

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

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

MDL Docket No. 1203

This Document Relates to:
SHEILA BROWN, et al., v. AMERICAN HOME
PRODUCTS CORPORATION

Civil Action No. 99-20593

PRETRIAL ORDER NO. 3883

(Modification of Stay Relating to Matrix Level I and II Claims)

AND NOW, this 26th day of Aug, 2004, upon consideration of the Motion for relief with respect to claims that are subject to Post-Audit Payable Determinations and pursuant to the Court's authority under Sections VI.C.5 and VI.E.8 of the Settlement Agreement, it is hereby ORDERED, ADJUDGED AND DECREED:

1. For purposes of this Order, the term "Pre-Stay Payable PADL" refers to a Post-Audit Determination Letter issued pursuant to Rules 12 through 17 of the Rules for the Audit of Matrix Compensation Claims approved by the Court in Pretrial Order No. 2807 ("Audit Rules"), and/or a notice issued pursuant to paragraph 6 of Court Approved Procedure No. 4 ("CAP 4 Notice"), and/or a Post-Audit Determination Letter issued pursuant to Section IV.A or IV.B of the Policies and Procedures for Audit and Disposition of Matrix Compensation Claims in Audit approved by the Court in Pretrial Order No. 2457 that was:

- (a) issued by the Trust prior to May 6, 2004;
- (b) after a Trust Audit in which the Auditing Cardiologist determined that there was a reasonable medical basis for the Matrix claim that was the subject of the Post-Audit Determination Letter or CAP 4 Notice;
- (c) with respect to a claim for Matrix Level I or Matrix Level II benefits; and

(d) where the affected Class Member(s) has not received any payment, or full payment based on the Audit outcome with respect to the Matrix claim.

2. Except as otherwise provided in this Order, the Claims Integrity Program, all Show Cause proceedings, all “Enforcement Actions” (as defined in the proposed Seventh Amendment to the Nationwide Class Action Settlement Agreement) and all other actions by the Trust relating to any Pre-Stay Payable PADL are stayed until the earlier of the date that Wyeth exercises its Walkaway Right or the Court determines whether or not to approve the Seventh Amendment to the Nationwide Class Action Settlement Agreement (“Settlement Agreement”).

3. With respect to each Matrix claim that is the subject of a Pre-Stay Payable PADL, and for which the relevant deadlines set forth in Audit Rules 14, 16, and 18 had not run as of May 6, 2004, such deadlines are extended thirty (30) days from the date of this Order.

4. Notwithstanding the stay set forth in paragraph 2 of this Order, the Trust shall continue to (i) process any Matrix claim that is the subject of a Pre-Stay Payable PADL with reasonable diligence to determine the amount to be paid in connection with such claims in accordance with the Audit outcome relating to the claim or (ii) process and determine whether there was an intentional manipulation of the echocardiogram tape or disk submitted in connection with the claim that was not detected by the Trust before Audit or by the Auditing Cardiologist in the Audit of the claim and that amounts to a material misrepresentation of fact in connection with such a claim. For this purpose, claim “processing” is limited to steps that lead to a determination of the amount to be paid in connection with such claims and investigations into whether there was such a material misrepresentation of fact in connection with the claim. “Processing” does not include the re-Audit of a claim or any other court filings, motions, and/or discovery as to the claims subject to any Pre-Stay Payable PADL, all of which shall remain subject to the stay contained in paragraph 2 of this Order.

5. Within the time period specified by paragraph 9 of this Order, the Trust shall categorize all Pre-Stay Payable PADL claims into one of the following three categories:

- (a) Pre-Stay Payable PADL claims where the Trust alleges that there was an intentional manipulation, as described in Paragraph 4 of this Order, in connection with the claim (“Paragraph 5(a) Claims”).
- (b) Other Pre-Stay Payable PADL claims, not included in Paragraph 5(a) of this Order, that the Trust does not consider to be presently payable (“Paragraph 5(b) Claims”).
- (c) Pre-Stay Payable PADL claims that the Trust considers to be presently payable (“Paragraph 5(c) Claims”).

6. The Trust shall pay all Paragraph 5(c) Claims and those that become payable pursuant to Paragraph 4 of this Order in accordance with the Audit outcome for each such claim, proof of Diet Drug use, and the information furnished in response to any CAP 4 Notice, within the applicable deadlines as extended by this Order.

7. If this Court approves the Seventh Amendment, the Trust shall pay all Paragraph 5(b) Claims in accordance with the Audit outcome for each such claim, proof of Diet Drug use and the information furnished in response to any CAP 4 Notice within thirty days of the date on which such “Trial Court Approval” occurs.

8. As to all claims subject to a Pre-Stay Payable PADL that are or become payable pursuant to this Order, the Trust shall consider the information furnished in response to any CAP 4 Notice to comply with CAP 4 if the materials are complete. With regard to Matrix Claims subject to CAP 4 Notices, “complete” shall mean that in response to the CAP 4 Notice issued by the Trust, the Diet Drug Recipient has furnished to the Trust a completed and signed Physician Verification Form and/or all General Medical Records as required by paragraph 4 of the CAP 4 Notice, and proof of Diet Drug use greater than sixty (60) days. If the Class Member has submitted the aforementioned materials, the Trust shall not seek further proof and shall not delay

payment for any reason whatsoever, except as provided herein.

9. As to any Matrix claim that is subject to a Pre-Stay Payable PADL and for which the Class Member has affirmatively accepted the Post-Audit Determination under Audit Rule 18(a), the time within which the Trust must pay the claim, determine and report that the claim is a Paragraph 5(a) Claim or determine and report that the claim is a Paragraph 5(b) Claim shall be no later than thirty (30) days from the date of this Order or thirty (30) days from the date of the Class Member's affirmative acceptance of the Post-Audit Determination, whichever is later. As to any Matrix claim that is subject to a Pre-Stay Payable PADL and for which the Class Member has initiated a timely contest pursuant to Audit Rule 18(b), or has failed to affirmatively accept the Trust's Post-Audit Determination within the time prescribed by Audit Rule 18(a), the time within which the Trust must pay the claim, determine and report that the claim is a Paragraph 5(a) Claim or determine and report that the claim is a Paragraph 5(b) Claim shall be no later than sixty (60) days from the date of this Order or ninety (90) days from the date of the Post-Audit Determination, whichever is later. The deadlines applicable to processing and payment of any Pre-Stay Payable PADL, as extended herein, shall be strictly adhered to by the Trust and strictly enforced.

10. The Trust shall promptly report each determination made pursuant to paragraph 5 of this Order to Wyeth, Class Counsel and the SALC and, within ten days of receiving a written request, shall provide them with a detailed explanation of the basis for each such determination.

11. In connection with any claim which the Trust determines is a Paragraph 5(a) Claim, the Trust shall, within forty-five (45) days of making such a determination, furnish Wyeth, Class Counsel, the SALC and the affected Class Member or the Class Member's attorney, if represented, with a copy of the echocardiogram tape or disk submitted in support of

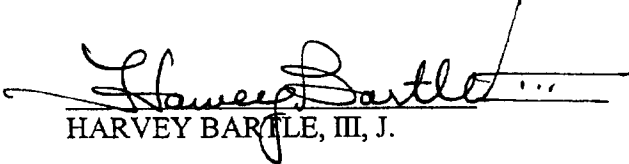
the claim, and a report stating with the specificity required by FED.R.CIV.P. 9(b) and Audit Rule 23(c) the specific factual basis for the Trust's assertion that there was a material misrepresentation in connection with the claim. To the extent that the Trust's claim of material misrepresentation is based on the opinion of an expert, the Trust shall, within ten days of making its determination that a claim is a Paragraph 5(a) Claim, furnish Wyeth, Class Counsel, the SALC, and the affected Class Member or the Class Member's attorney, if represented, with a report by such expert setting forth the material facts known to that expert and the opinions of that expert concerning the Paragraph 5(a) Claim and the basis for such opinions with the specificity required in FED.R.CIV.P. 26 (a)(2). The Trust may meet its expert disclosure obligations under this paragraph by submitting one or more generic reports describing the facts known to its expert(s) and the opinions of such expert(s) that are common to multiple claims, along with individualized reports with all required case specific information for each claim.

12. The Trust shall establish and maintain a database that accurately and timely records the date of each and every post-Audit processing activity relevant to each Pre-Stay Payable PADL Claim, including the date on which a processing activity takes place, a description of the processing activity, and the results of that processing activity. The Trust shall furnish an electronic copy of this database to Class Counsel, Wyeth, and the SALC.

13. For purposes of the information disclosure requirements of this Order, the members of the SALC are "Authorized Persons" entitled to receive Confidential Information under Pretrial Order No. 2683 and in accordance with paragraph 19 of the Order Preliminarily Approving the Seventh Amendment.

14. This Order and any actions taken pursuant to this Order are without prejudice to and are not admissible in any proceeding relating to an opt-out from the Settlement Agreement.

BY THE COURT:


HARVEY BARTLE, III, J.