

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**

DEC 19 2003

v.

AMERICAN HOME PRODUCTS CORPORATION,

MICHAEL E. KUNZ, Clerk

By \_\_\_\_\_ Dep. Clerk

Defendant.

COURT APPROVED PROCEDURE NO. 7-113

(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.

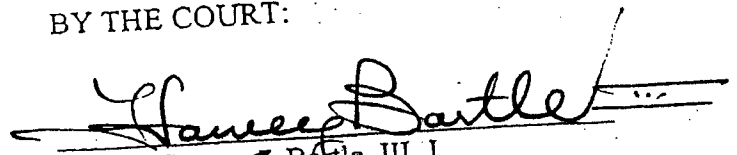
11. *Procedure Not Applicable to Fund A Claims Processed Outside of Claims Assistance Program.* This Procedure does not impair in any manner Wyeth's right to designate Fund A Claims processed outside of this Claims Assistance Program for audit under ASA § VI.F, and all possible audit designations not 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