

arbitrator's decision to the court whose decision is "final and binding." See Settlement Agreement § VI.C.4.h.-1.

The Settlement Agreement provides for various levels of matrix benefits, depending on the age of the class member and seriousness of the injury experienced from ingesting Wyeth's diet drugs Pondimin and/or Redux. Ms. Kuerth claims that the arbitrator erred in denying her Matrix Level II benefits, which she seeks under § IV.B.2.c.(2)(a)(i) of the Settlement Agreement. It reads:

(2) **Matrix Level II** is left sided valvular heart disease with complicating factors, and is defined as:

(a) Moderate AR (25% - 49% JH/LVOTH) or Severe AR (> 49% JH/LVOTH) with one or more of the following:

(i) Pulmonary hypertension secondary to severe aortic regurgitation with a peak systolic pulmonary artery pressure > 40 mm Hg measured by cardiac catheterization or with a peak systolic pulmonary artery pressure > 45 mm Hg measured by Doppler Echocardiography, at rest, utilizing standard procedures assuming a right atrial pressure of 10 mm Hg.

The controversy centers on the interpretation of the Settlement Agreement and its application to the facts, which are not in dispute. Our review is de novo.

Ms. Kuerth began to take Pondimin in January, 1996 and continued to use it for more than 61 days. In October, 1997 she was diagnosed with moderate aortic regurgitation, defined as 25%

- 49% JH/LVOTH, and pulmonary hypertension. Prior to that time, Ms. Kuerth did not suffer from valvular hypertension or pulmonary hypertension.

Ms. Kuerth asserts that subsection (i) cannot be taken literally because a person such as she with only moderate aortic regurgitation could never meet the criteria of that subsection which requires severe aortic regurgitation. She requests that we interpret the words "secondary to severe aortic regurgitation" in subsection (i) to read "secondary to valvular heart disease." While Ms. Kuerth is correct that a person suffering from moderate aortic regurgitation can never receive benefits pursuant to subsection (2)(a)(i), there are other bases for Matrix Level II benefits under subsection 2(a). In contrast to subsection 2(a)(i), persons with moderate aortic regurgitation are eligible for benefits under subsection (2)(a)(ii) and (iii) if the other criteria set forth are met.

The language in subsection (2)(a)(i) is clear and unambiguous. It is a basic principle of interpretation "that a contract should be read so as to give meaning to all of its terms when read as an entirety." See Bohler-Uddeholm Am., Inc. v. Ellwood Group, Inc., 247 F.3d 79, 97 (3d Cir. 2001) (citation omitted). We cannot and will not modify the bargain the parties struck.

Ms. Kuerth and her husband as a derivative claimant are not now entitled to Matrix Level II payments under § IV.B.2.c.(2)(a)(i) because she does not have pulmonary

hypertension secondary to severe aortic regurgitation. We will deny their appeal and affirm the decision of the arbitrator.

