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## JPML Again Won't Combine USPlabs Diet Supplement Suits

By **Emily Field**

Law360, New York (December 12, 2014, 6:19 PM ET) -- The U.S. Judicial Panel on Multidistrict Litigation on Friday again refused to centralize 16 actions pending in five different federal courts against GNC Holdings Inc., manufacturer USPlabs LLC and others over sales of a recalled diet supplement linked to liver damage.

The JPML denied USPlabs' motion to centralize personal injury lawsuits stemming from two of its dietary supplements in either California or Texas, saying that litigation hasn't grown significantly outside the district of Hawaii, where coordination between the 11 actions in that district is now well underway. The panel **previously decided on April 2** not to centralize the cases because the suits focused on different formulations of the supplements, alleged different health risks and had distinct regulatory responses, according to the order.

"We also determined that voluntary coordination among the parties and the involved judges was preferable to centralization, noting that two groups of plaintiffs' counsel already were coordinating most of the personal injury actions," the panel said. "All of the factors weighting against centralization still exist."

The lawsuits claim that GNC sold USPlabs' OxyElite Pro and Jack3d lines of products while both companies were well aware of widespread reports that the products containing dimethylamylamine, better known as DMAA, and aegeline were causing severe liver damage.

The panel rejected USPlabs' contention that centralization was necessary because it thought voluntary coordination had been unsuccessful, saying that the record showed that USPlabs now has a national coordinating counsel who has recently tried to coordinate global document production and other discovery issues.

Two other plaintiffs firms have also advanced informal coordination with "a reasonable degree of success," according to the panel.

"The current disputes over coordination of defendants' depositions appear to be the subject of ongoing good faith negotiations, and the panel is not convinced that centralization is necessary to resolve the limited areas of disagreement given the circumstances presented by this litigation," the panel said.

The panel also said that the size of the litigation has not changed materially; although there are 11 more actions, they are all in the district of Hawaii and have been assigned to a single judge, according to the panel.

Outside Hawaii, there are only five other suits — in California, Florida, Texas and Pennsylvania — according to the panel. Factual issues do not predominate across the suits, according to the panel.

The Hawaii plaintiffs allege they were injured from OxyElite Pro products containing aegeline, while a Texas plaintiff allegedly died from consuming a Jack3d product with DMAA, according to the panel. Another plaintiff in Pennsylvania allegedly died from taking an OxyElite Pro supplement with DMAA, according to the panel.

The OxyElite Pro line was voluntarily recalled in November following a warning letter to the company from the Food and Drug Administration.

Ten of the responding co-defendants supported centralization, while co-defendant Bodybuilding.com LLC and the plaintiffs were opposed, according to the order.

Representatives for USPlabs didn't respond to request for comment immediately Friday.

Plaintiffs are represented by Anne Andrews and John C. Thornton of Andrews & Thornton, Lee B. Balefsky of Kline & Specter PC, Aashish Y. Desai of Desai Law Firm PC, Bruce T. Clark of Marler Clark LLP, Michael F. O'Connor of Ogawa Lau Nakamura & Jew, Tim Howard of Howard & Associates PA, Lucas Lanasa of Lanasa Law Firm, Howard W. Rubinstein of the Law Offices of Howard W. Rubinstein PA and Joshua H. Egnatz of the Egnatz Law Firm PA.

USPlabs is represented by Pamela J. Lormand of Brewer & Lormand PLLC and Angel Garganta of Venable LLP.

The case is In re: Oxyelite Pro and Jack3d Products Liability Litigation, case number 2523, before the U.S. Judicial Panel on Multidistrict Litigation.

--Additional reporting by Kira Lerner. Editing by Jeremy Barker.

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