

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

IN RE DIET DRUGS  
(Phentermine/Fenfluramine/Dexfenfluramine)  
PRODUCTS LIABILITY LITIGATION

MDL NO. 1203

THIS DOCUMENT RELATES TO:

SHEILA BROWN, *et al.*,  
Plaintiffs,

v.

AMERICAN HOME PRODUCTS  
CORPORATION,  
Defendant.

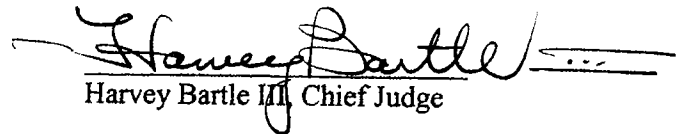
Civil Action No. 99-20593

FILED NOV 22 2006

PRETRIAL ORDER NO. 6707

AND NOW, this 22nd day of November, 2006, upon consideration of the Joint Motion of Class Counsel and Wyeth for Approval of a Procedure to Resolve Certain Disputed Claims, it is hereby ORDERED that the Court-Approved Procedure attached hereto as Exhibit A is APPROVED.

BY THE COURT:

  
Harvey Bartle III, Chief Judge

**EXHIBIT A**

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

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IN RE: DIET DRUGS  
(PHENTERMINE/FENFLURAMINE/  
DEXFENFLURAMINE) PRODUCTS LIABILITY  
LITIGATION

MDL No. 1203

THIS DOCUMENT RELATES TO: SHEILA BROWN,  
ET. AL. V. AMERICAN HOME PRODUCTS  
CORPORATION

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CIVIL ACTION  
No. 99-20593

COURT APPROVED PROCEDURE NO. 13

(Procedure for the Disposition of Pre-Stay Payable PADs and PADLs)

AND NOW, in accordance with the Nationwide Class Action Settlement Agreement and the agreement of Class Counsel and Wyeth, it is hereby ORDERED as follows:

1. ***Incorporation of Settlement Agreement Definitions.*** Unless otherwise specified in this Procedure, references to a Section refer to Sections of this Procedure. The capitalized terms used in this Procedure shall have the same meaning as those terms have in the Settlement Agreement and/or the Seventh Amendment to the Settlement Agreement. Additional capitalized terms defined in this Procedure shall have the meanings given to them in this Procedure.
2. ***Compromise of Claims Subject to Show Cause Proceedings.*** This Procedure implements an agreement among Wyeth, Class Counsel and the Class Members who elect to participate herein to settle and compromise the claims described in Paragraph 3 hereof pursuant to the provisions of the Eighth Amendment to the Settlement Agreement.
3. ***Scope of this Procedure.*** This Procedure shall determine the method of resolution for the claims for Matrix Compensation Benefits identified in Exhibit 1 to this Procedure. This Procedure shall not apply to and is without prejudice to the position of any party as to any claims of any kind other than the claims identified in Exhibit 1, and shall not affect the manner in which the Trust processes or administers any claims of any kind other than the claims identified in Exhibit 1.
4. ***Class Member Election.*** Any Class Member who has a claim identified in Exhibit 1 may elect not to participate in the method of resolution prescribed by this Procedure by mailing written notice to the Trust, Class Counsel, and Wyeth, postmarked no later than 30 days after the date of mailing of Notice to that Class Member of this Procedure under Section 12. The claims of all Class Members who make such a timely election shall not be governed by this

Procedure. The claims of Class Members identified on Exhibit 1 who do not make such a timely election shall be governed by this Procedure.

**5. Medical Review by a Participating Physician.** Within 120 days after the Effective Date of this Procedure, the Trust and the Fund Administrator shall cause the echocardiogram tape or disk that forms the basis of the claim ("Reviewable Echocardiogram") of each Class Member identified on Exhibit 1 who has not made a timely election of non-participation under Section 4 and who has paid to the Fund Administrator the Medical Review Fee required by Section 7 ("Reviewable Claims") to be reviewed by a Participating Physician under Section XV.I of the Seventh Amendment to determine, pursuant to the methodology for Medical Review of claims under Section XV.M of the Seventh Amendment, the medical conditions shown on the Reviewable Echocardiogram. The results of such Participating Physician reviews shall be reflected in a report ("Medical Review Report") substantially in the form of a QCC Report under Section XV.I of the Seventh Amendment, which shall be furnished by the Fund Administrator to the affected Class Member, Trust, Class Counsel and in electronic and hard copy form to Wyeth. The findings of the Participating Physician as reflected in the Medical Review Report shall be final and binding on the Class Member, Wyeth and the Trust for all purposes relating to the Reviewable Claim, with no further rights of Contest or appeal and the Trust shall not conduct any further Medical review of the Reviewable Claim and the underlying medical condition of the Class Member or otherwise seek to contest the accuracy or reliability of the Medical Review Report in any fashion or for any purpose relating to the Reviewable Claim.

**6. Final Post-Audit Determination and Payment.** The Trust shall determine the Class Member's eligibility for Matrix Compensation Benefits solely on the basis of the findings of the Participating Physician in the Medical Review Report, the answers contained in Section E of Part II of the Green Form submitted in connection with the claim, and the proof of Diet Drug use submitted by the Class Member. The Trust shall not apply Court Approved Procedure No. 4 to the Reviewable Claims. A Class Member who is found eligible on a Reviewable Claim for Matrix Compensation Benefits shall be paid an amount equal to 70% of the amount of the Matrix Compensation Benefits that would be payable on the claim under the Settlement Agreement based on the medical condition of the Class Member as determined in the Medical Review Report, the answers contained in Section E of Part II of the Green Form submitted in connection with the claim, and the proof of Diet Drug use submitted by the Class Member. Within 20 days after its receipt of the Medical Review Report, the Trust shall issue a Final Post-Audit Determination to the Class Member on the Class Member's Reviewable Claim, including the determinations required by Section VI.C.4.g of the Settlement Agreement. Within 30 days after the date of the Final Post-Audit Determination, the Trust shall pay the Matrix Compensation Benefits payable on a Reviewable Claim found eligible for payment, and shall record all other Reviewable Claims in its claims database as denied.

**7. Medical Review Fee.** Each Class Member whose claim is subject to this Procedure shall pay to the Fund Administrator, within 30 days after the date of mailing of Notice to that Class Member of this Procedure under Section 12, a non-refundable Medical Review Fee of \$1,000. The claims of Class Members who fail timely to pay the Medical Review Fee and who do not make a timely election of non-participation under Section 4 shall be denied by the Trust without any further right of contest or appeal.

8. ***Seventh Amendment Matrix Compensation Benefits.*** Class Members with Reviewable Claims shall not be eligible to seek or receive Matrix Compensation Benefits on Matrix Level I or II on any claim other than the Reviewable Claim subject to this Procedure. Such Class Members shall be considered to be Category Two Class Members and shall be eligible to seek and receive Matrix Compensation Benefits on Matrix Levels III, IV, or V only as Seventh Amendment Matrix Compensation Benefits under Section IX.A of the Seventh Amendment, and any Initial Opt-Out, Intermediate Opt-Out, and/or Back-End Opt-Out exercised or attempted by such Class Member shall be deemed revoked pursuant to this Procedure.

9. ***Additional Medical Services or Cash Benefit.*** Class Members with Reviewable Claims who are found eligible for Matrix Compensation Benefits under Section 5 shall not receive the Additional Medical Services or Cash Benefit under Section IV.A.1.c or Section IV.A.2.c of the Settlement Agreement ("Cash/Med Benefit"). The Trust shall pay the Cash/Med Benefit to all other Class Members with Reviewable Claims who are found to have FDA Positive levels of regurgitation on the Reviewable Echocardiogram in the Medical Review Report for the Class Member, if not previously paid. Class Members found in the Medical Review Report not to have FDA Positive levels of regurgitation on the Reviewable Echocardiogram shall not be paid the Cash/Med Benefit.

10. ***Category Two Payment.*** Class Members with Reviewable Claims who are found eligible for Matrix Compensation Benefits under Section 5 shall not receive a Category Two Payment. The Trust shall pay a Category Two Payment to all other Class Members with Reviewable Claims who are found to have FDA Positive levels of regurgitation or Mild Mitral Regurgitation on the Reviewable Echocardiogram in the Medical Review Report for the Class Member, if not previously paid. Class Members found in the Medical Review Report not to have FDA Positive levels of regurgitation or Mild Mitral Regurgitation on the Reviewable Echocardiogram shall not be paid a Category Two Payment.

11. ***Claims That Are Not Reviewable Claims.*** Class Members with claims on Exhibit 1 who timely elect not to participate in this Procedure shall be processed by the Trust in accordance with the Settlement Agreement and all applicable Pretrial Orders.

12. ***Notice to Affected Class Members of this Procedure.*** Within ten days after the Effective Date of this Procedure, Class Counsel, Wyeth, and the SALC shall cause a copy of this Procedure to be mailed by first class mail, postage prepaid, to counsel for each Class Member with a claim identified in Exhibit 1 (or the Class Member directly, if unrepresented), at the last known address in the claims database of the Trust made available to Wyeth by the Trust, along with a cover letter explaining the terms of this Procedure, the election required under Paragraph 4, and the deadline for making such election.

13. ***Echocardiogram Tapes or Discs.*** Within 30 days after the deadline for the Class Member Election under Paragraph 4 of this Procedure, the Trust shall deliver to the Fund Administrator the tape or disk of the echocardiogram that formed the basis of the Audit determination by the Trust on each Reviewable Claim.

14. **Confidential Information.** Any information relating to claims covered by this Procedure shall be considered Confidential Information under PTO No. 2683 (and any subsequent order of the Court concerning such information).

15. **No Admissions.** Neither this Procedure nor any exhibit, document or instrument delivered under this Procedure, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Procedure, nor any term or provision of this Procedure, is intended to be or shall be construed as or deemed to be evidence of an admission or concession by any party of: (i) any liability or wrongdoing; (ii) the truth of any allegations asserted by the Trust or any other party; (iii) with respect to the Settlement Agreement or (iv) as an admission by any party of any lack of merit in their claims. This Procedure and all actions, determinations, submissions, filings and findings made pursuant to this Procedure shall not be admissible in any other proceeding of any kind for any purpose, except as expressly set forth herein. Nothing contained in this Procedure will be deemed to make admissible any evidence that is otherwise inadmissible under applicable law.

16. **Review Process.** The Fund Administrator shall administer the processing of Reviewable Claims under this Procedure in accordance with the standards and practices observed in the Medical Review of the claims of Category One Class Members under the Seventh Amendment, including that the Participating Physician review the claim without awareness of whether the Class Member is represented by counsel, the identity of the counsel for any represented Class Member, or the Attesting Physician on the claim. The Fund Administrator shall assign Reviewable Claims to Participating Physicians for review in a manner that allocates all Reviewable Claims substantially equally among all the Participating Physicians who are available and eligible to conduct Medical Reviews.

17. **Effective Date of this Procedure.** This Procedure shall become effective upon the entry of an Order of approval by the Court.


BY THE COURT

  
Harvey J. Bartle, Chief Judge

November 14, 2006

**AGREED:**

**CLASS COUNSEL:**

  
\_\_\_\_\_  
Michael D. Fishbein, Esquire  
Levin, Fishbein, Sedran & Berman  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106

**WYETH**

\_\_\_\_\_  
Peter L. Zimroth  
ARNOLD & PORTER  
399 Park Avenue  
New York, NY 10022

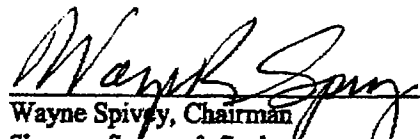
\_\_\_\_\_  
Orran L. Brown  
BrownGreer PLC  
115 S. 15<sup>th</sup> Street, Suite 400  
Richmond, Virginia 23219

**CONSENTED AND AGREED TO:**

**AHP SETTLEMENT TRUST**

\_\_\_\_\_  
Martin Rudolph  
Trustee  
AHP Settlement Trust  
1818 Market Street  
Philadelphia, Pennsylvania 19103

**SEVENTH AMENDMENT LIAISON COMMITTEE**

  
\_\_\_\_\_  
Wayne Spivey, Chairman  
Shrager, Spivey & Sachs  
Two Commerce Square, 32<sup>nd</sup> Floor  
2001 Market Street  
Philadelphia, PA 19103

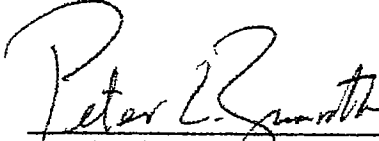
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**WYETH**



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Peter L. Zimroth  
ARNOLD & PORTER  
399 Park Avenue  
New York, NY 10022

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**WYETH**

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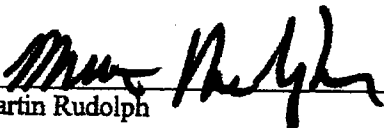
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EXHIBIT 1

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## EXHIBIT 1

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