

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

MASTER FILE

REZULIN PRODUCTS LIABILITY LITIGATION  
(MDL No. 1348)

00 Civ. 2843 (LAK)

This Document Relates to: 01 Civ. 2715 (LAK)  
01 Civ. 3454 (LAK)  
01 Civ. 3869 (LAK)  
01 Civ. 5772 (LAK)  
01 Civ. 5773 (LAK)  
01 Civ. 5774 (LAK)  
01 Civ. 5775 (LAK)  
01 Civ. 5778 (LAK)  
01 Civ. 5779 (LAK)

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**PRETRIAL ORDER NO. 32**  
**(Abandonment of Certain Remand Motions)**

LEWIS A. KAPLAN, *District Judge.*

Pretrial Order No. 14, issued April 3, 2001, required counsel for defendants to identify, on the last business day of April 2001 and of every second month thereafter, to the Court any new remand and other pending motions in all transferred actions cases pending before this Court and to submit any papers in opposition thereto. Pretrial Order No. 14 further directed plaintiffs affected by such motions to serve and file reply papers, and provide this Court with courtesy copies of their moving papers, within fourteen days thereafter.

In accordance with Pretrial Order No. 14, defendant identified nineteen cases in a brief filed on June 29, 2001. Plaintiffs in those nineteen cases thus had until July 13, 2001 to serve and file their reply papers and to provide the Court with copies of their moving papers.

It has come to the Court's attention that plaintiff's counsel in nine of the nineteen cases identified and briefed by defendants on June 29, 2001 have failed to comply with Pretrial Order No. 14. While such failure cannot be deemed a consent to subject matter jurisdiction or a waiver of defects in subject matter jurisdiction, *see United States v. 27.09 Acres of Land*, 1 F.3d 107, 111 (2d Cir. 1993) (citing *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986)), it may be deemed an admission that the non-diverse defendants in those cases were in fact fraudulently joined,

as was argued by defendants in those cases.<sup>1</sup> Such failure may also be deemed an admission that the amount in controversy requirement is satisfied<sup>2</sup> and that the plaintiffs had not yet filed their amended complaint before the case was removed.<sup>3</sup> The implied admissions of fact thus render this Court's jurisdiction over the actions proper under 28 U.S.C. § 1332. Accordingly, pursuant to Pretrial Order No. 14 and Rule 16 of the Federal Rules of Civil Procedure, the motions to remand in *Lutch v. Pfizer*, No. 01 Civ. 2715, *Hansen v. Warner-Lambert*, No. 01 Civ. 3454, *Hamrick v. Parke-Davis*, No. 01 Civ. 3869, *Abernathy v. Warner-Lambert*, No. 01 Civ. 5772, *Smith v. Pfizer*, No. 01 Civ. 5773, *Grubbs v. Warner-Lambert*, No. 01 Civ. 5774, *Morrison v. Parke-Davis*, No. 01 Civ. 5775, *C. Johnson v. Warner-Lambert*, No. 01 Civ. 5778, *McCullum v. Parke-Davis*, No. 5779, hereby are deemed abandoned.

SO ORDERED.

Dated: October 17, 2001

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Lewis A. Kaplan  
United States District Judge

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*See* Pretrial Order No. 17; *Lucht v. Pfizer, Inc.*, 01 Civ. 2715, and Def. Mem. of Law in Opposition to Motions to Remand at 11-14 (fraudulently joined pharmacies); *Hansen v. Warner-Lambert Co.*, 01 Civ. 3454 and Def. Mem. of Law in Opposition to Motions to Remand at 7-8 (fraudulently joined territory representative); *Abernathy v. Warner-Lambert Co.*, 01 Civ. 5772, and Def. Mem. of Law in Opposition to Motions to Remand at 7-11 (same); *Morrison v. Parke-Davis*, 01 Civ. 5775, and Def. Mem. of Law in Opposition to Motions to Remand at 14-19 (fraudulently joined pharmacy); *C. Johnson v. Warner-Lambert*, 01 Civ. 5778, and Def. Mem. of Law in Opposition to Motions to Remand at 11-13 (same); *McCullum v. Parke-Davis*, 01 Civ. 5779, and Def. Mem. of Law in Opposition to Motions to Remand at 1-3 (fraudulently joined territory representative), 19, 20-23 (fraudulently joined physician).

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*See Smith v. Pfizer, Inc.*, 01 Civ. 5773; *Grubbs v. Pfizer, Inc.*, 01 Civ. 5774; Def. Mem. of Law in Opposition to Motions to Remand at 33.

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*See Hamrick v. Parke-Davis*, 01 Civ. 3869, Def. Mem. of Law in Opposition to Motions to Remand at 31-33.