

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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In re : MDL No. 1285  
VITAMINS ANTITRUST LITIGATION. : Misc. No. 99-197 (TFH)

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This Document Relates To: : **FILED**  
ALL INDIRECT-PURCHASER ACTIONS, : JUL 10 2003  
*defined in this Order to include:* : **NANCY MAYER WHITTINGTON, CLERK**  
PUBLIX SUPER MARKETS, INC. : **U.S. DISTRICT COURT**  
v. F. HOFFMANN-LA ROCHE LTD. et al. : D.D.C. No. 99 Civ. 2786 (TFH)  
 : (Transferred from M.D. Fla.)  
MEIJER, INC. : D.D.C. No. 99 Civ. 3282 (TFH)  
v. F. HOFFMANN-LA ROCHE LTD. et al. : (Transferred from W.D. Mich.)  
PFFJ, INC. : D.D.C. No. 00 Civ. 2115 (TFH)  
v. F. HOFFMANN-LA ROCHE LTD. et al. : (Transferred from D. Ariz.)  
D&D FARMS, INC. : D.D.C. No. 00 Civ. 2117 (TFH)  
v. F. HOFFMANN-LA ROCHE LTD. et al. : (Transferred from D.S.D.)  
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**ORDER ON PUBLIX-MEIJER MOTION  
RE SCHEDULING**

Under stipulated Orders, the four captioned actions, in all of which the predominant damages claims are indirect-purchaser claims under state law, were taken off the schedule under which most actions in these MDL proceedings have been prepared for trial or remand. This Order, among other things, resolves the motion of plaintiffs Publix and Meijer (Verilaw No. 15124) regarding scheduling.

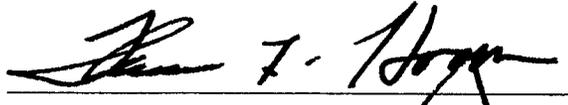
**A. Captioning and filing.**

The above-entitled actions (and such future state-law indirect-purchaser actions as the Court may designate by order) may be referred to collectively as the “Indirect-Purchaser Actions.” Documents captioned “This Document Pertains to All Indirect-Purchaser Actions” shall be deemed served or filed, as the case may be, in all Indirect-Purchaser Actions; *provided, however*, that the use of that caption shall not constitute an appearance by any person in any action in which that person has not already appeared as a party.

**B. Future scheduling.**

The parties to the Indirect-Purchaser Actions are directed to serve proposals for a Case Management Order within 30 days of the date on which the last of the motions identified in Exhibit A to this Order has been resolved.

SO ORDERED, this 9 day of July, 2003.



Hon. THOMAS F. HOGAN  
Chief United States District Judge

**EXHIBIT A**

**FILED**

JUL 10 2003

**Motions Pending in Indirect-Purchaser Actions  
Whose Disposition Will Trigger the Obligation  
to Submit Case Management Order Proposals**

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

**PRE-ANSWER MOTIONS IN PFFJ AND  
D&D FARMS**

1. Pre-Answer Motions to Dismiss the *D&D Farms* Action: Certain Defendants' Motion to Dismiss Plaintiffs' Complaint for Failure to State a Claim Upon Which Relief Can Be Granted, served August 17, 2001 (Verilaw # 3574); Joint Memorandum of Points and Authorities in Support of Motions to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, served August 17, 2001 (Verilaw # 3575); Motion and Supporting Memorandum of Defendant Chinook Group, Inc. to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim Upon Which Relief Can Be Granted, served August 17, 2001 (Verilaw # 3566); Memorandum in Support of Motion of Defendant Chinook Group, Inc. to Dismiss for Lack of Personal Jurisdiction, served August 17, 2001 (Verilaw # 3566 – combined with motion papers); Memorandum of Points and Authorities in Support of Defendant Eisai Co., Ltd.'s Motion to Dismiss, served (Verilaw # 3538 combined with motion papers); Lonza Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim Upon Which Relief Can Be Granted, served (Verilaw # 3583); Memorandum of Points and Authorities in Support of Lonza Inc.'s Motion to Dismiss, served Verilaw # 3582); Takeda Chemical Industries, Ltd.'s [Motion and] Memorandum of Points and Authorities in Support of Motion to Dismiss for Insufficiency of Process, served (Verilaw # 3557); Plaintiffs' Memorandum of Points and Authorities in Opposition to the Following Motions: (i) Defendants' Joint Motion to Dismiss for Failure to State a Claim; (ii) Defendant Lonza Inc.'s Motion to Dismiss Joint Reply Memorandum in Support of Motions to Dismiss For Failure to State a Claim Upon Which Relief Can Be Granted, served October 22, 2001 Reply Memorandum in Further Support of the Dismissal Motion of Chinook Group, Inc., served October 22, 2001 (Verilaw # 4550); Reply Memorandum of Points and Authorities in Support of Defendant Eisai Co., Ltd.'s Motion to Dismiss, served October 22, 2001 (Verilaw # 4541); Reply Memorandum in Further Support of Lonza Inc.'s Motion to Dismiss, served October 23, 2001 (Verilaw # 4562). *Fully briefed and ready for decision.*

2. Defendants' Joint Motion to Dismiss the PFFJ Action (with Annexed [Proposed] Order on Defendants' Joint Motion to Dismiss), served February 15, 2001 (Verilaw # 1288); Memorandum of Points and Authorities in Support of Defendants' Joint Motion to Dismiss, served February 15, 2001 (Verilaw # 1289); Plaintiffs' [sic] Memorandum of Law in Opposition to Defendants' Joint Motion to Dismiss, served August 17, 2001 (Verilaw # 3564); Reply Memorandum In Further Support Of Defendants' Joint Motion To Dismiss, served September 21, 2001 (Verilaw # 4034); Binder Of Arizona Legal

Materials Discussed In Reply Memorandum In Further Support Of Defendants' Motion To Dismiss, served September 21, 2001 (Verilaw # 4035); Notice of Supplemental Authority and Request for Status Conference, served April 9, 2002 (Verilaw # 8728); Supplemental Memorandum in Further Support of Defendants' Joint Motion to Dismiss, served October 3, 2002 (Verilaw # 12771). *At the MDL status conference of December 18, 2002, the Court approved the parties' proposal that proceedings on this motion be suspended in view of the December 2002 order of the Arizona Supreme Court granting review in two cases presenting the question also raised by this motion: whether Illinois Brick applies in Arizona. The Arizona Supreme Court's ruling is expected before summer 2003.*

### **MOTION TO AMEND IN PUBLIX AND MEIJER TO ADD NEW DEFENDANTS**

Plaintiffs Meijer and Publix's Motion for Leave to File Third Amended Complaint, served October 21, 2002 (Verilaw # 13109); E.I. Du Pont de Nemours and Company's Opposition to Plaintiffs Meijer, Inc. and Publix Supermarket, Inc.'s Motion for Leave to File Third Amended Complaint, served November 4, 2002 (Verilaw # 13229); Memorandum of Law of Nepera, Inc., In Opposition to Publix Super Market, Inc. and Meijer, Inc.'s Motion for Leave to File Third Amended Complaint, served November 4, 2002 (Verilaw # 13236); Memorandum in Opposition to Meijer Inc. and Publix Super Markets, Inc.'s Motion for Leave to File Third Amended Complaint, served November 4, 2002 (Verilaw # 13239); Publix & Meijer's Consolidated Reply Brief in Support of their Motion for Leave to File their Third Amended Complaints, served November 11, 2002 (Verilaw # 13317). *Fully briefed.*

### **SUMMARY JUDGMENT MOTIONS IN ALL CASES**

The summary judgment motions identified below carry the numbers assigned to them in the Dispositive Motions chart submitted to the Court under Richard Leveridge's letter of August 14, 2002 (Verilaw No. 11459). These motions are pending in all Indirect-Purchaser Actions except as noted.

**Dispositive Motion No. 7: Degussa "All Vitamins."** Degussa AG and Degussa Corporation's Motion for Partial Summary Judgment on "All-Vitamins" Conspiracy Claim and [Proposed] Order, filed *under seal* August 6, 2002 (Verilaw # 11279); Memorandum in Support, filed *under seal* August 6, 2002; Statement of Material Facts in Support filed *under seal* August 6, 2002 (Verilaw # 11254); Certain Defendants' Joint Memorandum of Law in Support of Summary Judgment on Plaintiffs' All-Vitamins Conspiracy and Joint Appendix to Certain Defendants' Joint Memorandum of Law in Support of Summary Judgment on Plaintiffs' All-Vitamins Conspiracy, filed *under seal* August 2, 2002 (Verilaw # 11030; Joint Appendix To Certain Defendants' Joint Memorandum of Law in Support of Summary Judgment on Plaintiffs' All-Vitamins Conspiracy, filed *under seal* August 2, 2002 (Verilaw

#s 11052-057, 11060-061).<sup>\*</sup> Opposition papers filed September 9, 2002 and September 10, 2002 (Verilaw ## 11934, 12071, 11865); Reply Memorandum in Further Support, filed *under seal* September 30, 2002 (Verilaw ## 12562, 12641). *Fully briefed, argued and ready for decision. Pending only in Publix and Meijer.*

**Dispositive Motion No. 8: Lonza “All Vitamins.”** The Lonza Defendants’ Motion For Partial Summary Judgment Dismissing Plaintiffs’ All-Vitamins Conspiracy Claim; Memorandum of Law in Support; Statement of Material Facts Not in Genuine, Certification Stephan W. Engelhardt, filed *under seal* August 6, 2002 (Verilaw ## 11128-134); Opposition papers filed September 9, 2002 and September 10, 2002 (Verilaw ##11934, 12071, 11870); Reply Memorandum in Further Support, filed *under seal* September 30, 2002 (Verilaw # 12578, 12618). *Fully briefed, argued and ready for decision.*

**Dispositive Motion No. 10: Reilly “All Vitamins.”** The Reilly Defendants’ Joint Motion For Summary Judgment on Plaintiffs’ All-Vitamins Conspiracy Claim; [Proposed] Order; served August 6, 2002 (Verilaw ## 11260-261); Memorandum of Law in Support (with Appendix) and Statement of Undisputed Material Facts, filed *under seal* August 6, 2002 (Verilaw #s 11262-263, 11265); Opposition papers filed September 9, 2002 and September 10, 2002 (Verilaw ## 11934, 12071, 11872); Reply Memorandum in Further Support, filed served September 30, 2002 (Verilaw ## 12562 and 12632). *Fully briefed, argued and ready for decision. Pending only in Publix and Meijer.*

**Dispositive Motion No. 13: DuCoa/DCV “All Vitamins.”** DuCoa, L. P.’s and DCV, Inc.’s Motion for Summary Judgment on Plaintiff’s All-Vitamins Conspiracy Claim; Memorandum of Law in Support, Statement of Material Facts Not Dispute; [Proposed] Order; and Exhibits, served August 6, 2002 (Verilaw # 11185); Opposition papers filed September 9, 2002 and September 10, 2002 (Verilaw ## 11934, 12071, 11967, 11968); Reply Memorandum in Further Support, filed *under seal* September 30, 2002 (Verilaw ## 12734, 12737-738). *Fully briefed, argued and ready for decision.*

**Dispositive Motion No. 16: Chinook “All Vitamins.”** Chinook Group Limited and Chinook Group, Inc.’s Motion For Summary Judgment on Plaintiffs’ All-Vitamins Conspiracy Claim, served August 6, 2002 (Verilaw # 11310); Opposition papers filed September 9, 2002 and September 10, 2002 (Verilaw ## 11934, 12071, 11957, 11958);

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<sup>\*</sup> The Joint Memorandum of Law was submitted in support of the “All Vitamins” motions of a number of defendants, including the following defendants which remain movants in one or more Indirect-Purchaser Actions: Chinook Group Limited; Chinook Group, Inc.; Degussa AG; Degussa Corp.; DuCoa, L.P.; DCV, Inc.; Lonza AG, Lonza Inc.; Reilly Industries, Inc.; and, Reilly Chemicals, S.A.

Reply Memorandum in Further Support, filed *under seal* September 30, 2002 (Verilaw ## 12562, 12577, 12593). *Fully briefed, argued and ready for decision.*

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*N.b.: Three summary judgment motions pending in Indirect-Purchaser Actions are intentionally omitted from the list above of motions whose disposition will trigger the obligation to submit case management order proposals. The three are: Dispositive Motion No. 20 – Lonza B12 (Verilaw No. 11124, pending in all Indirect-Purchaser Actions); Dispositive Motion No. 27 – Degussa Corp. subsidiary liability (Verilaw No. 11282, pending only in Publix and Meijer); and, Dispositive Motion No. 2 -- Rhône-Poulenc “All Vitamins.” (Verilaw No. 11300, pending only in D&D Farms and PFFJ).*