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

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| IN RE: DIET DRUGS (PHENTERMINE/ FENFLURAMINE/DEXFENFLURAMINE) PRODUCTS LIABILITY LITIGATION | : | MDL DOCKET NO. 2:15MD1203 |
| SHEILA BROWN, ET AL. | : | CIVIL ACTION NO. |
| v. | : | 99-20593 |
| AMERICAN HOME PRODUCTS CORPORATION | : | |
| Appellant:<br>Arbitration No.:<br>Claim No.: | : | REPORT AND AWARD OF ARBITRATOR |

## FINDINGS OF FACT

1. On , the AHP Settlement Trust ("Trust") issued a Final Determination denying the claim of for Matrix Compensation Benefits.

2. On , filed an appeal from the denial of benefits by the Trust, requesting that the United States District Court ("Court") refer this matter to Arbitration.

3. On , the claim of was referred by the Court to Arbitration pursuant to VI.C.4(h) & (i) or VI.D.1.(f) & (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.

4. On at 10:00 a.m., an Arbitration Hearing was held concerning the claim of

5. The Trust determined that was not entitled to any Matrix Compensation Benefits on the basis that failed to supply the documentation required to establish Diet Drug ingestion.

6. In statement of the case, requests benefits based on alleged medical symptoms and conditions purportedly caused by the use of the Diet Drugs. In Green Form, indicates that believes is entitled to Matrix A-1 Benefits with severity level III. See Green Form, Part I, page 4, questions 5 and 6.

## ANALYSIS

### FUND A ISSUES NOT COVERED BY ARBITRATION PROCESS

1. The Settlement Agreement provides for two funds, Funds A and B, which were established to provide benefits to class members. See Settlement Agreement, Section III.A.1; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62. Fund A provides funding only for non-Matrix specified benefits and expenses, e.g., drug refunds and echocardiogram reimbursement. See Settlement Agreement, Section IV.A; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62. Fund B provides funding for Matrix Compensation Benefits. See Settlement Agreement, Section IV.B; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62.

2. The arbitration process only covers determinations made regarding Fund B and the eligibility of claimants to receive Matrix Compensation Benefits and/or the amount of Matrix Compensation Benefits they are entitled to receive.

### MATRIX ELIGIBILITY AND QUALIFICATION

1. Under the Settlement Agreement, Matrix Compensation Benefits are paid according to two matrices. See Settlement Agreement § IV.B.2.d. The A Matrix, or the full

compensation matrix, applies to claimants who: (1) have been diagnosed timely as FDA Positive; (2) ingested the diet drugs for sixty-one (61) or more days; and (3) have no conditions requiring a reduced payment under the terms of the Settlement Agreement. See Id. § IV.B.2.d.(1). The B Matrix, or reduced compensation matrix, applies to claimants who: (1) have been diagnosed timely with Mild Mitral Regurgitation (regardless of the duration of ingestion of the diet drugs); or (2) were diagnosed timely as FDA Positive and ingested the diet drugs for sixty (60) days or less; or (3) were diagnosed timely as FDA Positive, ingested the diet drugs for sixty-one (61) or more days, and have certain conditions, identified in the Settlement Agreement, that may have caused or contributed to the claimant's heart problems. See id. § IV.B.2.d.(2).

2. In determining the length of diet drug usage, Section VI.C.2.d of the Settlement Agreement requires the claimant to submit documentary proof concerning the period of time the diet drugs were ingested. Specifically, the claimant must submit pharmacy records documenting the claimant's name, prescribing physician information, diet drug name, date(s) prescribed, dosage and duration the drug was prescribed or dispensed. If a physician or weight loss clinic prescribed the diet drugs directly, or pharmacy records are unobtainable, a claimant must identify the prescribing physician, including the prescribing physician's name, address and telephone number, and submit a copy of the medical records prescribing or dispensing the drugs. If the pharmacy records and medical records are unobtainable, a claimant must submit an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See id. § VI.C.2.d.(3).

3. submitted a Green Form dated

4. In the Green Form, reference is made to an echocardiogram which was performed on . (See Green Form, Part II, page 8, questions C.1 and C.2).

5. The Green Form submitted by reports mild aortic valve regurgitation and no mitral valve regurgitation. (See Green Form, Part II, page 8, question C.3).

6. The answers to the questions in Part II of Green Form were completed by physician, ., a Board-Certified Cardiothoracic Surgeon. (See Green Form, Part II, page 7, Section A).

7. submitted a Blue Form dated .

8. According to questions 7 and 8 of Blue Form, answered that took Redux for 61 days or more.

9. failed to submit any pharmacy records documenting the claimant's name, prescribing physician information, diet drug name, date(s) prescribed, dosage and duration the drug was prescribed or dispensed; failed to submit a copy of any medical records prescribing or dispensing the drugs; and failed to submit any affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See Settlement Agreement § VI.C.2.d.(3).

10. did submit a document purporting to be a pharmacy record from Eckerd Drugs which contends documents the claimant's name, the prescribing physician information, the diet drug name, the date(s) prescribed, the dosages and the duration the drug was prescribed or dispensed. However, the Trust determined that the

document is unreadable. Upon review of the document, the Trust was unable to discern the prescribing physician information, the diet drug name, the date(s) prescribed, the dosages and the duration the drug was prescribed or dispensed.

11. The Trust attempted to read the document through magnification, but was unable to do so. The Trust then notified of the deficiency in the documentation submitted to prove diet drugs ingested. Notification was provided on four separate occasions: on , on , on , and on , in the form of a Pre-audit Determination Letter. failed to cure the deficiency following these notifications.

12. In statement of the case and during the Arbitration Hearing, conceded that the only available documentary proof of diet drug ingestion is the purported pharmacy record which submitted and which the Trust found to be illegible.

13. As a result, the Trust determined that failed to supply the required documentation needed to establish that had ingested diet drugs. I conclude that the Trust's analysis and determination were not clearly erroneous.

## CONCLUSIONS

1. The Claimant failed to provide documentary proof of diet drug ingestion to the Trust as required by the Settlement Agreement.

2. Based on the above, the findings of the Trust are not clearly erroneous as set forth in Rule 5 of the Rules Governing the Arbitration Process.

3. The final determination of the Trust is affirmed.