

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

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

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MDL Docket No. 1203

THIS DOCUMENT RELATES TO
ALL ACTIONS

SHEILA BROWN, et al v. Wyeth

CIVIL ACTION NO.99-20593

**CERTAIN CLASS MEMBERS' SUPPLEMENTAL EXHIBITS FILED IN ADDITIONAL
OPPOSITION TO AHP SETTLEMENT TRUST'S MOTIONS TO DISQUALIFY
ECHOMOTION ECHOCARDIOGRAMS AND TO STAY PAYMENT OF
CLAIMS SUPPORTED BY ECHOMOTION ECHOCARDIOGRAMS**

TO THE HONORABLE DISTRICT COURT JUDGE:

As further support for their oppositions to the AHP Settlement Trust's motions against EchoMotion echocardiograms,¹ class members represented by undersigned counsel respectfully file one hundred and four (104) cardiologists' affidavits and declarations describing supervision of cardiac sonographers in accepted medical practice. The testimony from these professionals establishes that the Trust's definition of supervision is contrary to the custom and practice of cardiologists. *See Marx & Co., Inc. v. The Diner's Club, Inc.*, 550 F.2d 505, 509 (2d Cir.1977) (expert testimony concerning ordinary practice in industry is admissible); *American Nat. Fire Ins. Co. v. Mirasco, Inc.*, 265 F.Supp.2d 240, 252 (S.D.N.Y. 2003) (experts may testify as to the customary practices in a profession or industry).

The cardiologists who provided affidavits and declarations come from twenty-four states and received their cardiology training at numerous well-respected institutions, including Harvard, University of

¹ The AHP motions were filed at Docket Nos. 204456 and 204457.

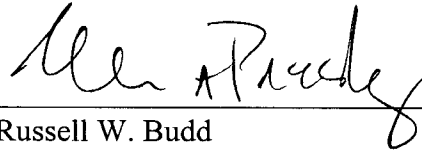
Pennsylvania, Duke, University of Chicago, and Stanford. To the knowledge of counsel, none of the cardiologists are the subject of a medical practices questionnaire or are otherwise the subject of an investigation by the Trust. On the contrary, twenty-eight (28) of the cardiologists participated in the Trust Screening Program and were compensated by the Trust for their services. These cardiologists were never told by the Trust that it required a level of supervision beyond that described in the affidavit or declaration.

The affidavits and declarations establish that cardiologists routinely diagnose valvular regurgitation based on ultrasound images independently obtained by cardiac sonographers, without the presence of a cardiologist and with direction that may be provided through a written protocol. If the images are not of adequate diagnostic quality, then the cardiologist may request a repeat study. Supervision commonly includes no more than this. It often happens that cardiologists do not train sonographers, provide supplies, or maintain sonographic equipment. This testimony proves, 104 times over, that EchoMotion echocardiograms were not deficiently supervised, and that the Trust's definition of supervision is contrary to the custom and practice of cardiologists.

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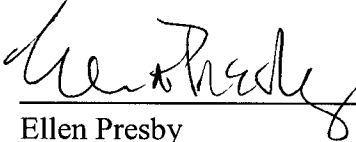
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically filed with the Court and forwarded via facsimile and/or electronic transmission to the attached service list on this the 26th day of January, 2004.



Ellen Presby

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