

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:)
VITAMINS ANTITRUST LITIGATION)

) Misc. No. 99-197 (TFH)
) MDL No. 1285

THIS DOCUMENT RELATES TO:)

FILED

Animal Science, et al. v.)
Chinook Group, LTD. et al.)

MAY 1 2 2003

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

Re: DuCoa, L.P. and DCV, Inc's Motion to
Preclude Evidence under *Daubert*

Pending before the Court is DuCoa, L.P. ("DuCoa") and DCV, Inc's ("DCV") Motion to Preclude Evidence under Daubert filed November 5, 2002. In that motion DuCoa, L.P. and DCV, Inc. "adopt and incorporate by reference and all Daubert motions" related to any aspect of this multidistrict litigation. Many of the motions were mooted or withdrawn due to settlement. At the April 2, 2003 Status Conference, the Court inquired as to what remained of the instant motion, and specifically, with respect to arguments to exclude the testimony of Dr. Bernheim whether the straight line / flat line methodology used affected the choline chloride Class case. DuCoa and DCV responded by written brief on April 28, 2003 and informed the Court as follows:

Although the arguments to preclude Dr. Bernheim's testimony which could be related to the straight line/ flat line methodology do not appear to be in issue with the choline chloride damages calculations, the arguments related to the forecast model, and therefore the transaction model, still need to be resolved before trial

No other Daubert motions were implicated in their April 28, 2003 brief. Based on this representation, and on the extensive argument and testimony heard by the Court on February 3,

2003 and March 20 and 21, 2003, it is hereby

ORDERED that DuCoa, L.P. ("DuCoa") and DCV, Inc's ("DCV") Motion to Preclude Evidence under Daubert is **DENIED** for the same reasons as stated in the Court's ruling from the bench and corresponding Memorializing Order on March 21, 2003 denying the Niacin Defendants's Motion *in Limine* to Exclude the Expert Reports and Testimony of Dr. Bernheim and Perloff as Related to Niacin. The Court notes that the Dr. Bernheim's straight line / flat line methodology was not at issue in the Niacin Defendants' motions. Although this does not appear to be at issue in this case, all arguments respecting the this methodology are preserved and may be renewed at the appropriate time.

SO ORDERED.

May 12, 2003



Thomas F. Hogan
Chief Judge