

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

MDL NO. 1203

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This Document Relates To: Sheila Brown,  
et. al. v. American Home Products  
Corporation

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CIVIL ACTION  
No. 99-20593

**JOINT MOTION TO APPROVE ELEVENTH AMENDMENT TO  
SETTLEMENT AGREEMENT**

Class Counsel and Wyeth respectfully move for approval of the Eleventh Amendment to the Nationwide Class Action Settlement Agreement attached as Exhibit A to this Joint Motion and, preliminary to that, for an Order authorizing the Parties to provide postcard notice of the filing of this Joint Motion to affected Class Members and their attorneys, if any, and affording such Class Members a 30-day period to respond to this Joint Motion if they choose to do so. The Parties developed and agreed to the Eleventh Amendment to enhance the efficient and prompt implementation of the Settlement Agreement. The grounds for this Joint Motion are set forth in the accompanying Memorandum in Support and in the Declarations of Orran Brown (Exhibit B to this Joint Motion) and Michael Fishbein (Exhibit C to this Joint Motion). The requested Order preliminarily approving the

Eleventh Amendment and authorizing postcard notice of the filing of the Joint Motion (Exhibit 2 to the Eleventh Amendment) and the requested Order granting final approval (Exhibit 3 to the Eleventh Amendment) are submitted with this Joint Motion.

Respectfully submitted,

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Date: June 14, 2023

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Date: June 14, 2023

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Date: June 14, 2023

**EXHIBIT A**  
**Eleventh Amendment to the**  
**Nationwide Class Action**  
**Settlement Agreement**

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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CIVIL ACTION  
No. 99-20593

**ELEVENTH AMENDMENT TO THE  
NATIONWIDE CLASS ACTION  
SETTLEMENT AGREEMENT WITH  
AMERICAN HOME PRODUCTS  
CORPORATION**

Dated: June 14, 2023

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CIVIL ACTION  
No. 99-20593

**ELEVENTH AMENDMENT TO THE  
NATIONWIDE CLASS ACTION SETTLEMENT AGREEMENT  
WITH AMERICAN HOME PRODUCTS CORPORATION**

WHEREAS, on November 18, 1999, American Home Products Corporation and Class Counsel executed the Nationwide Class Action Settlement Agreement with American Home Products Corporation (“Original Settlement Agreement”) arising from the marketing, sale, distribution and use of the diet drugs Pondimin® and Redux™;

WHEREAS, since the Court entered Pretrial Order (“PTO”) No. 1415 on August 28, 2000, approving the Original Settlement Agreement as amended by the first four amendments thereto, the Settlement Agreement has been amended another six times as follows:

1. The Fifth Amendment was approved in PTO No. 2677 on December 11, 2002;
2. The Sixth Amendment was approved in PTO No. 2778 on March 12, 2003;
3. The Seventh Amendment was approved in PTO No. 4567 on March 15, 2005 (following preliminary approval granted in PTO No. 3880 on August 26, 2004);

4. The Eighth Amendment was approved in PTO No. 3881 on August 26, 2004;
5. The Ninth Amendment was approved in PTO No. 5398 on July 1, 2005; and
6. The Tenth Amendment was approved in PTO No. 8506 on July 2, 2010.

WHEREAS, on March 11, 2002, American Home Products Corporation changed its corporate name to “Wyeth;”

WHEREAS, on October 16, 2009, Wyeth became a wholly owned indirect subsidiary of Pfizer Inc., and on November 9, 2009, Wyeth converted its corporate status under Delaware law and changed its name to “Wyeth LLC;”

WHEREAS, all benefits under the Settlement Agreement have been distributed and concluded, other than potential payment of additional, “incremental” Matrix Compensation Benefits to a group of approximately 2,700 Class Members who remain eligible to submit a claim for such additional incremental Matrix Compensation Benefits;

WHEREAS, those Class Members previously received payment of Matrix Compensation Benefits, were not subject to the Seventh Amendment to the Settlement Agreement, and may submit a claim if the severity of their underlying valve disease progresses before they reach age 80, such that they meet the eligibility requirements for payment of Matrix Compensation Benefits at a higher Matrix Level and in a larger amount than they previously received under the terms of the Settlement Agreement;

WHEREAS, during the four-year period of 2019 through 2022, the AHP Settlement Trust has received an average of only four claims for incremental Matrix Compensation Benefits per year;

WHEREAS, such reduced claim activity has caused the extensive structure of the AHP Settlement Trust to be excessive and unnecessary and presents the need for a simpler, streamlined, and more efficient administrative process to implement the Settlement Agreement; and

WHEREAS, Wyeth and Class Counsel (the “Parties”) have agreed it is appropriate and mutually beneficial to Wyeth and the affected Class Members to modify certain terms of the Settlement Agreement to adjust for changed circumstances in the manner set forth in this Eleventh Amendment;

NOW THEREFORE, in consideration of the covenants and undertakings expressed in this Eleventh Amendment and subject to Court approval, the Parties agree that the Settlement Agreement is further amended by this Eleventh Amendment as follows.

## **I. DEFINITIONS USED IN THIS ELEVENTH AMENDMENT**

**A. *Incorporation of Settlement Agreement Definitions.*** The capitalized terms used and not specifically defined in this Eleventh Amendment have the meanings given to them in the Settlement Agreement. For convenience, some of those terms are repeated in Section I.B.

**B. *Eleventh Amendment Definitions.*** As used in this Eleventh Amendment, these terms have the following meanings:

1. **“Appeal”** means a proceeding before the Court to review a final outcome issued by the Claim Administrator, as described in Section II.J.
2. **“BrownGreer”** means BrownGreer PLC (or its corporate successor), a claims administration service provider in Richmond, Virginia.
3. **“CEP”** means the three-person Consensus Expert Panel originally appointed in Court Approved Procedure No. 11 (Audit of Matrix Claims; approved by PTO No. 6100), consisting of a cardiologist designated by each of the Trust, Class Counsel, and Wyeth, or, if a replacement is needed at any time, such other cardiologist agreed upon and jointly nominated by Wyeth and Class Counsel and appointed by the Court to serve as a member of the CEP.
4. **“CEP Review”** means the review of a Claim to determine the medical issues presented by the Claim, pursuant to Section II.I.2.
5. **“Claim”** means the Green Form (or such other Claim Form in use by the Claim Administrator) submitted to seek Incremental Matrix

Compensation Benefits for a Progression Matrix Level Condition. and all materials and information submitted or created during processing relating to it.

6. **“Claim Administrator”** means BrownGreer, the entity to be nominated by the Parties to be appointed by the Court to perform the functions and obligations of the Claim Administrator. An authorized representative of the Claim Administrator may execute contracts and take such other actions as necessary to perform the role of the Claim Administrator.
7. **“Claim Administrator Fees and Costs”** mean the fees and costs of the Claim Administrator relating to the administration and implementation of the Settlement Agreement, as described in Section II.D.3.
8. **“Claimant”** means the Diet Drug Recipient asserting a Claim or the Representative Claimant asserting a Claim on behalf of a deceased or legally incapacitated Diet Drug Recipient. Where a Claim is asserted by a Representative Claimant on behalf of a Diet Drug Recipient, all references to the medical conditions on which the Claim is based are to the medical conditions of that Diet Drug Recipient.
9. **“Class Counsel Fees and Costs”** mean the fees and costs awarded by the Court to Class Counsel, as described in Section II.P.
10. **“Complete Claim”** means a Claim on which the Claimant has submitted or the Claim Administrator has in its possession the information and materials required for a Complete Claim under Section II.G.
11. **“Court”** or **“District Court”** means the United States District Court for the Eastern District of Pennsylvania.
12. **“District Court Approval”** means the entry by the Court of an Order approving the Eleventh Amendment, as described in Section III.A.3.
13. **“Derivative Claimants”** are persons who have a legally recognized claim for loss of services, consortium, support, or the like, arising from injury to a Diet Drug Recipient and who properly and timely

registered for benefits with the Trust by Date 2 (May 3, 2003), pursuant to Sections IV.B.1.c and IV.B.2 of the Settlement Agreement.

14. **“Effective Date”** means 30 days after the date of District Court Approval, unless any party has obtained before then a stay of District Court Approval pending appeal. If a stay of District Court Approval is obtained, the Effective Date will be the date, if any, on which District Court Approval is affirmed on appeal without any material change and any appellate stay has been vacated.
15. **“Eleventh Amendment Class Members”** mean all Diet Drug Recipients (or the Representative Claimants of Diet Drug Recipients) who: (a) are not Category One Class Members or Category Two Class Members under the Seventh Amendment to the Settlement Agreement; and (b) on or before the Effective Date, had been paid Matrix Compensation Benefits by the Trust on any Matrix Level other than Matrix Level V. This definition of Eleventh Amendment Class Members includes the Class Members defined as the “Age 80 Class Members” in the Tenth Amendment to the Settlement Agreement.
16. **“Fund Depository”** means the bank or other financial institution holding the Settlement Fund. The Claim Administrator, with the agreement of the Parties, will select the Fund Depository. The Claim Administrator will issue such instructions as are necessary to accomplish the timely payment from the Settlement Fund of all amounts payable from the Settlement Fund under the Settlement Agreement (including this Eleventh Amendment).
17. **“General Medical Records”** mean the information and materials described in Section II.G.4.
18. **“Healthcare Lien”** means a Medicare Claim and any other claim for reimbursement or Lien by a federal or state agency, healthcare provider, or insurer (that has not released all claims regarding Diet Drug Recipients) asserted to the Claim Administrator or required by applicable law regarding amounts expended for the care and treatment of the Progression Matrix Level Condition on which Incremental Matrix Compensation Benefits have been determined payable to an Eleventh Amendment Class Member.

19. **“Implementation Costs”** mean the Class Counsel Fees and Costs, Claim Administrator Fees and Costs, fees and expenses of the members of the CEP, any charges of the Fund Depository, expenses or fees of any service provider or vendor necessary to implement the Settlement Agreement, tax obligations of the Settlement Fund as a QSF, any other costs of administration incurred by the Settlement Fund.
20. **“Incremental Matrix Compensation Benefits”** mean the incremental dollar amount, if any, by which the Matrix Grid Amount for a higher Matrix Level for a Progression Matrix Level Condition exceeds the Matrix payment previously made to or on behalf of the Eleventh Amendment Class Member, pursuant to Section IV.C.3 of the Settlement Agreement.
21. **“Lien”** means any known or asserted lien, subrogation right, reimbursement right, third-party interest, claim, mortgage, pledge, charge, security interest, or legal encumbrance, of any nature, whether statutory or otherwise, regardless of whether it has the legal status of a lien under applicable law, seeking payment or repayment of any amount out of the Matrix Compensation Benefits payable on a Claim.
22. **“MMSEA”** means the Medicare, Medicaid, and SCHIP Extension Act of 2007 and its applicable regulations.
23. **“MMSEA Query”** means the query required by the MMSEA to determine whether a person is Medicare Entitled, as set forth in Section II.L.
24. **“MSP”** means the Medicare Secondary Payer Act, 42 U.S.C.A. §§ 1395y(b) *et seq.*, and its applicable regulations.
25. **“Matrix Grid Amount”** means the dollar amount payable on Matrix A-1 or Matrix B-1 in the year in which the payment of Incremental Matrix Compensation Benefits is made.
26. **“Maximum Available Settlement Fund Amount”** or **“MASFA”** has the meaning set forth in Section II.Q.

27. **“Medical Review”** means the processing of a Claim to determine if it is eligible for payment on any Matrix Level that would qualify the Claimant for Incremental Matrix Compensation Benefits, as described in Section II.I.
28. **“Medicare”** means the federal Medicare program and all representatives of that program, including the Centers for Medicare & Medicaid Services and any Coordination of Benefits Contractor or other representative engaged by the Medicare program.
29. **“Medicare Claim”** means any actual or potential claims by Medicare for reimbursement under the MSP.
30. **“Medicare Entitled”** means a person who is identified as eligible for Medicare benefits in response to an MMSEA Query.
31. **“Motion for Approval”** means the joint motion filed by the Parties with the Court seeking approval of the Eleventh Amendment, as described in Section III.A.1.
32. **“Non-Healthcare Lien”** means any Lien asserted by a Lien Claimant other than Healthcare Liens where there is a legal obligation to withhold payment of any Matrix Compensation Benefits payable on a Claim under applicable federal or state law. This definition includes Liens: (a) for attorneys’ fees and/or costs for work performed in representing an Eleventh Amendment Class Member individually in the Settlement Program; (b) from a federal or state child support agency for unpaid child support arrears; (c) from a federal, state, or local tax agency for unpaid tax obligations; (d) for debts based on a contract, business, loan, or any other debt enforced in a final judgment entered by a federal or state court; or (e) based on UCC-1 perfected security interests in the proceeds of a claim as evidenced by a UCC-1 filing and a security agreement granting a security interest in general intangibles, payment intangibles, or the proceeds of a litigation claim.
33. **“Preliminary Approval Order”** means the Order entered by the Court in conformity with Section III.A.2.
34. **“Progression Matrix Level Condition”** means that the condition of the Diet Drug Recipient which qualified such person for payment of

Matrix Compensation Benefits has progressed to a more severe condition after the Matrix Payment Cut-Off Date that would qualify the Diet Drug Recipient for Matrix Compensation Benefits on a higher Matrix Level, under Sections IV.C.2 and IV.C.3 of the Settlement Agreement.

35. **“PTO No. 1823 Reserve”** means the separate account maintained by the Trust pursuant to Paragraph 3 of PTO No. 1823, entered on March 21, 2001 (Document 101957).
36. **“QSF”** means a “qualified settlement fund” for federal tax purposes under Section 468B of the Internal Revenue Code and Treas. Reg. Section 1.468B-1.
37. **“QSF Administrator”** means the Claim Administrator acting as QSF “administrator” within the meaning of Treasury Regulation 1.468B-2(k)(3).
38. **“Reconsideration”** means the processing steps to have the Claim Administrator or CEP re-review the determinations made on or regarding a Claim or other matter.
39. **“Reduction Factors”** mean any of the medical conditions that reduce eligibility from Matrix A-1 to Matrix B-1 under Section IV.B.2.d of the Settlement Agreement.
40. **“Representative Claimant”** means a person with legal authority to act on behalf of a deceased or legally incapacitated Eleventh Amendment Class Member.
41. **“Section”** means the sections of this Eleventh Amendment, unless otherwise specified.
42. **“Settlement Agreement”** means the Original Settlement Agreement, as amended by all its Amendments.
43. **“Settlement Fund”** means the account held at the Fund Depository for the funds deposited by Wyeth to pay benefits under the Settlement Agreement and the costs of administering the Settlement Program, including Implementation Costs.

44. **“Settlement Program”** or **“Diet Drug Settlement Program”** means the claims process and compensation system created under the Settlement Agreement, which previously has been referred to on the Settlement website as the “AHP Diet Drug Settlement.”
45. **“Technical Advisor”** means a Board-Certified Cardiologist or Board-Certified Cardiothoracic Surgeon who has Level 3 training in Echocardiography, or a Board-Certified Neurologist or Neurosurgeon or a Board-Certified Pathologist, appointed by the Court to provide advice to the Court as needed on medical issues presented in Appeals.
46. **“Technical Advisor Fee”** means a fee of \$1,500 (or such other amount approved by the Court) for the services of a Technical Advisor relating to an Appeal.
47. **“Threshold Eligibility Requirements”** mean the requirements described in Section II.H.1 for eligibility to submit a Claim and be processed for eligibility for payment of Incremental Matrix Compensation Benefits.
48. **“Trust”** means the AHP Settlement Trust established under the Settlement Agreement.
49. **“Trustee”** means the person currently serving as or having the holdover duties and authority of the Trustee of the Trust, referred to in the Ninth Amendment as the “Ninth Amendment Trustee.”

## II. OPERATIVE TERMS

**A. *Continuation of Matrix Compensation Benefits Eligibility and Payment Provisions.*** This Eleventh Amendment does not modify in any respect the Matrix Compensation Benefits payable to eligible Eleventh Amendment Class Members (and the benefits payable to associated eligible Derivative Claimants) under the terms of Section IV.B of the Settlement Agreement, the Seventh Amendment to the Settlement Agreement, and the Court’s previous interpretations and applications of the terms of the Settlement Agreement. All provisions of the Settlement Agreement and previous rulings of the Court affecting eligibility to submit a Claim for Incremental Matrix Compensation Benefits and for payment of such benefits, the amount of such payment, the Matrices and Matrix payment

amounts, qualification on Matrix A-1 or Matrix B-1, the circumstances determining whether Matrix A-1 or Matrix B-1 is applicable to a Claim, the benefits payable to Derivative Claimants, the annual increase in Matrix payment amounts under Section IV.C.1 of the Settlement Agreement, Pfizer's guarantee of Wyeth's financial obligations under the Settlement Agreement, including this Eleventh Amendment, and other terms regarding eligibility and payment of Matrix Compensation Benefits remain in full force and effect.

***B. Transfer of Administration of the Diet Drug Settlement Program and Termination of the AHP Settlement Trust.***

- 1. Transfer of Administration on the Effective Date:** As of the Effective Date of this Eleventh Amendment, all responsibility for the implementation of the Settlement Agreement is transferred from the Trust to the Claim Administrator.
- 2. Effect of Transfer of Administration:** At the time of such transfer: (a) the Trust and the May 19, 2005 Amended and Restated AHP Settlement Trust Agreement (Ex. A to the Ninth Amendment to the Settlement Agreement) will terminate; (b) references in Section III of the Settlement Agreement to the Trust and its structure, governance, responsibilities, and operations will be deemed to apply to the Claim Administrator, except as modified by this Eleventh Amendment; (c) the Claim Administrator will have all the rights and responsibilities of the Trust and the Trustee under the Settlement Agreement and will exercise the functions that were to be exercised by the Trust under the Settlement Agreement, subject to the terms of this Eleventh Amendment; and (d) the Claim Administrator will succeed to all the rights and responsibilities of the Trust and Trustees under all contracts to which the Trust is a party.
- 3. Actions to Cause the Transfer of Administration:** The Trustee will have the authority and obligation to take all steps necessary for the complete and prompt transition of all such contracts to the Claim Administrator to the extent required by any such contract and to assign and transfer to the Claim Administrator all electronic data and information in the possession or control of the Trust, hard copy books and records of the Trust, licenses, servers and hardware, website URL, toll-free number, P.O. Box, and other materials used in the operation of the Trust. After the Effective Date, the Trustee will be considered

to have hold-over authority, if necessary, solely for the purpose of effectuating the transfers and assignments required under this Eleventh Amendment.

**C. *Nature of the Settlement Fund.***

- 1. QSF Status of the Settlement Fund:** On the Effective Date, the Settlement Fund of the Trust will continue as a QSF administered by the Claim Administrator, with the Claim Administrator serving as the QSF Administrator. To perform its duties in implementing the Settlement Agreement, the QSF Administrator will have access to and authority over the Settlement Fund at the Fund Depository.
- 2. QSF Compliance:** The QSF Administrator will: (a) comply with all requirements applicable to a QSF, including all tax filing, payment and reporting requirements imposed by Treasury Regulations issued under Section 468B of the Internal Revenue Code, any successor provisions, any comparable provisions of state or local tax laws, or otherwise, except to the extent that there has been a final determination, binding on the applicable taxing authority, the QSF Administrator, and Wyeth to the effect that other requirements apply to the QSF Administrator in lieu of the QSF requirements; (b) take any action necessary to create and maintain the status of the Settlement Fund as a QSF; (c) 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; and (d) timely pay taxes and any other obligations or liabilities which at any time are lawfully levied, assessed upon or become payable in respect of the Settlement Fund or the QSF. The QSF Administrator will not take any action that will adversely affect the qualification of the Settlement Fund as a qualified settlement fund.
- 3. Deposits into the Settlement Fund:** No Administrative Reserve or other minimum balance will be required in the Settlement Fund, other than any minimum required by the Fund Depository to maintain an open account. All amounts in the Settlement Fund may be used to pay Incremental Matrix Compensation Benefits, Implementation Costs, and any other obligation and expense of the Settlement Program, including payments made pursuant to any Court-approved program involving the future compromise of any potential rights of Eleventh

Amendment Class Members under the Settlement Agreement. If at any time the amounts in the Settlement Fund are insufficient to pay such obligations, the Claim Administrator will notify Wyeth on a monthly basis of the deposit required to pay such obligations and Wyeth will deposit such required funds into the Settlement Fund within 15 days after such request. Any objection by Wyeth to a requested amount must be resolved with Class Counsel or the matter presented to the Court within that 15-day period.

4. **Discontinuance of QSF Status:** At any time, Wyeth may elect to discontinue the treatment of the Settlement Fund as a QSF and instead have all payments of Incremental Matrix Compensation Benefits, Implementation Costs, and any other obligation and/or expense of the Settlement Fund made directly by Wyeth. Wyeth will notify the Claim Administrator and Class Counsel of such election not less than 30 days prior to it becoming effective. In the event of such an election, the 15-day period of Section II.C.3 will apply to payments to be made directly by Wyeth as requested by the Claim Administrator.

**D. *Appointment of and Service by the Claim Administrator.***

1. **Appointment and Term:** The effectiveness of this Eleventh Amendment and the Parties' respective obligations under it are conditional upon the appointment of BrownGreer as the Claim Administrator and the withdrawal of as BrownGreer as counsel to Wyeth on or before the Effective Date.
2. **Contractual Arrangement:** The Claim Administrator will serve under the terms of a contract among Class Counsel, Wyeth, and the Claims Administrator, as approved by the Court.
3. **Claim Administrator Fees and Costs:** No later than January 31 of each year, the Claim Administrator will submit to the Parties and the Court a projected annual budget for its fees and costs of administering and implementing the Settlement Agreement for that calendar year. On a monthly basis the Claim Administrator will report to the Parties the fees it has incurred and the costs it has expended in connection with the administration of the Settlement Agreement in the previous month and will be paid monthly from the Settlement Fund based on such reports to the extent that either party does not object to such payments within five days after receiving the Claim Administrator's monthly report of fees and costs. If

not resolved by the Claim Administrator and the Parties, any such objection will be determined by the Court.

- 4. Support Functions of the Claim Administrator:** The Claim Administrator will provide the technology, hardware, software applications, communications, processing functions and operations, system and data security, website, online applications, and any staff necessary to perform the duties of the Claim Administrator in implementing the Settlement Agreement. Class Counsel will have complete access to all Claims, reports, and any other information of the Claim Administrator relating to its performance.

**E. Claim Submission.** An Eleventh Amendment Class Member must submit a Claim for Incremental Matrix Compensation Benefits no later than four years from the date on which the Eleventh Amendment Class Member was first diagnosed as having the Progression Matrix Level Condition upon which the Claim is based. This provision incorporates into the Settlement Agreement the directive in Court Approved Procedure No. 16 (Payment and Claim Filing Deadlines; approved by PTO No. 8559 and by the Court of Appeals in *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liab. Litig.*, 763 F. App'x 237 (3d Cir. 2019)). All Claims must be submitted to the Claim Administrator in hard copy or using an online process provided by the Claim Administrator.

**F. Proof of Use and Duration of Use of the Diet Drugs.** Section VI.C.2.d of the Settlement Agreement governs the documentary proof of the period of time for which the Diet Drugs were prescribed and dispensed to the Diet Drug Recipient who is the subject of a Claim.

**G. Complete Claim Requirements.** Under Sections IV.B.2.c(3) through (5) and VI.C.4a(1) through (8) of the Settlement Agreement and Court-Approved Procedure 4 (Medical Records Relating to Matrix Claims; approved by PTO 2805), a Claim must contain the following to be considered a Complete Claim to be processed for payment eligibility and submitted with a Claim, unless already in the possession of the Trust or Claim Administrator or in any particular instance the Claim Administrator determines that the material is not necessary to determine the proper outcome on the Claim:

- 1. Green Form:** Green Form Parts I, II, and, if the Claimant is represented by counsel, Part III, properly completed and signed (or

such other form for this purpose adopted by the Claim Administrator, with the approval of Class Counsel).

- 2. Echocardiogram(s):** If not previously submitted in a readable form: (a) copy of the videotape, disc, or other usable digital format (using DICOM standards and viewable using a DICOM reader, or compatible with other currently available technology) of the Echocardiogram of the Diet Drug Recipient upon whose condition the Claim is based, meeting the Echocardiogram criteria of the Settlement Agreement and supporting the condition which qualifies the Diet Drug Recipient for a particular Matrix Compensation Benefit; and (b) the Gray Form or written report of such Echocardiogram(s). The Claim Administrator may convert videotape recordings into Audio Video Interleave (AVI) multimedia container format or such other format to render them readable under currently available technology.
- 3. Medical Records:** The records and documents necessary to support a reasonable degree of medical certainty: (a) that the Diet Drug Recipient has a Progression Matrix Level Condition which qualifies for Incremental Matrix Compensation Benefits; and (b) if the Claim seeks payment on Matrix A, the presence or absence of all the conditions for eligibility on Matrix A rather than Matrix B under Section IV.B.2.d of the Settlement Agreement.
- 4. General Medical Records and Medical History for Claims on Matrix A:** If the Claim seeks payment on Matrix A and if the Claim Administrator or the CEP determines they are relevant to the conditions asserted as the basis of the Claim and are needed to evaluate the Claim, (particularly the Reduction Factors that may be applicable to the Claim), General Medical Records regarding the Diet Drug Recipient, including, for the period beginning five years preceding the Diet Drug Recipient's Diet Drug use and continuing through the submission of the Claim, the records and documents of the general care providers (general practitioners, family physicians, primary care providers, and internists) and all subspecialty care providers (including without limitation subspecialists in internal medicine, cardiovascular and neurological surgeons, neurologists, cardiologists, rheumatologists, pathologists, emergency care providers, obstetricians, and gynecologists), who rendered any medical care to and/or were consulted by the Diet Drug Recipient

whose condition forms the basis of the Claim. If a Claimant seeks payment on Matrix A, the Claimant may elect to (a) submit all the Claimant's General Medical Records (in legible and usable form) to the Claim Administrator; (b) submit a Physician Verification Form and DDR Acknowledgment (substantially in conformance with the form attached to Court Approved Procedure 4 and as provided by the Claim Administrator) regarding the review and reporting of the Diet Drug Recipient's medical history, in lieu of submitted General Medical Records; or (c) agree to be paid Matrix Compensation Benefits on Matrix B in full satisfaction of the Claim being processed.

- 5. Lien and Attorney Documents:** The information on subrogation claims or liens and, if the Claimant is represented by counsel, the documents and information regarding the fee agreement and costs incurred, as required by Section VI.C.4.c of the Settlement Agreement, if applicable to the Claim.

**H. *Threshold Eligibility Review of Claims.***

- 1. Threshold Eligibility Requirements:** A Claim will be processed by the Claim Administrator to determine whether the Claimant qualifies for payment of Incremental Matrix Compensation Benefits if it satisfies each of these Threshold Eligibility Requirements:
  - (a) The Claimant is an Eleventh Amendment Class Member eligible to seek and receive Incremental Matrix Compensation Benefits;
  - (b) The Claim was timely submitted to the Claim Administrator or was timely submitted to the Trust before the Effective Date;
  - (c) The Claim states a Progression Matrix Level Condition that would qualify the Claimant for Incremental Matrix Compensation Benefits;
  - (d) The Claimant was diagnosed with the Progression Matrix Level Condition upon which the Claim is based before the Claimant reached the age of 80 years old;

- (e) The Claim is not a duplicate of a previously paid or denied Claim;
  - (f) The Claim seeks payment on a Matrix Level that, if eligible, would result in payment of Incremental Matrix Compensation Benefits to the Claimant; and
  - (g) The Claim is a Complete Claim.
2. **Notice of Additional Information or Documents Needed:** Within 10 days after submission of any elements of a Claim, the Claim Administrator will review the Claim to assess its completeness and whether the Claim satisfies the Threshold Eligibility Requirements. If the Claim Administrator determines that the Claim does not satisfy the Threshold Eligibility Requirements, it will provide the Claimant with notice of any deficiency and afford the Claimant a reasonable time (no fewer than 30 days) to explain any questions regarding Threshold Eligibility and to submit any missing information or documents required to make the Claim a Complete Claim.
3. **Outcome of Threshold Eligibility Review:** Within 10 days after the completion of the steps in Section II.H.1, the Claim Administrator will determine whether the Claimant and the Claim satisfy the Threshold Eligibility requirements and will move the Claim to Medical Review or notify the Claimant of a denial of a Claim on any Threshold Eligibility ground(s) no later than 15 days after the completion of the steps in Section II.H.2.
4. **Reconsideration by the Claim Administrator and Final Determination:** A notice of denial based on a failure to meet Threshold Eligibility Requirements will afford the Claimant a reasonable time (no fewer than 20 days) to have the Claim Administrator reconsider the denial and to provide any information or documents the Claimant would like the Claim Administrator to consider. If the Claimant does not timely request Reconsideration, the denial will become final. If the Claimant does timely request Reconsideration, within 10 days after the request, the Claim Administrator will re-review the Claim, determine whether the Claimant has satisfied the Threshold Eligibility Requirements for the

Claim and either move the Claim to Medical Review or notify the Claimant of a final denial on Threshold Eligibility Requirements.

5. **Appeal:** A Claimant receiving a notice of final denial of a Claim on Threshold Eligibility Requirements under Section II.H.4 may file an Appeal of that determination to the Court under Section II.J. No Appeal may be filed unless the Claimant had requested Reconsideration by the Claim Administrator and the Claim Administrator has issued a notice of outcome after Reconsideration.

- I. ***Medical Review of Claims.***

1. **Matrix Eligibility Determination by the Claim Administrator:** Within 10 days after a determination that a Claim meets the Threshold Eligibility Requirements, the Claim Administrator may determine without the need for CEP Review whether there is a reasonable medical basis for Green Form Part II answers (or equivalent answers in the Claim Form in use at the time by the Claim Administrator) material to the Claim and whether the Claim is eligible for payment on any Matrix Level that would qualify the Claimant for Incremental Matrix Compensation Benefits, and, if so, the amount of such benefits. If the Claim Administrator makes such a determination, the Claim Administrator will notify the Claimant that the Claim is payable and the amount of Incremental Matrix Compensation Benefits payable on the Claim.
2. **CEP Review:** A Claim not found payable under Section II.I.1 will be presented to the CEP for review within 10 days after a determination that a Claim establishes the Threshold Eligibility Requirements, provided, however, that the Claim Administrator may determine that a Claim is payable pursuant to Section II.I.1 at any time before the CEP takes final action in its review of the medical basis for the Claim. The CEP may require the Eleventh Amendment Class Member to submit additional materials or information if the CEP deems them necessary for the proper assessment of the Claim. Within 20 days after presentation of the Claim to the CEP together with the additional materials or information required by the CEP, if any, the CEP will review the Claim and determine whether there is a reasonable medical basis for Green Form Part II answers (or equivalent answers in the Claim Form in use by the Claim Administrator) material to the Claim

(including answers regarding Reduction Factors) and whether the Claim is eligible for payment on any Matrix Level that would qualify the Claimant for Incremental Matrix Compensation Benefits. Within five days after a determination by the CEP, the Claim Administrator will notify the Claimant of that determination and the amount, if any, of Incremental Matrix Compensation Benefits payable on the Claim.

3. **CEP Adjudication:** The CEP will attempt to achieve consensus on all its determinations, but where consensus cannot be reached will act by majority vote.
  4. **Reconsideration by the CEP and Final Determination:** The Claim Administrator will afford the Claimant a reasonable time (no fewer than 20 days) to have the CEP reconsider any determination that is adverse to the Claimant and to provide any information or documents the Claimant would like the CEP to consider. If the Claimant does not timely request Reconsideration, the outcome after CEP Review in Section II.I.2 will become final. If the Claimant does timely request Reconsideration by the CEP, within five days the Claim Administrator will present the Claim to the CEP. Within 20 days after such presentation, the CEP will re-review the Claim to make the determination required by Section II.I.2. Within five days after a determination by the CEP, the Claim Administrator will notify the Claimant of that determination after Reconsideration and the amount, if any, of Incremental Matrix Compensation Benefits payable on the Claim.
  5. **Appeal:** A Claimant receiving a notice after Reconsideration by the CEP may file an Appeal to the Court under Section II.J. No Appeal may be filed unless the Claimant had requested Reconsideration by the CEP and the Claim Administrator has issued a notice of outcome after Reconsideration.
- J. *Appeal of Claim Outcomes.***
1. **Time for Appeal:** Any Claimant who, after seeking Reconsideration as provided above, receives a notice that the Claim was denied, in whole or in part, for failure to meet Threshold Eligibility Requirements under Section II.H or on Medical Review grounds under Section II.I may, within 60 days after the date of such notice,

file an Appeal to the Court seeking review of the outcome on the Claim by filing with the Court a notice of Appeal and a supporting memorandum of law.

2. **Record on Appeal:** The record before the Court on an Appeal will be limited to the record before the Claim Administrator (and the CEP, as applicable) at the time of the outcome subject to the Appeal, unless the Court directs the submission of additional information or materials. If requested by the Court: (1) the Claim Administrator may provide information regarding the processing of the Claim and the outcome being reviewed; (2) Class Counsel and Wyeth each may file a response to the Appeal; and (3) a Technical Advisor may assist the Court on any medical issues presented by the Appeal.
3. **Technical Advisor Fee:** If requested by the Court, the Technical Advisor will review the Appeal record and prepare a Technical Advisor Report to the Court setting forth the Technical Advisor's opinions regarding the medical issue(s) in dispute. If the Court requires review by a Technical Advisor, the Appeal will not proceed until the Claimant advances to the Claim Administrator the Technical Advisor Fee and the Appeal will be dismissed if such Technical Advisor Fee is not timely paid. An Eleventh Amendment Class Member may request that the Court waive the Technical Advisor Fee due to true financial hardship. Any such request must include relevant financial documentation supporting the existence of a true financial hardship. If the Court concludes that payment of the Technical Advisor's costs creates a true financial hardship for an Eleventh Amendment Class Member in an Appeal, the Settlement Fund will pay the Technical Advisor Fee for that Appeal.
4. **Standard of Review on Appeal:** The Claimant will have the burden of proving on Appeal that any material factual or medical determination on the Claim by the Claim Administrator or the CEP was clearly erroneous. The Court will review *do novo* any questions of law, including those regarding the interpretation of language in the Settlement Agreement.
5. **Claim Found Payable on Appeal:** If the Court (or the Court of Appeals for the Third Circuit) rules on an Appeal that the Claim is payable in an amount greater than found by the Claim Administrator

on the Claim (other than because of the annual 2% increase in the Matrix Grid Amounts under the Settlement Agreement) the Claim Administrator will, within 15 days after the Court's determination, pay the Eleventh Amendment Class Member Incremental Matrix Benefits in accordance with the Court's determination and the amount of any Technical Advisor Fee paid by the Claimant in connection with the Appeal.

**K. *Derivative Claimants.***

1. **Notice of Outcome:** A notice from the Claim Administrator to a Claimant regarding payable Incremental Matrix Compensation Benefits will include information on any benefits payable to Derivative Claimants of the Claimant under Sections IV.B.1.c and IV.B.2 of the Settlement Agreement, if applicable, as determined by the Claim Administrator.
2. **Reconsideration:** Such notice will afford the Derivative Claimant(s) a reasonable time (no fewer than 20 days) to have the Claim Administrator reconsider the Derivative Claimant determinations and to provide any information or documents the Claimant would like the Claim Administrator to consider. If a Derivative Claimant does not timely request Reconsideration, the Claim Administrator's determination of the Derivative Claimant's entitlement to benefits as stated in the Claim Administrator's notice will become final. If the Derivative Claimant does timely request Reconsideration, within 10 days after the request, the Claim Administrator will re-review the Claim, determine the appropriate result under the terms of the Settlement Agreement, and notify the Derivative Claimant of that determination.
3. **Appeal:** A Derivative Claimant who continues to object to the Claim Administrator's benefit determination as to that Derivative Claimant after seeking Reconsideration may file an Appeal to the Court under Section II.J. No Appeal may be filed unless the Derivative Claimant had requested Reconsideration by the Claim Administrator and the Claim Administrator has issued a notice of outcome after Reconsideration. The provisions of Section II.J on the Appeal process will apply as relevant to any Appeal by a Derivative Claimant.

**L. *Processing of Healthcare Liens.*** The Claim Administrator will conduct an MMSEA Query as to the Diet Drug Recipient subject to a Claim found eligible for payment of Incremental Matrix Compensation Benefits. When the MMSEA Query results in a report that the Diet Drug Recipient at issue is Medicare Entitled, then the Claim Administrator will coordinate with the Eleventh Amendment Class Member to resolve any Medicare Claim concerning the Incremental Matrix Compensation Benefits payment and may employ outside consultants to assist in that resolution process. The Claim Administrator will recognize and process legitimate Healthcare Liens on the Incremental Matrix Compensation Benefits payment amount in accordance with applicable law. No Healthcare Lien will be recognized in favor of any insurer or third-party payor that previously has waived or released all such claims relating to Diet Drug Recipients.

**M. *Liens and Other Matters Affecting the Payment of Benefits.***

- 1. Notice of Outcome:** A notice from the Claim Administrator to a Claimant regarding payable Incremental Matrix Compensation Benefits will include information on the amounts necessary to satisfy any Healthcare Lien, Non-Healthcare Lien, any Derivative Claimant's entitlement, and (after the Claimant has submitted the information and materials necessary to make the determination) any fees or costs allocated to the Eleventh Amendment Class Member's individual counsel out of the Incremental Matrix Compensation Benefits payment. Such notice also will be provided to any Lien claimant (other than as to Medicare Claims or any other federal or state agency with a Healthcare Lien resolved by the Claim Administrator with that agency) or counsel affected by the notice.
  
- 2. Reconsideration:** Such notice will allow the Eleventh Amendment Class Member and others subject to the determinations in the notice a reasonable time (no fewer than 20 days) to have the Claim Administrator reconsider the determinations and to provide any information or documents for the Claim Administrator to consider. The outcome in the notice will become final as to any determination not subject to a timely request for Reconsideration. If there is a timely request for Reconsideration, within 10 days after the request, the Claim Administrator will re-review the issue, determine the appropriate result under the terms of the Settlement Agreement and applicable law, and notify the requesting party of that determination.

3. **Appeal:** A party objecting to that determination may file an Appeal under Section II.J. No Appeal may be filed unless the party had requested Reconsideration by the Claim Administrator and the Claim Administrator has issued a notice of outcome after Reconsideration. The provisions of Section II.J on the Appeal process will apply as relevant to any Appeal under this Section II.M.3.

**N. *Arbitration and Show Cause Provisions.*** The provisions of Section VI.C.4 of the Settlement Agreement regarding arbitration and those of Section VI.E of the Settlement Agreement regarding show cause proceedings are removed from the Settlement Agreement as no longer necessary, in light of the terms of this Eleventh Amendment, to secure the fair and accurate administration of the Settlement Agreement for the benefit of Eleventh Amendment Class Members.

**O. *Enhancements to the Administration of the Settlement Agreement.*** The Claim Administrator may alter any of the functions, procedures, systems, processes, operations, notices and other communications, and forms or other materials previously used by the Trust as necessary to facilitate the prompt and effective implementation of the Settlement Agreement in the best interests of the Eleventh Amendment Class Members, provided that no such changes or procedures may impair the substantive rights of any Eleventh Amendment Class Members to Incremental Matrix Compensation Benefits.

**P. *Class Counsel Fees and Costs.***

1. **Right to Class Counsel Fees and Costs:** Class Counsel will have the right to receive reimbursement of all costs reasonably incurred by them and reasonable attorneys' fees not to exceed the hourly value of the professional time expended for the following professional activities: (a) the development, negotiation, presentation, implementation and administration of this Eleventh Amendment (including discussions and analysis of changes to the administration of the Settlement Agreement that led to this Eleventh Amendment); (b) responding to requests directed to them by the Claim Administrator as set forth in Section II.S.3 of this Eleventh Amendment; and (c) providing assistance to unrepresented Class Members as set forth in Section II.S.3 of this Eleventh Amendment. Such fees and cost reimbursements shall be determined and awarded by the Court and,

upon such Court determination and award shall be paid by the Settlement Fund as further provided herein.

- 2. Motion for Court Approval.** Applications for an award of attorneys' fees and cost reimbursements may be submitted to the Court on a quarterly schedule (or on such other schedule as agreed upon by the Parties or directed by the Court). The first such motion will include any time incurred by Class Counsel for which compensation is requested in the development and Court approval of this Eleventh Amendment (including discussions and analysis of changes to the administration of the Settlement Agreement that led to this Eleventh Amendment). The fee adjudication procedures established in PTO 16, PTO 1164, paragraph 3 of PTO 5400 and paragraph 7 of PTO 7763A will not apply to the preparation and presentation of such fee petitions.
- 3. Pre-Filing Meet and Confer:** No later than 20 days before filing a motion under Section II.P.2, Class Counsel will provide Wyeth a copy of the motion and its supporting materials. The Parties will meet and confer to review the request and any objections by Wyeth. If the Parties are unable to resolve any such objections, Wyeth may respond to the motion and present its position to the Court for resolution.
- 4. Payment by the Settlement Fund:** Amounts awarded by the Court as Class Counsel Fees and Costs will be paid by the Settlement Fund not later than 30 days after the date of the Court's award of such fees and costs.

**Q. *The Maximum Available Settlement Fund Amount.*** The Maximum Available Fund B Amount (which, after the Fifth Amendment and the merger of Fund A and Fund B into one Settlement Fund, is the result of the Adjusted Maximum Fund B Amount under Section I.1 of the Settlement Agreement) is renamed the Maximum Available Settlement Fund Amount (or "MASFA"). Each deposit by Wyeth into the Settlement Fund (or payment directly by Wyeth if the QSF has been discontinued) under Section II.C.3 or Section II.C.4 will reduce MASFA as of the time it is made or paid. The Claim Administrator will maintain an accurate accounting of the MASFA.

**R. *Clarification of Applicable Requirements and Procedures.*** The Settlement Agreement, including this Eleventh Amendment, sets forth the terms and requirements for payment of Incremental Matrix Compensation Benefits and

the essential procedures for the implementation of the Settlement Agreement. The Parties agree that the agreed and other processing procedures, as well as the Court Approved Procedures, identified in the attached Exhibit 1 are moot or no longer necessary and jointly will request the Court to vacate any orders approving them.

**S. *Miscellaneous Terms.***

- 1. Financial Records of the Claim Administrator:** The Claim Administrator will maintain complete and current records of the assets and expenses of the Settlement Fund. The Claim Administrator is not required to perform an annual external audit of its financial statements or to issue an external audit report.
  
- 2. Report to the Court and the Parties:** No less frequently than every six months, the Claim Administrator will provide a report to the Court and the Parties on the implementation of the Settlement Agreement, including information on the following during the reporting period and cumulatively as of the date of the report (unless otherwise specified below):
  - (a) Implementation Costs, showing the amount of CEP Fees and Costs, Class Counsel Fees and Costs, Claim Administrator Fees and Costs, tax payments, and other payments for obligations of the Settlement Program other than as to Claims payments;
  - (b) Claims submitted, by Claimant age and Matrix Level asserted;
  - (c) Claims denied at any stage in the process, by Claimant age and Matrix Level asserted;
  - (d) Claims paid Incremental Matrix Compensation Benefits, by Claimant age and Matrix Level;
  - (e) Payments to Derivative Claimants;
  - (f) Payments made on Liens of any kind;
  - (g) The number and age distribution of Eleventh Amendment Class Members remaining eligible to seek Incremental Matrix Compensation Benefits as of the date of the report; and

(h) The MASFA as of the date of the report.

3. **Assistance to Unrepresented Eleventh Amendment Class Members and to the Claim Administrator:** Class Counsel may assist unrepresented Eleventh Amendment Class Members as requested on any matter concerning their rights under the Settlement Agreement and the submission, completion and adjudication of any Claim for Incremental Matrix Compensation Benefits, including any Appeal by an unrepresented Eleventh Amendment Class Member. In addition, at any time the Claim Administrator may request input from Class Counsel on an issue of Settlement Agreement interpretation or application, or any issue affecting the administration of the Settlement Agreement. Class Counsel may request and the Court may award compensation as Class Counsel Fees and Costs for time reasonably incurred for assisting unrepresented Class Members and assisting the Claim Administrator in this manner, in accordance with Section II.P.2.
4. **Contact Information for Eleventh Amendment Class Members:** Each Eleventh Amendment Class Member must keep the Claim Administrator apprised of current information on the Eleventh Amendment Class Member's name and contact information, including counsel information.
5. **Notices on Claim Outcomes:** Notices of outcome issued by the Claim Administrator to an Eleventh Amendment Class Member who currently is represented by individual counsel will be sent to that counsel and not directly to the Eleventh Amendment Class Member. Notices issued by the Claim Administrator to an Eleventh Amendment Class Member who is not represented by individual counsel will be sent directly to the Eleventh Amendment Class Member.

### III. APPROVAL AND OTHER TERMS

#### A. *Joint Application for District Court Approval.*

1. **Joint Motion for Approval:** Within five days after the full execution of this Eleventh Amendment, the Parties will move jointly for the

Court to enter orders: (a) granting Preliminary Approval of the Eleventh Amendment and (b) granting District Court Approval of the Eleventh Amendment. The Motions will be filed electronically and served upon all persons who have registered for electronic filing or who are otherwise entitled to receive copies of electronically filed documents in MDL 1203 and Civil Action No. 99-20593. *See In re Diet Drugs*, 93 Fed.Appx. 338, 344 (3<sup>rd</sup> Cir. Feb. 23, 2004). *See also* Memorandum in Support of PTO No. 8506 July 2, 2010) (approval of 10<sup>th</sup> Amendment) at 13, citing *In re: The Prudential Ins. Co. of America Sales Practices Litig.*, 962 F. Supp. 450, n.10 (D.N.J. 1997), *aff'd* 148 F.3d 283 (3<sup>rd</sup> Cir. 1998). The Trust will post a copy of the Motion for Approval and supporting materials on its website. The Parties also may post them to a website created by the Claim Administrator for such purpose.

**2. Preliminary Approval Order:** The Motion for Preliminary Approval will include a request to the Court to enter an order substantially in the form attached as Exhibit 2:

- (a) Granting Preliminary Approval of the Eleventh Amendment;
- (b) Directing that the Eleventh Amendment Class Members are not required to file any response to the Motion for Approval but establishing a period of no more than 30 days from the date of the order for any Eleventh Amendment Class Member who wishes to do so; and
- (c) Approving a postcard notice (substantially in the form attached as Exhibit 3) and directing the Parties to mail such notice to the Eleventh Amendment Class Members and their counsel at the last known address available for them in the Trust's database, as updated through national database research.

**3. District Court Approval Order:** The Motion for Approval will include a request to the Court to enter an order substantially in the form attached as Exhibit 4:

- (a) Granting District Court Approval of the Eleventh Amendment in its entirety under the standard which would be applicable under Fed.R.Civ.P. 23(e) as fair, reasonable, adequate, and non-

collusive, and requiring compliance with the terms of the Eleventh Amendment;

- (b) Appointing BrownGreer as the Claim Administrator;
- (c) Vacating PTO No. 1823 and considering the amount in the PTO No. 1823 Reserve as funds available in the Settlement Fund;
- (d) Vacating the Orders relating to Court Approved Procedures identified in Section A of the attached Exhibit 1.

**B. *Conditions to Effectiveness of the Eleventh Amendment.*** The effectiveness of the Eleventh Amendment and the Parties' respective obligations under it are subject to: (1) entry of the Preliminary Approval Order; (2) entry of the District Court Approval Order; and (3) the absence of a stay pending appeal from any District Court Approval Order within 31 days from the date of that order or the entry of an order vacating such a stay if it is entered.

**C. *Effective Date.*** The provisions of this Eleventh Amendment regarding implementation of the Settlement Agreement will become effective and applicable as of the Effective Date.

**D. *Retained Jurisdiction.*** The Court retains original and exclusive jurisdiction over the interpretation and enforcement of this Eleventh Amendment incident to its exclusive, retained jurisdiction under Section VIII.B.1 of the Settlement Agreement and Paragraph 11 of PTO No. 1415 entered by the Court on August 28, 2000.

**E. *Survival of Settlement Agreement Terms.*** Except as expressly modified in this Eleventh Amendment and as necessary to permit the complete implementation of this Eleventh Amendment, all terms and provisions of the Settlement Agreement remain in full force and effect.

**F. *Headings.*** The headings of the Sections of this Eleventh Amendment are included for convenience only and will not be deemed to constitute part of this Amendment or affect its construction.

**G. *Counterparts.*** This Eleventh Amendment may be executed in counterparts by facsimile signature. Each counterpart will be effective as part of a fully executed original Eleventh Amendment.

IN WITNESS WHEREOF, the Parties have duly executed this Eleventh Amendment to the Settlement Agreement by their respective counsel, as set forth below, as of the Effective Date.

\*\*\*\*\*SIGNATURES APPEAR ON FOLLOWING PAGE\*\*\*\*\*

**WYETH LLC**

By:   
Jeffrey N. Myers

Position: Vice President

Date: *June 13, 2023*

**CLASS COUNSEL**

By: \_\_\_\_\_  
Arnold Levin, Esquire  
Laurence S. Berman, Esquire  
LEVIN, SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106

By: \_\_\_\_\_  
Michael D. Fishbein, Esquire  
1706 Rittenhouse Sq.  
No. 1201  
Philadelphia, PA 19103

Date:

Date:

**WYETH LLC**

By: \_\_\_\_\_  
Jeffrey N. Myers

Position: Vice President

Date:

**CLASS COUNSEL**

By:  \_\_\_\_\_  
**Arnold Levin, Esquire**  
Laurence S. Berman, Esquire  
LEVIN, SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106

Date: 6/13/2023

By:  \_\_\_\_\_  
Michael D. Fishbein, Esquire  
1706 Rittenhouse Sq.  
No. 1201  
Philadelphia, PA 19103

Date: June 13, 2023

# **EXHIBIT 1**

## **Previous Court Approved and Other Procedures**

**PREVIOUS COURT APPROVED AND OTHER PROCEDURES**

**A. *Previous Court Approved Procedures:***

1. CAP 1 (PTO No. 1718) – Establishing Procedures to Resolve Non-Federal Subrogation Claims
2. CAP 2 (No PTO number) -- Governs Claims of or on Behalf of Minors, Incapacitated Persons and Deceased Persons
3. CAP 3 (No PTO number) – Authorizing Steps to be Taken by AHP Settlement Trust and Class Counsel Regarding Assistance to Pro Se Claimants
4. CAP 4 (PTO No. 2805) – Medical Records Relating to Matrix Claims
5. CAP 5 (PTO No. 2806) – Credentials of Auditing Cardiologists
6. CAP 6 (No PTO number) – Reimbursement for Additional Medical Services
7. CAP 7 (No PTO number) – Pro Se Claimants Completeness Assistance Program
8. CAP 8 (No PTO number) – Reporting Requirements of the AHP Settlement Trust
9. CAP 9 (PTO No. 5983) – Procedure for the Audit of Fund A Claims
10. CAP 10 (PTO No. 6085) -- Processing of Claims as to Certain Medicare Eligible Claimants
11. CAP 11 (PTO No. 6100) – Audit of Matrix Claims
12. CAP 12 (PTO 6100) – Re-Audit of Certain Claims for Matrix Compensation Benefits
13. CAP 13 (PTO No. 6707) – Procedure for the Disposition of Pre-Stay Payable PADs and PADLs
14. CAP 14 (PTO No. 6999) – Procedure for the Audit of Category Two Claims with Conflicting Diagnoses
15. CAP 15 (PTO No.) 7688 - Procedure for the Resolution of Certain Matrix Claims In Show Cause
16. CAP 16 (PTO No. 8559) – Payment and Claim Filing Deadline
17. CAP 17 (PTO No. 9103) – Processing of Medicare Claims

**B. *Previous Agreed Processing Procedures:***

1. APP 01-001 – Determination of Drug Use and Duration for Certain Fund A Benefits
2. APP 01-002 – GRAY Form Requirement for Cash/Med Benefits on PINK Form AIO Claims
3. APP 01-003 – Transesophageal Echocardiograms and Successive Echocardiograms
4. APP 01-004 – Relevance of Question 12 in PINK or BLUE Form for Certain Fund A Benefits:
5. APP 01-005 – Inventory of ORANGE Form #2 and ORANGE Form #3 Forms and the Processing of BLUE Forms by Persons Who Have Also Submitted ORANGE Form #2 or #3
6. APP 01-006 – Standards for Equating Numeric Indicators with Regurgitation Levels for Fund A AIO Benefits
7. APP 01-007 – Standards for Interpreting Ambiguous Echo Reports for Fund A AIO Benefits

**C. *Other Previous Claims Processing Procedures:***

1. Duration of Use (8/16/2000)
2. Subrogation (8/16/2000)
3. Record Retrieval Process (8/16/2000)
4. Foreign Claimants (8/16/2000)
5. Board-Eligible and Board-Certified Physicians (8/16/2000)
6. Policy for Processing Multiple Claim Form Submissions (11/9/2000)
7. Policy on Quantification of Claims for Purposes of Determining the Number and Extent of Audits of Claims to be Performed (11/16/2000)
8. Standards for Providing Echocardiograms for True Financial Hardship or Compassionate and Humanitarian Reasons (11/16/2000)
9. Policy on Access to Claims Information by American Home Products Corporation for Audit Purposes (11/16/2000)

10. Subrogation Issues and Subrogation Information Form (12/4/2000)
11. Filing Appeals of Decisions by the ICA/Trust Regarding Invalid Opt-Outs (12/7/2000)
12. PMC Access to Claims Information (1/12/2001)
13. Qualifications of Reviewing Cardiologists (1/12/2001)
14. AHP Settlement Trust Attorney Fee Policy (1/23/2001)
15. Parallel Processing of AIO Claims (5/25/2001)
16. Interim Procedures Regarding Intermediate and Back-End Opt-Outs before Final Judicial Approval (5/25/2001)
17. Parallel Processing of AIO Claims (Version 2) (7/3/2001)
18. Revised Claims Processing Guidelines (5/8/2001)
19. Changes to Proof Requirements for AIO Claims (7/3/2001)
20. Green Form Questions Requiring Review of Medical Records for Consistency (6/28/2001)
21. Agreed Funding Procedure No. 02-01 (3/31/2002)
22. Agreed Funding Procedure No. 02-02 (3/31/2002)
23. Agreement Regarding Quarterly Funding (11/6/2002)
24. Agreed Funding Procedure No. 02-03 (6/6/2005)
25. Memorandum of Understanding Regarding the Seventh Amendment (11/15/2004)
26. Joint Response to PTO 8549—Policy on Missing Echo Tapes (11/4/2010)

# **EXHIBIT 2**

## **Order-Preliminary Approval**

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

MDL NO. 1203

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This Document Relates To: Sheila Brown,  
et. al. v. American Home Products  
Corporation

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CIVIL ACTION  
No. 99-20593

**PRETRIAL ORDER NO. \_\_\_\_\_**

**(Preliminary Approval of the Eleventh Amendment and Notice to Affected  
Class Members)**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2023, upon consideration of the Joint Motion to Approve the Eleventh Amendment to the Settlement Agreement and finding that the terms of the proposed Eleventh Amendment appear to fall within the range of possible approval, permitting a preliminary determination of fairness, reasonableness, and adequacy of the terms, it is hereby ORDERED that the request for preliminary approval in the Joint Motion is GRANTED. Accordingly, it is further ORDERED as follows:

1. ***Preliminary Approval.*** The Eleventh Amendment is preliminarily approved.

2. ***Approval of Mailed Notice to Eleventh Amendment Class Members.***

The postcard notice proposed by the Parties and in the form attached to this Order, is

approved. Not later than ten (10) days from the date of this order, the Parties will cause such notice to be mailed to the Eleventh Amendment Class Members as defined by the Eleventh Amendment, at the last known address available for them in the database of the AHP Settlement Trust, as refreshed by a query to a national address database. Where the database of the AHP Settlement Trust indicates that an Eleventh Amendment Class Member is represented by one or more counsel, the notice also will be mailed to the last known attorney listed in the database. Where an attorney represents more than one Eleventh Amendment Class Member, it will be sufficient to provide that attorney with a single copy of the notice. The cost of the notice will be paid by the Settlement Fund.

**3. *Responses to the Motion for Approval.*** Eleventh Amendment Class Members are not required to file any response to the Joint Motion for Approval. However, if any Eleventh Amendment Class Member chooses to do so, any response to the Joint Motion must be filed with the Clerk of this Court no later than thirty (30) days from the date of this Order. A response not timely filed will not be considered.

**4. *Posting of this Order.*** The Parties are to cause a copy of this Order to be posted on the official website of the AHP Settlement Trust and the website established by the Eleventh Amendment Claim Administrator.

5. ***Retained Exclusive Jurisdiction.*** Without affecting the finality of this Order in any way, the Court retains original and exclusive jurisdiction over the interpretation, implementation, and enforcement of this Order and the Protocol, incident to its retained jurisdiction under Section VIII.B.1 of the Settlement Agreement and Paragraph 11 of PTO No. 1415 entered by the Court on August 28, 2000.

BY THE COURT:

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Harvey Bartle III, J.

Diet Drugs Settlement  
P.O. Box 85006  
Richmond, VA 23285

FIRST-CLASS  
MAIL U.S.  
POSTAGE PAID  
PERMIT NO

**Your Notice ID: 123456789**



**NOTICE**  
**REGARDING THE**  
**PONDIMIN® AND**  
**REDUX™ CLASS**  
**ACTION**  
**SETTLEMENT**

**John D. Sample, Jr.**  
123 Main Street  
Apt. #6  
New York, NY 12345-6789

**In Re: Diet Drugs  
(Phentermine/Fenfluramine/  
Dexfenfluramine) Products Liability Litigation  
(MDL No. 1203)**

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**This Document Relates To: Sheila Brown, et.  
al. v. American Home Products Corporation  
(Civil Action No. 99-20593)**

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**This Notice is given pursuant to an order issued by  
the United States District Court for the Eastern  
District of Pennsylvania (the “Court”).**

On June 14, 2023, Class Counsel and Wyeth filed a joint Motion asking the Court to approve an Eleventh Amendment to the Nationwide Class Action Settlement of the litigation relating to the diet drugs Pondimin® and Redux™. The Memorandum in Support of the Motion explains that the Parties agreed to this Eleventh Amendment and seek its approval by the Court to streamline, expedite, and modernize the processing of any claims submitted for incremental Matrix Compensation Benefits and make the administration structure more in line with the

level of claimant litigation over the past several years. The Eleventh Amendment, if approved, will replace the AHP Settlement Trust and its Trustee with BrownGreer PLC as Claim Administrator to process all Claims for incremental Matrix compensation under the Settlement, subject to the supervision of and right of a Class Member to appeal to the Court. The proposed Eleventh Amendment does not change the compensation rights of any Class Member under the terms of the Nationwide Class Action Settlement Agreement.

You may read the Motion, Memorandum in Support, and the Eleventh Amendment and its Exhibits by going to the AHP Settlement Trust website at [settlementdietdrugs.com](http://settlementdietdrugs.com) or the website at [www.dietdrugsettlementprogram.com](http://www.dietdrugsettlementprogram.com). You may also request a copy by writing to Diet Drug Settlement Program, P.O. Box 85006, Richmond, VA 23285.

No one is required to file any response to the Motion. But if you would like to submit a response, you must file it with the Clerk of the Court ***no later than*** \_\_\_\_\_, **2023**. A late response will not be considered.

**BY ORDER OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

# **EXHIBIT 3**

## **Postcard Notice**

Diet Drugs Settlement  
P.O. Box 85006  
Richmond, VA 23285

FIRST-CLASS  
MAIL U.S.  
POSTAGE PAID  
PERMIT NO

**Your Notice ID: 123456789**



**NOTICE**  
**REGARDING THE**  
**PONDIMIN® AND**  
**REDUX™ CLASS**  
**ACTION**  
**SETTLEMENT**

**John D. Sample, Jr.**  
123 Main Street  
Apt. #6  
New York, NY 12345-6789

**In Re: Diet Drugs  
(Phentermine/Fenfluramine/  
Dexfenfluramine) Products Liability Litigation  
(MDL No. 1203)**

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level of claimant involvement over the past several years. The Eleventh Amendment, if approved, will replace the AHP Settlement Trust and its Trustee with BrownGreer PLC as Claim Administrator to process all Claims for incremental Matrix compensation under the Settlement, subject to the supervision of and right of a Class Member to appeal to the Court. The proposed Eleventh Amendment does not change the compensation rights of any Class Member under the terms of the Nationwide Class Action Settlement Agreement.

You may read the Motion, Memorandum in Support, and the Eleventh Amendment and its Exhibits by going to the AHP Settlement Trust website at [settlementdietdrugs.com](http://settlementdietdrugs.com) or the website at [www.dietdrugsettlementprogram.com](http://www.dietdrugsettlementprogram.com). You may also request a copy by writing to Diet Drug Settlement Program, P.O. Box 85006, Richmond, VA 23285.

No one is required to file any response to the Motion. But if you would like to submit a response, you must file it with the Clerk of the Court ***no later than*** \_\_\_\_\_, **2023**. A late response will not be considered.

**BY ORDER OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

# **EXHIBIT 4**

## **Order-District Court Approval**

**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

MDL NO. 1203

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This Document Relates To: Sheila Brown,  
et. al. v. American Home Products  
Corporation

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CIVIL ACTION  
No. 99-20593

**PRETRIAL ORDER NO. \_\_\_\_\_**

**(District Court Approval of the Eleventh Amendment  
to the Settlement Agreement)**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2023, upon consideration of the Joint Motion to Approve Eleventh Amendment to the Settlement Agreement, it is hereby ORDERED that the Joint Motion is GRANTED. Accordingly, it is further ORDERED:

1. ***Approval of the Eleventh Amendment.*** The Eleventh Amendment is approved in its entirety. The Court finds that the notice provided the Class regarding the Amendment and all proceedings relating to its development and approval comply with the requirements of due process, Fed.R.Civ.P. 23, and applicable law.

2. ***Appointment of the Claim Administrator.*** Pursuant to the agreement and nomination by the Parties and for good cause shown, BrownGreer PLC is

appointed the Claim Administrator of the Settlement Agreement pursuant to the joint nomination of the Parties. Wyeth has informed Class Counsel and the Court that BrownGreer will withdraw as counsel for Wyeth prior to assuming the duties as Claim Administrator. Its appointment as Claim Administrator will become effective upon the filing of papers on the docket that accomplishes the withdrawal as a matter of record in the case.

**3. *Implementation of the Eleventh Amendment.*** Class Counsel, Wyeth, the Claim Administrator, and the AHP Settlement Trust are authorized and directed to proceed with the implementation of the Eleventh Amendment in accordance with its terms.

**4. *Termination of Trust.*** The AHP Settlement Trust is terminated and its Trustee discharged from any further duties under the Settlement Agreement and the Amended and Restated AHP Settlement Trust Agreement (entered into as of May 19, 2005), except as specified in this Order. The former Trustee, Martin Rudolph, is granted qualified judicial immunity and is forever discharged and released from any and all liabilities which may have arisen in connection with his service as Trustee, including activities undertaken in anticipation of appointment as a Trustee for purposes of carrying out the duties of the Trustee, and this Order precludes, at any time hereafter, any action, suit, or demand on the part of any person against him in connection with his service as Trustee. The provisions of

Section 4.09 (Indemnification) of the Amended and Restated AHP Settlement Trust Agreement governing his service as Trustee remain in full force and effect.

**5. *Vacating of PTO No. 1823.*** PTO No. 1823 is vacated as moot and no longer necessary. Any funds remaining in the PTO No. 1823 Reserve will be considered part of the Settlement Fund and available to pay claims and costs of administration of the Settlement Agreement.

**6. *Vacating of Previous Court Approved Procedures and Orders.*** Court Approved Procedures 1 through 16 and the Orders approving them (Pretrial Order Nos. (“PTO”) 1718, 2805, 2806, 5983, 6085, 6100, 6707, 6999, 7688, 8559, and 9103), and PTO 16, PTO 1164, paragraph 3 of PTO 5400, and paragraph 7 of PTO 7763A are vacated as no longer applicable or as superseded by the terms of the Eleventh Amendment.

**7. *Posting of this Order.*** The Parties are to cause a copy of this Order to be posted on the official website of the AHP Settlement Trust and on the website established by the Claim Administrator, [www.dietdrugsettlementprogram.com](http://www.dietdrugsettlementprogram.com).

**8. *Retained Exclusive Jurisdiction.*** Without affecting the finality of this Order in any way, the Court retains original and exclusive jurisdiction over the interpretation, implementation, and enforcement of this Order incident to its retained jurisdiction under Section VIII.B.1 of the Settlement Agreement and Paragraph 11 of PTO No. 1415 entered by the Court on August 28, 2000.

BY THE COURT:

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Harvey Bartle III, J.

**EXHIBIT B**  
**Declaration of**  
**Orran L. Brown, Sr.**

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

MDL NO. 1203

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This Document Relates To: Sheila Brown,  
et. al. v. American Home Products  
Corporation

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CIVIL ACTION  
No. 99-20593

**DECLARATION OF ORRAN L. BROWN, SR.**

1. ***The Declarant.*** My name is Orran L. Brown, Sr. I am the Chairman and a founding partner of BrownGreer PLC, located at 250 Rocketts Way, Richmond, Virginia 23231. I have worked in the mass claims area, including class actions, for over 30 years.

2. ***General Description of BrownGreer.*** BrownGreer has specialized in settlement design and administration since my partner, Lynn Greer, and I founded the firm in 2002. We have extensive experience in the legal and administrative aspects of the design, approval and implementation of notice plans, settlement allocation methodologies, and settlement programs; the design, staffing and operation of claims facilities to provide damages payments, medical monitoring, or other benefits for the resolution of multiple claims through class

action settlement, bankruptcy reorganization, voluntary agreement, or other aggregation vehicles; the identification and resolution of liens and reimbursement claims from Medicare, state Medicaid, and other governmental agencies and private providers or claimants; and the administration of Qualified Settlement Funds and other types of settlement funds. My co-founder, Lynn Greer, and I have been working in this field since 1989, beginning with the claims trust created to handle personal injury claims relating to the Dalkon Shield IUD. In the twenty years since we formed our own firm in 2002, BrownGreer has played a central role in the successful implementation of some of the largest and most significant claims resolution programs in history, including the NFL Concussion Settlement in this Court; the Vioxx personal injury settlement; the Fire Victim Trust providing compensation for claims arising from California wildfires; the facilities for BP oil spill claims; the fund for victims of the October 1, 2017 mass shooting at the Harvest Musical Festival in Las Vegas; and the administration of the national opioid settlement and other opioid litigation programs. We serve as neutral administrators, special masters, or trustees in resolution programs.

**3. *Our Role in this Settlement Program.*** BrownGreer has served as liaison counsel for Wyeth to the AHP Settlement Trust (the “Trust”) since shortly before the Court approved the Nationwide Class Action Settlement Agreement (“Settlement Agreement”) in Pretrial Order No. 1415, dated August

28, 2000, in *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation*, MDL Docket No. 1203 (E.D.Pa.). To avoid any question about our neutrality as the Claim Administrator, BrownGreer will withdraw from its designation as counsel for Wyeth immediately upon its appointment as the independent Claim Administrator.

**4. *The General Basis of this Declaration.*** The information in this Declaration is based on information developed by me and those acting under my supervision who report to me.

**5. *Claim Information from the Trust.*** Under Section VIII.F.1 of the Settlement Agreement and Pretrial Order No. 2683, Wyeth has access to all claim information at the Trust. Originally, the Trust entered material facts from claims and processing into a database. Until 2016, we had online access directly into a view-only version of the Trust's database, allowing us to look up claims, see the data, and read and download PDF images of claim forms, notices sent by the Trust, echocardiogram reports and other medical records, payments made, and other actions on claims. BrownGreer maintains its own database of all activity in which we have participated relating to the Diet Drugs, to which we refer as the "Diet Drugs Litigation Database" or the "DDLDD". Each week, the Trust transferred all data in its database electronically to BrownGreer for inclusion in our DDLDD. The Trust, however, discontinued the online version of its database on January 29, 2016. At that time, we received a computer hard drive from the Trust containing all of the Trust's data and electronic

images of materials up to that point.<sup>1</sup> Afterwards, the Trust periodically sent us a USB storage device with new claim information. We uploaded the contents of each USB into the duplicate copy of the Trust's claim database in our DDL. We received the last USB update from the Trust on December 6, 2022. Afterwards, a Trust employee informed BrownGreer when a new Matrix claim was submitted to the Trust. At present, Trust counsel Jules Henshell relays that information to us. Mr. Henshell emailed us a list of the claims in process at the Trust on January 25, 2023, and informed us on April 13, 2023, that no new claims had been submitted to the Trust since then.

**6. *Nature of the Claims Information Used in this Declaration.***

BrownGreer relies on the data sent us by the Trust, information presented by the Trust in its reports to the Court, and our analysis of Trust data to provide the Trust claim information and statistics reviewed in this Declaration. We consider this information to be reasonably accurate but not guaranteed, because this information is derived from a source over which BrownGreer has no control.

**7. *Registered Class Members and Matrix Claim History.*** According to the Trust database and our DDL, 564,248 Diet Drug users registered in the Settlement Program before the deadlines to do so. The Settlement Program experienced this activity on claims for Matrix Compensation Benefits:

- (a) Since it opened, the Settlement Program has received a total of 93,643 claims for Matrix Compensation Benefits.
- (b) Of those claims, 52,522 sought payment on Matrix Level I or II for presurgical valvular conditions.

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<sup>1</sup> Class Counsel also received a Trust computer and hard drive with the Trust claimant database.

- (c) At the time of the approval of the Ninth Amendment in 2005, the Trust had 42,298 Matrix claims to process, was paying an average of \$22,474,563 in Matrix claims monthly, received an average of 368 Matrix claims a year, and had an annual budget of \$48,259,522. *See* Memorandum in Support of Joint Motion for the Entry of AHP Settlement Fund Revised Reporting Requirements Court-Approved Procedure and Agreed Funding Procedure 2018-01 (Doc. No. 5342, filed on 10/15/18) at 3.
- (d) By January 1, 2019, four years after the final cut-off date to file new Matrix claims for most Class Members, there were 3,348 Class Members who remained potentially eligible to seek Matrix benefits.
- (e) Since its inception, the Settlement Program has paid \$2,082,220,537 in Matrix Compensation Benefits to 6,114 claimants and \$10,264,387 to their associated Derivative claimants.

**8. *More Recent Matrix Claim History.*** A settlement claims facility often is judged by how long it takes to process its claims. Based on information from the Trust and Mr. Henshell, we have determined there currently are four Matrix claims in process at the Trust: one submitted in 2020, one in 2022, and two in the first quarter of 2023. From 2019 through 2022, the Trust received 16 claims for Matrix Compensation Benefits. It has finished handling 13 of those 16 claims to either payment or denial, needing this amount of time to do them:

- (a) For all 13 claims, the average amount of time from submission to payment or denial was 348 days (about 11.6 months).
- (b) Of the 13 claims, five of them had steps that took longer than others (such as additional medical review; a Settlement interpretation issue over whether the aortic stenosis defined in the Settlement Agreement includes prosthetic aortic stenosis to reduce a claim to Matrix B; a missing medical records issue; deficiency notices from the Trust for other things that made the file incomplete; medical audit and then a Show Cause proceeding before the Court). Those five claims averaged 553.8 days to get through all their processing, which was over a year and a half.

- (c) Eight of the 13 claims did not need any such additional steps. Those eight averaged 219 days from start to finish (7.3 months).

**9. *Trust Administrative Expenses Relative to Matrix Claims Received and Paid.*** Settlement programs also are evaluated and audited by comparing the number of claims handled and the amount of benefits paid to the administrative costs incurred by the settlement trust or administrator to perform those functions. In most settlement programs, the average per claim administrative cost ranges from about \$250 to \$2,000 a claim. In programs where claim evaluation is especially complex or involves multiple levels of review and appeals, that per claim cost might range as high as \$4,000 to \$4,500. In the four years from 2019 to 2022, the Trust received a total of 16 new Matrix claims. Over that same period, it paid out \$7,743,309 in Matrix benefits on 17 claims, six of which had been submitted in a previous year. After reviewing the Quarterly Report of the AHP Settlement Trust as of March 31, 2023, the year-end Quarterly Reports of the AHP Settlement Trust for the years 2019 through 2022, filed with the Court, the information received from the Trust on claims received, data from the Trust claim database and our DDL, and Matrix payments due to claimants as listed in the Quarterly Settlement Fund Notices received from the Trust, we created this table on the Trust's administrative expenses, Matrix claims received and paid, and the average cost per claim paid from 2019 through the first quarter of 2023 (two claims have arrived in 2023):

<b>TRUST ADMINISTRATIVE EXPENSES AND MATRIX CLAIMS RECEIVED AND PAID (2019-2023)</b>						
	<b>Year</b>	<b>Claims Received</b>	<b>Claims Paid</b>	<b>Matrix Benefits Paid</b>	<b>Trust Actual Expenses</b>	<b>Avg. Cost Per Claim Paid</b>
<b>1.</b>	2019	4	5	\$1,088,716	\$1,174,214	\$234,843
<b>2.</b>	2020	5	3	\$2,002,055	\$1,088,446	\$362,815
<b>3.</b>	2021	5	6	\$3,173,545	\$993,437	\$165,573
<b>4.</b>	2022	2	3	\$1,478,993	\$983,672	\$327,891
<b>5.</b>	Q1 2023	2	0	\$0	\$257,352	None paid
<b>5.</b>	<b>Total</b>	<b>18</b>	<b>17</b>	<b>\$7,743,309</b>	<b>\$4,497,121</b>	<b>\$264,537</b>

We also can pinpoint some specifics about the Trust's handling of Matrix Claims:

- (a) In 2022, the Trust was paying an average of \$360,631 in Matrix claims quarterly (\$120,210 monthly), received two new Matrix claims, and spent \$983,672 in total ongoing operating expenses. *See Quarterly Report of the AHP Settlement Trust as of December 31, 2022 (Doc. No. 5397, filed on 1/26/23) at 3, 6.*
- (b) In 2022, the Trustee's compensation of \$20,000 monthly amounted to a cost of \$80,000 per claim paid to Class Members that year.
- (c) In the first quarter of 2023, the Trust received two new Matrix claims, while it paid no claims and accumulated \$257,352 in expenses. Those expenses included \$60,000 in Trustee fees and \$82,807 in claims administration-related professional fees. *See Quarterly Report of the AHP Settlement Trust as of March 31, 2023 (Doc. No. 5401, filed on 4/17/23) at 2, 5.*

**10. *The Trust's Recent Annual Budgets.*** The Trust submitted an operating expense budget of \$1,009,800 to the Court for 2022. *See 12/10/21 AHP Settlement Trust 2022 Proposed Budget Letter, approved by the Court on 12/14/21.* Claims professional fees, which include outside counsel fees, CEP Expert fees, and computer consulting costs, were \$346,776 for 2021 and budgeted at \$353,000 in 2022. The Trustee's compensation in 2022 was \$240,000 annually, or \$20,000

monthly. The next highest expense in the budget was \$209,500 for D&O/E&O insurance for the Trustee and its three part-time staffers. Payroll and related expenses were budgeted at \$69,800 for 2022. On January 31, 2023, two of those part-time staff were laid off. There were \$40,000 in “other” costs listed in the 2022 budget, including \$25,000 for off-site storage of 5,800 boxes of claimant materials. There was also a 2022 line item for office rent of \$19,500. The Trust ended its office lease on January 31, 2023. On December 8, 2022, the Trustee submitted a letter to the Court concerning the Trust’s proposed budget for 2023 and requested that the Trust operate at the 2022 Court-approved budget levels until the Parties presented a new Trust operating structure to the Court for its consideration. *See* 12/8/22 AHP Settlement Trust 2023 Proposed Budget Letter, approved by the Court on 12/14/22. On December 14, 2022, the Court granted the Trust permission to continue to operate under the 2022 budget for the present. By letter of February 9, 2023 to the Court, Mr. Rudolph submitted his resignation as Trustee, effective on the later of April 10, 2023, or the date when his successor was appointed.

**11. *Current Trust Processes.*** The Trust continues to receive claims by mail and operate a paper process with no online claim submission or processing functionality. The Trust administers the official website for the Settlement Program, [www.settlementdietdrugs.com](http://www.settlementdietdrugs.com). The last entry on the Reports page of that

website is from 2015 , when the 2015 Trust Annual Report was posted, and the last page on the Arbitration Processes page of the website was in 2017, though the most recent Pretrial Order involving Arbitration was issued on April 24, 2019. *See* Pretrial Order No. 9512 (Doc. No. 5362, filed 4/24/19). At the Trust, the review of claims to determine whether the records show the medical diagnosis and conditions necessary to qualify for payment on a higher Matrix Level is done by an Auditing Cardiologist using a paper file and tapes or discs of echocardiograms. Under current practice, either Class Counsel or Wyeth may have the CEP assess the claim file when they see a problem in any of the medical findings by the Trust's Auditing Cardiologist.

**12. *Age 80 Group Membership.*** Section I.B.2 of the Tenth Amendment to the Settlement Agreement defined Class Members who may seek and be paid Incremental Matrix Compensation Benefits as the “Age 80 Group” of Class Members. The Eleventh Amendment calls them “Eleventh Amendment Class Members.” Under the Settlement Agreement, Matrix Compensation Benefits are paid for qualifying conditions diagnosed before the Class Member turns 80 years of age. Under CAP 16, a Class Member must submit a claim within four years after the diagnosis. As Class Members reach age 84 (age 80 plus the four years to submit a claim), or four years pass after the Class Member's death (death as a possible qualifying event plus the four years to make a claim), they drop out of

membership in the Age 80 Group (Eleventh Amendment Class Members). Class Members also have no further eligibility after they are paid on Level V, which is the highest Matrix Level. In addition, as Class Members age beyond age 69, the amount of benefits payable decline, which can mean that a Class Member's prior payment would exceed that available on a higher Matrix Level today. All these factors affect how the list of Class Members still eligible to make a Matrix claim is compiled.

**13. *Developing the List of Age 80 Group Class Members.*** In March 2020, we sent Trustee Martin Rudolph an Age 80 Group Class Member list we had prepared based on the Trust's database. Mr. Rudolph compared it to the Trust's Age 80 Group list and sent us information on the Class Members (1) on both the Trust's and Wyeth's lists; (2) on the Trust's list and not on Wyeth's; and (3) on Wyeth's list and not on Trust's. There were 3,089 Class Members on which Wyeth and the Trust agreed. Combining both lists resulted in one with 4,053 Class Members. We then submitted all those names to a national death database to try to find if any of the persons on the list had passed away and, if so, when. The results returned 782 Class Members with dates of death verified by Social Security Number and name matches or date of birth and name matches. Those who passed away more than four years ago came off the Age 80 Group list. In December 2020, we agreed with Trust counsel Jules Henshell on a definitive list of 3,102 Age 80

Group Class Members who could still make a Matrix claim if their conditions progressed to a higher Matrix Level.

**14. *Updated Date of Death Query.*** On January 27, 2023, we again submitted the Age 80 Group list to a national death database to bring it current. This identified 340 Class Members with dates of death verified by Social Security number-name matches or Social Security number-date of birth matches with name variations verified by obituaries. Of them, we again kept Class Members on the list who still had time to file a claim based on their death as the qualifying event for their progression claim.

**15. *Attributes of Eleventh Amendment Class Members.*** As of June 1, 2023, there were 2,699 Eleventh Amendment Class Members:

- (a) The 2,699 total includes 342 Class Members (12.67% of the entire group) where a payment on a higher Matrix Level in 2023 would not exceed what the Class Member already has been paid under the current Matrix values. Because the 2% annual increase in Matrix Grid amounts could restore their eligibility to a certain extent, these persons are monitored as still in the group until they reach an age where such restoration is not mathematically possible, largely because the amounts payable in the 70 to 79 age bracket are 50% of those payable in the 65 to 69 age group.
- (b) The 2,699 total includes 358 persons (13.26% of the group) who are older than age 79, but are kept in the group number until four years after they turn age 80, to allow for the four-year claim filing period.
- (c) The net number of persons who are under age 80 and would be paid a positive incremental amount today is 2,040 (75.58% of the 2,699).

- (d) Of the 2,699, there are 2,201 (81.55%) shown in the Trust's database as represented by their own counsel, while 498 (18.45%) are listed as *pro se*.
- (e) None of the Eleventh Amendment Class Members is younger than 35. There are 1,158 (42.91%) in the age brackets covering ages 35 to 69; 1,183 (43.83%) are ages 70 to 79 where the amounts payable on the Grid are 50% of those in the adjacent 65-69 bracket.; 358 (13.26%) already are older than 79 but have four years to make a claim, as mentioned in (b) above.
- (f) 1,931 (71.55%) of the Eleventh Amendment Class Members were paid on Matrix A, while 768 (28.45%) are on Matrix B where the payment amounts are 20% of those on Matrix A.
- (g) 2,064 (76.47%) were paid on Level I or Level II; 580 (21.49%) on Level III; and 55 (2.04%) on Level IV.
- (h) On average, it has been 18.7 years since the Eleventh Amendment Class Member's last Matrix payment.

The latest Eleventh Amendment Class Member to turn age 80 will do so on September 30, 2063, with four years from then (September 30, 2067) to file a claim if she were diagnosed with a higher Matrix Level condition before she turned 80.

**16. *The Consensus Expert Panel.*** In PTO No. 6100, entered on March 31, 2006, at the request of Class Counsel, Wyeth and the Trust, the Court approved Court Approved Procedure No. 11 which appointed a three-person Consensus Expert Panel (the "CEP") to oversee the Trust's medical audit of Matrix claims. The highly credentialed cardiologists who comprise the CEP are:

- (a) John M. Dent, M.D., designated by the Trust. Dr. Dent is Professor of Cardiovascular Medicine at the University of Virginia School of Medicine.
- (b) Harry Rakowski, M.D., FRCP, FACC, FASE, designated by Class Counsel. Dr. Rakowski is the Director of the Hypertrophic Cardiomyopathy Clinic at Peter Munk Cardiac Centre, University Health Network, Toronto, Ontario, and a Professor of Medicine at the University of Toronto.
- (c) Neil J. Weissman, M.D., designated by Wyeth. Dr. Weissman is President, MedStar Health Research Institute, and Chief Scientific Officer, MedStar Health and Professor of Medicine at Georgetown University School of Medicine.

17. ***Parallel Processing Programs.*** Wyeth (BrownGreer) and Class Counsel joined together for two rounds of a “Parallel Processing Program” to move Matrix claims along more quickly than the Trust could do them. We first joined together with Class Counsel by agreement for the Parallel Processing of Accelerated Implementation Option (“AIO”) Claims from January 23, 2001 to September 30, 2002, when the Trust terminated the program (the “PPP I”). When the Parties moved for the Court to order medical review of 100% of Matrix claims in 2002 and asked for an emergency stay to prevent payments by the Trust on medically unsound claims, the Parties recited in their memorandum in support of the motion for stay, filed September 24, 2002, that “the Trust determined based on the claims processed to date, primarily from those who filed AIO claims [that were processed in the PPP I], that 2,157 claimants should be paid \$858,468,235.” *See* Document No. 203235 at p. 21. The Parties collaborated a second time to process Matrix Level III, IV and V claims after Pretrial Order No. 3882 on August 26, 2004, in which the Court authorized Wyeth and Class Counsel to resume the

Parallel Processing of High Level claims to facilitate their expedited review and payment. Based on the records we have of this second Parallel Processing Program (“PPP II”), in the 22 months of the PPP II from 2004 to 2006, Wyeth and Class Counsel identified approximately 900 claims for payment of a total of \$236,188,112 in Matrix Benefits as payable, averaging about 41 claims a month.

**18. *Arbitration Proceedings Under the Settlement Agreement.*** As part of the tracking of Matrix claims in our DDLT, we have monitored their status through any arbitration and show cause proceedings. In the 23 years since 2000, there have been 485 arbitration proceedings, 352 of which were withdrawn or dismissed before the issuance of a decision by an arbitrator. Historically, objections concerning attorneys’ fees and expenses payable to a Class Member’s individual counsel from a Matrix payment and Medicare and other healthcare reimbursement claims or liens were heard first in arbitration and then appeal to the Court, but in 23 years there has never been an arbitration filed by either a Derivative Claimant or a lienholder, and only four arose over attorneys’ fees, three of which were withdrawn before decision. Of the 123 Arbitration claims finally adjudicated by an arbitrator, the District Court, or the Third Circuit Court of Appeals, 94% (116) were decided in the Trust’s favor, while 6% (seven cases) were in favor of the Class Member. In the last six years, there have been only two arbitrations, both of which were decided in favor of the Trust, one in 2017 and one in 2020.

**19. *Show Cause Proceedings Under the Settlement Agreement.*** We also keep track of show cause proceedings before the Court when a Class Member

objects to the medical findings by the Trust on a Matrix claim. Our records indicate that in 23 years there have been 1,269 show cause proceedings decided on the merits. Of them, 1,184 (93.3%) sustained the Trust's outcome on the claim at issue, while 85 (6.7%) found for the Class Member. In 2019, there were two show cause denials. The last show cause was a denial of a claim in 2021.

I, Orran L. Brown, Sr., declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on this 14th day of June, 2023.



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Orran L. Brown, Sr.

**EXHIBIT C**  
**Declaration of**  
**Michael D. Fishbein**

**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

MDL NO. 1203

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This Document Relates To: Sheila Brown,  
et. al. v. American Home Products  
Corporation

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CIVIL ACTION  
No. 99-20593

**DECLARATION OF CLASS COUNSEL, MICHAEL D. FISHBEIN,  
IN SUPPORT OF JUDICIAL APPROVAL OF THE ELEVENTH  
AMENDMENT TO THE NATIONWIDE CLASS ACTION  
SETTLEMENT AND APPOINTMENT OF  
BROWNGREER, PLC AS “CLAIM ADMINISTRATOR”**

Subject to the penalties for unsworn falsification to authorities set forth in 28  
U.S.C. § 1746 Michael D. Fishbein, Esq. hereby declares the following:

1. I am attorney admitted to the bar in 1977. During my forty-six-year career I have had substantial experience in litigating and resolving mass tort and class action cases pending in federal courts. Among other things I am one of the attorneys who was appointed to represent the class of Diet Drug recipients certified in this case and the principal architect of the Nationwide Class Action Settlement with American Home Products [Wyeth] in the above-entitled matter (“The Class Action Settlement”).

2. I submit this declaration in support of judicial approval of the Eleventh Amendment to the Class Action Settlement Agreement and, in particular, the appointment of the firm of BrownGreer, PLC as Claim Administrator to administer the remaining settlement benefits that may become payable over the coming decades to a group of less than 3,000 Class Members who remain eligible to receive such benefits if, as and when their underlying valvular heart disease (“VHD”) progresses in severity such that they qualify for additional “Matrix Benefits” as further discussed in this declaration.

3. The Class Action Settlement Agreement was originally executed on November 18, 1999 to provide a range of “cradle to grave” benefits to the six million individuals who ingested the Diet Drugs, Pondimin and Redux, and who were thereby exposed to an increased risk of VHD. Among these benefits was a set of Settlement Matrices that provided five levels of increasing, but age-adjusted amounts of financial compensation for those who developed serious levels of VHD. In rough terms, Matrix Levels I & II provide compensation for presurgical levels of disease and Matrix Levels III-V provide compensation for those who needed valve surgery or whose VHD progresses beyond that to near fatal or fatal outcomes. Under the terms of the Class Action Settlement Agreement Class Members whose underlying VHD progressed in severity to a point entitling them to a higher Matrix level were entitled to receive from the Settlement Fund as

additional, incremental compensation the difference between the amount specified by the Matrices for the higher level Matrix condition, if any, and the Matrix payment amount that they previously received.

4. As originally conceived, the Class Action Settlement was to be administered by the “AHP Settlement Trust”, a Trust composed of seven court-appointed Trustees who were to adjudicate claims for Matrix benefits based on the certification of a board-certified cardiologist with Level III training in echocardiography. However, when it appeared that a substantial percentage of the Matrix claims submitted to the Trust were based on echocardiograms in which the images were manipulated with inappropriate settings and supported by questionable physician attestations the Court invoked the claims integrity mechanisms provided by the Class Action Settlement Agreement and ordered a substantive medical review or “audit” of each Matrix claim prior to payment. This one hundred percent audit requirement added a layer of complexity to an already complex compensation regime. The complexity of the settlement is reflected in the fact that the Court entered approximately 8,000 orders and adopted seventeen “Court Approved Procedures” governing various aspects of Settlement administration since judicial approval of the Class Action Settlement in August, 2000.

5. As originally constituted, the Trust had difficulty administering the one hundred percent audit requirement, adjudicating Matrix claims and promptly paying Matrix compensation benefits to deserving class members while filtering out unmeritorious claims. To resolve these challenges the Parties took a number of steps. Three of the most important ones were the creation of the Parallel Processing Program (“PPP”) and the execution of two major amendments to the Class Action Settlement Agreement. The PPP was a joint endeavor between BrownGreer and Class Counsel to facilitate the audit of Matrix claims by jointly determining if claims were sufficiently complete to proceed to audit and to assist Class Members in completing claims submissions if they were determined to be deficient. Second, they executed the Seventh Amendment, which transferred all the Level I and II Matrix claims to a separate claims facility for processing in accordance with a streamlined system for systematic medical review of the claims by a group of over one hundred experienced cardiologists with Level III training in echocardiography. This new claim facility was administered by Heffler, Radetich and Saitta, LLP, an accounting firm with enormous experience in administering class action settlements. Under the Seventh Amendment a dedicated fund of \$ 1.275 billion over and above the amount of the original Settlement Fund was created to pay all claims covered by the Seventh Amendment, pro rata, based on the outcome of the independent medical reviews of all such claims. To provide for administration of

both existing and future Level III, IV and V Matrix claims the Parties entered into the Ninth Amendment which replaced the seven Trustees of the AHP Settlement Trust, who collectively had no experience in settlement administration, with a single Trustee, Martin Rudolph, a certified public accountant with substantial experience in class action administration.

6. By the Matrix Payment Cut-Off Date, December 31, 2015, sixteen years after the settlement was first executed, the rights of Class Members to recover benefits under the terms of the Class Action Settlement Agreement expired as to all Class Members except for approximately three thousand Diet Drug recipients who had received Matrix benefits before the adoption of the Seventh Amendment and who were, therefore, outside of its terms. These Class Members remain eligible to recover incremental Matrix progression benefits at Matrix Levels III, IV and/or V if their underlying Matrix disease progresses to such levels before age 80. These progression Matrix claims continued to be processed by the Trust under the leadership of Mr. Rudolph.

7. While the number of Matrix progression claims thus far filed by this limited number of Class Members has been very small, the Trust's per claim cost of processing these claims has been huge. In the four-year period from 2019 through 2022 inclusive, the Trust received a total of sixteen Matrix Progression claims – an average of four per year. The Trust's stated cost to process these claims has

averaged approximately \$250,000 per claim over this four-year period. And it has taken an average of 348 days to process the claims from initial submission to final payment or denial. Plainly, the complex engine constructed to process and adjudicate tens of thousands of Matrix claims has been both too expensive and too slow as applied to the processing and adjudication of a handful of claims each year.

8. As the Parties were engaged in discussions regarding steps that could be taken to reduce the costs associated with administering incremental Matrix progression benefits and increase the speed of delivering compensation to deserving Class Members, Mr. Rudolph provided the Court and the Parties with notice dated February 9, 2023 that he intended to resign as Trustee effective upon the later of April 10, 2023 or the date his replacement is appointed.

9. Thus, the Parties were faced with the considerable challenge of locating someone who had the knowledge, experience and ability to administer a complex settlement requiring familiarity with literally thousands of pages of settlement documents, thousands of court orders, scores of Court Approved Procedures, the principles of physiology, medicine, cardiology and echocardiography on which the Settlement was based, and familiarity with all the players involved with the architecture of Settlement Administration, including the auditing cardiologists, members of the Consensus Expert Panel, claimant's attorneys, lien resolution counsel and the like. And even if they found someone suitable, the learning curve

here is so substantial it would likely cost hundreds of thousands of dollars in administrative expense and months or years of time for such a person to get “up to speed” so that Matrix adjudications would take place accurately and efficiently with respect to what looks like it will be less than half dozen claims per year.

10. To address these circumstances I personally suggested the structure for what ultimately became an Eleventh Amendment to the Class Action Settlement Agreement that will, if approved, create a streamlined method for processing all remaining claims for Incremental Matrix Benefits to be administered by BrownGreer, PLC as claim administrator.

11. BrownGreer attorneys have served as Settlement Administration counsel for Defendant Wyeth from shortly after the Settlement Agreement was originally executed in the fall of 1999 through the present. If the Eleventh Amendment is approved, then BrownGreer will resign from that position so that it may act as Claim Administrator without any appearance of conflict.

12. In the unique circumstances presented here Class Counsel firmly believes that the appointment of BrownGreer as Claim Administrator is not only appropriate but is the only option reasonably available to secure prompt, reliable, accurate adjudication of the remaining Matrix claims herein at anything approaching a reasonable cost.

13. I first met the principal shareholders of BrownGreer, PLC, Attorneys Orran Brown and Lynn Greer, shortly after the execution of the Class Action Settlement Agreement when they were retained as settlement administration counsel for Wyeth. As I came to understand it, their role in the case was to organize and systematize all the claim data submitted to the Trust and effectively shadow the Trust's administration of the Settlement in order to identify and respond to problems that might develop in its administration.

14. Their experience made them well suited to that purpose. Mr. Brown and Ms. Greer had worked together to successfully resolve more than 300,000 claims arising from the use of the A.H. Robbins' Dalkon Shield Intrauterine Device that were the subject of three Trust funds that had been created as part of the Chapter 11 proceedings filed by Robbins. As a result of the Brown and Greer's work the Trust funds paid out nearly \$3 billion to Dalkon Shield claimants ten years ahead of schedule, closing out one of the largest mass tort cases in history.

15. In its role as Wyeth's Settlement Administration counsel BrownGreer quickly, efficiently, and accurately assimilated all of the data submitted to the AHP Settlement Trust, which placed them in a better position than the Trust itself to understand the data in real time on both a macro and micro level. The firm did not keep its analyses to itself. Over the 23-year history of this litigation BrownGreer consistently kept Class Counsel informed regarding important findings from the

data and accurately performed any and every data query that was ever requested by Class Counsel. This was a distinct benefit to all Parties including Class Counsel. It allowed Class Counsel to take immediate steps to facilitate the proper implementation of the Settlement and address problems as they occurred rather than trying to manage them after the fact. Three concrete examples serve to make the point.

16. First, BrownGreer's data analysis determined that the incidence and type of Matrix level VHD claimed by Class Members was distinctly at odds with the medical and epidemiological evidence on which the settlement was predicated. Thus, alerted to the need to investigate, Class Counsel retained statisticians, epidemiologists and cardiologists who developed and implemented a program to vet a large, statistically significant, stratified, random sample of claims to determine if they were medically well founded, the outcome of which led Class Counsel to join with Wyeth in making a successful application for an order requiring a medical audit of one hundred percent of the Matrix claims. This saved the Settlement Fund from being dissipated in payment of unmeritorious claims.

17. Second, when the Trust initially proved ineffective in quickly, reliably and accurately adjudicating Matrix claim submissions, BrownGreer used its administrative acumen to operate the Parallel Processing Program ("PPP") with Class Counsel whereby the Parties jointly determined if claims were complete,

helped to make them complete if they were not, determined if claims were payable without the need for a full blown audit and transmitted completed claims for audit if they were not found payable in their face.

18. Third, when the Parties negotiated the Seventh Amendment to resolve the massive number of Level I & II Matrix claims that were suffused with manipulated echocardiograms and false and misleading representations, BrownGreer's command of the demographic characteristics of the more than 70,000 affected Class Members as well as the nature and status of their Matrix claims allowed the Parties make realistic projections of the financial impact of the amendment and thereby develop terms that were realistic and that would gain the acceptance of virtually all Class Members who were subject to that Settlement instead of cratering it with opt-outs.

19. Over the period that the Diet Drug litigation was pending BrownGreer developed a well-deserved national reputation for fairly, efficiently, expeditiously, and accurately managing the settlements of a wide variety of mass and class actions in federal courts throughout the country. A copy of the firm brochure summarizing the extensive and varied claims processing and litigation management experience of the BrownGreer firm is attached as Exhibit "1" to this Declaration. As reflected therein, the firm has so thoroughly earned the trust of Plaintiffs, Defendants, and federal judges that it has been appointed to administer

and has successfully managed eighty-six separate economic loss class/mass action settlements and 33 separate class/mass personal injury programs. Among these, by way of example, have been the \$4.85 billion personal injury settlement in the Vioxx MDL litigation that was pending in the Eastern District of Louisiana before Judge Eldon Fallon; the ongoing \$2.8 billion settlement of the ASR Hip Litigation pending in the Northern District of Ohio before Judge Jeffrey J. Helmick; and the \$11 billion settlement of the BP/Deepwater Horizon MDL litigation pending in the Eastern District of Louisiana before Judge Carl Barbier. Altogether the firm has administered 119 mass/class claim resolutions, processing approximately 4.5 million claims and delivering over \$33 billion in benefits to 39.5 million class members/claimants.

20. Settlements of economic loss claims typically make recovery dependent on straightforward, objective economic data like how much stock or how many widgets the claimants purchased during what period. There are a number of companies that can competently input this data and efficiently and accurately mete out benefits based on such data. Settlements of personal injury claims in a class or mass context typically create a grid or matrix that makes recovery dependent on multiple factors that include the claimant's medical condition, the evaluation of which often involves the judgment of medical personnel based on tests that often themselves involve a degree of professional subjectivity. They also provide for

resolution of the various subrogation liens that routinely attach to personal injury recoveries and the derivative claims of persons who are related to and/or dependent upon the individual who was injured. Thus, there is far more data to obtain and verify to adjudicate a personal injury claim in a mass settlement context than there is in a case involving only economic loss. Few companies are suited to this task, and I know of none who are as good at it as BrownGreer.

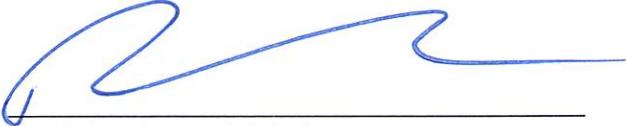
21. By virtue of its extensive experience in the administration of the complex class settlement in the Diet Drug litigation over the past two-plus decades and given its overall experiencing in crafting and deploying reliable, accurate, prompt and cost effective personal injury settlement administration programs BrownGreer is uniquely suited to assume the burden of administering the processing of the remaining Incremental Matrix Benefit Claims that emerge at this advanced stage in the settlement process. Indeed, I believe that we are lucky that the firm is willing to do so.

22. Class counsel has no concern about the fact that BrownGreer will be moving into the role of Claim Administrator from its role as Wyeth's settlement administration counsel. First, in our experience BrownGreer has always acted with integrity and tenacious dedication to the principle that a mass resolution should be administered fairly and efficiently to effectuate its provisions at a reasonable cost and with reasonable speed. The fact that it represented Wyeth previously will not

affect this. Second, under the terms of the proposed Eleventh Amendment itself BrownGreer must provide Class Counsel with notice and an opportunity to comment on every material claim decision that BrownGreer proposes, and the Court has the power to review every such decision. Therefore, in the unlikely event BrownGreer were somehow to misapply a settlement term, the prospect of class counsel involvement and judicial oversight will assure that Claimants are not be adversely affected.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Date: June 13, 2023

  
\_\_\_\_\_  
Michael D. Fishbein, Esq.

**EXHIBIT 1**  
**BrownGreer PLC**  
**Firm Brochure**



Innovative Solutions. Exceptional Results

# Firm Overview

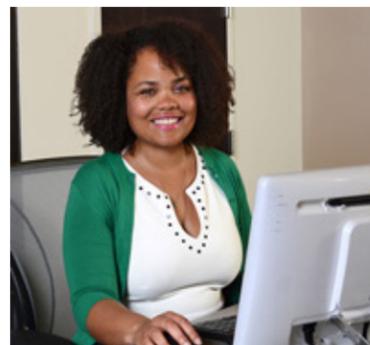


**BROWNGREER PLC**  
250 Rocketts Way  
Richmond, VA 23231  
information@browngreer.com  
(804) 521-7200  
www.BrownGreer.com



## Action, Integrity and Service.

The claims administration process moves quickly, requiring smart and nimble action to ensure the best possible resolution. BrownGreer was built with this in mind. Our relentless pursuit of excellence has allowed us to become a well-respected and sought after claims resolution law firm. We are known not only for our mastery of the technical and legal procedures in the claims resolution



process, but also for our ability to fulfill the requirements of any settlement program with integrity and respect. Choosing a claims administrator can be daunting. There are many factors to consider and every settlement has its own unique challenges. By selecting BrownGreer, you are choosing a partner that will be with you every step of the way.

## Why Choose BrownGreer?



### *First and foremost, we are lawyers.*

We can review and understand the legalities and nuances in every settlement agreement, as well as the implications of law that may come into play as we build your settlement program. That knowledge helps us identify potential obstacles, discuss them with you at the outset, and plan for them in the execution of your program.

### *We are cutting edge technology experts.*



Our lawyers are paired with highly skilled in-house technology professionals. Having our technology team on site gives us the advantage of working through the technical and security requirements of your program collaboratively in real time, ensuring you are receiving the best and most secure platform to execute your settlement.

### *We have deep and varied experience.*



Our principals, Orran Brown, Sr. and Lynn Greer, have been at the center of some of the most significant multiple claims resolutions for more than 30 years. As BrownGreer has grown, we have added to that foundation, creating a firm that can readily tackle programs of any scale across multiple industries and jurisdictions. From consumer products, food and beverage, and retail to financial services, pharmaceuticals, and medical devices, our settlement programs have ranged from several hundred class members to several million class members.

# MDL CENTRALITY

Powered by BROWNGREER

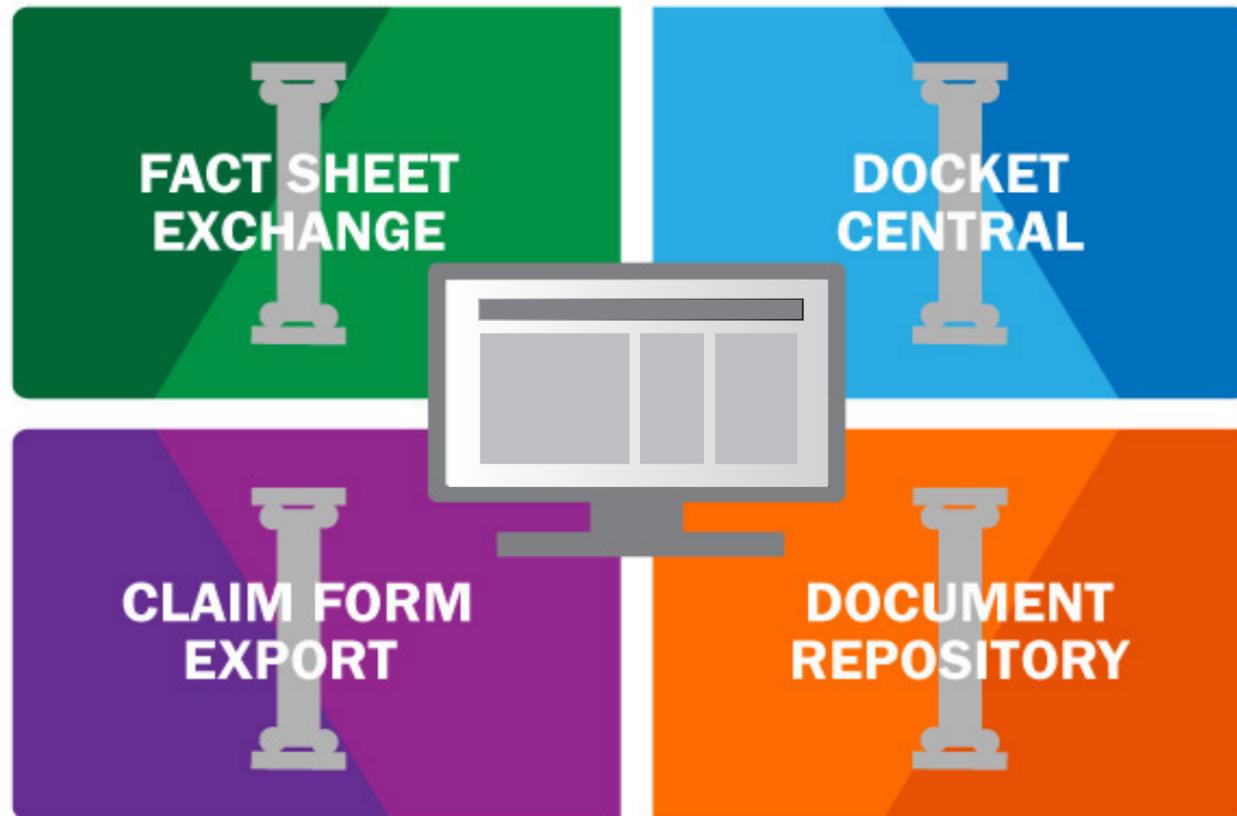
## The Answer to Your Litigation Management Needs

### Fact Sheet Exchange:

Exchange Fact Sheets and supporting documents through a secure online portal instead of by email or mail.

### Docket Central:

Automatically download and store court filings, eliminating the need to spend time and money uploading and distributing documents manually.



### Claim Form Export:

Export data and documents from Fact Sheets to Claim Forms, eliminating the need to spend time and money manually re-entering information already provided.

### Document Repository:

Store documents in a secure, online repository, eliminating the need to pay for and maintain a separate document storage solution.

## Harness the Power of Modern Information Management to Save Time and Money.

- Stop wasting time completing PDF Fact Sheets and serving them by email. Enter Fact Sheets online in a central database that gives you instant access to reports that aggregate all Fact Sheet responses.
- Stop paying to upload pleadings and orders to a document distribution vendor. Let MDL Centrality automatically harvest pleadings and Orders from ECF Notifications and send automated notification emails to all counsel.
- Stop paying to create and maintain a stand alone document repository. MDL Centrality is a central hub that hosts Fact Sheets, pleadings and Orders, and a document repository.
- Stop manually creating a database of Fact Sheet answers or relying on individual counsel to tell you what their cases look like. MDL Centrality creates an instant, real time database of Fact Sheet responses that you can use to monitor submissions, select bellwether cases, and review Fact Sheet responses for completeness.
- Stop negotiating settlement without a clear understanding of the potential number claims and the type of claimed injuries. The parties can use the data in MDL Centrality to satisfy the Court that a potential settlement is fair and should be approved. Then MDL Centrality can export Fact Sheet data to the settlement program, which will lead to rapid, efficient settlement program.

All features of MDL Centrality can be utilized as stand-alone products or combined to meet your unique case requirements.

# MDL Centrality Services

MDL Centrality is a custom-built data management tool designed specifically to manage information exchange and storage in mass tort litigation. MDL Centrality eliminates cumbersome, inefficient, piecemeal methods and centralizes case-specific discovery in a single online system. The standard features of MDL Centrality are as follows:

1. **Secure, Online Completion of Plaintiff Fact Sheets.** MDL Centrality allows plaintiffs to complete the Plaintiff Fact Sheet by using a secure, web-based interface. We convert the Court approved PFS into an online form that can be completed either within the MDL Centrality Portal or outside of MDL Centrality. Our online platform allows us to automatically aggregate PFS answers and information into reports, as detailed more fully in the reports section below.
2. **Online Upload of Supporting Documentation.** In addition to completing their Fact Sheets, firms can also upload or import supporting documentation through MDL Centrality. Each plaintiff has an individual document archive within MDL Centrality that contains all documents related to that plaintiff, whether they come from the Plaintiff, the defense, or a third-party record collection vendor.
3. **Comprehensive, Real-Time Reporting.** MDL Centrality includes a robust reporting feature that allows users to have

instant, real time access to anything that happens within MDL Centrality. We include several standard reports in the basic platform, examples of which are listed below. We can also create custom reports based on the needs of the parties.

- (a) **Fact Sheet Completion Status.** We track how many Fact Sheets have been submitted, how many have been started, how many have been submitted by each firm, and how many are outstanding.
- (b) **Plaintiff Information.** This report provides information about each plaintiff in the litigation, including demographic information, whether they have completed a questionnaire, the injuries alleged, the number and nature of their supporting documents, and their alleged damage amounts.
- (c) **Aggregated PFS Information.** These reports offer real-time information all answers within PFSs. These can be designed as full data exports of all PFS answers from all plaintiffs or can focus on specific questions or sections.
- (d) **Deficiency Information.** This report shows the number and basis of all deficiency notices issued by defendants, whether the plaintiff has responded, and the deadline to respond.

4. **Plaintiff Leadership Access.** Plaintiff leadership can access documents and PFSs submitted by all plaintiffs and can also access reports that aggregate information from all PFSs. This gives leadership a real time overview of case metrics and the opportunity to review materials submitted to the defense by all plaintiffs.
5. **Docket Repository.** MDL Centrality can include a keyword searchable docket repository, which allows the parties to access pleadings and Orders in the same portal that they use for Fact Sheet exchange. If the Court agrees to send EFC notifications to us, we can automatically download and distribute pleadings and Orders to all system users, which eliminates the need to pay PACER fees to access documents.
6. **Plaintiff Fact Sheet Review.** MDL Centrality includes a review platform that allows the defendant to review PFS answers and supporting documents for accuracy and completeness.
7. **Deficiency Notice Generation and Service.** MDL Centrality allows defendants to issue and serve custom Deficiency Notices on plaintiff's counsel. Using a template provided by defendants, MDL Centrality can export data from the Fact Sheet Review platform into Deficiency Notices that can be reviewed and served on plaintiff's counsel. All deficiency information, including the specific deficiencies, date of issuance, response deadline, and content of responses, is included in real time

reports that allow the parties to track all information related to deficiency notices.

8. **Defendant Fact Sheet Service.** The MDL Centrality Defendant Fact Sheet module allows defendants to import Defendant Fact Sheet responses from an excel spreadsheet into MDL Centrality, which automatically generates a PDF copy of the completed Defendant Fact Sheet. Defendants can review the PDF copy, revise as necessary, and then serve on plaintiff's counsel. Defendants can also upload or import supporting documents that can be served on plaintiff's counsel.
9. **Document Repositories.** MDL Centrality can include repositories for Court Orders, documents obtained in discovery, and other litigation related documents. These repositories can be configured to be accessed by all parties in the litigation or can be limited to only one party.
10. **Document Export.** If called upon to do so, we can facilitate the production of documents to a Court or defendant by exporting files to an FTP site or other similar file-sharing mechanism.
11. **Record Collection Import.** MDL Centrality can incorporate documents and information obtained by third parties, such as record collection vendors.
12. **Data Storage.** MDL Centrality includes unlimited data storage. There is no charge for data storage and there are no monthly or annual fees associated with data storage.

# Notice Administration — Knowledge, Creativity and Resourcefulness.

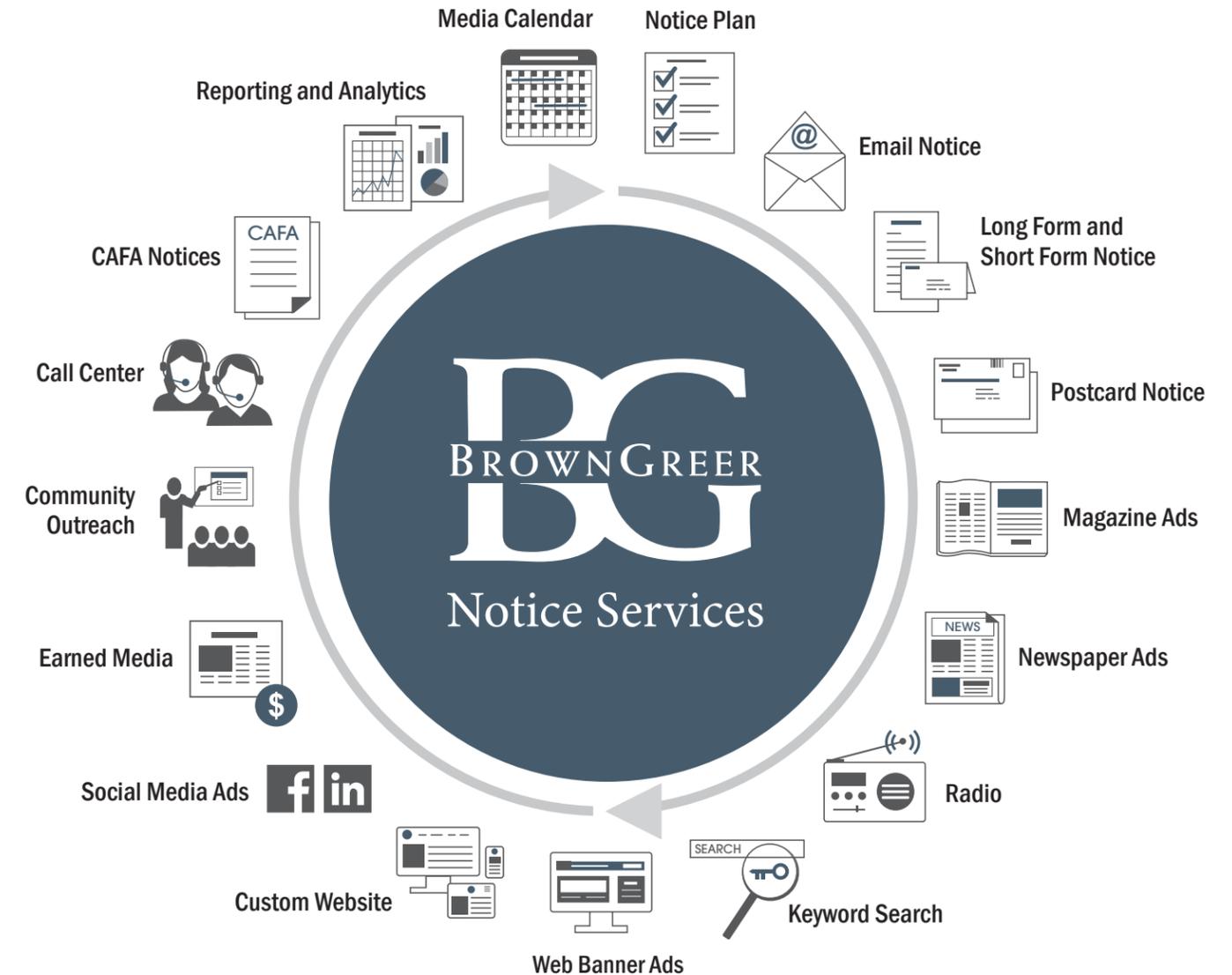
When designing notice plans, BrownGreer focuses on reaching potential class members using the most effective methodologies to target the impacted population. Each plan is created to inform them in clear terms of the existence of the proposed settlement, how it affects them, their rights and obligations under the settlement agreement, the actions they may take, any deadlines for acting, and the consequences of acting or failing to act by the deadline.

We have issued millions of direct class notices by email, short-form postcards, and/or long-form letters or notice packets. Our notice services follow through to the resolution of a settlement program. We have also issued millions of review determination notices and courtesy or instructional notices to class members



and their counsel.

BrownGreer also designs and executes public notice campaigns through traditional print and digital channels, including social media, that meet and exceed court mandated requirements for approval. Our goal in every public notice campaign is to connect with the right people in the right places, using sophisticated analytics such as geo-location and profile matching.



## Notice Administration Experience

<b>55+ MILLION</b> Total Notices Issued	<b>41+ Million</b> Class Notices	<b>14+ Million</b> Program Notices
--------------------------------------------	-------------------------------------	---------------------------------------

“[T]he notice provided by BrownGreer was state of the art and well-tailored to reach the maximum number of class members”

**The Hon. James F. Holderman**  
U.S. District Judge, Northern District of Illinois  
*In re Capital One Telephone Consumer Protection Act Litigation, MDL Docket No. 2416*

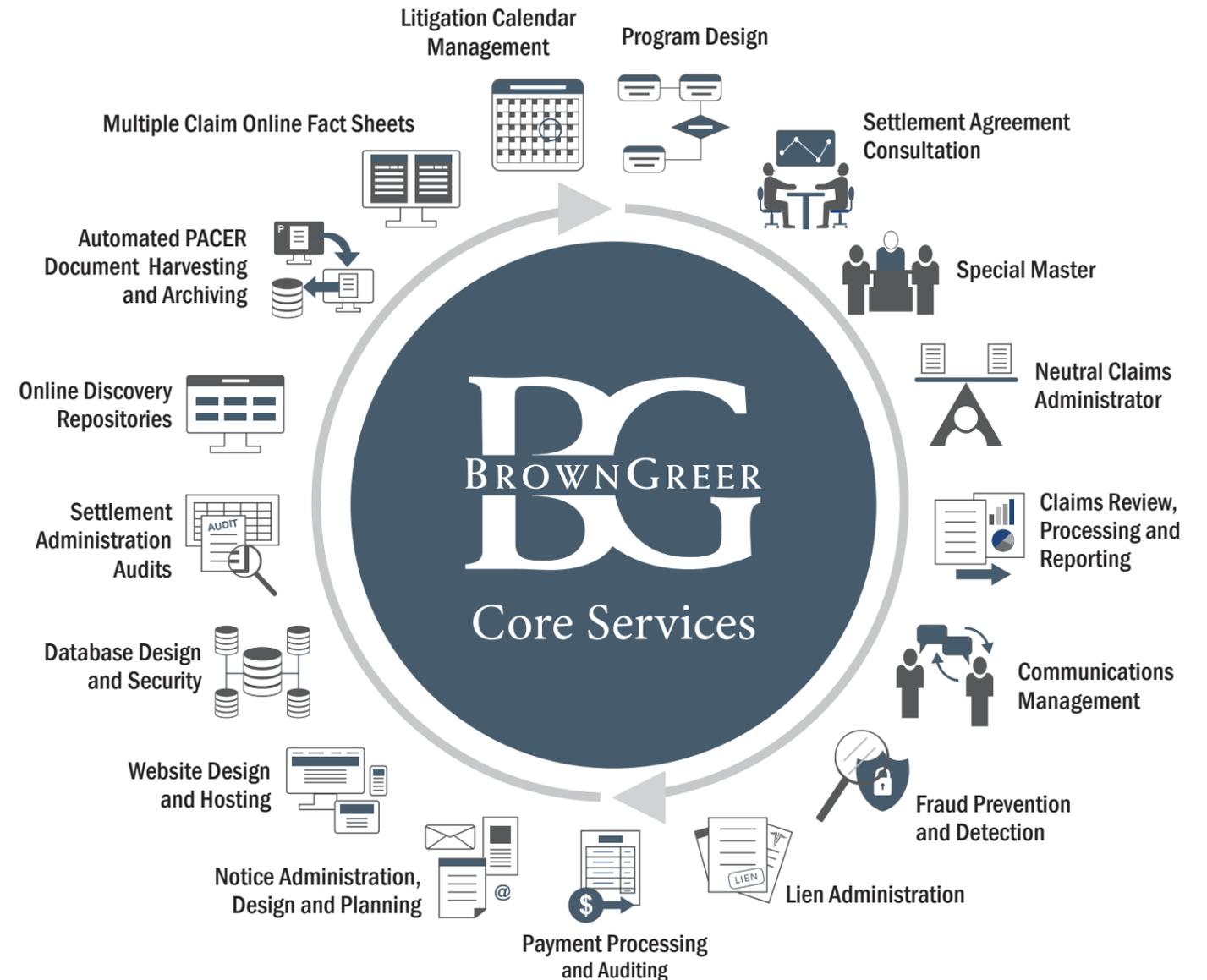
# Claims Administration — Experience, Commitment and Compassion.

Drawing on our collective knowledge, we assist clients with the full range of legal and administrative services necessary to design, approve and implement claims facilities created for the resolution of mass claims, notice campaigns, and product recalls. We can also assist in the management of mass claims litigation through our proprietary, MDL Centrality litigation management system.



We are proud to have served in some of our nation's most significant resolution programs, such as the \$4.85 billion Vioxx personal injury settlement, the ongoing \$2.8 billion ASR hip settlement, and the \$11 billion BP/Deepwater Horizon

settlement. Equally, we are honored to have been chosen to administer some of our country's smaller, but most sensitive settlements, including the One October Settlement Fund, a private settlement to resolve claims arising from the October 1, 2017 mass shooting at the Route 91 Harvest Festival in Las Vegas, Nevada, and the Catholic Diocese of Richmond Independent Reconciliation Program, a private settlement to resolve sexual abuse claims in the Richmond Catholic Diocese. As a result, we are familiar with the special and varying requirements associated with myriad settlements both nationally and globally.



## Claims Administration Experience

<b>\$33+ Billion</b> Paid to Claimants	<b>4.5+ Million</b> Claims Processed	<b>39.5+ Million</b> Class Members
-------------------------------------------	-----------------------------------------	---------------------------------------

“The expedited resolution of approximately fifty thousand personal injury claims could not have been achieved without the extraordinary effort and outstanding work put forth by BrownGreer PLC in its role as Claims Administrator”

**The Hon. Eldon E. Fallon**  
U.S. District Judge, Eastern District of Louisiana  
*In re Vioxx Products Liability Litigation*, MDL Docket No. 1657

# Trust Administration: Legal Acumen, Technical Skill and Comprehensive Service.

Orran Brown and Lynn Greer founded BrownGreer after working together to successfully resolve the Dalkon Shield Settlement Trust. From opening to closing, they handled the three trust funds created in the Chapter 11 bankruptcy proceeding of the A.H. Robins Company to resolve more than 300,000 claims related to the Dalkon Shield, an intrauterine device. The Trust paid out nearly \$3 billion 10 years ahead of schedule, closing out one of the largest mass tort cases in history.



The experience gained and lessons learned from that program are the foundation from which our comprehensive suite of Trust Administration services began.

## Victims' Trust Administration

Settlements involving victims' trusts are often challenging on many fronts. They involve intense media scrutiny,

emotionally charged issues, and claimants who are often hesitant to share their story. Administering these settlements requires significant experience coupled with a deft hand, empathy, and the ability to be compassionate while remaining unbiased.

BrownGreer is adept at handling these matters because we embody a culture of dignity and respect in everything we do. We have been retained

to administer victims' trusts in many contexts, from discrete matters with small classes to high-profile cases under a national spotlight. Every employee assigned to work on a victims' trust is specially trained in trauma-informed practices to ensure we are sensitive to each program's unique circumstances. In every instance, we work with counsel, claimants, Special Masters and the courts to ensure a fair resolution while upholding the utmost degree of professionalism and confidentiality.



## Special Master: Steadfast, Efficient and Definitive.

Our founding partners have experience serving as the Court-Appointed Special Master, with appointments in this role on several

significant cases. We have a reputation for fairly and effectively navigating a range of issues presented in complex cases, including:



Coordinating discovery and maintaining online discovery calendars



Conducting status calls with the parties



Issuing Rulings and Procedures and implementing Plans



Reporting to the Court and addressing pre-trial and post-trial matters

## Fund Allocation: Methodical, Fair and Transparent.

Determining how to equitably distribute funds to claimants in a way that is transparent and understandable is key to the successful resolution of a settlement program. From simple pro rata

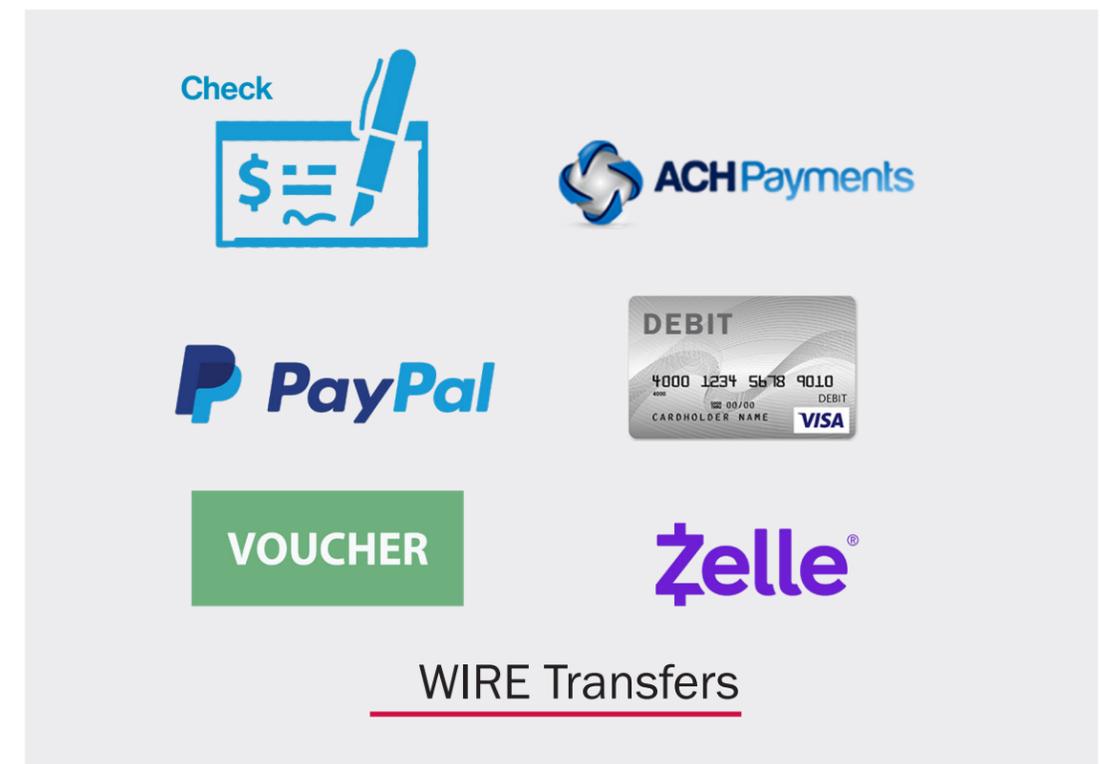
distribution to economic life value modeling, we have decades of experience designing allocation methods that are as fair as possible to every claimant and address individual requirements of a program.



## Fund Administration and Distribution Validated, Secure and Verified.

We efficiently and effectively provide the full breadth of all payment related tasks and responsibilities needed to ensure the successful fulfillment of program payment needs. We can design procedures to calculate award amounts, print, mail and track the status of checks, and in the case of electronic payments, we can coordinate the seamless exchange

of program funds through PayPal, Wire, Zelle, or ACH transactions. Additionally, we can provide any ensuing post-payment oversight and follow-up activities, as needed, such as generation of end-of-year informational tax forms, stale check re-issuance, as well as ongoing monitoring and reconciliation of account balances and close-out reports.



## Fraud Prevention, Detection and Audits

Customized, Comprehensive and Proven.

Fraud costs the economy billions of dollars in losses yearly, and settlement programs are not immune from fraudulent attempts. Recognizing the myriad ways settlements are vulnerable, BrownGreer developed state-of-the-art fraud detection and prevention programs. We advise our clients on best practices to deter fraud and if potential fraud is detected, we help manage communications regarding those findings.

With a primary focus on fraud prevention, we have built extensive fraud vulnerabilities assessment checklists and have advanced data analytics tools to observe and summarize trends to allow meaningful analysis. We develop customized internal and external training programs to recognize potential fraud threats for each program to sensitize stakeholders to red flags and potential wrongdoings. For many programs,

this includes setting up and implementing anonymous fraud reporting hotlines.



Not all fraud can be prevented. Our audit team members are highly trained and experienced in analyzing, investigating, and documenting findings that help expose potential fraud, while assuring that legitimate and deserving claims get processed and paid promptly. When allegations of fraud are escalated, we cooperatively work with multiple law enforcement agencies on case referrals and assist with their investigations as needed.

## Lien Resolution

Innovative, Adaptive and Effective.



At BrownGreer, our goal is always to provide the highest quality, most efficient methods and services to resolve settlements. For some settlements, lien administration is an additional step towards final resolution that requires specialized knowledge and skills.

BrownGreer has worked extensively with these issues in programs

involving thousands of claims. In addition to MMSEA querying and reporting, when necessary to resolve programs fully, we work in consultation with industry experts to negotiate global lien resolution agreements and develop functionality and reports to support the exchange of lien and payment data with lien holders and other third parties.

## QSF Administration

We provide a full spectrum of QSF and Fund Administration services, whether assisting and facilitating with the execution of QSF Administrator duties in instances where the official QSF Administrator role is assigned to

the financial institution holding the settlement funds; or by serving in the role as the designated QSF Administrator, in instances where those duties are to be handled by a separate party, while working closely with the financial institution.

### Typical Duties Include:



Establishing the tax ID number for the QSF, ensuring that the QSF structure is in compliance with Internal Revenue Code Section 468B.



Preparing and submitting applicable tax filings in a timely and appropriate manner.



Ensuring that the settlement funds are held and managed in accordance with the parties' instructions and pursuant to the terms of the applicable settlement agreement.

## Information Technology Performance, Reliability and Security.

BrownGreer prides itself on using cutting edge technology to maximize performance, security, and efficiency. Our team of seasoned architects, project managers, software developers, systems and network administrators, and information security officers identify each unique requirement of a project, and then design, update, and report from custom-built, secure platforms.



Our web-based database applications not only track claim and litigation activity, they also serve as tools to trigger claim processing events. Our customized, secure settlement portals allow for instantaneous exchange of information, eliminating costs associated with data entry.



### External Validation

Our Information Security Program is based on industry best practices. We have successfully completed an external SOC 2 examination. We have a fully documented Information Security Program that clearly details how we secure our data and resources.



### Access Control

Our Access Control Program is built on the principle of least privilege ensuring the minimum level of access required is given to any user. Our Program also ensures access requested are approved by the data or system owner and periodic reviews occur to ensure access permissions are kept up to date.



### Defense in Depth

We follow a defense in depth model to provide multiple layers of protection, detection, and alerting. A defense in depth approach ensures there are additional layers of defense in place to protect our environment, in the event that a layer of security is bypassed or is unsuccessful in blocking a specific attack.



### Incident Response

We have an established Incident Response team prepared to immediately activate to address incidents both big and small. In addition, external partnerships are already in place in the event specialized assistance is needed as part of any incident. Our Information Security team performs risk assessments to continually measure the risk of our environment and prioritize remediation efforts.

Case Study

NATIONAL OPIOID SETTLEMENT ADMINISTRATION

BrownGreer serves as the Directing Administrator for the \$26 billion National Opioid Settlement finalized with the “Big Three” drug distributors – AmerisourceBergen, Cardinal Health, and McKesson – and opioid manufacturer Johnson & Johnson.

The settlement requires 85 percent of funds be allocated to programs that will help address the ongoing opioid crisis through treatment, education and prevention efforts. A majority of states have passed agreements that dictate how funds will be distributed between state and local subdivision governments, ensuring funds will effectively reach impacted communities.

The settlement is the first of its kind to administer resources directly to state and local governments specifically for relief programs to help rebuild the devastation caused by the opioid epidemic. As Directing Administrator, we will allocate and distribute funds based on population

adjusted for the proportionate share of the opioid epidemic impact. The share of the impact is calculated using detailed and objective national data, including the amount of opioids shipped to the state, the number of opioid-related deaths that occurred in the state and the number of people who suffer opioid use disorder in the state.

BrownGreer developed a web portal that allows states and localities to easily submit and update information necessary to receive continued payments. BrownGreer serves as the primary point of contact for state and local government officials, maintaining a Communications Center with a team of Case Managers to ensure prompt payments.

Case Study

FIRE VICTIM TRUST

We serve as the Claims Processor in the Fire Victim Trust, a \$13.5 billion fund established for the benefit of claimants who suffered property loss, emotional distress and other damages as a result of the Butte, North Bay, and Camp Fires in Northern California. More than 80,000 claimants filed claims in the PG&E bankruptcy and are registered to seek compensation from the Fire Victim Trust.

The Federal Emergency Management Agency (FEMA) paid claimants affected by wildfires before the

bankruptcy was established. Under the Stafford Act, claimants are required to repay those emergency funds under certain circumstances. In this program, FEMA reached an agreement to not pursue repayment from claimants if the trust offset awards by the amount of FEMA benefits a person already received. We developed a data sharing agreement with FEMA through which we send them claimant tax IDs and they return a report of the benefits paid to those individuals.

Case Study

NFL CONCUSSION SETTLEMENT

As the Claims Administrator in this program, BrownGreer oversees the intake, processing, and payment of claims for six different qualifying medical diagnoses. We established a network of Qualified MAF Physicians and coordinate with the Court and its Special Masters in implementing all aspects of the program.

The program was plagued with suspicions of potentially fraudulent claims. We implemented fraud prevention and detection processes that addressed these concerns, while assuring that payments are made to eligible claims. We coordinate with local law enforcement officials and the DOJ regarding our findings of potential fraud and provide trial assistance as needed.

Case Study

LAS VEGAS HARVEST MUSIC FESTIVAL SHOOTING

The \$800 million One October Fund is to compensate victims of the mass shooting at the Harvest Music Festival in Las Vegas on October 1, 2017. This program involves 4,068 claimants, from the United States, Canada, and Mexico, represented by 60 law firms. We designed an equitable points system using the four injury categories of death, gunshot, crowd trampling, and PTSD and other psychological harm, with differing levels of injury severity and twelve criteria that compare the magnitude of personal and economic losses across claimants,

and then wrote the governing protocol to define clearly the proof requirements and administrative process, working with the two retired state court judges who mediated the settlement. Claimants opted in and then submitted a claim package with supporting documentation on the online system we created for the program. We evaluated each claim and provided an outcome based on the allocation criteria. We also coordinate with the Centers for Medicare & Medicaid Services to handle the required MMSEA query and reporting functions.

Case Study

PORTER RANCH PERSONAL INJURY AND PROPERTY CLASS SETTLEMENTS

Following a massive natural gas leak in the Porter Ranch, California area in 2015, more than 35,000 individuals filed claims of personal and property damage. In 2021, BrownGreer was named as Settlement Administrator in the \$40 million property settlement program and Claims Processor in the separate \$1.8 billion personal injury settlement program.

In the personal injury settlement, we developed a complex, points-based allocation system with base points for residence and employment proximity, or lack thereof, to the gas leak. We also established base point adjustments as a percentage of assigned base points to account for age, health conditions, healthcare treatment, relocation, economic loss, remediation measures performed,

bellwether plaintiffs, and discovery pool plaintiffs, and are separately addressing exceptional circumstances.

In accordance with the settlement timelines, BrownGreer established a settlement website for the property class to accept and review claims. Both programs require regular reporting to the Court and Claims Administrator, respectively, and frequent and open communication between parties. We are facilitating this with communication portals for the exchange of information. The portals we design are a hallmark of each program we administer, allowing role-based access to information and providing a secure place within the database to act on a claim or determination.

Case Study

DEEPWATER HORIZON

On April 20, 2010, an explosion on the Deepwater Horizon Macondo oil well drilling platform tragically killed 11 workers and started the largest marine oil spill in U.S. history, releasing millions of barrels of oil into the Gulf of Mexico. Hundreds of thousands of individuals and businesses suffered physical and economic damages. After filling the administrative, review, and technology needs of the Gulf Coast Claims Facility from June 2010 to 2012, BrownGreer was appointed by the court to intake, review, and process to payment claims in the Deepwater Horizon Settlement Program established in the class action settlement that replaced the

GCCF process. We also liaised with the National Center for Disaster Fraud and the DOJ to coordinate findings of fraud and assisted in trial preparations across the country. Overall, the program referred close to 2,000 matters to the DOJ.

This program paid over \$12 billion on nearly 391,000 claims. We designed and implemented processes for the twelve different claim types outlined in the settlement agreement, issued determinations to and handled program communication with lawyers and unrepresented claimants, and opened and operated 21 satellite offices across the Gulf.

Case Study

**CATHOLIC DIOCESE OF RICHMOND  
INDEPENDENT RECONCILIATION PROGRAM**

Seeking to assist in the healing of those who were sexually abused as children by Catholic clergy in Richmond, Virginia, the Richmond Diocese engaged BrownGreer to independently administer a private settlement program that accepted, reviewed, and paid claims to survivors. Firm leadership personally interviewed each victim who wished to do so.

A total of \$6.3 million was distributed to 51 victims whose claims were accepted.

BrownGreer maintained the confidentiality of the claimants' identities, except as necessary to process and pay a claim, to report to the diocese, and to comply with state and federal law, including requirements of the Office of the Attorney General of Virginia.

**1. Program Protocol:** BrownGreer leadership developed the protocol for the program, which included

important program definitions, eligibility criteria, the claim submission and review processes, and information about releases, liens, and payments.

- 2. Medicare Querying and Reporting:** BrownGreer performed Medicare queries to determine whether any claimants were eligible to receive Medicare benefits and completed reporting to Medicare on any eligible claimants.
- 3. Releases:** BrownGreer leadership drafted the release signed by claimants who accepted offers in the program and reviewed those releases for completeness prior to clearing a claim to receive monetary payment.
- 4. Specialized Training:** Our communications team underwent specific internal training to sensitize them to issues relating to trauma.

Case Study

**BLACK FARMERS DISCRIMINATION  
LITIGATION SETTLEMENT**

The Black Farmers Discrimination Litigation settlement resolves claims by African American farmers for racial discrimination by the United States Department of Agriculture in its farm loan program. We provided system design input and review process protocols for the neutrals, class counsel, and the claims administrator. We evaluated approximately 35,000 claims and the prepared preliminary determinations for consideration and approval by the court-appointed neutrals, 97% of which were confirmed by the neutrals and the USDA.

**1. Fraud Prevention and Detection:** Our BrownGreer team developed fraud methodology to identify fact patterns that were outside the scope of traditional farming operations and USDA loan types, as well as fact patterns that demonstrated commonalities

between claim forms suggesting group preparation or sharing of common responses in an attempt to secure determinations of eligibility. We identified the associated fact patterns and claims, summarized the commonalities for review by the claims administrator, and flagged such claims meeting the established scheme markers.

- 2. Government Agency Coordination:** We coordinated with the USDA, the Government Accountability Office (GAO), and the Office of Inspector General (OIG). The GAO and OIG were responsible for several audits of the program, and we worked directly with the offices to provide data regarding the evaluation of claims and the methodology for identifying potential fraud.

Case Study

SYNGENTA CORN SEED SETTLEMENT

BrownGreer served as both Notice Administrator and Claims Administrator in a 2018 settlement relating to Syngenta-produced corn seed that affected over 650,000 potential class members in four sub-classes. Our duties included providing notice to class members through multiple channels, maintaining a claims website and call center, receiving and processing correspondence, and making final determinations relating to claim payments.

We reached 99.1 percent of class members through direct mail long-form notices bolstered by supplemental and reminder campaigns. In addition to direct-mailed notices, the supplemental campaign consisted of Facebook advertising, a national press release, radio advertisements, and print publication in national and regional

trade magazines. Fliers were also sent to Farm Service Agency offices and other state and national trade organizations.

A reminder campaign included standard and bi-fold postcards direct-mailed to class members, advertisements aired across strategically selected radio stations, and an additional press release.

BrownGreer received 225,000 claims forms via hard copy and our website, comprising nearly 35 percent of the total class. We operated a call center during Central Time business hours and monitored a dedicated email address to assist claimants with questions and claim deficiencies. BrownGreer also handled designing and distributing CAFA notice, opt-out and regular program reporting to the parties and making a final declaration to the court.

Case Study

3M COMBAT ARMS EARPLUG PRODUCTS LIABILITY LITIGATION

MDL Centrality, a proprietary litigation management system developed by BrownGreer, was selected as the technological platform to support the parties engaged in 3M's Combat Arms Earplug Products Liability Litigation following an extensive vetting process in 2019. The litigation has grown exponentially since its inception in 2018, amassing more than 240,000 claims. It is now recognized as the largest MDL in U.S. history, surpassing IN RE: Asbestos Products Liability Litigation, which has been pending since 1991.

MDL Centrality has risen to the challenges of supporting the nation's largest MDL and proven itself to be a necessary and adaptive data management resource. Core services provided by MDL Centrality include:

- Fact Sheet Exchanges,
- Docket Central,
- Claim Form Exports,
- Document Repositories, and
- Reporting.

In this complex and evolving litigation, our technology team has created agile and intuitive solutions to address the rapidly changing needs of the parties. The team's work resulted in new features that are now available systemwide, including:

- Reporting and analytics services,
- Special Master support, and
- Bellwether selection analysis.

Additionally, MDL Centrality goes a step further by implementing the most secure data management protocols and processes available, enabling the parties to comply with government regulations and standards surrounding the collection and use of highly protected, national security-related information.

# MDL Centrality Experience

We have broad experience in mass tort data management. Our case list is as follows:

	PROGRAM
1.	MDL 2885 In Re: 3M Combat Arms Earplug Products Liability Litigation.
2.	MDL 2592 In Re: Xarelto (Rivaroxaban) Products Liability Litigation.
3.	JCCP 4887 Essure (California).
4.	MDL 2740 In Re: Taxotere (Docetaxel) Products Liability Litigation.
5.	JCCP 4965 Southern California Fire Cases (California).
6.	In Re: Pradaxa Products Liability Litigation (California, Connecticut, Missouri).
7.	MDL 2734 In Re: Abilify (Aripiprazole) Products Liability Litigation.
8.	JCCP No. 5000 Woolsey Fire Cases (California).
9.	MDL 2741 In Re: Roundup Products Liability Litigation.
10.	PCCP 2349 In Re: Xarelto (Rivaroxaban) Products Liability Litigation.
11.	MDL 2691 In Re: Viagra (Sildenafil Citrate) Products Liability Litigation.
12.	MDL 2767 In Re: Mirena IUS Levonorgestrel-Related Products Liability Litigation.
13.	MDL 2657 In Re: Zofran (Ondansetron) Products Liability Litigation.
14.	MDL 2775 In Re: Smith & Nephew Hip Implant Products Liability Litigation.
15.	MCL 628 In Re: Taxotere Litigation (New Jersey).
16.	MDL 2820 In Re: Dicamba Herbicides Litigation.
17.	MDL 2592 In Re: Xarelto (Rivaroxaban) Products Liability Litigation (Missouri).
18.	MDL 2592 In Re: Xarelto (Rivaroxaban) Products Liability Litigation (California).

	PROGRAM
19.	MDL 2875 In Re: Valsartan Products Liability Litigation.
20.	MDL 2913 In Re: JUUL Labs Product Liability Cases.
21.	MDL 2921 In Re: Allergan Breast Implant Liability Litigation.
22.	Lincoln v. Sharp (California State Court).
23.	JCCP 4955 North Bay Wildfire Litigation.
24.	MDL 2924 In Re Zantac Products Liability Litigation.
25.	JCCP 5052 In Re: JUUL Labs Product Liability Cases.
26.	PCCP 3420 In Re Essure (Pennsylvania State Court).
27.	MDL 3014 In Re: Philips Recalled CPAP Device Litigation.
28.	January 24 Explosion Litigation (Texas State Court).
29.	MDL 2921 In Re Allergan Breast Implant Litigation.
30.	Medtronic MiniMed Insulin Pump Litigation (California Federal Court).
31.	MDL 2738 In Re Talcum Powder Litigation.
32.	MDL 2924 In Re Zantac Products Liability Litigation.
33.	Native American Tribal Opioids Litigation.
34.	Five Point Holdings (California State Court).
35.	MDL 2973 In Re Elmiron Products Liability Litigation.
36.	Hunter's Point Litigation (California State Court).
37.	Heekin/St.Vincent's Litigation (Florida State Court).
38.	Exactech MDL & State Court Litigation.
39.	MDL 3043 In Re: Acetaminophen ASD/ADHD Product Liability Litigation.

# Economic Loss Program Experience

ECONOMIC LOSS SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
1.	<b>Porter Ranch Property Class Settlement.</b> Settlement for owners and leaseholders of real property to resolve claims arising from the October 23, 2015 gas leak from a storage well at the Aliso Canyon natural gas storage facility in Porter Ranch, California.	Settlement Administrator	Estimated > 50,000 Class Members	\$40 Million
2.	<b>In re: PG&amp;E Corporation and Pacific Gas and Electric Company, Debtor, Bankruptcy Case No. 19-30088, (Bankr. N.D. Ca.).</b> Settlement program created in the Chapter 11 bankruptcy proceeding of PG&E Corporation to resolve claims from individuals and businesses who suffered personal injury, property damage and economic losses as a result of fires allegedly caused by PG&E.	Claims Processor	70,000 Claimants	\$13.5 Billion
3.	<b>In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, MDL Docket No. 2179 (E.D. La).</b> Class action settlement to resolve economic loss and property damage claims arising from the April 20, 2010 oil spill in the Gulf of Mexico.	Claims Administration Services	260,000 Claimants	Uncapped Fund; \$11.6 Billion Disbursed
4.	<b>Gulf Coast Claims Facility.</b> Voluntary claims program to resolve economic loss and physical injury claims arising from the April 20, 2010 oil spill in the Gulf of Mexico.	Claims Administration Services; Transition Coordinator	600,000 Claimants	\$20 Billion cap; \$6.5 Billion Disbursed
5.	<b>In re Chinese-Manufactured Drywall Products Liability Litigation, MDL Docket No. 2047 (E.D. La.).</b> Class action settlement for the remediation of homes containing defective drywall manufactured in China.	Claims Administrator; Lynn Greer, Special Master	25,000 Claimants	Blend of Uncapped and Capped Funds; \$610 Million Disbursed
6.	<b>In re Syngenta AG MIR 162 Corn Litigation, MDL Docket No. 2591, (D. Kansas).</b> Class action settlement to resolve claims concerning genetically modified corn and crop values.	Notice and Claims Administrator	> 600,000 Class Members	\$1.51 Billion
7.	<b>In re Black Farmer's Discrimination Litigation, No. 08-mc-0511 PLF (D.D.C.).</b> Class action settlement to resolve claims of discrimination against African-American farmers by the U.S. Department of Agriculture regarding farm loans and loan servicing for claimants who had missed deadlines in a prior settlement.	Claims Review and Evaluation	40,000 Claimants	\$1.25 Billion
8.	<b>Travel Insurance Refund Program in the matter of Jefferson Insurance Company NAIC #11630 and in the matter of BCS Insurance Company NAIC #38245.</b> Regulatory settlement program between certain travel insurance companies and State regulators to issue refunds to policy holders who purchased travel insurance through an Opt-Out Marketing Plan.	Program Administrator	504,927 Payees	To Be Determined
9.	<b>Ortega Melendres, et. al., v. Paul Penzone, et. al., No. CV-07-2513-PHX-GMS (D. Az.).</b> Voluntary program to resolve claims that individuals were stopped or held by the Maricopa County Sheriff's Office in violation of a court order.	Notice and Claims Administrator	200 Claimants	Uncapped Fund

ECONOMIC LOSS SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
10.	<b>Confidential.</b> Conciliation agreement between a financial institution and the U.S. Department of Housing & Urban Development related to alleged discriminatory acts in mortgage loan application handling.	Notice and Claims Administrator	Class Size Unknown	Fund Uncapped
11.	<b>United States Securities and Exchange Commission v. American International Group, Inc., No. 06-Civ. 100-LAP (S.D.N.Y.).</b> Securities enforcement action settlement between the SEC and a multinational insurance corporation over allegations of accounting fraud and related shareholder litigation.	Audited the Claims Administrator	260,000 Class Members	\$843 Million
12.	<b>In re Genetically Modified Rice Litigation, MDL Docket No. 1811 (E.D. Mo.).</b> Voluntary claims program to resolve claims concerning genetically modified rice and crop values.	Claims Administrator	12,000 Claimants	\$750 Million
13.	<b>CBP Global Settlement.</b> Settlement program reached by the Department of Homeland Security, U.S. Customs and Border Protection (CBP) and the National Treasury Employees Union (NTEU) to resolve certain grievances filed by NTEU.	Settlement Administrator	25,000 Class Members	\$184.1 Million
14.	<b>United States v. National Treasury Employees Union, No. 93-1170 (D.C. App.).</b> Class action settlement between a federal employees' union and the U.S. Government for back payment of wages.	Trustee of Settlement Trust	212,000 Class Members	\$173 Million
15.	<b>Blando v. Nextel West Corp., No. 02-0921-FJG (W.D. Mo.).</b> Class action settlement by a wireless telecommunications provider to resolve claims under Missouri law involving "cost recovery fees" charged to customers.	Advisor to the Court	5,000,000 Class Members	\$165 Million
16.	<b>Brown &amp; Szaller, Co., L.P.A. et al., v. Waste Management of Ohio, Inc., Case No. CV-16-859588.</b> Proposed class action settlement resolving claims of certain commercial customers of Waste Management of Ohio, Inc. related to alleged improper price increases on waste collection, disposal, and/or recycling services.	Notice and Claims Administrator	65,000 Class Members	\$30.5 Million
17.	<b>Bartell, et al. v. LTF Club Operations Company, Inc., Case No. 2:14-cv-00401.</b> Proposed class action settlement resolving claims of certain former members of Life Time Fitness in Ohio related to Life Time's alleged failure to honor cancellation requests and issue certain refund payments under Ohio's Prepaid Entertainment Contracts Act (PECA).	Notice and Claims Administrator	60,000 Class Members	\$14 Million
18.	<b>Wildfire Assistance Program.</b> Voluntary program providing financial assistance to individuals experiencing urgent needs as a result of the 2017 and 2018 California Wildfires.	Claims Administrator	20,000 Claimants	\$100 Million
19.	<b>In re Capital One Telephone Consumer Protection Act Litigation, MDL Docket No. 2416 (N.D. Ill.).</b> Class action settlement to resolve claims arising from alleged violations of the Telephone Consumer Protection Act.	Notice and Claims Administrator	17,500,000 Class Members	\$75.4 Million
20.	<b>In re Vioxx MDL Settlement Agreement Related to Consumer Class Actions, MDL Docket No. 1657 (E.D. La.).</b> Class action settlement to resolve consumer protection claims arising from the marketing of prescription painkillers.	Claims Administrator	8,000 Claimants	\$23 Million
21.	<b>Yarger v. ING Bank, FSB, No. 11-154-LPS (D. Del.).</b> Class action settlement to resolve claims related to advertising fixed rate mortgages under Delaware consumer law.	Notice and Claims Administrator	115,000 Class Members	\$20 Million

ECONOMIC LOSS SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
22.	<b>Acosta v. Tyson Foods, Inc., No. 8:08-cv-86 (D. Neb.)</b> . Class action settlement by a poultry producer to resolve claims under the Fair Labor Standards Act and Nebraska law for employee compensation for time spent donning/doffing protective equipment.	Notice Administrator	3,700 Class Members	\$19 Million
23.	<b>Flores v. Zorbalas, No. 27-CV-16-14225 (Minn. St. Ct., Hennepin Cnty., Minn.)</b> . Class certification notice program and subsequent class action settlement program resolving claims of tenants of certain apartments in Minneapolis, MN whose landlords allegedly rented out the properties without proper licenses and failed to maintain the properties as required by health and safety laws.	Notice and Claims Administrator	5,500 Class Members	\$18.5 Million
24.	<b>United States of America v. Capital One, N.A., No. 1:12-cv-828 (E.D. Va.)</b> . Consent decrees between a financial services company and the Department of Justice and Office of Comptroller of the Currency to resolve alleged violations of the Servicemembers Civil Relief Act.	Notice and Claims Administrator	44,000 Claimants	\$15 Million
25.	<b>Figuroa v. Capital One, N.A., No. 3:18-cv-00692-JM-BGS (S.D. Cal.)</b> . Class action settlement by a financial institution to resolve claims that it breached its contract with accountholders by improperly assessing and collecting fees when accountholders used out of network ATMs to conduct a balance inquiry.	Notice and Claims Administrator	1.9 million Class Members	\$13 million
26.	<b>Ene v. Maxim Healthcare Services, Inc., No. 4:09-cv-02453 (S.D. Tex.)</b> . Class action settlement by a healthcare provider to resolve claims under the Fair Labor Standards Act concerning the classification of healthcare recruiters as exempt from overtime pay.	Notice Administrator	1,600 Class Members	\$12.3 Million
27.	<b>Gregorio v. Premier Nutrition Corporation, Civil Action No: 17-cv-05987 (S.D.N.Y.)</b> . Class action settlement to resolve claims concerning the misleading advertising of protein shake products.	Notice and Claims Administrator	9,360,000 Class Members	\$9 Million
28.	<b>Spinelli v. Capital One Bank (USA), No. 8:08-cv-132 (M.D. Fla.)</b> . Class action settlement by a financial services company with credit card holders to resolve claims under the Truth in Lending Act.	Notice and Claims Administrator	9,000,000 Class Members	\$5 Million
29.	<b>Hankins v. CarMax Inc., No. 03-C-07-005893 CN (Baltimore County Md. Cir. Ct.)</b> . Class action settlement to resolve claims that a retail car company sold used vehicles without disclosing that the vehicles had been used previously as short-term rentals.	Notice and Claims Administrator	7,300 Class Members	\$8 Million
30.	<b>Cohen v. Warner Chilcott Public Ltd. Co., No. 1:06-cv-00401-CKK (D.D.C.)</b> . Class action settlement to resolve antitrust claims against two pharmaceutical companies regarding the sale of an oral contraceptive.	Notice Administrator	2,000,000 Class Members	\$6 Million
31.	<b>Peg Bouaphekeo, et. al., v. Tyson Foods, Inc., No. 5:07-cv-04009-JAJ (N.D. Iowa Western Division)</b> . Class action settlement by a poultry producer to resolve claims under the Fair Labor Standards Act and Iowa law for employee compensation for time spent donning/doffing protective equipment.	Notice Administrator	2,523 Class Members	\$5.78 Million
32.	<b>Morgan v. Richmond School of Health and Technology, Inc., No. 3:12-cv-00373-JAG (E.D. Va.)</b> . Class action settlement by a for-profit vocational college to resolve claims under the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964 and the Virginia Consumer Protection Act.	Notice and Claims Administrator	4,200 Class Members	\$5 Million

ECONOMIC LOSS SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
33.	<b>Gomez v. Tyson Foods, Inc., No. 08-021 (D. Neb.)</b> . Class action settlement by a poultry processing company to resolve claims under the Fair Labor Standards Act and Nebraska law for employee compensation for time spent donning/doffing protective equipment.	Notice Administrator	5,300 Class Members	\$5 Million
34.	<b>Rogers v. City of Richmond, Virginia, No. 3:11-cv-00620 (E.D. Va.)</b> . Class action settlement under the Fair Labor Standards Act and Virginia law involving current and former city police officers alleging unpaid overtime wages.	Claims Administrator	600 Claimants	\$4.6 Million
35.	<b>Gales v. Capital One, N.A., No. 8:13-cv-01624 (D. Md.)</b> . Class action settlement by a financial services company to resolve claims related to the sale of certain repossessed motor vehicles.	Claims Administrator	9,000 Class Members	\$4.4 million
36.	<b>Betts v. National Cash Advance/Advance America, Nos. 502001CA0003200CAI-MB and 502004CA008164XXXXI-MB (Palm Beach County Cir. Ct.)</b> . Class action settlement to resolve claims alleging violates of the Florida Lending Practices Act, the Florida Consumer Finance Act, the Florida Deceptive and Unfair Trade Practices Act, and the Civil Remedies for Criminal Practices Act.	Notice and Claims Administrator	18,500 Class Members	\$4.32 Million
37.	<b>Llewellyn v. Big Lots Stores, Inc., No. 09-cv-5085 (E.D. La.)</b> . Class action settlement by a retailer to resolve claims under the Fair Labor Standards Act regarding the classification of assistant store managers.	Claims Administrator	200 Class Members	\$4 Million
38.	<b>Desio v. Emerson Electric Co. d/b/a InSinkErator, No. 2:15-cv-00346 (E.D. Wa.)</b> . Class action settlement to resolve claims that certain filters used in water filtration systems could crack and leak water, causing property damage.	Notice and Claims Administrator	Estimated < 455,000 Class Members	\$3.8 Million
39.	<b>Herron v. CarMax Auto Superstores, Inc., No. 2006-CP-02-1230 (Aiken County S.C. Jud. Dist.)</b> . Class action settlement to resolve claims related to document processing fees charged to customers by a car dealer.	Notice and Claims Administrator	27,000 Class Members	\$3.8 Million
40.	<b>Collins v. Sanderson Farms, Inc., No. 2:06-cv-02946 (E.D. La.)</b> . Class action settlement by a poultry processing company to resolve claims under the Fair Labor Standards Act regarding employee compensation for time spent donning/doffing protective equipment.	Notice and Claims Administrator	21,000 Class Members	\$3.1 Million
41.	<b>Nader v. Capital One Bank (USA), No. CV-12-01265-DSF (RZx) (C.D. Cal.)</b> . Class action settlement by a financial institution to resolve claims under state privacy and wiretapping laws concerning the alleged recording of outbound customer service calls.	Settlement Administrator	1,800,000 Class Members	\$3 Million
42.	<b>In re Children's Ibuprofen Oral Suspension Antitrust Litigation, No. 1:04-mc-0535 (D.D.C.)</b> . Class action settlement to resolve claims of antitrust violations by two manufacturers of over-the-counter children's pain relievers.	Notice Administrator	10,000 Class Members	\$3 Million
43.	<b>Rubenstein v. The Neiman Marcus Group LLC, No. 2:14-cv-07155-SJO-JPR (C.D. Ca.)</b> . Proposed settlement program to resolve allegations that consumers were misled by the "Compared To" price tags on merchandise sold by the Defendant.	Notice and Claims Administrator	To Be Determined	\$2.9 Million
44.	<b>United States of America v. Chevy Chase Bank, F.S.B., No. 1:13-cv-1214 (E.D. Va.)</b> . Consent decree between a financial services company and a federal regulatory agency involving allegations under the Equal Credit Opportunity and Fair Housing Acts.	Notice and Claims Administrator	3,500 Class Members	\$2.85 Million

ECONOMIC LOSS SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
45.	<b>Samuel v. EquiCredit Corp., No. 00-cs-6196 (E.D. Pa.)</b> . Class action settlement by a financial services institution to resolve claims under the Real Estate Settlement Procedures Act regarding the application of loan proceeds to pay mortgage broker fees.	Notice and Claims Administrator	13,000 Class Members	\$2.5 Million
46.	<b>Beecroft v. Altisource Business Solutions PVT LTD, No. 0:15-cv-02184 (D. Minn.)</b> . Class action settlement to resolve claims arising from alleged violations of the Telephone Consumer Protection Act.	Notice and Claims Administrator	56,104 Class Members	\$1.8 Million
47.	<b>Hall v. Capital One Auto Finance, Inc., No. 1:08-cv-01181 (N.D. Ohio)</b> . Class action settlement by a financial services company to resolve claims related to automobile repossession under Ohio consumer statutes.	Notice and Claims Administrator	3,400 Class Members	\$1.5 Million
48.	<b>McCoy v. North State Aviation, LLC, Case No. 1:17-cv-00346-CCE-LPA (M.D.N.C.)</b> . Class action settlement to resolve claims that Defendant violated the federal Worker Adjustment and Retraining Notification Act (the WARN Act), which requires certain employers to give 60-day advance notification of plant closings and mass layoffs.	Settlement Administrator	339 Class Members	\$1.5 Million
49.	<b>Watts v. Capital One Auto Finance, Inc., No. CCB-07-03477 (D. Md.)</b> . Class action settlement by a financial services company to resolve claims related to automobile repossession under Maryland consumer statutes.	Notice and Claims Administrator	2,700 Class Members	\$990,000
50.	<b>Churchill v. Farmland Foods, Inc., No. 4:06-cv-4023 (C.D. Ill.)</b> . Class action settlement by a pork processing company to resolve claims under the Fair Labor Standards Act and Illinois law regarding employee compensation for time spent donning/doffing protective equipment.	Notice and Claims Administrator	2,300 Class Members	\$980,000
51.	<b>Polanco v. Moyer Packing Company, No. C.P., 1852 (Philadelphia County Pa.)</b> . Class action settlement by a beef processing company to resolve claims under the Fair Labor Standards Act and Pennsylvania law regarding employee compensation for time spent donning/doffing protective equipment.	Notice and Claims Administrator	4,500 Class Members	\$850,000
52.	<b>Cohen v. Foothill/Eastern Transportation Corridor Agency, et. al., No. SACV 15-01698 DDP (C.D. Ca.)</b> . Class action settlement to resolve alleged violations of the Fair and Accurate Credit Transactions Act (FACTA) by a toll-road operator.	Notice and Claims Administrator	25,762 Class Members	\$850,000
53.	<b>Bessey v. Packerland Plainwell, Inc., No. 4:06-cv-0095 (W.D. Mich.)</b> . Class action settlement by a pork processing company to resolve claims under the Fair Labor Standards Act and Michigan law regarding employee compensation for time spent donning/doffing protective equipment.	Notice and Claims Administrator	3,000 Class Members	\$700,000
54.	<b>Santiago v. GMAC Mortgage Group, Inc., No. 784574 (E.D. Pa.)</b> . Class action settlement by a financial services company to resolve claims under the Real Estate Settlement Procedures Act concerning charges for mortgage settlement services.	Notice and Claims Administrator	84,000 Class Members	\$650,000

ECONOMIC LOSS SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
55.	<b>Contreras v. PM Beef Holdings, LLC, No. 07-CV-3087 (D. Minn.)</b> . Class action settlement by a beef processing company to resolve claims under the Fair Labor Standards Act and Minnesota law for employee compensation for time spent donning/doffing protective equipment.	Notice and Claims Administrator	3,000 Class Members	\$500,000
56.	<b>Morales v. Greater Omaha Packing Co. Inc., No. 8:08-cv-0161 (D. Neb.)</b> . Class action settlement by a beef processing company to resolve claims under the Fair Labor Standards Act and Nebraska law regarding employee compensation for time spent donning/doffing protective equipment.	Notice and Claims Administrator	4,000 Class Members	\$490,000
57.	<b>Graham v. Capital One Bank (USA), N.A., 8:13-cv-00743 (C.D. Cal.)</b> . Class action settlement related to claims under the California Unfair Competition Law regarding alleged improper disclosures and charges assessed on credit card accounts.	Notice and Claims Administrator	22,500 Class Members	\$460,000
58.	<b>Hanna v. Agape Senior, LLC, No. 12-CP-40-5950 (S.C. St. Ct., Richland Cnty., S.C.)</b> . Class action settlement resolving claims of certain residents of senior and assisted living facilities related to alleged improper delivery of medical treatment.	Notice and Claims Administrator	600 Class Members	Uncapped Fund; \$480,000 Disbursed
59.	<b>In re Moyer Packing Co., P. &amp; S. Docket No. D-07-0053 (U.S. Dep't Agric.)</b> . Consent decision involving a beef processing company to compensate cattle producers for goods sold based on weights derived using an allegedly malfunctioning weight calculation system.	Notice and Claims Administrator	1,100 Claimants	\$325,000
60.	<b>Confidential</b> . Voluntary payment program by a city government to compensate current and former city police officers for unpaid overtime wages.	Claims Administrator	175 Class Members	\$300,000
61.	<b>Dapice v. Capital One Bank (USA), N.A. No. 14-cv-6961 GW (AGRx)</b> . Class action settlement by a financial institution to resolve claims related to interest rates charged on balance transfers for certain credit card accounts.	Settlement Administrator	2,564 Class Members	\$350,000
62.	<b>Confidential</b> . Voluntary program by a financial institution to refund customers for payments subsequently discharged in bankruptcy.	Program Administrator	457 Payees	\$233,000
63.	<b>Wilder v. Triad Financial Corp., No. 3:03-cv-863 (E.D. Va.)</b> . Class action settlement by a financial services company to resolve claims associated with automobile loan applications under the Fair Credit Reporting Act.	Notice and Claims Administrator	80,000 Class Members	\$200,000
64.	<b>Conerly v. Marshall Durbin Food Corp., No. 2:06-cv-205 (N.D. Ala.)</b> . Class action settlement by a poultry processing company to resolve claims under the Fair Labor Standards Act regarding employee compensation for time spent donning/doffing protective equipment.	Notice and Claims Administrator	1,900 Class Members	\$150,000
65.	<b>Ferguson v. Food Lion, LLC, No. 12-c-861 (Berkeley County W. Va. Cir. Ct.)</b> . Class action settlement by a retail company to resolve claims under the West Virginia Wage Payment and Collection Act regarding timing of paychecks issued to discharged employees.	Notice and Claims Administrator	185 Class Members	\$150,000
66.	<b>Confidential</b> . Voluntary settlement by a food processing company to resolve claims regarding employee compensation for donning/doffing protective equipment.	Notice Administrator	670 Class Members	\$125,000

ECONOMIC LOSS SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
67.	<b>Confidential.</b> Voluntary check remittance program by an investment fund to distribute proceeds from numerous settlements to beneficiaries of the fund.	Settlement Administrator	1,049 Payees	\$117,000
68.	<b>Confidential HUD Compensation Program.</b> Compensation fund established to pay damages to persons allegedly discriminated against by financial institution on basis of pregnancy or parental leave.	Notice and Claims Administrator	<100 Class Members	\$50,000
69.	<b>Cook v. Columbia Freightliner, LLC, No. 10-CP-02-1987 (Aiken County S.C. Jud. Dist.).</b> Class action settlement to resolve claims regarding a trucking company and the collection of administrative fees in the sale of motor vehicles.	Notice and Claims Administrator	380 Class Members	\$17,000
70.	<b>Confidential.</b> Voluntary payments by a financial institution to reimburse fees charged to the credit card accounts of small business owners.	Payment Administrator	656 Payees	\$16,000
71.	<b>Clark v. Group Hospitalization and Medical Services, Inc., No. 3:10-CIV-00333-BEN-BLM (S.D. Cal.).</b> Class action settlement by a health insurance provider to resolve claims under the Employee Retirement Income Security Act and California's Unfair Competition Law.	Notice and Claims Administrator	80 Class Members	\$1,300 Disbursed
72.	<b>Quinn v. BJC Health System, No. 052-00821A (City of St. Louis Mo. Cir. Ct.).</b> Class action settlement by a healthcare system to resolve claims associated with hospital fees charged to uninsured patients.	Claims Administrator	26,000 Class Members	Debt Reduction/ Forgiveness to Qualifying Class Members
73.	<b>In re Record Company Infringement Litigation, No. 6:15-cv-00708 (M. D. Fla.).</b> Consolidated proceedings involving 65+ parties and alleged violations of copyrights and contracts.	Orran Brown, Special Master; Project Manager	Not Applicable	Not Applicable
74.	<b>Gray, Ritter &amp; Graham P.C., et al. v. Goldman Phipps PLLC, et al., No. 4:13-cv-00206-CDP (E.D. Mo.).</b> Three separate but related claims programs (Watts Group Settlement, Banks Group Settlement, and GP/ Murray Group Settlement), established to resolve a class action lawsuit involving claimants who settled claims against Bayer arising out of the presence of Bayer's genetically-modified rice seed in the United States rice supply or lawyers who were paid common-benefit attorneys' fees or paid common-benefit expenses in that litigation.	Notice Administrator	27,000 Class Members	Not Applicable
75.	<b>In re Lehman Brothers Holdings Inc., No. 08-13555-JMP (Bankr. S.D.N.Y.).</b> Program to track, monitor and evaluate fees being charged by bankruptcy lawyers in the Lehman Brothers Chapter 11 bankruptcy proceeding.	Fee Committee Assistant	Not Applicable	Not Applicable
76.	<b>Jerry Parker, et al. v. Smithfield Packing Company, Inc., No. 7:07-cv-00176-H.</b> Class action settlement to resolve claims related to overtime pay for employees of a processing facility in Clinton, North Carolina.	Notice Administrator	2,656 Class Members	Not Applicable

ECONOMIC LOSS SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
77.	<b>Lee Lewis, et al. v. Smithfield Packing Company, Inc., No. 7:07-cv-00166-H.</b> Class action settlement to resolve claims related to overtime pay for employees of a processing facility in Tarheel, North Carolina.	Notice Administrator	12,136 Class Members	Not Applicable
78.	<b>Lycan, et al. v. City of Cleveland, No. CV 09686044 (Court of Common Pleas, Cuyahoga County, OH).</b> Class action lawsuit to resolve claims that the City of Cleveland, Ohio, assessed traffic fines against non-vehicle owners (including lessees and renters) whose vehicles were photographed by automatic enforcement cameras operating in city limits, in violation of a city ordinance.	Notice and Claims Administrator	31,937 Class Members	To Be Determined
79.	<b>Mercier, et al v. The United States, No. 12-920C.</b> Class action to resolve alleged claims of unpaid wages for nurses and physician assistants.	Notice and Claims Administrator	15,000 Class Members	\$130 Million
80.	<b>Runton et al. v. Brookdale Senior Living, Inc., No. 0:17-cv-60664-CMA (S.D. Fla.).</b> Class action settlement resolving claims of certain residents of senior and assisted living facilities related to staffing determinations.	Notice and Claims Administrator	29,760 Class Members	To Be Determined
81.	<b>In re De Bernardi v. City and County of San Francisco.</b> Served as Court-approved Third Party Notice Administrator for a collective action lawsuit regarding Compensatory Time Off earned in lieu of paid overtime.	Notice Administrator	26,000 Class Members	Not Applicable
82.	<b>In re Wazwaz v. City and County of San Francisco.</b> Served as Court-approved Third Party Notice Administrator for a collective action lawsuit regarding Compensatory Time Off earned in lieu of paid overtime.	Notice Administrator	1,000 Class Members	Not Applicable
83.	<b>In re Donofrio v. IKEA, No. 2:2018-cv-00599.</b> Served as Court-appointed Third-Party Administrator, responsible for tracking and maintaining Opt-in Consent Forms for a collective action lawsuit involving alleged age-discrimination in the workplace.	Third Party Administrator	500 Claimants	Not Applicable

# Personal Injury Program Experience

PERSONAL INJURY SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
1.	<b>National Opioid Settlement.</b> BrownGreer established the web portal and payment system that ensures states and subdivisions receive settlement funds from the 2022 "Big Three" opioid distributor settlement. The 18-year project requires continuous coordination with thousands of state and local government officials nationwide.	Directing Administrator	3,000 States and Localities	\$26 Billion
2.	<b>Oxnard Train Derailment Settlement.</b> Served as claims administrator for a program that resolved injury claims relating to a 2015 passenger train incident in California.	Claims Processor	37 Claimants	\$61 Million
3.	<b>JUUL Government Entity, Tribal, and Personal Injury Settlements.</b> A 2022 agreement was reached between the makers of JUUL and government entities, Native American tribes, and personal injury claimants to resolve claims that it deceptively marketed e-cigarettes to youths.	Settlement Administrator	Approx. 2,000 government entities, 10,000 individual claimants	Not yet disclosed
4.	<b>Confidential.</b> Settlement involving sexual abuse claims.	QSF Trustee; Lien Resolution Administrator	Approx. 5,000 claimants	Approx. \$70 million
5.	<b>Porter Ranch Private Party Claims Settlement Program.</b> Private settlement to resolve claims arising from the October 23, 2015 gas leak from a storage well at the Aliso Canyon natural gas storage facility in Porter Ranch, California.	Design the share allocation protocol; Claim Processor	36,000 Claimants	\$1.6 Billion
6.	<b>One October Settlement Fund.</b> Private settlement to resolve claims arising from the October 1, 2017 mass shooting at the Route 91 Harvest Festival in Las Vegas, Nevada.	Design the share allocation protocol; Claim Processor	4,300 Claimants	\$800 Million
7.	<b>In re National Football League Players' Concussion Injury Litigation, MDL Docket No. 2323 (E.D. Pa.).</b> Class action settlement to resolve claims by retired National Football League players relating to repetitive head impacts.	Claims Administrator	20,571 Claimants	Fund Uncapped; \$975 Million Disbursed
8.	<b>Catholic Diocese of Richmond Independent Reconciliation Program.</b> Private Settlement to resolve sexual abuse claims in the Richmond Catholic Diocese.	Claims Administrator	68 Claimants	\$6.3 Million
9.	<b>Trafigura.</b> Expert consultant to evaluate feasibility of claims administration program arising from a toxic spill in the Ivory Coast of Africa, evaluating hurdles of corruption, fraud, identity verification, payment and communication difficulties.	Lynn C. Greer Expert Consultant	Not Applicable	Not Applicable
10.	<b>In re Vioxx Products Liability Litigation, MDL Docket No. 1657 (E.D. La.).</b> Voluntary settlement program to resolve claims arising from the use of prescription painkillers.	Claims Administrator	60,000 Claimants	\$4.85 Billion
11.	<b>In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation, MDL Docket No. 1203 (E.D. Pa.).</b> Class action settlement to resolve claims arising from the use of "Fen-Phen" diet drugs.	Liaison for the Defendant to the Settlement Trust	600,000 Claimants	\$3.55 Billion

PERSONAL INJURY SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
12.	<b>In re A.H. Robins Company Inc., Debtor (In re Dalkon Shield Claimants Trust), MDL Docket No. 211 (Bankr. E.D. Va.).</b> Settlement program created in the Chapter 11 bankruptcy proceeding of the A.H. Robins Company to resolve claims arising from use of the Dalkon Shield intrauterine device.	Counsel to the Settlement Trust	400,000 Claimants	\$3 Billion
13.	<b>In re DePuy Orthopaedics, Inc., ASR Hip Implant Products, MDL Docket No. 2197 (N.D. Ohio).</b> Voluntary settlement program for claims relating to metal-on-metal hip implant devices.	Claims Administrator	9,300 Claimants	\$2.8 Billion
14.	<b>In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation, MDL Docket No. 1203 (E.D. Pa.).</b> Voluntary settlement program to resolve opt outs from the class action settlement of claims arising from use of "Fen-Phen" diet drugs.	Claims Administrator	66,000 Claimants	\$2.63 Billion
15.	<b>In re Actos (Pioglitazone) Products Liability Litigation, MDL Docket No. 2299 (W.D. La.).</b> Voluntary settlement program to resolve claims arising from the use of a diabetes medication.	Claims Administrator	10,800 Claimants	\$2.37 Billion
16.	<b>Confidential.</b> Voluntary settlement program of claims arising from the use of a prescription medication.	Claims Administrator	12,000 Claimants	Fund Uncapped; \$1.4 Billion Disbursed
17.	<b>In re Sulzer Orthopedics and Knee Prosthesis Products Liability Litigation, MDL Docket No. 1401 (N.D. Ohio).</b> Class action settlement of claims relating to hip and knee implants.	Claims Administrator	27,000 Claimants	\$1.15 Billion
18.	<b>Confidential.</b> Voluntary settlement program of claims arising from the use of a prescription medication.	Claims Administrator	2,700 Claimants	Fund Uncapped; \$279 Million Disbursed
19.	<b>In re Xarelto® Litigation Settlement Program.</b> Private settlement to resolve cases arising out of the use of a prescription blood thinner.	Claims Administrator	33,000	\$775 Million
20.	<b>In re Pradaxa (Dabigatran Etexilate) Products Liability Litigation, MDL Docket No. 2385 (S.D. Illinois).</b> Voluntary settlement program to resolve claims arising from the use of a blood thinning medication.	Claims Administrator	4,800 Claimants	\$650 Million
21.	<b>In re Benicar (Olmesartan) Products Liability Litigation, MDL No. 2606 (N.J.).</b> Voluntary settlement program to resolve claims arising from the use of prescription hypertension medication.	Claims Administrator	8,500 Claimants	\$358 Million
22.	<b>In re Wright Medical Technology, Inc., Conserve Hip Implant Products Liability Litigation, MDL Docket No. 2329, (N.D. Ga.).</b> Private settlement program established to resolve claims related to CONSERVE®, DYNASTY®, and LINEAGE® metal-on-metal hip replacement devices.	Claims Administrator	1,233 Claimants	\$249 Million
23.	<b>In re Reglan®/Metoclopramide Mass Tort Litigation, No. 01997 (Philadelphia County Ct. of C.P.); In re Reglan® Litigation, Case No. ATL-L-3865-10 (Super Ct. NJ); Reglan®/Metoclopramide Cases, CJC-10-004631 (Cal. Super Ct.).</b> Private settlement program consolidating PA, NJ, and CA class action settlements to resolve claims arising out of the use of a prescription medication.	Notice and Claims Administrator	5,263 Claimants	\$240 Million
24.	<b>In re Guidant Implantable Defibrillators Products Liability Litigation Settlement, MDL Docket No. 1708 (D. Minn.).</b> Voluntary settlement program to resolve claims related to a medical device company's cardiac resynchronization therapy devices, implantable cardiac defibrillators and pacemakers.	Advised Defendant and Defense Counsel	26,000 Class Members	\$240 Million

PERSONAL INJURY SETTLEMENT PROGRAMS				
	PROGRAM DESCRIPTION	ROLE	PROGRAM SIZE	SETTLEMENT FUND
25.	<i>In re Nuvaring Products Liability Litigation</i> , MDL Docket No. 1964 (W.D. Mo.). Voluntary settlement program to resolve claims related to the use of a contraceptive device.	Claims Administrator	3,800 Claimants	\$100 Million
26.	<i>In re Abilify (Aripiprazole) Products Liability Litigation</i> , MDL No. 2734 Settlement Program. Private settlement program to resolve cases arising out of the use of a prescription medication.	Claims Administrator	3,955 Claimants	\$60 Million
27.	<i>In re Phenylpropranolamine (PPA) Products Liability Litigation</i> , MDL Docket No. 1407 (W.D. Wash.). Class action settlement trust established to resolve claims related to an over-the-counter weight loss product.	Claims Administrator	500 Claimants	\$60 Million
28.	<i>In re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation</i> , MDL Docket No. 2100 (S.D. Ill.). Private voluntary settlement program to resolve claims alleging an arterial thromboembolism ("ATE"), either alone or in combination with some other injury, resulting from the use of drospirenone-containing oral contraceptives manufactured by Bayer or marketed by Barr Laboratories, Inc., or Teva Pharmaceuticals USA, Inc.	Claims Administrator	1,275 Claimants	\$57 Million
29.	<i>In re Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation</i> , MDL Docket No. 2100 (S.D. Ill.). Private settlement program to resolve claims alleging gallbladder disease or a gallbladder injury from the use of drospirenone-containing oral contraceptives manufactured by Bayer or marketed by Barr Teva.	Claims Administrator	9,000 Claimants	\$24 Million
30.	<i>In re OxyContin Litigation - All Cases, No. 2002-CP-18-1756 (Cir. Ct. Dorchester County, S.C.)</i> . Class action settlement by a pharmaceutical company regarding a prescription pain killer.	Notice and Claims Administrator	3,600 Class Members	\$4.25 Million
31.	<i>Confidential</i> . Private Settlement to resolve cases arising out of the use of a male-oriented hair coloring product designed to cover grey hair.	Claims Administrator	Not Disclosed	Not Disclosed
32.	<i>In re Seroquel Products Liability Litigation</i> , MDL Docket No. 1769 (M.D. Fla.). Multidistrict litigation proceedings involving the antipsychotic prescription drug Seroquel.	Special Master; Project Manager	Not Disclosed	Not Applicable
33.	<i>In re Pittsburgh Corning Corporation, No. 00-22876-TPA (Bankr. W.D. Pa.)</i> . Class action settlement to resolve personal injury claims relating to exposure to asbestos made by refinery and chemical plant workers with individual asbestos cases pending in the Eastern District of Texas.	Notice Administrator	2,272 Class Members	Not Applicable

Orran L. Brown



Orran develops and implements the best practices and strategies for the negotiation and drafting of resolution plans, legal proceedings to obtain court approval, the efficient design and operation of group claims facilities and compliance with the agreements and court orders governing the claims resolution process to provide a program a successful start and timely and efficient progress to a successful completion.

Orran is respected by lawyers for claimants and the defense, courts, and claimants as knowledgeable, efficient, fair, and in tune with their needs. He has helped guide the implementation of extremely complex programs, and knows how to design and put in place allocation and evaluation criteria that uniformly and equitably deliver benefits to those entitled to receive them, while keeping administrative costs as low as possible. He believes that these programs cannot be bureaucratic or impenetrable, or even appear to be. Instead, they serve the needs of the parties and the court, which leads to successful outcomes. His work on the \$800 million One October Settlement Fund for the victims of the mass shooting in 2017 at the Route 91 concert in Las Vegas is an example of how his experience, creativity, and diligence can be brought to bear on a complicated, emotionally difficult program.

Lynn Crowder Greer



Lynn has served in mass claims resolution for 30 years, advising management, trustees, claims administrators and corporations on the successful implementation and administration of resolution plans. She began specializing in this area of the law in 1990, when she joined the in-house legal department of Dalkon Shield Claimants Trust, an entity created pursuant to the A.H. Robins bankruptcy to process claims of women injured by the Dalkon Shield intrauterine device. Lynn became the Manager of the Trust's legal department and ultimately rose to General Counsel and Executive Director, developing and implementing policies and processes that handle these deeply personal injury claims with accuracy and sensitivity, while achieving finality. The finite fund set aside to pay the claims was managed so successfully, that the Trust made four additional pro rata payments to women as claims were processed and concluded.

Since the Trust's closure in 2000, Lynn has focused her professional career on meeting the unique needs of clients or Courts involved in or faced with multiple claims or lawsuits. Recognizing the need to bring order to the chaos that arises when numerous claims are filed against a defendant, she and Orran Brown founded BrownGreer PLC in 2002 to provide different and innovative solutions for managing such situations. Since then, BrownGreer has been involved in some of the largest and most complex claims resolution programs in history, processing over 4.3 million claims filed by nearly 40,000,000 class members and paying over \$34 billion to qualified claimants.

Lynn has been appointed by Courts to serve as Special Master, Claims Administrator and other leadership positions in national settlement programs such as the Chinese Drywall class action litigation and the BP Oil Spill program as it transitioned from an emergency fund to a certified class action settlement. She has also acted as the head of the Project Management Office for a major client defending a pharmaceutical action and has served as a consultant in an international matter opining on the feasibility of a claims administration program. In each of BrownGreer's engagements, Lynn lends her expertise and is a hands-on participant, working with and serving all of the program's constituents and ensuring its successful development, administration and conclusion. Her unique combination of legal, administrative, communication, leadership, and personal skills render her equally comfortable presenting to a supervisory Federal District Court, reporting to executive management at a Fortune 500 company, facilitating and leading a conference call among the parties to a settlement agreement, speaking with claimants, mentoring her internal team members, participating in panel discussions on claims administration best practices, or working behind the scenes to draft protocols or process flows. Her sole focus on multiple claims resolution for almost three-decades, as well as her vast and unique experience make her a leader in the industry.



**B**rownGreer is redefining multiple claim resolution and litigation management with industry-leading technology and expert strategies to resolve your multiple claims and data management challenges with uncompromising accuracy and efficiency.



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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

MDL NO. 1203

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This Document Relates To: Sheila Brown,  
et. al. v. American Home Products  
Corporation

CIVIL ACTION  
No. 99-20593

**MEMORANDUM OF LAW IN SUPPORT OF THE  
JOINT MOTION TO APPROVE ELEVENTH AMENDMENT  
TO THE SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

Class Counsel and Wyeth (the “Parties”) submit this Memorandum in Support of their Joint Motion for Approval of the Eleventh Amendment to the Class Action Settlement Agreement in the above-entitled matter.<sup>2</sup> The proposed Eleventh Amendment is intended to modernize and enhance the efficiency of the administration of the Nationwide Class Action Settlement Agreement in light of the experience processing the relatively small number of claims that have been presented for payment by the Class Action settlement fund over the last four years.

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<sup>2</sup> A copy of the Eleventh Amendment is appended as Exhibit A to the Parties’ Joint Motion. Preliminary to approval of the Amendment, the Parties also request that the Court enter a “Preliminary Approval Order” authorizing the transmission of a postcard notice advising affected Class Members and their attorneys of the filing of the Joint Motion and affording them a 30-day opportunity to respond if they wish. *See* Section III.A, *infra*.

The Parties agree it is appropriate to modify certain terms of the Settlement Agreement to adjust for such changed circumstances. If approved, the amendment will make it possible to adjudicate Class Member claims more quickly, more accurately and much less expensively than the current system without prejudicing Class Members in any way.

## **II. PROCEDURAL HISTORY AND STATEMENT OF THE FACTS**

### **A. BACKGROUND OF THE DIET DRUG CLASS ACTION SETTLEMENT**

On November 18, 1999, Class Counsel and Wyeth entered into a Nationwide Class Action Settlement to resolve on a class basis most claims arising from Wyeth's marketing of the Diet Drugs, Pondimin® and Redux™ ("Diet Drugs") including all claims predicated on allegations of Diet Drug-induced valvular heart disease ("VHD"). *See In re Diet Drugs*, 2000 WL 1222042 at \*5 (E.D.Pa. Aug. 28, 2000). The Settlement Agreement received Trial Court Approval in Pretrial Order ("PTO") 1415 on August 28, 2000, and attained the status of "Final Judicial Approval" on January 3, 2002, upon the resolution of all appeals from PTO 1415 without any change in its terms. *See In re Diet Drugs*, 2002 WL 32154197, at \*5 (E.D. Pa. Oct. 3, 2002).

The Settlement was intended to address comprehensively the needs of Class Members on a "cradle to grave" basis in relation to the increased risk of VHD caused by exposure to Diet Drugs. *Diet Drugs*, 2000 WL 1222042 at \*16, \*19-\*27.

Among other things it provided at risk Class Members with: (1) purchase price refunds, (2) a free screening echocardiogram to determine if they had VHD, (3) a “cash/medical services” benefit of either \$3,000 or \$6,000 in cash, depending on duration of Diet Drug use, to fund ongoing medical surveillance, (4) a \$32.5 million fund for medical research, and (5) compensation for serious levels of VHD in accordance with two settlement Matrices. *Id.*

Insofar as Matrix benefits are concerned, the “A” or full compensation Matrix sets forth the monetary benefits payable to those Class Members who used the Diet Drugs for more than 60 days and who do not demonstrate any alternative causes for the VHD that they are diagnosed as having, while the “B” or “impaired causation” Matrix describes the benefits payable to those Class Members who were prescribed the Diet Drugs for 60 days or fewer or who manifest alternative causes for their VHD and provides for compensation at 20% of the compensation amounts specified on the A-Matrix. *Id.* at \*21-\*22. Each Matrix contains cells that establish compensation values based on the intersection of one of five VHD severity levels and one of eleven age intervals corresponding to the age at which that level of Matrix disease was first diagnosed. *Id.* at \*22. Matrix Levels I and II represent clinically significant VHD that has not progressed to the point that it requires a surgery. *Id.* Matrix Level III represents VHD that requires surgery to repair or

replace the damaged heart valve. *Id.* Matrix Levels IV and V represent morbid complications of VHD that was not successfully treated. *Id.*

Compensation under the Matrices is not available for conditions that are first manifested after the Class Member reaches age 80. *Id.* Class Members are required to file a Matrix compensation claim within four years of the date on which they were first diagnosed with the condition that would form the basis of their Matrix claim. *In re Diet Drugs*, No. 17-1625, 763 Fed.App'x. 237, 239-40, 242-43 (3d Cir. Feb. 8, 2019). Two additional Matrices described the compensation payable to “Derivative Claimants” such as those alleging loss of consortium.<sup>3</sup> *Diet Drugs*, 2000 WL 1222042 at \*21-\*22.

The Matrix values established by the Settlement Agreement increase by two percent per year to compensate for inflation. *Id.* at \*22. Class Members are eligible to participate in Matrix compensation if they were diagnosed with mild or greater mitral or aortic regurgitation by July 3, 2003, the end of the Settlement’s medical screening program. *In re Diet Drugs*, No. 12-3138, 525 F. App'x 140, 142 (3d Cir. May 21, 2013). Those who were diagnosed with mild or greater mitral or aortic regurgitation by that date were entitled to receive Matrix benefits so long as they

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<sup>3</sup> The Settlement Agreement defines a Derivative Claimant as anyone who claimed a right to sue derivatively based on a relationship with the Diet Drug Recipient, including “spouses, parents, children, dependents, other relatives, and ‘significant others.’” Under Section IV.B.1.c of the Settlement Agreement, the Derivative Claimants who registered with the Trust by May 3, 2003, are paid an amount equal to 1.01% of the Matrix payment being paid to their associated Diet Drug Recipient. If a Diet Drug Recipient has more than one registered Derivative Claimant, all those Derivative Claimants divide up one Derivative Payment.

developed a Matrix level condition by a “Matrix Payment Cut-Off Date” of December 31, 2015. *Diet Drugs*, 2000 WL 1222042 at \*21. A Class Member who reached a Matrix-Level condition by the Cut-Off date and was paid on a Matrix Level below Level V is entitled to “step-up to higher Matrix-Level conditions and...be paid the incremental dollar amount, if any, by which the Matrix payment for the higher Matrix-Level condition exceed[ed] the Matrix payment previously received.” *In re Diet Drugs*, No. 11-1617, 451 F. App’x 165, 168 (3d Cir. Nov. 14, 2011).

The Settlement Agreement created two funds to pay for the benefits promised to Class Members. Fund A, in the amount of \$1 billion, was established to fund the provision of purchase price refunds, screening echocardiograms, the cash/medical services benefit, and medical research. *Diet Drugs*, 1222042 at \*27. With respect to Fund B, Wyeth agreed to have \$2.55 billion available to fund the payment of Matrix benefits under the Settlement Agreement. *Id.* Any balance remaining in Fund A after it has served its purpose was to be transferred to Fund B. *In re: Diet Drugs*, 226 F.R.D. 498, 504 n. 7 (E.D. Pa. 2005). The amount remaining to fund Matrix benefits at any given time – that is, \$2.55 billion plus the amount transferred from Fund A to Fund B, less all amounts paid in Matrix benefits and the costs of administering those benefits – is defined as the Maximum Available Fund

B Amount or “MAFBA” and is the outer limit on Wyeth’s funding obligation under the Agreement. *Diet Drugs*, 226 F.R.D. at 504.

Under the Settlement Agreement Class Members who were dissatisfied with the determination of their Matrix benefit claim had two paths to judicial review. For determinations that were non-medical in nature such as the resolution of liens and the amount of individual attorneys’ fees, Class Members could proceed through an arbitration process and, if dissatisfied with the outcome there, could appeal to the Court. *See* PTO 2807. Claimants who disagreed with a medical determination regarding a Matrix claim could challenge that determination through the show cause process. *In re Diet Drugs*, No. 14-1298, 597 F. App’x. 719, 723 (3d Cir. Jan. 29, 2015). Both the arbitration process and show cause proceedings were each subject to an exhaustive set of rules. *See* PTOs 2807 & 2153.

The Settlement Agreement was to be managed by a Trust consisting of seven court-appointed Trustees with two appointed by directly this Court and the remaining five being appointed upon the recommendation of the state court judges who had certified state-bound Diet Drug classes prior to execution of the Nationwide Class Action Settlement Agreement. *Diet Drugs*, 1222042 at \*27. Although these seven Trustees had substantial experience in business, medicine, law and accounting, none had any experience in settlement administration. *Id.*

The information in the Trust's database shows that 564,248 Diet Drug recipients registered for benefits by the registration deadlines set by the Nationwide Class Action Settlement. *See* Declaration of Orran Brown in Support of Approval of the Eleventh Amendment, attached as Exhibit B to the Parties' Joint Motion ("Brown Decl.") at ¶ 7. Of these, 93,643 applied for Matrix benefits, with 52,522 initially seeking payment on Matrix Level I or II for presurgical Matrix conditions. *Id.* at ¶¶ 7(a), 7(b). By December 2002, the processing of claims for Fund A benefits was largely concluded and Funds A and B were then merged. *In re: Diet Drugs*, 553 F. Supp. 2d 442, 454 (E.D. Pa. July 21, 2008).

While the administration of Fund A claims was a relatively straightforward matter, the processing of claims for Matrix benefits proved formidable. By the middle of 2002, it became apparent that both the number and type of Matrix claims submitted for payment by the Trust "departed dramatically from what was expected when the Settlement Agreement was approved." *Diet Drugs*, 226 F.R.D. at 506. *See also* *Diet Drugs*, 226 F.R.D. at 507-08. Moreover, there was evidence that a substantial proportion of the Matrix claim submissions were based on echocardiograms that had been manipulated to create a false appearance of clinically significant VHD when none existed. *E.g.*, *Diet Drugs*, 553 F. Supp.2d at 454. As a result, the Court invoked the audit provisions of the Settlement Agreement and ordered an audit or medical review of every Matrix claim prior to

payment. *Id.* This one hundred percent audit requirement proved too difficult for the Trust to administer, interfering with the timely payment to deserving Class Members and thereby threatening one of the fundamental aims of the Settlement. To remedy that problem, the Parties advocated the creation of the “Consensus Expert Panel” or CEP and executed two amendments to the Agreement, the Seventh Amendment and the Ninth Amendment.

In PTO No. 6100, entered on March 31, 2006 at the request of Class Counsel, Wyeth and the Trust, the Court approved Court Approved Procedure No. 11, which appointed the three-person CEP to oversee the Trust’s medical audit of Matrix claims. The CEP consists of three highly distinguished academic cardiologists with expertise in VHD and echocardiography: John Dent, M.D., designated by the Trust, Harry Rakowski, M.D., designated by Class Counsel, and Neil Weissman, M.D. designated by Wyeth. Brown Decl. at ¶ 16. The CEP’s mission has been to oversee the audit process, to direct training of the Trust’s auditing cardiologists and to resolve Matrix claims where one of the Parties questions an audit outcome on medical grounds. *E.g., In re Diet Drugs Litig.*, No. 99-20593, 2011 WL 2174611, at \*6 (E.D. Pa. June 2, 2011).

The Seventh Amendment, approved by the Court in PTO No. 4567 on March 15, 2005, created a new fund in the amount of \$1.275 billion to pay all outstanding Level I and II claims, pro rata, based on independent medical review

under the auspices of a new and separate claims facility. *Diet Drugs*, 226 F.R.D. at 510. It also authorized such claimants to recover additional Matrix benefits from the Trust should their underlying VHD progress in severity to Levels III, IV and/or V by the earlier of 15 years from last ingestion of Diet Drugs or December 31, 2011, which became the Matrix Payment Cut-Off Date for this group. *Id.* at 510 n. 7.

The Ninth Amendment, approved in PTO No. 5398 on July 1, 2005, discharged the existing seven Trustees and transferred management of the Trust to Martin Rudolph, a certified public accountant with vast experience in the administration of mass and class settlements. *See* PTO 5398. At that time, the Trust had 42,298 Matrix claims to process, was paying an average of \$22,474,563 in Matrix claims monthly, received an average of 368 Matrix claims a year, and had an annual operating budget of \$48,259,522. *See* Brown Decl. at ¶ 7(c). In contrast, by 2019, four years after the final cut-off date to file new Matrix claims for most Class Members, there were only 3,348 Class Members who remained potentially eligible to seek Matrix benefits. *See* Brown Decl. at ¶ 7(d). These potentially eligible Class Members are those who were defined out or opted out of the Seventh Amendment or who had already been paid Matrix benefits on some level below Matrix Level V as of the effective date of the Seventh Amendment.

In the four years from 2019 to 2022, the Trust received a total of 16 new Matrix claims. Over that same period, it paid out \$7,743,309 in Matrix benefits on 17 claims, some of which had been submitted in a previous year. *Id.* at ¶ 9. Over that same period, the Trust incurred \$4,239,769 in administrative fees. *Id.* at ¶ 9. In 2022, the Trust paid \$1,478,993 in Matrix benefits on three Matrix claims and accumulated \$983,672 in expenses. *Id.* at ¶ 9. In the first quarter of 2023, two new Matrix claims were submitted, while the Trust paid no claims and accumulated \$257,352 in expenses, which included \$60,000 in Trustee fees and \$82,807 in claims administration-related professional fees. *Id.* at ¶ 9(c).

The administrative costs at the Trust are abnormally high. While MAFBA currently stands at approximately \$1.3 billion and is unlikely to ever be exhausted, every penny paid in administrative expenses reduces MAFBA and thereby reduces the amount available to the Class. *See* Quarterly Report of the AHP Settlement Trust as of March 31, 2023 (Doc. No. 5401, filed on April 17, 2023) at 2. A good index of the performance of a claims facility is its average per claim administrative costs. *Id.* at ¶ 9. In most settlement programs, that cost ranges from \$250 to \$2,000 a claim, or perhaps up to \$4,000 to \$4,500 for claims with complex evaluation steps and multiple levels of review and appeal. *Id.* at ¶ 9. Here, however, in 2022 the Trustee's compensation alone (\$20,000/month) amounted to \$80,000 per claim, while the Trust's overall average cost per claim handled was \$327,891. *Id.* at ¶ 9.

The following Table sets out more information on the Trust’s administrative expenses, Matrix claims received and paid, and the average cost at the Trust per claim paid from 2019 through the first quarter of 2023:<sup>4</sup>

<b>TRUST ADMINISTRATIVE EXPENSES AND MATRIX CLAIMS RECEIVED AND PAID (2019-2023)</b>						
	<b>Year</b>	<b>Claims Received</b>	<b>Claims Paid</b>	<b>Matrix Benefits Paid</b>	<b>Trust Admin. Expenses</b>	<b>Avg. Cost Per Claim Paid</b>
<b>1.</b>	2019	4	5	\$1,088,716	\$1,174,214	\$234,843
<b>2.</b>	2020	5	3	\$2,002,055	\$1,088,446	\$362,815
<b>3.</b>	2021	5	6	\$3,173,545	\$993,437	\$165,573
<b>4.</b>	2022	2	3	\$1,478,993	\$983,672	\$327,891
<b>5.</b>	Q1 2023	2	0	\$0	\$257,352	None paid
<b>5.</b>	<b>Total</b>	<b>18</b>	<b>17</b>	<b>\$7,743,309</b>	<b>\$4,497,121</b>	<b>\$264,537</b>

The Trust submitted an operating expense budget of \$1,009,800 to the Court for 2022. *Id.* at ¶ 10. Claims professional fees, which include outside counsel fees, CEP Expert fees, and computer consulting costs, were \$346,776 for 2021 and budgeted at \$353,000 in 2022. *Id.* at ¶ 10. The Trustee’s compensation in 2022 was \$240,000 annually, or \$20,000 monthly. *Id.* at ¶ 10. The next highest expense in the budget was \$209,500 for D&O/E&O insurance for the Trustee and its three part-time staffers. *Id.* at ¶ 10. Payroll and related expenses were budgeted at \$69,800 for 2022. *Id.* at ¶ 10. On January 31, 2023, two of those part-time staff were laid off. *Id.* at ¶ 10. There were \$40,000 in “other” costs listed in the 2022 budget, including \$25,000 for off-site storage of 5,800 boxes of claimant materials.

<sup>4</sup> See Brown Decl. at ¶ 9.

*Id.* at ¶ 10. There was also a 2022 line item for office rent of \$19,500. The Trust ended its office lease on January 31, 2023. *Id.* at ¶ 10.

On December 8, 2022, the Trustee submitted a letter to the Court concerning the Trust's proposed budget for 2023 and requested that the Trust operate at the 2022 Court-approved budget levels until the Parties presented a new Trust operating structure to the Court for its consideration. *Id.* at ¶ 10. The Court granted the Trust permission to continue to operate under the 2022 budget for the present, on December 14, 2022. *Id.* at ¶ 10.

The Trust continues to receive claims by mail and operate a paper process with no online claim submission or processing functionality. The Settlement website, [www.settlementdietdrugs.com](http://www.settlementdietdrugs.com), is administered by the Trust. The last entry on the Reports page of the website is from 2015, when the 2015 Trust Annual Report was posted, and the last page on the Arbitration Processes page of the website was in 2017 even though the most recent Pretrial Order involving Arbitration was issued on April 24, 2019. *Id.* at ¶ 11.

A claim facility also is judged by how quickly it carries out its mission of processing claims. *Id.* at ¶ 8. On the criterion of the length of claim processing time, from 2019 through 2022, 16 claims for Matrix Compensation Benefits came in at the Trust. The Trust has finished handling 13 of those 16 claims, by getting them to the point of either payment or denial. *Id.* at ¶ 8. For all 13 claims, the

average amount of time from submission to payment or denial was 348 days (about 11.6 months). *Id.* at ¶ 8(a). Of the 13 claims, five of them had steps that took longer than others (such as additional medical review; a Settlement interpretation issue over whether the aortic stenosis defined in the Settlement Agreement includes prosthetic aortic stenosis to reduce a claim to Matrix B; a missing medical records issue; deficiency notices from the Trust for other things that made the file incomplete; medical audit and then a Show Cause proceeding before the Court). *Id.* at ¶ 8(b). Those five claims averaged 553.8 days to get through all their processing, which was over a year and a half. *Id.* at ¶ 8(b). Eight of the 13 claims did not need any such additional steps. Those eight averaged 219 days from start to finish (7.3 months). *Id.* at ¶ 8(c).

It is obvious that the structure that the Trust utilized for more than a decade to successfully process and audit tens of thousands of Matrix claims is anachronistic. It is far too expensive and far too slow to adjudicate the handful of claims now presented to it on an annual basis. In light of this, in light of the Trustee's age and in light of the fact that the Parties have been at work to develop a modernized process that can dispose of matrix claims with greater speed and accuracy and with less cost, Mr. Rudolph submitted his resignation as Trustee on February 6, 2023, effective on the later of April 10, 2023, or the date when his successor was appointed. *Id.* at ¶ 10.

The Parties developed and executed the Eleventh Amendment, subject to Court approval, to update the claim processes of the Settlement program, speed up claim processing and payment, reduce the excessive cost of administration, and provide continuity for the administration of Matrix benefits over the remaining forty years in which one or more Class Members will be eligible to submit a claim for incremental or progression Matrix benefits. What follows is a description of the proposed Amendment.

## **B. THE ELEVENTH AMENDMENT**

### **1. *The Eleventh Amendment Class Members***

The Eleventh Amendment applies to “Eleventh Amendment Class Members” who are defined as:

[A]ll Diet Drug Recipients (or the Representative Claimants of Diet Drug Recipients) who: (a) are not Category One Class Members or Category Two Class Members under the Seventh Amendment to the Settlement Agreement; and (b) on or before the Effective Date, had been paid Matrix Compensation Benefits by the Trust on any Matrix Level other than Matrix Level V.

*See* Eleventh Amendment at § I.B.15. As of June 1, 2023, there were 2,699 such Class Members:

(1) This total of 2,699 Eleventh Amendment Class Members includes 342 Class Members (12.67% of the entire group) where a payment on a higher Matrix Level in 2023 would not exceed what the Class Member already has been paid under the current Matrix values. *See* Brown Decl. at ¶ 15(a). Because the 2% annual increase in Matrix Grid amounts could restore their eligibility to a certain extent, these persons are monitored as still in the group until they reach an age where such restoration is not

mathematically possible, largely because the amounts payable in the 70 to 79 age bracket are 50% of those payable in the 65 to 69 age group.

- (2) The 2,699 total includes 358 persons (13.26% of the group) who are older than age 79, but are kept in the group number until four years after they turn age 80, to allow for the four-year claim filing period. *Id.* at ¶ 15(b).
- (3) The net number of persons who are under age 80 and would be paid a positive incremental amount today is 2,040 (75.58% of the 2,699). *Id.* at ¶ 15(c).
- (4) Of the 2,699, there are 2,201 (81.55%) shown in the Trust's database as represented by their own counsel, while 498 (18.45%) are listed as *pro se*. *Id.* at ¶ 15(d).
- (5) None of the Eleventh Amendment Class Members is younger than 35. *Id.* at ¶ 15. There are 1,158 (42.91%) in the age brackets covering ages 35 to 69; 1,183 (43.83%) are ages 70 to 79 where the amounts payable on the Grid are 50% of those in the adjacent 65-69 bracket; 358 (13.26%) already are older than 79 but have four years to make a claim, as mentioned in (b) above. *Id.* at ¶ 15(e).
- (6) 1,931 (71.55%) of the Eleventh Amendment Class Members were paid on Matrix A, while 768 (28.45%) are on Matrix B where the payment amounts are 20% of those on Matrix A. *Id.* at ¶ 15(f).
- (7) 2,064 (76.47%) were paid on Level I or Level II; 580 (21.49%) on Level III; and 55 (2.04%) on Level IV. *Id.* at ¶ 15(g).
- (8) On average, it has been 18.7 years since the Eleventh Amendment Class Member's last Matrix payment. *Id.* at ¶ 15(h).

The latest Eleventh Amendment Class Member to turn age 80 will do so on September 30, 2063, with four years from then (September 30, 2067) to file a claim if she were diagnosed with a higher Matrix Level condition before she turned 80. *Id.* at ¶ 15.

## ***2. Summary of the Essential Terms of the Eleventh Amendment***

The Eleventh Amendment will not change anything about the eligibility requirements set out in the Settlement Agreement for a Class Member to be paid Matrix Compensation Benefits. Nor does it modify how much a Class Member will be paid on an eligible claim. None of that landscape will be altered in any respect.

Instead, the Eleventh Amendment will improve upon claims processing and administration under the Settlement Agreement to elevate the Program's performance on the criteria by which a claims program is judged – the speed in which claims are handled, the accuracy of outcomes on them, the ease in which claims are presented and completed, how quickly eligible claims are paid, and the administrative costs of the program relative to the level of claim activity. It will accomplish these goals in these essential ways:

- (1) Replace the Trust and Trustee with one Claim Administrator;
- (2) Set out in one governing Amendment the requirements from the Settlement Agreement and prior rulings for a payable claim for progression or “Incremental” Matrix Compensation Benefits;
- (3) Have the three expert cardiologists on the CEP do the medical review when needed on a claim, which will remove the delay caused by the current Trust Auditing Cardiologist step;
- (4) Set deadlines for the Claim Administrator and for Class Members to get results on their claims;
- (5) Remove the arbitration and show cause stages and replace them with one simple appeal to the Court if a Class Member objects to the outcome on a claim;

- (6) Clarify how liens against claim payments are addressed and place that duty squarely in the hands of the Claim Administrator;
- (7) Empower the Claim Administrator to modernize the manner in which claims are submitted and reviewed, to bring best practices to bear in this Program;
- (8) Ensure that Class Counsel is kept fully apprised on all claim activity and is available to assist unrepresented Class Members and the Claim Administrator when needed.

The following sub-sections of this memorandum explain these terms in detail.

### ***3. Continuation of Settlement Agreement Matrix Compensation Benefits Eligibility and Payment Provisions***

The first substantive part of the Eleventh Amendment – Section II.A – confirms that the Amendment does not modify the Matrix Compensation Benefits payable to eligible Eleventh Amendment Class Members (and the benefits payable to associated eligible Derivative Claimants) under the terms of Section IV.B of the Settlement Agreement, the Seventh Amendment to the Settlement Agreement, and the Court’s previous interpretations and applications of the terms of the Settlement Agreement. All provisions of the Settlement Agreement and previous rulings of the Court affecting eligibility to submit a Claim for Incremental Matrix Compensation Benefits and for payment of such benefits including Diet Drug ingestion and duration proof, the amount of such payment, the Matrices and Matrix payment amounts, qualification on Matrix A-1 or Matrix B-1, the circumstances

determining whether Matrix A-1 or Matrix B-1 is applicable to a Claim, the benefits payable to Derivative Claimants, the annual increase in Matrix payment amounts under Section IV.C.1 of the Settlement Agreement, Pfizer's guarantee of Wyeth's financial obligations under the Settlement Agreement, including the Eleventh Amendment, and other terms regarding eligibility and payment of Matrix Compensation Benefits, remain in full force and effect.

#### ***4. Replacement of the Trust With a Claim Administrator***

The extensive structure of a Trust facility is excessive and no longer needed to implement the Settlement Agreement fairly and correctly in light of the minimal claim activity occurring under the Settlement Agreement, and instead impede the prompt delivery of Settlement Agreement benefits. Section II.D of the Eleventh Amendment will replace the AHP Settlement Trust and its Trustee with BrownGreer PSC as Claim Administrator to handle the processing of Matrix compensation claims under the Settlement. Class Counsel will have complete access to all Claims, reports, and any other information of the Claim Administrator relating to its performance. Class Members who object to the final outcome on a claim from the Claim Administrator will be able to appeal to the Court.

Attached as Exhibit "C" to the Parties' Joint Motion is a Declaration by Class Counsel Michael Fishbein, explaining why BrownGreer should be serving as the Claim Administrator under the Eleventh Amendment. BrownGreer is a

seasoned claims administration firm, located in Richmond, Virginia. *See* Brown Decl. at ¶¶ 1, 2. In the twenty years since its founding in 2003, BrownGreer has played a central role in the successful implementation of some of the largest and most significant claims resolution programs in history, including the NFL Concussion Settlement in this Court; the Vioxx personal injury settlement; the Fire Victim Trust providing compensation for claims arising from California wildfires; the facilities for BP oil spill claims; the fund for victims of the October 1, 2017 mass shooting at the Harvest Musical Festival in Las Vegas; and the administration of the national opioid settlement and other opioid litigation programs. *See* Brown Decl. at ¶ 2. BrownGreer’s founders, Orran Brown and Lynn Greer, have been working in this field since 1989, beginning with the claims trust created to handle personal injury claims relating to the Dalkon Shield IUD. *See* Brown Decl. at ¶ 2.

Throughout this litigation BrownGreer has served as a settlement “liaison counsel” for Wyeth, working with Class Counsel, the Trust, the Court, and counsel for Class Members to implement the Settlement Agreement correctly. *See* Brown Decl. at ¶ 3. To avoid any question about its neutrality as the Claim Administrator, BrownGreer will withdraw from its designation as counsel for Wyeth immediately upon its appointment as the independent Claim Administrator. *See* Eleventh Amendment at § II.D.1; Brown Decl. at ¶ 3. Section II.B of the Eleventh Amendment addresses how and when the transfer of administrative duties from the

Trust to the Claim Administrator will occur on the Amendment's Effective Date, which will be 30 days after the Court enters its approval Order, unless during that 30-day period someone appeals and obtains a stay on implementation of the Eleventh Amendment pending appeal. The Claim Administrator will serve by Court appointment and under the terms of a contract with both Class Counsel and Wyeth. *See* Eleventh Amendment at § II.D.2. The fees and expenses of the Claim Administrator will be closely controlled and monitored through an annual budget process, *See* Eleventh Amendment at § II.D.3 and detailed reports by the Claim Administrator to the Parties and the Court at least every six months on all implementation costs, *See* Eleventh Amendment at § II.S.2(a).

#### ***5. QSF Status of the Settlement Fund.***

The Settlement Agreement provides that the funds transferred by Wyeth to the Trust or Claim Administrator for payment of claims shall be treated as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code. *See* Settlement Agreement at § III.D.1. That means the fund has its own tax identification number, files tax returns, and pays taxes on its income. Section II.C of the Eleventh Amendment continues QSF treatment of the Settlement Fund and makes the Claim Administrator responsible for tax compliance. Section II.C.4 of the Eleventh Amendment will allow Wyeth to convert the Fund from a QSF to a simple escrow account without any adverse effect on the Class. Under Section

II.C.3, the Claim Administrator will notify Wyeth monthly of any deposit needed to meet the Program's obligations and Wyeth will deposit the funds within 15 days after the notice. This is an improvement for the Class over the current practice, under which deposits are made on a quarterly basis.

**6. *Claim Submission and Proof Requirements.***

Sections IV.B.2, VI.C.2, and VI.C.4 of the Settlement Agreement set out the forms and documentary proof required for a payable claim. Sections II.E through G of the Eleventh Amendment aggregate those requirements, but do not change them. Over the 23 years since 2000, the Parties and the Trust have accumulated numerous agreed procedures to define how aspects of claims were to be handled, many of which remain on the books but now are moot. In addition, the Parties proposed and the Court entered Orders endorsing 17 Court Approved Procedures ("CAPs"), most of which also have outlived their utility. The Eleventh Amendment will bring all these rules current. Section II.E repeats the long-standing mandate in CAP 4 that a claim for Matrix Compensation Benefits must be filed with the Claim Administrator no later than four years after diagnosis of a Matrix condition. Section II.F of the Eleventh Amendment confirms that the terms of Section VI.C.2 of the Settlement Agreement continues to govern proof of use of the Diet Drugs, given that length of use is one factor that determines whether a claim is payable on the "A" or "B" Matrix.

Section II.G of the Eleventh Amendment reviews the materials required for a complete claim for Incremental Matrix Compensation Benefits, from both the Settlement Agreement and CAP 4, which addresses what medical history records are required and what happens when they cannot be obtained. And then Section II R of the Eleventh Amendment reflects the Parties' agreement that the Settlement Agreement, with the Eleventh Amendment, set out all the requirements for payment of Incremental Matrix Compensation Benefits and the essential procedures for the implementation of the Settlement Agreement. Section II.R also provides that the procedures listed in Exhibit 1 to the Amendment are moot or no longer necessary and ask the Court to vacate any orders approving them.

***7. Threshold Eligibility Requirements for Incremental Matrix Compensation Benefits***

The Claim Administrator will continue to apply the eligibility requirements that the Trust has followed for payment eligibility. Section II.H.1 of the Eleventh Amendment presents all these requirements for all to see and understand. Pursuant to that section a Matrix progression claim is payable if:

- (a) The Claimant is an Eleventh Amendment Class Member eligible to seek and receive Incremental Matrix Compensation Benefits;
- (b) The Claim was timely submitted to the Claim Administrator or was timely submitted to the Trust before the Effective Date;
- (c) The Claim states a Progression Matrix Level Condition that would qualify the Claimant for Incremental Matrix Compensation Benefits;

- (d) The Claimant was diagnosed with the Progression Matrix Level Condition upon which the Claim is based before the Claimant reached the age of 80 years old;
- (e) The Claim is not a duplicate of a previously paid or denied Claim;
- (f) The Claim seeks payment on a Matrix Level that, if eligible, would result in payment of Incremental Matrix Compensation Benefits to the Claimant; and
- (g) The Claim is a Complete Claim, which is defined in Section I.B.10 as a claim on which the Claimant has submitted or the Claim Administrator has in its possession the information and materials required for a Complete Claim under Section II.G of the Eleventh Amendment.

None of these requirements is new. The Eleventh Amendment simply confirms this and collects them in one convenient location.

## ***8. Enhancements to Claims Review and Processing***

### **(a) The Initial Stages of Processing**

The Eleventh Amendment will make great strides in simplifying and expediting how claims move through the administrative process to a final resolution. The first step when a Class Member wishes to assert a claim is to work with the claimant (or their counsel) to complete the claim. *See* Eleventh Amendment at § II.E. Within 10 days after any part of a claim is submitted, the Claim Administrator must review the file, notify the claimant of anything that is missing, and afford the claimant no less than 30 days to provide it. *Id.* at § II.H.2. Then, within 10 days after the file is complete, the Claim Administrator must determine whether the claim fulfills the Threshold Eligibility requirements

necessary to “complete” a claim. *Id.* at § II.H.1. Once it is determined that the claim is complete it must move to the Medical Review stage within ten days of that determination. *Id.* at § II.H.3. If it is determined that the claim cannot be made complete the Claim Administrator must issue a notice of denial no later than 10 days after that determination. *Id.* at § II.H.4. These tight timetables will speed up claims processing exponentially.

A key feature of the Settlement Agreement regarding eligibility for Matrix Compensation Benefits clearly persists after the Eleventh Amendment – the Class Member qualifies for payment if there is a “reasonable medical basis” for the medical diagnoses made by the Class Member’s cardiologist who completed Part II of the Green Form asserting the claim. *See* Settlement Agreement at § III.E.6-8. At the Trust, the review of claims to determine whether the records show the medical diagnosis and conditions necessary to qualify for payment on a higher Matrix Level is done by an Auditing Cardiologist using a paper file and tapes or discs of echocardiograms. *See* Brown Decl. at ¶ 11. Under current practice, either Class Counsel or Wyeth may have the CEP assess the claim file when they see a problem in any of the medical findings by the Trust’s Auditing Cardiologist. *Id.* at ¶ 11.

The Eleventh Amendment collapses all these steps into a simpler and much quicker process. The Claim Administrator may decide that a claim qualifies medically for payment on the basis of the records submitted without the need for

expert review. *See* Eleventh Amendment at § II.I.1. It must finish that analysis within 10 days after it has decided that the claim satisfies all the Threshold Eligibility requirements. *Id.* at § I.I.H.3. If the claim needs expert medical review, it must be presented to the CEP within 10 days after meeting Threshold Eligibility. *Id.* at § II.I.1. The CEP has 20 days to examine the claim and decide whether there is a reasonable medical basis for Green Form Part II answers (or equivalent answers in the Claim Form in use by the Claim Administrator) material to the claim and whether the Claim is eligible for payment on any Matrix Level that would qualify the Claimant for Incremental Matrix Compensation Benefits. *Id.* at § II.I.2. The Claim Administrator will notify the Class Member of that decision within five days. *Id.* at § II.I.2.

**(b) The Reconsideration Step**

The Eleventh Amendment will afford every Class Member who disagrees with the outcome on a claim either by the Claim Administrator or by the CEP, to have the Claim Administrator or the CEP to take a second look at the entire claim, including any additional information or materials the Class Member wishes to be considered. *Id.* at § II.I.4. This step will allow every Class Member who disagrees with an outcome to be heard on that objection. It too is subject to tight deadlines. While the Class Member will have 20 days to submit added materials, the Claim Administrator must act on the objection within 10 days. *Id.* at § II.H.4. The CEP

will have 20 days for its re-review and the Claim Administrator must notify the Class Member of their determination within five days. *Id.* at § II.I.4.

**(c) The Right of a Class Member to Appeal to the Court**

The review of claims by an experienced, neutral Claim Administrator or by the CEP and the availability of the Reconsideration step make it highly unlikely that any of the five or fewer claims made each year will cause a Class Member to feel a need for even further review of a claim outcome. Nonetheless, Sections II.H.5, II.I.5, and J of the Eleventh Amendment will provide every Class Member the right to file an appeal to the Court from any final claim determination and to be heard by the Court on any still lingering objection. The Class Member will have 60 days to bring that appeal and will have the burden of showing the Court that any material factual or medical determination on the claim by the Claim Administrator or the CEP was clearly erroneous. *See* Eleventh Amendment at § II.J.1. On appeal, the Court will review *do novo* any questions of law, including those regarding the interpretation of language in the Settlement Agreement. *Id.* at § II.J.4. The record on the appeal will be the same as that last before the Claim Administrator. *Id.* at § II.J.2. The Court may be assisted by a cardiologist serving as its Technical Advisor, just as it has been in the Show Cause process. *Id.* at § II.I.J. Class Counsel may assist an unrepresented Class Member on the appeal step. *Id.* at § II.S.3.

With these ample opportunities for re-review and appeal, the arbitration and show cause review vehicles in Sections VI.C.4 and VI.E of the Settlement Agreement will not be needed and will be eliminated by the Eleventh Amendment. *Id.* at § II.N. The Settlement Agreement provided arbitration proceedings before a member of a panel of arbitrators maintained by the Court's Special Master for Class Members seeking review of a Trust determination on a non-medical issue, such as duration of drug use. *See* Settlement Agreement at § IV.4.i. The arbitrator's decision was then appealable to the Court. *Id.* at § IV.4.l. Where a Class Member contested the medical outcome on a claim, the Trust filed a motion for show cause with the Court, to which the Class Member responded to have the Court decide on the objection. *Id.* at § IV.E.7. These proceedings necessitated multiple steps that consumed considerable time and resources for the Trust, Class Members, and the Court when they are invoked. In reality, a small percentage of processed claims have resulted in such proceedings.

In the 23 years since 2000, there have been only 485 arbitration proceedings, 352 of which were withdrawn or dismissed before the issuance of a decision. Brown Decl. at ¶ 18. Of the 123 Arbitration claims finally adjudicated by an arbitrator, the District Court, or the Third Circuit Court of Appeals, 94% (116) came down in the Trust's favor and 6% (seven cases) were decided for the Class Member. *Id.* at ¶ 18. In the last six years, there have been only two arbitrations,

both of which were decided in favor of the Trust, one in 2017 and one in 2020. *Id.* at ¶ 18. Up to now, there have been 1,269 show cause proceedings decided on the merits. Of them 1,184 (93.3%) sustained the Trust's outcome, while 85 (6.7%) found for the Class Member. *Id.* at ¶ 19. In 2019, there were two show cause denials; the last show cause was a denial in 2021. *Id.* at ¶ 19.

These elaborate arbitration and show cause processes – while needed when there were over 564,000 registrants who could make claims in the Settlement Program – are no longer effective when we have about 2,700 persons who can make only one type of claim. Nonetheless, the Eleventh Amendment preserves the right of a Class Member to seek judicial review of any outcome on a claim. The Parties expect there will be little occasion for a Class Member to feel a need to invoke that option.

### ***9. Derivative Claimants, Attorney Fees, and Liens***

Under the Eleventh Amendment, the Claim Administrator will make the determinations required by the Settlement Agreement on who qualifies as a Derivative Claimant of a Diet Drug Recipient with a payable claim for Incremental Matrix Compensation Benefits. *See* Eleventh Amendment at § II.K.1. The same time deadlines, reconsideration step, and judicial appeal rights enjoyed by the Diet Drug Recipient claimants will apply to Derivative Claimants. *Id.* at § II.K.

Similarly, the Claim Administrator will make the determinations the Trust has made on the attorneys' fees and expenses payable to a Class Member's individual counsel from a Matrix payment. *Id.* at § II.M.1. The Claim Administrator will resolve Medicare and other healthcare reimbursement claims or liens.<sup>5</sup> *Id.* at § II.M.1. These actions also are assigned deadlines and are subject to appeal to the Court. *Id.* at §§ II.L and II.M. Historically, these objections were heard first in arbitration and then appeal to the Court, but in 23 years there has never been an arbitration filed by either a Derivative Claimant or a lienholder, and only four arose over attorneys' fees, three of which were withdrawn before decision. *See* Brown Decl. at ¶ 18.

### ***10. Other Aspects of the Eleventh Amendment***

In addition to the forgoing, the Eleventh Amendment covers these important areas:

- (a) Enhancements to Processing:** Section II.O of the Eleventh Amendment allows the Claim Administrator to adjust any of the functions, procedures, systems, processes, operations, notices and other communications, and forms or other materials previously used by the Trust as necessary to facilitate the prompt and effective implementation of the Settlement Agreement in the best interests of the Eleventh

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<sup>5</sup> With the Claim Administrator responsible for resolving Medicare reimbursement claims and with the federal law query, reporting, and payment requirements Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) and the Medicare Secondary Payer Act, 42 U.S.C.A. §§ 1395y(b) *et seq.*, the reserve fund set aside by PTO No. 1823 on March 21, 2001 to cover unpaid Medicare claims is no longer needed. In over 22 years, the Trust has never used the reserve to cover a Medicare reimbursement claim. As a result, Section III.A.3(c) of the Eleventh Amendment contemplates that in its approval Order, the Court will vacate PTO No. 1823 and allow the amount in the PTO No. 1823 Reserve to be considered funds available in the Settlement Fund for other purposes.

Amendment Class Members, provided that no such changes or procedures may impair the substantive rights of any Eleventh Amendment Class Members to Incremental Matrix Compensation Benefits. This will lead to modernizing claim processes and, depending on volume, may involve moving from the Trust's paper process to an online one.

- (b) Class Counsel Assistance to Unrepresented Class Members and the Claim Administrator:** Class Counsel will continue to help *pro se* Class Members, particularly someone who objects to a claim outcome and wants to appeal to the Court. *See* Eleventh Amendment at §II.S.3. There also will be times when the Claim Administrator calls upon Class Counsel for input on an unsettled question of Settlement Agreement interpretation or application. *Id.* at § II.S.3. Class Counsel will be reimbursed for their reasonable time and expenses for these two categories of professional service and for their services in creating a modernized method for processing claims culminating in the Eleventh Amendment. *Id.* Such compensation shall be awarded by the Court in an amount not to exceed the “lodestar” value of their time in doing this work. *Id.* at §§ II.P and II.S.3.
- (c) Books and Records and Reporting by the Claim Administrator:** Section II.S.1 of the Eleventh Amendment will require the Claim Administrator to maintain complete financial records of the Settlement Program, but eliminates the unnecessary expense of a third-party financial audit. Instead, the Claim Administrator will report at least every six months to Class Counsel and the Court on all aspects of the implementation of the Settlement Agreement, including each claim made and its result. *Id.* at §II.S.2.
- (d) MAFBA:** MAFBA will be renamed the Maximum Available Settlement Fund Amount (or “MASFA”). *Id.* at § I.B.26. The Claim Administrator will maintain an accurate accounting of the MAFSA, which will continue to be reduced by claim payments and administrative costs in the same manner as before. *Id.* at § II.Q.

### III. ARGUMENT

#### A. NOTICE AND OPT-OUT CONSIDERATIONS

Under Federal Rule of Civil Procedure 23(e), Class Members are entitled to opt-out of a proposed class settlement that would bind them and to individual notice that must provide them with the information “needed to decide, intelligently, whether to stay in or opt-out.” *Amchem Prods. v. Windsor*, 521 U.S. 591, 628 (1997); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, (1985) (stating that class members must be provided with meaningful notice and an opportunity to exclude themselves from the class). However, this requirement does not apply to an amendment to a class action settlement agreement that has already received final judicial approval where the amendment would not have “a material adverse effect on the rights of class members.” *In re Diet Drugs*, 2010 WL 2735414 at \*6 (July 2, 2010) (citing *In re The Prudential Ins. Co. of America Sales Practices Litig.*, 962 F.Supp. 450, n. 10 (D.N.J.1997), *aff’d* 148 F.3d 283 (3d Cir.1998)). Even in the absence of such a material adverse effect, it is at least arguable that class members who would be affected by such a non-adverse amendment should be afforded an opportunity to consider and comment on the amendment. *See In re Diet Drugs*, No. 02-4581, 93 Fed.Appx. 338, 344 (Feb. 23, 2004). In ruling on prior, non-adverse amendments to the Settlement Agreement in this litigation, both this Court and the Court of Appeals have found that such an

opportunity was provided to class members with respect to each such amendment because “[t]he representatives of class members having cases in MDL 1203 were notified of the proposed amendment” by virtue of filing on the Court’s ECF docketing system. *Diet Drugs*, 93 Fed.Appx. at 344. *Accord*, e.g., *Diet Drugs*, 2010 WL 2735414 at \*6 (“notice of the proposed Tenth amendment, along with an opportunity to object, was supplied to representatives of all class members with active cases in MDL 1203. We provided similar notice in connection with the Fifth, Sixth, Eighth and Ninth Amendments to the Settlement Agreement.”).

The Eleventh Amendment is not adverse to the interests of the Eleventh Amendment Class Members. It does not alter the substantive rights of those Class Members in any way. Rather, it helps to guarantee that Class Members fully realize those rights by making changes in the administration of the Settlement during its extensive sunset period by assuring that claims are processed with increased speed, efficiency and accuracy, decreased administrative cost and burden, and with continuity over the forty-four years that remain in which one or more Eleventh Amendment Class Members are entitled to receive Matrix benefits if, as and when their VHD progresses in severity. Given this, no right to opt-out of the Eleventh Amendment is provided by the amendment and none is legally required.

With respect to notice of the Joint Motion seeking approval of the Eleventh Amendment, the situation is materially different than it was when the Court

considered prior amendments to the Settlement Agreement. MDL 1203 was dissolved over five years ago and the docket is no longer active. *See* PTO No. 9493 (filed October 27, 2017). Even though the docket in the present class litigation – *Brown v. American Home Products*, No. 99-20593 – is presently open, that docket is not very active given the extremely low level of settlement-related litigation activity that presently exists. Consequently, the Parties agreed not to rely solely on the electronic filing of the instant motion to afford Class Members and their counsel meaningful notice of and an opportunity to respond to the Joint Motion to approve the Eleventh Amendment. Therefore, the Joint Motion requests that the Court grant “preliminary approval” of the Eleventh Amendment and approve the transmission of a form of postcard notice to the Eleventh Amendment Class Members informing them: (1) that the Joint Motion has been filed, (2) how they can obtain a copy of the Eleventh Amendment and the present motion to approve it and (3) that they have a 30-day period from the date of the notice to file a response to the Joint Motion, if they wish to do so. A copy of the proposed postcard notice (Exhibit 3 to the Eleventh Amendment) is included in the proposed Preliminary Approval Order that is Exhibit 2 to the Eleventh Amendment and is submitted along with the Joint Motion. This process is more than sufficient to satisfy the due process rights of Eleventh Amendment Class Members with regard to the Court’s consideration of whether to approve the Amendment.

Technically “preliminary approval” is required where the Court is asked to initially certify a settlement class or approve a materially adverse change to a class settlement that has already been approved. *E.g.*, *Wood v. Saroj & Manju Invs. Philadelphia LLC*, No. CV 19-2820-KSM, 2020 WL 7711409, at \*3 (E.D. Pa. Dec. 28, 2020) (citing *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods.*, 55 F.3d 768, 786 (3d Cir. 1995) & *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 476 (E.D. Pa. 2010)). In those situations, the court “approves preliminary certification of the class,” but reserves “[f]inal certification” until it “rules on whether the final settlement agreement is to be approved.” *Id.* Typically, a preliminary approval order not only authorizes notice to the class but also sets a period of at least 60 days for class members to opt-out of or object to the Settlement, allows Defendant(s) a period of time to exercise any contractual walk away rights in light of the class response to the notice, sets a briefing schedule to begin after the walk away period and schedules a “fairness hearing” at which the parties and objectors may present evidence and make pre- and post-hearing submissions on whether the proposed settlement or materially adverse amendment is fair, reasonable and adequate. *See, e.g.*, PTOs 997, 3880.

Preliminary approval of a proposed class-action settlement is left to the discretion of the trial court and is based on an examination of whether the proposed settlement is “likely” to be approved under Rule 23(e)(2). Fed. R. Civ. P.

23(e)(1)(B)(i). See *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 299 (3d Cir. 1998). ACORD, E.g., *In re Traffic Exec. Ass'n-E. R.R.s.*, 627 F.2d 631, 634 (2d Cir. 1980) (“[Preliminary approval] is at most a determination that there is what might be termed ‘probable cause’ to submit the proposal to class members and hold a full-scale hearing as to its fairness.”). Preliminary approval is not a commitment to approve the final settlement. “[R]ather, it is a determination that ‘there are no obvious deficiencies, and the settlement falls within the range of reason.’” *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 438 (E.D. Pa. 2008) (quoting *Smith v. Pro. Billing & Mgmt. Servs., Inc.*, Civil No. 06-4453 (JEI), 2007 WL 4191749, at \*1 (D.N.J. Nov. 21, 2007)).

In the present matter, the Class Settlement has already received final judicial approval and the Eleventh Amendment to that Settlement is not materially adverse to Class Members. Therefore, there are no rights for Class Members to opt-out of or for Wyeth to walk away from the Amendment. Instead, Class Members would be receiving notice of the filing of this Joint Motion simply to satisfy any potential due process concern that they receive fair notice and an opportunity to respond to the Joint Motion. These circumstances obviously make it unnecessary to employ the convoluted and time-consuming process of considering the Joint Motion to Approve the Eleventh Amendment in multiple stages separating the notice, objections to the Amendment, briefing, a fairness hearing, and the submission of

post-hearing briefs and proposed findings. In any event, as we explain in the next section of this Memorandum, there is little question that the Eleventh Amendment's terms are "fair, reasonable, and adequate," making "preliminary approval" of the Eleventh Amendment in the form proposed by the Parties more than appropriate.

**B. THE ELEVENTH AMENDMENT SHOULD BE APPROVED BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE**

"One purpose for which it is appropriate to approve ...an amendment [to a class action settlement agreement] is adjusting for changed circumstances, particularly in light of the parties' experience in implementing the agreement." *In re Diet Drugs*, 385 F.3d 386, 392 (3d Cir. 2004) (citing *In re: Joint E & S Dists. Asbestos Litig.*, 237 F.Supp.2d 297, 300 (E.D.N.Y. 2002)). The standard to determine whether such an amendment is appropriate and subject to approval by a district court is whether the proposed amendment is "fair, reasonable and adequate." *Diet Drugs*, 385 F.2d at 392 (citing *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 965 (3d Cir., 1981)).

The conclusion is inescapable that the Eleventh Amendment is a fair, reasonable and adequate response to the massive change in claim volume that has resulted from the fact that there are fewer than three thousand Class Members out of the more than 564,000 who registered for settlement benefits who remain

eligible to recover Matrix benefits for progressive VHD. At least four considerations support this conclusion.

**CONTINUITY.** Forty-four years remain before all Matrix compensation rights expire as to all Class Members. Given his current age, it would be unreasonable to think that Mr. Rudolph could possibly remain as Trustee through 2067 and the simple fact is that he has now resigned from that position. The Eleventh Amendment will replace him with BrownGreer, an experienced, capable, reliable claims administration firm that not only has a detailed understanding of the Settlement Agreement and the opinions, rules and practices that govern its administration but also has sufficient depth of personnel and a continuity plan to assure efficient, prompt and accurate claims determinations for the handful of new Matrix progression claims that are file each year over the coming four decades.

**SPEED.** The Eleventh Amendment assures that Matrix claims are disposed of more quickly than the processing time Class Members currently experience. Under the present system all claims must be sent to audit to determine if there is a reasonable medical basis for claiming the condition asserted by the Class Member as a basis for Matrix recovery. However, unlike the Matrix Level II claims that were susceptible to mischief, virtually all of the Matrix progression claims submitted by Eleventh Amendment Class Members involve surgery or complications of severe VHD that are not easily misrepresented. The Eleventh

Amendment affords the new Claim Administrator discretion to pay claims without audit if the circumstances justify it. Obviously, this will accelerate processing times significantly.

Moreover, the current audit system involves audits by individual auditors subject to review and revision by the CEP. Under the Eleventh Amendment, claim review by individual auditors will no longer be required. Instead, the CEP will be responsible to promptly examine the medical basis for each claim that the Claim Administrator does not determine to be payable on its face and medical payment decisions will be based on the Panel's findings rather than await an initial review by the auditor, a request for reconsideration if the outcome is adverse to the claimant and then review by the CEP. Obviously, this will speed the medical review process considerably.

In addition, the Eleventh Amendment substantially reduces the time allowed for each processing step entrusted to the Claim Administrator in comparison to the time period that the Trust is allowed for each such step under the Settlement Agreement.

Finally, the Eleventh Amendment decreases the number of steps to a final determination of claims decided adversely to class members at the administrative stage by providing for direct appeals to the Court instead of putting claimants

through the arbitration or show cause process to attain judicial review of adverse claim determinations.

The collective effect of these administrative changes should materially speed the determination and payment of Matrix claims based on disease progression.

**ACCURACY.** Under the Eleventh Amendment every qualifying Matrix claim that is not denied for failure to meet Threshold Eligibility Requirements and that is not paid based on the Claim Administrator's facial review of the medical evidence will be evaluated by the CEP. Because the members of the CEP are among the nation's top experts in VHD and echocardiography and because all of them have a detailed understanding of the medical criteria for Matrix compensation as a result of nearly two decades of experience in applying the medical criteria of the Settlement Agreement, Class Members can reasonably expect that Matrix claims will not only be decided more quickly under the Eleventh Amendment but also with greater initial accuracy.

**REDUCED ADMINISTRATIVE EXPENSE.** Under the current system for administering Matrix benefits the Trustee receives a high annual salary, incurs six figure expenses for insurance and professional fees and is required to engage in multiple processing steps that would be eliminated by the Eleventh Amendment. As a result of these extraordinary, fixed expenses, it has incurred an average of \$264,537 per claim in administrative expense over the past four years. By utilizing

BrownGreer as Claim Administrator and by eliminating unnecessary processing machinations, the Eleventh Amendment should eliminate the above described extraordinary, fixed expenses and reduce the per claim costs to the industry norm. While this is not a direct benefit to the Eleventh Amendment Class Members because of the current size of MAFBA, avoiding a waste of settlement funds in unreasonably large expenses is consistent with the mandate underlying all federal civil litigation to “secure the just, speedy, and *inexpensive* determination of every action and proceeding.” *See* Fed.R.Civ.P. 1 (emphasis supplied).

#### **IV. CONCLUSION**

For these reasons, Class Counsel and Wyeth request that the Court enter the proposed Preliminary Approval Order presented by the Parties and then approve the Eleventh Amendment as fair, reasonable, and adequate.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Joint Motion to Approve Eleventh Amendment to Settlement Agreement was filed electronically this 14<sup>th</sup> day of June, 2023 and is available for viewing and downloading from the ECF System of the United States District Court for the Eastern District of Pennsylvania.

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