

**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

**DECLARATION AND REPORT BY THE SEVENTH AMENDMENT FUND
ADMINISTRATOR IN SUPPORT OF THE JOINT MOTION BY THE
FUND ADMINISTRATOR, CLASS COUNSEL AND SALC FOR JUDICIAL
AUTHORIZATION TO MAKE A SECOND SUPPLEMENTAL FINAL
DISTRIBUTION OF THE SUPPLEMENTAL CLASS SETTLEMENT FUND
AND TO DISTRIBUTE THE BALANCE OF THAT FUND**

1. As used herein, capitalized terms are defined as set forth in the Seventh Amendment to the Nationwide Class Action Settlement Agreement.
2. On January 25, 2008, the undersigned filed a Joint Motion with Class Counsel and the Seventh Amendment Liaison Committee ("SALC") seeking the Court's authorization to make a "final" distribution from the Supplemental Class Settlement Fund in the total amount of \$818,171,051.70.¹ In the Joint Motion, we reported that as of December 31, 2007 there were 38,397 Category One Class Members whose claims had been Finally Adjudicated by the Fund Administrator. We also reported that there were 1,084 remaining Class Members whose

¹ This distribution was in addition to and over and above the amount of \$374,105,402.80, which had previously been distributed as interim, partial payments of Grid benefits and full payments of Minimum Payment Amounts to Category One Class Members pursuant to Pretrial Order Nos. 6875 & 7129.

Category One Claims had not been subject to a Final Adjudication by the Fund Administrator and that there were 25 Class Members with outstanding motions in which the disposition of the motion would affect their inclusion in Category One and/or the processing of their Category One Claims. Accordingly, the Joint Motion proposed that approximately \$69 million of the Supplemental Class Settlement Fund be held in reserve to provide a source for (a) payment of these claims, (b) for additional “Progression during Pendency” payments to the Trust pursuant to the provisions of Section III.C of the Seventh Amendment and (c) payment of ongoing costs of administration. On April 8, 2008, the Court entered Pretrial Order No. 7764 in which it granted the Joint Motion.

3. During the period from January 1, 2008 through July 25, 2008, there were 828 additional Category One Claims that reached Final Adjudication status, representing the “Fourth Group of Finally Adjudicated Claims.”² On August 7, 2008, we filed a Supplemental Joint Motion with Class Counsel and SALC requesting the Court’s authorization to make a “final” distribution of \$31,868,481.82 from the Supplemental Class Settlement Fund in connection with the 828 claims that were in the Fourth Group of Finally Adjudicated Claims. On November 13, 2008, the Court entered Pretrial Order No. 8014 in which it granted this Supplemental Joint Motion.

4. During the period since July 25, 2008, we have determined that it is appropriate to make additional payments from the Supplemental Class Settlement Fund to certain Class

² The First Group of Finally Adjudicated claims was subject to Final Adjudication as of September 30, 2006. The Second Group of Finally Adjudicated claims was subject to Final Adjudication between October 1, 2006 and March 1, 2007. The Third Group of Finally Adjudicated claims was subject to a Final Adjudication by the Fund Administrator between March 1, 2007 and December 31, 2007.

Members who were included in the First, Second, Third and Fourth Group of Finally Adjudicated Claims because of additional information that was provided by or relating to such Class Members. These adjustments are reflected in Schedule I to this Declaration and Report, attached hereto as Exhibit "A."

5. As of July 26, 2008, there remained 256 Category One Claims that had not been finally adjudicated by the Fund Administrator. In the period since that date, the Fund Administrator has completed its adjudication of each of those 256 claims such that it is now appropriate to make distribution of all of the Category One Benefits to which such persons are entitled as proposed herein.

6. In addition, the status of the 25 Class Members with outstanding motions relating to their Category One Status has since been resolved by a series of stipulations, which ultimately added 17 Class Members to the Category One List. The Fund Administrator has completed its adjudication of the claims of these 17 Class Members.

7. It is now appropriate to make distribution from the Supplemental Class Settlement Fund with respect to the claims for which adjustments have been made as identified in Schedule I hereto, the 256 claims identified in paragraph 5 of this Declaration and Report and the 17 claims identified in paragraph 6 of this Declaration and Report. Collectively, this group of claims will be referred to herein as the "Fifth Group of Finally Adjudicated Claims."

8. Of the Fifth Group of Finally Adjudicated Claims, 28 are claims by Class Members in which the Seventh Amendment Medical Review process finally determined that the Relevant Echocardiogram submitted by the Class Member demonstrated a High Threshold or a Low Threshold condition, which were each assigned a Relative Payment Value by the Fund

Administrator based upon the outcome of such Medical Review, and which are each entitled to Benefits Subject to Medical Review (i.e., “Grid Benefits”) under the terms of the Seventh Amendment. Each of these claims is identified in Schedule II to this Declaration and Report, attached as Exhibit “B” hereto.

9. Of the Fifth Group of Finally Adjudicated Claims, 63 are claims by Class Members in which the Seventh Amendment Medical Review process finally determined that the Relevant Echocardiogram submitted by the Class Member demonstrated FDA Positive valvular regurgitation but did not demonstrate a High Threshold or a Low Threshold condition. Each of these claims is identified in Schedule III to this Declaration and Report, attached as Exhibit “C” hereto. Under Sections VII.B.1 and X.A.2 of the Seventh Amendment these Class Members are entitled to receive payment of the \$2,000.00 Minimum Payment Amount from the Supplemental Class Settlement Fund and payment of the Cash/Medical Services Benefit in the amount of either \$3,000.00 or \$6,000.00 from the Trust to the extent not previously paid.

10. Of the Fifth Group of Finally Adjudicated Claims, 140 are claims in which the Fund Administrator determined that the Class Member is entitled to receive the Minimum Payment Amount of \$2,000.00 from the Supplemental Class Settlement Fund as specified in Section VII.B.1. of the Seventh Amendment. Each of these claims is identified in Schedules IV and IX to this Declaration and Report, attached as Exhibits “D” and “I” hereto. The 140 claims identified in Schedules IV and IX include the 63 claims also identified in Schedule III as having FDA Positive regurgitation without the presence of a High Threshold or Low Threshold condition. The Class Members listed on Schedule IX have each qualified for payment of High Level Matrix Benefits from the Trust. As a result, the Minimum Payment Amount that would

otherwise be paid to the Class Members identified in Schedule IX is to be paid to the Trust under the “progression during pendency” provisions of the Seventh Amendment. *See* Seventh Amendment, §III.C.

11. Of the Fifth Group of Finally Adjudicated Claims 31 are claims in which the Fund Administrator has denied the claim on the grounds that it is fatally deficient but in which the Fund Administrator has been provided with proof that the Class Member ingested diet drugs. Each of these claims is identified in Schedule V, attached as Exhibit “E” hereto. Under the terms of the Seventh Amendment each of these Class Members is entitled to payment of \$2,000 – *i.e.*, the Minimum Payment Amount – from the Supplemental Class Settlement Fund. *See* Seventh Amendment, §§ XV.F & XV.G.

12. Of the Fifth Group of Finally Adjudicated Claims, 16 are claims in which the Fund Administrator has denied the claim on the grounds that it is fatally deficient and in which the Class Member has also failed to provide proof of diet drug use as required in Sections XV.B.1 and XV.G of the Seventh Amendment. Each of these claims is identified in Schedule VI, attached as Exhibit “F” hereto. Under the terms of the Seventh Amendment these Class Members are not entitled to any payment from the Supplemental Class Settlement Fund. *See* Seventh Amendment, § XV.G.

13. In the Declaration and Report that we filed on January 22, 2008, we calculated that the Individual Payment Amount for each Class Member entitled to Benefits Subject to Medical Review was equal to \$11,960.00 for each Relative Value Point assigned to each such Class Member. In Pretrial Order No. 7763A, the Court determined that the “Common Benefit Percentage” – *i.e.*, the percentage of the Individual Payment Amounts to be paid to Class Counsel

and other common benefit attorneys – was 6.4%. Using the per point Relative Payment Value of \$11,960.00 and the Common Benefit Percentage of 6.4%, Schedule II (Exhibit “B”) sets forth the calculation of the gross amount of Grid Benefits to which each listed Class Member is entitled, the amount to be deducted for payment of the Common Benefit Percentage and the net amount payable to the Class Member. In addition, Schedule II reflects the payments that are due to the Trust under the “progression during pendency” provisions of the Seventh Amendment for those Category One Class Members in the Fifth Group of Finally Adjudicated Claims that demonstrated a Grid Level condition and who also qualified for payment of Matrix Level III, IV and/or V benefits from the Trust. *See* Seventh Amendment, §III.C.

14. After payment of the amounts proposed for distribution in paragraphs 8 - 13 of this Declaration and Report, and after creating a reserve of \$900,000.00 to cover the estimated costs of the Fund Administrator to complete the administration of the Seventh Amendment and to pay taxes and other anticipated charges against the Supplemental Settlement Fund,³ the portion of the Supplemental Class Settlement Fund that will remain unused and available for distribution is \$28,886,940. Under the terms of the Seventh Amendment, all Category One Class Members that have been adjudged to be entitled to Grid Benefits are entitled to distribution of this balance prorated in accordance with the ratio between the Relative Payment Value assigned to each such person and the total of all Relative Payment Values assigned to all such persons. In Schedule VII, attached as Exhibit “G” hereto, we have calculated the pro rata amount to which these Class Members are entitled as payment of additional Grid Benefits under the terms of the Seventh

³ These estimated costs are itemized in Schedule VIII, which is attached as Exhibit “H” hereto.

Amendment, the amount to be deducted from these additional Grid Benefits for payment of the Common Benefit Percentage and the net amount payable to the Class Member. In addition, Schedule VII reflects the payments that are due to the Trust under the “progression during pendency” provisions of the Seventh Amendment for those Category One Class Members who qualified for payment of Grid Benefits and who also qualified for payment of Matrix Level III, IV and/or V benefits from the Trust. *See* Seventh Amendment, §III.C.

15. The procedures that we recommend for making distribution of Minimum Payment Amounts and Grid Benefits to the Class Members in the Fifth Group of Finally Adjudicated Claims and to those listed on Schedule VII are the same as those adopted by the Court in Pretrial Order Nos. 7764 and 8014.

16. Finally, upon the Court’s approval of the Fund Administrator’s adjudication of Fifth Group of Finally Adjudicated Claims, the claims of all Category One Class Members will have been finally adjudicated. The final count of all adjudicated Category One claims is as follows:

<u>Amended and Final Category One Class List</u>	41,384
<u>Adjustments to Final List</u>	
Category One Class Members who made Category Two Election (Includes 2,269 from the originally approved list, plus 2 from PTO 6904)	(2,271)
Duplicate Listing of Class Member (DDR 8271785)	(1)
Net Additions and Deletions from PTOs, 6904, 7040, 7491, 8103, and a withdrawal of a Motion (PTO 7491 listed 23 deletions from Category One. DDR 8200880 was listed on PTO 7491 but was not on the “Amended and Final Category One Class List” of 39,113)	13
DDRs who were listed on Final Category One List but who have either settled or who are not Category One Class Members (The	

following DDRs settled with the Trust: 1048982, 3287190, 8157559,
8241843, 8170117, 2623098, 8022580, 3580958, 8183757, 901579.

The following DDRs are not Category One Class Members:

1446152, 1408806). (12)

“Window Claims”. 24

Total of Finally Adjudicated Category One Claims. 39,137

The Fund Administrator hereby declares under penalty of perjury of the laws of the United States of America that the statements made in this Declaration and Report are true and correct to the best of its knowledge, information and belief.

HEFFLER, RADETICH & SAITTA, L.L.P

Dated: 4/15/09

By: Edward J. Radetich, Jr.
EDWARD J. RADETICH, JR.

Dated: 4/15/09

By: Michael T. Bancroft
MICHAEL T. BANCROFT