

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

-----  
IN RE DIET DRUGS (Phentermine/  
Fenfluramine/Dexfenfluramine)  
PRODUCTS LIABILITY LITIGATION  
-----

MDL DOCKET NO. 1203

THIS DOCUMENT RELATES TO:

SHEILA BROWN, et al.

CIVIL ACTION NO. 99-20593

Plaintiffs,

v.

AMERICAN HOME PRODUCTS  
CORPORATION,

Defendant.  
-----

**CLASS MEMBERS' MOTION TO DISCHARGE TRUSTEES OF  
THE AHP SETTLEMENT TRUST**

For the reasons set forth in the accompanying Affidavit of Denise A. Rubin, the exhibits annexed thereto and the facts and legal authorities set forth in the annexed Memorandum of Law, the undersigned, counsel for claimants, hereby serve and file the within MOTION TO REMOVE THE AHP SETTLEMENT TRUST BOARD OF TRUSTEES, *i.e.*, Alison Overseth, Senator Chris Harris, Dr. George Beller, Dr. Rosemarie Robertson, Mr. Joseph Castle, The Hon. Dean Trafelet and The Hon. Richard Cohen.

For all of the foregoing reasons, Claimants who have filed "Green" Forms, "Blue" Forms and "Pink" forms and similarly situated class members represented by the

undersigned attorneys, respectfully ask this Court to discharge the Trustees and to grant such other and further relief as to the Court may seem just and proper.

Dated: Great River, New York  
July 18 2003

Respectfully submitted,

NAPOLI KAISER BERN & ASSOCIATES, LLP  
Attorneys for Class Members

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

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IN RE DIET DRUGS (Phentermine/  
Fenfluramine/Dexfenfluramine)  
PRODUCTS LIABILITY LITIGATION  
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) SHEILA BROWN, et al.  
)

) CIVIL ACTION NO. 99-20593  
)

) Plaintiffs,  
)

) AFFIDAVIT  
)

) v.  
)

) AMERICAN HOME PRODUCTS  
) CORPORATION,  
)

) Defendant.  
)  
-----

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

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

1. I am associated with the law firm Napoli, Kaiser, Bern & Associates, LLP, attorneys for class member Claimants who have filed "Green" Forms, "Blue" Forms and "Pink" forms, and similarly situated class members<sup>1</sup>, as well as other class members, in the above-captioned matter now pending before this Honorable Court.

---

<sup>1</sup> Including, but not limited to: Paula Ledwith, New York; Robin Picott, Virginia; Marveta Randolph, Illinois; Toni Wilson, Indiana; Gregory Heyeck, New Jersey; Dolores Irato, New Jersey; Gilles Boisvert, New York; Michael Schulman, New York; Leah Baker, West Virginia; Mary Corbin, Pennsylvania; Linda Gregory, Pennsylvania; Martha Green, Texas; Joyce Lyons, Texas; and Dale Strawn, Washington.

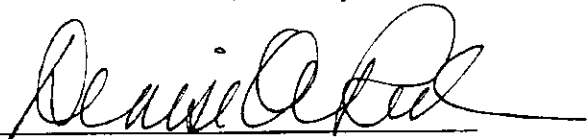
2. I offer this affidavit based on my personal knowledge and review of the files maintained by this office for the prosecution of the claims herein, in support of class members' motion for this Court's order.

3. The accompanying Memorandum of Law is hereby incorporated by reference as if fully set forth herein.

4. Annexed here are the following exhibits:

- a. Deposition of Trustee Alison Overseth, Transcript excerpts, dated November 1415, 2002;
- b. Settlement Agreement excerpt; §§ VI A 3 and 4(a)
- c. Excerpt from PTO 1415 (pp. 60-61);
- d. Trust Agreement
- e. Robert A. Mitchell, Jr., Testimony excerpts November 14-15, 2002;
- f. Thomas Florence Testimony excerpts, November 2002;
- g. Jules Henshell, Esq. Letter of October 23, 2002;
- h. Statement of Michael Fishbein, Esq., excerpt from Transcript of May 20, 2003 Status Conference;
- i. Statement of Andrew Chirls, Esq., excerpt from transcript of May 20, 2003 Status Conference;
- j. Statement of Michael Fishbein, Esq., excerpt from Transcript of February 27, 2003 Status Conference;
- k. Affidavit of Robert Mitchell, September 23, 2002;
- l. Reports of the AHP Settlement Trust; January-June 2003.

Sworn to before me this 18 th day  
Of July, 2003  
Betsy Barranco  
Notary Public

  
DENISE A. RUBIN (DR-5591)

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

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

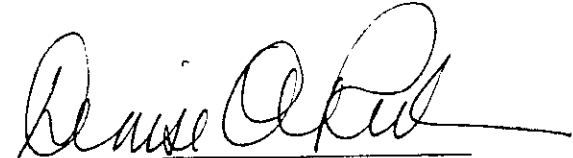
-----X  
IN RE: DIET DRUGS (Phentermine/  
Fenfluramine/ Dexfenfluramine) :  
PRODUCTS LIABILITY LITIGATION : CIVIL ACTION 99-20593  
-----X  
THIS DOCUMENT RELATES TO: : **Hon. Harvey Bartle**  
SHEILA BROWN, SHARON GADDIE, :  
VIVIAN NAUGLE, QUINTIN LAYER, and :  
JOBY JACKSON-REID, : **DECLARATION OF SERVICE**  
Individually and all others similarly situated, :  
:  
Plaintiffs, :  
:  
-against - :  
:  
AMERICAN HOME PRODUCTS :  
CORPORATION, :  
:  
Defendants. :  
-----X

DENISE A. RUBIN, an attorney duly admitted to practice in the State of New York and before the United States Court of Appeals for the Third Circuit, hereby declares that on July 18, 2003, I caused a true copy of the **CLAIMANTS' AFFIDAVIT AND EXHIBITS IN SUPPORT OF THEIR MOTION TO REMOVE THE AHP SETTLEMENT TRUST BOARD OF TRUSTEES** to be served on the following person(s) by e-mail and electronically filed with the Court. These papers were also served via certified mail on the persons listed in the annexed Certificate of Service.

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Denise A. Rubin (DR-5591)

**CERTIFICATE OF SERVICE**

---

I hereby certify that a true and correct copy of the foregoing Notice of Motion, Affidavit of Denise A. Rubin, Exhibits, and Memorandum In Support Of the Claimants' Motion To Remove the AHP Settlement Trust Board of Trustees, have been served on all attorneys of record, as set forth below, on the \_\_\_\_\_ day of July 2003 via Certified Mail:

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Denise A. Rubin (DR-5591)

# EXHIBIT 1

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

3 In Re: DIET DRUGS : MDL DOCKET NO.  
4 (PHENTERMINE/FENFLURAMINE/ : 1203  
5 DEXFENFLURAMINE) PRODUCTS :  
6 LIABILITY LITIGATION :  
7 -----

8 THIS DOCUMENT RELATES TO:  
9 ALL ACTIONS  
10 -----

11 SHEILA BROWN, et al. :  
12 :  
13 Plaintiffs, :  
14 :  
15 vs. :  
16 :  
17 WYETH (FORMERLY :  
18 AMERICAN HOME PRODUCTS :  
19 CORPORATION, :  
20 : CIVIL ACTION NO.  
21 Defendant. : 99-20593  
22 -----

23 Oral deposition of ALISON  
24 OVERSETH, taken pursuant to notice, at the Law  
25 Offices of Wolf, Block, Schorr and  
26 Solis-Cohen, LLP., 1650 Arch Street, 22nd  
27 Floor, Philadelphia, Pennsylvania 19103, on  
28 Thursday, November 14, 2002, beginning at  
29 approximately 4:30 p.m., before David Walsh,  
30 Court Reporter-Notary Public, there being  
31 present:

1  
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3  
4  
5 1 Q. I didn't write any of them down. If  
6  
7 2 you'd told me there were seven, I would have  
8  
9 3 tried to count. What do you do as trustee for  
10  
11 4 the trust?

12  
13 5 A. We are the oversight or overseeing body  
14  
15 6 to the implementation of the settlement  
16  
17 7 agreement.

18  
19 8 Q. And how do you go about doing that?

20  
21 9 A. We initially familiarized ourselves with  
22  
23 10 the settlement agreement and with aspects of  
24  
25 11 that and really reviewed that and other  
26  
27 12 pertinent documents as we could. Then we have  
28  
29 13 worked to set up a claims process, in part  
30  
31 14 what had already been inherited from the  
32  
33 15 interim claims administrators, and then we  
34  
35 16 eventually took over after the settlement  
36  
37 17 agreement was approved. We are in the process  
38  
39 18 and continue to process claims and to preserve  
40  
41 19 the assets of the trust.

42  
43 20 Q. What do you mean preserve the assets of  
44  
45 21 the trust?

46  
47 22 A. Both from the perspective of investments  
48  
49 23 that the trust makes, though that is fairly  
50  
51 24 detailed in the settlement agreement, and from  
52  
53 25 the perspective of insuring fairness to class

1  
2  
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4  
5 1 members that we're paying legitimate claims  
6  
7 2 and we have set up a process that pays  
8  
9 3 legitimate claims within the context of the  
10  
11 4 settlement agreement.

12  
13 5 Q. So, the trust wants to pay legitimate  
14  
15 6 claims, right?

16  
17 7 A. Absolutely.

18  
19 8 Q. And the trust is obligated to pay  
20  
21 9 legitimate claims?

22  
23 10 A. It is the role of the trust to pay  
24  
25 11 legitimate claims.

26  
27 12 Q. It's your role to make sure the trust is  
28  
29 13 doing their job?

30  
31 14 A. Yes, it is.

32  
33 15 Q. Are they doing their job?

34  
35 16 A. Yes, they are.

36  
37 17 Q. No criticisms at all of how they're  
38  
39 18 doing things?

40  
41 19 A. Today?

42  
43 20 Q. Today.

44  
45 21 A. No.

46  
47 22 Q. How much time do you spend -- and if it  
48  
49 23 has been different over the past -- we're  
50  
51 24 almost three years now, tell me. If it was  
52  
53 25 more in 2000 than now. Just give me some idea

1  
2  
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4  
5 1 how much time you have spent working on trust  
6  
7 2 matters?

8  
9 3 A. It's hard to say because the time has  
10  
11 4 been substantially different during the period  
12  
13 5 of time that we have served as trustees and  
14  
15 6 it's probably different among the trustees.

16  
17 7 Myself personally, there was  
18  
19 8 initial get up to speed time which with both  
20  
21 9 reviewing documents and attending meetings.  
22  
23 10 We initially met as trustees roughly once a  
24  
25 11 month. We expected that to decrease over time  
26  
27 12 as we came up to speed.

28  
29 13 I also chair the Finance and  
30  
31 14 Audit and Planning Committee of the trust.  
32  
33 15 So, we have at least quarterly meetings.

34  
35 16 I also chair what we call the  
36  
37 17 special working group, which starting in July  
38  
39 18 of 2001, has met somewhere between as often as  
40  
41 19 once a week and more often, sort of every two  
42  
43 20 to three weeks, though there has recently been  
44  
45 21 a hiatus of almost two months because of other  
46  
47 22 proceedings that were going on in court and  
48  
49 23 peoples inability to meet.

50  
51 24 I also spend substantial  
52  
53 25 amounts of time on phone calls with

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1 management, on phone calls with the parties  
2 and other sorts of things to make sure that we  
3 feel there's a facilitation of communication  
4 among the parties and the trustees.

5 Q. Do you get paid for your work?

6 A. Yes, I do.

7 Q. So, I guess you have to submit time  
8 sheets or at least bills for your work, right?

9 A. The bills are submitted by Mr. Joseph  
10 Castle, the chair of the trustees.

11 Q. Does the -- would the bills show the  
12 number of hours you spent on a given billing  
13 period?

14 A. We are paid for meetings and so they  
15 would show the hours that we have spent in  
16 meetings.

17 Q. What about the I call it learning curve,  
18 you called it getting familiar with the trust  
19 period. Did you get paid for that?

20 A. Well, no. Not separately for meetings,  
21 no.

22 Q. So, all you get paid for is the  
23 meetings?

24 A. Yes.

25 Q. Don't get paid for phone calls?

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1 A. Unless it's a conference call, which I'm  
2 calling a meeting, where there is generally  
3 more than two or three people on the phone, we  
4 get paid for that.

5 Q. How much do you get paid?

6 A. Our compensation is \$75,000 a year,  
7 \$2,500 I believe per meeting, per official  
8 trustee meeting, and I believe it's \$275 an  
9 hour for other meetings such as I've  
10 described.

11 Q. How did you find out you were going to  
12 be requested to work on this trust?

13 A. I first heard of the trust when a man I  
14 used to work with when I was at First Boston  
15 many years ago called to say they were looking  
16 for trustees.

17 Q. Who was that person?

18 A. Jack Leary, L-E-A-R-Y.

19 Q. Did you have to like apply for it and  
20 interview or did Jack just tell you you had  
21 the job if you wanted it?

22 A. No.

23 Q. Tell me how it worked please?

24 A. He suggested I send my resume to Gene  
25 Locks. The two of them served together on

1  
2  
3  
4  
5 1 several asbestos trusts. I believe they  
6  
7 2 worked together professionally. I did that.  
8  
9 3 I met with Gene. Who then referred me to a  
10  
11 4 man in New York, whose name I have forgotten.  
12  
13 5 Who then referred my resume to Judge Freeman,  
14  
15 6 Helen Freeman, who I then met with and then  
16  
17 7 she nominated me to be a trustee.

18  
19 8 Q. How long did that process take from the  
20  
21 9 time that Jack first called you until you were  
22  
23 10 nominated?

24  
25 11 A. I'm guessing four or five months.

26  
27 12 Q. But you did start in April of 2000?

28  
29 13 A. That was our first meeting as a group of  
30  
31 14 trustees.

32  
33 15 Q. So, it may have been as early as late '99  
34  
35 16 when you first found out --

36  
37 17 A. Probably late fall, early winter '99 that  
38  
39 18 I first heard of the trust or the potential  
40  
41 19 for the creation of the trust.

42  
43 20 Q. You've worked on other trusts before,  
44  
45 21 haven't you?

46  
47 22 A. I hadn't until that time.

48  
49 23 Q. But you are now working on another  
50  
51 24 trust?

52  
53 25 A. I am now on the UNR, asbestos disease  
54  
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1 claims trust.

2 Q. Was there a time you had criticism of  
3 the way the trust was operating? You said  
4 that you don't now.

5 A. I wouldn't use the term criticism.

6 Q. Well, Mr. Mitchell just testified that  
7 there were certain deadlines that haven't been  
8 complied with that for processing of claims,  
9 for a number of things. Are you aware of the  
10 trust not meeting certain deadlines?

11 A. Yes.

12 Q. What deadlines are they not meeting?

13 A. There are a series of requirements under  
14 the settlement agreement currently that are  
15 not met as were originally outlined in the  
16 settlement agreement. Such as once a claim is  
17 received, how rapidly it is processed to  
18 completion.

19 Q. Are there other deadlines they're not  
20 meeting that you're aware of?

21 A. Not that I'm aware of.

22 Q. How about the trustees, do they have any  
23 obligations in the settlement agreement that  
24 you're aware of?

25 A. Beyond what I previously described as

1 not?

2 A. We currently have a number of  
3 professionals involved that help us in  
4 auditing in a different sense than perhaps is  
5 directly reflected there, but help us to audit  
6 and to a process which we believe is leading  
7 to fair payment of claims. So, paying valid  
8 claims and not paying invalid claims.

9 Our subcontract with ARPC  
10 helps us with this. We have previously worked  
11 with Heffler Radetich to help us on the  
12 screening program side. We have Ernst and  
13 Young working internally to assure controls in  
14 other sorts of financial matters, but also  
15 some of the business functions. And we meet  
16 regularly with the chief financial officer and  
17 chief operating officer, Joseph Foley, as well  
18 as with Robert Mitchell, the CEO of the trust,  
19 to have them describe internal processes that  
20 occur, as well as the controls which would be  
21 able to double-check that they are occurring  
22 properly.

23 Q. And you're involved with auditing in  
24 your capacity as chair of the Audit Planning  
25 and Finance Committee, correct?

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1 BY MR. PETROFF:

2 Q. Did you have any involvement with the  
3 transition which led to Seabury and Smith no  
4 longer being involved?

5 A. I reviewed the business plan and, in  
6 fact, much of the business plan was prepared  
7 under the direction of the trustees to segway  
8 from an outside claims subcontractor to  
9 bringing the claims processing in house.

10 Q. Once it was brought in house, there was  
11 no need for Seabury and Smith anymore?

12 A. Seabury and Smith's contract finished at  
13 the end of January -- January 31st 2002,  
14 almost a year. We maintained our relationship  
15 with them until that time, which was the end  
16 of their contract. At the same time, we were  
17 moving, transitioning to bringing claims  
18 processing in house.

19 Q. Was that part of the plan from the start  
20 as far as you know to start out with out  
21 sourcing it and then bringing it in house?

22 A. Not as far as I know.

23 Q. Why was that decision made?

24 A. In the fall of 2000, November, we had a  
25 rather spectacular failure to comply with



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1 Q. I appreciate that. Was that fact  
2 appreciated at the time this trust was set up?

3 A. I wasn't here at the time the trust was  
4 set up.

5 Q. Well, at the time you were there, you  
6 were one of the initial trustees, correct?

7 A. Yes.

8 Q. Was it appreciated by the trustees at  
9 the time the trust was -- began its operation  
10 that this was a complicated process?

11 A. Yes.

12 Q. And was -- did the trust then rely upon  
13 the fact that there were contractors that  
14 would be able to do it in a timely manner  
15 complicated as it was?

16 A. We believed that we had a subcontractor  
17 that would be able to.

18 Q. So, once it was determined the  
19 subcontractor wasn't able to do it in a timely  
20 fashion, what was it specifically that the  
21 trust did to make sure that it was done in a  
22 timely fashion?

23 A. We were first interested in that it was  
24 done in any fashion and we then moved to try  
25 and work and continue to work in a timely --

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1 to move towards a timely fashion.

2 Q. When was it that it was determined that  
3 it couldn't be done in a timely fashion and  
4 the subcontractor was removed?

5 A. Two different questions, which one do  
6 you want me to answer?

7 Q. The second one. When was it that the  
8 subcontractor --

9 MR. LOCKS: I object, would  
10 you restate the question.

11 BY MR. BLIZZARD:

12 Q. When was the subcontractor removed?

13 A. The subcontractor finished their  
14 contract January 31st, 2002.

15 Q. During what period of time prior to that  
16 had there been concerns about the ability of  
17 the subcontractor to deliver in a timely  
18 fashion?

19 A. At the end of November 2000.

20 Q. So, for over a year the contractor  
21 remained in place despite the fact there was  
22 concerns about it's ability to deliver claims  
23 processing in a timely fashion?

24 A. Yes, they did, but not in the same  
25 manner.

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5 1 Q. Why did that happen? Why did it take a  
6  
7 2 year to get rid of them?

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9 3 A. Two reasons: One, despite where we  
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11 4 eventually landed up, at the time there had  
12  
13 5 been a substantial investment in this  
14  
15 6 contractor when we found out they could not  
16  
17 7 perform or were not performing in a timely  
18  
19 8 fashion, and we had hoped that that investment  
20  
21 9 would not be totally lost and we would be able  
22  
23 10 to improve upon working with them in terms of  
24  
25 11 prioritizing and working with them to strongly  
26  
27 12 encourage them to improve their management  
28  
29 13 abilities.

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31 14 Q. Okay. Did part of that involve --

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33 15 MR. ZIMROTH: Excuse me, I  
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35 16 don't know if she's finished her answer. She  
36  
37 17 said there were two reasons.

38  
39 18 THE WITNESS: Yeah, I'm  
40  
41 19 trying to remember.

42  
43 20 MR. CHIRLS: Do you remember  
44  
45 21 the question? Why did they stick around for  
46  
47 22 13 months?

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49 23 THE WITNESS: That's it, why  
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51 24 did they stick around so long, that's right.  
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53 25 The other reason, thank you, is that we ended

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1 that.

2 Q. But you are aware that there are  
3 allegations that there are far more matrix  
4 claims then were ever predicted, right?

5 A. I have heard concerns about that.

6 Q. Have the trustees talked about those  
7 concerns?

8 A. About a large number of claims?

9 Q. Yes.

10 A. Yes.

11 Q. And has the trustees talked about the  
12 fact that this trust may run out of money  
13 inside of the next 12 months?

14 A. We don't believe it's a fact that the  
15 trust will run out of money in the next 12  
16 months.

17 Q. Have you talked about that possibility?

18 A. We have been concerned about the funding  
19 of the trust.

20 Q. You know there are deadlines that are  
21 continuing to run with respect to claimants  
22 rights, true?

23 A. Yes.

24 Q. And if this trust is to run out of  
25 money, if that were to happen in the next 12

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1 months, that's something that claimants would  
2 want to know so that they can exercise certain  
3 rights with respect to the deadlines; isn't  
4 that fair?

5 A. That would be appropriate.

6 Q. So, what are the trustees doing to  
7 figure that out so they can notify the  
8 claimants that it may occur?

9 A. We have since the earliest days  
10 involvement with the trust discussed what are  
11 our responsibilities in terms of the funding  
12 of the trust to claimants. If we had a  
13 specific concern that the trust -- that people  
14 would make decisions today that might in some  
15 way allow them or limit their options were the  
16 money to run out -- were the trust to run out  
17 of money, that they should be notified.

18 Q. So, are you notifying people now?

19 A. We have no reason to believe that the  
20 trust is running out of money today.

21 Q. You don't?

22 A. No.

23 Q. Well, you're aware -- you've heard the  
24 number today that there may be 75,000 matrix  
25 claims by --

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1 A. I don't know where that number came  
2 from. I haven't heard that number.

3 Q. You haven't talked to Mr. Florence about  
4 that?

5 A. No.

6 Q. Has the trust done any investigation  
7 whatsoever with respect to the number of  
8 claims on file?

9 A. We have looked at many of the claims  
10 that are on file and have been very concerned.

11 Q. Do you know that there are about 50,000  
12 matrix claims that are predicted at least by  
13 the end of December?

14 A. What has been filed versus what we  
15 believe will actually result for -- qualify  
16 for a benefit, we've looked at both of those.

17 Q. Okay. You know that right now there are  
18 averments that there may only be enough money  
19 to pay around 5,000 matrix claims. Do you  
20 know that?

21 MR. ZIMROTH: Objection as to  
22 form.

23 MR. CHIRLS: I object.

24 THE WITNESS: You're making  
25 assumptions that I don't have in front of me

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1 in terms of what sort of where somebody is on  
2 the matrix and how much.

3 BY MR. ALEXANDER:

4 Q. Have the trustees done anything to  
5 figure that out?

6 A. We have looked at this on a regular  
7 basis and our primary concern would be is  
8 somebody unable to pursue other ways of at  
9 some point making a claim against the  
10 company. Are we precluding them in anyway if  
11 they don't have information. If they're --  
12 can they opt out or not if there's not enough  
13 money.

14 Q. Do you know there's a deadline for the  
15 intermediate opt out right, true?

16 A. Yes.

17 Q. You know that if claimants might not get  
18 paid, they might want to exercise that right  
19 to intermediately opt out, right?

20 MR. ZIMROTH: Objection as to  
21 form.

22 THE WITNESS: It's hard for  
23 me to say what a claimant might want to do.  
24 There's intermediate opt outs and back end opt  
25 outs.

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1 BY MR. ALEXANDER:

2 Q. As a trustee you have fiduciary  
3 obligation to the claimants, true?

4 A. Yes.

5 Q. And so it makes sense to figure out what  
6 their rights might be and what they might want  
7 to do?

8 A. Yes.

9 Q. Okay. And if claimants are so far back  
10 in line in the que that they may not get paid,  
11 it's reasonable to assume some of those  
12 claimants might want to opt out of this deal  
13 and pursue an individual lawsuit; isn't that  
14 fair?

15 A. The claimants have the right to opt out,  
16 which are matrix claims?

17 Q. Yes.

18 A. We do not have the data -- I don't want  
19 you to stop. The cue would be not the way I  
20 would look at it. In our current estimations,  
21 which are not highly scientific, in our  
22 current sampling, we believe that the claims  
23 that we believe would not qualify based on  
24 medical reasonableness and other sorts of  
25 reasons, that there are funds to cover the

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1 claims that we think will actually eventually  
2 be adjudicated.

3 Q. Wait a minute, didn't you tell me  
4 earlier you have no idea how many matrix  
5 claims there are going to be?

6 A. Ever or in the next three months?

7 Q. Well, between now and May of 2003.

8 A. I don't know how many there will be  
9 between now and May of 2003.

10 Q. Do you anticipate more than 50,000 by  
11 the end of this year?

12 A. In the next month?

13 Q. Yes, by the end of this year.

14 A. I don't know what our current total is.

15 Q. Well, if you don't know what the current  
16 total is, how can you know how many that can  
17 be paid?

18 A. In house inventory, I'm sorry.

19 Q. What is your in house inventory? How  
20 many thousands of matrix claims do you have in  
21 house right now?

22 A. I would have to refer to our CEO who has  
23 the specific numbers, but I think we're  
24 talking about 45,000.

25 Q. So, out of the 45,000, how many of those

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1 do you think you can pay?

2 A. My understand is that there are  
3 around -- I can't say that. I don't have the  
4 specific numbers that has been determined to  
5 be possible to be paid. Again, my issue  
6 though is --

7 Q. Wait a minute, I'm sorry.

8 MR. ZIMROTH: Let her finish  
9 her answer, Mr. Alexander. She wants to  
10 finish her answer.

11 MR. ALEXANDER: Well, I'm not  
12 asking her what her issue is. I asked her a  
13 specific question.

14 MR. CHIRLS: What was the  
15 question?

16 THE WITNESS: I don't know  
17 how many claims we have.

18 BY MR. ALEXANDER:

19 Q. Okay. And if you don't know how many  
20 claims you have, then how do you know if  
21 there's -- I thought you said we think there's  
22 enough money to pay all the claims that are  
23 going to be approved?

24 A. We don't know that.

25 Q. Okay. If you don't know that, isn't

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1 that something that you should be figuring out  
2 so you can advise your claimants -- I mean I  
3 want you to assume, for example, somebody is  
4 number 45,000 in line and there's a deadline  
5 coming up to opt out and they need to make a  
6 decision because if they miss that deadline,  
7 they may not be entitled to opt out and they  
8 don't know if they're going to get paid.

9                   Doesn't the trustees have an  
10 obligation to figure that out so they can tell  
11 the claimants hey, maybe there is not going to  
12 be enough money. You might want to exercise  
13 some other rights.

14                   MR. ZIMROTH: Objection as to  
15 form. I think you're mixing apples and  
16 oranges, Mr. Alexander.

17                   MR. ALEXANDER: Well, it's a  
18 convoluted question.

19                   THE WITNESS: Yes, it is.

20 BY MR. ALEXANDER:

21 Q. I apologize. Are the trustees doing  
22 anything right now so that they can inform  
23 claimants as to how many claims are likely to  
24 be paid and where they are in line if they're  
25 ever likely to get paid?

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1 A. No, we are doing nothing on that right  
2 now.

3 MR. ALEXANDER: Thank you.

4 BY MR. FLEMING:

5 Q. My name is George Fleming.

6 A. Hello, George. Mr. Fleming, sorry.

7 Q. Would you agree with, Ms. Overseth, that  
8 the legitimate claimants have a huge interest  
9 in making sure that this trust works?

10 A. I can't speak for legitimate claimants,  
11 but I would accept -- assume so.

12 Q. And would you expect that legitimate  
13 claimants would have a big stake and a huge  
14 interest in making sure that you met your  
15 deadlines on the trust?

16 A. I can't speak to their interest in the  
17 deadlines on the trust.

18 Q. Would you expect, ma'am, that if there  
19 were difficulties in servicing individual  
20 legitimate claimants, that the trust would be  
21 concerned about that?

22 A. How do you mean servicing?

23 Q. I mean completing their forms and  
24 meeting their deadlines?

25 A. Could you ask the question again, I'm

Untitled

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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
	:	
	:	
SHEILA BROWN, ET AL.	:	
	:	
V.	:	CIVIL ACTION
	:	NO. 99-20593
	:	
AMERICAN HOME PRODUCTS CORPORATION	:	

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 PHILADELPHIA, PENNSYLVANIA  
 FRIDAY, NOVEMBER 15, 2002  
 -----

BEFORE: HONORABLE HARVEY BARTLE, III, J.

HEARING

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 SUZANNE R. WHITE, C.M.  
 FEDERAL CERTIFIED REALTIME REPORTER  
 601 MARKET STREET  
 1234 U.S. COURTHOUSE  
 PHILADELPHIA, PA  
 (215) 627-1882

1 Q. Now, we have talked about the formation of the  
2 special working group. We began to talk about the  
3 search for the CEO. How did that -- how did that  
4 progress?

5 A. Mr. Cassel, Judge Cohen and I really led that up.  
6 And we received about 60 resumes, both from the Wall  
7 Street Journal ad and from a variety of other sources  
8 from people who had recommendations and had been in  
9 touch with people they knew.

10 It became fairly clear, particularly to me  
11 and Mr. Cassel's management experience, that we were  
12 looking for a complicated -- we were asking -- it was a  
13 complicated position to staff for several reasons.

14 The first was that the Trust is a relatively  
15 -- at the volumes that we were even at that point  
16 expecting is a relatively short term position. It is  
17 not something, while the Trust goes for 15 years, the  
18 point during which we would expect high volume activity  
19 such that it is a big business, is probably three to  
20 four years at that time which is now a year ago.

21 The second thing is that it is -- while we  
22 wanted a chief executive officer, what we were asking  
23 of that person is, very much of a hands-on  
24 management ability to build this Trust but at the same  
25 time the train had left the station. We were working

1 with ARPC. We had a plan. We were moving forward.  
2 Most people that have experience being a CEO are going  
3 to want to come in and do it their way. And we really  
4 did not and very consciously chose not to pursue the  
5 let's stop everything and reevaluate and let a CEO put  
6 his own personal mark on the business that we were  
7 building.

8 And so what we needed was someone who was  
9 willing to both be very hands on but also to be with  
10 the program, if you will.

11 The other thing we asked of this person was  
12 beyond the usual ability to manage people, to  
13 comprehensively be able to plan things strategically  
14 about a business was that this was a complicated group  
15 of individuals who otherwise have an opinion about what  
16 goes on in the Trust, and you have the plaintiff  
17 attorneys, the Court and the company and a whole series  
18 of other interested parties beyond the claimants which  
19 are your primary constituents and that is not a  
20 situation just anyone can either want to walk into or  
21 to desire to walk into.

22 Q. So how did you get to the choice that you got to?

23 A. We interviewed a number -- we reviewed a number of  
24 resumes. We interviewed a number of people both in  
25 person and on the phone and between some of these

1 issues it became clear to Joe and myself that probably  
2 the ideal person for this is someone who's either  
3 retired or looking for a project, or is probably  
4 thinking of switching careers. At the same time all of  
5 this is going on, Mr. Mitchell is really doing a  
6 terrific job. I think all of us somewhat collectively  
7 that had direct experience with Mr. Mitchell were  
8 delighted with the work that he had been doing. And he  
9 had indicated to us that he would at least consider  
10 this position.

11 One of our concerns about Mr. Mitchell was  
12 -- did not have CEO experience. And as we looked at  
13 what I just described of the whole series of things we  
14 were asking of the CEO, and as we looked at the other  
15 alternatives we had that we saw in terms of  
16 applications or resumes that had been submitted, what  
17 we started to look at was that we would -- if we went  
18 with Mr. Mitchell, we would be able to let him grow  
19 into the job. And quite consciously, Judge Cohen,  
20 Mr. Cassel and I said we would stay involved on some  
21 sort of senior level, not micromanaging certainly, but  
22 with some ability to help with the more strategic  
23 issues that had to be dealt with by a number of the  
24 parties.

25 Q. And thus the regular meetings every two or three

1 weeks of the special working group continued?

2 A. They continued for that reason, and also because  
3 we were in a major transition and it really -- there  
4 are big -- everything from mundane decisions to huge  
5 decisions that could not always be well worked out on  
6 an operating basis without perhaps the trustees acting  
7 as a bit of a mediator in terms of making sure that  
8 things moved forward constructively.

9 Q. You consulted with the parties when you chose  
10 Mr. Mitchell?

11 A. Yes, we did.

12 Q. His contract was approved -- and selection and  
13 contract were approved by the Court?

14 A. Yes.

15 Q. Mr. Mitchell is in place, special working group  
16 continues, the plan is being developed so that the  
17 Trust has capacity to process in house. What do you  
18 remember as the next milestone that is important to  
19 your -- from your perspective in the governance of the  
20 Trust?

21 A. We were staying on top of what was going in terms  
22 of the transition plan. Final judicial approval  
23 happened January of 2002, and that required a whole --  
24 put into motion a whole series of other obligations of  
25 the Trust. The first was the notice package that

# EXHIBIT 2

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

_____	)	
IN RE DIET DRUGS	)	
(PHENTERMINE/FENFLURAMINE/	)	MDL NO. 1203
DEXFENFLURAMINE) PRODUCTS	)	
LIABILITY LITIGATION	)	
_____	)	
THIS DOCUMENT RELATES TO:	)	
ALL ACTIONS	)	
_____	)	
SHEILA BROWN, et al. v. AMERICAN	)	CIVIL ACTION NO. 99-20593
HOME PRODUCTS CORPORATION	)	
_____	)	

NATIONWIDE CLASS ACTION  
SETTLEMENT AGREEMENT WITH  
AMERICAN HOME PRODUCTS CORPORATION  
(AS AMENDED)

Dated: November 18, 1999

Amended: November 24, 1999 (First Amendment)  
January 10, 2000 (Second Amendment)  
March 24, 2000 (Third Amendment)  
July 20, 2000 (Fourth Amendment)  
November 21, 2002 (Fifth Amendment)  
January 10, 2003 (Sixth Amendment)

## **VI. CLAIMS ADMINISTRATION**

### **A. THE INTERIM ESCROW AGENT, INTERIM CLAIMS ADMINISTRATOR(S), CLAIMS ADMINISTRATOR(S) AND TRUSTEES.**

1. In connection with their request for Preliminary Approval of the Settlement, AHP and the Class Counsel Representative(s) shall mutually select an Interim Escrow Agent, such selection being subject to approval by the Court. Until such time as the Court approves the appointment of Trustees, the Interim Escrow Agent shall have all of the rights and responsibilities of the Trustees under the Settlement Agreement with regard to the receipt and investment of Settlement Funds and any payments which AHP is required to make to the Trustees shall be paid to the Interim Escrow Agent.
2. In connection with their request for Preliminary Approval of the Settlement, AHP and the Class Counsel Representative(s) shall request that the Court approve the appointment of two (2) Interim Claims Administrator(s). The Interim Claims Administrator(s) will be nominated by the Parties, and each nomination will be subject to agreement of the Parties and subject to approval by the Federal District Court.
3. The Trustees shall consist of seven (7) independent individuals, all of whom shall be jointly nominated by the Parties and subject to agreement of AHP and the Class Counsel Representative(s). Four (4) of the nominees shall be subject to the approval by the Judges who will participate in the State Court Judicial Advisory Committee referred to in Sections VIII.B.3-6 of this Agreement. These four Trustees shall serve for a period ending December 31, 2004. The initial Trustees shall be those persons named on the signature pages of the Trust Agreement, and the Trustees who shall serve until December 31, 2004, shall be designated as such on the signature pages of the Trust Agreement. Beginning on January 1, 2005, the Trust will be comprised of three (3) Trustees until the termination of the Trust. All nominee Trustees shall be subject to the approval of and appointment by the Federal District Court. AHP and the Class Counsel Representative(s) shall use their best efforts to assure that such Trustees will be appointed within sixty (60) days of this Settlement Agreement. If any nominee is not approved, the Parties shall jointly nominate another nominee, who will be subject to agreement of AHP and the Class Counsel Representative(s). If any vacancy occurs among the Trustees, the successor Trustee, if any, shall be selected in accordance with Article 3.06 of the Trust Agreement, subject to approval of the Court.

4. The Interim Escrow Agent, Interim Claims Administrator(s), Trustees and Claims Administrator(s), shall have the following qualifications:
  - a. The Interim Claims Administrator(s), Trustees and Claims Administrator(s) shall have relevant medical, financial, legal, or administrative experience.
  - b. The following individuals and/or entities, may not be nominated, approved, or serve as the Interim Escrow Agent or any other escrow agent appointed hereunder, Interim Claims Administrator(s), Claims Administrator(s), or Trustees:
    - i. Past or present officers, directors, agents, or employees of AHP, Interneuron or Servier, or any successor or any affiliates thereof.
    - ii. Past or present officers, directors, agents, or employees of any manufacturer, seller, wholesaler, or distributor of any Phentermine hydrochloride or Phentermine resin pharmaceutical product.
    - iii. Attorneys or other persons who represent or have represented or been retained to represent Interneuron, Servier, or any of the Parties to this Agreement, including but not limited to, AHP, any Diet Drug Recipients, Representative Claimants or Derivative Claimants.
    - iv. Diet Drug Recipients, Class Members, Representative Claimants, or Derivative Claimants.
    - v. Persons or entities related to or affiliated with any attorneys or representatives of Diet Drug Recipients, Representative Claimants, or Derivative Claimants.
    - vi. Persons who own any securities of AHP, Interneuron, Servier, or any successor corporations or any affiliates thereof, or who have any other financial interest in AHP, Interneuron, Servier or, any successor corporations or any affiliates thereof.
    - vii. Persons who own any securities of any manufacturer, seller, wholesaler or distributor of any Phentermine hydrochloride or Phentermine resin pharmaceutical product.

Notwithstanding the foregoing, upon written request and full disclosure of any and all disqualifications under this subsection, said disclosed disqualifications may be waived in writing by the Parties to this Agreement, subject to Court approval.

5. The rights and duties of the Interim Escrow Agent shall be set forth in an escrow agreement substantially in the form appended hereto as Exhibit "10."
6. Until the effective date of the Trust, the Interim Claims Administrator(s) shall jointly exercise all of the functions which are to be exercised by the Claims Administrator(s) and/or Trustees under the terms of this Settlement Agreement, except those functions which will be exercised by the Interim Escrow Agent. Each Interim Claims Administrator that was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit or proceeding of any kind, whether civil, administrative or arbitral, by reason of such Interim Claims Administrator being or having been an Interim Claims Administrator, shall be indemnified by the Trust against expenses, costs and fees of attorneys, judgments, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by such Interim Claims Administrator in connection with or resulting from such action, suit, or proceeding if he or she acted in good faith and in a manner such Interim Claims Administrator reasonably believed to be in or not opposed to the best interests of the Trust and/or the Interim Escrow established pursuant to the Interim Escrow Agreement contemplated in this Section VI.A. Any indemnification under this Section VI.A.6 shall be made only upon a determination by the Court that indemnification of such Interim Claims Administrator is proper in the circumstances. Reasonable expenses, costs, and fees of attorneys incurred by or on behalf of an Interim Claims Administrator in connection with any such action, suit, or proceeding, whether civil, administrative or arbitral, may be paid by the Trust in advance of the final disposition thereof upon receipt of an undertaking by or on behalf of such Interim Claims Administrator to repay such amount unless it shall be determined ultimately that such Interim Claims Administrator or former Interim Claims Administrator is entitled to be indemnified by the Trust. If any disbursements are required to be made for indemnification purposes pursuant to this Section VI.A.6 prior to the effective date of the Trust, and are ordered to be paid by the Court, the Interim Escrow Agent shall have the authority to make disbursements from the Interim Escrow for such purposes. Each Interim Claims Administrator may purchase and maintain reasonable amounts and types of insurance against

# EXHIBIT 3

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

IN RE: DIET DRUGS : MDL DOCKET NO. 1203  
(PHENTERMINE, FENFLURAMINE, :  
DEXFENFLURAMINE) PRODUCTS :  
LIABILITY LITIGATION :  
: :  
THIS DOCUMENT RELATES TO: :  
: :  
SHEILA BROWN, et al. :  
: :  
v. :  
: :  
: :  
AMERICAN HOME PRODUCTS :  
CORPORATION : CIVIL ACTION NO. 99-20593

MEMORANDUM AND PRETRIAL ORDER NO. 1415

BECHTLE, J.

AUGUST 28, 2000

Presently before the court is the Joint Motion of the Class Representatives and American Home Products Corporation ("AHP") for an order certifying and approving the nationwide settlement class embodied in the Settlement Agreement entered into between the parties on November 19, 1999. For the reasons set forth below, the court will grant the motion and will certify the class and approve the settlement pursuant to Federal Rule of Civil Procedure 23. The court's findings of fact and conclusions of law are as follows.

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opt-out right and who initiates a lawsuit against AHP or any of the AHP Released Parties within one year from the date on which the back-end opt-out right is exercised, the AHP Released Parties shall not assert any defense based on any statute of limitations or repose, the doctrine of laches, any other defense predicated on the failure to timely pursue the claim, any defense based on "splitting" a cause of action, any defense based on a release signed pursuant to the Settlement Agreement and/or any other defense based on the existence of the Settlement Agreement. (Ex. P-3 at 61-63 of 148.)

Finally, the Settlement Agreement provides for a "financial insecurity opt-out right." (Ex. P-3 at 32-33 of 148.) If a condition of financial insecurity with respect to payment of AHP's obligations under the Settlement Agreement occurs in accordance with the conditions defined in the Agreement, then all Diet Drug Recipients who were diagnosed as having FDA Positive or Mild Mitral Regurgitation by the end of the Screening Period and who have registered for settlement benefits by Date 2 have a right to opt-out of the settlement and pursue all of their settled claims against AHP and the other Released Parties, including claims for punitive, multiple and exemplary damages. (Ex. P-3 at 32-33 of 148.)

### 3. Creation of a Settlement Trust

The Settlement Agreement requires the creation of a Settlement Trust which has responsibility for receiving the amounts deposited by AHP to fund the settlement, investing such amounts (under supervision of the court), administering the trust, providing the benefits contemplated by the Settlement Agreement and conducting the

audits contemplated by the Settlement Agreement.<sup>8</sup> It is also required to issue regular reports to the court concerning these matters. (Ex. P-3 at 22-24, 73-81 & 100-15 of 148; Ex. P-4.) Pending the creation of the Trust, the functions of the Settlement Trust are to be performed by Interim Claims Administrators and an Interim Escrow Agent. (Ex. P-3 at 70-73 of 148.) On November 23, 1999, the Court appointed Gregory P. Miller, Esquire and the Honorable C. Judson Hamlin to serve as Interim Claims Administrators. Mr. Miller is an experienced trial lawyer who has served as Special Discovery Master in MDL 1203. Judge Hamlin served as a judge in the Superior Court of the State of New Jersey handling mass tort litigation until his retirement from that position in 1998. He has functioned as Special Settlement Master with respect to the Diet Drug Litigation pending in the state of New Jersey. (Tr. 5/9/00 at 18-20 & 54-56.) In Pretrial Order No. 1010, dated December 6, 1999, the court appointed PNC Bank to serve as Interim Escrow Agent.

The Settlement Agreement contemplates that there will be seven Trustees who will serve until the year 2005, and that, thereafter, there will be three Trustees for the Settlement Trust. (Ex. P-3 at 22 & 70 of 148.) By Pretrial Order No. 1159, the court appointed the following individuals to serve as Trustees for the Settlement Trust: Joseph L. Castle, II, Radnor, Pennsylvania; George A.

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<sup>8</sup> The Settlement Trust is to be structured and managed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code. (Ex. P-3 at 28 of 148.)

Beller, M.D., Charlottesville, Virginia; Honorable Richard S. Cohen, New Brunswick, New Jersey; Senator Chris Harris, Arlington, Texas; Ms. Alison Overseth, New York, New York; Rose-Marie Robertson, M.D., FACC, Nashville, Tennessee; and Honorable Dean M. Trafelet, Chicago, Illinois. Although the court has issued an order appointing Trustees to the Settlement Trust, the Trust had not been formally organized as of the date of the Fairness Hearing. (Tr. 5/9/00 at 49.)

#### 4. The Settlement Fund

The settlement requires the creation of two separate funds to provide benefits to class members. "Fund A" is intended to provide funding to pay for all non-matrix benefits available under the Settlement Agreement to class members and the associated costs of administering those benefits. "Fund B" is intended to provide funding to pay for matrix benefits for class members and the associated costs of administering those benefits.

Under the agreement, AHP is required to make payments into Fund A as follows: (1) \$50 million 5 business days after preliminary approval; (2) \$383 million 5 business days after trial court approval; (3) \$383 million 180 days after the preceding payment of \$383 million; and (4) \$184 million 5 business days after Final Judicial Approval. (Ex. P-3 at 22-23 of 148.)

With respect to Fund B, AHP agrees to have \$2.55 billion available for Fund B payments which the Trustees may reasonably draw upon. (Ex. P-278 ¶ 4.) In any given quarter, to the extent that the \$2.55 billion is not drawn upon, such amount accrues interest at

# EXHIBIT 4

AMERICAN HOME PRODUCTS CORPORATION  
SETTLEMENT TRUST AGREEMENT

THIS TRUST AGREEMENT is entered into as of [\_\_\_\_\_, \_\_\_\_], by and among American Home Products Corporation, a Delaware corporation ("AHP") as Trustor, and the Trustees identified in Section 3.01 herein (this "Trust Agreement").

WHEREAS, AHP and certain other parties have been named as defendants in various individual cases and class actions relating to the marketing, sale, distribution and use of the diet drugs Pondimin<sup>®</sup> and Redux<sup>™</sup>;

WHEREAS, on November \_\_, 1999, AHP and Class Counsel on behalf of the Class Members entered into a Settlement Agreement with respect to such claims (the "Settlement Agreement"), a copy of which is attached hereto as Exhibit A;

WHEREAS, pursuant to the Settlement Agreement, a trust is to be established to receive the funds to be paid by AHP and to administer the provision of benefits to the Settlement Class under the terms of the Settlement Agreement and the rights and benefits provided thereunder;

WHEREAS, on November \_\_, 1999, the Trial Court granted Preliminary Approval of the Settlement Agreement and directed the issuance of notices to the Settlement Class; and

WHEREAS, the parties hereto desire to establish the trust mandated by the Settlement Agreement (the "Trust") to accord each of the parties their rights and enforce their obligations under the Settlement Agreement.

NOW, THEREFORE, it is hereby declared, in accordance with the Settlement Agreement as follows:

ARTICLE I

DEFINITIONS

1.01 All capitalized terms used herein shall have the meanings as defined and set forth in the Settlement Agreement. All references herein to the "Settlement Agreement" shall be deemed to include all Exhibits thereto. In addition, whenever used in this Trust Agreement, the following words and phrases shall have the following meanings:

Court: United States District Court for the Eastern District of Pennsylvania, presiding over Sheila Brown et al. v. American Home Products Corporation, Civil Action No. 99-20593 (the "Brown Action").

Effective Date: The date after Preliminary Approval when each party hereto shall have signed a counterpart hereof.

Eligible Depositories: Commercial banks designated by the Trustees for Fund A and Fund B, each of which (1) has deposits insured by the Federal Deposit Insurance Corporation, (2) is organized under the laws of the United States or any state thereof, (3) has a minimum long-term rating of "A-3" (or the then equivalent) by Moody's Investors Service and a long-term rating of "A-" (or the then equivalent) by Standard & Poor's Rating Services, and (4) has combined capital and surplus of at least \$10 billion.

Fund A: The fund established pursuant to Section 4.01(a) herein.

Fund A Payments: Those payments required to be made into Fund A by AHP in accordance with Section III.B of the Settlement Agreement.

Fund B: The fund established pursuant to Section 4.01(b) herein.

Fund B Payments: Those payments required to be made into Fund B by AHP in accordance with Section III.C of the Settlement Agreement.

Interim Escrow Account: The escrow account formed pursuant to the Escrow Agreement, dated November \_\_, 1999, by and among AHP, the Class Counsel Representative(s) and [\_\_\_\_\_] to receive certain payments from AHP, to invest such amounts, and to make certain disbursements during the interim period between the Preliminary Approval Date and the Effective Date of the Trust.

Person: Any legal person, including any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

Settlement Class: The nationwide class preliminarily certified for settlement purposes in the Brown Action pursuant to the order of Court dated November \_\_, 1999, and as finally certified by the Court hereafter.

Trust Estate: The corpus of the Trust created by this Trust Agreement existing from time to time consisting of all of the assets of the Trust, including but not limited to Fund A and Fund B Payments deposited in the Trust, any income earned thereon and any assets purchased therewith.

## ARTICLE II

### DECLARATION OF TRUST

2.01 Creation and Name. The Trust is hereby created, and shall be known as the "AHP Settlement Trust."

2.02 Purpose. The purpose of the Trust is to implement and carry out under the supervision of the Court, the provisions and purposes of the Settlement Agreement, affording to the parties to the Settlement Agreement their rights and enforcing their obligations, including but not limited to receiving payments from AHP, investing such amounts and providing certain benefits to Class Members, all in accordance with the terms and conditions set forth in the Settlement Agreement.

2.03 Transfer of Assets. The Trustees shall receive, hold and administer hereunder, as part of the Trust Estate (i) the funds required to be paid to the Trust from time to time by AHP pursuant to Sections III and V of the Settlement Agreement, including without limitation the funds to be transferred to the Trust by the Interim Escrow Agent, and (ii) any interest or other earnings on such funds. All assets received by the Trust, and any earnings thereon, shall be held, administered and disbursed under the terms of this Trust Agreement in accordance with the Settlement Agreement.

2.04 Satisfaction of Obligations. Neither Class Counsel, the Class Members nor AHP shall be responsible to the Trustees or the Trust for compensation of the Trustees or for any other expense of the Trust except to the extent of the payments required to be made to the Trust pursuant to Sections III and V of the Settlement Agreement. In addition, neither Class Counsel nor AHP shall have any responsibility or liability to Class Members with respect to the handling of claims by the Trustees or Claims Administrators or otherwise with respect to the management or conduct of the Trust, or any liability for taxes owed by the Trust.

2.05 Supervision by the Court. The Trustees and the Claims Administrators shall operate under the supervision of the Court, which shall have the authority to enforce and interpret the provisions of this Trust Agreement and the Settlement Agreement to which it relates.

### ARTICLE III

#### TRUSTEES

3.01 Number; Chairperson.

(a) A Board of Trustees (the "Board of Trustees") is hereby established to manage the business and affairs of the Trust. The Board of Trustees shall be comprised of the seven (7) individual Trustees (each a "Trustee" and collectively, the "Trustees") all of whom shall be jointly nominated by AHP and the Class Counsel Representative(s) and subject to agreement of AHP and the Class Counsel Representative(s). Four (4) of the nominees shall be subject to the approval by the Judges who will participate in the State Court Judicial Advisory Committee referred to in Sections VIII.B.3-6 of the Settlement Agreement. These four Trustees shall serve for a period ending December 31, 2004. The initial Trustees shall be those persons named on the signature page of the Trust Agreement, and the Trustees who shall serve until December 31, 2004, shall be designated as such on the signature page of the Trust Agreement. Beginning on January 1, 2005, the Trust will be comprised of three (3) Trustees until the termination of the Trust. All nominee Trustees shall be subject to the approval of and appointment by the Federal District Court.

(b) There shall be a Chairperson of the Trustees, selected by the Trustees, who shall act as the liaison of the Trust, coordinate and schedule meetings of the Trustees, and handle all administrative matters that come before the Trustees. He or

she shall serve as Chairperson of the Trustees for a period of three (3) years from the effective date of the Trust. Upon the earlier of the completion of the three year period commencing on the effective date of the Trust, or the resignation or death of the Chairperson, the vacancy in the position of Chairperson shall be filled by the majority vote of all the Trustees, including the vote of the Chairperson upon resignation or at the completion of his or her term as Chairperson. The Trustees may reappoint the same Trustee to serve as Chairperson for successive terms.

3.02 Powers of Trustees. Board of Trustees shall have the powers set forth in Article VI hereof, all of which powers shall be deemed fiduciary powers to be exercised in a fiduciary capacity to accord each of the parties to the Settlement Agreement their rights and to enforce their obligations thereunder and otherwise to carry out the provisions and purposes thereof. Each Trustee shall carry out his or her fiduciary obligations in accordance with his or her own judgment, subject in all cases to the terms and conditions of this Trust Agreement and the Settlement Agreement.

3.03 Qualifications. Each Trustee shall be independent and have the qualifications set forth in Section VI.A.4.a of the Settlement Agreement. No person or entity shall serve as a Trustee if that person or entity is disqualified from serving as a Trustee under the provisions of Section VI.A.4.b of the Settlement Agreement unless such disqualification is waived pursuant to the terms of that section of the Settlement Agreement. If any qualified Trustee becomes ineligible after his or her appointment pursuant to the terms of this Section 3.03, such Trustee shall be removed from the Board of Trustees pursuant to Section 3.05(c) of this Trust Agreement.

3.04 Voting. Each Trustee shall be entitled to cast one vote with respect to any vote of the Board of Trustees. All decisions of the Board of Trustees shall require the affirmative vote of a majority of the Trustees.

3.05 Terms of Service; Removal.

(a) Each Trustee shall serve for the duration of the Trust or the shorter term as provided in Article 3.01 above, subject to his or her earlier death, resignation or removal.

(b) Any Trustee may resign by providing at least sixty (60) days prior written notice of resignation of the Trustee to AHP, Class Counsel and the Court.

(c) The Court may remove a Trustee for cause upon the provision of prior written notice to all Trustees, AHP and Class Counsel and opportunity for hearing.

3.06 Appointment of Successor Trustees.

(a) Within 60 days following a Trustee's death, resignation or removal, AHP and the Class Counsel Representative(s) shall nominate a successor Trustee, who shall be subject to the same approval and appointment provisions as set forth in Article 3.01 above.

(b) Upon the acceptance of office by any successor Trustee, all rights, titles, duties, obligations, powers and authority of the predecessor Trustee under this Trust Agreement shall be vested in and undertaken by the successor Trustee without any further act being required.

3.07 Meetings -- Call and Notice of Same. The Trustees shall hold an annual meeting at such time as may be appropriate in light of the fact that the Trust has reporting obligations which are based on both the calendar year and the Fiscal Year. The agenda for the annual meeting shall include, among other things, the making of all determinations which the Trustees are required to make on an annual basis under the Settlement Agreement, including each item described with particularity in Section VI.A.10.a of the Settlement Agreement. The Trustees shall also hold quarterly meetings at such time as may be appropriate in light of the fact that the Trust has reporting obligations which are based on both the calendar year and the Fiscal Year. The agenda for each quarterly meeting shall include, among other things, the making of all determinations which the Trustees are required to make on a quarterly basis under the Settlement Agreement, including review and authorization of the Fund B Quarterly Notices to be provided to AHP pursuant to Section III.C.1.d of the Settlement Agreement and each item described with particularity in Section VI.A.10.b of the Settlement Agreement. Any Trustee may call a special meeting of the Board of Trustees by giving written notice of such meeting to each other Trustee at least five Business Days prior to the date thereof. Such notice shall specify the date, time and place of the meeting and shall set forth an agenda of items to be discussed or acted upon at the meeting.

(a) Quorum. During the period ending December 31, 2004, the presence of five (5) Trustees shall constitute a quorum for the transaction of business; thereafter, three (3) Trustees shall constitute a quorum for the transaction of business. In the absence of a quorum, the Trustee(s) present may adjourn the meeting from time to time until a quorum shall be present.

(b) Consent of Absentees and Waiver of Notice. The actions taken at any meeting of the Board of Trustees without a quorum shall, if taken by the requisite vote, be valid as though had at a meeting duly held after proper notice and with a quorum if, either before or after the meeting, each Trustee not present in person or by proxy signs a written waiver of notice or a written consent to the holding of such meeting, or approves the minutes thereof. All such waivers, consents or approvals shall be filed with the books and records of the Trust and made a part of the minutes of the meeting. Attendance of a Trustee at any meeting of the Board of Trustees shall constitute a waiver of notice of such meeting, except when a Trustee attends for the express purpose of objecting to the transaction of any business because such meeting has not been (or has allegedly not been) duly noticed.

(c) Telephone Meetings. Trustees may participate in any meeting of the Board of Trustees by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting, except when a Trustee participates in such conference call or similar communication for the express purpose of objecting to the transaction of any business because such meeting has not been duly noticed.

(d) Written Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Trustees may be taken without a meeting and without prior notice, if consent in writing to such action is provided by all

Trustees entitled to vote to approve such action at a meeting. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Trustees. Written notice of any such action shall be delivered promptly by the Trust to any Trustee who did not execute such written consent. Action by written consent shall have the same force and effect as a vote of the Trustees.

3.08 Liability of Trustees. No Trustee shall be liable for monetary damages with respect to his or her actions regarding the Trust except for the gross negligence or willful misconduct of the Trustee. No Trustee shall be liable for monetary damages for any act or omission of any agent or employee of the Trust unless that Trustee acted with gross negligence or willful misconduct in the selection or retention of such agent or employee. No successor Trustee shall be liable personally for any act or omission of his or her predecessor.

3.09 Compensation and Expenses of Trustees. The Trustees shall receive, out of Trust assets, as their compensation such amounts as are provided in the schedule attached as Exhibit [ ] hereto. Such schedule may be adjusted from time to time subject to approval of the Court. In addition, each Trustee shall be reimbursed out of Trust assets for his or her reasonable out-of-pocket expenses.

3.10 Indemnification.

(a) Each Trustee or former Trustee that was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit or proceeding of any kind, whether civil, administrative or arbitrative, and whether brought by or against the Trust, by reason of such Trustee being or having been a Trustee, or by reason of such Trustee serving or having served in any capacity at the request of and on behalf of the Trust shall be indemnified by the Trust against expenses, costs and fees of attorneys, judgments, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by such Trustee in connection with or resulting from such action, suit, or proceeding if he or she acted in good faith and in a manner such Trustee reasonably believed to be in or not opposed to the best interests of the Trust.

(b) Any indemnification under Section 3.10(a) of this Trust Agreement shall be made by the Trust only upon a determination by the Court that indemnification of such Trustee or former Trustee is proper in the circumstances.

(c) Reasonable expenses, costs and fees of attorneys incurred by or on behalf of a Trustee or former Trustee in connection with any such action, suit, or proceeding, whether civil, administrative or arbitrative, may be paid by the Trust in advance of the final disposition thereof upon receipt of an undertaking by or on behalf of such Trustee or former Trustee to repay such amount unless it shall be determined ultimately that such Trustee or former Trustee is entitled to be indemnified by the Trust.

(d) The Trustees shall have the power, generally or in specific cases, to cause the Trust to indemnify the employees and agents of the Trust to the same extent as provided in this Section 3.10 with respect to the Trustees.

(e) The Trustees may purchase and maintain reasonable amounts and types of insurance on behalf of an individual who is or was a Trustee, employee, or agent

of the Trust against liability asserted against or incurred by such individual in that capacity or arising from his, her or its status as a Trustee, employee, or agent.

3.11 Trustee's Lien. Each Trustee shall have a prior lien upon the Trust Estate to secure the payment of any amounts payable to such Trustee pursuant to Sections 3.09 and 3.10.

3.12 Reliance by Persons Dealing with Trust. Any Person dealing with the Trust may rely in good faith upon any certificate or other instrument signed by the Chairperson Trustee, or upon any certificate or other instrument signed by any officer or agent of the Trust whose authority is evidenced by a certificate or other instrument signed by the Chairperson Trustee, without the necessity of further inquiry by such Person into the authority of such Trustee, officer or agent to act on behalf of the Trust.

3.13 Bond. The Trustees shall not be required to post any bond or other form of surety unless otherwise ordered by the Court.

3.14 Trustees' Independence. No Trustee shall, during the term of his or her service, act as attorney or in any capacity for AHP or any Class Member.

3.15 Trustees' Service as Officers or Consultants to the Trust. The Trustees may, but are not required to, select any Trustee to serve as an officer or manager of the Trust or as a consultant to the Trust. In the event any Trustee serves the Trust in such a capacity, the Trust shall compensate the Trustee in an amount determined by the Trustees and approved by the Court.

#### ARTICLE IV

##### ESTABLISHMENT OF FUNDS, ADMINISTRATION OF CLAIMS; ADMINISTRATION OF AIO

4.01 Establishment of Funds. The Trustees shall establish two separate accounts for the Trust, identified as "Fund A" and "Fund B".

(a) Fund A. Within three (3) Business Days following the Effective Date, the Trustees shall open with one or more Eligible Depositories a Fund A account in the name of the Trust. The Trustees shall ensure the timely collection of all Fund A Payments as and when due (including any amounts transferred from the Interim Escrow Account that are designated by the Interim Escrow Agent as Fund A amounts), pursuant to the terms set forth in Sections III.B and V.H.2 of the Settlement Agreement. All Fund A Payments deposited from time to time in Fund A (together with all investments made with such amounts and all income or other gain thereon) shall be held by the Trustees in Fund A as part of the Trust Estate, subject to authorized disbursement by the Trustees in accordance with the terms and conditions of the Settlement Agreement and this Trust Agreement.

(b) Fund B. Within three (3) Business Days following the Effective Date, the Trustees shall open with one or more Eligible Depositories a Fund B account in the name of the Trust. The Trustees shall ensure the timely collection of all Fund B

Payments as and when due (including any amounts transferred from the Interim Escrow Account that are designated by the Interim Escrow Agent as Fund B amounts), pursuant to the terms set forth in Sections III.C, V.F and V.H.2 of the Settlement Agreement. All Fund B Payments deposited from time to time in Fund B (together with all investments made with such amounts and all income or other gain thereon) shall be held by the Trustees in Fund B as part of the Trust Estate, subject to authorized disbursement by the Trustees in accordance with the terms and conditions of the Settlement Agreement and this Trust Agreement.

(c) Separation of Funds. Except as expressly provided herein, or in the Settlement Agreement, Fund A amounts shall not be deposited in, transferred to, or used for the purposes of Fund B, and Fund B amounts shall not be deposited in, transferred to, or used for the purposes of Fund A.

(d) Recordkeeping of Funds. The Trustees shall keep detailed records regarding the amounts transferred to and disbursed from each of Fund A and Fund B, and report such information to AHP and Class Counsel, in each case in accordance with Section VI.A.10 of the Settlement Agreement.

(e) Audits of Funds. The Trustees shall conduct audits of the administration of the Funds in accordance with Section VI.E of the Settlement Agreement, and shall obtain financial audits of the Trust by independent Certified Public Accountants in accordance with Section VI.A.10.a.1 of the Settlement Agreement.

4.02 Processing of Claims. The Trustees shall provide benefits pursuant to Section III of the Settlement Agreement, shall administer claims pursuant to Section VI.C of the Settlement Agreement, and shall appoint one or more Claims Administrators to assist in carrying out these responsibilities, including but not limited to receiving and processing forms received from Class Members, and disbursing amounts required under the Settlement Agreement for payment of benefits and authorized expenses. The appointment of any Claims Administrator shall be subject to approval by the Court. Claims Administrators may be either employees of the Trust or independent contractors. In order to supply Transthoracic Echocardiograms and associated interpretive physician visits pursuant to Sections IV.A.1.a, IV.A.1.b, IV.A.2.b.2, IV.A.2.b.3 and IV.A.3.c of the Settlement Agreement, and the additional medical services which Class Members are entitled to receive in accordance with Sections IV.A.1.c and IV.A.2.c of that Agreement, the Trustees and/or Claims Administrator(s) may enter into a contract with a provider of network health services, pursuant to Section IV.A.4.a of the Settlement Agreement.

4.03 Required Disbursements.

(a) Fund A Disbursements. The Trustees shall make, or shall cause the Claims Administrator(s) to make, disbursements from Fund A in the amounts, for the purposes, to the persons, and at the times as provided in the Settlement Agreement.

(b) Fund B Disbursements. The Trustees shall make, or shall cause the Claims Administrator to make, disbursements from Fund B in the amounts, for the purposes, to the persons, and at the times as provided in the Settlement Agreement.

(c) Authorized Expenses. The Trustees shall make, or shall cause the Claims Administrator to make, disbursement for reasonable expenses incurred by the

Trust relating to the administration of the Trust. Notwithstanding any other provision herein, no expenditures shall be made other than those expenditures provided for in the Settlement Agreement or this Trust Agreement or reasonably necessary in order to afford AHP and the Class Members their rights and enforce their obligations under the Settlement Agreement.

(d) Allocation of Authorized Expenses. All authorized expenses relating directly to the administration of Fund A shall be allocated to and paid from the Fund A account. All authorized expenses relating directly to the administration of Fund B shall be allocated to and paid from the Fund B account. Authorized expenses of the Trust that relate to both Fund A and Fund B shall be allocated between Fund A and Fund B equally, provided that such expenses shall be allocated 30 percent to Fund A and 70 percent to Fund B during any calendar quarter in which the remaining balance in Fund A is less than \$300 million; and zero percent to Fund A and 100 percent to Fund B during any calendar quarter in which the remaining balance in Fund A is less than \$150 million, unless the Court determines that the allocation of authorized expenses between Fund A and Fund B should be otherwise. For the purpose of the preceding sentence, the remaining balance in Fund A shall be determined as of the last day of the calendar quarter in question.

4.04 Fund B Quarterly Notices.

(a) The Trustees shall prepare each Fund B Quarterly Notice and determine the related payments to be made by AHP to the Trust in accordance with Section III.C.1.d of the Settlement Agreement. Each Fund B Quarterly Notice shall include a level of detail sufficient to advise AHP of the basis for the Trustees' claim that additional funds are required, including but not limited to the then existing balance of Fund B, a description of the claims required at that time to be paid and the funds then available in the Administrative Reserve.

(b) AHP may dispute the amount of any Fund B Deposit Amount requested by the Trustees by providing a written notice within ten (10) Business Days of receipt of the related Fund B Quarterly Deposit (a "Dispute Notice"). The Trustees and AHP shall use all commercially reasonable efforts to resolve any dispute pursuant to this Section 4.04(b) within five (5) Business Days of the Trustees' receipt of a Dispute Notice. If the parties are unable to resolve the dispute within such five day period, the parties shall submit the dispute to the Court for resolution. If any such dispute is not resolved by the fifteenth day following AHP's receipt of the Fund B Quarterly Notice, AHP shall remit to the Trust the amount stated therein; provided, that upon the resolution of the dispute by the Court, any amount paid by AHP in excess of that amount determined by the Court to be due and payable shall be credited against amounts requested in the next Fund B Quarterly Notice.

4.05 Termination of Fund A and Transfer of Fund A Amounts to Fund B

(a) Fund A shall be terminated upon the Trustees' determination that:

(i) the Screening Program established pursuant to Sections IV.A.1.a, IV.A.1.b, IV.A.2.b, and IV.A.3.c of the Settlement Agreement has been completed; and

(ii) all eligible Class Members have received additional medical services or cash to which they are entitled pursuant to Sections IV.A.1.c and IV.A.2.c of the Settlement Agreement; and

(iii) all eligible Class Members have received refunds pursuant to Sections IV.A.1.d and 2.a of the Settlement Agreement; and

(iv) the maximum amount has been expended by the Trust for the medical research and education fund pursuant to Section IV.A.3.a; and

(v) funds have been reserved, but not necessarily expended, in an amount that the Trustees deem reasonably necessary to maintain the medical registry established pursuant to Section IV.A.3.b of the Settlement Agreement.

(b) Upon termination of Fund A pursuant to Section 4.05(a), the remaining balance, if any, in Fund A, after adequate reservation of amounts for maintenance of the medical registry, shall be transferred to Fund B in accordance with Section III.B.4 of the Settlement Agreement.

4.06 Administration of AIO. The Trustees shall administer the payment of the AIO benefits to persons entering into AIO Individual Agreements in accordance with, and to the extent provided in, Section V of the Settlement Agreement.

4.07 Compliance with Settlement Agreement. The Trust shall be administered in accordance with the Settlement Agreement, including but not limited to the Trustees' compliance with the reporting obligations set forth in Section VI.A.10 of the Settlement Agreement and the claims administration provisions set forth in Section VI.C thereof.

## ARTICLE V

### FINANCIAL MANAGEMENT

5.01 Accounts. The Trustees shall establish investment accounts with such Persons as they shall, in their discretion, deem necessary or advisable for carrying out the purposes of the Trust.

5.02 Investments. Monies held in the Trust Estate may be invested by the Eligible Depository in the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs, subject to the following limitations and provisions:

(a) The Trust shall not acquire, or hold for longer than 90 days, any long-term debt securities, participation certificates or similar instruments unless (i) such securities, certificates or instruments are rated "Aa" or higher by Moody's Investors Service, Inc. ("Moody's") or "AA" or higher by Standard & Poor's Corporation ("S&P's") or (ii) have been issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof.

(b) The Trust shall not acquire, or hold for longer than 90 days, any commercial paper unless (i) such commercial paper is rated "Prime-1" or higher by Moody's or "A-1" or higher by S&P's and (ii) the senior long-term debt of the

commercial paper issuer is rated "Aa" or higher by Moody's or "AA" or higher by S&P's.

(c) The Trust shall not acquire any securities or other instruments issued by any Person (other than debt securities or other instruments issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof) if, following such acquisition, the aggregate market value of all securities and instruments issued by such Person held by the Trust would exceed 2% of the aggregate market value of the Trust Estate. The Trust shall not hold any securities or other instruments issued by any Person (other than debt securities or other instruments issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof) to the extent that the aggregate market value of all securities and instruments issued by such Person held by the Trust would exceed 5% of the aggregate market value of the Trust Estate. The Trust shall not acquire any securities or other instruments issued by any Person (other than debt securities or other instruments issued or fully guaranteed as to principal and interest by the United States of America or any agency of instrumentality thereof) unless, at the time of acquisition, the securities or other instruments so acquired represent not more than 5% of all outstanding securities or instruments of the same class and series.

(d) The Trust may acquire certificates of deposit, time deposits and banker's acceptances only (i) if issued by a bank whose senior long-term debt is rated "Aa" or higher by Moody's or "AA" or higher by S&P's, (ii) if issued by a bank whose name appears on a list, maintained by the Trust and reviewed quarterly by the Trustees or an investment manager designated by them, of banks approved by the Trustees or such investment manager, and (iii) if the term to maturity from the date of acquisition does not exceed two years and one day. The limitations of (a) and (c) above shall not apply to such certificates of deposit, time deposits and banker's acceptances.

In determining investments to be held by the Trust, due regard shall be given by the Trustees to safety of principal and to production of reasonable amounts of current income. The Trustees shall not be under any obligation to invest Trust assets for capital appreciation, in view of the purposes for which the Trust was created, but are not prohibited from so doing.

#### 5.03 Accounting.

(a) As soon as practicable on or about the commencement of each calendar year, the Trustees shall cause to be prepared budget and cash flow projections covering such calendar year.

(b) The Trustees shall cause to be prepared at the end of each calendar year an annual accounting containing financial statements of the Trust as of the end of such calendar year, including, without limitation, a balance sheet of the Trust, a statement of receipts and disbursements, a statement of profit and loss prepared on an accrual basis, and a supplementary schedule of investments and assets, listing both principal and income, audited by a recognized national firm of independent public accountants selected by the Trustees, and reported on by such firm as to fairness of presentation in accordance with generally accepted accounting principles consistently applied.

(c) The Trustees shall cause to be prepared at the end of each of the first three quarters of each calendar year a quarterly accounting containing unaudited financial statements of the Trust as of the end of such quarter, including, without limitation, a balance sheet of the Trust, a statement of receipts and disbursements, a statement of profit and loss prepared on an accrual basis, and a supplementary schedule of investments and assets, listing both principal and income, reported on, subject to normal year-end adjustments, as to fairness of presentation in accordance with generally accepted accounting principles consistently applied, by the Trustees or by an accountant or financial officer or agent regularly employed by the Trust.

5.04 Reporting. The Trustees shall cause the annual and quarterly accountings required by Section 5.03 of this Trust Agreement to be filed with the Court and to be provided to AHP and Class Counsel. The annual accountings shall be filed and provided as soon as available, but in no event later than 90 days following the end of each calendar year. The quarterly accountings shall be filed and provided as soon as available, but in no event later than 45 days following the end of the quarter of the calendar year to which such accounting relates.

## ARTICLE VI

### TRUST POWERS

#### 6.01 Powers.

(a) Subject to the limitations set forth in this Trust Agreement and the Settlement Agreement, the Board of Trustees shall have the power to take any and all actions that, in the judgment of the Trustees, are necessary or proper to fulfill the purposes of the Trust, including, without limitation, each power expressly granted in this Article VI, any power reasonably incidental thereto, and any trust power now or hereafter permitted under the laws of the State of Delaware.

(b) Except as expressly provided in this Agreement and in the Settlement Agreement, and unless the Court in its exercise of its general supervisory power enters an order as to any particular matter, the Trustees need not obtain the order or approval of the Court in the exercise of any power or discretion conferred hereunder.

6.02 Specific Powers. Without limiting the generality of Section 6.01 of this Trust Agreement, and subject to the other provisions of this Trust Agreement, the Board of Trustees shall have the power:

(a) to receive, hold, and administer hereunder, as part of the Trust Estate (i) the funds delivered to the Trust from time to time by AHP pursuant to the Settlement Agreement, subject to the adjustments and limitations described therein; (ii) any recoveries with respect to amounts previously expended by the Trust (such as, without limitation, refunds of taxes or administrative expenses previously paid by the Trust); and (iii) any interest or other earnings on any of the foregoing;

(b) to invest and reinvest the funds of the Trust as provided in this Trust Agreement;

(c) to employ and compensate counsel, accountants, appraisers, and other parties deemed by the Trustees to be qualified as experts on such matters as may arise before them, and the opinion of such parties on any matters submitted to them by the Trustees shall be full and complete protection to the Trustees with regard to any action taken by the Trustees hereunder in good faith and in accordance with such opinion;

(d) to indemnify any Person entitled to indemnification under Section 3.10 of this Trust Agreement, to purchase insurance to effect such indemnification, in accordance with such Section 3.10 and to meet the obligations of the Trust under Articles IV and V hereof;

(e) to appoint or hire such employees, and engage such legal, financial and other advisors and agents as are deemed necessary by the Trustees for the proper administration of the Trust and to compensate such officers, employees, advisers and agents for their services;

(f) to enter into such other arrangements with third parties as are deemed by the Trustees to be useful in carrying out the purposes of the Trust (including, without limitation, engaging a financial institution to act as paying agent, depository, custodian or trustee with respect to funds, reserves or accounts created hereby or established pursuant hereto), and to compensate such third parties for their services;

(g) to delegate any or all of the discretionary power and authority herein conferred at any time with respect to the investment of the Trust Estate to any one or more nationally recognized individual or institutional advisors or investment managers, and to compensate such advisors and managers for their services;

(h) to acquire, own, lease and convey such real and personal properties, in such locations as the Trustees may deem necessary or desirable for the proper administration of the Trust;

(i) to adopt and amend rules and procedures not inconsistent with the Settlement Agreement and this Trust Agreement, as the Trustees may deem necessary or desirable for the governance or administration of the Trust;

(j) to assign, pledge, or otherwise transfer or encumber Trust assets to the extent the Trustees deem necessary or desirable in the ordinary course of administration of the Trust;

(k) to obtain and pay the premiums for such fidelity bonds and other insurance policies as the Trustees may deem reasonably necessary or desirable for the protection of the Trust or the Trustees;

(l) following Final Judicial Approval, to borrow money and issue notes, guaranties and other evidences of indebtedness (which notes, guaranties or other evidences of indebtedness may exonerate the Trustees from personal liability with respect thereto), to the extent the Trustees deem necessary or desirable for the proper administration of the Trust; provided, however, that except for contracts or leases for the purchase or lease of items necessary for the proper administration of the Trust, the

Trustees shall have no power to borrow money or issue notes, guaranties, or other evidences of indebtedness in an amount outstanding at any one time in excess of \$1,000,000 unless it receives the prior approval of the Court for a greater amount;

(m) to consult with AHP and Class Counsel at such times with respect to such issues relating to the conduct of the Trust as the Trustees consider desirable, as provided in Section 10.03 hereof;

(n) to adopt and amend By-laws to manage internal affairs of the Trust, provided that no such By-law may be inconsistent with the provisions of this Trust Agreement or of the Settlement Agreement and provided further that the initial By-laws shall be as attached at Annex A; and

(o) to do all other acts and things not inconsistent with the provisions of the Settlement Agreement and this Trust Agreement which the Trustees may deem reasonably necessary or desirable to carry out the purpose of the Trust as set forth in Article 2.02, in the same manner and to the same extent as an individual might or could do with respect to his own property, subject to the limitations of applicable law governing the conduct of fiduciaries.

(p) to enter into any contract or otherwise engage in any transaction with any Trustee or Entity affiliated with any Trustee, provided that (a) such contract or transaction is approved by the unanimous vote of the disinterested Trustees upon full disclosure of all relevant facts, and (b) the terms and conditions of such contract or transaction are approved by the Court;

(q) The Trustees shall not have the power to guaranty any debt of other persons.

## ARTICLE VII

### TERMINATION AND REVERSION

7.01 Trust Termination. Subject to Article IX hereof, the Trust shall terminate within a reasonable time following: (1) the Trustees' determination that all of the purposes of the Trust have been met, (2) the Final Payment has been made by AHP pursuant to Section III.C.5 of the Settlement Agreement or has been deemed to have been made by AHP pursuant to Section III.C.7 of the Settlement Agreement, (3) notice by the Trustees to AHP and the Court of such determination and a recommendation to the Court that the Trust be terminated, (4) the Court's approval of termination of the Trust, and (5) the winding down of the Trust; provided, however, that in no event shall the Trust continue beyond the expiration of 21 years from the death of the survivor of the descendants of Joseph P. Kennedy, the late ambassador of the United States to the Court of St. James's, living on the date this Trust Agreement is executed.

7.02 Non-Reversion. Upon Final Judicial Approval, AHP's right of reversion in the Trust Estate shall terminate, and thereafter no amount remaining in the Trust Estate shall be distributed to AHP. Any amounts remaining in the Trust after termination

pursuant to Section 7.01 herein, and except as provided in Article IX hereof, shall be transferred by the Trustees to nonprofit organizations qualifying under Section 501(c)(3) of the Internal Revenue Code in such respective amounts as the Trustees shall determine, in each case as approved by the Court.

## ARTICLE VIII

### TAX MATTERS

8.01 Qualified Settlement Fund; Tax Filings. The Trust established pursuant to this Trust Agreement (including both Fund A and Fund B) is intended to constitute, together with the Interim Escrow Account, a single "qualified settlement fund" for federal tax purposes as described in Treas. Reg. Section 1.468B-1. Subject to Article IX hereof, the Trustees shall comply with all requirements applicable to such a qualified settlement fund, including without limitation all tax filing, payment and reporting requirements imposed by Treasury Regulations issued under Section 468B of the Code, any successor provisions thereto, any comparable provisions of state or local tax laws, or otherwise, except to the extent that either (i) there has been a final determination, binding on the applicable taxing authority, the Trustees and AHP, or (ii) the Trustees have received an opinion of counsel meeting the requirements of Section 9.04 herein, in either case to the effect that other requirements apply to the Trustees in lieu of the qualified settlement fund requirements. The Trustees shall take any action or cause the Trust to take any action necessary to create and maintain the status of the Trust as a qualified settlement fund. In addition, no Trustee shall take any action that will adversely affect the qualification of the Trust as a qualified settlement fund.

8.02 Taxable Year and Accounting Method. The taxable year of this Trust shall be the calendar year. The Trust shall use an accrual method of accounting within the meaning of Section 446(c) of the Code.

8.03 Relation-Back Election. At the option of AHP, the Trustees and AHP shall join in the filing of a "relation-back election" within the meaning of Treas. Reg. Section 1.468B-1(j)(2) with respect to the Trust. Pursuant to such election, the Trustees shall comply with all of the requirements contained in Treas. Reg. Section 1.468B-1(j)(2) that apply to such election.

8.04 Tax Information to be Provided to AHP. The Trustees shall provide to AHP such information as is requested by AHP regarding the operations of the Trust, including the amounts of distributions from the Trust Estate, in such detail as is reasonably necessary to enable AHP to determine properly its applicable tax obligations on a timely basis. Such information shall be provided within 30 days after the end of each calendar quarter, within 30 days after the end of each calendar year, and at such other times as AHP may reasonably request in order to compute its estimated taxes.

8.05 Tax Returns; Tax Payments. The Trustees shall timely file such income tax and other returns and statements as are required to comply with applicable provisions of the Internal Revenue Code and of any state law and the regulations promulgated

thereunder. The Trust shall be responsible for paying (or reimbursing AHP for) taxes and any other obligations or liabilities of any and all kinds whatsoever which at any time are lawfully levied, assessed upon or become payable in respect of the Trust or the Trust Estate (including taxes or obligations in respect of assets received from the Interim Escrow Account).

## ARTICLE IX

### EFFECT OF TERMINATION OF SETTLEMENT AGREEMENT

If Final Judicial Approval is not obtained or if the Settlement Agreement is terminated by AHP for any reason, the Trust shall no longer have as its purpose the administration of the settlement with the Settlement Class contemplated in the Settlement Agreement, but the Trust shall remain in effect to administer the AIO Individual Agreements, subject to and in accordance with Section V.H of the Settlement Agreement, as follows:

9.01 Transfer of Trust Estate. Within 5 Business Days after the date on which Final Judicial Approval is not obtained or the date on which the Settlement Agreement is terminated for any other reason, the Trustees shall transfer the Trust Estate to AHP, except to the extent provided in Section V.H.2 of the Settlement Agreement.

9.02 Operation of Trust. The operation of the Trust and AHP's rights and obligations under the Settlement Agreement shall be deemed to be modified as provided in Sections V.H.2 and V.H.3 of the Settlement Agreement.

9.03 Amendment of Trust Agreement. This Trust Agreement shall be subject to amendment if and to the extent agreed upon by AHP and Class Counsel pursuant to Section V.H.4 of the Settlement Agreement or as directed by arbitrators pursuant to Section V.H.5 thereof, and the provisions of Section 10.08 hereof shall not apply to any such amendments.

9.04 Effect on Tax Status. The Trustees shall consult with qualified legal counsel acceptable to AHP regarding whether the Trust would continue to be taxed as a "qualified settlement fund" and, if such legal counsel opine that the Trust would no longer be taxed in that manner, the Trustees shall no longer manage the Trust as a "qualified settlement fund" pursuant to Section 8.01 hereof, provided that nothing herein shall relieve the Trustees of their obligations to provide timely information to AHP pursuant to Section 8.04 hereof or to file all required tax returns and statements and to pay, or reimburse AHP for, taxes or other obligations in accordance with Section 8.05 hereof.

9.05 Termination of Trust for Alternative Mechanism. If AHP and Class Counsel mutually agree, pursuant to Section V.H.4.a of the Settlement Agreement, that a different mechanism should be established for administering the AIO Individual Agreements than this Trust, or if arbitrators so determine pursuant to Section V.H.5 thereof, this Trust shall terminate in such manner and at such time as shall be so agreed or

determined, notwithstanding the fact that such termination might occur prior to the date on which this Trust would terminate pursuant to Section 7.01 hereof. In the event of such a termination, the balance, if any, of the Trust Estate, after payment or reservation for any authorized expenses incurred prior thereto, shall be distributed to AHP subject to any different disposition of such balance which is mutually agreed between Class Counsel and AHP pursuant to Section V.H.4 of the Settlement Agreement or directed by the arbitrators pursuant to Section V.H.5 thereof.

## ARTICLE X

### GENERAL PROVISIONS

10.01 Irrevocability. The Trust is irrevocable.

10.02 Recordation. This Trust Agreement shall be recorded in such places as AHP or the Trustees shall deem necessary or advisable.

10.03 Consultation with AHP and Class Counsel. The Trustees shall have the right to consult with Class Counsel and AHP as they may deem necessary for the proper administration of the Settlement Agreement and their duties under this Trust Agreement. In the event that such consultation is requested of and provided by Class Counsel after the Court enters an order awarding counsel fees and reimbursement of litigation expenses to Class Counsel and the Common Benefit attorneys in connection with their services in creating the settlement funds, Class Counsel shall have the right to apply for and receive additional fees and expense reimbursements for their time and costs incurred in consulting with the Trustees, payable from the Trust Estate, in such amount as the Court may approve.

10.04 Conflict with Settlement Agreement. In the event of a conflict between the terms of this Trust Agreement and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

10.05 Demands, Notices and Communications. All formal demands, notices and communications by and among AHP, Class Counsel and the Trustees shall be in writing and shall be deemed to have been properly given when received. Any notice or other communication made pursuant to this Trust Agreement shall be sent, as applicable, to the persons set for below. AHP, Class Counsel and the Trust may each change its designated recipient by written notice to the others.

If to AHP, to:

Louis L. Hoynes, Jr., Esq.  
Senior Vice President and General Counsel  
American Home Products Corporation  
5 Giralda Farms  
Madison, New Jersey 07940

If to Class Counsel, to:

Arnold Levin, Esq.  
Levin, Fishbein, Sedran & Berman  
510 Walnut Street, Suite 500  
Philadelphia, Pennsylvania 19106-3875

Michael D. Fishbein, Esq.  
Levin, Fishbein, Sedran & Berman  
510 Walnut Street, Suite 500  
Philadelphia, Pennsylvania 19106-3875

Stanley Chesley, Esq.  
Waite, Schneider, Bayless & Chesley  
1513 Central Trust Tower  
Fourth & Vine Streets  
Cincinnati, Ohio 45202

John J. Cummings, Esq.  
Cummings, Cummings & Dudenhefer  
416 Gravier Street  
New Orleans, Louisiana 70130

Gene Locks, Esq.  
Greitzer & Locks  
1500 Walnut Street -- 20th Floor  
Philadelphia, Pennsylvania 19102

Sol H. Weiss, Esq.  
Anapol, Schwartz, Weiss, Cohan,  
Feldman & Smalley, P.C.  
1900 Delancey Place  
Philadelphia, Pennsylvania 19102

Christopher Placitella, Esq.  
Wilentz, Goldman & Spitzer  
90 Woodbridge Center Drive  
Suite 900, Box 10  
Woodbridge, New Jersey 07095

If to the Trust or to the Trustees, to:

[Insert name and address]

10.06 Severability. Should any provision of this Trust Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Trust Agreement.

10.07 Headings. The headings used in this Trust Agreement are inserted for convenience only and shall not affect the construction of any provisions of this Trust Agreement.

10.08 Amendment. Subject to Article IX hereof, this Trust Agreement may be amended only by order of the Court; provided, however, that any amendment that would adversely affect or increase the obligations of AHP shall require the consent of AHP and any amendment that would adversely affect or decrease the benefits of Class Members shall require the consent of Class Counsel; and provided further, that this Trust Agreement shall not be amended in any manner that adversely affects the treatment of the Trust as a qualified settlement fund (as described in Section 8.01 hereof).

10.09 Governing Law. The laws of the State of Delaware shall govern the interpretation and validity of the provisions of this Trust Agreement and all questions relating to management, administration and investment of the Trust and the Trust Estate.

10.10 Jurisdiction and Venue. The parties hereto submit to the continuing exclusive jurisdiction of the Court for purposes of any suit, action or proceeding seeking to interpret or enforce any provision of, or based on any right arising out of, this Trust Agreement, and the parties hereto agree not to commence any such suit, action or proceeding except in the Court. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court and hereby further waive and agree not to plead or claim in the Court that any such suit, action or proceeding has been brought in an inconvenient forum.

10.11 Trust Location. The Trust shall maintain its principal offices in the State of Delaware. Upon a determination by Delaware taxing authority or tax counsel that income and/or gains of the Trust are subject to taxation by the State of Delaware, the Trustees shall have the right to take such actions, including relocating its principal office, as they deem necessary to minimize or eliminate any state income tax liability, provided such actions are reasonably believed to result in the increase of amounts in the Trust Fund available for other distributions required by this Trust Agreement.

10.12 Counterparts. This Trust Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery by facsimile of a signed counterpart shall be deemed delivery for purposes of acknowledging acceptance hereof; however, an original executed Agreement must promptly thereafter be delivered to each party.

10.13 Conditions to Effectiveness. This Trust Agreement shall become effective when each party hereto shall have signed a counterpart hereof (the "Effective Date").

IN WITNESS WHEREOF, AHP has caused this Trust Agreement to be executed by a duly authorized officer or representative of AHP and attested by another duly authorized officer of AHP, and the Initial Trustees have each executed this Trust Agreement, all as of \_\_\_\_\_,

AHP, as Trustor

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

Name: Louis L. Hoynes, Jr., Esq.  
Title: Senior Vice President and  
General Counsel

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Attest:

\_\_\_\_\_

TRUSTEE TO SERVE UNTIL 12/31/04

By: \_\_\_\_\_

Name:

Attest:

\_\_\_\_\_

TRUSTEE TO SERVE UNTIL 12/31/04

By: \_\_\_\_\_

Name:

Attest:

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TRUSTEE TO SERVE UNTIL 12/31/04

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TRUSTEE TO SERVE UNTIL 12/31/04

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TRUSTEE

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Attest:

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TRUSTEE

By: \_\_\_\_\_

Name:

Attest:

\_\_\_\_\_

TRUSTEE

By: \_\_\_\_\_

Name:

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AHP SETTLEMENT TRUST

BYLAWS

ARTICLE I

OFFICES

SECTION 1. Principal Office. The initial principal office of the AHP Settlement Trust (the "Trust") shall be in Delaware. Relocation of the principal office of the Trust shall require Court Approval.

SECTION 2. Other Offices. The Trust may have such other offices at such other places as the Trustees may from time to time determine to be necessary for the efficient and cost-effective administration of the Trust.

ARTICLE II

TRUSTEES

SECTION 1. Number of Trustees. The number of Trustees in the provisions governing the resignation and removal of a Trustee and the appointment of a successor Trustee shall be governed by the provisions of Article 3.01 of the Trust Agreement.

SECTION 2. Regular Meetings. Regular meetings of the Trustees may be held at such time and place as shall from time to time be determined by the Trustees provided that the Trustees shall meet at least once per month. After there has been such

determination, and a notice thereof has been once given to each Trustee, regular meetings may be held without further notice being given.

SECTION 3. Special Meeting Notice. Special meetings of the Trustees shall be held whenever called by one or more of the Trustees. Notice of each such meeting shall be delivered to each Trustee, addressed to him or her at his or her residence or usual place of business, at least seven (7) days before the date on which the meeting is to be held. Such notice shall state the place, date and hour of the meeting and the purposes for which it is called. In lieu of the notice to be given as set forth above, a waiver thereof in writing signed by the Trustee or Trustees entitled to receive such notice, whether before or after the meeting, shall be deemed equivalent thereto for the purposes of this section. No notice to or waiver by any Trustee with respect to any special meeting shall be required if such Trustee shall be present at said meeting.

### ARTICLE III

#### OFFICERS

SECTION 1. Principal Officers. The Trust may have such principal officers as the Trustees may in their discretion appoint after determining that such appointment will promote the efficient and cost-effective administration of the Trust, including an Executive Director, one or more Assistant Directors, a Secretary-Treasurer and a Controller.

SECTION 2. Election and Term of Office. The principal officer(s) of the Trust shall be chosen by the Trustees. Each such officer shall hold office until his successor

shall have been duly chosen and qualified or until his earlier death, resignation or removal.

**SECTION 3. Subordinate Officers.** In addition to the principal officers enumerated in Section 1 of this Article III, the Trust may have such other subordinate officers, agents and employees as the Trustees may deem necessary for the efficient and cost effective administration of the Trust, each of whom shall hold office for such period, have such authority, and perform such duties as the Trustees may from time to time determine. The Trustees may delegate to any principal officer the power to appoint and to remove any such subordinate officers, agents or employees.

**SECTION 4. Removal.** Any officer of the Trust may be removed with or without cause, at any time, by resolution adopted by the Trustees at any meeting of the Trustees for that purpose at which a quorum is present.

**SECTION 5. Resignations.** Any officer may resign at any time by giving written notice to the Trustees. The resignation of any officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**SECTION 6. Powers and Duties.** The officers of the Trust shall have such powers and perform such duties as may be conferred upon or assigned to them by the Trustees.

**ARTICLE IV**

**AMENDMENTS**

Any proposed Amendment of the Bylaws must be contained in the notice of the meeting.

# EXHIBIT 5



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1 class counsel. I relied on Mr. Rich's  
2 representation that he would notify people.  
3 Whether he has or not, I have no idea, but we  
4 have agreed to have Ms. Overseth available at  
5 4:00, though it may be a few minutes later  
6 then that, and then Mr. Florence thereafter in  
7 this room.

8 MR. WEISS: I'm in court all  
9 day, so I couldn't get my e-mails.

10 MR. PETROFF: Ready to go, Mr.  
11 Mitchell?

12 THE WITNESS: Sure.

13 MR. PETROFF: I've got 2:15.  
14 Is that what you've got, Andy?

15 MR. CHIRLS: Yup. I've got  
16 2:14, but we're here.

17 MR. PETROFF: I should have  
18 said 2:13.

19 - - -

20 EXAMINATION

21 - - -

22 BY MR. PETROFF:

23 Q. Please state your full name?

24 A. Robert A. Mitchell, Jr.

25 Q. You're the executive director of the AHP

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1 settlement trust?

2 A. That's correct.

3 Q. How long have you been the executive  
4 director?

5 A. I started on January 1st, 2002.

6 Q. So, almost a year?

7 A. That's right.

8 Q. And who was the executive director  
9 before you?

10 A. Before me, it was actually a chief  
11 operating officer, who was at the trust. His  
12 name was Jim Wonderly. It wasn't an executive  
13 director -- yeah, I take it back. It was an  
14 executive director position, so it was Jim  
15 Wonderly.

16 Q. How did you come about to be selected as  
17 executive director, do you have any idea?

18 A. I can tell you my perspective of it. I  
19 was working -- prior to working at the trust,  
20 I was counsel at Wolf, Block, who was counsel  
21 for the trust, and I spent a lot of my time at  
22 Wolf, Block working with the AHP settlement  
23 trust, and in August of 2001, Mr. Wonderly  
24 made it known that he was going to resign his  
25 position as the chief operating officer and

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5 1 executive director.

6  
7 2 At that time, the trustees  
8  
9 3 asked me to step in as an interim CEO for the  
10  
11 4 trust, as the trust worked through some  
12  
13 5 transition issues with its prior contractor,  
14  
15 6 and I was very familiar with those issues.  
16  
17 7 And the trustees conducted a nationwide search  
18  
19 8 for a permanent executive director and out of  
20  
21 9 that search, they offered me the position and  
22  
23 10 I accepted it.

24  
25 11 Q. So, when did you actually start working  
26  
27 12 on trust matters? Obviously, it was before  
28  
29 13 you became executive director?

30  
31 14 A. Right, I probably started as early as  
32  
33 15 August or September of 2000.

34  
35 16 Q. Okay. When did the trust come into  
36  
37 17 existence?

38  
39 18 A. The trust came into existence shortly  
40  
41 19 before I actually started off with the trust.  
42  
43 20 I'm not exactly sure of the precise date that  
44  
45 21 the trusts formal existence started. I know  
46  
47 22 that the settlement agreement itself received  
48  
49 23 trial court approval in September 2000.  
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51 24 September of 2000, that's correct. And it was  
52  
53 25 at that point that the trust actually stood up

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1 and began operating.

2 Q. Okay. You understand that the court has  
3 allowed plaintiffs in this case to take your  
4 deposition for up to 90 minutes? You're aware  
5 of that, right?

6 A. That's right.

7 Q. You're aware a designation, in fact, two  
8 designations have been filed by the trust  
9 telling the world what you're going to testify  
10 about at tomorrow's hearing?

11 A. That's right.

12 Q. Have you seen Exhibit Number 1 before?

13 A. I don't think I saw this cover letter,  
14 but the actual contents of it where it  
15 describes my -- the disclosure of my  
16 testimony, yes, I had seen that.

17 Q. If you'd switch to page three of the  
18 exhibit, the actual typed page.

19 A. Okay.

20 Q. Do you see where it says, "he will  
21 testify about operational aspects of the  
22 Echocardiogram Screening Program"?

23 A. Yes.

24 Q. Is that something that you're familiar  
25 with as a result of working on this trust for

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1 I guess over two years now?

2 A. Yes.

3 Q. What is the Echocardiogram Screening  
4 Program that you're prepared to testify about?

5 A. Under the settlement agreement, one of  
6 the benefits available to class members is a  
7 free echocardiogram and -- to people who meet  
8 the qualification requirements and the echo  
9 screening -- the Echocardiogram Screening  
10 Program referred to in this document is the  
11 method by which the trust delivers that  
12 benefit.

13 Q. How does the trust go about finding out  
14 what doctors could do these echoes in this  
15 screening program?

16 A. Prior to the trustees, the formal trust  
17 taking shape, there were a couple of contracts  
18 that were issued by the interim claims  
19 administrator. Seabury and Smith was  
20 originally envisioned to be the company, the  
21 contractor for the trust that handled the  
22 majority of claims processing and Crawford and  
23 Company was awarded the contract with respect  
24 to the Echo Screening Program.

25 They worked together.

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1 Q. All right. Exhibit Number 10 is a  
2 letter from Orran Brown dated September 13th,  
3 2002. You're familiar with this letter,  
4 aren't you?

5 A. Yes.

6 Q. On page two, there's some language about  
7 when a claim can be audited and I'll show the  
8 two sentences I've got highlighted which I  
9 think focuses on that. "The settlement  
10 agreement does not impose any deadline upon  
11 either Wyeth or the trust" and then a  
12 paragraph down it says, "it's clear that a  
13 matrix claim could be selected for audit at  
14 anytime in its processing, history, even after  
15 it has been paid". Do you see that?

16 A. Yes.

17 MR. CHIRLS: Where is the  
18 second one just for my reference? Yes, sir,  
19 thank you.

20 BY MR. PETROFF:

21 Q. Is there any deadline for when one of  
22 these claims can be audited?

23 A. I believe Wyeth has until the quarter  
24 after a claim -- the end of the quarter after  
25 the claim has been -- has become complete.

# EXHIBIT 6

Untitled

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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
	:	
	:	
SHEILA BROWN, ET AL.	:	
	:	
V.	:	CIVIL ACTION
	:	NO. 99-20593
	:	
AMERICAN HOME PRODUCTS CORPORATION	:	

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PHILADELPHIA, PENNSYLVANIA  
FRIDAY, NOVEMBER 15, 2002  
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BEFORE: HONORABLE HARVEY BARTLE, III, J.

HEARING

-----  
SUZANNE R. WHITE, C.M.  
FEDERAL CERTIFIED REALTIME REPORTER  
601 MARKET STREET  
1234 U.S. COURTHOUSE  
PHILADELPHIA, PA  
(215) 627-1882

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1 qualifications, moved through his resume.

2 THE COURT: Is there any objection that this  
3 be part of the record?

4 MR. CHIRLS: I don't know that he was  
5 offered up as an expert, but I do now on the basis of  
6 the resume offer him up as an expert in development and  
7 management of mass torts claims process.

8 THE COURT: Anybody want to voir dire him on  
9 that subject?

10 All right. You may proceed.

11 CROSS EXAMINATION AS TO VOIR DIRE

12 BY MR. CHIRLS:

13 Q. Mr. Florence, how have you -- what have you done  
14 for the Trust? Or what tasks have you -- things have  
15 you been called upon to do?

16 A. We were initially hired by the Trust to look at  
17 the claim processing operation of the contractor that  
18 the Trust was using, Seabury and Smith.

19 Q. When was this, more or less, do you remember?

20 A. That was in the late spring, early summer of 2001.  
21 And after performing that contract we were asked to put  
22 together a plan to assist the Trust in transitioning  
23 from the use of an outside contractor to conducting  
24 claim processing services in-house. And since putting  
25 the plan together, we have worked with the Trust on

1 implementing that plan to pull basically all claim  
2 processing services.

3 Q. Pull things in house beginning in, did you say,  
4 the summer of '01?

5 A. I think the plan actually was completed and began  
6 on August 1st of 2001.

7 Q. And in very broad outline what did the plan call  
8 for the Trust to do?

9 A. Well, there are a couple segments of the plan.  
10 One was to continue claims processing using the  
11 contractor through the end of their contract, which was  
12 the end of January of 2002. And that involved  
13 increasing supervision and actually specifically  
14 directing the workflow of the contractor down to a  
15 level of saying who would be working on what, what  
16 cases would be looked at and in fact taking over some  
17 of the not just management but data processing for the  
18 contractor.

19 And then the -- then the second main  
20 category of activities were activities directed toward  
21 building a facility, which was everything from  
22 developing space, staffing plans, hiring people,  
23 developing training materials, developing a computer  
24 system to traffic claims and to assist in the  
25 processing of the claims, the scanning and filing of

1 the paper. The plan actually covered all the major  
2 activities of building a claims processing  
3 organization.

4 Q. So step one was to sort of step in and function  
5 as -- have the Trust function as the management of what  
6 Seabury, the contractor, was doing.

7 A. Much more direct management of Seabury.

8 Q. Then at the same time to build capacity so the  
9 Trust could do its own processing?

10 A. Correct. It was a little like trying to build the  
11 airplane as you fly it.

12 Q. To whom did you report?

13 A. I reported to the trustees.

14 Q. And did the trustees take an active role in  
15 reviewing what you did and providing their own thoughts  
16 on what should be done?

17 A. They took a very active role.

18 Q. Did you give any consideration to recommending to  
19 the Trust that it engage a different contractor to do  
20 this rather than to build in-house its own capacity?

21 A. We did consider that, yes.

22 Q. And what was the result of your consideration?  
23 What were your views?

24 A. Well, the views were that there really was not a  
25 contractor available that had the capability to do this

1 job any quicker or with higher quality than the Trust  
2 could do itself and certainly not cheaply.

3 Q. Aren't there Trusts -- aren't there claims  
4 processing contractors out there in the world?

5 A. There are. There are many.

6 Q. There are none that could do this -- figure it out  
7 and get it going in a short time?

8 A. We didn't believe so, of the contractors that we  
9 had been exposed to. In fact, we had spoken with the  
10 interim claims administrators briefly back in, I guess  
11 it was December of 2000.

12 Q. "We" being ARPC?

13 A. Yes. And having read the agreement at that time,  
14 I think we said to them that we didn't -- we were not  
15 aware of any single contractor that had the experience  
16 necessary to perform the contract, certainly not to  
17 perform it with the existing time deadlines in the  
18 contract.

19 Q. What about the deadlines made that -- brought you  
20 to that conclusion?

21 A. Well, our experience with other trusts, or claim  
22 processing facilities that are set up as part of mass  
23 tort procedure for distributing money is that there is  
24 usually a huge rush of claims at the front end,  
25 especially if there is a deadline of some sort. If you

1 are creating an organization from scratch or if you are  
2 contracting with someone, there is a great deal of  
3 planning that has to go -- has to take place. And if  
4 there are deadlines at the front end of the process,  
5 that means that you have to build the facility from  
6 scratch or you have to train the people to do the  
7 contracting from scratch and build that organization up  
8 to be able to process the largest quantity of claims  
9 that it will ever see at the front end of the process.  
10 So, you know, a manufacturing analogy may be that  
11 someone is coming in with a new product. It's likely  
12 to have a great market appeal, but only at  
13 Christmastime. And so you say, well, you believe that  
14 the appeal is going to be for a half a million units,  
15 but you want to be able to have a half million to sell  
16 at Christmas. Then you build a factory that can  
17 produce a half million units in a very short period of  
18 time. The problem is, then, when January comes and  
19 February, March and April, you have this huge capacity  
20 and nothing to process, so the deadlines in the plan  
21 trouble me some. I mentioned that to the interim  
22 claims administrators because it's very difficult to  
23 meet early upfront deadlines in processing.

24 Q. Now, when you went about developing the plan  
25 beginning in August or September of 2001, it involved

1 building the Trust's capacity to process claims, is  
2 that right?

3 A. That's correct.

4 Q. Did you set a goal in cooperation or under -- in  
5 consultation with the trustees or recommend to them a  
6 goal as to when the Trust would be ready to do its own  
7 processing?

8 A. The plan, as it ran out, I think, had the  
9 implementation, full implementation by the Trust  
10 sometime in March.

11 Q. And why did you pick March?

12 A. I didn't pick March.

13 Q. What led to the March deadline or the March goal?

14 A. We really were operating under, I guess, two  
15 constraints. One is, in an ideal situation how long  
16 will it take anyone to complete the set of tasks that  
17 were outlined, and then, second, that the -- as I  
18 understood the contract with subcontractor, that it was  
19 to lapse at the end of January. And if I'm not  
20 mistaken, there was both a notification period and a  
21 contract interval that would have committed the Trust  
22 to a much longer period of time to use a subcontractor.  
23 So we were trying to pick that schedule that could be  
24 done and could be completed as close as possible to  
25 January 31.

1 Q. Did you see any possibility of getting the Trust  
2 ready to process all the elements of claims on its own  
3 before March?

4 A. No. In fact, we described the plan to the  
5 trustees as an extremely aggressive plan.

6 Q. And how close did the Trust come to meeting that  
7 plan?

8 A. The Trust met the plan.

9 Q. Now, you have since been called upon to do  
10 another -- to work with the Trust on another plan or  
11 another course of action in the development of its  
12 capacity, am I right?

13 A. That's correct.

14 Q. Tell us what you have been called upon to do.

15 A. Well, when the -- when the date one passed and  
16 after final judicial approval, the Trust was faced with  
17 a level of claims that it had not anticipated, that  
18 certainly we had not anticipated either, we were asked  
19 to work with the Trust to develop another plan for both  
20 expanding the capacity and trying to improve any --  
21 improve efficiencies so we could, again, do more with  
22 less.

23 Q. When did you get called upon to do that and what  
24 have you done?

25 A. We actually started that activity, I think, three

1 would be in the notice package, any updates to the  
2 claim forms, the notice, the instructions, clean and  
3 update the mailing list. The mailing list is -- as I  
4 said, is about 1.4 million addresses. So there is an  
5 attempt to update it, take out any duplicates to --  
6 anybody that has mailed -- sent mail to the Trust since  
7 the last mailing to update their address. Then there  
8 is bidding and engaging a mailing contractor, printing  
9 and mailing the notice.

10 Q. That has nothing to do with processing itself,  
11 other than you don't want it to interfere and drag  
12 management time away from the processing, is that  
13 right?

14 A. That's right. That's why it's in here. The  
15 intent is to develop a plan such that the Trust is  
16 ready, as soon as the notice goes out.

17 Q. 3.2, is that planning for the fact that there will  
18 likely be a large spike of mail around day 2 or after  
19 the notice goes out?

20 A. Yes, it is. It's trying to set up a contingency  
21 plan, such that if there is a spike of mail that comes  
22 in on date 2, it is not disruptive to normal Trust  
23 operations.

24 Q. 3.27 is implementation of procedures to sort time  
25 sensitive correspondence.

1 A. Correct.

2 Q. Rather than ask you, I will ask you if you agree.  
3 For instance, when the Trust sends out a tentative  
4 determination now, or until now, it has said if you  
5 have 30 days -- if you send us back an acceptance  
6 within 30 days, you will get paid sooner. If you don't  
7 contest within 30 days, it will affect the date of your  
8 payment, am I right?

9 A. That's correct.

10 Q. When the Trust had that deluge of mail, 75,000  
11 pieces in one day, it fell behind more than 30 days in  
12 just opening the mail?

13 A. They did, yes.

14 Q. The Trust could not know whether it was getting  
15 mail within 30 days in response to that letter?

16 A. That's correct.

17 Q. Do you know if the Trust made plans to deal with  
18 that problem then?

19 A. Yes, they did. I mean, at one point the Trust, in  
20 essence, stopped the deficiency process. To stop --  
21 they stopped sending out letters that would likely  
22 result in mail coming back in that was time sensitive  
23 that they might not be able to opine that could  
24 adversely affect the claimant.

25 Q. They did not stop issuing tentative

1 Q. And you could have, if asked, made a claims  
2 projection of how many claims this Trust should  
3 reasonably expect to be filed back when the Trust was  
4 formed, right?

5 A. I'm not sure I could. It would depend upon what  
6 was -- I have not tried to do that in this case, so I  
7 don't really know that much about what would be  
8 entailed in a projection.

9 Q. All right.

10 A. There have been instances where I have said, I  
11 can't do this, there are certain projections I can't  
12 do.

13 Q. All right. And certain projections you can?

14 A. I can, correct.

15 Q. You were not given the opportunity to make that  
16 determination with this Trust, right?

17 A. I was not asked to do a projection, correct.

18 Q. Certainly a reasonable estimate of the claims that  
19 would be filed or should be anticipated to be filed  
20 against the Trust at the time that the Trust was formed  
21 may have avoided some of the problems that we have  
22 today?

23 A. If it had been an accurate estimate, it could have  
24 avoided some of the problems, yes, that's right.

25 Q. Because then the Trust would know how many claims

1 to plan for?

2 A. Correct.

3 Q. And would know how many people it needed to  
4 process the claims?

5 A. Correct. Assuming that it was a manageable  
6 number. I mean, if the estimate had been -- for  
7 example, if the estimate had been -- in fact if the  
8 estimate had been what it is, if someone had said well,  
9 we think that the estimate is going to be 500,000  
10 claims and you are going to get them in a month, I'm  
11 not sure what the Trust could have done at that point.  
12 I don't think they could have built a facility nor  
13 wanted to build a facility that was capable of  
14 processing 500,000 claims in a month.

15 Q. It could at that point have brought the issue to  
16 the Court's attention at some time sooner than a month  
17 and-a-half before the filing deadline, right?

18 A. Yes. I mean, if they had -- if they suspected a  
19 problem, they could have brought it to the Court's  
20 attention.

21 THE COURT: You think I could have solved  
22 that one.

23 MS. PRESBY: I know you could, Your Honor.  
24 I just know it.

25 BY MS. PRESBY:

Untitled

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

IN RE: DIET DRUGS (PHENTERMINE/ : MDL NO. 1203  
FENFLURAMINE/DEXFENFLURAMINE) :  
PRODUCTS LIABILITY LITIGATION :  
: :  
SHEILA BROWN, ET AL. :  
: :  
V. : CIVIL ACTION  
: NO. 99-20593  
: :  
AMERICAN HOME PRODUCTS :  
CORPORATION :

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PHILADELPHIA, PENNSYLVANIA  
FRIDAY, NOVEMBER 15, 2002  
-----

BEFORE: HONORABLE HARVEY BARTLE, III, J.

HEARING

-----  
SUZANNE R. WHITE, C.M.  
FEDERAL CERTIFIED REALTIME REPORTER  
601 MARKET STREET  
1234 U.S. COURTHOUSE  
PHILADELPHIA, PA  
(215) 627-1882

□

1 this exhibit book.

2 Q. Where do they go?

3 A. They are used for internal purposes and report to  
4 the trustees.

5 Q. Okay. So under your plan, how can the public get  
6 access to that?

7 A. I don't address the issue of public access and I'm  
8 only looking at how to get this done.

9 Q. So right now, in your opinion, the Trust has the  
10 capacity to process 3,200 claims per month as of today?

11 A. Correct.

12 Q. Do they have the capacity also to audit 3,200  
13 claims per month today?

14 A. No. There would be no -- the expectation is that  
15 there would not be the necessity to audit 3,200 claims  
16 per month.

17 Q. What is the capacity to audit per month right now?

18 A. I think, as we talked about -- in fact last week  
19 -- was the issue of the Trust has a plan in place, had  
20 a plan in place to hire 50 to 60 additional auditing  
21 cardiologists, 50 additional. At the present time,  
22 they have agreements or at least agreements have been  
23 attempted to participate from 51 auditors. It was  
24 anticipated based on the Trust's historical experience  
25 that auditing cardiologists could do 10 of these a

1 week, which would make it 500 a week basically. They  
2 could do that many audits per week or roughly 2,000 a  
3 month.

4 Q. So how long, as we discussed yesterday, if the  
5 Judge were to rule next week or December first that,  
6 you know, whatever he says about the audits if there  
7 are any additional audits, how long would it take you  
8 to have this plan implemented to full capacity?

9 A. The capacity on the processing side?

10 Q. I'm talking about on the auditing side.

11 A. On the auditing side, I think we talked about the  
12 plan was to have the audits in place by the beginning  
13 of the year.

14 Q. January one?

15 A. Have the auditors in place by the beginning of the  
16 year.

17 Q. As we discussed yesterday, the Trust, based on  
18 your plan, would have the capacity, at least sometime  
19 in a couple of months, to tell a person where they  
20 would be, how many claims are ahead of them on the  
21 first in, first out system, right?

22 A. No. I think you are talking about -- yesterday, I  
23 think you asked me a question at deposition that said,  
24 is it possible to do something like that?

25 Q. Right.

# EXHIBIT 7

**AHP Settlement Trust**

**P.O. Box 42805, Philadelphia, PA 19101 • 215-923-5211 • Fax: 215-923-5217**

October 23, 2002

VIA 2<sup>nd</sup> Day Air

John Rodriguez  
c/o Hariton & D'Angelo, LLP  
Attn: Mario D'Angelo, Esquire  
3500 Sunrise Highway, Suite T-207  
Great River, NY 11739

RE: Audit Selection Letter  
Diet Drug Recipient: John Rodriguez  
Claim No.: 183/00 8013394

Dear Class Member c/o Counsel:

In accordance with the provisions of the Nationwide Class Action Settlement Agreement with American Home Products Corporation (the "Settlement Agreement") your Claim for Matrix Compensation Benefits ("Claim") has been selected for audit. Your Claim will be audited by an independent Auditing Cardiologist to determine whether there was a reasonable medical basis for the physician who completed your Green Form to answer the question(s) identified in the enclosed Attestation form.

The Court has approved Policies and Procedures for Audit and Disposition of Matrix Claims in Audit ("Policies and Procedures"), which are enclosed. Under those Policies and Procedures, you have thirty (30) days to send to the AHP Settlement Trust (the "Trust") any additional credible medical information that you wish for the Trust and the independent Auditing Cardiologist to consider in connection with the specific reason(s) why your Claim was selected for audit. Such medical information shall not include materials you previously submitted with your Claim, shall not be cumulative of materials previously submitted with the Claim, and shall be limited to the specific issue(s) in audit. Any submission must be *postmarked or placed in the hands of a delivery carrier no later than thirty (30) days from the date of this letter, or it will not be considered by the Trust*. You will not be able to submit any information related to your Claim to the Trust following this thirty (30) day period unless the Trust has granted an extension of the deadline upon good cause shown. The Trust will not accept submissions by a facsimile transmission. Send submissions to: **AHP Settlement Trust, Audit Selection Information, P.O. Box 42290, Philadelphia, PA 19101.**

The following documents are enclosed to inform you of the process governing the audit of your Claim and to provide you with more documentation relating to the reason why your Claim was designated for audit:

- (1) Policies and Procedures (approved by the Court by Pretrial Order No. 2362 on 1/31/02);

- (2) Standard instructions to the independent Auditing Cardiologist ("Auditing Cardiologist"), which specify how the audit should be conducted;
- (3) A copy of the Auditing Cardiologist Attestation form ("Attestation Form"), which will be forwarded to the Auditing Cardiologist with your Claim File. This Attestation Form requires the Auditing Cardiologist to verify the materials he/she reviewed and to conclude whether there was a reasonable medical basis for the specific answers given by your attesting physician in the Green Form that have been identified for audit; and,
- (4) A copy of the reason(s) why Wyeth<sup>1</sup> designated your Claim for audit.

Following the timely receipt of additional credible medical information you submit in connection with the audit of your Claim, the Trust will review the information to determine whether the audit should proceed or whether the Claim should be withdrawn from audit and paid by the Trust at the level supported by Part II of the Green Form. If the audit is not withdrawn, the Claim File will be transmitted to the independent Auditing Cardiologist for a determination of whether there is a reasonable medical basis for the answer(s) to the Green Form questions in audit. If the Auditing Cardiologist finds that there is no reasonable medical basis to support the answers in the Green Form that were placed into audit, the Settlement Agreement directs the Trust to apply to the Court for an Order to Show Cause why the Claim should be paid as submitted. Such an application will require you to prove to the Court why your Claim should be paid as submitted and the relief requested by the Trust in its application should not be granted. See, Policies and Procedures, at §VII. Pursuant to the terms of the Settlement Agreement, the Court will then determine whether there was no reasonable medical basis to support the answers in the Green Form that were placed into audit.

If you do not want your Claim to proceed through the audit process, you may withdraw your Green Form without prejudicing your ability to submit a new Matrix Compensation Claim (new Green Form) in accordance with the terms of the Settlement Agreement. Submission of a new Green Form will constitute a new Claim and may be based on a new echocardiogram and/or any other medical evidence previously submitted that you believe supports your eligibility for Matrix Compensation Benefits at the level of severity you are requesting. Accordingly, you must complete fully all portions of the Green Form and may not rely on any answer provided on a previous Green Form. You may withdraw your Matrix Compensation Claim by completing and returning the enclosed Withdrawal Without Prejudice form. Withdrawal of your Claim will not prejudice your ability to submit a new Claim if your condition changes in the future and meets the criteria for Matrix Compensation and you have complied with the requirements and deadline date(s) contained in the Settlement Agreement for making a Matrix Compensation Claim.

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<sup>1</sup> Effective March 11, 2002 American Home Products Corporation changed its name to Wyeth. The name change does not affect any aspects of the Nationwide Class Action Settlement Agreement.

If you have any questions concerning the audit process, you may contact the following persons:

**For AHP Settlement Trust:**

Jules S. Henshell, Esquire  
Director, Matrix Claim Integrity,  
Review & Disposition  
AHP Settlement Trust  
P.O. Box 42805  
Philadelphia, PA 19101  
215.923.5211

**For Class Counsel:**

Luke Pepper, Esquire  
Class Counsel Claims Office  
325 Chestnut Street, Suite 320  
Philadelphia, PA 19106  
215.413.2759

Sincerely,

AHP Settlement Trust

PARALLEL PROCESSING PROGRAM  
WYETH'S AUDIT DESIGNATIONS

DDR	LAST NAME	FIRST NAME	AUDIT COMMENT
8013394	Rodriguez	John	<ul style="list-style-type: none"><li>Wyeth's re-read of the 3/25/02 Echo finds physiologic to mild mitral regurgitation. This conflicts with the attesting physician's response to Question C.3.A in the Green Form, which indicates moderate mitral regurgitation.</li></ul>

# EXHIBIT 8

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

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IN RE: DIET DRUGS (Phentermine/ :  
Fenfluramine/Dexfenfluramine : MDL DOCKET NO. 1203  
PRODUCTS LIABILITY LITIGATION : ALL CASES

Philadelphia, Pa.  
May 20, 2003

BEFORE HON. HARVEY BARTLE, III, J.

HEARING

APPEARANCES:

LEVIN, FISHBEIN, SEDRAN & BERMAN  
BY: ARNOLD LEVIN, ESQUIRE  
MICHAEL FISHBEIN, ESQUIRE  
LAURENCE BERMAN, ESQUIRE  
510 Chestnut Street  
Philadelphia, PA 19106

For the PMC

CUMMINGS, CUMMINGS & DUDENHEFER  
BY: JOHN CUMMINGS, ESQUIRE  
Alison House  
416 Gravier Street  
New Orleans, LA 70103

For the PMC

GREITZER & LOCKS  
BY: GENE LOCKS, ESQUIRE  
1500 Walnut Street  
Philadelphia, PA 19102

For the PMC

1 electronic audit application for those people will not work  
2 when it's run because it depends on accurate electronic  
3 information about what's in people's green forms. So that is  
4 a concern.

5 Another concern is that, as of today, there are  
6 only 38 auditors under contract with the Trust. At least  
7 that's the report that I heard as of yesterday, the day  
8 before. There is a number that is being considered. There  
9 are a number of contracts in negotiation, and we may get well  
10 over the 51 that Mr. Mitchell testified to back in November.  
11 But we're not there yet.

12 To my knowledge, thus far the trust has sent out  
13 200, perhaps 300 -- it may have changed the last time I had  
14 information -- claims of audits with relatively few audit  
15 returns.

16 So we are substantially behind --

17 THE COURT: You mean the auditors haven't  
18 responded?

19 MR. FISHBEEIN: The auditors have not completed  
20 their audits, and the claim has not been processed to a  
21 benefit determination. So this is not what the expectation  
22 of anybody was, the Trust, the Court, the parties, the class  
23 members, anyone. I think that it's not a great situation.

24 The parties have been trying to work with the  
25 Trust to figure out what's wrong and unstick the jam points.

1 can be assured that we get to that goal.

2 I don't think it's helpful at this point to say  
3 why we aren't there, certainly to have a big fight about it  
4 now. The fact is that we are here where we are now, and we  
5 have to be in a position to get these people, their claims  
6 audited and pay for those people who are entitled to be paid,  
7 and then to show cause for those people who are found not  
8 entitled to be paid.

9 We have to, it seems to me, Your Honor, have a  
10 plan that has a goal and has accountability for whether that  
11 goal is met. That's my spiel on that point, Your Honor.

12 THE COURT: Thank you very much. Wyeth have  
13 anything to say? Mr. Brown?

14 MR. BROWN: Good afternoon, Your Honor. Orran  
15 Brown for Wyeth. Your Honor, I will not repeat anything Mr.  
16 Fishbein said. We agree with that --

17 THE COURT: I'm glad to hear that.

18 MR. BROWN: -- on these points. So I could stop  
19 here. But there are three things that bear mentioning.

20 First of all, on the extension of deadlines on the  
21 Fund A benefits, it's a very narrow group that we and class  
22 counsel said we really need treatment. Mr. --

23 THE COURT: When you say a narrow group, how many  
24 people are you talking about?

25 MR. BROWN: I think according to the Trust data,

1 We developed what I would call the 12 point plan  
2 that we thought would be helpful in that regard. We  
3 presented it or started to present it to the trustees  
4 yesterday, and I don't want to characterize it more than to  
5 say that it was a fairly contentious meeting. That left me  
6 with the impression that it's going to be sort of hard to  
7 continue to work on this process in a collegial fashion, and  
8 it's something that is more formal that needs to be done.

9 The suggestion that I think we left the meeting  
10 with yesterday was that the Trust knows where they are in  
11 terms of processing matrix claims and in the audit process,  
12 generally. They ought to be able to commit to a time at  
13 which they will meet the 500 claims per week in terms of  
14 getting claims to auditors in a way that is accurate,  
15 reliable, and then processing the audit results in a way that  
16 results in either a payment in a relatively speedy way, or in  
17 a show cause proceeding, getting to the Court in a relatively  
18 speedy way, and be able to articulate how and when they are  
19 going to get to that goal, and then be held accountable to  
20 that goal.

21 I think it would be helpful, Your Honor, to  
22 involve the special master more actively in the process,  
23 perhaps more formally to monitor this process as it goes

1 the 553 people that they say allege in their forms are FDA  
2 positive, appear to be eligible for the payment of the 3,000  
3 or 6,000 dollars, but have not yet been paid.

4 There is this other slug of 1700, 1800 claimants  
5 that I think are the next group that allege they were  
6 payable, but had some question about their -- whether all  
7 their paperwork was there that the settlement agreement  
8 requires to get that payment. That was a group that was  
9 identified to us last week. We're working on sorting through  
10 those to see if there are missing pieces of the file. That  
11 the settlement agreement requires, but nonetheless don't  
12 matter.

13 Because our goal is to streamline the whole  
14 deficiency process to avoid consuming so many resources,  
15 sending out letters, waiting for them to come back, getting  
16 them back or not getting them back, sending out another one  
17 on the Fund A side and the matrix side. But we are helping  
18 push these claims to resolution.

19 The only thing we were saying in this response  
20 was, it looks like the Trust is paying the cash-med benefit  
21 for persons who come out of the screening program and are  
22 found FDA positive. That's not the problem. The problem is  
23 the group of claimants who say they had their own privately  
24 obtained echo

# EXHIBIT 9

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

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IN RE: DIET DRUGS (Phentermine/ :  
Fenfluramine/Dexfenfluramine : MDL DOCKET NO. 1203  
PRODUCTS LIABILITY LITIGATION : ALL CASES

Philadelphia, Pa.  
May 20, 2003

BEFORE HON. HARVEY BARTLE, III, J.

HEARING

APPEARANCES:

LEVIN, FISHBEIN, SEDRAN & BERMAN  
BY: ARNOLD LEVIN, ESQUIRE  
MICHAEL FISHBEIN, ESQUIRE  
LAURENCE BERMAN, ESQUIRE  
510 Chestnut Street  
Philadelphia, PA 19106

For the PMC

CUMMINGS, CUMMINGS & DUDENHEFER  
BY: JOHN CUMMINGS, ESQUIRE  
Alison House  
416 Gravier Street  
New Orleans, LA 70103

For the PMC

GREITZER & LOCKS  
BY: GENE LOCKS, ESQUIRE  
1500 Walnut Street  
Philadelphia, PA 19102

For the PMC

1 MR. BROWN: Yes, Your Honor, that's the way I  
2 understand the information. I believe it's 553, not 33. But  
3 the group of people who obtained their own echo, who say in  
4 their forms that I had an echo and I was found FDA positive,  
5 in the settlement agreement, Section Roman Numeral 63(c)(i)  
6 and (J) on page 100 of the amended settlement agreement,  
7 those sections require the Trust to pay those claims within  
8 45 days after the claim is complete, and the documentation is  
9 there that shows that they are eligible.

10 That's the only piece of the puzzle that we're  
11 saying really shouldn't be extended any longer for people who  
12 filed their pink forms, sometimes as long as two years ago,  
13 and for people who filed the blue forms before June 30, which  
14 was before the mail flood around the August 1 date deadline.  
15 That's the only thing we're saying should get the attention  
16 to get out.

17 The second piece of that discussion is this  
18 deficiency process. We want to help the Trust streamline  
19 deficiency process so that we don't have claims waiting to  
20 hear things that really will never materialize.

21 Mr. Fishbein's idea of sending them a letter that  
22 says, you didn't say you're FDA positive, do you want the  
23 benefit or not -- and if not, that's the end of those claims  
24 -- would help compress the process a lot. We encourage the  
25 Trust to do that and help work with us to find other ways to

1 that process in a collegial manner and have a work plan with  
2 some definite fixed deadlines in it so that we know it will  
3 happen. If not, then we'll be able to assess why not.

4 That's all I have, Your Honor.

5 THE COURT: Thank you. Anyone else who has filed  
6 a brief on this subject and wishes to be heard?

7 All right, thank you.

8 MR. CHIRLS: Your Honor, may I be heard?

9 THE COURT: Please respond.

10 MR. CHIRLS: The group of 553 or 533, I forget  
11 which was addressed in our brief -- and it is our intention  
12 to give priority to payment to them and completion of the  
13 necessary paperwork --

14 THE COURT: How soon will you be doing that?

15 MR. CHIRLS: If I said the end of the month, I  
16 would be wrong in saying that they will all be paid by the  
17 end of the month. But most will be, and shortly after the  
18 end of the month.

19 THE COURT: End of the month of May?

20 MR. CHIRLS: Correct.

21 THE COURT: '03.

22 MR. CHIRLS: '03.

23 Mr. Brown discusses the post-eligibility deadline,  
24 and I thought he said that was all they want. It's not all  
25 they want, and it's not all we want, at least in terms of our

1 minimize the letter campaign to make sure that resources  
2 aren't spent on claims that never really wanted the benefit,  
3 because they didn't say they were FDA positive to start with.

4 The third part of Mr. Fishbein's discussion, Your  
5 Honor, we also echo, in that on the matrix side of the  
6 equation, we do, and have talked to class counsel a lot, and  
7 want to work with the Trust on making the audits happen the  
8 way they should. There are a number of areas that need  
9 attention, that need people committed to them, to finish the  
10 process, to finish the electronic aspect of the process, to  
11 make sure that the data in the claimant database is accurate  
12 because that's what feeds the audit program to make sure that  
13 the processes are there so that there are not unnecessary  
14 deficiency letters sent out on the matrix claims on  
15 non-material issues.

16 We want to make that happen. We would like to  
17 have a work plan with some definite deadlines for each of  
18 those aspects to be finished. We can list the aspects and  
19 have listed the aspects, the elements of it for the Trust.

20 We invite the supervision of the special master or  
21 anyone else who could help us to push this to resolution,  
22 because we want to make the audit process get off the ground  
23 and start happening. The Trust is working on it. Tom

1 views of how they should be treated.

2 If we can find 6,000 people who need certain  
3 specific attention, we want to do that. We want to work with  
4 the parties collegially, as they say, to make sure that  
5 people aren't being ignored.

6 If we can streamline the deficiency process,  
7 nothing would make us happier than to figure out a way to  
8 make those deficiency letters stronger than we think the  
9 settlement agreement calls for, and to see if we can submit  
10 an order, or at least come to an agreement on how to make  
11 those deficiency letters simpler and clearer and so on.

12 As for the audits, I do want to point out -- at  
13 least I'm looking at Mr. Florence's testimony of November  
14 15th, where he said that the Trust had a plan in place to  
15 hire 50 or 60 more cardiologists, and that the plan was to  
16 anticipate 50 auditors or 51. Based on how things were being  
17 audited then, it could be 500 a week.

18 Obviously, we don't disagree with what the parties  
19 have said to this extent. The audit program is not off the  
20 ground, even close to what we thought it would be, to what we  
21 hoped it would be, and to what we led ourselves and others to  
22 have it be.

23 We are working on a disciplined plan. We have not

# EXHIBIT 10

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

IN RE: Diet Drugs Litigation MDL-1203

1:30 p.m.  
February 27, 2003  
Courtroom 16-A  
Philadelphia, PA

---

Before the HONORABLE HARVEY BARTLE, III, J.

---

STATUS HEARING

---

APPEARANCES:

Arnold Levin, Esq. For Class Plaintiffs  
Michael Fishbein, Esq.  
Laurence Berman, Esq.  
LEVIN FISHBEIN SEDRAN & BERMAN  
510 Walnut Street, Ste. 500  
Philadelphia, PA 19106

Deborah A. Hyland, Esq. For the PMC  
Luke Pepper, Esq.  
325 Chestnut Street, Ste. 200  
Philadelphia, PA 19106

Edward Madeira, Jr. Liason Counsel  
PEPPER HAMILTON  
1717 Arch Street  
Philadelphia, PA 19103

Nancy O'Neill  
Official Court Reporter  
1234 U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106

1 resolved, or the process of resolution was put in place  
2 by PTO 2622 requiring a hundred percent audit.

3 But the other question that seemed obvious at  
4 the time, and from my perspective is even more obvious  
5 now than it was back last summer, well, what do we do if  
6 the settlement runs out of money to pay claims as they  
7 come through audit if they exceed the funding limitation  
8 -- Wyeth's funding limitations under the settlement?  
9 And it could be that that happens because the science  
10 that we established at the fairness hearing turned out  
11 to be wrong. It could be that that will happen because  
12 the settlement uses extremely liberal disease  
13 definitions, and that, coupled with the inherent  
14 subjectivity of echo diagnosis and the very differential  
15 standards of audit review, allows claims to get through  
16 and be paid even though the people are not really sick  
17 as contemplated by the parties when they executed the  
18 settlement agreement. Either way, that creates a  
19 problem. And although we don't know what will happen as  
20 the 100 percent audit proceeds and how many claims will  
21 be found to be good and how many claims will be found to  
22 be bad, I have to tell you that sitting here today, your  
23 Honor, it's my view, based on what I have seen from our  
24 own analysis of the evidence and the claims rates, that  
25 sooner or later I believe that the settlement will most

1 probably run out of money. I think there will be a  
2 funding problem. I can't say that for sure. Maybe  
3 there won't be, and maybe it won't manifest itself for  
4 many years, but it is an issue. And so that is the  
5 issue that brings us here today.

6           When this came to our attention, we tried to  
7 figure out what to do about it. Obviously, the problem  
8 is the settlement does not oblige Wyeth to pay claims to  
9 class members. The settlement simply sets up a trust  
10 which obliges the trust to pay claims in a certain way  
11 and obliges Wyeth to fund the settlement up to funding  
12 caps, and binds class members with an injunction to the  
13 terms of the settlement which precludes them from  
14 litigating their claims outside of the settlement except  
15 pursuant to intermediate and back-in/opt-out rights. So  
16 we have the potential problems where class members could  
17 be bound by the settlement without receiving that which  
18 they expected and everyone expected they could get if  
19 they were qualified to receive it.

20           We considered what to do about that. The  
21 first consideration -- and as I go through these  
22 considerations, in effect, your Honor, I'm not only  
23 going through the class counsels' thought process, but  
24 also making the argument in support of the Sixth Amendment.

25           The first thing we considered, well, are there

# EXHIBIT 11

**EXHIBIT 1 TO JOINT MOTION FOR AN EMERGENCY  
STAY OF PROCESSING MATRIX CLAIMS TO TENTATIVE AND/OR  
FINAL DETERMINATIONS:**

**DECLARATION OF ROBERT A. MITCHELL, JR.**

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

_____ )	
IN RE DIET DRUGS )	
(PHENTERMINE/FENFLURAMINE/ )	MDL No. 1203
DEXFENFLURAMINE) PRODUCTS )	
LIABILITY LITIGATION )	
_____ )	
SHEILA BROWN, et al. v. AMERICAN )	CIVIL ACTION No. 99-20593
HOME PRODUCTS CORPORATION )	
_____ )	

**DECLARATION OF ROBERT A. MITCHELL, JR.**  
**PURSUANT TO 28 U.S.C. SECTION 1746**

I, ROBERT A. MITCHELL, JR, hereby declare:

1. I am the Executive Director of the AHP Settlement Trust, located in Philadelphia, Pennsylvania.
2. I have personal knowledge of the matters set forth in this Declaration, and if called as a witness, could and would competently testify to them.
3. The AHP Settlement Trust ("the Trust") was created pursuant to the November 18, 1999 Nationwide Class Action Settlement Agreement ("Settlement Agreement") and the September 1, 2000 Settlement Trust Agreement. The Settlement Agreement is between Wyeth (formerly known as American Home Products Corporation) and Class Representatives for a nationwide class of persons who used Wyeth's prescription diet medications, Pondimin<sup>®</sup> and/or Redux.<sup>™</sup> The Settlement Agreement was approved by Judge Louis Bechtel of the United States District Court for the Eastern District of Pennsylvania in Pretrial Order No. 1415, dated August

28, 2000, in the proceedings known as *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation*, MDL Docket No. 1203 (E.D.Pa.).

4. The Trust is governed by seven Trustees. See Settlement Agreement, § VI.A.3 [ASA p.65]. Beginning in 2005, the Trust will be comprised of three Trustees who will serve until the termination of the Trust. See Id. The Trustees are together responsible for the receipt, preservation, maintenance, investment, and disbursement of the Settlement funds.

#### Fund A

5. *Trust Infrastructure and Fund A Processing Capabilities.* As Executive Director employed by the Trust, I oversee its operations, its 229 employees, and its outside contractors who perform various services for the Trust relating to implementation of the Settlement Agreement. The Trust employees, who currently occupy a total of approximately 44,000 square feet of office space, include 212 trained analysts who process claims, perform Quality Assurance functions, and respond to Class Member inquiries, and 17 administrative support staff members. At current capacity, the Trust can review 5,000 or more **Fund A** claims per week. The results of that review can include a deficiency letter to inform a claimant of additional information required to pay a benefit, placement of a claimant into the Echo Screening Program, payment of a Cash/Medical Services benefit, or qualification for a Drug Refund.

6. *Fund A Projections.* Between the initiation of Settlement administration in January 2000 and the end of 2001, the Trust received about 191,609 Pink (AIO) Forms from about 177,530 claimants and about 134,184 Blue Forms from about 109,644 claimants. By the end of 2001, the Trust had forwarded 132,874 AIO claimants to the Echocardiogram Screening Program, paid 5,178 Cash/Medical Services benefits, and either paid or scheduled for payment 99,900 Drug Refunds. No benefits had been paid to Class Members who had submitted Blue Forms because their benefits were contingent upon Final Judicial Approval. Based on the best information available to the Trust at the end of 2001, the Trust anticipated Final Judicial Approval occurring in March of 2002. Anticipating that the deadline for registering claims for Echocardiogram Screening Benefits and Drug Refunds would fall in late 2002, and based upon

input from Class Counsel, Wyeth, and expert consultants, the Trust budgeted resources to process the remaining AIO claims, the already filed Blue claims, and 50,000 new Blue claims at the same time it was in the midst of a transition of processing responsibilities with its former claims processing contractor.

7. *Final Judicial Approval.* Final Judicial Approval occurred on January 3, 2002, which hastened the initiation of non-AIO claim processing and substantially compressed time available to complete transition activities that the Trust had planned through March of 2002. Because of the compressed timeframes that the Trust had to execute the transition from relying on a contractor to becoming a stand-alone claims processor, in February of 2002 the Trust dedicated the vast majority its Fund A claims processing resources to processing Echocardiogram Screening Benefits. With the consent and at the urging of both Class Counsel and Wyeth, the Trust gave priority to the Echocardiogram Screening benefits both to ensure that Class Members who have undiagnosed heart conditions would receive access to a free echocardiogram as quickly as possible and to establish eligibility for the other benefits under the Settlement Agreement that are premised upon the results of the echocardiogram. Through July 31, 2002, the Trust referred an additional 91,497 Class Members to the Echocardiogram Screening Program, paid 4,922 Cash/Medical Service payments that flowed from the results of Screening Program echocardiograms, and continued to schedule or pay 44,337 Class Members for Drug Refunds. As of August 31, 2002, eleven percent (11%) of the claimants who received an echocardiogram through the Screening Program and for which the Trust has received results from the Screening Program physician are FDA-positive.

8. *Actual Claims Received.* As a result of Final Judicial Approval occurring on January 3, 2002, the deadline for registering a claim for the Echocardiogram Screening Program and Drug Refunds was established for August 1, 2002. Registration forms had to be postmarked by that date to be timely, and many forms were received after that date. Through July 28, 2002, the Trust received 87,114 new Blue Forms. Between July 29, 2002, and August 17, 2002, the Trust received an estimated 112,610 new Blue Forms. Therefore, as of August 17, 2002, the Trust

received approximately 199,724 new Blue Forms, or four times the number of new claim forms that the Trust had projected for all of 2002. In addition to claims on hand, Class Members have until May 3, 2003, to submit new Blue Forms to register for Cash/Medical Services benefits and Matrix Compensation Benefits. As a consequence of the surge in Fund A filings, the Trust must process over 150,000 more claim forms than it had budgeted resources for, most of which appeared at the Trust during a one week period just over a month ago.

9. *Projected Infrastructure Requirements.* Unless the Trust's current levels of support and processing capabilities are expanded, the unprocessed and the new Fund A claims can be expedited only at the expense of accuracy. To address the need for expansion, the Trust has obtained Court approval to lease an additional 15,620 square feet of working space, which will enable the hiring of an additional 60 new claims processors and staff to support those processors. By November 15, 2002, based on the assumption that assuming additional space will be ready for occupancy and at least half of the new employees are trained in claims processing procedures, the Trust will be able to present a realistic plan to the Court, outlining tasks required to pay outstanding claims, identifying additional staffing needs, and projecting when benefits can be processed and paid.

#### **Fund B**

10. *Green Form Filings After Final Judicial Approval.* Since Final Judicial Approval, the Trust has received approximately 772 Green Forms per week. While some of these Green Forms are duplicates or updates of previously filed Green Forms, the vast majority represents new Matrix Claims. If this trend continues through year-end, this equates to approximately 36,000 new Matrix Claims by the close of 2002.

11. *Incorporation of Attached Exhibits.* To further aid the Court, the attached Exhibits A through D were prepared at my direction based on data captured in the Trust's computer system in the ordinary course of the Trust's business processing claims. Where used in the reports, the acronym "DDR" refers to Diet Drug Recipients. The term "Valid Green DDRs" in Exhibit A refers to Matrix Claims that are not duplicate forms or forms submitted to supplement

# EXHIBIT 12

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  
)

SHEILA BROWN, et al. v. AMERICAN  
HOME PRODUCTS CORPORATION

)  
) CIVIL ACTION No. 99-20593  
)

REPORT OF THE AHP SETTLEMENT TRUST  
OF JANUARY 15, 2003, PURSUANT TO PRETRIAL ORDER NO. 2663

The AHP Settlement Trust (the "Trust") hereby reports pursuant to paragraph 3 of Pretrial Order No. 2663 on matters related to its review, processing and payment of claims. This report includes information and is in the format developed after consultation with the Special Master. The attached tables summarize activities of the Trust in December, 2002. This report will also describe how the report is to be read.

As the first of the attached tables shows, the Trust sent 40,548 acknowledgment letters in December, 2002. By the end of December, it had sent acknowledgment letters to all claimants who had submitted BLUE or PINK Forms before December, 2002, and who provided the Trust with sufficient information to enable the Trust to address a letter and to classify the submission as calling for an acknowledgement. Ninety-two claimants submitted new claims during December, 2002, and the Trust had not sent acknowledgment letters to these claimants by December 31, 2002. The Trust is meeting its obligation to send acknowledgment letters to claimants within the thirty days, as is required by Section VI.C.3.a of the Settlement Agreement.

The second of the attached tables shows that in December, 2002, the Trust processed 29,053 applications submitted by Fund A claimants. The Trust stated that it would be able to

process 24,000 such applications each month until it doubled its capacity, and the Trust is currently operating at a rate in excess of what was anticipated. The Trust processed 5,729 Fund B claims in December, 2002—2,529 more than the expectation of 3,200 claims.

The third of the attached tables describes the nature of the applications that were to be processed at the beginning of December, 2002, by quantifying how many applications were to be the subject of initial review or processing and how many were to be the subject of review or processing of information submitted after the Trust stated that the applications were incomplete. Applications are also categorized in columns according to the nature of the benefits sought. The bottom section of this table shows how many claimants received deficiency letters and how many received denial letters with respect to each benefit claimed. It also shows how many claimants had their claims approved (in the case of Fund A claims, by benefit) and how many were approved to go to the next step -- in the case of Fund B claims, a medical audit. The table also shows the number of claims paid or approved for entry in the Echocardiogram Screening Program.

In connection with this submission, the fourth and fifth of the attached tables substantially repeat information shown in the third table. They are included here for the purpose of having a consistent format in connection with reports to be filed in the future. The fifth table shows that \$7,179,000 in payments were made in the Cash or Additional Medical Services Program.

For the purposes of this report, "processing" means that the Trust has reviewed the information the claimant has submitted and either: (1) approved the payment or provision of a particular benefit; (2) denied the payment or provision of a particular benefit; or (3) determined that the claim is deficient in some manner, in which case a detailed letter to the claimant

describing the deficiency has been prepared for distribution. For example, in December, 2002, the Trust processed 20,828 Drug Refund claims to the point of issuance of 3,872 Drug Refund deficiency letters while approving 16,956 claims for payment of the Drug Refund. Similarly, for Fund B claims, the Trust processed 321 claims to the point of a deficiency letter, sent 3,656 claimants a letter stating that their Fund B submission is denied because it is inadequately filled out to process further or fails to show entitlement to a Matrix Level Benefit. Additionally, the Trust reviewed and approved 1,752 claims for inclusion in the Trust's medical review program to be carried out pursuant to Pretrial Order No. 2662.

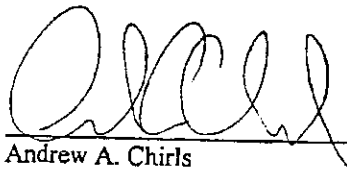
An individual claimant may qualify for more than a single benefit with the Trust. For example, the Trust could approve a Drug Refund while sending the claimant at the same time a deficiency letter seeking more information regarding echo screening and cash and medical service benefits. When viewed on a benefit-by-benefit basis, rather than a claimant basis, the Trust processed 40,289 Fund A benefit requests and 5,729 Fund B benefit requests. The number of Fund A benefit requests processed (40,289) exceeds the number of claimants' applications processed (29,053) because many claimants had more than one benefit request outstanding when their claims were processed. As noted, the Trust's processing of 29,053 claimants' requests is the number to compare against its goal of 24,000.

Additional activity by the Trust during December, 2002, included:

- Paid \$8.3 million to physicians who performed and reported on 9,813 echocardiograms in the Screening Program.
- Sent 15,512 second or third deficiency letters; these are follow up letters to claimants who had not answered a previously sent deficiency letter.
- Sent 36,883 letters notifying claimants of results of their Screening Echocardiograms.
- Sent 1,723 Echo Screening Program follow-up letters reminding eligible claimants of how they may participate in the Screening Program.

From the inception of the Settlement Agreement through December 31, 2002, the Trust has:

- Paid more than \$961.2 million on account of 2,381 Matrix claims and their associated derivative claimants; these payments are the aggregate of direct payments to class members, subrogation payments, attorneys' fees and costs and derivative claims.
- Approved and referred 301,503 claimants to the Trust's Echocardiogram Screening Program.
- Paid \$99.4 million to physicians who performed and reported on 122,818 echocardiograms in the Screening Program.
- Paid \$91.2 million to 15,565 claimants who have been determined to have FDA Positive valvular conditions pursuant to the Cash or Additional Medical Services program.
- Sent 118,079 letters notifying claimants of results of their Screening Echocardiograms.
- Paid 17,186 drug reimbursement claims totaling \$1.2 million.
- Approved and referred 2,920 claims for the medical audit program to be performed pursuant to Pretrial Order No. 2662.



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EXHIBIT A

AHP Settlement Trust  
Monthly Processing Report: December 2002

Activity	Fund A				Fund B
	Drug Refund	Echo Screening	Cash/Medical Services	Reimbursements (White Forms)	Mailbox
<b>At Knowledge Letter Activity:</b> DDRs Not Yet Sent an Acknowledgment Letter (beginning) Acknowledgment Letters Sent DDRs Not Sent an Acknowledgment Letter Within 30 Days of Receipt DDRs Not Yet Sent an Acknowledgment Letter (end)	40,546 40,546 -				35,185 5,728 3,200 2,528 625 4,772
<b>Activity By Claim</b> Total Claims to be Processed: Total Claims Processed: Processing Goal: Variance Above/Below Goal: Prior Month Variance: Average Forms Processed Per Month (Nov. 2002 through Dec. 2002)					280,212 29,053 24,000 5,063 1,839 27,298
<b>Activity by Account</b> Additional Information Reviews Total by Account to be Processed: Payments Total by Account (Fund A)/Approved for Mailbox Audit (Fund B) Total by Account (Fund B)	77,574 150,260 227,834	33,218 84,210 97,428	2,818 104,780 107,408	15,773 -	129,143 319,290 448,433
Total by Account to be Processed: Payments Total by Account (Fund A)/Approved for Mailbox Audit (Fund B) Total by Account (Fund B)	3,872 16,958 20,828	4,047 1,336 6,278	10,348 1,602 11,950	- -	18,304 19,894 40,285
<b>Fund B Audit Activity</b> Approved for Mailbox Audit Sent to Mailbox Audit Audit Completed and Sent Back to Trust Deficient Approved for Payment					1,762 -
Paid: Number of Payments Total Amount of Payments	\$	\$	\$	\$	\$
		885	1,188	-	2,081
			\$ 7,179,000		\$ 7,179,000

Note: There are multiple benefits per claim. When a claim is processed, all benefits are processed at the same time.

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

<u>IN RE DIET DRUGS</u>	)	
(PHENTERMINE/FENFLURAMINE/	)	MDL No. 1203
DEXFENFLURAMINE) PRODUCTS	)	
LIABILITY LITIGATION	)	
_____	)	
SHEILA BROWN, et al. v. AMERICAN	)	CIVIL ACTION No. 99-20593
HOME PRODUCTS CORPORATION	)	
_____	)	

**REPORT OF THE AHP SETTLEMENT TRUST  
OF FEBRUARY 18, 2003, PURSUANT TO PRETRIAL ORDER NO. 2663**

The AHP Settlement Trust (the "Trust") hereby reports pursuant to paragraph 3 of Pretrial Order No. 2663 on matters related to its review, processing and payment of claims. This report includes information and is in the format developed after consultation with the Special Master. The attached tables summarize activities of the Trust in January, 2003. This report will also describe how the attached tables are to be read. This is the second monthly report filed pursuant to Pretrial Order No. 2663; the first such report is on file with the Court and may be seen at the Trust's website, [www.settlementdietdrugs.com](http://www.settlementdietdrugs.com), under "REPORTS."

As the first of the attached tables shows, the Trust sent 6,126 letters in January 2003, to acknowledge receipt of BLUE Forms from people who had not previously filed BLUE Forms. The Trust is meeting its obligation to send acknowledgment letters to claimants within the thirty days, as is required by Section VI.C.3.a of the Settlement Agreement. At the end of January, there were 1,848 BLUE Form filers who had not been sent acknowledgment letters. All had filed their BLUE Forms within the previous thirty days. In December, 2002, 5,849 BLUE Forms were filed by new claimants; 92 of these had not received acknowledgment letters by the end of that month.

The second table on the attached report shows that during the month of January, 2003, the Trust processed Fund A claims of 170,563 claimants. The Trust processed Fund A claims of 146,563 more claimants than the goal of 24,000 claimants that was the subject of testimony at the hearing that preceded entry of Pretrial Order No. 2663. The number is higher than that of the previous month and is likely to be higher than that of the following month because it includes activity resulting in the Trust having processed 148,461 Drug Refund claims, resulting in issuance of 143,968 Drug Refund benefit checks. The timing of processing of Drug Refund benefits was governed in large part by the Fifth Amendment to the Settlement Agreement.

The third of the attached tables describes the nature of the applications that were to be processed at the beginning of January, 2003, by quantifying how many applications were to be the subject of initial review or processing and how many were to be the subject of review or processing of information submitted after the Trust stated that the applications were incomplete. Applications are also categorized in columns according to the nature of the benefits sought. The bottom section of this table shows how many claimants received deficiency letters and how many received denial letters with respect to each benefit claimed. It also shows how many claimants had their claims approved (in the case of Fund A claims, by benefit) and how many were approved to go to the next step - - in the case of Fund B claims, a medical audit.

An individual claimant may qualify for more than a single Fund A benefit with the Trust. For example, the Trust could be approving a Drug Refund while sending the claimant at the same time a deficiency letter seeking more information regarding his or her Echo Screening and Cash and Medical Service benefits. When viewed on a claimant basis, rather than a benefit basis, the Trust processed 193,940 Fund A benefits for 170,563 Fund A claimants. There is only one Fund B benefit per claimant, so 3,398 Fund B benefits were processed for the same number of

claimants. "Processing" means the Trust has reviewed the information the claimant has submitted and either approved the payment of a particular benefit or has determined that the claim is deficient in some manner, in which case a detailed letter to the claimant describing the deficiency has been prepared and distributed.

The Trust processed the Matrix claims of 3,398 Fund B claimants, 198 more than the goal of 3,200 claimants that was the subject of testimony at the hearing that preceded entry of Pretrial Order No. 2663. The Trust's tally of Fund B claims processed includes those that were brought to the point where they were referred to the Audit program established pursuant to Pretrial Order No. 2662. Activity in the Audit program is not underway, and the Trust does not expect to be issuing any substantial number of payments with respect to Matrix claims until that activity proceeds.

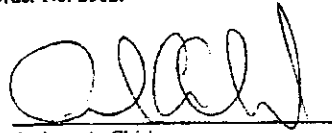
The table also shows the number of claims paid or approved for entry in the Echocardiogram Screening Program. For Fund B (i.e., Matrix, or GREEN Form) claims, in January 2003, the Trust processed 787 claims to the point of a deficiency letter, sent 1,169 claimants a letter stating that their Fund B submissions are denied because they were inadequately filled out to process further or failed to assert Matrix Level claims. Additionally, the Trust reviewed and approved 1,442 claims for inclusion in the Trust's matrix audit review program.

Additional activity by the Trust during January 2003 included:

- Payment of \$9.5 million to physicians who performed and reported on 11,694 echocardiograms in the Screening Program.
- Mailing of 7,720 second or third deficiency letters; these are follow up letters to claimants who had not answered previously sent deficiency letters.
- Mailing of 9,992 letters notifying claimants of results of their Screening Echocardiograms.
- Mailing of 27,868 Echo Screening Program follow-up letters reminding eligible claimants of how they may participate in the Screening Program.

From the inception of the Settlement Agreement through January 31, 2003, the Trust has:

- Paid more than \$961.2 million on account of 2,381 Matrix claims and their associated derivative claimants; these payments are the aggregate of direct payments to class members, subrogation payments, attorneys' fees and costs and derivative claims.
- Sent 127,063 letters notifying claimants of results of their Screening Echocardiograms.
- Paid \$100.1 million to 16,958 claimants who have been determined to have FDA Positive valvular conditions pursuant to the Cash or Additional Medical Services program.
- Paid \$108.9 million to physicians who performed and reported on 134,512 echocardiograms in the Screening Program.
- Paid 161,151 drug reimbursement claims totaling \$41.0 million.
- Approved and referred 327,718 claimants to the Trust's Echocardiogram Screening Program.
- Approved and referred 4,362 claims for the medical audit program to be performed pursuant to Pretrial Order No. 2662.



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

<b>IN RE DIET DRUGS (PHENTERMINE/FENFLURAMINE/ DEXFENFLURAMINE) PRODUCTS LIABILITY LITIGATION</b>	)	<b>MDL No. 1203</b>
<b>SHEILA BROWN, et al. v. AMERICAN HOME PRODUCTS CORPORATION</b>	)	<b>CIVIL ACTION No. 99-20593</b>

**REPORT OF THE AHP SETTLEMENT TRUST  
OF MARCH 17, 2003, PURSUANT TO PRETRIAL ORDER NO. 2663**

The AHP Settlement Trust (the "Trust") hereby reports pursuant to paragraph 3 of Pretrial Order No. 2663 on matters related to its review, processing and payment of claims. This report includes information and is in the format developed after consultation with the Special Master. The attached tables summarize activities of the Trust in February, 2003. This report will also describe how the attached tables are to be read. This is the third monthly report filed pursuant to Pretrial Order No. 2663; the first and second reports are on file with the Court and may be seen at the Trust's website, [www.settlementdietdrugs.com](http://www.settlementdietdrugs.com), under "REPORTS."

As the first of the attached tables shows, the Trust sent 4,540 letters in February, 2003, to acknowledge receipt of BLUE Forms from people who had not previously filed BLUE Forms. The Trust is meeting its obligation to send acknowledgment letters to claimants within the thirty days, as is required by Section VI.C.3.a of the Settlement Agreement. At the end of February, there were 1,316 BLUE Form filers who had not been sent acknowledgment letters. All had filed their BLUE Forms within the previous thirty days.

The second table on the attached report shows that during the month of February, 2003, the Trust processed Fund A claims of 40,739 claimants. This is 84.9 percent of the goal of

48,000 claimants that was the subject of testimony at the hearing that preceded entry of Pretrial Order No. 2663. The Trust attributes the shortfall to four factors: (1) February is a short month; (2) there were days on which the Trust was closed entirely and other days on which attendance was reduced significantly due to weather, including extra weekend days on which the Trust had scheduled processing work; (3) there was unusually high turnover as the Trust replaced certain processing employees who were not working at the rate necessary to help the Trust sustain its growth in capacity; and (4) the Trust devoted management resources and some processing resources to a special program which expedited the placement of 36,456 Fund A claimants into the Echocardiogram Screening Program, thereby resolving these claims and reducing processing requirements. The 36,456 claimants who were placed into this program were identified in February, and letters informing them of their eligibility were sent in March, 2003.

The third of the attached tables describes the nature of the applications that were to be processed at the beginning of February, 2003, by quantifying how many applications were to be the subject of initial review or processing and how many were to be the subject of review or processing of information submitted after the Trust stated that the applications were incomplete. Applications are also categorized in columns according to the nature of the benefits sought. The bottom section of this table shows how many claimants received deficiency letters and how many received denial letters with respect to each benefit claimed. It also shows how many claimants had their claims approved (in the case of Fund A claims, by benefit) and how many were approved to go to the next step--in the case of Fund B claims, a medical audit.

An individual claimant may qualify for more than a single Fund A benefit with the Trust. For example, the Trust could be approving a Drug Refund while sending the claimant at the same time a deficiency letter seeking more information regarding his or her Echo Screening and

Cash and Medical Service benefits. When viewed on a claimant basis, rather than a benefit basis, the Trust processed 62,245 Fund A benefits for 40,739 Fund A claimants. Counting the special eligibility determinations for the Screening Program, the Trust resolved 98,707 Fund A benefits for 72,825 Fund A claimants. There is only one Fund B benefit per claimant; 4,177 Fund B benefits were processed for the same number of claimants. "Processing" means the Trust has reviewed the information the claimant has submitted and either approved the payment of a particular benefit or has determined that the claim is deficient in some manner, in which case a detailed letter to the claimant describing the deficiency has been prepared and distributed.

The Trust processed the Matrix claims of 4,177 Fund B claimants--2,223 less than the goal of 6,400 claimants that was the subject of testimony at the hearing that preceded entry of Pretrial Order No. 2663. The Trust attributes the shortfall to three factors: (1) February is a short month; (2) there were days on which the Trust was closed entirely and other days on which attendance was reduced significantly due to weather, including extra weekend days on which the Trust had scheduled processing work; and (3) there was unusually high turnover as the Trust replaced certain processing employees who were not working at the rate necessary to help the Trust sustain its growth in capacity. At the end of February and during the beginning of March, the Trust was processing at a rate which allows it to meet its goal. The Trust's tally of Fund B claims processed includes those that were brought to the point where they were referred to the Audit program established pursuant to Pretrial Order No. 2662. Except insofar as the Trust is engaged in audit activity to further assessment of claims that were reviewed in its Parallel Processing Program, activity in the Audit program is not underway, and the Trust does not expect to be issuing any substantial number of payments with respect to Matrix claims until that activity proceeds.

The table also shows the number of claims paid or approved for entry in the Echocardiogram Screening Program. For Fund B (i.e., Matrix, or GREEN Form) claims, in February 2003, the Trust processed 1,839 claims to the point of a deficiency letter, sent 162 claimants a letter stating that their Fund B submissions are denied because they were inadequately filled out to process further or failed to assert Matrix Level claims. Additionally, the Trust reviewed and approved 2,118 claims for inclusion in the Trust's matrix audit review program.

Additional activity by the Trust during February 2003 included:

- Payment of \$6.6 million to physicians who performed and reported on 7,963 echocardiograms in the Screening Program.
- Mailing of 16,598 second or third deficiency letters; these are follow up letters to claimants who had not answered previously sent deficiency letters.
- Mailing of 8,841 letters notifying claimants of results of their Screening Echocardiograms.
- Mailing of 141 Echo Screening Program follow-up letters reminding eligible claimants of how they may participate in the Screening Program.

From the inception of the Settlement Agreement through February 28, 2003, the Trust has:

- Paid more than \$967.5 million on account of 2,436 Matrix claims and their associated derivative claimants; these payments are the aggregate of direct payments to class members, subrogation payments, attorneys' fees and costs and derivative claims.
- Sent 135,875 letters notifying claimants of results of their Screening Echocardiograms.
- Paid \$104.4 million to 17,685 claimants who have been determined to have FDA Positive valvular conditions pursuant to the Cash or Additional Medical Services program.
- Paid \$115.5 million to physicians who performed and reported on 142,475 echocardiograms in the Screening Program.
- Paid 176,051 drug reimbursement claims totaling \$45.0 million.
- Approved and referred 373,679 claimants to the Trust's Echocardiogram Screening Program.
- Approved and referred 6,480 claims for the medical audit program to be performed pursuant to Pretrial Order No. 2662, including the amounts

disclosed in each of the monthly reports and a number that were approved and referred in months preceding those for which monthly reports have been filed.



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5/17/03

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**AHP Settlement Trust  
Monthly Processing Report: February 2003**

<b>Acknowledgment Letter Activity:</b>	
DRRs Not Yet Sent an Acknowledgment Letter (as of 2/15/03)	1,048
Acknowledgment Letters Sent in February 2003	4,540
DDRs Not Sent an Acknowledgment Letter Within 30 Days of Receipt of Claim	0
DDRs Not Yet Sent an Acknowledgment Letter (as of 2/28/03)	1,318

Activity By Claimant	Fund A				Total Fund A	Fund B
	Drog Refund	Etho Strychny	Cath/Medical Services	Rehab/Services (Whole Fund)		
<b>Activity By Claimant</b>						
Total Claims to be Processed as of February 1, 2003:						
Total Claims to be Processed in February 2003:						
Processing Goal:						
Variance Allowed (Below) Goal:						
Final Month Variance:						
Average Forms Processed Per Month (Nov. 2002 through Feb. 2003)						

Activity By Benefit	Fund A				Total Fund A	Fund B
	Drog Refund	Etho Strychny	Cath/Medical Services	Rehab/Services (Whole Fund)		
<b>Activity By Benefit</b>						
<b>Benefit Applications To Be Processed as of February 1, 2003:</b>						
Initial Reviews	51,332	3,891	3,150	17,929	76,302	1,627
Additional Information Reviews	84,681	64,450	110,161	0	259,292	30,976
<b>Total Benefit Applications To Be Processed:</b>	136,013	68,341	113,311	17,929	336,214	32,603
<b>Processed:</b>						
Delivered y/ others	8,350	8,350	17,777	0	34,513	1,020
Denial Letters	0	0	0	0	0	162
Claims Approved (Fund A)/Approved for Markx Audit (Fund B)	179	2,026	30	0	2,235	2,118
Letters Sent (Fund B)	0	0	0	0	0	0
Claims Paid for Sent to Echo Screening Program)	14,800	9,205	782	0	25,187	58
Expended Echo Eligibility Determinations	0	30,414	0	0	30,414	0
<b>Total Benefit Applications Processed:</b>	23,429	50,005	18,559	0	92,493	1,177

Fund B Audit Activity	Fund A				Total Fund A	Fund B
	Drog Refund	Etho Strychny	Cath/Medical Services	Rehab/Services (Whole Fund)		
<b>Fund B Audit Activity</b>						
Approved for Markx Audit						
Sent to Markx Audit						
Audit Completed and Sent Back to Trust						
Deficient						
Approved for Payment						
<b>Paid:</b>						
Number of Payments	14,000	45,061	757	0	60,018	83
Total Amount of Payments	\$ 4,029,208	\$ -	\$ 4,071,000	\$ -	\$ 8,100,208	\$ 6,024,632

Client #	Lname	Fname	Address1	City	State	Zip_Code	HomePhoneNumber	Contract Returned?
1	Atchison	Tom	723 Hawthorne Place	Edmond	OK	73003	4053480690	
2	Bell	Lloyd	5701 Bodine	Oklahoma City	OK	73135	4058405920	YES
3	Bradshaw	Steve	12205 Endor Drive	Oklahoma City	OK	73170	4057353223	
4	Burchett	Michael	16 S.W. 59th	Oklahoma City	OK	73109	4057030492	
5	Campbell	Dal	11500 S.E. 89th	Oklahoma City	OK	73150	4057338899	
6	Carty	David	13108 Cedar Springs Road	Oklahoma City	OK	73120	4057498378	
7	Cole	Judy	142 Orchard Drive	Chickasha	OK	73018	40523324822	
8	Collins	Jason	8528 N.W. 90th	Oklahoma City	OK	73132	4054700194	
9	Cunningham	Debbie	Rt. 2 Box 158D	Pauls Valley	OK	73075	4054847287	
10	Curry	Janice	RR 1 Box 146	Wewoka	OK	74884	4052572956	YES
11	Daniel	Steven	8901 N. Ollie, Apt. 14	Oklahoma City	OK	73114	4058437146	
12	Daube	Scott	11247 Jade Heights	San Antonio	TX	78249	2105586597	
13	Davis	Joe	2209 Barbara Place	Oklahoma City	OK	73111	4054782212	
14	Davis	Thomas	2813 Shelter Creek Drive	Lawton	OK	73507	5802481856	
15	Dowding	Donald	P.O. Box 870070	Yukon	OK	73085	4053543432	
16	Elmore	Leon	401 E. Frisco	Henryetta	OK	74437	9186522142	
17	Epperson	Robert & Margaret	1704 Cedar Lane	Ponca City	OK	74604	5807624429	
18	Estes	William	309 Stonehaven Drive	Norman	OK	73072	4053649514	
19	Fisher	Tom	16640 S.W. 23rd St.	El Reno	OK	73036	4053241051	
20	Franz	Robert	21175 State Highway 249	Houston	TX	77070	5598756363	
21	Franz	Roger	214 Fink	Sanger	CA	93657	4053061147	
22	Freeding	Chris	4821 N.W. 18th Street	Oklahoma City	OK	73127	4059177461	
23	Frizzell	George	7125 Comanche Ave.	Warr Acres	OK	73132	4057218072	
24	Gaither	Linda	305 N.E. 6th St.	Perkins	OK	74059	9182236431	
25	Hammons	Frans	10300 Durham Drive	Oklahoma City	OK	73162	4057223904	
26	Hamstead	Bill	217 W. Blackburn Road	Marlow	OK	73055	5806583255	
27	Hemmingson	Flossie	Rt. 1 Box 135A	Cyril	OK	73029	5804643344	
28	Higgs	Clemmie	P.O. Box 535	Ardmore	OK	73402	5802262505	
29	Hoang	Tan	7309 N.W. 109th St.	Oklahoma City	OK	73162	4057289873	
30	Holiday	James	14400 N.E. 150th	Jones	OK	73049	4053968591	YES
31	Howell	Steve	9201 S. Blackwelder	Oklahoma City	OK	73159	4056911413	
32	Jared	David	712 S.W. 113th St.	Oklahoma City	OK	73170	4055906262	
33	Jensen	Ned	1309 McGraw Drive	Ponca City	OK	74601	5807651701	
34	Johnson	Patrick	6109 Raintree Dr.	Oklahoma City	OK	73150	4057330776	YES
35	Lapp	Dennis	5801 Norman Road	Oklahoma City	OK	73122	4057213364	
36	Madrid	Pam	Rt. 2 Box 293C	Meeker	OK	74855	4052750484	

37 Matteson	Bruce	7904 Duane Drive	Oklahoma City	OK	73132	
38 Mayfield	Dorothy	6101 N. Barnes	Oklahoma City	OK	73112	4058409516
39 McMullen	Margery	3600 N. Markwell Ave.	Bethany	OK	73008	4057820821
40 Mertz	Sharon	1917 N.W. 21st	Oklahoma City	OK	73106	4055244176
41 Miller	Donna	301 Bridlewood Drive	Edmond	OK	73034	4053415709
42 Miller	Mike	9308 S. Meadow Lane	Mustang	OK	73064	4053763922
43 Millus	Earl	6416 N.W. 16th St.	Oklahoma City	OK	73127	4054953589
44 Myers	Max	P.O. Box 300	Carney	OK	74832	4058652323
45 Newman	Donna	8117 Woodchuck	Yukon	OK	73099	4053503270
46 Nichols	Troy "Aaron"	P.O. Box 114	Konawa	OK	74849	5809259182
47 Norman	Frank	9302 N.E. 34th	Spencer	OK	73084	4057715325
48 Nowland	Mel	2904 Pine Ridge Road	Oklahoma City	OK	73120	4057524241
49 Palmer	Carol	7009 S. Banner Drive	Oklahoma City	OK	73159	4056861609
50 Payne	Delmer & Charlene	RR 3 Box 215	Lindsay	OK	73052	4057564233
51 Phillips	Charles	16 Sequoyah	Shawnee	OK	74801	4052738544
52 Reed	Cynthia	4900 N.E. 70th	Oklahoma City	OK	73121	4055909504
53 Reneau	Steve	P.O. Box 315	Wakita	OK	73771	5805942960
54 Riggs	Tamra	10100 Kyle Drive	Norman	OK	73026	
55 Schurmacher	Phillip	6316 Connaught Court	Oklahoma City	OK	73132	4057222095
56 Scott	Darrell	313 Novak Circle	Yukon	OK	73099	4057738515
57 Shelite	Garry & Beverly	P.O. Box 776	Hennessey	OK	73742	4058532602
58 Shipman	Donald	Rt. 2 Box 27	Comanche	OK	73529	5804395531
59 Sleeker	Sandra	2000 Crested Butte	Guthrie	OK	73044	4052828870
60 Smith	Leon	12135 Jaycie Circle	Midwest City	OK	73130	4057694838
61 Thompson	Cathy	901 Hobson Ave.	Shawnee	OK	74801	4052733381
62 Tucker	Jerry	311 Herrinman	Pawnee	OK	74058	9187622217
63 Washburn	Frances	2302 Doubletree	Enid	OK	73703	5802340803
64 Yager	Richard & Sara	10105 Bison Circle	Yukon	OK	73099	4057735489
65 Yancey	Ronald	317 N.W. 34th St.	Newcastle	OK	73065	4053874329



