

# THE SIXTH AMENDMENT TO THE SETTLEMENT AGREEMENT

(NOT PART OF THE OFFICIAL COURT-APPROVED NOTICE)

Effective on January 10, 2003, Class Counsel and Wyeth signed a Sixth Amendment to the Settlement Agreement. The parties wrote the Sixth Amendment to deal with the question of what happens if a Class Member claims Matrix Compensation Benefits from the Trust and the Trust does not have sufficient funds to pay the benefits if the Class Member is eligible for them. The Sixth Amendment also specifies what actions amount to “claiming” Matrix Compensation Benefits.

The parties have submitted this Sixth Amendment to the Trial Court for its consideration. As of January 15, 2003, the Trial Court had not issued an opinion approving or disapproving the Sixth Amendment.

Although the Sixth Amendment will not become effective unless and until the Trial Court approves it, it contains important provisions of which all Class Members should be aware. The Trust, Class Counsel, and Wyeth developed this description of the proposed Sixth Amendment to apprise you of its terms. As described below, the status of the Sixth Amendment will change over time. As a result, this description is not part of the Official Notice of May 3, 2003 Deadline approved by the Trial Court, but is a supplement to it compiled by the parties.

## **1. What Does it Mean to “Claim” Matrix Compensation Benefits?**

Under the Settlement Agreement a Class Member with a Matrix-Level condition cannot exercise a Back-End Opt-Out if the Class Member has “claimed” Matrix Compensation Benefits from the Trust. The new Sixth Amendment Opt-Out described below would apply only to Class Members who have “claimed” Matrix Compensation Benefits.

Sending a full GREEN Form to the Trust containing Parts I, II, and III, completed and signed, would be “claiming” Matrix Compensation Benefits. To clarify what other actions amount to “claiming” Matrix Compensation Benefits, Class Counsel and Wyeth agreed in the Sixth Amendment that doing either of the following constitutes “claiming” Matrix Compensation Benefits:

- (a) Sending to the Trust Part I of a GREEN Form signed by the Class Member; or
- (b) Sending to the Trust Part II of a GREEN Form signed by a physician and a BLUE Form signed by the Class Member in which the Class Member has indicated a belief or assertion of a Matrix-Level condition.

If a Class Member has done either (a) or (b), or more, the Class Member has “claimed” Matrix Compensation Benefits within the meaning of the Settlement Agreement. If the Class Member has done neither (a) nor (b), then the Class Member has not “claimed” Matrix Compensation Benefits. This clarification depends upon whether the Trial Court approves the Sixth Amendment.

## **2. What Happens if a Class Member Has Claimed Matrix Compensation Benefits and the Trust Does Not Have Funds to Pay the Claim?**

Class Counsel and Wyeth agreed in the Sixth Amendment that Class Members who have claimed Matrix Compensation Benefits by May 3, 2003, and who qualify for Matrix Compensation Benefits but cannot be paid by the Trust because the Trust does not have sufficient funds, can exercise a newly created Sixth Amendment Opt-Out. This Sixth Amendment Opt-Out would be subject to the same conditions as the Back-End Opt-Out under the Settlement Agreement. In addition, the following terms would apply to the Sixth Amendment Opt-Out:

- (a) The Class Member must have filed a GREEN Form with the Trust postmarked no later than May 3, 2003.
- (b) The Trust has determined, after audit of the claim, that the Class Member qualifies for Matrix Compensation Benefits, including that the Class Member satisfies the requirements of the Settlement Agreement for medical eligibility for Matrix Compensation Benefits.

- (c) The Class Member has not received any Matrix Compensation Benefits from the Trust or received payment of any settlement amount from Wyeth.
- (d) The amount of money left available to the Trust to pay Matrix Compensation Benefits at such time has reached \$255 million or less. The parties are reserving this \$255 million to pay the supplemental claims of persons who have already been paid some Matrix Compensation Benefits and whose conditions progress to higher levels on the Matrix.
- (e) Wyeth has not deposited additional funds into the Trust to pay the Class Member's claim.
- (f) The Class Member agrees in writing that if the Class Member opts out and then files any lawsuit as a Sixth Amendment Opt-Out, the Class Member will name only Wyeth as the defendant and no other defendants, the Class Member (and any Derivative Claimants of such Class Member) will be sole plaintiff(s) in such action, and the Class Member will not agree to or cause consolidation of such action with any other claims or actions (other than consolidation for purposes of pretrial discovery pursuant to 28 U.S.C. § 1407 or a similar state statute) and will dismiss such action if consolidation is nonetheless ordered by any court, subject to the right to re-file the action within 120 days of any such dismissal.
- (g) The Class Member would exercise the Sixth Amendment Opt-Out by submitting an ORANGE Form #4 to the Trust and Wyeth postmarked no later than 120 days after the date of a notice from the Trust to the Class Member that the Class Member is eligible for the exercise of this Sixth Amendment Opt-Out right. The ORANGE Form #4 is not yet available. The Trust will make it available if and when the circumstances arise that give rise to a Sixth Amendment Opt-Out right for any Class Member.

***IMPORTANT NOTE: This new Sixth Amendment Opt-Out right would not take the place of the Back-End Opt-Out right already existing under the Settlement Agreement. The existing Back-End Opt-Out is and will remain available to all otherwise qualified Class Members who have not claimed Matrix Compensation Benefits as described above. The new Sixth Amendment Opt-Out would be available to those persons who have given up or will give up their right to exercise a Back-End Opt-Out by claiming Matrix Compensation Benefits before May 3, 2003. The new Sixth Amendment Opt-Out would apply only to Class Members who file GREEN Forms with the Trust on or before May 3, 2003, and who have unpaid Matrix-Level conditions. Also, it would apply only if and when the amount of money left available to the Trust to pay Matrix Compensation Benefits has reached \$255 million or less. All of this depends upon whether the Trial Court approves the Sixth Amendment. If it does, Class Members who have or think they have Matrix-Level conditions and who have not already filed a GREEN Form or validly opted out will have to make a decision about what to do before May 3, 2003. Remember that regardless of what decision you make, you must mail the Trust a BLUE Form postmarked no later than May 3, 2003, if you have not done so already, if you ever want to seek benefits from the Trust under the Settlement, or to opt out as a Back-End Opt-Out.***

### **3. How to Get Updated Information on the Sixth Amendment and the Settlement Agreement in General.**

All Class Members should continue to monitor whether the Sixth Amendment becomes effective. If it does and you want to take advantage of it, you will have to mail a GREEN Form to the Trust postmarked no later than May 3, 2003, if you have not already filed a GREEN Form by then. If you have already validly opted out of the Settlement and do not revoke your opt-out, then the Sixth Amendment will not apply to you. To obtain a copy of the Sixth Amendment and to stay informed on its status, visit the Trust's official web site, [www.settlementdietdrugs.com](http://www.settlementdietdrugs.com), or call the Trust at (800) 386-2070. If there is any conflict between the terms of this notice and the provisions of the Sixth Amendment, the provisions of the Sixth Amendment control.