

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. 8260
(AUTHORIZATION FOR SECOND SUPPLEMENTAL FINAL DISTRIBUTION
OF THE SUPPLEMENTAL CLASS SETTLEMENT FUND)

AND NOW, this 26th day of August, 2009, upon consideration 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 (the "Second Supplemental Final Distribution Motion"), it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Second Supplemental Final Distribution Motion is GRANTED.
2. As used in this Order, capitalized terms shall have the same meanings that those terms have in the Seventh Amendment to the Nationwide Class Action Settlement Agreement with American Home Products Corporation ("Seventh Amendment").
3. The Court hereby authorizes a Distribution in the total aggregate amount of \$34,973,144.26 from the Supplemental Class Settlement Fund, representing the Balance of the Individual Payment Amounts due to each of the Category One Class Members listed in

Schedules II and VII to the Declaration and Report by the Seventh Amendment Fund Administrator in Support of the Second Supplemental Joint Motion by the Fund Administrator, Class Counsel and SALC for Judicial Authorization to Make a "Final" Distribution of the Supplemental Class Settlement Fund and to Liquidate the Balance of that Fund (the "Second Supplemental Distribution Report"), as follows:

- a. Beginning on a date that is not more than thirty (30) days from the date on which this Order has been entered, the Fund Administrator shall promptly draw checks payable to each unrepresented Category One Class Member listed on Schedules II and VII to the Second Supplemental Distribution Report and shall draw checks that are jointly payable to each represented Category One Class Member and his or her primary attorney for the Balance of the Individual Payment Amount due each such Class Member as shown on Schedules II and VII to the Second Supplemental Distribution Report, less the "Common Benefit Percentage";
- b. In Pretrial Order No. 7763A, the Court determined that the Common Benefit Percentage is 6.4 %. Therefore, in distributing the Balance of the Individual Payment Amount due each Class Member as shown on Schedules II and VII to the Second Supplemental Distribution Report, the Fund Administrator shall first deduct an amount equal to the Common Benefit Percentage multiplied by the Individual Payment Amount for each such Class Member;
- c. With respect to represented Class Members, the Fund Administrator shall promptly transmit the checks referred to in paragraph 3(a) of this Order to the primary attorney for the Class Member via overnight delivery, accompanied by a

transmission letter in the form appended as Exhibit "1" to this Order. A copy of the transmission letter shall also be delivered by first-class mail to the Class Member at his or her last known address;

- d. With respect to unrepresented Class Members, the Fund Administrator shall promptly transmit the checks referred to in paragraph 3(a) of this Order to the Class Member via overnight delivery, accompanied by a transmission letter in the form appended as Exhibit "2" to this Order;
- e. The Fund Administrator shall not transmit any payment pursuant to Paragraph 3 of this Order unless and until it has received from the Class Member who is otherwise entitled to such payment a fully executed Release and Covenant Not to Sue in the form appended as Exhibit "F" to the Seventh Amendment; and
- f. In distributing the Balance of Individual Payment Amounts transmitted to counsel for represented Category One Class Members pursuant to Paragraph 3 of this Order, the attorneys for such Class Members shall comply with the provisions of Sections XV.S, XV.T and XV.W of the Seventh Amendment, which specifically state:

S. Distribution of Proceeds. When a Class Member is represented by an attorney who is named as a joint payee on any check tendered by the Escrow Agent in payment of the Balance of the Individual Payment Amount, the attorney shall hold the proceeds of the check in the attorney's client escrow and/or trust account and shall distribute such proceeds to persons entitled to participate in such proceeds, including:

1. Any Derivative Claimants to the extent of 2% of the Individual Payment Amount;

2. Any amounts which the Class Member is obligated to pay to any Third Party Payor pursuant to Section XV.W; and
3. Any other persons having a legally recognized right to participate in the settlement proceeds.

Category One Class Members who are not represented by their own counsel shall distribute the proceeds of their check for Benefits Subject to Medical Review to the same groups, if any, identified in Section XV.S.1-3.

T. Attorneys' Fees. When a Class Member is represented by an attorney who is named as a joint payee on any check tendered by the Escrow Agent in payment of the Balance of the Individual Payment Amount, the attorney shall distribute the portion of the recovery payable to any and all attorneys as follows:

1. Payment to attorneys shall be in accordance with the terms of any applicable contingent fee contract and applicable law, provided that:
 - a. The attorney or attorneys may not charge or collect a contingent fee that is, in the aggregate, larger than 40% of the total Individual Payment Amount, for all Class Members entitled to participate in the distribution of such Individual Payment Amount, as computed before deduction of the Common Benefit Percentage Amount;
 - b. The Common Benefit Percentage Amount, if any, shall be deducted from the amount of fees to which such attorneys are entitled (as limited in Section XV.T.1.a) and shall not be deducted from the client's share of the recovery; and
 - c. Each such attorney, by making such a distribution, agrees to and shall indemnify and hold harmless the Fund Administrator, the Escrow Agent, Wyeth, Class Counsel, and the members of the SALC, with respect to any and all liability for, and the actual costs of defending against, any and all

claims that are or may be made that relate to the distribution of the proceeds by that attorney.

W. Subrogation and Other Third Party Payor Claims.

1. Each Category One Class Member and Category Two Class Member, and their attorney(s) if represented, covenants that any lawful outstanding liens or claims, whether asserted or unasserted, for reimbursement of medical expenses, including the cost of medical services, by any private subrogee or government entity, including any claims for reimbursement of medical expenses paid by Medicare, shall be satisfied after receipt of payment from the Fund Administrator or the Trust. All such private subrogees and government entities shall be "Third Party Payors" for purposes of this Section.

4. The Court hereby authorizes a Distribution in the total aggregate amount of \$342,000 from the Supplemental Class Settlement Fund, representing Minimum Payment Amounts for all Category One Class Members who are listed in Schedules IV and V to the Second Supplemental Distribution Report. The Minimum Payment Amount of \$2,000 shall be paid to each Category One Class Member listed on Schedules IV and V to the Second Supplemental Distribution Report as follows:

- a. In the case of unrepresented Class Members listed on Schedules IV and V to the Final Distribution Report, beginning on a date that is not more than thirty (30) days from the date on which this Order has been entered, the Fund Administrator shall promptly draw checks in the amount of \$2,000 that are payable to each such Class Member, containing the endorsement legend specified in Section VII.B.2 of the Seventh Amendment, and shall promptly transmit such checks to such Class

Members via first-class mail, accompanied by a transmission letter in the form appended as Exhibit "3" to this Order;

- b. In the case of each represented Class Member listed on Schedules IV and V to the Second Supplemental Distribution Report, beginning on a date that is not more than thirty (30) days from the date on which this Order has been entered, the Fund Administrator shall promptly draw: (i) a check in the amount of \$1,350 that is payable to each such Class Member individually, containing the endorsement legend specified in Section VII.B.2 of the Seventh Amendment and (ii) an additional check in the amount of \$650 that is jointly payable to each such Class Member and his or her primary attorney containing the endorsement legend specified in Section VII.B.2 of the Seventh Amendment, and shall promptly transmit such checks to such primary attorney for the Class Member via first-class mail, accompanied by a transmission letter in the form appended as Exhibit "4" to this Order. A copy of the transmission letter shall also be delivered by first-class mail to the Class Member at his or her last known address; and
- c. In distributing the gross amounts transmitted to counsel for represented Category One Class Members pursuant to paragraph 4 of this Order, the attorneys for such Class Members shall comply with the provisions of Section XV.V of the Seventh Amendment, which states:

Distribution of Minimum Payment Amount. For Category One Class Members the Minimum Payment Amount shall be distributed as follows:

1. If the Class Member is represented by counsel, the Class Member's attorney shall be entitled to receive

an amount not to exceed \$650 as full compensation for all attorneys' fees and costs to which such counsel are entitled; and

2. The balance remaining after deduction of such payment to the Class Member's attorney or the sum of \$2,000 in those instances where the Class Member is unrepresented, shall be paid to the Diet Drug Recipient whose drug ingestion forms the basis of the claim or to the applicable Representative Claimant(s).

5. The Court hereby authorizes the Fund Administrator to distribute \$339,899.43 from the Settlement Fund to the AHP Settlement Trust pursuant to the terms of Section III.C of the Seventh Amendment, as specified in Schedules II, VII and IX to the Second Supplemental Distribution Report.

6. All checks issued pursuant to this Order shall be drawn on the Supplemental Class Settlement Funds on deposit with PNC Bank, N.A., Escrow Agent.

7. In the copies of the transmission letters that the Fund Administrator is required to send to represented Class Members under paragraphs 3(c) and 4(b) of this Order, the Fund Administrator may affix a legend on such copies that states: "PLEASE NOTE THAT THIS IS A COPY of the letter and check(s) sent to your attorney. You must contact your attorney for information regarding your claim and/or check."

8. The Class Members listed on Schedule VI to the Second Supplemental Distribution Report as having "fatally deficient" claim submissions with no proof of Diet Drug use shall not receive any payment from the Supplemental Class Settlement Fund.

9. The amount of \$900,000.00 shall remain on reserve to pay the remaining costs and expenses incurred by the Fund Administrator to wind up its administration of Category One

Claims under the Seventh Amendment. Funds on reserve hereunder shall be subject to distribution only as directed by subsequent order(s) of the Court.

BY THE COURT:



HARVEY BARTLE III, CHIEF JUDGE