

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

IN RE: DIET DRUGS
(PHENTERMINE, FENFLURAMINE,
DEXFENFLURAMINE) PRODUCTS
LIABILITY LITIGATION

MDL DOCKET NO. 1203

FILED

DEC 19 2003

SHEILA BROWN, et al.

MICHAEL E. KUNZ, Clerk

v.

By _____ Dep. Clerk

AMERICAN HOME PRODUCTS
CORPORATION

CIVIL ACTION NO. 99-20593

MEMORANDUM AND PRETRIAL ORDER NO. 3185

Bartle, J.

December 19, 2003

Before the court is the motion by the AHP Settlement Trust ("Trust") for authorization to proceed in accordance with its proposed Operations Plan, which among other things calls for suspension of certain deadlines and time periods and for approval of new procedures for processing claims. Also before the court and related to the Trust's motion is the motion of certain class members to enjoin the Trust's reprioritization of audits of claims for so-called Matrix benefits.

The Trust has developed an Operations Plan, dated August 4, 2003, in consultation with the Special Master, Class Counsel, and Wyeth, which presents a report of the Trust's recent activities, the current state of its operational abilities, and its twelve-month plan to accelerate the process for providing benefits to class members. The Operations Plan proposes several "Court Approved Procedures" ("CAPs"), for which the Trust seeks

court approval. The first, known as the "Three Strikes CAP," has been withdrawn and is no longer in issue. The second proposed CAP is for a Pro Se Completeness Assistance Program ("Pro Se CAP"), staffed by Class Counsel. The third is for implementation of the Medical Services component of the Cash and Medical Services Benefit Program ("Medical Services CAP"). The Operations Plan would also suspend certain deadlines and time periods and adopt others, and revise reporting requirements so that the court, the parties, and the class members may assess the Trust's progress in accordance with its fiduciary duties under the Nationwide Class Action Settlement Agreement ("Settlement Agreement"). Additionally, the Operations Plan provides for the prioritized auditing of Matrix claims with the higher severity levels of III, IV, and V.

We first turn to the proposed Pro Se CAP, which will enable the Class Counsel's Claims Office ("CCCO") to assist pro se claimants in completing and submitting their claims. Certain class members have objected to this program, arguing it unduly prejudices represented claimants by giving preferential treatment to those who are unrepresented. According to the objectors, this provision changes the terms of the settlement to the detriment of the class after the initial opt-out date and fairness hearing. In their view, class members should therefore receive a new notice and a revived right to opt out of the settlement. The objectors also complain that the CAP seeks to limit the liability of Class Counsel vis-a-vis those pro se claimants.

In CAP Three, approved on November 15, 2001, we

permitted the Trust to refer certain pro se claimants to the CCCO for assistance in completing their claims. The Pro Se CAP would simply extend CAP Three by authorizing the Trust to refer all pro se claims to the CCCO for assistance. Clearly most pro se claimants are at a disadvantage in understanding the detailed claims submission requirements and in correcting the myriad of deficiencies which experience demonstrates have occurred. Help from Class Counsel will save the Trust countless hours in dealing with incomplete and faulty claim submissions. It will put pro se claimants on a level playing field with those claimants who are represented. When the completed claim submissions are returned to the Trust from the CCCO, the claims would be reinserted in line for determination and audit, in just the same way as are claims submitted by represented claimants.

Furthermore, CAP Three, as approved, already limits the liability of Class Counsel with regard to the pro se claimants they assist in completing their claim submissions. It states that an attorney-client relationship shall not be deemed to have been formed from the assistance provided. The proposed Pro Se CAP would simply further define the limitation of Class Counsels' liability for the pro se claimants they assist beyond the limitation approved in CAP Three so that it will mirror the limitation of the Trustees' liability as set forth in the Settlement Trust Agreement. The Settlement Trust Agreement, § 3.08, reads:

No Trustee shall be liable for monetary damages or otherwise with respect to his or her actions or omissions regarding the Trust except for the

recklessness, willful misconduct or fraud of the Trustee. No Trustee shall be liable for monetary damages or otherwise for any act or omission of any agent or employee of the Trust unless that Trustee acted recklessly, with willful misconduct or fraudulently in the selection or retention of such agent or employee. No successor Trustee shall be liable personally for any act or omission of his or her predecessor Trustee.

The proposed Pro Se CAP does not change any requirements for claim completeness, does not reprioritize pro se claims, and does not enhance benefits to any claimants over others. The terms of the settlement remain the same. No unfair prejudice will result to represented individuals from approval of this proposed CAP. For these reasons, we will approve the proposed Pro Se Claim Completeness Assistance Program CAP.

As to the proposed Medical Services CAP, there are no objections. The Medical Services benefit under the Settlement Agreement provides that eligible class members may be entitled to receive certain medical procedures, such as comprehensive physical examinations, chest x-rays, and electrocardiograms, as determined by the Trustees. See Settlement Agreement, § IV.A.4.b. Claimants tend to misunderstand the benefit. It is rarely requested and covers only about 2,000 claimants. In its place, the Trust will reimburse qualified class members who receive covered medical services benefits, rather than establishing and maintaining a network of physicians to provide, supervise, and prescribe these services. We will approve the proposed Medical Services CAP.

The Operations Plan further contemplates the suspension of certain deadlines and time periods and the adoption of others.

As we most recently discussed in Pretrial Order ("PTO") No. 2881, we have the authority to grant the relief requested for "good cause shown" under § VI.C.5 of the Settlement Agreement, which reads "[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." See also PTO No. 2663. While the Trust has been meeting its goals of processing 48,000 non-Matrix and 6,400 Matrix claim submissions for completeness each month since February, 2003, the backlog of claims pending before the Trust will remain for some time. The court is certainly troubled by the delays in making payments to class members who are entitled to them. Nonetheless, as we noted in PTO Nos. 2663 and 2881, this backlog is due in large part to the unanticipated deluge of claims submitted to the Trust just before the two most recent filing deadlines, a large number of which were deficient in some regard. These deficiencies in themselves have caused significant delay. In addition, the backlog has been exacerbated to some extent by the 100 percent audit requirement imposed by the court to prevent the payment of bogus claims. See PTO No. 2662. It is undisputed that the current deadlines cannot be met, and no one has suggested a viable option other than to suspend the deadlines.

The Trust's request is not for an indefinite postponement. Once the Trust's inventory and output are equalized, the suspension will no longer be needed. Claims submissions are not expected to spike again in the near future,

as there are no impending filing deadlines, and the Trust anticipates it will reach the goal of equalization in the first part of 2004. As noted above, the Settlement Agreement allows for a suspension of deadlines when the court determines there has been good cause shown. We find that there has been good cause shown by the Trust, and we will grant its motion to suspend the deadlines until February 29, 2004.

The proposed Operations Plan also calls for revised reporting requirements. These procedures facilitate increased information sharing with the class members, the parties, and the court and are aimed at allowing these entities to measure better the Trust's progress in relation to its Operations Plan goals. The new reporting plan would replace the reporting outlined in PTO No. 2881 but would not replace the reports that are filed annually and quarterly pursuant to the Settlement Agreement. No arguments against these revised reporting requirements have been raised, and we see no reason not to approve them.

As a final matter, we must address the challenges by certain class members to the Trust's prioritization of Matrix claims. The Operations Plan reflects the Trust's decision to advance the auditing of claims for benefits under Matrix Levels III, IV, and V. See Operations Plan, § 8.6. These Matrix Levels provide the largest payments and are reserved for those who suffer the most severe injuries from ingesting Wyeth's diet drugs. See Settlement Agreement, § IV.B. These are persons who have incurred significantly greater injury from Wyeth's diet drugs than those at Levels I and II. The Trust has estimated

that these Level III, IV, and V claims make up less than three percent of Matrix claims in the audit queue.

Some class members argue that the only proper way to proceed is on a first-in-first-out basis, and that putting those with more severe injuries first impermissibly places the interests of some class members ahead of others. They are worried that the Trust will run out of money and that meritorious claimants at the end of the line may never get paid.

The Settlement Agreement is silent on the issue of priority among Matrix claimants in the audit queue. The Settlement Agreement does prescribe time frames for certain activities such as reviewing claims for completeness. The objectors assert that these processing deadlines carry over into the audit process, but they can point to no provision in the Settlement Agreement to that effect. As we have already stated, claims are submitted with various deficiencies which require remediation before the claims can be processed and sent to audit. Although the Trust has been augmenting its pool of auditors, it is still a limited group because the auditors must be board-certified cardiologists who have no conflict of interest and who are willing to add this responsibility to their busy schedules. Thus, whatever system is in place, it is the unavoidable reality that some choices will have to be made in sending claims to the auditors. Levels III, IV, and V are the most severe claims and are the least susceptible to fraud or misrepresentation.¹ The

¹ Settlement Agreement § IV.B.2.c defines each Matrix Level. Levels I and II are reached if the claimant has valvular

Settlement Agreement does not regulate the priority of claims for audit, and the Settlement Trust Agreement gives the Trust authority "to adopt and amend rules and procedures ... as the Board of Trustees may determine is necessary or desirable for the governance or administration of the Trust." PTO No. 1419, Settlement Trust Agreement, § 6.02. We find neither a breach of the Settlement Agreement nor any basic unfairness or inequity if the Trust gives priority to the relatively small number of the most severely injured claimants, who will receive a larger payment than those less severely injured. Because the Settlement Agreement does not regulate the priority of claims for audit, the Trust has considerable leeway in developing a program that is not unfair or inequitable under the totality of the circumstances. It is not the role of the court to micro-manage the operation of the Trust. We will deny the movants' motion to enjoin the Trust Operations Plan prioritization program.

Since the submission of the Operations Plan, the Trust has added what it describes as a second level of priority to the prioritization program. Certain class members have also moved to enjoin the prioritization of these additional groups. The second level prioritizes claims in the audit queue after claims under Levels III, IV, and V, and includes claims for benefits under Level I, all claims filed by pro se claimants, Level II claims

heart disease ("VHD") with or without complicating factors. Level III requires heart valve surgery or conditions of equal severity. Levels IV and V require complications from, or more serious conditions than, heart valve surgery. Settlement Agreement § IV.B.2.c(1)-(5).

substantiated by physicians who have attested to twenty or fewer Matrix claims, and Level II claims for which the Pink and Green forms were filed before February 15, 2002. These factors assist the Trust in determining which claims go to audit after claims for Level III, IV, or V benefits. Level II claims that do not fall under the second prioritization level are not prevented from going to audit, particularly with the Trust's increased auditing capacity as it hires new auditors. To the contrary, the Trust audited its entire backlog of claims qualifying for audit under the second-level prioritization within a matter of weeks after adopting the policy, a fact which renders the argument against prioritization partially moot. Moreover, the Trust clearly has discretion to give special scrutiny to physicians submitting certifications for numerous claimants. This is not an unreasonable procedure to protect against improper payments. See PTO Nos. 2640 and 2662. As noted above, the Trust has considerable leeway in this regard. Accordingly, we will deny the motion to enjoin the prioritization program.

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

PRETRIAL ORDER NO. 3185

AND NOW, on this 19th day of December, 2003, for the reasons stated in the accompanying memorandum, IT IS HEREBY ORDERED that:

(1) By separate Orders, the court approves CAP No. **6** and CAP No. **7** as requested by the Trust.

(2) Except as otherwise provided in Paragraph 3, the following deadlines and time periods under the Nationwide Class Action Settlement Agreement ("Settlement Agreement"), as amended, with the American Home Products Corporation (now known as Wyeth) for processing claims for benefits payable from Fund A and Fund B as set forth in the Settlement Agreement shall continue to be suspended until February 29, 2004, or such further time as the court may order:

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

(3) The provisions of Paragraph 2(a) above do not relieve the Trust of its obligation to provide Wyeth with access to completed Matrix claims pursuant to § VI.F.1 of the Settlement Agreement within five (5) days of determining that a claim for Matrix Level benefits is complete within the meaning of §§ VI.C.2 and VI.C.4 of the Settlement Agreement and to make tentative determinations of such claims within the time periods otherwise applicable under the Settlement Agreement upon determination that a Claim for Matrix Level Benefits is complete. Nothing in this Paragraph or Order shall be construed to relieve the Trust of its obligations to meet the deadlines set forth in §§ VI.C.3.a.1 and VI.C.4.e-n of the Settlement Agreement.

(4) This Order supercedes Pretrial Order No. 2663 and Pretrial Order No. 2881, which shall have no further force or effect. This Order shall have no effect on the Trust's obligation to provide specific quarterly and annual reports called for in the Settlement Agreement.

(5) On the last day of each month and until further order of this Court, the Trust shall file with the Court a report on the operations of the Trust for the prior month in the format set forth in the Operations Plan.

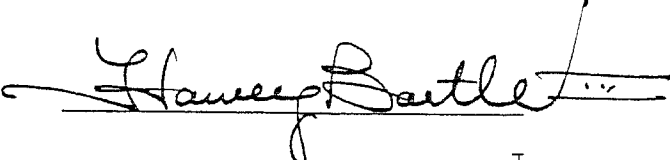
(6) The Trust shall file with the Court, on the forty-fifth (45th) day following the close of every quarter, until further order of this Court, a Statement of Changes in Net Assets Available for Claims in the format set forth in the Operations Plan.

(7) The reports and other filings required by this Order shall be filed with the Clerk of the court and served on the parties. Posting on the Trust's website, www.settlementdietdrugs.com, promptly after filing in a format that permits downloading and printing shall be sufficient as service on any Class Member, except in cases where a Class Member informs counsel for the Trust that the Class Member requires service of a printed copy of such reports and filings.

(8) Capitalized terms used in this Court Approved Procedure shall have the same meaning as corresponding capitalized terms used in the Settlement Agreement.

(9) The motion of certain class members to enjoin the Trust's reprioritization of claimants is DENIED.

BY THE COURT:


J.

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

FILED

DEC 19 2003

By MICHAEL E. KUNZ, Clerk
Dep. Clerk

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

CIVIL ACTION No. 99-20593

COURT APPROVED PROCEDURE NO. 06 JB

(Reimbursement for Additional Medical Services)

AND NOW, this 19 day of December, 2003, upon representation of the AHP Settlement Trust (the "Trust") and with the concurrence of the Parties to the Nationwide Class Action Settlement Agreement with American Home Products Corporation, dated November 18, 1999, as amended (the "Settlement Agreement"), the Court makes the following findings and enters the following Order:

FINDINGS OF FACT

1. Sections IV.A.1.c, IV.A.2.c and IV.A.4.b of the Settlement Agreement requires the Trust to provide certain Additional Medical Services or Cash to qualified Class Members.

2. A small number of qualified Class Members have elected and are likely to continue to elect to receive Additional Medical Services rather than Cash as a benefit pursuant to these provisions of the Settlement Agreement. In cases where qualified Class Members so elect, the Settlement Agreement does not limit the time within which they must avail themselves of the services they may receive.

3. Because only a small number of Class Members are likely to receive Additional Medical Services, because they may receive them over a protracted period of time, and because these Class Members are spread over a wide geographic area, it would be a substantial administrative burden for the Trust to maintain a network of physicians to provide the benefits in question. The cost of doing so would be unduly large in light of the value of the benefits to be provided.

4. Wyeth and Class Counsel are not opposed to entry of the following Order on the basis of the Findings of Fact set forth herein.

ORDER

1. The Trust may provide the benefit of Additional Medical Services to qualified Class Members by: (a) reimbursing qualified Class Members for out of pocket expenses they incur in obtaining Additional Medical Services; or (b) paying reasonable amounts to health care providers who are not contractors of the Trust upon receipt of proof that those health care providers have rendered such Additional Medical Services and that payment for those Additional Medical Services is not collectible from third party payors. The Trust shall, in consultation with the Parties, establish procedures for doing so and shall inform qualified Class Members of those procedures.

2. Provision of the benefit of Additional Medical Services by the methods described above in paragraph 1 shall relieve the Trust of any obligation to provide the benefit of Additional Medical Services through health care providers who are employees or contractors of the Trust.

3. Capitalized terms used in this Court Approved Procedure shall have the same meaning as corresponding capitalized terms used in the Settlement Agreement.

BY THE COURT:



J.

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

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

MDL Docket No. 1203

SHEILA BROWN, SHARON GADDIE,
VIVIAN NAUGLE, QUINTIN LAYER, and
JOBY JACKSON-REID
Individually and all others similarly situated,

Civil Action No. 99-20593

Plaintiffs,

FILED

v.

DEC 19 2003

AMERICAN HOME PRODUCTS CORPORATION,

MICHAEL E. KUNZ, Clerk

By _____ Dep. Clerk

Defendant.

COURT APPROVED PROCEDURE NO. 7-IB

(Pro Se Claim Completeness Assistance Program)

AND NOW, on the date set forth in the accompanying Pretrial Order No. 3185, in accordance with the Nationwide Class Action Settlement Agreement (the "Settlement Agreement"), it is hereby ORDERED as follows:

1. *Definitions.* All capitalized terms not otherwise defined in this Procedure shall have the meanings given them in the Settlement Agreement.
2. *Scope of this Procedure.* This Procedure is an extension of Court Approved Procedure No. 3 authorizing the AHP Settlement Trust and Class Counsel to assist *pro se* Claimants in completing their claims. This Procedure applies to unpaid Claims for Matrix Compensation Benefits and any related unpaid Claims for Cash or Additional Medical Services benefits filed by Class Members who are not represented by counsel, where Part II of the GREEN Form is signed by a physician and asserts at least one of the following medical conditions: moderate or severe mitral regurgitation, mild mitral regurgitation with surgery, moderate or severe aortic regurgitation, mild aortic regurgitation with surgery, bacterial

endocarditis after diet drug use with FDA+ levels of regurgitation, or Endocardial Fibrosis. Class Counsel, Wyeth and the Trust may agree to alter the Scope of this Procedure to include additional Class Members and/or medical conditions.

3. *Initiation of the Process.* The Trust shall transfer to Class Counsel copies of Claim files governed by this Procedure and shall notify any affected Class Member of this transfer. The notification shall provide the Class Member with information regarding this process and information concerning how to contact Class Counsel regarding their Claim. The Trust will furnish Class Counsel duplicate copies of the Diet Drug Recipient's PINK Form, BLUE Form, GREEN Form, any other Claim Form submitted in support of the Claim, all Medical Information concerning such Claim (as defined in ASA § VI.C.4.a, excluding a copy of the Echocardiogram tapes and disks), and the Claimant Identification Number assigned to the Claim by the Trust pursuant to ASA § VI.C.3.a (1). As of the date the Trust transfers the Claim to Class Counsel, all applicable Settlement Agreement deadlines and claims processing steps required of the Trust shall be suspended until the Claim is returned to the Trust. The Trust at its discretion will determine which eligible Claim files shall be transferred to Class Counsel under this Procedure.

4. *Treatment of Echocardiogram Tapes.* The Trust shall notify Class Counsel as to the existence of an Echocardiogram tape or disk for the Claimants at issue, and shall verify to Class Counsel that the Echocardiogram tape or disk is the correct Echocardiogram tape or disk for the Claim by ensuring that the date on the tape or disk matches the date attested to in Question II.C.2 of the Green Form, when it transmits the file to Class Counsel as provided in Paragraph 3. If Class Counsel receives an Echocardiogram tape or disk directly from a Class Member, Class Counsel shall clearly label the tape with the Class Member's name and Claim number and shall keep a copy of the tape and shall forward the original tape to the Trust. If Class Counsel receives the Echocardiogram tape or disk directly from a Class Member, Class Counsel shall also confirm that the Echocardiogram tape or disk is the correct tape or disk for the Claim before returning the completed Claim to the Trust.

5. *Determination of the Completeness of Each Claim.* Class Counsel shall review each Claim to determine if it is sufficiently complete within the meaning of ASA § VI.C.2 and § VI.C.4 to permit the Trust to make Fund A benefit and Matrix determinations on the Claim. If not sufficiently complete, Class Counsel will use reasonably diligent efforts to contact the Class Member and ask for the missing information that will render the Claim sufficiently complete to make a Fund A benefit and Matrix determination. During the initial contact on the Claim, Class Counsel shall notify the Class Member that the Claim is in the Alternative Review Program and shall confirm the Class Member's desire to be included in the Program. If the Class Member does not wish to be included in the Program, Class Counsel shall return the file to the Trust and shall notify the Trust that the Claim should be processed by the Trust. For any Claim remaining in the Program, Class Counsel will create a database or paper form for retaining information gathered from and communications made with the Class Member and shall segregate any new material it receives in from a Class Member. Class Counsel will also maintain call logs on every Class Member contacted containing the date and time of the call, the identity of those involved in the call and a short description of the contents of the conversation. If after at least three documented attempts by Class Counsel to contact the Class Member, either in writing or by

telephonic contact with the Class Member, the Class Member is unable to provide the information necessary to complete the Claim, Class Counsel shall return the file to the Trust with a written statement that at least three opportunities were provided to complete the Claim in accordance with ASA §VI.C.3.b and that it will take no further action on the Claim. The Trust shall have no further obligation to process the Claim for completeness and shall issue a Tentative Determination letter denying the Claim as incomplete.

6. *Complete Claims.* If Class Counsel determines that a Claim is sufficiently complete within the meaning of ASA § VI.C.2 and § VI.C.4 to permit the Trust to make Fund A benefit and Matrix determinations on the Claim, Class Counsel will notify the Trust of the completed Claim, and the Trust will place the Claim in the Audit Queue for further processing in accordance with the Settlement Agreement and Rules for the Audit of Matrix Claims.

7. *Information Regarding Potential Subrogees.* If the subrogation block on the GREEN Form, Part III, Question 5 is checked "Yes," Class Counsel will confirm all information contained in this question and will forward this information to the Trust. If it is not checked, Class Counsel will contact the Class Member, determine the appropriate response, obtain the information contained in this question and will forward that information to the Trust. If it is checked "No," the Trust will address the subrogation issue in the tentative Matrix Benefits determination letter and in a legend on any check issued to the Class Member.

8. *Procedure for Return of Claim Files to Trust.* When Claim files are returned to the Trust for any reason, Class Counsel shall return to the Trust only information or documentation not originally provided to them by the Trust. Class Counsel will segregate this information from the information originally provided by the Trust and will forward to the Trust only newly acquired information obtained by Class Counsel. Class Counsel will retain the copies of the information that it received from the Trust and copies of any newly acquired information.

9. *Derivative Claims.* The Trust shall process in accordance with ASA § IV.B.2 all Derivative Claims associated with any Claim of a Diet Drug Recipient included in this process.

10. *Processing of Undisputed Benefits.* If the Trust determines that there exists a question or issue that may result in the need for further processing or inquiry into the validity or amount of a Derivative Claim or in the need to make legal determinations about a Derivative Claim, the pendency of that processing, inquiry or need for determination shall not delay the processing or payment of a Claim for Matrix Benefits or a claim for Fund A benefits that may be payable to a Diet Drug Recipient or his or her Representative Claimant.


11. *Procedure Not Applicable to Fund A Claims Processed Outside of Claims Assistance Program.* This Procedure does not impair in any manner Wyeth's right to designate Fund A Claims processed outside of this Claims Assistance Program for audit under ASA § VI.F, and all possible audit designations not used by Wyeth as to Fund A Claims in a batch of Fund A Claims and/or in a given quarter shall carry forward to subsequent batches of Fund A Claims and/or to subsequent quarters to be available to Wyeth for use as to Fund A Claims in such subsequent batches and/or quarters. The full requirements of the Settlement Agreement shall apply to all Fund A Claims designated by Wyeth for audit under ASA § VI.F.

12. *Duration of this Procedure.* This procedure shall apply to all Claims of unrepresented Class Members processed after the date of the approval of this Procedure by the Trial Court and shall remain in place until further Order of the Court. If this Procedure is terminated and Claims are returned to the Trust for processing, the Trust's deadlines for processing the returned Claims shall be suspended until further Order of the Court. The Trust will evaluate the condition of the Claims that have been returned and report to Class Counsel and the Court its recommendations for processing the returned Claims.

13. *Liability of the Trust.* Neither the Trust nor the Trustees shall have any liability for any act or omission of Class Counsel pursuant to this Procedure, nor shall the Trust nor the Trustees have any duty to supervise and/or monitor the activities of Class Counsel hereunder.

14. *Relationship to and Liability of Class Counsel Claims Office Personnel Regarding Claims Transferred By Trust of Pro Se Class Members.* The Assistance that Class Counsel provides to *pro se* Class Members under this procedure shall not be construed to create a private attorney-client relationship between Class Counsel and the *pro se* Class Members so assisted. Further, Class Counsel Claims Office personnel shall not be liable for monetary damages or otherwise with respect to his or her actions or omissions in assisting *pro se* Class Members in completing their claims, except for their individual recklessness, willful misconduct or fraud. Class Counsel shall not be liable for monetary damages or otherwise for any act or omission of Class Counsel Claim Office personnel unless Class Counsel acted recklessly, with willful misconduct or fraudulently in the selection or retention of such Class Counsel Claim Office personnel. Class Counsel and Class Counsel Claim Office personnel shall have no liability for any act or omission of the Trust with respect to claims that are subject to this Procedure, nor shall Class Counsel or Class Counsel Claim Office personnel have any duty to supervise and/or monitor the activities of the Trust hereunder.

BY THE COURT:


Harvey F. Battle, III. J.
December 19, 2003