

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JOHN W. BACON, III,

Plaintiff,

No.: 04 CV 1388

-against-

ALISON OVERSETH, SENATOR CHRIS HARRIS,
DR. GEORGE BELLER, DR. ROSEMARIE
ROBERTSON, MR. JOSEPH CASTLE, THE HON.
DEAN TRAFELET and THE HON. RICHARD
COHEN, Individually And In Their Capacities As
Trustees Of The Wyeth Settlement Trust, THE
WYETH SETTLEMENT TRUST Formerly Known As
The American Home Products Settlement Trust,
RICHARD L. SCHEFF, Esq. and MONTGOMERY
McCRACKEN WALKER & RHODES LLP

AFFIDAVIT IN OPPOSITION

Defendants.

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

DENISE A. RUBIN, being duly sworn, hereby deposes and says:

1) I am an attorney duly licensed to practice in the State of New York and, inter alia, before the United States Court of Appeals for the Third Circuit; by virtue of my representation of clients before this Court in MDL-1203, a matter related to this action, I appear for the plaintiff herein.

2) I am associated with the law office of Napoli Bern & Associates, LLP, f/k/a Napoli Kaiser Bern & Associates, LLP, attorneys for the plaintiff, and respectfully offer the within affidavit and its exhibits in opposition to the defendants' motion for dismissal of the matter now pending before this Court.

3) The plaintiff's Memorandum of Law is annexed to these papers, and its factual statements and legal arguments are adopted here by reference as if fully set forth.

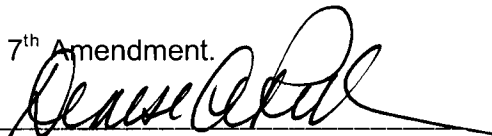
4) Defendants describe this action as a “second and duplicative attempt by plaintiff, a claimant under the AHP Settlement Trust to make an end run around the procedures governing the Trust and the Settlement Agreement in In Re Diet Drugs Products Liability Litigation, MDL 1203.”

5) While it is true that this case has its genesis in the defendants’ machinations within the administration of the plaintiff’s claim under the Settlement Agreement, the wrongs alleged in this complaint are wholly independent of his underlying claim for damages due him as a result of injuries suffered as a result of his ingestion of diet drugs.

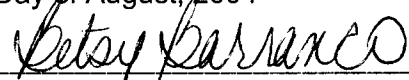
6) More to the point, plaintiff has stated a cause of action sufficient to meet his threshold burden under Fed. R. Civ. P. 12 (b)(6), and this Court should deny the instant motion to dismiss and allow Mr. Bacon to pursue this action against the defendants who, collectively and individually, have undermined and emasculated the Settlement Agreement the plaintiff entered in good faith expecting that his claim would be processed in an expeditious, professional and honest fashion by persons who were interested in settlement of the claims submitted under that agreement.

7) The exhibits annexed to these papers are:

- (a) Dr. Robert Smith’s April 1, 2002 Echocardiogram Report;
- (b) August 14, 2003 letter from the AHP Trust;
- (c) AHP Trust letter;
- (d) Trust letter dated November 21, 2003;
- (e) Declaration of Source of Echocardiogram form Jan. 22, 2004;
- (f) March 15, 2004 Scheff letter;
- (g) Trust Agreement Articles III and VI;
- (h) Class Counsel Memo in Support of 7th Amendment.


Denise A. Rubin (DR-5591)

Sworn to before me this 11th
Day of August, 2004


Notary Public

BETSY BARRANCO
Notary Public, State of New York
No. 01BA6043158
Qualified in Richmond County
Commission Expires June 12, 2006

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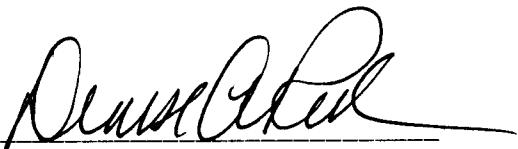
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The American Home Products Settlement Trust,
RICHARD L. SCHEFF, Esq. and MONTGOMERY
McCRACKEN WALKER & RHODES LLP

Declaration of Service

Defendants.

DENISE A. RUBIN, an attorney duly licensed to practice before the Courts of the State of New York and before this Court for matters related to MDL-1203, hereby declares that, on August 11, 2004, I electronically served the within Opposition Affidavit, Exhibits, and Memorandum of Law on the following person(s) and electronically filed same with the Court, mailing a "courtesy copy" to the attention of the Hon. Harvey Bartle, III.

Andrew A. Chirls Esq.
Wolf, Block, Schorr & Solis-Cohen, LLP
Attorneys for the defendants
1650 Arch Street, 22nd Floor
Philadelphia, PA 19103
Achirls@wolfblock.com


Denise A. Rubin (DR-5591)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JOHN W. BACON, III,

Docket No.: 04 CV 1388

Plaintiff,

-against-

ALISON OVERSETH, SENATOR CHRIS HARRIS, DR. GEORGE BELLER, DR. ROSEMARIE ROBERTSON, MR. JOSEPH CASTLE, THE HON. DEAN TRAFELET and THE HON. RICHARD COHEN, Individually And In Their Capacities As Trustees Of The Wyeth Settlement Trust, THE WYETH SETTLEMENT TRUST Formerly Known As The American Home Products Settlement Trust, RICHARD L. SCHEFF, Esq. and MONTGOMERY McCracken Walker & Rhodes LLP

Defendants.

PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS

NAPOLI BERN & ASSOCIATES, LLP

Attorneys for : Plaintiff JOHN W. BACON, III

Office and Post Office Address, Telephone

Two Penn Center, Suite 200

Philadelphia, PA 19102

(856) 988-5574 or (212) 267-3700

To
Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated, _____
Attorney(s) for

PLEASE TAKE NOTICE:

? NOTICE OF ENTRY

that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 20

? NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the HON. _____ one of the judges of the within named Court, at _____ on 20 at _____ M.

Dated,

Yours, etc.

NAPOLI BERN & ASSOCIATES, LLP