

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

IN RE: LATEX GLOVES : MDL Docket No. 1148
PRODUCTS LIABILITY :
LITIGATION : This Document Relates
: To All Cases

**CASE MANAGEMENT ORDER No. 5
COMPREHENSIVE CASE MANAGEMENT PLAN**

AND NOW, this 29th day of May, 1997, upon conference, the following is ordered:

1. Application of this Order to Subsequently Filed Cases.

This order together with Case Management Orders 1, 1-A, 2, 3, 4, and every subsequent Case Management Order shall apply to all cases, including each subsequently filed case that becomes part of MDL No. 1148. Every party will be bound by this order absent an express determination to the contrary by the Court, for good cause shown.

2. Newly Filed or Transferred Cases. When a case becomes part of MDL No. 1148, the Clerk of this Court shall:

(a) File a copy of the Practice and Procedure Order of March 10, 1997, and this order in the separate file for such action.

(b) Mail a copy of the Practice and Procedure Order of March 10, 1997, and all case management orders to counsel for plaintiff(s) and counsel for each defendant in such newly transferred case.

(c) Make an appropriate entry in the Master Docket.

3. **Pretrial Consolidation.** All cases in this litigation are consolidated for pretrial purposes. This is not a determination to effectuate a consolidation for trial or for any other purpose and does not have the effect of making any entity a party to an action in which it has not been named and served.

4. **Filing of Papers with Court.** The purpose of the following instructions is to reduce the time and expense of duplicate filings of documents through use of a Master Case File. At the same time, the Master Case File should not be congested with miscellaneous pleadings and orders of interest only to the parties directly affected by them. Also, it is not intended that a party be deprived of any rights based on not following these instructions.

(a) **Master Docket and File.** As ordered by the Multidistrict Litigation Panel, the Clerk will maintain a Master Docket and Case File under the style "In re Latex Gloves Products Liability Litigation (MDL 1148)": Master File Number 10-MD-1148. Orders, pleadings, motions and other documents bearing a caption similar to that of this order will, when docketed and filed in the Master Case File, be deemed as docketed and filed in each individual case and will not be separately docketed or physically filed in the individual cases. However, the caption may also contain a notation stating whether the document relates to all

cases or only to specified cases.

(b) **Separate Filing.** A document that relates only to a specific case and not of interest except to the parties directly affected by it - e.g. an amended complaint adding a party or a motion to dismiss a party - should bear the caption and case number of that case rather than that of the Master Case File. Such a document will be docketed and filed in that case file and not in the Master Case File. Cases removed or transferred to this Court will be assigned a new case number in this Court.

(c) **Number of Copies.** When filing documents with the Court, only one signed original should be sent to Michael E. Kunz, Clerk of Court, United States District Court, United States Courthouse, 601 Market Street, Philadelphia, PA 19106 and one copy to the Court's chambers, 12614 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. Documents should be stapled or fastened once and should not have covers. Unless specifically requested by the Court, additional copies should not be submitted to the Clerk.

(1) Telephone Numbers. The telephone number for Aida Ayala, the Docket Clerk presently assigned to these cases, is (215) 597-6674. The general telephone number for the Clerk's office is (215) 597-7704.

(2) Fax. Litigants may transmit documents to chambers by fax if advance approval is given by the Court. This approval should be requested in exigent circumstances where

transmission by other methods is not feasible.

The chambers fax number is (215) 580-2142.

5. **Discovery Documents.** Under Fed. R. Civ. P. 5(d) and E.D. Pa. Local R. 26.1(a), discovery requests and responses, and deposition notices and depositions are not to be filed with the Clerk except when specifically so ordered by the Court or to the extent needed in connection with a motion.

6. **Effort to Resolve Without Court Intervention.** Any motion relating to discovery or any other subject on which a conference of affected parties might be expected to resolve differences shall contain a certificate that the movant has conferred with other affected parties and made a good faith effort to resolve the dispute without Court intervention. See E.D. Pa. Local R. 26.1(g).

7. **Computer Files.** On request by the Court, counsel using computers to prepare documents sent to the Clerk or to the Judge's chambers are asked to provide a copy of the document on disk in Word Perfect 6.1.

8. **Correspondence with the Court.** Counsel may correspond with the Court only on scheduling matters or to respond to inquiries made by the Court. Copies of any and all communications to the Court must simultaneously be served by the same means (i.e. first class mail, overnight deliveries, etc.) upon all counsel.

Send to the Judge's chambers (12614 U.S. Courthouse, 601 Market St., Philadelphia, PA 19106) the original of correspondence and other similar materials that are not to be docketed. Do not send correspondence to the Clerk.

9. **Service of Certain Documents.** Service of all orders and notices from the Court will be effective on all parties when made on the following:

For Plaintiffs:

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For Defendants:

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Larry L. Turner, Esq.
James A. Willhite, Esq.
Montgomery, McCracken,
Walker & Rhoads, LLP
The Fidelity Bldg.
123 South Broad St.
Philadelphia, PA 19109
Tel: (215) 772-1500
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Special Master:

Perry S. Bechtle, Esq.
1880 J.F.K. Blvd.

Suite 1400
Philadelphia, PA 19103
Tel: (215) 563-3500
Fax: (215) 563-5610

10. **Preservation of Records.** The parties in each case shall preserve all documents and other records relevant to the subject matter of this litigation.

11. **Communication among Counsel.** The Court recognizes that cooperation among plaintiffs' counsel and among defendants' counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among plaintiffs' counsel and defendants' counsel shall not be deemed a waiver of the attorney-client privilege or the protection afforded attorney's work product, and cooperative efforts shall not be used against any party. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client or joint defense privilege or the attorney work-product doctrine.

12. **Other Matters.**

(a) **Deadlines Imposed by Other Courts.** Orders issued by other Courts imposing dates for initiation or completion of discovery are, when a case is removed or transferred to this Court, vacated and replaced by the schedule provided in this order.

(b) **Exceptional Cases.** Any party may move for relief from the prescribed discovery schedule when merited by special circumstances, such as serious health problems or as relates to important preliminary issues (e.g., *forum non conveniens* issues

respecting claims by foreign plaintiffs).

(c) **Modification of the Terms of this Case Management Order.** This Case Management Order may be modified by agreement of all parties, subject to approval by the Court. If the parties cannot agree, the party requesting modification may move the Court to modify, supplement or amend this Case Management Order.

(d) **Modification of the Deadlines in this Case Management Order.** The parties by agreement may modify the deadlines contained in this Case Management Order, subject to Court approval, for a specified case. If the parties cannot agree, the party requesting modification may move the Court for specific relief.

(e) **Regular Status Conference.** The Court intends to hold status conferences on a regular basis. Liaison counsel will submit a proposed joint agenda of items to be considered, both agreed and disputed, at least five days prior to each conference. Anyone desiring to have a particular item placed on the agenda shall notify that party's liaison counsel at least 10 days before the conference.

13. **Pleadings; Motions**

(a) Each defendant shall have 30 days from the date of this Order (or following service of a complaint, whichever is later), within which to answer or otherwise plead to the complaint.

(b) **Cross-Claims:** All appropriate cross-claims shall be

timely asserted and, if asserted, shall be deemed to be denied by the party against whom they are directed without further pleading or response. All cross-claims discovery shall be deferred until further order of Court.

14. **Discovery.** Concepts and Objectives. This discovery plan provides that substantive discovery will proceed promptly and will be concluded as expeditiously as reasonably practicable. Early disclosure of product identification information shall generally take precedence. Relevant information in related cases (such as filings in state courts) will be made available, so as to encourage overall national coordination of discovery.

(a) **Product Identification Discovery.** A supplemental order will be entered governing product identification discovery.

(b) **Substantive Discovery**

1. As soon as practicable and no later than June 13, 1997, defendants shall deliver to plaintiffs' document depository copies of all documents produced or prepared in all other federal or state latex glove litigation, including deposition and trial transcripts and exhibits.

2. After entry of this order, any party may serve upon any other party a uniform master set of interrogatories under Fed. R. Civ. P. 33 and a uniform master request for production of documents under Fed. R. Civ. P. 34. Until further order of Court,

which may be applied for at any time, no responses shall be due other than to discovery relating to product identification. Upon production of documents, the recipient shall pay a reasonable charge for all copies selected for copying.

(c) In order to facilitate deposition discovery, the parties are directed to identify to other counsel by Friday, June 13, 1997 all depositions conducted in any other latex glove products case and shall promptly make available the transcript of such testimony together with exhibits.

(d) **Bates Numbering System.** All documents produced to the document depository shall bear a distinctive Bates Number. No party shall introduce at a deposition or trial any document which has not been Bates-Numbered and produced.

(e) **Plaintiffs' Document Depository.** The Court hereby authorizes plaintiffs to establish a plaintiffs' document depository. All materials produced by the parties and third parties that may be needed in more than one case shall be stored at the depository, including documents; deposition and trial transcripts; and trial exhibits. Plaintiffs' Lead Counsel is requested to formulate a protocol governing the operation of the document depository.

(f) **Defendants' Document Depository.** It is understood

that defendants are considering arrangements for defendants' document depository, to be authorized by subsequent order.

(g) **Privilege Logs.** On or before July 31, 1997, each party shall provide a privilege log to opposing counsel. This privilege log shall set forth the following information: 1) author's name and job title, if known; 2) recipient's name and job title, if known; 3) subject matter of document; and 4) nature of privilege claimed. Thereafter, any privilege log shall be supplemented to include any documents that are subsequently designated privileged by counsel.

(h) **Dispositive Motions.** Within 30 days after completion of discovery, all dispositive motions, relating to issues of general applicability to all consolidated cases, shall be filed.

(i) **Miscellaneous.** Fed. R. Civ. P. 26(a)(1), Initial Disclosures, shall not applicable.

Edmund V. Ludwig, J.