

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	:	
	:	
_____	:	
	:	
SHEILA BROWN, et al.	:	
	:	
v.	:	
	:	
AMERICAN HOME PRODUCTS	:	
CORPORATION, et al.	:	CIVIL ACTION NO. 99-20593

MEMORANDUM AND PRETRIAL ORDER NO.

Bartle, J.

July 26, 2005

Before the court is the third motion of the AHP Settlement Trust (the "Trust") addressing requests of claimants for extensions of time to receive Echocardiogram Screening Program benefits under the Nationwide Class Action Settlement Agreement ("Settlement Agreement") involving Wyeth's diet drugs, Pondimin and Redux (Doc. No. 1109). Also before the court are the submissions of claimants and the Trust (Doc. No. 1488) in response to PTO No. 4040, deciding a similar motion by the Trust, in which we requested further information.

Claimants who were unable to have Screening Program echocardiograms before the July 3, 2003 deadline were required to send a letter to the Trust or the court requesting an extension of time and explaining why a timely echocardiogram was not possible prior thereto. The Trust has reviewed the claimants'

letters, claim files, and telephone records and has made decisions as to whether each claimant at issue has demonstrated the good cause and due diligence necessary to receive a further extension of time to have a Screening Program echocardiogram taken. We now review those decisions as required under § I.49 of the Settlement Agreement, which provides:

all such Echocardiograms must be conducted no later than July 3, 2003, unless the court, upon a showing of good cause and due diligence by or on behalf of a Class Member or group of Class Members, allows the Class Member or group of Class Members to receive an Echocardiogram and associated interpretive physician visit after such date.

Settlement Agreement § I.49 (emphasis added). The Settlement Agreement does not define "good cause" or "due diligence."

This court, in another context, has described due diligence as a reasonable effort under the facts and circumstances. The inquiry focuses on whether the claimant "exhibited those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interests and the interests of others." Vitalo v. Cabot Corp., Civ.A. No. 01-6759, 2003 WL 22999240, *6 (E.D. Pa. Feb. 25, 2003) (quoting Burnside v. Abbott Labs., 505 A.2d 973, 988 (Pa. Super. 1985)). We have also observed that, in general, "good cause is a fluid concept, the meaning of which will depend on the circumstances of the individual case." Memorandum and Order ("PTO") No. 2662 at 10. In examining the scope of good cause, our Court of Appeals has noted that it

requires "at least as much as would be required to show excusable neglect." Dominic v. Hess Oil V.I. Corp., 841 F.2d 513, 517 (3d Cir. 1988).

In In re Orthopedic Bone Screw Products Liability Litigation ("Bone Screw"), 246 F.3d 315 (3d Cir. 2001), the Court of Appeals reiterated the Supreme Court's analysis of excusable neglect as set forth in Pioneer Investment Services Company v. Brunswick Associates Limited Partnership ("Pioneer"), 507 U.S. 380 (1993). Four factors should be evaluated in deciding whether excusable neglect exists: (1) the danger of prejudice to the nonmovant; (2) the length of the delay and its potential effect on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. Pioneer, 507 U.S. at 395; Bone Screw, 246 F.3d at 322-23. In our view, the due diligence standard is encompassed by the third factor of the excusable neglect test. See Vitalo, 2003 WL 22999240, at *6; Pioneer, 507 U.S. at 395. Accordingly, "good cause and due diligence" as used in the Settlement Agreement is synonymous with "excusable neglect" as articulated by the Supreme Court in Pioneer. See Pioneer, 507 U.S. at 395. Thus, we will determine whether the claimants have demonstrated good cause and due diligence for extensions of time to receive echocardiograms through the Screening Program by applying the Pioneer test for excusable neglect.

I.

We first address claimants for whom the Trust supports an extension of time to receive an echocardiogram under the Screening Program. The Trust has determined that neither the Trust nor other claimants will be prejudiced if the court grants extensions in these cases because the number of claimants is limited, they simply will receive a benefit to which they were entitled. Moreover, their echocardiograms can be performed within ninety days of the issuance of this order. Furthermore, these claimants have made diligent efforts to obtain their echocardiograms before the deadline. The delays in their submissions resulted from factors outside of their control. See Pioneer, 507 U.S. at 395.

There are three categories of claimants for whom the Trust does not oppose extensions. The first group is comprised of claimants who did not receive their first echocardiogram eligibility notices prior to June 1, 2003 and who in its view did not have enough time to schedule a Screening Program echocardiogram before the July 3, 2003 deadline.¹ The second group encompasses claimants who did not receive echocardiograms due to processing delays or irregularities within the Trust.² In

1. T.G. (DDR No. 8121950); C.J.M. (DDR No. 8046626); E.S. (DDR No. 2640027); C.T. (DDR No. 8010772); R.M. (DDR No. 8041697); J.O. (DDR No. 8014313); V.M.S. (DDR No. 8016115); D.T. (DDR No. 8042045); K.L.A. (DDR No. 8012732); P.D. (DDR No. 8046359).

2. C.B.B. (DDR No. 8026578); V.R. (DDR No. 8044295); S.C. (DDR No. 8041081); J.F.H. (DDR No. 8046303); B.G.L. (DDR No. 1200484);
(continued...)

the third category, the Trust has determined special circumstances justify extensions. We will describe each individually.

C.L.H. (DDR No. 8141353) and his attorney were sent echocardiogram eligibility letters on March 6, 2003. C.L.H. is autistic and has a fear of doctors. He is represented by his legal guardian, his mother, who believes she now has found someone who will be able to persuade her son to submit to the echocardiogram.

T.P. (DDR No. 3350212) was sent a letter by the Trust on December 21, 2000 identifying a Screening Program physician and follow-up letters on April 17, 2002 and March 20, 2003. However, T.P.'s husband underwent a five-organ transplant in February, 2001 and she has spent the past three years dedicated to his special needs. Her husband's condition has now stabilized, and she will be able to travel the distance to a Screening Program provider. Although T.P. was notified almost two and a half years before the deadline expired, her husband's extensive surgery took place shortly after that notification. Over the objection of Wyeth, we find her circumstances are unique and her neglect excusable.

2. (...continued)

T.B.M. (DDR No. 865691); J.M.B. (DDR No. 3236544); M.M.G. (DDR No. 847111); J.B.P. (DDR No. 539924); A.W. (DDR No. 8009455); A.J.J. (DDR No. 433492); J.W.G. (DDR No. 3293867); P.G.E. (DDR No. 2637197); E.Y. (DDR No. 2543502); T.B. (DDR No. 585588); M.L. (DDR No. 8046461); M.B.C. (DDR No. 8046597); D.M.C. (DDR No. 8046170); M.D.G. (DDR No. 8143317).

R.C.L. (DDR No. 1447564) was sent a matching letter on March 20, 2002, and follow-up letters on September 5, 2002 and March 18, 2003. However, R.C.L. was incarcerated from 1997 until November, 2003. On March 25, 2003, his brother, who has power of attorney, requested an extension until R.C.L.'s release from prison. Upon his release, R.C.L. followed up with the Trust. R.C.L. has exhibited due diligence.

M.M. (DDR No. 1935840) had an echocardiogram performed beyond the deadline. M.M. was made eligible on August 27, 2002 and was sent follow-up letters on November 23, 2002 and March 19, 2003. Claimant called to request an extension on July 23, 2003 and sent a written request in November, 2003, for the reason that claimant needed surgery for "heart implant, carotid artery implant, severe blood clotting, and congestive heart failure." Under these circumstances, M.M. may have an extension of time to submit the late echocardiogram.

L.L.R. (DDR No. 1639665) had an echocardiogram performed within the Screening Program. However, because of a technical problem, the echocardiogram was unable to be interpreted. L.L.R. had a second echocardiogram performed after the Screening Program deadline and called the Trust on December 19, 2003 and wrote on January 19, 2004 seeking an extension of time so the Trust could accept the late echocardiogram. The Trust does not oppose accepting the late echocardiogram and we will permit it to do so.

J.C.H. (DDR No. 3029477) may have "small mitral insufficiency" but the record is unclear as to whether the claimant has mild mitral regurgitation. In accordance with Memorandum and PTO No. 4040, J.C.H. may have an extension of time for an echocardiogram so as to preserve possible future claims for benefits. Regardless of whether or not there has been a diagnosis of FDA Positive, the Settlement Agreement provides that a claimant must submit an echocardiogram tape if he or she has been diagnosed as having mild mitral regurgitation in order to preserve that claim for the future. See Settlement Agreement § IV.B.1.

II.

We now examine requests opposed by the Trust. We note that the claimant has the burden of demonstrating good cause and due diligence. See Bone Screw, 246 F.3d at 321; Settlement Agreement § I.49.

A.

The Trust opposes extensions for claimants it deems ineligible for Screening Program echocardiograms. Some claimants in this group failed to submit a signed Blue or Pink Form by August 1, 2002 and are ineligible for Screening Program benefits.³ One claimant was diagnosed as FDA Positive before

3. S.C. (DDR No. 8041334); S.C.M. (DDR No. 1655844); C.H. (DDR No. 8130121); I.C. (DDR No. 8017977); C.P.B. (DDR No. 8159068); C.H. (DDR No. 8071559); B.L. (DDR No. 81660705); J.F. (DDR No. 8166435); S.H. (DDR No. 8065906); D.L.H. (DDR No. 8071947); M.B. (DDR No. 8070128); J.S. (DDR No. 8268731); M.B.L. (DDR No.

(continued...)

October 1, 1999 and is therefore ineligible.⁴ Other claimants are ineligible because they failed to allege more than sixty days of diet drug use on their Blue or Pink Forms.⁵ Settlement Agreement § IV.

E.J.M. (DDR No. 8064974) failed to file her Blue Form prior to the August 1, 2002 deadline and is not eligible for Screening Program benefits. E.J.M. has submitted a copy of her signed Blue Form dated July 16, 2002 and a letter from her former attorney, dated September 17, 2002, which states her Blue Form was filed with the Trust prior to the deadline but that the attorney would not represent her. E.J.M. contends she attempted on a number of occasions to contact the Trust but that the Trust employees insisted she was represented by an attorney and would not communicate with her. However, no affidavit from her attorney or copy of the Form from the attorney's files has been produced. Therefore, we will not grant an extension.

The Trust opposes an extension for S.L.M. (DDR No. 8041724) because there are conflicting Blue Forms. The Trust has

3. (...continued)
8280915); S.K.R. (DDR No. 8133799); M.H. (DDR No. 8272560); J.K. (DDR No. 8159768); B.C. (DDR No. 8283124); D.W. (DDR No. 8205857); S.J.O. (DDR No. 8188529); J.G. (DDR No. 8286118); A.J.V. (DDR No. 8221786); A.L. (DDR No. 8133772).

4. M.A.M. (DDR No. 1930320).

5. K.J.H. (DDR No. 8016068); J.B. (DDR No. 8046441); S.M. (DDR No. 8010943); L.D.L. (DDR No. 8026564); P.E.B. (DDR No. 8014447); C.R.S. (DDR No. 8033898); I.H.G. (DDR No. 8026398); D.T. (DDR No. 3597226); J.F. (DDR No. 8069016); M.J.H. (DDR No. 9890270); L.B. (DDR No. 8014764); P.J.S. (DDR No. 8009470).

two Blue Forms from the claimant alleging 60 days or less and one from the attorney alleging 61+ days but without claimant's signature. Based on this information, the request of S.L.M. for an extension of time to obtain a Screening Program echocardiogram will be denied.

B.

The Trust maintains that a number of claimants requesting extensions have failed to satisfy the excusable neglect standard. We agree with the Trust as to the following claimants.

J.H.F. (DDR No. 8045809) and M.S. (DDR No. 8083121) and their attorneys were mailed special echocardiogram eligibility letters on March 6, 2003, but these claimants never followed up with the Trust regarding the benefit.

C.T. (DDR No. 2870434) was sent a matching letter on April 5, 2002 and echocardiogram follow-up letters on September 12, 2002 and March 19, 2002. The March follow-up letter was returned to the Trust because the claimant had moved. Although C.T. called the Trust in March, 2003 to state she would submit a change of address, the Trust never received one.

J.A.S. (DDR No. 1557917) was sent follow-up letters on September 6, 2002 and March 18, 2003. Although J.A.S. called the Trust on March 18, 2003, she did not take any steps to set up an echocardiogram appointment.

D.O. (DDR No. 8114160) was sent an eligibility letter on October 18, 2002 and follow-up letters on January 10, 2003 and

March 20, 2003. D.O. did not follow up with the Trust until September, 2003.

L.T. (DDR No. 8155609) was sent an eligibility letter on March 6, 2003 and a matching letter on April 23, 2003. She claims she was unable to schedule an echocardiogram because she was out of town for three weeks in June. However, she has been aware of the need to schedule an echocardiogram since March, 2003.

D.M. (DDR No. 2274488) was sent an eligibility letter on August 7, 2001 and follow-up letters on April 10, 2002 and March 19, 2003. She did not follow up with the Trust until October 27, 2003, well beyond the deadline for receiving a Screening Program echocardiogram.

A.B.T.W. (DDR No. 8131615) was sent an eligibility letter on October 18, 2002 and follow-up letters on January 10, 2003 and March 20, 2003. Claimant had a private *electrocardiogram* for which she was billed and may have confused it with a Screening Program echocardiogram. However, this mistake does not satisfy plaintiff's burden.

A.W.A. (DDR No. 8120029) was sent an eligibility letter on October 18, 2002 and follow-up letters on January 10, 2003 and March 21, 2003. In a letter to the Trust dated October 25, 2003, claimant states that he assumed his attorney did not want him to take advantage of the Screening Program benefit and so he did not pursue it. He acknowledges that he "dropped the ball" and does not have "any excuses."

V.H. (DDR No. 8099397) and her attorney were sent special eligibility letters on March 6, 2003. Claimant's letter was returned due to her failure to notify the Trust of her new address. The letter to V.H.'s attorney was not returned, and this attorney continued to represent V.H. until June 20, 2003. Claimant did not call to follow up with the Trust until October 27, 2003.

B.F. (DDR No. 1680180) was sent an eligibility letter on September 24, 2001, a matching letter on October 26, 2001, and follow-up letters on April 3, 2002 and March 19, 2003. B.F. called the Trust on October 1, 2002 and was given the number for Crawford & Company ("Crawford"), the entity which, in consultation with the Trust, may arrange for a claimant to travel more than seventy-five miles to a participating provider. Nevertheless, claimant made no attempts to schedule an appointment for an echocardiogram.

M.N.J. (DDR No. 710046) was sent a matching letter on October 19, 2001 and follow-up letters on April 17, 2002 and March 18, 2003. Prior to the April, 2002 letter, claimant had contacted the Trust for information on the Screening Program but did not follow up again until August 15, 2003 or attempt to schedule an appointment.

G.M.H. (DDR No. 9890288) was sent a special eligibility letter on March 6, 2003 and a matching letter on April 18, 2003. She called on March 17, 2003 and stated she wanted a Screening Program echocardiogram but did not attempt to schedule an

appointment. Although she asserts she moved and heard nothing from the Trust, she failed to notify the Trust of her move until September 8, 2003.

J.L. (DDR No. 1669811) was sent follow-up letters on April 17, 2002 and March 19, 2003. The second letter was returned to the Trust due to an incorrect address because the claimant had moved in March, 2003 and failed to notify the Trust of her new address.

K.L.T. (DDR No. 8043027) was sent an eligibility letter on August 19, 2002, a matching letter on October 4, 2002, and follow-up letters on November 23, 2002 and March 20, 2003. The final letter was sent to both K.L.T. and her attorney. Claimant herself acknowledges in her request form that her attempts were not to the best of her ability.

D.A.I. (DDR No. 8043403) was sent an eligibility letter on August 19, 2002, a matching letter on September 30, 2002, and follow-up letters on November 23, 2002 and March 20, 2003. Claimant asserts she was unable to schedule an appointment for an echocardiogram because she had a busy work schedule in June, 2003. However, she had ample time prior to June.

D.M.W. (DDR No. 8064966) was sent an eligibility letter on March 3, 2003 and was placed on "mail hold" on March 28, 2003. Claimant failed to notify the Trust of her change of address.

T.M. (DDR No. 8046382) was sent an eligibility letter on August 19, 2002, a matching letter on October 9, 2002, and

follow-up letters on November 23, 2002 and March 20, 2003 but failed to attempt to schedule an echocardiogram appointment.

A.P. (DDR No. 8033882) was sent a follow-up letter on November 15, 2002 and a final follow-up letter on March 20, 2003. Claimant did not attempt to schedule an appointment.

C.N.J. (DDR No. 8075310) and her attorney were sent special eligibility letters on March 6, 2003. Claimant never attempted to schedule an appointment.

T.P. (DDR No. 8034050) was sent an eligibility letter on August 6, 2002, a matching letter on September 17, 2002, and follow-up letters on November 15, 2002 and on March 20, 2003 to claimant and counsel. Claimant did not attempt to schedule an appointment.

I.L.S. (DDR No. 8016100) was sent an eligibility letter on September 16, 2002 and follow-up letters on December 6, 2002 and March 20, 2003 to claimant and counsel. Claimant did not attempt to schedule an appointment.

M.K.G. (DDR No. 1797181) was sent a matching letter on May 23, 2002 and a follow-up letter on March 20, 2003. Claimant did not attempt to schedule an appointment before the deadline.

E.K.W. (DDR No. 8022392) was sent an eligibility letter on August 6, 2002, a matching letter on September 23, 2002, and follow-up letters on November 15, 2002 and March 20, 2003 to claimant and counsel. Claimant did not make an attempt to have an echocardiogram before the deadline.

J.A.H. (DDR No. 8009421) and his attorney were sent special eligibility letters on March 6, 2003. Claimant states in his affidavit that he was unable to obtain a Screening Program echocardiogram because "No one in the area had an opening for the 7/3/03 program." However, claimant failed to call Crawford until July 1, 2003, two days before the deadline.

M.M. (DDR No. 8022696) was sent an eligibility letter on August 6, 2002, a matching letter on September 16, 2002, and follow-up letters on November 15, 2002 and March 20, 2003 to claimant and counsel. Claimant failed to schedule an appointment.

C.S.B. (DDR No. 8048026) was sent an eligibility letter on August 21, 2002, a matching letter on September 16, 2002, and follow-up letters on December 6, 2002 and March 20, 2003 to claimant and counsel. Claimant states she was unable to obtain a free echocardiogram because "the last one was offered when I was out of the state." However, claimant knew since August, 2002 about the need to have an echocardiogram performed.

T.M.H. (DDR No. 8010785) was sent an eligibility letter on August 27, 2002, a matching letter on September 27, 2002, and follow-up letters on November 23, 2002 and March 20, 2003 to claimant and counsel. Claimant's request states she moved "during the summer," but this move had no bearing on her ability to obtain an echocardiogram within the time provided.

K.B. (DDR No. 8010925) was sent an eligibility letter on August 5, 2002, a matching letter on September 5, 2002, and

follow-up letters on November 15, 2002 and March 20, 2003 to claimant and counsel. Claimant failed to schedule an echocardiogram before the deadline.

T.M. (DDR No. 8046410) was sent an eligibility letter on September 16, 2002 and follow-up letters on December 6, 2002 and March 20, 2003 to claimant and counsel. Claimant failed to schedule an echocardiogram before the deadline.

C.J. (DDR No. 8072720) was sent an eligibility letter on January 21, 2003, a matching letter on February 10, 2003, and a follow-up letter on March 20, 2003 to claimant and counsel. T.M. failed to schedule an appointment before the deadline.

C.S.B. (DDR No. 8011334) was sent an eligibility letter on August 5, 2002 and a matching letter on September 5, 2002. She scheduled but did not attend an appointment for October 25, 2002. She offers no explanation for her failure to keep the appointment. C.S.B. was sent a post-appointment follow-up letter on April 16, 2003 but did not follow up with the Trust.

C.C. (DDR No. 8026473) was mailed an eligibility letter on September 16, 2002 and follow-up letters on December 6, 2002 and March 20, 2003 to claimant and counsel. She made no effort to obtain a Screening Program echocardiogram before the deadline.

J.R. (DDR No. 8046560) was sent an eligibility letter on August 19, 2002, a matching letter on October 9, 2002, and a follow-up letter on November 23, 2002. She scheduled but did not appear for an appointment on February 4, 2003. She offers no explanation.

S.P. (DDR No. 8077055) was sent an eligibility letter on January 22, 2003, a matching letter on February 10, 2003 and a follow-up letter on March 20, 2003 to claimant and counsel. Nevertheless, she failed to schedule an appointment.

I.A.L. (DDR No. 8046218) was sent an eligibility letter on August 27, 2002 and a matching letter on October 9, 2002. Claimant scheduled Screening Program echocardiograms for December 10, 2002 and June 19, 2003 but failed to attend either appointment. He simply claims without further explanation he had "no transportation to get to appointments." He had sufficient time to deal with this impediment.

J.R. (DDR No. 8023982) was mailed an eligibility letter on July 18, 2002, a matching letter on August 9, 2002, and follow-up letters on October 25, 2002 and March 20, 2003 to claimant and counsel. Claimant failed to make any effort to schedule a Screening Program echocardiogram before the deadline.

C.A.A. (DDR No. 8009263) and his counsel were sent special eligibility letters on March 6, 2003, but claimant failed to follow-up with the Trust. He states in his affidavit that he was unable to obtain a Screening Program echocardiogram due to "transportation." Again, he provided no further details. He had sufficient time to deal with this problem.

S.J. (DDR No. 8185217) and her attorney were sent special eligibility letters on March 6, 2003, but claimant failed to try to schedule an echocardiogram before the deadline.

M.B.J. (DDR No. 8043207) was sent a special eligibility letter on March 6, 2003 but made no effort to schedule a Screening Program echocardiogram before the deadline. Her affidavit accompanying her request for an extension simply states, "I was sent a letter that stated that the echocardiogram that I was given could not be read due to my being overweight."

G.L. (DDR No. 8026676) was sent an eligibility letter on August 6, 2002, a matching letter on September 13, 2002, and follow-up letters on November 15, 2002 and March 20, 2003 to claimant and counsel. Claimant failed to schedule an appointment.

J.E. (DDR No. 8065377) and her attorney were sent a special eligibility letter on March 6, 2003, but claimant failed to take the necessary steps to obtain a Screening Program echocardiogram.

J.W. (DDR No. 8036662) was mailed an eligibility letter on August 6, 2002, a matching letter on September 23, 2002, and follow-up letters on November 15, 2002 and March 20, 2003 to claimant and counsel. Claimant failed to make an effort to schedule a Screening Program echocardiogram before the deadline.

L.J. (DDR No. 8075248) was sent an eligibility letter on March 3, 2003, a matching letter on March 19, 2003, and a follow-up letter June 16, 2003. However, claimant failed to schedule a Screening Program echocardiogram before the deadline.

B.B. (DDR No. 8022527) was sent an eligibility letter on August 5, 2002, a matching letter on September 6, 2002, and

follow-up letters on December 27, 2002 and March 20, 2003 to claimant and counsel. Although B.B. claims the office where she was told she could receive a Screening Program echocardiogram was "constantly booked up," she did not follow-up with the Trust or Crawford regarding her difficulty in scheduling an appointment. Furthermore, she had almost a year to do so.

L.B. (DDR No. 8047400) was sent an eligibility letter on August 27, 2002, a matching letter on October 9, 2002, and follow-up letters on November 23, 2002 and March 20, 2003. L.B. was given the name of other providers on November 4, 2002 and April 25, 2003. She scheduled but did not attend an appointment on May 8, 2003 because of "moving from state-to-state and transportation." She never followed up thereafter.

L.T.P. (DDR No. 8002372) and her attorney were sent a special eligibility letter on March 6, 2003. Claimant failed to make any effort to have a Screening Program echocardiogram.

A.D.V. (DDR No. 8026367) was sent an eligibility letter on August 27, 2002, a matching letter on October 7, 2002, and a follow-up letter on November 23, 2002. She scheduled a Screening Program echocardiogram for January 29, 2003, which she failed to attend without explanation.

A.R. (DDR No. 8073162) was sent an eligibility letter on January 21, 2003, a matching letter on February 10, 2003 and a follow-up letter on March 20, 2003 to claimant and counsel. Claimant's affidavit states that he "made several attempts but did not have any success" in obtaining a Screening Program

echocardiogram. A.R. did not follow-up with the Trust until after the deadline.

L.R. (DDR No. 8016086) was sent an eligibility letter on September 16, 2002, and follow-up letters on December 6, 2002 and March 20, 2003 to claimant and counsel. Claimant made no effort to obtain a Screening Program echocardiogram.

C.J.M. (DDR No. 8043546) and her attorney were sent a special eligibility letter on March 6, 2003. Claimant's attorney did not follow up with the Trust until January 22, 2004.

T.D.W. (DDR No. 8011002) was sent an eligibility letter on July 18, 2002, a matching letter on August 12, 2002, and follow-up letters on October 25, 2002 and March 20, 2003 to claimant and counsel. Despite these letters, claimant failed to make efforts to set up an appointment to have a Screening Program echocardiogram taken before the deadline.

K.E. (DDR No. 8009409) was sent an eligibility letter on August 5, 2002, and matching letters on August 5, 2002 and September 10, 2002. Claimant maintains that she was unable to obtain a Screening Program echocardiogram because she had a complete hysterectomy on July 8, 2003 and "misplaced phone number for scheduling and also forgot (sorry)." We note that July 8, 2003 was after the July 3, 2003 deadline.

A.S. (DDR No. 8043331) was sent an eligibility letter on August 19, 2002, and follow-up letters on November 23, 2002 and March 20, 2003 to claimant and counsel. She states she did not obtain an echocardiogram because she was pregnant, but she

does not provide any more information. A.S. had sufficient time to obtain a Screening Program echocardiogram.

S.J.B. (DDR No. 3508637) was sent an eligibility letter on November 11, 2002 and a matching letter on December 4, 2002. The letters were returned because claimant failed to notify the Trust of her new address until July 9, 2003. S.J.B. sent a letter to the court dated May 24, 2004 stating she had not requested an extension of time to receive an echocardiogram.

T.L. (DDR No. 1595883) (#151) was sent an echocardiogram eligibility letter on June 25, 2003 but did not follow up with the Trust until March 9, 2004, over eight months later.

S.V. (DDR No. 3428745) was sent an eligibility letter on March 6, 2003 but did not follow-up with the Trust until October 9, 2003. At that time, she was advised to write to the Trust to request an extension of the deadline. No written request was sent until April 12, 2004.

B.P. (DDR No. 761882) was sent an eligibility letter on April 9, 2001 and scheduled a Screening Program echocardiogram for August 31, 2001. After that date, the Trust sent a post-exam follow-up letter to B.P. explaining that the Trust had not received anything from the physician and asking her to confirm whether she had attended the appointment. Claimant scheduled a second appointment for April 29, 2003 but cancelled it and made no attempt to schedule another until asking for an extension on

January 20, 2004. This was over six months after the July 3, 2003 deadline.

M.R.M. (DDR No. 8171438) was sent an eligibility letter on January 21, 2003 and a follow-up letter on March 20, 2003. M.R.M. did not follow up with the Trust until making a telephone call on October 28, 2003 and sending a written request for an extension on November 3, 2003.

J.T. (DDR No. 2244986) was sent an eligibility letter on April 9, 2001 and follow-up letters in April, 2002 and March, 2003. J.T. did not follow up with the Trust until September 29, 2003, when she called and was given instructions on sending in a request for an extension. She did not do so until November 3, 2003.

J.D. (DDR No. 1445642) was sent an eligibility letter on January 25, 2002 and follow-up letters in September, 2002 and March, 2003. J.D. did not send a written request for an extension until October 30, 2003, which contained no explanation for her delay in obtaining an echocardiogram.

R.C. (DDR No. 2505493) was sent an eligibility letter on August 7, 2001 and follow-up letters in April, 2002 and March, 2003. Claimant did not follow up with the Trust until February 9, 2003. Claimant's request states that she received faulty advice from her attorney. Although she may have a viable claim against her attorney, this is not an adequate reason.

A.M. (DDR No. 8000722) was sent an eligibility letter on July 8, 2002 and follow-up letters in December, 2002 and

March, 2003 but did not contact the Trust to obtain an echocardiogram until November 1, 2003. A.M. provided no explanation for the delay.

B.D.W. (DDR No. 8045904) was sent an eligibility letter on March 6, 2003 but did not follow up with the Trust until November 1, 2003. No explanation was provided for the delay.

D.F. (DDR No. 8034141) was sent an eligibility letter on August 6, 2002 and follow-up letters on November 15, 2002 and March 20, 2003. D.F. failed to follow up with the Trust until November 4, 2003. She cited conflicts with her work schedule as reason for the delay. However, she had more than a year to schedule an appointment.

S.B. (DDR No. 8010939) was sent an eligibility letter on July 8, 2002 and follow-up letters in October, 2002 and March, 2003. Claimant failed to follow up with the Trust until January, 2004. S.B. claims she had an echocardiogram done and sent the results to her attorney's office. However, failure of the claimant's attorney to forward the results to the Trust does not merit an extension.

M.G.R. (DDR No. 8044389) was sent an eligibility letter on August 19, 2002 and follow-up letters in November, 2002 and March, 2003. Claimant did not contact the Trust until November, 2003 and gave no reason for the delay.

C.M. (DDR No. 8026697) was sent an eligibility letter on August 5, 2002 and follow-up letters in November, 2002 and March, 2003. C.M. did not contact the Trust until November 5,

2003, at which time she stated she "had one by the attorney." The Trust received no echocardiogram for C.M., and she has presented no reason why she should receive an extension.

L.A.A. (DDR No. 8097358) was sent an eligibility letter in March, 2003 and a follow-up letter in June, 2003 but did not follow-up with the Trust until November 6, 2003. At that time, she first alleged she had not known the benefit was available "until this notification."

C.D.L. (DDR No. 8022689) was sent an eligibility letter in August, 2002 and follow-up letters in November, 2002 and March, 2003. Claimant failed to contact the Trust until November 10, 2003, stating only: "No doctors in Lubbock, Texas."

C.R.G. (DDR No. 8022374) was sent an eligibility letter in July, 2002 and follow-up letters in October, 2002 and March, 2003. Claimant failed to contact the Trust until November 12, 2003. Although she cited chronic back pain as preventing her from traveling to receive an echocardiogram, there is no evidence that she ever attempted to request accommodation for this problem.

M.A.R. (DDR No. 8073246) was sent an eligibility letter in March, 2003 but did not follow up with the Trust until November 4, 2003 and gave no reason for the delay.

J.S. (DDR No. 8009912) was sent an eligibility letter in March, 2003 but did not follow up with the Trust until November 12, 2003, giving no reason for the delay.

T.T. (DDR No. 2254548) was mailed an eligibility letter in January, 2002 and a follow-up letter in April, 2003. Claimant did not contact the Trust to receive an echocardiogram until she called on November 25, 2003 and wrote a letter on December 9, 2003. Her letter asked for an extension because she did not receive notice about the opportunity to request an exception. However, she cites no reason why an extension would be merited other than not having an attorney.

S.N.H. (DDR No. 8028635) was sent an eligibility letter in August, 2002 and follow-up letters in November, 2002 and March, 2003. Claimant did not follow up with the Trust until November 14, 2003, alleging she had received no information regarding the benefit. S.N.H., however, had a responsibility to monitor her claim.

J.F. (DDR No. 8042017) was sent an eligibility letter in August, 2002 and follow-up letters in November, 2002 and March, 2003. J.F. did not act until November 18, 2003, when she asked for an extension due to "work schedule."

E.P. (DDR No. 3100294) was sent an eligibility letter in January, 2002 and follow-up letters in September, 2002 and March, 2003. He contacted the Trust on November 27, 2003, stating in a letter that his now-ex-wife had been hiding his mail. Despite the actions of E.P.'s ex-wife, E.P. was not diligent in following up on his claim with the Trust.

D.B. (DDR No. 8001493) was sent an eligibility letter in January, 2003. She called the Trust November, 2003 and was

advised to send a written extension request, which she did in January, 2004. Her letter merely explains that she did not understand that she had to schedule an echocardiogram.

A.P.J. (DDR No. 3571536) was mailed an eligibility letter in January, 2002 and follow-up letters in September, 2002 and March, 2003 but did not follow up with the Trust until January, 2004. Claimant states in his letter that he had trouble scheduling an appointment, but he did not act on this problem until well beyond the deadline for obtaining a Screening Program echocardiogram.

K.W. (DDR No. 3050648) was sent an eligibility letter in August, 2001 and a follow-up letter in April, 2002. The Trust was unable to contact K.W. from May, 2002 until January, 2004, as she had changed her address and did not provide her new address to the Trust. She called the Trust on December 29, 2003 and wrote a letter to the Trust which it received on February 3, 2004. It stated she had had several surgeries since 2001 and had complications preventing her from obtaining an echocardiogram. K.W. had nearly two years to obtain an echocardiogram and does not address why she waited until after the deadline to contact the Trust about her inability to have one performed.

C.B. (DDR No. 8147288) was sent an eligibility letter on October 18, 2002 and follow-up letters on January 10, 2003 and March 20, 2003. Claimant called the Trust in October, 2002 and again in June, 2003, asserting she had not received any information from the Trust. The letter she sent requesting an

extension states she was given the names and numbers of two doctors when she called the Trust on June 2, 2003, after she "hadn't heard anything from [the Trust] since [she] called on October 15, 2002." After the June, 2003 call, her mother-in-law became sick with "conjunction heart failure" and was diagnosed with breast cancer. Claimant had the responsibility for caring for her mother-in-law full-time until she was placed in a nursing home. We are sympathetic to C.B.'s family situation. However, because C.B. waited so long to follow up with the Trust since her October, 2002 call, we do not find she has met her burden.

As to the foregoing claimants, we agree with the Trust that excusable neglect has not been shown, and no extension to obtain a Screening Program echocardiogram should be granted.

C.

We disagree with the following determinations of the Trust and shall grant extensions for the following claimants to obtain Screening Program echocardiograms because they have demonstrated excusable neglect.

C.D. (DDR No. 8044676) was not sent an eligibility letter until June 6, 2003. The Trust has not opposed extensions for other claimants who received their eligibility letters subsequent to June 1, 2003, and we cannot discern why C.D. should be treated differently from others who had the same short time.

B.Z. (DDR No. 8123003) was sent a special eligibility letter on March 6, 2003. She asserts that she contacted the Trust via telephone and email in early 2003 to receive a list of

doctors. The Trust maintains it sent a matching letter to B.Z. on April 23, 2003, but B.Z. claims she received no list of physicians from the Trust. B.Z. emailed the Trust again in July, 2003 for a list and was told she missed the deadline to receive a Screening Program echocardiogram. B.Z. has been diligent and may have an extension.

L.F. (DDR No. 3372687) was sent an eligibility letter on May 29, 2003. In her letter dated October 22, 2003, she maintains that she wrote three letters to the Trust after she received her eligibility letter, two of which requested information on how to obtain a Screening Program echocardiogram. No response is documented. We note that L.F. had a short time between her eligibility notification and the Screening Program deadline and that she made efforts to find out where she could obtain a free echocardiogram. Therefore, we disagree with the Trust's determination and will grant an extension to L.F.

L.J.B. (DDR No. 2445039) also was sent an eligibility letter by the Trust on May 29, 2003. She followed up with the Trust on July 23, 2003. On October 28, 2003, she wrote a letter to the Trust requesting an extension, stating she had received the eligibility notice one week before the July 3, 2003 deadline. L.J.B.'s letter makes reference to a private echocardiogram she had and submitted in 2000. Because of the short time provided and the efforts made by L.J.B., we will grant an extension.

A.R. (DDR No. 8046871) was sent an eligibility letter on May 29, 2003. While the Trust maintains she was not diligent

in trying to obtain an echocardiogram through the Screening Program, we note that she had just over a month to do so. Therefore, we will grant A.R. an extension.

R.W. (DDR No. 3638699) was sent an eligibility letter on May 13, 2003. Her attorney wrote to the Trust to request an extension of the deadline because the claimant's divorce and move to a new home prevented her from pursuing the benefit. Claimant was also visiting doctors to determine whether she had cancer. The Trust maintains that because neither the attorney nor the claimant followed up with the Trust until October 30, 2003, claimant should not be afforded an extension, even though R.W. was not notified of her eligibility until less than two months prior to the expiration of the deadline. We believe that under the circumstances and time of notification, R.W. may have an extension to obtain a Screening Program echocardiogram.

T.A.Y. (DDR No. 3397825) (#175) was sent an eligibility letter on May 29, 2003 but did not follow up with the Trust until August 21, 2003. We note that T.A.Y. had a small window of time to obtain an echocardiogram before the deadline. In addition, she is in the U.S. Army and often travels. Under the circumstances, T.A.Y. has demonstrated excusable neglect and will be granted an extension in which to obtain a Screening Program echocardiogram.

D.

The requests of a number of claimants for extensions are now moot because the Trust has received completed Screening

Program echocardiogram packets prior to the filing of the present motion.⁶ Therefore, these claimants' requests for a second echocardiogram will be denied.

Additionally, L.L. (DDR No. 8009337) was sent an eligibility letter on August 5, 2002, a matching letter on September 13, 2002, and a follow-up letter on March 20, 2003 (to claimant and counsel). Claimant alleges to have had two Screening Program echocardiograms. According to the Trust these two prior echocardiograms were private and not through the Screening Program. In the event that L.L. timely registered for benefits and if any echocardiogram was conducted prior to January 3, 2003, she will be permitted to submit it. To the extent that she is requesting an extension, it will be denied.

E.

In several cases, the Trust and/or the claimant has failed to provide the court with enough information to enable it to make a determination as to whether or not an extension and/or a second echocardiogram should be allowed. In the following cases, we will allow the claimants and/or the Trust to submit

6. C.K. (DDR No. 8066554); N.M. (DDR No. 8025085); N.J.D. (DDR No. 8028526); A.C. (DDR No. 8043435); R.M.R. (DDR No. 8036671); B.J.S. (DDR No. 8045908); C.W. (DDR No. 8041896); B.F.C. (DDR No. 8066880); E.M.F. (DDR No. 8044566); G.G. (DDR No. 8016075); D.S. (DDR No. 8072443); K.J.R. (DDR No. 8045490); S.Mi. (DDR No. 8044315); S.Ma. (DDR No. 2371623); C.A.S. (DDR No. 8009570); C.H. (DDR No. 8045918); B.A. (DDR No. 8072192); A.M. (DDR No. 8065405); T.H. (DDR No. 8072332); P.D.W. (DDR No. 8028870); D.D. (DDR No. 8065610); T.L. (DDR No. 8043422); D.E.H. (DDR No. 8066078); R.R. (DDR No. 8065763); T.S. (DDR No. 8101679); R.M. (DDR No. 8077227); C.W. (DDR No. 8034037); D.A.B. (DDR No. 8072323); C.Y.B. (DDR No. 3440153); J.M. (DDR No. 1704196).

additional information within 30 days of this order. Where the Trust has no additional information to submit, it shall so state within that period of time. Thereafter, we will render a decision.

The Trust opposes an extension for L.C.B. (DDR No. 8065434) because there are conflicting Blue Forms for this claimant. The first form was sent by L.C.B.'s attorney and alleges 61+ days of diet drug use. The second form was sent by the L.C.B. and alleges 60 days or less of use. The Trust and the L.C.B. shall submit within 30 days prescription records or other information substantiating the proper number of days of diet drug use.⁷

R.B. (DDR No. 8034101) was sent an eligibility letter on August 6, 2002, a matching letter on September 5, 2002, and follow-up letters on November 15, 2002 and March 20, 2003 to claimant and counsel. Claimant called the Trust on March 24, 2003, but the Trust's records do not reflect the nature of the call. R.B. was informed that because he was represented, he needed to call his attorney, but he responded that he did not know who his attorney was. R.B.'s affidavit states he needs an extension because he was unable to get a "response from the company who to go with." We will require the Trust to inform the court within 30 days who R.B.'s attorney was believed to be and

7. We find the situation of L.C.B. (DDR No. 8065434) to be distinguishable from that of S.L.M. (8041724), supra, because S.L.M. herself signed conflicting Blue Forms, whereas L.C.B. signed and sent only one form.

to provide the court with copies of correspondence sent to R.B. and counsel believed to be representing R.B.

The Trust has no echocardiogram tape for B.J.H. (DDR No. 2255321). The echocardiogram report on file with the Trust does not show mitral or aortic valve regurgitation. However, it does not appear that claimant has received a Screening Program echocardiogram, and it is unclear whether B.J.H. was entitled to have one. Therefore, we will give the Trust 30 days in which to inform the court as to whether this claimant would have been eligible for a Screening Program echocardiogram and what notification claimant received to this effect.

L.G.R. (DDR No. 8033895) and her attorney were sent special eligibility letters on March 6, 2003. Claimant's affidavit accompanying her request for an extension states she already had a Screening Program echocardiogram performed. Trust records, however, do not show that a Screening Program echocardiogram was performed. In this case, we cannot make a determination. L.G.R. and the Trust will have 30 days in which to provide the court with more information regarding any echocardiograms performed on L.G.R.

V.B. (DDR No. 3369485) was sent an eligibility letter on August 8, 2001 and follow-up letters on September 13, 2002 and March 20, 2003. Claimant failed to follow-up with the Trust until she called on March 22, 2004 and then wrote on April 30, 2004. V.B. claims that she had scheduled numerous appointments but that each time someone had called her to cancel. The Trust

investigated V.B.'s allegation and "determined it was at variance with the procedures of the screening program coordinator."

Before making a decision as to V.B., we will give the Trust 30 days to provide the court with support for its determination.

S.R. (DDR No. 1518004) was sent an eligibility letter on February 12, 2001. She was sent a follow-up letter on April 24, 2002. From May 31, 2002 until April 31, 2003 the Trust was unable to contact S.R. because her mailing address had changed and she had failed to provide the Trust with an updated address. S.R. emailed the Trust in November, 2003 and was advised to call the Trust immediately. After calling the Trust, the claimant finally sent her extension request in February, 2003. Claimant's letter states that she had received the incorrect forms from the Trust and had filled out everything she did receive and returned it to the Trust before the passage of applicable deadlines. The court has not been provided with the forms that S.R. did return to the Trust. Therefore, we will allow the parties 30 days to supplement the record.

D.H. (DDR No. 8016066) was sent an eligibility letter in September, 2002 and follow-up letters in December, 2002 and March, 2003 but did not contact the Trust until November 12, 2003. However, D.H. stated in her request that she had an echocardiogram in 2000 or 2001 in Dallas, Texas. We have not been informed as to whether D.H. timely registered for benefits with the Trust. If she did timely register, we will direct the Trust to accept her echocardiogram. We will give D.H. and the

Trust 30 days in which to advise the court as to whether D.H. has timely registered.

V.L.B. (DDR No. 8036870) was sent an eligibility letter on August 5, 2002, a matching letter on September 6, 2002, and follow-up letters on November 15, 2002 and March 20, 2003 (to claimant and counsel). Claimant maintains she was unable to obtain a free echocardiogram because she "had medical problems that needed 2 surgical procedures." She does not state when the procedures were performed or why they prevented her from obtaining a Screening Program echocardiogram despite the five private echocardiograms she obtained. We will provide V.L.B. with an opportunity to submit further information within 30 days about the dates and nature of her surgeries from which we may make a determination. Further, we inquire as to the dates of her five private echocardiograms and whether she has timely registered for benefits.

P.A.H. (DDR No. 590802) was sent an eligibility letter on July 30, 2001, a matching letter on November 26, 2001, and follow-up letters on April 17, 2002 and March 18, 2003. Although it appears that the claimant believes she had a Screening Program echocardiogram performed, the Trust has records only of a private test. We will allow the Trust and P.A.H. 30 days to provide further information about the date this echocardiogram was performed and whether P.A.H. is timely registered for benefits.

P.K. (DDR No. 8065089) was sent an eligibility letter in March, 2003 but did not follow up with the Trust until

November 18, 2003. However, P.K. stated in her extension request that she already had one "at Sherton Hotel in Dallas given by Joseph Malley." We have not been informed as to whether D.H. timely registered for benefits with the Trust. If she did timely register, we will direct the Trust to accept her echocardiogram. Thus, we will give P.K. and the Trust 30 days in which to advise the court as to whether P.K. has timely registered.

P.E. (DDR No. 8043201) was sent an eligibility letter in March, 2003 and requested an extension on November 19, 2003. Her extension request states she "thought [she] had one in Ft. Worth." We have not been informed as to whether D.H. timely registered for benefits with the Trust. If she did timely register, we will direct the Trust to accept her echocardiogram. Thus, we will give P.E. and the Trust 30 days in which to advise the court as to whether P.E. has timely registered.

F.L.W. (DDR No. 2751832) was sent an eligibility letter in September, 2001 and follow-up letters in April, 2002 and March, 2003. Claimant called the Trust in July, 2003 and stated that her doctor had not informed her of the date of her echocardiogram. She did not send a written extension request until March, 2004. However, her letter states that she had previously written to the Trust because all the physicians she had contacted had informed her that payment was required before performance of the echocardiogram. We think it necessary for the court to see the letters sent by F.L.W. to the Trust in order to make a determination of her request for an extension. Therefore,

we will provide the Trust and F.L.W. with 30 days in which to supplement the record with the letters.

N.J.C. (DDR No. 3008588) was sent an eligibility letter in September, 2001 and arranged for an echocardiogram appointment for November 16, 2001. In April, 2003, the Trust sent a post-appointment follow-up letter to N.J.C., advising her it had not received an echocardiogram and asking whether she had attended the appointment. On December 12, 2003, claimant called the Trust to schedule an echocardiogram, and on January 21, 2004, she sent a written request for an extension. Claimant's letter states she had an echocardiogram performed on November 16, 2001 and identified the doctor. However, her letter goes on to say, "they can't find anything to show that I was there." Because of this discrepancy, the Trust will have 30 days in which to inform the court as to what information it or Crawford has regarding whether claimant received an echocardiogram, and claimant will have the same amount of time in which to supplement the record to substantiate her contention that she had an echocardiogram performed.

B.A. (DDR No. 1583402) was sent an eligibility letter in July, 2001 and follow-up letters in April, 2002 and March, 2003. Claimant called the Trust on January 23, 2004 and stated she had not been able to obtain an echocardiogram. In her letter requesting an extension, dated January 25, 2004, B.A. stated that by the time she received the Gray Form to get the test, she was in the hospital for a hysterectomy. Under the circumstances, we

will allow B.A. 30 days to supplement the record with further information regarding the dates of her illness and surgery.

M.C. (DDR No. 2117042) was sent an eligibility letter on September 24, 2001, a matching letter on October 30, 2001, and follow-up letters on April 3, 2002 and March 19, 2003. Claimant scheduled a Screening Program echocardiogram appointment for May 30, 2003, which he failed to attend. The Trust maintains that M.C. has provided no explanation for missing the appointment. M.C. writes in his letter requesting an extension that he spent most of last year in the hospital with his thirteen year-old son who was being treated for cancer. M.C. refers to a problem he had in scheduling an interpretation of a private echocardiogram he had performed on July 31, 2002. The court is not aware of whether M.C. registered for benefits by the May, 2003 deadline. If he did, M.C. will be allowed to submit the 2002 echocardiogram and the Trust will be ordered to accept it. We will grant the Trust 30 days in which to inform the court in this regard and if M.C. is timely registered, he will have 30 days thereafter to submit his echocardiogram to the Trust.

S.C. (DDR No. 3583200) was sent an eligibility letter on September 24, 2001. While S.C. scheduled two echocardiogram appointments for July 30, 2002 and October 21, 2002, the Trust never received a completed echocardiogram packet. On April 16, 2003, the Trust sent a post-appointment follow-up letter to claimant inquiring whether she had attended any appointment and asking her to contact the Trust if she still needed to receive an

echocardiogram. Claimant responded to this notice on February 4, 2004, stating she failed to attend her appointments because she suffers from severe obsessive compulsive disorder and depression and had been pregnant (she gave birth on April 20, 2003) and had been unable to take her medication, leaving her "somewhat agoraphobic." S.C. has represented that she could provide treatment records from her psychiatrist and psychologist. S.C. may have 30 days to do so.

M.K.K. (DDR No. 8026357) was sent an eligibility letter on July 18, 2002, a matching letter on August 7, 2002, and a follow-up letter on October 25, 2002. She scheduled an appointment on January 31, 2003, which she missed. Although claimant asserts she missed the appointment due to "illness," she made no effort to reschedule it although there were several months remaining before the deadline. However, M.K.K. has not provided the court with sufficient reason to justify an extension. We will provide M.K.K. with 30 days to submit more information, including the dates and other specifics of her illness.

F.

There is a group of claimants for whom the Trust does not support extensions because these claimants' Blue Forms did not include a verifiable pharmacy address. According to the Trust, two of these claimants, L.T.B. (DDR No. 8045146) and M.R.C. (DDR No. 8046920) were sent numerous deficiency notices

and never cured the deficiency. They will not be granted extensions.

However, the Trust makes no statement as to whether D.S. (DDR No. 673939) was sent any deficiency notice. The Trust may inform the court within 30 days of the date of this order whether any deficiency notice was sent. If none was sent, D.S. will be given 30 days thereafter in which to cure the deficiency.

G.

Finally, in response to PTO No. 4040, the Trust and several claimants have submitted further information, allowing the court to make determinations as to them.

F.P. (DDR No. 8048579) submitted conflicting Blue Forms to the Trust, one alleging less than 60 days of diet drug use and the other alleging 61 days or more. The court ordered the Trust to state whether it had issued any deficiency letters or if it had any additional information, such as prescription records, which would allow a more definitive determination. The prescription records in the Trust's possession do not substantiate more than 61 days of diet drug use. Therefore, we will deny the request for an extension.

M.M. (DDR No. 8046107) failed to provide complete pharmacy demographic information. The court requested further information regarding whether the Trust sent any deficiency letters to M.M., whether the Trust had received any prescription records, and the length of time of diet drug use. The Trust has proffered the following information: M.M. originally stated she

had used diet drugs for 60 days or less and did not provide a total period of use. The Trust sent M.M. two deficiency letters requesting clarification of length of diet drug use. The claimant did not cure the deficiency until May 5, 2003 and never provided a verifiable pharmacy address. The claimant was sent another deficiency letter on August 26, 2003, however, this deficiency still has not been remedied. Therefore, we will deny the request for an extension.

E.C. (DDR No. 207506) had a Screening Program echocardiogram performed, but her provider failed to submit the packet to the Trust. The Trust sent E.C. a post-appointment follow-up letter on April 16, 2003. On April 21, 2003, claimant called the Trust and was advised to call Crawford to obtain additional providers' names. E.C. called the Trust on July 31, 2003 and notified the Trust that she had been unable to reach a provider. Under the circumstances, we find E.C. has been duly diligent and her neglect is excusable. She will be granted an extension.

The Trust has stated that the records of the provider for C.R. (DDR No. 489932) show that C.R. failed to attend the echocardiogram appointment. In PTO No. 4040, we noted that while the provider's records indicated that C.R. did not attend the appointment, the claimant maintained she attended the appointment and the results must have been lost. The court requested information as to when C.R. was notified by the Trust that no echocardiogram packet was submitted by the provider. The Trust

has responded that no such notification was ever given, although other claimants who the Trust thought had missed appointment received follow-up correspondence. We will grant C.R. an extension to receive a Screening Program echocardiogram.

M.T. (DDR No. 8064357) alleged she was unable to schedule a Screening Program echocardiogram appointment because her sister had died, and the court had requested information as to when this unfortunate event occurred. The Trust has tried to obtain this information by calling the claimant, however the number is disconnected. Further, the Trust sent a letter to M.T., but has received no reply. Under the circumstances, we will deny M.T.'s request for an extension.

2543502); T.B. (DDR No. 585588); M.L. (DDR No. 8046461); M.B.C. (DDR No. 8046597); D.M.C. (DDR No. 8046170); M.D.G. (DDR No. 8143317); C.L.H. (DDR No. 8141353); T.P. (DDR No. 3350212) ; R.C.L. (DDR No. 1447564) ; J.C.H. (DDR No. 3029477); C.D. (DDR No. 8044676); B.Z. (DDR No. 8123003); L.F. (DDR No. 3372687); L.J.B. (DDR No. 2445039); A.R. (DDR No. 8046871); R.W. (DDR No. 3638699); T.A.Y. (DDR No. 3397825); E.C. (DDR No. 207506); C.R. (DDR No. 489932);

(2) the motion of the following claimants for an extension of time to obtain an echocardiogram through the Screening Program is DENIED: S.C. (DDR No. 8041334); S.C.M. (DDR No. 1655844); C.H. (DDR No. 8130121); I.C. (DDR No. 8017977); C.P.B. (DDR No. 8159068); C.H. (DDR No. 8071559); B.L. (DDR No. 81660705); J.F. (DDR No. 8166435); S.H. (DDR No. 8065906); D.L.H. (DDR No. 8071947); M.B. (DDR No. 8070128); J.S. (DDR No. 8268731); M.B.L. (DDR No. 8280915); S.K.R. (DDR No. 8133799); M.H. (DDR No. 8272560); J.K. (DDR No. 8159768); B.C. (DDR No. 8283124); D.W. (DDR No. 8205857); S.J.O. (DDR No. 8188529); J.G. (DDR No. 8286118); A.J.V. (DDR No. 8221786); A.L. (DDR No. 8133772); M.A.M. (DDR No. 1930320); K.J.H. (DDR No. 8016068); J.B. (DDR No. 8046441); S.M. (DDR No. 8010943); L.D.L. (DDR No. 8026564); P.E.B. (DDR No. 8014447); C.R.S. (DDR No. 8033898); I.H.G. (DDR No. 8026398); D.T. (DDR No. 3597226); J.F. (DDR No. 8069016); M.J.H. (DDR No. 9890270); L.B. (DDR No. 8014764); P.J.S. (DDR No. 8009470); E.J.M. (DDR No. 8064974); S.L.M. (DDR No. 8041724); J.H.F. (DDR No. 8045809); M.S. (DDR No. 8083121);

C.T. (DDR No. 2870434) ; J.A.S. (DDR No. 1557917); D.O. (DDR No. 8114160); L.T. (DDR No. 8155609); D.M. (DDR No. 2274488);
A.B.T.W. (DDR No. 8131615); A.W.A. (DDR No. 8120029); V.H. (DDR No. 8099397); B.F. (DDR No. 1680180); M.N.J. (DDR No. 710046);
G.M.H. (DDR No. 9890288); J.L. (DDR No. 1669811); K.L.T. (DDR No. 8043027); D.A.I. (DDR No. 8043403); D.M.W. (DDR No. 8064966);
T.M. (DDR No. 8046382); A.P. (DDR No. 8033882); C.N.J. (DDR No. 8075310); T.P. (DDR No. 8034050); I.L.S. (DDR No. 8016100);
M.K.G. (DDR No. 1797181); E.K.W. (DDR No. 8022392); J.A.H. (DDR No. 8009421); M.M. (DDR No. 8022696); C.S.B. (DDR No. 8048026);
T.M.H. (DDR No. 8010785); K.B. (DDR No. 8010925); T.M. (DDR No. 8046410); C.J. (DDR No. 8072720); C.S.B. (DDR No. 8011334); C.C. (DDR No. 8026473); J.R. (DDR No. 8046560); S.P. (DDR No. 8077055); I.A.L. (DDR No. 8046218); J.R. (DDR No. 8023982);
C.A.A. (DDR No. 8009263); S.J. (DDR No. 8185217); M.B.J. (DDR No. 8043207); G.L. (DDR No. 8026676); J.E. (DDR No. 8065377); J.W. (DDR No. 8036662); L.J. (DDR No. 8075248); B.B. (DDR No. 8022527); L.B. (DDR No. 8047400); L.T.P. (DDR No. 8002372);
A.D.V. (DDR No. 8026367); A.R. (DDR No. 8073162); L.R. (DDR No. 8016086); C.J.M. (DDR No. 8043546); T.D.W. (DDR No. 8011002);
K.E. (DDR No. 8009409); A.S. (DDR No. 8043331); S.J.B. (DDR No. 3508637); T.L. (DDR No. 1595883); S.V. (DDR No. 3428745); B.P. (DDR No. 761882); M.R.M. (DDR No. 8171438); J.T. (DDR No. 2244986); J.D. (DDR No. 1445642); R.C. (DDR No. 2505493); A.M. (DDR No. 8000722); B.D.W. (DDR No. 8045904); D.F. (DDR No. 8034141); S.B. (DDR No. 8010939); M.G.R. (DDR No. 8044389); C.M.

(DDR No. 8026697); L.A.A. (DDR No. 8097358); C.D.L. (DDR No. 8022689); C.R.G. (DDR No. 8022374); M.A.R. (DDR No. 8073246); J.S. (DDR No. 8009912); T.T. (DDR No. 2254548); S.N.H. (DDR No. 8028635); J.F. (DDR No. 8042017); E.P. (DDR No. 3100294); D.B. (DDR No. 8001493); A.P.J. (DDR No. 3571536); K.W. (DDR No. 3050648); C.B. (DDR No. 8147288); C.K. (DDR No. 8066554); N.M. (DDR No. 8025085); N.J.D. (DDR No. 8028526); A.C. (DDR No. 8043435); R.M.R. (DDR No. 8036671); B.J.S. (DDR No. 8045908); C.W. (DDR No. 8041896); B.F.C. (DDR No. 8066880); E.M.F. (DDR No. 8044566); G.G. (DDR No. 8016075); D.S. (DDR No. 8072443); K.J.R. (DDR No. 8045490); S.Mi. (DDR No. 8044315); S.Ma. (DDR No. 2371623); C.A.S. (DDR No. 8009570); C.H. (DDR No. 8045918); B.A. (DDR No. 8072192); A.M. (DDR No. 8065405); T.H. (DDR No. 8072332); P.D.W. (DDR No. 8028870); D.D. (DDR No. 8065610); T.L. (DDR No. 8043422); D.E.H. (DDR No. 8066078); R.R. (DDR No. 8065763); T.S. (DDR No. 8101679); R.M. (DDR No. 8077227); C.W. (DDR No. 8034037); D.A.B. (DDR No. 8072323); C.Y.B. (DDR No. 3440153); J.M. (DDR No. 1704196); L.L. (DDR No. 8009337); L.T.B. (DDR No. 8045146); M.R.C. (DDR No. 8046920); F.P. (DDR No. 8048579); M.M. (DDR No. 8046107); M.T. (DDR No. 8064357);

(3) the Trust and the following claimants shall have thirty (30) days to provide the court with additional information as discussed in the accompanying Memorandum. Where the Trust has no further information, it shall so state within the same thirty (30) days: L.C.B. (DDR No. 8065434); R.B. (DDR No. 8034101); B.J.H. (DDR No. 2255321); L.G.R. (DDR No. 8033895); V.B. (DDR No.

3369485); S.R. (DDR No. 1518004); D.H. (DDR No. 8016066); V.L.B. (DDR No. 8036870); P.A.H. (DDR No. 590802); P.K. (DDR No. 8065089); P.E. (DDR No. 8043201); F.L.W. (DDR No. 2751832); N.J.C. (DDR No. 3008588); B.A. (DDR No. 1583402); M.C. (DDR No. 2117042); S.C. (DDR No. 3583200); M.K.K. (DDR No. 8026357); D.S. (DDR No. 673939); and

(4) M.M. (DDR No. 1935840) and L.L.R. (DDR No. 1639665) shall have thirty (30) days to provide the Trust with a copy of their late echocardiograms, which were performed after the Screening Program deadline. The Trust is ordered to accept the late echocardiograms.

BY THE COURT:

/s/ Harvey Bartle III

J.