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10/10/24

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

NOV 23 1999

MICHAEL E. KUNZ, Clerk
By SL Dep. Clerk

THIS DOCUMENT RELATES TO ALL
ACTIONS

SHEILA BROWN, ET AL. V. AMERICAN
HOME PRODUCTS CORPORATION

CIVIL ACTION NO. 99-20593

PRETRIAL ORDER NO. 997

CONDITIONALLY CERTIFYING SETTLEMENT CLASS, PRELIMINARILY
APPROVING THE SETTLEMENT AGREEMENT, APPROVING THE FORMS OF
NOTICE, AND SCHEDULING THE FAIRNESS HEARING

AND NOW, this 23rd day of November, 1999, upon consideration of the Joint Motion of American Home Products Corporation ("AHP") and Class Counsel (as designated below) for Preliminary Approval of the Nationwide Class Action Settlement Agreement with American Home Products Corporation ("Settlement Agreement"), Conditional Certification of the Settlement Class, Approval of Notice to the Settlement Class, and for the Scheduling of a Fairness Hearing, and being satisfied that the proposed Settlement Agreement meets the applicable criteria for preliminary approval and that the proposed forms of notice and proposed plan for dissemination of the notice will satisfy all applicable requirements, IT IS HEREBY ORDERED that said motion is GRANTED as follows.

1. The capitalized terms used in this Order shall have the same meaning as those in the Settlement Agreement;
2. The Settlement Class is conditionally certified as an opt-out class under Fed. R. Civ. P. 23(b)(2) and 23(b)(3), with a right of all class members to opt-out. It is certified solely for settlement purposes, and shall consist of:

All persons in the United States, its possessions and territories who ingested Pondimin® and/or Redux™ (“Diet Drug Recipients”), or their estates, administrators or other legal representatives, heirs or beneficiaries (“Representative Claimants”), and any other persons asserting the right to sue AHP or any Released Party independently or derivatively by reason of their personal relationship with a Diet Drug Recipient, including without limitation, spouses, parents, children, dependents, other relatives or “significant others” (“Derivative Claimants”). The Settlement Class does not include any individuals whose claims against AHP and/or the AHP Released Parties arising from the use of Diet Drugs have been resolved by judgment on the merits or by release (other than releases provided pursuant to this Settlement).

3. Five Subclasses are hereby established, as follows:

“Subclass 1(a)” shall consist of all Diet Drug Recipients in the Settlement Class (1) who ingested Pondimin® and/or Redux™ for 60 days or less, and (2) who have not been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and September 30, 1999, and all Representative and Derivative Claimants in the Settlement Class whose claims are based on their personal or legal relationship with a Diet Drug Recipient (1) who ingested Pondimin® and/or Redux™ for 60 days or less, and (2) who has not been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and September 30, 1999.

“Subclass 1(b)” shall consist of all Diet Drug Recipients in the Settlement Class (1) who ingested Pondimin® and/or Redux™ for 61 or more days, and (2) who have not been diagnosed by a Qualified Physician as FDA Positive by an

Echocardiogram performed between the commencement of Diet Drug use and September 30, 1999, and all Representative and Derivative Claimants in the Settlement Class whose claims are based on a personal or legal relationship with a Diet Drug Recipient (1) who ingested Pondimin® and/or Redux™ for 61 or more days, and (2) who has not been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and September 30, 1999.

“Subclass 2(a)” shall consist of all Diet Drug Recipients in the Settlement Class (1) who ingested Pondimin® and/or Redux™ for 60 days or less, and (2) who have been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram which was performed between the commencement of Diet Drug use and September 30, 1999, and all Representative and Derivative Claimants in the Settlement Class whose claims are based on a personal or legal relationship with a Diet Drug Recipient (1) who ingested Pondimin® and/or Redux™ for 60 days or less, and (2) who has been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram which was performed between the commencement of Diet Drug use and September 30, 1999.

“Subclass 2(b)” shall consist of all Diet Drug Recipients in the Settlement Class (1) who ingested Pondimin® and/or Redux™ for 61 or more days, and (2) who have been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram which was performed between the commencement of Diet Drug use and September 30, 1999, and all Representative and Derivative Claimants in the Settlement Class whose claims are based on a personal or legal relationship with a Diet Drug Recipient (1) who ingested Pondimin® and/or Redux™ for 61 or more days, and (2) who has been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram which was performed between the commencement of Diet Drug use and September 30, 1999.

“Subclass 3” (which may include persons also included in Subclasses 1(a) and 1(b)) shall consist of all Diet Drug Recipients in the Settlement Class who have been diagnosed by a Qualified Physician as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the

Screening Period but who have not been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, and all Representative and Derivative Claimants in the Settlement Class whose claims are based on a personal or legal relationship with a Diet Drug Recipient who has been diagnosed by a Qualified Physician as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period but who has not been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period.

4. Plaintiffs Sheila Brown, Sharon Gaddie, Jose Gaddie, Vivian Naugle, Quentin Layer, Joan S. Layer, Joby Jackson-Reid and Harvey E. Reid in *Sheila Brown, et al. v. American Home Products Corporation*, Civil Action No. 99-20593, are appointed as the Representative Plaintiffs to represent the Settlement Class. Sheila Brown is appointed as a representative plaintiff to represent Subclass 1(a). Sharon Gaddie and Jose Gaddie are appointed as the representative plaintiffs to represent Subclass 1(b). Vivian Naugle is appointed as a representative plaintiff to represent subclass 2(a). Quentin Layer and Joan S. Layer are appointed as representative plaintiffs to represent Subclass 2(b). Joby Jackson-Reid and Harvey E. Reid are appointed as the representative plaintiffs to represent Subclass 3.

5. The following attorneys are appointed as Class Counsel for the class as a whole: Arnold Levin, Gene Locks, Michael D. Fishbein, Sol H. Weiss, Stanley Chesley, Christopher Placitella, and John J. Cummings; for Subclass 1(a), Dianne Nast; for Subclass 1(b), Richard Lewis; for Subclass 2(a), Mark W. Tanner; for Subclass 2(b), R. Eric Kennedy; for Subclass 3, Richard Wayne.

6. The Settlement Agreement is preliminarily approved for settlement purposes only and without prejudice to AHP's rights to contest class certification for litigation purposes.

7. The Court finds that the establishment of Fund A and Fund B and the administration thereof through the Interim Escrow and the Settlement Trust (together, the "Settlement Trust") as provided in the Interim Escrow Agreement and the Settlement Trust Agreement are intended to resolve and satisfy contested claims asserted or threatened against AHP.

8. The Court hereby preliminarily approves, and retains jurisdiction over, the Interim Escrow Agreement and the Settlement Trust Agreement and the Settlement Trust created thereby, and the operation of the Settlement Trust.

9. The Court hereby approves the appointment of Gregory P. Miller, Esq. and the Honorable C. Judson Hamlin as the Interim Claims Administrator(s) and PNC Bank Corp. as the Interim Escrow Agent pursuant to the Settlement Agreement and the Interim Escrow Agreement.

10. The Court hereby approves the following forms of notice proposed by the Parties:

- a. A written notice to the Settlement Class which contains an Official Court Notice in the form appended to the Settlement Agreement as Exhibit "13" (subject to graphic design), A Class Member's Guide to Settlement Benefits in the form appended to the Settlement Agreement as Exhibit "12," and a Matrix Compensation Benefits Guide for Physicians, Attorneys and Class Members in the form appended to the Settlement Agreement as Exhibit "14" (subject to graphic design);
- b. The Publication Notice to the Settlement Class in the form appended to the Settlement Agreement as Exhibit "15";
- c. The establishment of and maintenance of a "1-800" telephone number and website as provided in the Settlement Agreement to receive requests from Class Members for written notice, the costs of which shall be considered administrative expenses which shall be paid out of the Interim Escrow Account or the Settlement Trust;

- d. The Summary Notice to Physicians in the form appended to the Settlement Agreement as Exhibit "18";
- e. The Summary Notice to Pharmacists in the form appended to the Settlement Agreement as Exhibit "5";
- f. The Script of Television Notice in the form appended to the Settlement Agreement as Exhibit "17" (subject to production).

11. The Court hereby directs that individual written notice shall be provided to all Class Members whose names and addresses are known or presently knowable to the parties as a result of:

- a. The filing of legal claims by Class Members against AHP;
- b. The creation and maintenance of a database of Class Members who registered to receive benefits pursuant to a proposed limited fund Class Action Settlement with Interneuron Pharmaceuticals, Inc. in *Sharon Wish v. Interneuron Pharmaceuticals, Inc.*, Civil Action No. 98-CV-20594;
- c. Any database within the possession, custody, or control of AHP which reflects the names and addresses of Class Members;
- d. Any database which is readily obtainable from any pharmacy chain which reflects the name and address of Class Members;
- e. The establishment and operation of the "1-800-386-2070" telephone number and www.settlementdietdrugs.com website incident to the publication of the Memorandum of Understanding which was executed among the parties on October 7, 1999.

12. The Court hereby directs that, for the purpose of mailing individual notices as provided in the preceding paragraph, the Smith-Edwards-Dunlap Company shall have access to the names and addresses of individuals who requested the mailing of individual notices to them by contacting "1-800-386-2070" and www.settlementdietdrugs.com incident to the publication of the Memorandum of Understanding which was executed among the parties on October 7, 1999; provided, however, that Smith-Edwards-Dunlap Company shall keep such names and addresses strictly confidential and shall not disclose such names to any person other than to its officers, employees and agents as necessary

and appropriate for the mailing of such individual notices, or as otherwise directed or authorized by prior order of this Court.

13. The Court hereby authorizes and directs dissemination of notice to the Settlement Class as follows:

- a. Publication Notice in the form appended to the Settlement Agreement as Exhibit "15" in accordance with the Plan of Media Notice appended to the Settlement Agreement as Exhibit "16" (as amended);
- b. Television Notice in accordance with the Script of Television Notice appended to the Settlement Agreement as Exhibit "17" and in accordance with the Plan of Media Notice appended to the Settlement Agreement as Exhibit "16" (as amended);
- c. Summary Notice to Physicians in the form appended to the Settlement Agreement as Exhibit "18" for display to physicians' patients;
- d. Summary Notice to Pharmacists in the form appended to the Settlement Agreement as Exhibit "5" for display to pharmacists' customers;

provided that the Publication Notice provided for in Paragraph 13(a) shall issue to Class Members beginning on December 1, 1999 and that the Notice provided for in Paragraphs 13(b), (c) and (d) shall issue to Class Members beginning on January 3, 2000.

14. The costs of preparing, printing, publishing, mailing and otherwise disseminating the notice shall be paid out of the Interim Escrow, which will charge the expenses as follows: Fund A will pay 50% and Fund B will pay 50% of the total costs. In the event that the Settlement does not receive Final Judicial Approval, the costs of preparing, printing, publishing, mailing and otherwise disseminating the notice shall be borne by the Interim Escrow and/or the Settlement Trust, and the Settlement Trust will have no obligation to return or refund such costs to AHP.

15. The Court finds that the forms and manner of notice approved herein meet the requirements of due process and are the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

16. The Court will hold a formal fairness hearing (the "Fairness Hearing") to determine whether the Settlement Agreement is fair, adequate and reasonable and should be finally approved and any other matters deemed appropriate by the Court. The Fairness Hearing will be held on May 1-5, 2000 in Courtroom 17B of the United States District Court for the Eastern District of Pennsylvania, to determine: (a) whether the Settlement Class should be finally certified as a class action under Fed. R. Civ. P. 23(b)(2) and 23(b)(3); (b) whether the Settlement Agreement is fair, reasonable and adequate and whether final judgment should be entered dismissing the action on the merits, with prejudice and without costs; (c) whether the Court should enter an order barring and enjoining Non-Settling Defendants from commencing or prosecuting claims for contribution and/or non-contractual indemnity against AHP and/or any other Released Party arising out of a claim against a Non-Settling Defendant on behalf of any Class Member asserting a Settled Claim in any present or future litigation, other than any Class Member who has timely and properly exercised an opt-out right under the Settlement Agreement; (d) whether the Court should enter an order barring and enjoining any person who has rights of subrogation by virtue of a payment or payments made to or for the benefit of any specific Class Member who has not properly and timely exercised a right of opt-out under the Settlement Agreement from commencing or prosecuting such claims against AHP and/or any other Released Party, except to the extent that it would be

impermissible to bar such claims under provisions of applicable law, and (e) to consider any other matters deemed appropriate by the Court.

17. To maintain orderly proceedings and to afford a reasonable opportunity to be heard to those who wish it, any Class Member or other interested party wishing to appear at the Fairness Hearing in person or through his or her attorney must submit a written request, including a summary of the issue(s) to be presented at the hearing, postmarked no later than March 30, 2000 and mailed to the addresses provided in the settlement notice. This requirement ensures that the parties will have adequate notice of the issues and arguments to be addressed at the hearing.

18. Any Class Member or other interested party wishing to submit comments to support or oppose any aspect of the Settlement Agreement may do so in writing, without the necessity of retaining counsel or making any formal appearance. All written comments must be postmarked no later than March 30, 2000 and mailed to the addresses provided in the settlement notice. Any Class Member or other interested party who does not make an objection in the manner provided shall be deemed to have waived such objection and shall be forever foreclosed from making any objection to the certification of the Settlement Class, the fairness, adequacy or reasonableness of the proposed Settlement Agreement, the entry of the Final Order and Judgment, and the issuance of a permanent injunction and bar against claims for contribution, non-contractual indemnity and subrogation against AHP and/or the other Released Parties as described above.

19. Any Class Member wishing to opt out of the Settlement Class must sign and submit written notice to the Claims Administrator(s) with a copy to AHP, clearly manifesting the Class Member's intent to opt out of the Settlement. This notice shall be

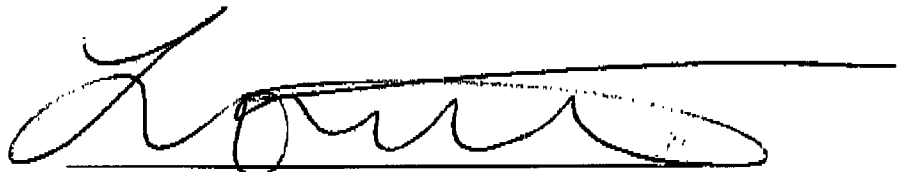
in the form appended to the Settlement Agreement as Exhibit "6" or in a substantially identical written manifestation of intent. To be effective, any such written notice of intent to opt out of the Settlement must be deposited in the United States mail and postmarked no later than March 30, 2000.

20. The Settlement Agreement, with appendices and amendments thereto, will be made available for public inspection in the Clerk's office during regular business hours.

21. A hearing will be held on November 30, 1999 at 10 o'clock A .m. in Courtroom 17B at the United States Courthouse, 601 Market Street, Philadelphia, PA 19106 at which all parties may appear and show cause why this order should not remain in effect.

ORDERED this 23rd day of November, 1999.

3 PM
ACB



LOUIS C. BECHTLE
UNITED STATES DISTRICT COURT JUDGE

11-24-99
Kaiser Counsel