

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LATEX GLOVES PRODUCTS : MDL DOCKET NO. 1148  
LIABILITY LITIGATION :  
: ALL CASES

**CASE MANAGEMENT ORDER NO. 46**  
**RE: COORDINATION OF FEDERAL AND STATE LATEX GLOVE ACTIONS**  
**AND SCHEDULE FOR COMPLETION OF DISCOVERY ON COMMON ISSUES**

AND NOW, this **30th day of March, 1999**, the following schedule is adopted to facilitate the coordination of discovery in latex glove product liability actions in this MDL and those pending in the State Courts. There appear to be about 275 latex glove cases pending in this MDL and another 125 in the State Courts. A principal goal of MDL is to conserve both the parties' and judicial resources by coordinating discovery on common issues and avoiding unnecessarily duplicative efforts. The goal in this MDL is to complete as much discovery on common issues as practicable by **August 27, 1999**, so that actions may be remanded to transferor Courts and trials may go forward expeditiously in State Court actions.

It should be understood that the time limitations set forth in this order may well require foreshortening and reduction of common issue discovery that might otherwise be undertaken if State Court actions were not pending and there were fewer case management time constraints. Additional common issue discovery, as well as case-specific discovery, may be conducted after remand and in the State Court actions upon approval of the applicable judge for good cause shown.

DEFENDANTS' DOCUMENT PRODUCTION AND INTERROGATORY ANSWERS

1. By **the date of this order**, defendants in the original group of tag-along actions, *i.e.*, those cases originally filed in this Court or transferred or removed to this Court, prior to **June 2, 1997**, shall have completed their responses to the Merits Interrogatories of Plaintiffs Addressed to All Defendants - First Set and their productions of documents responsive to the Merits Request for Production of Documents of Plaintiffs Addressed to All Defendants - First Set.

2. By **April 30, 1999** all other defendants in this MDL that have not already done so shall complete their production of documents responsive to the Merits Request for Production of Documents of Plaintiffs Addressed to All Defendants - First Set and their responses to the Merits Interrogatories of Plaintiffs Addressed to All Defendants - First Set. This document production shall be governed by paragraphs C.-I. of CMO 34.

3. By **April 3, 1999** a proposed Case Management Order shall be submitted setting forth a mechanism for obtaining access to plaintiffs' document depository by plaintiffs' counsel in latex glove cases in the State Courts and ensuring compliance with CMOs 7, 7A and 27. This is intended to minimize duplicative document production in State Court cases.

4. Supplemental written discovery requests on common issues shall be permitted, so long as there is no interference with the schedule set forth in this order.

**PLAINTIFFS' DOCUMENT PRODUCTIONS AND INTERROGATORY ANSWERS**

5. By **April 13, 1999** plaintiffs identified in Exhibit A, which is attached hereto, shall complete and serve on defendants all responses to defendants' first set of merits discovery requests, and serve same on defendants.

6. **By April 30, 1999** the parties shall determine and report whether they can resolve the scheduling issues regarding defendants' merits discovery requests related to alternative liability theories.

**SCHEDULE OF OTHER DEPOSITIONS AND EXPERT DISCOVERY**

7. The following schedule of discovery completion dates shall be complied with to the extent practicable:<sup>1</sup>

– **By April 15, 1999** all depositions of fact witnesses on common, non-case specific issues, including plaintiffs' depositions of defendants' officers and employees and defendants' 30(b)(6) witnesses.

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<sup>1</sup>Any extension beyond the completion dates set forth shall be by agreement or by order of Court. The Court shall be notified of any extension by agreement. Such extension(s) shall not extend the Joint Report date of **August 27, 1999** set forth below in par. 8.

**EXPERT DISCOVERY ON COMMON ISSUES**

– By **August 20, 1999** all discovery of and in regard to expert witnesses on common, non-case specific issues.

This discovery relates to all experts on non-case specific subjects including without limitation general causation; the need for and adequacy of warnings; the design and manufacture of defendants' products; and general medical issues. It does not include case-specific subjects such as case-specific causation, plaintiffs' medical treatment and condition and plaintiffs' damages. All expert witnesses on common issues shall submit reports and other materials described in Fed. R. Civ. P. 26(a)(2)(B) and may be deposed without further leave of Court.

– By **May 28, 1999** delivery of plaintiff's expert witness reports and materials to defendants.

– By **June 25, 1999** depositions of plaintiffs' expert witnesses.

– By **July 23, 1999** delivery of defendants' expert witness reports and materials to plaintiffs.

– By **August 20, 1999** depositions of defendants' experts.

**JOINT REPORT TO THE COURT: AUGUST 27, 1999**

8. By **August 27, 1999** a Joint Report shall be submitted setting forth the status of each action listed in Exhibit "A" including a brief history, the pending legal claims, the nature and extent of alleged injuries, the names and addresses of trial

counsel, a settlement demand, unusual issue(s), if any, and any other information that may assist the transferor Court.

**PLAINTIFFS' DOCUMENT DEPOSITORY: USE OF DEPOSITIONS**

9. Copies of all depositions taken in MDL 1148 shall be lodged in the plaintiffs' Document Depository. Such depositions may, under the conditions prescribed in Rule 32, Fed. R. Civ. P., or as otherwise permitted by the Federal Rules of Evidence, be used against any party

(a) who was present or represented at the deposition or

(b) who had reasonable notice thereof.

Cross-noticing of depositions pursuant to CMO 6, paragraph 4(c), for use in State Court actions, shall be implemented.

**COORDINATION WITH STATE COURTS**

10. Coordination of MDL proceedings and schedules with State Court latex glove litigation shall be implemented so as to avoid unnecessary conflicts and expense, conserve judicial resources and expedite disposition of all cases. Copies of this CMO and all Case Management Orders previously or hereafter to be entered in this MDL shall be made available to State Court Judges.

**CONFERENCE WITH STATE COURT JUDGES**

10. Provided that there is sufficient interest, a conference with State Court Judges responsible for latex glove cases shall be held on **Thursday, April 29, 1999** at the Federal Courthouse, 601 Market Street, Philadelphia, PA, in the Ceremonial Courtroom, first floor, **at noon**. Matters to be considered shall include scheduling

of pretrial and discovery activity, trial scheduling, consolidated hearings, pretrial conferences, and entry of joint orders by State Court Judges and this MDL, and other coordination efforts. A notice in the form of an invitation shall be sent to all State Court Judges who are known to this MDL.

11. With the assistance of MDL Plaintiffs' Lead Counsel and MDL Defendants' Liaison Counsel-Spokesperson, this MDL shall establish and maintain a National Latex Glove Litigation Trial Calendar of state and federal glove trials. This calendar shall be sent to all State Court Judges assigned to latex glove cases and shall also be distributed to all parties of record in MDL 1148 at the time of the regularly scheduled Rule 16 Conferences. MDL Plaintiffs' Lead Counsel and MDL Defendants' Liaison Counsel-Spokesperson shall submit all known trial dates for state latex glove cases, together with the caption, jurisdiction and assigned Judge.

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Edmund V. Ludwig, J.

MDL EXHIBIT "A" ACTIONS

All cases below were to have completed product identification discovery prior to October 15, 1998.

A. Original Cases Which Became Part  
Of This MDL Prior to June 2, 1997

<u>Case No.</u>	<u>Plaintiff</u>
95-7296	Frankel (PA)
96-6789	Jackson (PA)
96-7186	Dunbar (PA)
96-8596	Stevison (PA)
97-275	Schreinert (PA)
97-1681	Baulch (PA)
97-1694	Hughes (PA)
97-1791	Williams (MD)
97-1813	Barger (IN)
97-1968	Berry (MI)
97-1969	Wolf (MI)
97-2011	Kerchoff (MO)
97-2017	Swiatkowski (MI)
97-2018	Adams (GA)
97-2188	Starer (MA)
97-2224	Mize (PA)
97-2293	Clark (GA)
97-2294	Gonnelly (SD)
97-2398	Sallese (MA)
97-2544	Rabinowitz (MD)
97-2551	Albrecht (NY)
97-2730	Butler (PA)
97-2876	Wiegand (GA)
97-2926	Childress (IN)
97-2925	Barnett (IN)
97-2927	Warner (IN)
97-2928	Strus (IN)
97-2929	Nicholson (IN)
97-2930	Murray (IN)
97-2966	Buttweiler (MN)
97-3006	Petter (MN)
97-3041	Krohner (MI)
97-3505	Beckman (PA)
97-3582	Gardner (SC)
97-3583	Roerden (SC)
97-3584	Winner (OH)
97-3585	Kaser (OH)
97-3592	Delpit (LA)
97-3616	Baker (NY)
97-3648	Chock (MN)

97-3701 Hewlett-Loomis (CA)  
97-3781 Raisor (OH)  
97-3862 Dente (NH)  
97-4079 Macklin (MI)  
97-4744 Gaeta (MA)

B. Subsequent Cases, Which Became Part  
Of This MDL On Or After June 2, 1997

<u>Case No.</u>	<u>Plaintiff</u>
97-4309	Biggers (PA)
97-4434	Lee (CA)
97-4526	Jesberg (MN)
97-4766	Fredman (MI)
97-4991	Steiner (ME)
97-5432	Janulis (PA)
97-5737	Mathews (AR)
97-5769	Hensel (MN)
97-5810	Einbinder (NY)
97-5893	Kowalczyk (MI)
97-5936	Boggs (NY)
97-5937	Rudt-Pohl (NY)
97-5938	McGookin (NY)
97-5939	Phillips (NY)
97-5940	Sava (NY)
97-5941	Tupper (MN)
97-6064	Kennedy (MN)
97-6330	Wagner (PA)
97-6412	Landrith (PA)
97-6550	So (MI)
97-6563	Doe (PA)
97-6879	Mazer (MN)
97-6880	Pettigrew (RI)
97-7040	Goldstein (OH)
97-7237	Gonzalez (FL)
97-7233	Fleischer (PA)
97-7305	Belle (OH)
97-7317	Calvo (MI)
97-7370	McMullen (PA)
97-7371	Felder (PA)
97-7434	Dau (MN)
97-7806	Kale (NY)
97-7849	Doe II (PA)
97-7966	Minardi (ME)
97-7967	Stern (ME)
97-7968	Skelly (ME)
97-7969	Stark (ME)
97-7970	Plocharczyk (ME)
97-7971	Butler (ME)

97-7972 Collard (ME)  
97-7973 Batra (ME)  
97-7974 Butts (ME)  
97-7975 Rowley (ME)  
97-8105 Johnson-Jones (IN)  
97-8084 Whitson (PA)  
98-91 Siegel (PA)  
98-344 Evans (PA)  
98-464 Gavin (PA)  
98-611 Corr (PA)  
98-754 Ostler (MI)  
98-914 Ingrassia (PA)  
98-1073 Cavalletto (HI)  
98-1152 Saam (NY)  
98-1193 Albrecht (ME)  
98-1236 Walz (MN)  
98-1307 Stein (LA)  
98-1308 LeClair (MN)  
98-1247 Smith (PA)  
98-1282 Warren (PA)  
98-1690 Morris(OH)  
98-1873 Gouda (MI)  
98-1881 Ortiz (NY)  
98-1882 Whalen (NY)  
98-1909 Wagner (OH)  
98-1915 Oakes (AR)  
98-1950 Jones (SC)  
98-1952 Campoli (IN)  
98-1968 Clift (OR)  
98-2150 Oliverio (MI)  
98-2154 Tucker-Warner (NJ)  
98-2050 Dennis (PA)  
98-2214 Lacich (ME)  
98-2231 Guido (NY)  
98-2269 Persad (NY)  
98-2272 Pearsall (NY)  
98-2273 Pagano (NY)  
98-2295 Knight (OH)  
98-2308 Kraras (OH)  
98-2335 Regier (WA)  
98-2368 Dungca (NY)  
98-2369 McAuliffe (NY)  
98-2396 Melvin (NY)  
98-2397 Connolly (NY)  
98-2436 Herath (OH)  
98-2515 Comstock (WA)  
98-2524 Matthews (MO)  
98-2965 Smith (AR)  
98-3042 Collins (KY)