

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

IN RE: DIET DRUGS	:	MDL DOCKET NO. 1203
(PHENTERMINE, FENFLURAMINE,	:	
DEXFENFLURAMINE) PRODUCTS	:	
LIABILITY LITIGATION	:	
	:	
THIS DOCUMENT RELATES TO:	:	
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SHEILA BROWN, et al.	:	
	:	
v.	:	
	:	
AMERICAN HOME PRODUCTS	:	
CORPORATION	:	CIVIL ACTION NO. 99-20593

MEMORANDUM AND PRETRIAL ORDER NO. 1463

Bartle, J.

December 3, 2002

The AHP Settlement Trust (the "Trust") has filed a motion for emergency suspension of certain Fund A and Fund B processing deadlines. We have authority to grant the relief requested for "good cause shown" pursuant to § VI.C.4.n.5 of the court approved Class Action Settlement Agreement. It provides, "At any time, the Court may extend any time period in Section VI.C for good cause shown upon application by the Parties, Trustees, ..., after notice to AHP and Class Counsel." Settlement Agreement § VI.C.4.n.5. Section VI.C deals with "Claims Administration and Criteria for Benefits Determinations." See also Pretrial Order No. 1415.

It is undisputed that the Trust has failed to meet various deadlines for processing and paying claims for benefits from Funds A and B established under the Settlement Agreement in

this class action involving the diet drugs commonly known as fen-phen. Fund A provides three primary benefits: (1) echocardiogram screening; (2) an option between receiving valve-related medical benefits up to \$10,000 in value or \$6,000 in cash; and (3) reimbursement for the cost of diet drugs prescriptions. To register for these benefits, a potential claimant must submit what is known as the Blue Form to the Trust.¹ The monies in Fund B, on the other hand, are designed to compensate claimants who have been diagnosed with certain levels of valvular heart disease. Claimants may register for Fund B benefits by submitting the Blue Form to the Trust by May 5, 2003. To apply for and receive these benefits, claimants must complete the Green Form.

It is distressing to the court that benefits due and owing to rightful claimants who have been injured by fen-phen have not and are not being paid on a timely basis. The delay is the result, at least in part, of a number of unforeseen factors. First, thousands more class members have submitted claims than the Trust could have reasonably anticipated. For example, the Trust estimated that a minimum of 53,000 Blue Forms would be submitted around August 1, 2002, the deadline under the Settlement Agreement for registering for the echocardiogram screening program and prescription drug reimbursement. Instead, it unexpectedly received nearly twice that amount, that is,

1. In addition; under the Accelerated Implementation Option, claimants could register for Fund A benefits by filing with the Trust the Pink Form.

105,989 Blue Forms, during August, 2002. More than 190,000 Blue Forms were submitted in the months of June, July, and August. This large influx of claims has contributed to a backlog of nearly 200,000 Fund A claims, each of which is at some stage of processing. Robert Mitchell, CEO and Executive Director of the Trust, explained that because of the backlog the most recent claims filed could take one year to process.

The Trust also has been flooded with Fund B claims in volume far out of proportion with the projections on which the Settlement Agreement was based. See Memorandum and Pretrial Order No. 2662 (Nov. 26, 2002). Based in part on sound epidemiological studies, the anticipated number of Fund B claimants was approximately 35,000. As of August 12, 2002 more than 35,000 claimants had already filed Green Forms seeking Fund B benefits. If the current filing trends continue, the Trust expects that tens of thousands of additional Green Forms would be filed by May 3, 2003, the date by which claimants can register for Fund B benefits.

There is another major factor that has caused the delay in processing claims. To collect benefits, a claimant must supply on the appropriate form relevant medical history, including detailed information about the number of days that he or she took fen-phen. Under the Settlement Agreement, the benefits available to a claimant depend in part on whether he or she took the diet drugs for more than sixty-one days. Often claimants, including those represented by counsel, have submitted

incomplete or deficient answers. The Trust has received tens of thousands of claims that fail to identify the claimant or fail to make an allegation with respect to the length of the claimant's alleged diet drug use. Many of these were part of mass filings by a few law firms and often the only information provided was the name of the claimant and the law firm. Without knowing about drug usage, the Trust does not know if the person filing the claim is even alleging that he or she is a class member. When the Trust receives such incomplete answers, it then returns the form, noting the problems, and must await a revised submission. This accounts for significant delay through no fault of the Trust, to say nothing of the added expense incurred.

To remedy this unfortunate situation, the Trust intends to hire between fifty and sixty new full-time employees to review and complete forms and process and pay claims. It expects to begin hiring employees immediately and to have them working to reduce the backlog by the end of February, 2003. This should double the Trust's processing capacity from 24,000 Fund A claims and 3,200 Fund B claims to 48,000 Fund A and 6,400 Fund B claims per month. It must be emphasized that it is not possible simply to have new employees at full efficiency immediately. Anyone hired must be fully trained and immersed in the intricacies of the forms and the medical information required. Quality assurance is of the utmost importance. Only those who have legitimate claims, of course, should be paid benefits. Any money

paid to a non-qualifying person means less for those who are entitled.

We reiterate our sincere concern that claims have not been processed, benefits have not been paid and claimants have not always been informed of the status of their claims on a timely basis. It goes without saying that legitimate claimants should be paid as quickly as possible consistent with the sound administration of the Trust. We are confident that the Trust is now working diligently to rectify a situation not solely of its own making. And, we might add, we expect nothing less.

Good cause has been shown for the extension of certain time periods set forth in § VI.C of the Settlement Agreement. Accordingly, we will temporarily suspend them as detailed in the accompanying Order. We will not, however, extend the deadlines under §§ VI.C.3.a.1 and VI.C.3.a.4 of the Settlement Agreement for notifying claimants of the unique identifying number assigned to their claims. Claimants are entitled, at the least, to be informed promptly that the Trust has received their claims. Such notification will likely relieve some anxiety on their part and reduce the amount of follow-up phone calls and correspondence. We sincerely hope that the Trust can meet these important deadlines.

The suspended deadlines will automatically be reinstated on May 1, 2003. We will also direct the Trust to file a report with the court beginning January 15, 2003 and every thirty (30) days thereafter with respect to how quickly it is

reviewing, processing, and paying claims. The Trust shall work out the form of the report with Special Master Gregory P. Miller, Esquire.

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

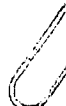
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PRETRIAL ORDER NO. 2663

AND NOW, this 3rd day of December, 2002, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) except as otherwise provided in paragraph 2, the following deadlines and time periods under the Nationwide Class Action Settlement Agreement, as amended, (the "Settlement Agreement") with the American Home Products Corporation (now known as Wyeth) for processing claims for benefits payable from Fund A and Fund B as set forth in the Settlement Agreement are hereby suspended as follows:

(a) the requirements of § VI.C.3.a.2-4 related to both Fund A and Fund B claims, except that the requirement of § VI.C.3.a.4 that within thirty (30) days of receipt of a claim the Trust inform the class



member, in writing, of the unique identifying number assigned to the class member's claim is not suspended;

- (b) the requirements of § VI.C.3.g and VI.C.3.h;
- (c) the requirements of § VI.C.3.i and VI.C.3.j;
- (d) the requirement of § VI.C.3.k;
- (e) the requirement of § VI.C.3.l; and
- (f) the requirement of § VI.C.3.n;

(2) the provisions of paragraph 1(a) above do not relieve the Trust of its obligation to provide Wyeth with access to completed Matrix claims pursuant to §VI.F.1 of the Settlement Agreement within five days of determining that a Claim for Matrix Level Benefits is complete within the meaning of §§ VI.C.2 and VI.C.4 of the Settlement Agreement and to make tentative determinations of such claims within the time periods otherwise applicable under the Settlement Agreement upon determination that a Claim for Matrix benefits is complete. Nothing in this paragraph or order shall be construed to relieve the Trust of its obligations to meet the deadlines set forth in §§ VI.C.3.a.1 and VI.C.4.e-n of the Settlement Agreement;

(3) the Trust shall file with the court beginning on January 15, 2003 and every thirty (30) days thereafter until further order of this court a report with respect to how quickly it is reviewing, processing, and paying claims. The report shall be in a format created after consultation with the Special Master Gregory P. Miller, Esquire; and

