

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

MEMORANDUM AND PRETRIAL ORDER NO. 2881

Bartle, J.

June 3, 2003

The AHP Settlement Trust (the "Trust") has filed a motion for renewed suspension of certain deadlines for processing claims for benefits made pursuant to the Nationwide Class Action Settlement Agreement involving the diet drugs commonly known as fen-phen. We granted a similar motion on December 3, 2002 and temporarily suspended several deadlines, all of which were reinstated on May 1, 2003. See Pretrial Order No. 2663 (Dec. 3, 2002).

We have authority to grant the relief requested for "good cause shown" pursuant to § VI.C.5 of the Settlement Agreement. This section provides, "[a]t any time, the Court may extend any time period in Section VI.C for good cause shown upon application by the Parties, Trustees, Claims Administrator(s)

..., after notice to AHP and Class Counsel." Settlement Agreement § VI.C.5. Section VI.C deals with "Claims Administration and Criteria for Benefits Determinations." See also Pretrial Order No. 1415. In Pretrial Order No. 2663, we found good cause to suspend deadlines based in part on an unanticipated deluge of claims received by the Trust, a high rate of which were deficient in some regard. Combined with a sizeable backlog of claims already awaiting disposition, these factors made it impossible for the Trust to adhere to the processing requirements set forth in the Settlement Agreement and bring legitimate claims to resolution. Despite the delays, we were encouraged by the Trust's representations that it was working diligently to improve its processing capabilities and reach a goal of handling approximately 55,000 claims per month.¹

After more than five months, however, the Trust unfortunately finds itself in much the same position as it was in December: it remains unable to meet all deadlines suspended in PTO 2663. No one seriously disputes this.² The volume of

1. The Trust specifically stated that it intended to process 48,000 so called Fund A claims and 6,400 Fund B or Matrix claims each month. Fund A benefits include, among other things, echocardiogram screening, an option between receiving valve-related medical benefits up to \$10,000 in value or \$6,000 in cash, and reimbursement for the cost of diet drugs prescriptions. Fund B or Matrix benefits are available to compensate claimants who have been diagnosed with certain levels of valvular heart disease.

2. Class Counsel and Wyeth (formerly American Home Products Corporation) contend that a backlog of claims for certain Fund A benefits can and should be processed promptly. The Trust has indicated that it expects some of these to be paid within the
(continued...)

incoming claims continues to exceed by a significant amount that which was originally anticipated. Although it has hired more than 100 additional employees and is operating close to its objective of 55,000 claims per month, the Trust has been unable to meaningfully reduce its backlog. In fact, the backlog has increased since December. Further hampering the timely processing of claims are two additional factors. First, the Trust is required to submit to audit all claims for Matrix benefits. See Memorandum and Pretrial Order No. 2662 (Nov. 26, 2002). This 100% audit regime only recently got underway. Second, the Trust has been inundated with more than 88,000 applications from class members seeking to exercise their rights to opt-out of the Settlement.³

We reiterate, as we did in PTO 2663, that we are distressed 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. Legitimate claimants should be paid as promptly as possible consistent with the sound administration of the Trust. We strongly encourage the Trust to move as expeditiously as possible to develop and implement a plan to improve claims

2. (...continued)

next few weeks. We encourage the Trust to continue to work with the parties to expedite the processing of all backlogged Fund A claims, some of which have been awaiting disposition for more than one year.

3. Under the Settlement Agreement, class members had until May 3, 2003 to notify the Trust and the parties to this class action settlement of their intent to exercise their right to opt-out of the Settlement.

processing and reduce its backlog. To this end, we urge the Trust to continue to work with the parties and the Office of the Special Master. Indeed, we expect nothing less.

Under the circumstances, we find good cause has been shown for the continued 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. The suspended deadlines will automatically be reinstated on November 1, 2003.

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PRETRIAL ORDER NO. 2881

AND NOW, this 3rd day of June, 2003, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) 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 under the Settlement Agreement are hereby suspended as follows:

(a) the requirements of § VI.C.3.a.2-4 related to the processing of claims for Matrix Compensation and other Benefits, 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.i and VI.C.3.j;

(c) the requirement of § VI.C.3.k;

(d) the requirement of § VI.C.3.l; and

(e) the requirement of § VI.C.3.n;

(2) The Trust shall:

(a) continue to timely assign unique identifying claim numbers and notify claimants of those numbers under Sections VI.C.3.a.1 and VI.C.3.a.4 of the Settlement Agreement;

(b) timely process claims for Echocardiogram Screening Benefits under Sections VI.C.3.g and VI.C.3.h of the Settlement Agreement; and

(c) process to determination and/or referral to audit all claims within sixty (60) days of the date that claims are determined to be complete and timely notify claimants under Sections VI.C.4.e and VI.C.4.f of the Settlement Agreement;

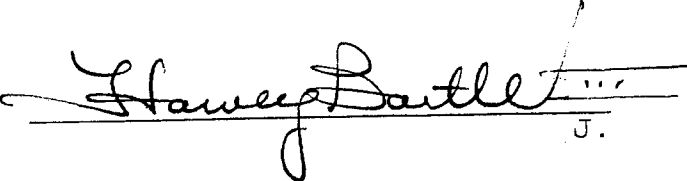
(3) nothing in this Order shall relieve the Trust from following the time periods and deadlines imposed by the Rules for the Audit of Matrix Compensation Claims, as set forth in Pretrial Order No. 2807 (March 26, 2003);

(4) the Trust shall file with the court beginning on June 21, 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 Trust shall continue to work in consultation with the Special Master Gregory

P. Miller, Esquire to develop a format for the reporting of this information; and

(5) notwithstanding anything to the contrary, all deadlines suspended herein will be reinstated automatically on November 1, 2003.

BY THE COURT:



J.