

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

This document relates to:)

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

Civil Action No. 99-20593

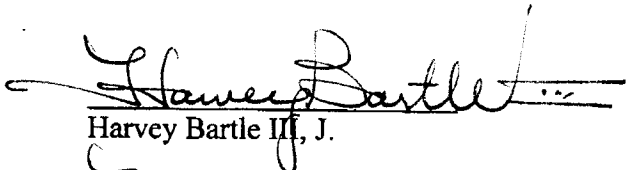
PRETRIAL ORDER NO. 6085

(PROCESSING OF CLAIMS AS TO CERTAIN MEDICARE ELIGIBLE CLAIMANTS)

Upon consideration of the Joint Motion of Wyeth and Class Counsel for approval of an interim Court Approved Procedure relating to Processing of Claims of Certain Medicare Eligible Claimants, and any responses thereto it is hereby:

ORDERED, ADJUDGED AND DECREED that Court Approved Procedure No. 10 is hereby adopted in the form attached to this Order.

BY THE COURT:



Harvey Bartle III, J.
March 29, 2006

**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

THIS DOCUMENT RELATES TO: SHEILA BROWN, ET
AL. V. AMERICAN HOME PRODUCTS CORPORATION

CIVIL ACTION
No. 99-20593

COURT APPROVED PROCEDURE No. 10
(PROCESSING OF CLAIMS AS TO CERTAIN MEDICARE ELIGIBLE CLAIMANTS)

1. *Claims Covered by this Procedure*

The procedures set forth in this Court Approved Procedure (“CAP”) shall apply solely to claims for Matrix Level III, IV or V benefits in which:

- (a) Either (i) the Class Member was at least 65 years old at the time of any medical service or procedure relating to the condition that forms the basis for the Class Member's Matrix Level III, IV or V claims, or (ii) the Trust has actual notice that Medicare may have paid some health care expenses to or for the Class Member; and
- (b) The Trust has not issued a Tentative Determination as of the date on which this Procedure is approved by the Court.

Each such claim shall be referred to herein as a “Medicare Covered Claim.”

2. *Certification of No Medicare Payment*

The Trust shall provide any Class Member with a Medicare Covered Claim the opportunity to execute and submit to the Trust a certification, under penalty of perjury and in the form attached hereto as Exhibit A (the “Certification”), that Medicare has never paid for any

medical services furnished to the Class Member relating to the medical condition that serves as the basis for the Class Member's Matrix Level III, IV or V claim or that the Class Member has previously fully reimbursed Medicare for all such expenses. A Class Member who timely submits such an executed Certification to the Trust shall not be subject to the extended time for the Trust to issue a Final Determination on the Claim as provided in Section 4 of this CAP, and the Trust shall make a final determination with respect to such claim for the full amount of the Matrix benefits to which the Class Member is entitled within the non-extended period of time provided by the Settlement Agreement. The Trust shall provide the form of that certificate to every Class Member at the time the Trust provides the Class Member with the form entitled "AHP Settlement Trust Subrogation Form: Subrogation Lien or Claim Information." To be timely, the Certification must be delivered to the Trust within 30 days after the date the Trust mails the form of certification to the Class Member.

3. *Notice to Medicare and the Class Member*

(a) The Trust shall promptly provide a notice to Medicare in the form of Exhibit B hereto (the "Initial Notice") as to each Medicare Covered Claim at such time as Wyeth may direct. The Trust shall send a copy of such notice (the "Initial Notice") to the Class Member and to the Class Member's attorney, if represented, along with letters in substantially the form of Exhibit C. The Trust shall send any further notices to Medicare which Wyeth directs or which the Trust deems appropriate to expedite Medicare's review and response to the Trust's Initial Notice. The Trust shall not send such notices in connection with any Medicare Covered Claim that is subject to a Certification in conformity with paragraph 2 of this CAP.

(b) Each Class Member with a Medicare Covered Claim shall provide to the Trust a copy of each item of correspondence or other communication between the Class Member and/or his or her attorney, on the one hand, and Medicare or its representatives, on the other hand, relating to Medicare's having paid any portion of the medical expenses relating to the condition that forms the basis for the Class Member's Medicare Covered Claim. Copies of all such items shall be furnished to the Trust promptly after mailing of the Initial Notice pursuant to Section 3(a) hereof. Thereafter, copies of each such item shall be delivered to the Trust promptly after its being sent or received by the Class Member or his or her attorney.

4. *Extension of Time to Issue Final Determination on Medicare Covered Claims.*

The period of notice which the Trust is required to afford subrogees to contest a tentative determination and to provide additional information concerning the existence and amount of any subrogation or reimbursement interest in the proceeds of a prospective Matrix payment with respect to any Medicare Covered Claim as provided in Section VI.C.4.f of the Settlement Agreement is extended by ninety (90) days such that Medicare will have a period of one hundred twenty (120) days from the date of the Trust's Tentative Determination to provide additional information concerning the existence and amount of any subrogation or reimbursement interest that it may claim in the proceeds of a Prospective Matrix payment with respect to any Medicare Covered Claim. If, within such 120 day period, Medicare has provide the Trust with written notification that it has expended funds to pay for medical services relating to the medical condition which serves as a basis for the anticipated Matrix payment to a Medicare Covered Claimant, but has not fully documented the basis for its claim, the Trust shall further solicit such

documentation from Medicare during the forty-five (45) days after the expiration of the 120-day period, provided that the last thirty (30) of those forty-five days shall also constitute the first thirty (30) days of the 60-day period provided by Section VI.C.4.g of the Settlement Agreement for the Trust to make a Final Determination of the amount, allocation and distribution of Matrix Benefits under that Section.

5. *Evidence of Satisfaction*

If any Class Member obtains from Medicare in connection with any Medicare Covered Claim a written release, written evidence of an accord and satisfaction, or the like, the Class Member shall use his or her best efforts to assure that the Trust and Wyeth are also named as beneficiaries of any such release, accord and satisfaction or the like. If the Trust shall obtain from Medicare, as a condition for payment of a Medicare Covered Claim, a written release, written evidence of an accord and satisfaction, or the like, then the Trust shall use its best efforts to assure that Wyeth and the Class Member are also named as beneficiaries of any such release, accord and satisfaction or the like. Copies of any documents received from Medicare that reflect the resolution of Medicare's claim for reimbursement with respect to a Medicare Covered Claim shall promptly be exchanged among Wyeth, the Trust and the affected Class Member.

6. *Retention of Expert Consultant*

The Trust shall retain an individual with expertise in Medicare payment and reimbursement policies and procedures to advise and assist the Trust and Class Members in expediting Medicare's determinations and resolutions of Medicare's claims for reimbursement

from Matrix benefits due to Class Members. The Trust's selection of that expert shall be subject to the approval of both Class Counsel and Wyeth.

7. *Retained Jurisdiction*

This Court shall retain continuing and exclusive jurisdiction over the enforcement of this CAP and the representations and obligations of all parties hereunder.

8. *Trust Reporting of Medicare Experience to the Parties*

Within 15 days after the end of each calendar month ending after the establishment of this procedure, the Trust shall provide a report to Wyeth and Class Counsel identifying all Medicare Covered Claims for which notices were sent to Medicare during that month, the responses or lack of responses received that month from Medicare with respect to all notices previously sent to Medicare and the disposition of all Medicare Covered Claims during that month. The Trust shall provide such additional details in that connection as either Wyeth or Class Counsel shall reasonably request.

9. *Reassessment of Procedures*

This CAP has been entered on an interim basis. Despite this, and without prejudice to the assertion of any position previously expressed by Class Counsel on Medicare-related issues in opposition to any future request by Wyeth or the Trust to vacate or modify this CAP, Class Counsel have waived their right to seek to vacate or modify this CAP without the consent of Wyeth and shall not do so. Nothing in this CAP prevents the Trust and/or Wyeth from seeking modifications of this CAP, including a further extension of the time for Medicare to submit or document a claim with respect to Medicare Covered Claims, based on the Trust's experience

with Medicare before or after this CAP is entered, and nothing in this CAP prevents Class Counsel and/or any Class Member from opposing such modifications, if requested.

By THE COURT :



C.S.J.

EXHIBIT A

CERTIFICATION OF EXEMPTION FROM MEDICARE PROCEDURE

Class Members who may be Medicare beneficiaries and who qualify for Matrix benefits are subject to a procedure to address potential claims by Medicare to reimburse it for medical expenses paid for the Class Members. Under that procedure, the Trust will have an extension of time to issue a Final Determination on claims by such Class Members. The purpose of this Form is to provide Class Members entitled to receive Matrix Compensation Benefits, and who were 65 years or older at the time of any medical service or procedure relating to the claimant's valvular heart disease, the means to claim an exemption from such an extension of time for the Trust to issue a Final Determination. If the Class Member can truthfully certify, by completing and signing this Form and timely returning it to the AHP Settlement Trust, either (1) that Medicare has not paid for any of the Class Member's relevant medical services or procedures; or (2) that any such payments by Medicare have already been reimbursed by the Class Member, no extension of time under the Medicare procedure for the Trust to issue a Final Determination will be granted.

INSTRUCTIONS

1. The Class Member and the Class Member's attorney, if the Class Member is represented, must read this Form carefully. Print or type all information.
2. Complete Section A of this Form (Identifying Information) for the Class Member and the Class Member's attorney, if represented.
3. If, as stated in the certification below, Medicare has not paid for any of the Class Member's relevant medical services or procedures, the Class Member may complete Section B of this Form.
4. In order to be eligible for the exemption from the Medicare procedures, Class Members must return the completed Form, including the certification, to: AHP Settlement Trust, P.O. Box 7939, Philadelphia, PA 19101, no later than 30 days from the date of the transmittal letter accompanying this form.

A. IDENTIFYING INFORMATION

Name of Class Member	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-bottom: 1px solid black;"> </td> <td style="width: 5%; border-bottom: 1px solid black;"> </td> <td style="width: 45%; border-bottom: 1px solid black;"> </td> </tr> <tr> <td>First Name</td> <td align="center">MI</td> <td>Last Name</td> </tr> </table>						First Name	MI	Last Name						
First Name	MI	Last Name													
Address of Class Member	<table style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="3" style="border-bottom: 1px solid black;"> </td> </tr> <tr> <td colspan="3">Street Address</td> </tr> <tr> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> </tr> <tr> <td>City</td> <td align="center">State</td> <td align="right">Zip Code</td> </tr> </table>						Street Address						City	State	Zip Code
Street Address															
City	State	Zip Code													
Social Security Number		Claim Number													
Name of Attorney (if any)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-bottom: 1px solid black;"> </td> <td style="width: 5%; border-bottom: 1px solid black;"> </td> <td style="width: 45%; border-bottom: 1px solid black;"> </td> </tr> <tr> <td>First Name</td> <td align="center">MI</td> <td>Last Name</td> </tr> </table>						First Name	MI	Last Name						
First Name	MI	Last Name													
Name of Law Firm															
Address of Law Firm	<table style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="3" style="border-bottom: 1px solid black;"> </td> </tr> <tr> <td colspan="3">Street Address</td> </tr> <tr> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> </tr> <tr> <td>City</td> <td align="center">State</td> <td align="right">Zip Code</td> </tr> </table>						Street Address						City	State	Zip Code
Street Address															
City	State	Zip Code													
Attorney's Telephone Number		Attorney's Facsimile Number													
Area Code Phone Number		Area Code Phone Number													
Attorney's Email Address															
	Email														

CERTIFICATION OF EXEMPTION FROM MEDICARE PROCEDURE – Page 2

B. CLAIMANT CERTIFICATION AND AGREEMENT

By my signature below, I hereby certify under penalty of perjury that the following is true and correct:

1. One of the following statements, which I have marked with an "X", is true and correct:

No medical services and/or procedures relating to the heart valve condition(s) which serve as the basis of my Matrix claim were paid for, in whole or in part, by Medicare.

--OR--

Although Medicare has paid, in whole or in part, for medical services and/or procedures relating to the heart valve condition(s) which serve as the basis of my Matrix claim, I have reimbursed Medicare for the full extent of such payments.

2. I understand that the submission of this form to the AHP Settlement Trust (the "Trust") shall be equivalent to filing it with the United States District Court for the Eastern District of Pennsylvania.

3. I understand and acknowledge, by my signature below, that I (and each of my respective heirs, executors, successors and assigns (collectively "Obligors")) shall be obligated to reimburse the Trust and Wyeth for any and all claims, suits or demands asserted against either of the Trust or Wyeth by Medicare or by any private person on behalf of Medicare arising out of or relating to the payment of medical expenses or the provision of medical services by Medicare or the failure of Wyeth or the Trust to pay Medicare, including the cost of investigating and defending against such Medicare Claims, suits or demands, and including any settlement thereof. I further understand and acknowledge that the Obligors shall be obligated to cooperate as reasonably requested by the indemnitee in such investigation and defense. I acknowledge that the Medicare Secondary Payer Act may permit recovery of double the amount of such expenses paid by Medicare, and agree that the foregoing indemnity includes the amount of any such double recovery or any other penalty or interest imposed. I further acknowledge that the United States District Court for the Eastern District of Pennsylvania has retained continuing and exclusive jurisdiction to administer, supervise, and enforce the Settlement Agreement and this Certification.

4. I have had the opportunity to consult with my attorney identified above, or to retain an attorney to advise me, and make this certification voluntarily and with full knowledge of the consequences of my actions.

Signature: _____
Class Member

Date: ____/____/____
(month) (day) (year)

EXHIBIT B

[Date]

[Addressee]

Re: **Diet Drugs Litigation – Potential Subrogation Lien**

DDR Number:
DDR Name:
DDR Gender:
DDR DOB:
DDR SSN:
DDR Address:
Drug Use Date:
Attorney:
Firm:
Firm Address:

Dear Sir or Madam:

The AHP Settlement Trust (“Trust”) administers settlement benefits for the Nationwide Class Action Settlement Agreement (“Settlement Agreement”) with American Home Products Corporation arising out of the Diet Drugs Litigation. This matter involved claims that Diet Drugs caused valvular heart disease.

The above-referenced individual has filed a claim for “Matrix” benefits under the Settlement Agreement based on valve repair or replacement surgery or other serious valvular heart disease at Matrix Levels III, IV or V under the Settlement Agreement. A description of the medical conditions qualifying for those levels may be found at Settlement Agreement § IV.B.2.c.(3)-(5).¹ The claimant appears to be eligible for Medicare benefits and may have received such benefits related to those medical conditions. Because the claimant might have received benefits from Medicare relating to those medical conditions, the Trust will be granted an extension of time to issue a final determination of the “Matrix” benefits otherwise payable to this claimant to give Medicare the opportunity to submit a claim for reimbursement out of those “Matrix” benefits.

¹ The Settlement Agreement is available from Trust’s website, which is located at <http://www.settlementdietdrugs.com>.

[Addressee]

Date

Page 2

If Medicare wishes to seek such reimbursement, you must document Medicare's reimbursement claim as promptly as possible. Specifically, Medicare must:

- (1) Provide the Trust with written notification that you have expended funds to pay for medical services relating to the medical condition which serves as a basis for the Matrix payment;
- (2) Provide the Trust with a written itemized statement of the amounts you claim Medicare has paid for such medical services, including a statement of the date of the payment, the person who received payment, the amount of the payment and the reason for the payment (as to which a standardized payment code would suffice).

You should send such written notification and itemized statement, with the "DDR Number" and other identifying information set forth at the beginning of this letter, to the following address:

**AHP Settlement Trust
ATTENTION: SUBROGATION DEPARTMENT
P.O. Box 7939
Philadelphia, PA 19101**

If you have any questions regarding this notice, please call the Trust at 800-386-2070.

Sincerely,

AHP Settlement Trust

cc: Wyeth
[Claimant]
[Claimant's Attorney]

EXHIBIT C

AHP Settlement Trust

P.O. BOX 42805, Philadelphia, PA 19101 1-800-386-2070

XXXXXX XX, 2005

XXXXXXXXXXXXXXXXXXXX (Claimant Name)
c/o XXXXXXXX X. XXXXXXXXXXXXXXX (Attorney Name)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX (Firm Name)
XX (Firm Street & Suite)
XXXXXXXX, XX XXXXX

Re: Claimant: XXXXXXXX XXXXXXXX (Claimant Name)
Claim Number: XXXXXXXX (Claim Number)

Medicare law may affect what you receive from the Trust. As part of its processing of your claim, the Trust mailed the enclosed notice to Medicare, because if Medicare paid for any of your medical care for any condition asserted to be related to your use of the Diet Drugs, it may have a right under federal law (the Medicare Secondary Payer Act) and the Settlement Agreement to receive all or part of any benefit payment that the Trust would otherwise pay to you on your claim.

You may wish to work directly with Medicare to determine if it has a claim and if so to quantify how much it will be, if you have not already done so. We ask that you advise the Trust as soon as possible regarding the amount, if any claimed by Medicare. This will expedite the processing of your claim and is more likely to lead to a resolution of Medicare's claim. You can call the following number to request information regarding any claim that Medicare may intend to assert against any settlement benefits you might receive from the Trust:

1-800-MEDICARE (633-4227)

AHP Settlement Trust

P.O. BOX 42805, Philadelphia, PA 19101 1-800-386-2070

XXXXXX XX, 2005

XXXXXXXXXXXXXXXXXXXX (Claimant Name)
XXXXXXXXXXXXXXXXXXXX (Claimant Address)
XXXXXX, XX XXXXXXXXXXXX

Re: Claimant: XXXXXXX XXXXXXX (Claimant Name)
Claim Number: XXXXXXX (Claim Number)

Medicare law may affect what you receive from the Trust. As part of its processing of your claim, the Trust mailed the enclosed notice to Medicare, because if Medicare paid for any of your medical care for any condition asserted to be related to your use of the Diet Drugs, it may have a right under federal law (the Medicare Secondary Payer Act) and the Settlement Agreement to receive all or part of any benefit payment that the Trust would otherwise pay to you on your claim.

You may wish to work directly with Medicare to determine if it has a claim and if so to quantify how much it will be, if you have not already done so. We ask that you advise the Trust as soon as possible regarding the amount, if any claimed by Medicare. This will expedite the processing of your claim and is more likely to lead to a resolution of Medicare's claim. You can call the following number to request information regarding any claim that Medicare may intend to assert against any settlement benefits you might receive from the Trust:

1-800-MEDICARE (633-4227)

Please be advised that Fabrice Vincent, Esquire, of Lieff, Cabraser, Heimann & Bernstein, is available to assist you in helping to resolve Medicare's subrogation lien, if any, against your settlement benefit payment. Mr. Vincent's law firm is a member of the Plaintiff's Management Committee, and has been asked by the Lead Counsel of that Committee, which also is Lead Class Counsel, to assist you in resolving Medicare's potential subrogation liens.

Mr. Vincent is not your personal attorney; however, he is available to assist you in resolving this lien. You may contact him at Embarcadero Center West, 275 Battery Street, Suite 3000, San Francisco, CA 94111-3339, Tel. (415) 956-1000.