

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 ALL ACTIONS	§ § § § § § § § § §	
SHEILA BROWN, et al v. Wyeth	§	CIVIL ACTION NO.99-20593

**CERTAIN CLASS MEMBERS' REPLY TO THE AHP SETTLEMENT TRUST'S
BRIEF IN OPPOSITION TO MOTION TO COMPEL
COMPLIANCE WITH COURT ORDER 3047**

TO THE HONORABLE U.S. DISTRICT JUDGE:

Come now certain class members represented by undersigned counsel, and respectfully request that the Court accept this their reply to The AHP Settlement Trust's Brief in Opposition to Certain Class Members' Motion to Compel Compliance with Court Order 3047 dated January 5, 2004 ("Trust Rsp.):

THE TRUST¹
(A One Act Play)

[THE CURTAIN RISES TO TWO CHARACTERS STARKLY LIT ON AN EMPTY STAGE WITH A FORBIDDING CASTLE LOOMING IN THE BACKGROUND.]

K., a Trust Beneficiary: Why have you stopped processing my claim?

The Trust: Your doctor is bad.

K.: What has my doctor done wrong?

The Trust: We have a bunch of factors, such as bad audit results, that went into our decision.

K.: What was my doctor's audit result? What factors applied to my doctor?

¹ The character of K. had a role in Franz Kafka's *The Castle*, where he suffers similar frustration.

The Trust: I won't tell you. It's privileged.

K.: Privileges do not apply to a beneficiary to whom you owe a fiduciary duty – it's the fiduciary exception to the privilege.

The Trust: There's an exception to the fiduciary exception per a New York bond case out of the 1940's, and the exception to the exception applies because most of you "beneficiaries" have committed Fraud.²

K.: Why do you say I've committed Fraud?

The Trust: That's privileged. Maybe it's not you. Did I say it was you?

K.: There's an exception to the privilege.

The Trust: There's an exception to the exception.

K.: Why?

The Trust: Because a lot of people – a really big number – have committed Fraud.

K.: Why have you decided that?

The Trust: That's privileged.

K.: There's an exception to the privilege.

The Trust : The exception doesn't apply because of the Fraud.

K.: What Fraud?

The Trust: Can't tell you. That's privileged.

K.: Um, don't you have a duty to me?

² See Trust Rsp., pp. 13-14 (relying on 1948 E.D.N.Y. decision as effectively declaring an exception to the fiduciary exception), 15 (discussing need to oppose "fraudulent claims"), 16-17 (arguing based on unidentified "current data" that the majority of claimants are "illegitimate"). The Trust also argues that all of the fiduciary exception cases are distinguishable because they are not settlement trust cases and that this case is more adverse because of its post-settlement posture. *See id.* at 15.

The Trust: Not really. There's a lot of Fraud.³

K.: What Fraud affects *my* claim?

The Trust: Can't really say....

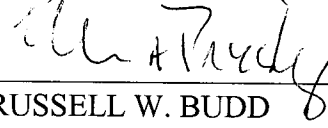
[DIALOGUE REPEATS WHILE HOUSE LIGHTS DIM.]

(The End).

Respectfully submitted,

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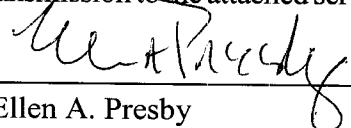
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply has been electronically filed with the Court and forwarded via electronic and/or facsimile transmission to the attached service list on this the 9th day of January, 2004.



Ellen A. Presby

³ See *id.* at pp. 15-16, 18 (denying beneficiary status).