

FILED

MAR 28 2000

**NANCY MAYER-WHITTINGTON, CLE
U.S. DISTRICT COURT**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re: Vitamins Antitrust Litigation

MDL No. 1285

Misc. No. 99-0197 (TFH)

THIS DOCUMENT RELATES TO:

Cargill Incorporated., et al. v.
F. Hoffman-La Roche, Ltd., et al.,
Case No. 99-C-5167 (N.D. Ill.)

Docket No. 99-5167

~~PROPOSED~~ STIPULATION AND ORDER REGARDING JURISDICTIONAL
BRIEFING SCHEDULE FOR RESPONSES TO THE COMPLAINT

On February 25, 2000, Plaintiffs in the above-captioned matter and defendants Eisai Co., Ltd. ("ECL") and Takeda Chemical Industries, Ltd. ("TCI") (together the "Foreign Defendants") entered into a Stipulation in which the Foreign Defendants' time to answer, move against or otherwise respond to the complaint in the above-captioned matter (the "Complaint") was extended to and including March 8, 2000 (the "February 25, 2000 Stipulation"). This Court entered the February 25, 2000 Stipulation as an Order on February 28, 2000. The February 25, 2000 Stipulation had three additional operative provisions.

1. The Plaintiffs and Foreign Defendants agreed that any arguments related to personal jurisdiction presented in any motion filed in response to the Complaint on March 8, 2000 would be limited to whether: (1) personal jurisdiction under Section 12 of the Clayton Act, 15 U.S.C. § 22, should be measured by the Foreign Defendants local contacts with the transferor forum ("Local Contacts") or national contacts with the United States as a whole ("National Contacts"); (2) the Foreign Defendants lack sufficient national contacts with the United States as

a whole to subject them to personal jurisdiction; and (3) service of process was proper (collectively the “Initial Jurisdiction Issues”).

2. The Plaintiffs and Foreign Defendants agreed that the Foreign Defendants would file an answer to the Complaint within twenty (20) days of a ruling herein that: (1) the relevant test for personal jurisdiction is National Contacts; and (2) ECL or TCI has sufficient national contacts, respectively, to subject them to personal jurisdiction.*

3. The Plaintiffs and Foreign Defendants agreed that if the Court determines that a test for personal jurisdiction other than National Contacts applies in the above-captioned matter, the Foreign Defendants will be permitted to file either: (1) a motion to dismiss the Complaint (if a motion to dismiss the Complaint was not previously filed addressing only the Initial Jurisdiction Issue); or (2) a supplemental memorandum of law in further support of their motion to dismiss the Complaint (filed pursuant to the terms of the first above-listed provision). The parties agreed that such motion to dismiss or supplemental memorandum of law would be limited to the question of whether personal jurisdiction exists over each of the Foreign Defendants in the above-captioned case under the test, other than National Contacts, determined by the Court (the “Supplemental Jurisdiction Issues”). Finally, the parties agreed to agree upon a briefing schedule for such motions addressing the Supplemental Jurisdiction Issues if the Court finds that the relevant test for personal jurisdiction is a test other than National Contacts.

On March 8, 2000 the Foreign Defendants filed motions to dismiss the Complaint limited to the Initial Jurisdiction Issues, as provided for in the February 25, 2000 Stipulation. On March 20, 2000 the Plaintiffs filed a consolidated memorandum of law in opposition to the

* By agreeing to file an answer to the Complaint within 20 days of a ruling by the Court that the relevant forum is the United States as a whole, the Foreign Defendants did not and do not waive any rights they may have to appeal such a ruling or any rights they may have to seek a stay of their obligation to answer pending any such appeal.

Foreign Defendants' motions ("Plaintiffs' Opposition") that addressed both the Initial Jurisdiction Issues and the Supplemental Jurisdiction Issues.

IT IS THEREFORE HEREBY STIPULATED AND AGREED, by and between counsel for the undersigned parties, that:

The Foreign Defendants reply memoranda of law shall only be required to address those issues in the Plaintiffs' Opposition that address the Initial Jurisdiction Issues. The Foreign Defendants are not required to respond to those portions of the Plaintiffs' Opposition that address the Supplemental Jurisdiction Issues until such time as the conditions precedent to the presentation of such Supplemental Jurisdiction Issues set forth in the February 25, 2000 Stipulation (as described herein) are satisfied. The Parties do not believe that the Court need address issues raised in the Plaintiffs' Opposition that address the Supplemental Jurisdiction Issues until such time as the conditions precedent to the presentation of such Supplemental Jurisdiction Issues set forth in the February 25, 2000 Stipulation (as described herein) are satisfied.

This stipulation is not intended to waive and does not waive any defenses, including the defenses of lack of jurisdiction and insufficiency of service of process or any right of any party to appeal any ruling by the District Court.

Dated: New York, New York
March 23, 2000

Respectfully submitted by,

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*Counsel for Defendant
Takeda Chemical Industries, Ltd.*

SO ORDERED:

Thomas F. Hogan
THOMAS F. HOGAN
UNITED STATES DISTRICT JUDGE

3/27/00