

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

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

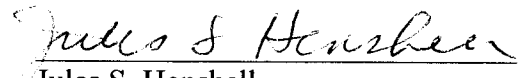
MDL No. 1203

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SHEILA BROWN, et al. v. AMERICAN )  
HOME PRODUCTS CORPORATION, et al. )  
\_\_\_\_\_ )

CIVIL ACTION No. 99-20593

**REPORT OF THE AUDIT OF THE SETTLEMENT TRUST  
FOR THE YEAR ENDED DECEMBER 31, 2009**

Pursuant to paragraph 2 of Court Approved Procedure 8, the AHP Settlement Trust hereby files this Report of the audited financial statements of the Trust for the year ended December 31, 2009.

  
\_\_\_\_\_  
Jules S. Henshell  
AHP Settlement Trust  
555 North Lane  
Suite #6045  
Conshohocken, PA 19428  
(610)-729-7927

Date: March 30, 2010

**McGladrey & Pullen**  
Certified Public Accountants

## **AHP Settlement Trust**

Financial Report  
December 31, 2009

## **AHP Settlement Trust**

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# McGladrey & Pullen

Certified Public Accountants

## Independent Auditor's Report

To the Trustee of the  
AHP Settlement Trust  
Conshohocken, Pennsylvania

We have audited the accompanying statements of net assets available for claims of AHP Settlement Trust as of December 31, 2009 and 2008, and the related statements of changes in net assets available for claims and cash flows for the years then ended. These financial statements are the responsibility of the Trust's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of AHP Settlement Trust as of December 31, 2009 and 2008 and the changes in its net assets available for claims and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

*McGladrey & Pullen, LLP*

Blue Bell, Pennsylvania  
March 26, 2010

**AHP Settlement Trust**

**Statements of Net Assets Available for Claims  
December 31, 2009 and 2008**

	<u>2009</u>	<u>2008</u>
<b>Assets</b>		
Cash and cash equivalents	\$ 14,413,755	\$ 21,877,279
Subrogation Fund - cash and cash equivalents	6,936,700	7,000,000
Accrued interest receivable	2,031	-
Due from Wyeth	2,418,807	3,770,807
Prepaid expenses and other assets	608,521	614,464
	<hr/>	<hr/>
<b>Total assets</b>	<b>24,379,814</b>	<b>33,262,550</b>
<b>Liabilities</b>		
Accounts payable and accrued expenses	708,060	611,367
Claims in course of settlement	5,795,930	13,099,091
Common benefit fee refunds payable	282,698	1,719,050
	<hr/>	<hr/>
<b>Total liabilities</b>	<b>6,786,688</b>	<b>15,429,508</b>
<b>Net assets available for claims</b>	<b>\$ 17,593,126</b>	<b>\$ 17,833,042</b>
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See Notes to Financial Statements.

## AHP Settlement Trust

### Statements of Changes in Net Assets Available for Claims Years Ended December 31, 2009 and 2008

	2009	2008
<b>Additions</b>		
Settlement funds	\$ 61,082,490	\$ 128,764,204
Investment and other income	44,425	1,103,993
Total additions	<u>61,126,915</u>	<u>129,868,197</u>
<b>Deductions</b>		
Benefit payments	54,039,017	54,224,979
Common benefit fee refunds	-	51,161,844
Litigation expense reimbursements	-	14,226,055
Claims administration expenses	2,917,263	3,918,737
General and administrative expenses	4,410,551	6,038,601
Total deductions	<u>61,366,831</u>	<u>129,570,216</u>
<b>Increase (decrease) in net assets available for claims</b>	<b>(239,916)</b>	<b>297,981</b>
Net assets available for claims:		
Beginning	<u>17,833,042</u>	<u>17,535,061</u>
Ending	<u>\$ 17,593,126</u>	<u>\$ 17,833,042</u>

See Notes to Financial Statements.

**AHP Settlement Trust**

**Statements of Cash Flows  
Years Ended December 31, 2009 and 2008**

	2009	2008
<b>Cash Flows from Operating Activities</b>		
Increase (decrease) in net assets available for claims	\$ (239,916)	\$ 297,981
Adjustments to reconcile increase (decrease) in net assets available for claims to net cash used in operating activities:		
Depreciation	82,641	90,466
Changes in operating assets and liabilities:		
(Increase) decrease in:		
Attorney fees paid from Subrogation Fund	63,300	-
Accrued interest receivable	(2,031)	141,659
Due from Wyeth	1,352,000	5,362,439
Prepaid expenses and other assets	(39,352)	261,195
Increase (decrease) in:		
Accounts payable and accrued expenses	96,693	68,704
Claims in course of settlement	(7,303,161)	(8,326,344)
Common benefit fee refunds payable	(1,436,352)	1,719,050
<b>Net cash used in operating activities</b>	<b>(7,426,178)</b>	<b>(384,850)</b>
Net cash used in investing activities, purchases of equipment	(37,346)	(170,021)
<b>Decrease in cash and cash equivalents</b>	<b>(7,463,524)</b>	<b>(554,871)</b>
Cash and cash equivalents, beginning	21,877,279	22,432,150
Cash and cash equivalents, ending	<b>\$ 14,413,755</b>	<b>\$ 21,877,279</b>

See Notes to Financial Statements.

## AHP Settlement Trust

### Notes to Financial Statements

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#### Note 1. Description of the Trust

The AHP Settlement Trust (the "Trust") was established by order of The United States District Court for the Eastern District of Pennsylvania on September 2, 2000, effective as of September 1, 2000. It is a Qualified Settlement Fund as described in Section 468B of the Internal Revenue Code and Regulations thereunder. The Trust's fiscal year ends on December 31.

On November 18, 1999, American Home Products Corporation ("AHP") which, on March 11, 2002 changed its name to Wyeth, and representatives of a purported class and subclasses in litigation which was pending in various courts and arising from the marketing, sale, distribution and use of the diet drugs Pondimin(R) and Redux(TM) (the "Diet Drugs") agreed to and proposed a nationwide class action settlement to resolve claims against AHP and other released parties on the terms set forth in a Settlement Agreement, as subsequently amended (the "Settlement Agreement"). The Settlement Agreement called for the creation of a settlement trust to receive the funds to be paid by AHP pursuant to the Settlement Agreement and to administer the provision of benefits to the settlement class under the terms of the Settlement Agreement. The Settlement Agreement calls for monies held in the Trust's estate to be invested as directed by the Trustee.

The maximum additional amount as of December 31, 2009 and 2008 that Wyeth may be called upon to pay for the purpose of funding Matrix benefits is approximately \$1,327,943,163 and \$1,311,101,634, respectively, adjusted pursuant to the Settlement Agreement, which calls for accretions on the adjusted amount at 1.5% per quarter less potential credits against such amounts arising from payments and from certain opt out and other credits. On January 18, 2002, Wyeth established a Security fund to partially guarantee this obligation. At December 31, 2009 and 2008, the Security Fund had an approximate market value of \$940.6 million and \$947 million, respectively.

Any assets remaining at the end of the Trust's term are to be donated to heart research facilities.

This Description of the Trust is not intended to be a legal interpretation of the benefits available to class members or others; nor is it a legal description of the obligations of any parties to the Settlement Agreement. A complete description of the rights and benefits of any parties and class members must be derived from the Settlement Agreement as amended and associated Pre-Trial Orders. All applicable documents can be found at [www.settlementdietdrugs.com](http://www.settlementdietdrugs.com).

#### Note 2. Summary of Significant Accounting Policies

Use of Estimates: The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires the Trust to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents: Cash and cash equivalents include all highly liquid investments with original maturities of three months or less. Cash equivalents consist primarily of funds invested in United States Treasury Bills and in money market accounts invested in United States Treasury obligations.

Property: Property, including computer software, is recorded at cost. Depreciation and amortization are computed using the straight-line method over estimated useful lives ranging from two to five years. Property is included in prepaid expenses and other assets in the accompanying statement of net assets available for claims.



## AHP Settlement Trust

### Notes to Financial Statements

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#### Note 2. Summary of Significant Accounting Policies (Continued)

Income Taxes: The Trust is organized as a qualified settlement fund as described in Section 468B of the Internal Revenue Code and Regulations thereunder. As a result, the Trust is subject to federal income taxes based on modified gross income, as defined by the Code. The Trust is subject to state income taxes only in the State of New Jersey, based upon a negotiated percentage.

On January 1, 2009, the Trust adopted the accounting standard on accounting for uncertainty in income taxes, which addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under this guidance, the Trust may recognize the tax benefit from an uncertain tax position only if it is more-likely-than-not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The guidance on accounting for uncertainty in income taxes also addresses de-recognition, classification, interest and penalties on income taxes, and accounting in interim periods.

Deferred taxes are provided on a liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carryforwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Benefit Payments: Benefit payments are recorded as an expense when approved for payment by the Trust.

Claims in Course of Settlement: Claims in course of settlement are accruals for claims that have completed all phases of the claim payment review process, including approval, but have not yet been paid.

Claims Administration Expenses: Claims administration expenses represent costs associated with the settlement and payment of claims.

#### Note 3. Settlement Funds Received

During 2009 and 2008, the Trust received settlement funds from the following sources:

	2009	2008
Wyeth	\$ 60,742,591	\$ 31,434,645
Common Benefit Attorney Escrow (Note 11)	-	86,742,450
Supplemental Class Settlement Fund (1)	339,899	10,587,109
	<u>\$ 61,082,490</u>	<u>\$ 128,764,204</u>

(1) On April 8, 2008, the Court approved a Joint Motion filed by the Fund Administrator, Class Counsel and the Seventh Amendment Liaison Committee ("the Parties") for judicial authorization to make a final distribution of the Supplemental Class Settlement Fund established under the terms of the Seventh Amendment to the Settlement Agreement ("Seventh Amendment"). On August 26, 2009, the Court approved a Joint Motion filed by the Parties for judicial authorization to make a second supplemental final distribution of the Supplemental Class Settlement Fund. The Court authorized the Fund Administrator to make distributions from the Supplemental Class Settlement Fund to the Trust in the amounts of \$339,899 in 2009 and \$10,587,109 in 2008 for prior payments made by the Trust to certain Class Members during the pendency of the Seventh Amendment.

## AHP Settlement Trust

### Notes to Financial Statements

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#### Note 4. Property

A summary of property at December 31, 2009 and 2008 is as follows:

	2009	2008
Equipment	\$ 319,461	\$ 319,461
Computer systems/software	3,853,078	3,815,732
Furniture and fixtures	92,413	92,413
Leasehold improvements	53,644	53,644
	<u>4,318,596</u>	<u>4,281,250</u>
Less: accumulated depreciation and amortization	4,155,589	4,072,948
	<u>\$ 163,007</u>	<u>\$ 208,302</u>

#### Note 5. Income Taxes

The Trust had approximately \$230,080,000 and \$222,804,000 of net operating loss carryforwards for income tax purposes as of December 31, 2009 and 2008, respectively. The carryforwards expire in 2019 through 2029.

The Trust had a deferred tax asset of \$80,526,000 and \$77,980,000 at December 31, 2009 and 2008, respectively, arising primarily from the carryforward of the net operating losses. The Trust recorded a valuation allowance for the entire deferred tax asset as it is uncertain that the deferred tax asset will be realized.

On January 1, 2009, the Trust adopted the accounting standard on accounting for uncertainty in income taxes. Management evaluated the Trust's tax positions and concluded that the Trust had taken no uncertain tax positions that require adjustment to the financial statements to comply with the provisions of this guidance. With few exceptions, the Trust is no longer subject to income tax examinations by the U.S. federal, state or local tax authorities for years before 2006.

#### Note 6. Leases

The Trust leases office space and uses certain equipment under various operating leases that expire through 2013. Rental expense under such arrangements was approximately \$291,000 and \$312,000 for the years ended December 31, 2009 and 2008, respectively.

The following is a schedule of future minimum lease payments on noncancelable operating leases as of December 31, 2009:

Years Ending December 31,	
2010	\$ 289,509
2011	296,033
2012	302,557
2013	50,607
2014	-
	<u>\$ 938,706</u>

## **AHP Settlement Trust**

### **Notes to Financial Statements**

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#### **Note 7. Subrogation Fund**

On March 21, 2001, the Court that is supervising the Settlement ordered the Trust to set aside \$7 million from Fund B in a separate account that may, subject to further proceedings, be utilized in the event that the United States government establishes an interest in proceeds of Matrix awards made to class members. The reserve arises from a determination made by the Court on the question of whether it was necessary for the Trust to await a determination of whether certain class members owed money to the government before the Trust could make benefit payments to those class submembers. The Court determined that it was not necessary for the Trust to do so, yet ordered the Trust to set aside the reserve described herein. The reserve may be distributed only upon order of the Court. The settlement agreements provided that this fund shall also be available to Wyeth as a further indemnity from and against any claims, suits or demands asserted by any Third Party Payor arising out of, or relating to, the payment of medical expenses or provision of medical services by such Third Party Payor, or the failure of the Fund Administrator or Wyeth to pay the Third Party Payor.

During 2008, the Trust retained the services of a law firm to assist with Medicare issues relating to claims for Matrix Compensation Benefits. On December 22, 2008, the Court approved a Stipulation permitting the Trust to pay the related fees and expenses from the Subrogation Fund. During 2009 the Trust paid fees from the Subrogation Fund in the amount of \$63,300.

#### **Note 8. Retirement Plan**

The Trust has a retirement plan under which eligible employees may defer a portion of their annual compensation, pursuant to Section 401(k) of the Internal Revenue Code. All permanent, full-time employees with at least six months of service and who have attained the age of 21 are eligible to participate. On March 20, 2009, the Trustee approved the discontinuance of the Trust's mandatory matching contribution to the Plan effective May 1, 2009. Effective that date, the Trust contributions will be discretionary. Trust contributions to the plan amounted to \$26,783 and \$102,089 for the years ended December 31, 2009 and 2008, respectively.

#### **Note 9. Severance Benefit Plans**

The Trust established a Severance Benefit Plan covering full-time employees. According to the provisions of the plan, eligible employees may receive severance payments under certain conditions upon termination of employment. The amount of the severance payments is based on the length of the employee's service as well as the employee's position level. Severance payments range from one week to nine weeks of the employee's salary as of the date of termination.

The Trust established an Executive Retention Plan covering certain executives employed by the Trust. The retention benefits to be paid to certain executives upon termination of employment range from nine to twelve months of the executive's salary as of the date of termination.

#### **Note 10. Uncertainties**

Claims and Availability of Funds to Pay Them from the Net Assets of the Trust: The ultimate liability for all claims is not determinable at this time. Net assets available for claims at December 31, 2009 and 2008 represent excess of funding received for claims and administrative expenses over amounts paid.

The deadlines for filing of some claims have not yet come to pass, and there are class members who are seeking relief from certain deadlines that have come to pass.

## AHP Settlement Trust

### Notes to Financial Statements

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#### Note 10. Uncertainties (Continued)

Claims and Availability of Funds to Pay Them from the Net Assets of the Trust (Continued): Net assets available for the payment of Matrix claims and associated administrative expenses at December 31, 2009 and 2008, are to be supplemented, pursuant to the Settlement Agreement as in effect at that date, by contributions from AHP or withdrawals from the Security Fund as and when it becomes necessary to have additional funds to pay claims and to maintain an Administrative Reserve. The maximum amount required to be paid by Wyeth or that may be made available to the Trust from the Security Fund may or may not be sufficient to pay all claims for Matrix benefits that have been or will be submitted to the Trust and that are, upon processing and review, determined to be valid and well founded.

Court Jurisdiction: The Court that has jurisdiction over the Trust and the administration of the Settlement Agreement has ordered that it retains continuing jurisdiction to, among other things, interpret and enforce the Settlement Agreement in accordance with its terms. Pursuant to its continuing jurisdiction, the Court has imposed and may impose certain financial obligations on the Trust that are not foreseen at this time, and could approve certain amendments to the Settlement Agreement that would provide material benefits to the Trust and its beneficiaries or otherwise materially alter the operations and financial position of the Trust.

#### Note 11. Common Benefit Fee Refunds and Litigation Expense Reimbursements

During 2008, the Court approved a joint petition for final award of counsel fees and expense reimbursements. The significant provisions of the Order as they relate to the Trust are as follows:

Common Benefit Fees: In accordance with the Settlement Agreement, the total gross Matrix payments due Class Members were reduced by 9.0%. This amount was maintained outside of the Trust in a Common Benefit Attorney escrow pending the award of fees to certain attorneys designated in the Settlement Agreement as Class Counsel or as Common Benefit Attorneys.

On April 8, 2008 the Court awarded Common Benefit fees in the aggregate amount of \$163.1 million which represents approximately 6.4 % of the amount that Wyeth was legally obligated to pay to Fund B for the benefit of the Class. The Court directed the Trust to submit a plan for the distribution ("Plan of Distribution") of the remaining 2.6% (approximately \$51.1 million) to Class Members or their individual attorneys. The Plan of Distribution was submitted by the Trust on May 8, 2008 and was approved by the Court on July 21, 2008.

On June 3, 2008, the Court approved a Stipulation filed by Class Counsel and Wyeth regarding the disposition of the balance of the Common Benefit escrow account. In accordance with the Stipulation the escrow agent transferred approximately \$86.7 million to the Trust to be used to pay refunds in accordance with the Plan of Distribution. Any funds remaining after payment of the refunds may be used by the Trust to pay benefits to Class Members, costs of administration and any other payments required of the Trust.

The total gross Matrix payments paid to Class Members after April 8, 2008 are reduced by 6.4%. These amounts are maintained outside of the Trust in the Common Benefit Attorney escrow.

Litigation Expense Reimbursements: In addition to requesting the final reimbursement of expenses and costs, the Joint Fee Applicants also requested that the Trust reimburse the Fund A Escrow Account and the MDL 1203 Fee and Cost Account for costs and expenses incurred for work related to the Settlement Agreement. The Court directed the Trust to transfer \$4.2 million to the Fund A Escrow Account and \$9.2 million to the MDL 1203 Fee and Cost Account. The Court also ordered the Trust to pay \$.8 million to the Joint Fee Applicants for outstanding expenses. These amounts were paid by the Trust in May 2008.

**AHP Settlement Trust**

**Notes to Financial Statements**

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**Note 12. Subsequent Events**

In May 2009, the FASB issued Statement No. 165, *Subsequent Events* ("SFAS 165"), effective for periods ending after June 15, 2009, as codified in the ASC under topic 855. SFAS 165 establishes general standards of accounting for disclosure of events that occur after the balance sheet date but before the financial statements are issued or available to be issued. The Company has evaluated its subsequent events (events occurring after December 31, 2009) through March 26, 2010 which represents the date the financial statements were issued.

**CERTIFICATE OF SERVICE**

Jules S. Henshell hereby certifies that on March 30, 2010, he caused a true and correct copy of the Report of the Audit of the Settlement Fund for the Year Ended December 31, 2009, to be filed with and made available for viewing and downloading on the Court's ECF system and to be further served by first-class mail upon the following:

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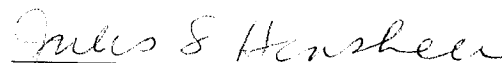
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