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

IN RE: DIET DRUGS (PHENTERMINE / FENFLURAMNE/DEXFENFLURAMINE) PRODUCTS LIABILITY LITIGATION	:	MDL DOCKET NO. 2 :15 MD1203
SHEILA BROWN, ET AL. v. AMERICAN HOME PRODUCTS CORPORATION	:	CIVIL ACTION 99-20593
Appellant: Arbitration No.: Claim No.: 183/00	:	REPORT AND AWARD OF ARBITRATOR

FINDINGS OF FACT

1. On , the AHP Settlement Trust ("Trust") issued a Final Determination in the matter of ("Claimant") and awarded Claimant compensation in the amount of pursuant to Matrix B-1, Level III.

2. On Claimant filed an appeal from the award of benefits by the Trust, and requested that the United States District Court ("Court") refer this matter to Arbitration. The appeal was assigned docket number

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

4. On , an Arbitration Hearing was held concerning the claim of Claimant was represented by surviving spouse of

ANALYSIS

1. The claimant's Blue Form reports that [redacted] ingested Redux (Dexfenfluramine) for sixty-one days or more. This is confirmed by pharmacy records which reflect that [redacted] was dispensed Redux (Dexfenfluramine) on four dates ranging from [redacted]

2. The parties agree that [redacted] died on [redacted]

3. There is no dispute about [redacted] eligibility for Matrix compensation. In order to be eligible, a Diet Drug Recipient must fit within one of two categories: (1) Diet Drug Recipients diagnosed by a Qualified Physician as FDA Positive or as having mild mitral regurgitation by an echocardiogram performed on or before January 3, 2003, provided the Diet Drug Recipient registered for settlement benefits by May 3, 2003; or (2) Diet Drug Recipients who by September 30, 2005 have been diagnosed by a Qualified Physician as having Endocardial Fibrosis and who have registered for Fund B Benefits by January 31, 2006. *See* Settlement Agreement, Section IV.B.1. In order to be diagnosed as FDA Positive, a Diet Drug Recipient must suffer mild or greater aortic valve regurgitation and/or moderate or greater mitral valve regurgitation. *Id.* at Section I.22. Because [redacted] had severe mitral regurgitation and mild aortic regurgitation, he met the definition of FDA Positive, thus making him eligible for Matrix Compensation. *See* Green Form, Questions C.3.a. and C.3.b.

4. Nor is there a dispute about [redacted] qualification for Matrix-Level III benefits. Matrix Level III includes surgery to repair or replace the aortic and/or mitral valve(s) after the use of Diet Drugs. *See* Settlement Agreement, Section IV.B.2.c.(3). Because he had mitral valve surgery after ingestion of Redux, [redacted] was qualified to receive Matrix-Level III benefits.

5. The dispute in this matter centers on whether Level III benefits should be paid on

Matrix A-1 or Matrix B-1. Claimant's position is that the claim should be paid on the A-1 Matrix and that the Trust erred in placing the claim on the B-1 Matrix.

The claimant's Green Form, received by the Trust on , was completed by a Board-Certified Cardiologist. In that Green Form, stated that had mitral annular calcification and moderate or greater mitral regurgitation prior to his ingestion of Redux. *See* Green Form, Questions D.9 and E.5. These conclusions were based on an echocardiogram performed on *See* Green Form, Question C.2. In its written submission, claimant asserted those answers were incorrect in that there is no evidence that had either mitral regurgitation or mitral annular calcification prior to his ingestion of Redux in Claimant supported this assertion with a letter from following her review of four echocardiogram reports and two cardiac catheterization reports Based on her review, concluded that she had completed Questions D.9 and E.5 in error because neither the echocardiogram reports nor the cardiac catheterization reports contained evidence to document the presence of significant mitral annular calcification or mitral regurgitation prior to

6. Although did not press the issue of mitral regurgitation during the Arbitration Hearing, revised answer to Green Form Question E.5 deserves to be addressed. Diet Drug recipients with either aortic or mitral valve claims who are entitled to Matrix-Level benefits receive compensation on the B-1 Matrix if they have FDA Positive regurgitation prior to ingestion of Diet Drugs for the valve that is the basis of the claim. Settlement Agreement, Section IV.B.2.d.(2)(c)iii)c. As its text clearly specifies, this provision is affected by the time at which the B-1 triggering factor is diagnosed and only directs a claim to Matrix B-1 if the Diet Drug recipient had FDA Positive regurgitation before ingestion of Diet

Drugs. Accepting, therefore, statement that she initially answered Green Form Question E.5 incorrectly and that did not have moderate or greater mitral regurgitation before ingesting Diet Drugs, that factor would no longer serve to move his claim from the A-1 Matrix to the B-1 Matrix.

7. During the Arbitration Hearing, central claim was that the timing of diagnosis of mitral annular calcification made placement of his claim on Matrix B-1 unjustified. conceded that had mitral annular calcification, but asserted that the timing and severity of his condition was evidence that the condition came after, and was likely exacerbated by, ingestion of Diet Drugs. Under those circumstances, disputed the use of mitral annular calcification as a reduction factor which had the effect of moving her claim to the B-1 Matrix.

Settlement Agreement, Sections IV.B.2.d.(2)(c)ii)b and IV.B.2.d.(2)(c)ii)c specify that Diet Drug recipients with mitral valve claims who are entitled to Matrix-Level benefits receive compensation on the B-1 Matrix if they have, *inter alia*, Mitral Valve Prolapse or Mitral annular calcification. In resolving the Diet Drug lawsuit, the parties to the Settlement Agreement could have treated Mitral annular calcification like they treated FDA Positive regurgitation, and could have agreed that Diet Drug recipients whose mitral annular calcification developed after taking Diet Drugs should be compensated on the A-1 Matrix. But they did not. In the case of Mitral Valve Prolapse and Mitral annular calcification, assignment to the B-1 Matrix is unaffected by the time at which the condition appears or is diagnosed. Thus, no matter when they developed,

Mitral annular calcification (*see* Green Form, Question D.9) and Mitral valve prolapse (*see* Operative Report, on the occasion of mitral valve replacement) require that his compensation be paid on the B-1 Matrix. *See* Settlement Agreement, Sections IV.B.2.d.(2)(c)ii)b and IV.B.2.d.(2)(c)ii)c.

CONCLUSIONS

1. The findings of the Trust are not clearly erroneous, as set forth in Rule 5 of the Rules Governing Arbitration Process.

2. Based upon the findings above, the [redacted] is not entitled to payment on Matrix A-1 because of the presence of conditions that mandate compensation on Matrix B-1. Settlement Agreement, Sections IV.B.2.d.(2)(c)iii)a and IV.B.2.d.(2)(c)iii)c.

Accordingly, based on all of the above, I find that [redacted] is entitled to Level III benefits payable on the B-1 Matrix.

10/5/06

DATE

[redacted]

Arbitrator