf of plaintiffs in the above captioned
actions*

SO ORDERED:


Thomas F. Hogan
United States District Judge

