

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

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

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

Dated: November 18, 1999

First Amendment (November 23, 1999)  
Second Amendment (December 10, 1999)  
Third Amendment (February 24, 2000)  
Fourth Amendment (July 20, 2000)  
Fifth Amendment (November 21, 2002)  
Sixth Amendment (January 10, 2003)  
Seventh Amendment (July 21, 2004)  
Eighth Amendment (August 4, 2004)  
Ninth Amendment (May 18, 2005)

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# NATIONWIDE CLASS ACTION SETTLEMENT AGREEMENT WITH AMERICAN HOME PRODUCTS CORPORATION

## PREAMBLE

American Home Products Corporation ("AHP") and the undersigned representatives of the purported class and subclasses defined herein (the "Class Representatives") (together, the "Parties") hereby agree to propose a nationwide Class Action Settlement which would resolve, on the terms set forth in this Settlement Agreement, "Settled Claims" against AHP and other "Released Parties" arising from the marketing, sale, distribution and use of the diet drugs Pondimin<sup>®</sup> and Redux<sup>™</sup>, pending in various courts, including but not limited to claims which have been made in the actions that have been transferred for coordinated or consolidated pretrial proceedings to the United States District Court for the Eastern District of Pennsylvania under Docket No. MDL 1203 (the "Federal District Court"), in *Vadino et al. v. AHP* (Docket No. MID-L-425-98), and in the numerous other State Courts around the United States. The Parties to this Agreement are aware of the following certified or conditionally certified nationwide or statewide classes involving Pondimin<sup>®</sup> and Redux<sup>™</sup> as of October 7, 1999: United States District Court for the Eastern District of Pennsylvania, *Jeffers v. American Home Products Corp.*, C.A. No. 98-CV-20626 (E.D. Pa.) (*In re Diet Drug Products Liability Litigation*, MDL 1203) (nationwide medical monitoring class); West Virginia (*Burch et al. v. AHP*, Civil Action No. 97-C-204(1-11)) (statewide personal injury and medical monitoring class); Illinois (*Rhyne v. AHP*, 98 CH 4099) (statewide refund and monitoring reimbursement class); New Jersey (*Vadino et al. v. AHP*, Docket No. MID-L-425-98) (statewide Unfair and Deceptive Acts and Practices and medical monitoring class); New York (*New York Diet Drug Litigation*, Index No. 700000/98) (statewide medical monitoring class); Pennsylvania (*Pennsylvania Diet Drug Litigation*, Master Docket No. 9709-3162 C.C.P. Phila.) (statewide medical monitoring class); Texas (*Earthman v. AHP*, No. 97-10-03970 CV, Dist. Ct. Montgomery Co. Texas) (statewide medical monitoring class); and Washington (*St. John v. AHP*, 97-2-06368-4) (statewide medical monitoring class).

This Settlement Agreement shall not be construed as evidence of or as an admission by AHP of any liability or wrongdoing whatsoever or as an admission by the Class Representatives or members of the Settlement Class as defined herein ("Class Members") of any lack of merit in their claims.

Accordingly, AHP and the Class Representatives hereby agree, subject to Final Judicial Approval (except as to the Accelerated Implementation Option ("AIO") described in Section V below), compliance with applicable legal requirements, and other conditions, all as set forth below, that Fund A and Fund B shall be established, from which the benefits described herein will be paid to the Class Members of the proposed Settlement Class and Subclasses, and that the Settled Claims against AHP and other Released Parties, as defined herein, will be settled, compromised and released, in accordance with the following terms.

## I. DEFINITIONS

For purposes of this Settlement Agreement the following terms (designated by initial capitalization throughout this Agreement) shall have the meanings set forth in this Section. Terms used in the singular shall be deemed to include the plural and vice versa.

1. "Adjusted Maximum Available Fund B Amount" shall mean the amount determined by adding the Fund A Transfer Amount to the Maximum Available Fund B Amount as defined in this Section, and by then subtracting from the resulting sum all amounts paid by the Trust out of the Fund A Transfer Amount for any purpose. The "Maximum Available Fund B Amount" shall mean the amount determined by adding \$2,550,000,000 and the Fund B Accretions and by then subtracting from the resulting sum: (i) the Fund B Initial Payment under Section III.C.2; (ii) all amounts paid or transferred by AHP to the Trustees for deposit into Fund B or the Settlement Fund pursuant to Fund B Quarterly Notices under Section III.C.3, pursuant to Requests for Fund B AIO Payments under Section V.F.2, or pursuant to other payment or deposit requests from the Trust for deposits into Fund B; and (iii) Credits to which AHP is entitled under Section VII.A (Opt-Out Credits) and Section VII.C.1.g (Cross-Claim Credits), provided that Initial Opt-Out Credits (as defined in Section VII.A.2) and Back-End Opt-Out Credits (as defined in Section VII.A.3) shall be applied to reduce the Maximum Available Fund B Amount only when and as provided in Section VII.A. "Fund B Accretions" shall be determined as follows: On the first day of the first AIO Fiscal Quarter or Fiscal Quarter (whichever is applicable) after the Final Judicial Approval Date or the date on which it is determined that Final Judicial Approval will not be obtained, the Trustees shall calculate a quarterly accretion to the Maximum Available Fund B Amount which will be one and one-half percent (1.5%) of the Maximum Available Fund B Amount determined as of the close of the preceding AIO Fiscal Quarter or Fiscal Quarter, whichever is applicable. Such accretions shall be added to the Maximum Available Fund B Amount as of the day on which the accretion is calculated.
2. "Administrative Reserve" has the meaning provided in Section III.C.3.b.
3. [This section intentionally left blank.]
4. "AHP" means American Home Products Corporation, its successors and assigns.
5. "AHP Released Parties" shall mean the Released Parties described in Sections I.48.a and I.48.b herein.

6. "AIO Fiscal Year" shall mean the partial calendar year and each calendar year after the date on which it is finally determined that Final Judicial Approval will not be obtained or the Settlement Agreement is otherwise terminated, as follows. The first AIO Fiscal Year shall be the partial calendar year beginning on the date on which it is determined that Final Judicial Approval will not be obtained or the Settlement Agreement is otherwise terminated. The second AIO Fiscal Year shall be the calendar year beginning on the first day of the year following the year in which Final Judicial Approval is not obtained or the Settlement Agreement is otherwise terminated, and so forth. "AIO Fiscal Quarter" shall mean the partial calendar quarter and each calendar quarter after the date on which it is finally determined that Final Judicial Approval will not be obtained or the Settlement Agreement is otherwise terminated, as follows. The first AIO Fiscal Quarter shall be the partial calendar quarter beginning on the date on which it is determined that Final Judicial Approval will not be obtained or the Settlement Agreement is otherwise terminated. The second AIO Fiscal Quarter shall be the calendar quarter beginning on the first day of the calendar quarter following the quarter in which Final Judicial Approval is not obtained or the Settlement Agreement is otherwise terminated, and so forth.
7. "AIO Start Date" shall mean the date on which the Trial Court determines by oral or written decision whether or not to approve the Settlement or the date on which AHP terminates the Settlement Agreement, whichever is earlier.
8. "Business Day" shall mean any day other than Saturday, Sunday or New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.
9. "Claim for Benefits" or "Claim for Settlement Benefits" or "Claim" refers to the submission of a form in which a Class Member elects the Accelerated Implementation Option (or "AIO"), or the submission of a form in which a Class Member seeks to register for any of the benefits available to Class Members pursuant to this Settlement Agreement, or the submission of a form through which a Class Member seeks Matrix Compensation Benefits pursuant to the matrices, along with all other materials including correspondence, documents and video tapes or disks of Echocardiograms submitted with such forms or in support of such a Claim.
10. "Class Counsel" shall mean those attorneys executing this Settlement Agreement on behalf of the Class Representatives, or such other attorneys as shall be approved by the Court as counsel to the Settlement Class.

11. "Claims Administrator" shall mean any person or persons to be appointed by the Trustees, subject to approval of the Court, to administer Claims for Benefits pursuant to the Settlement Agreement.
12. "Class Counsel Representative(s)" shall mean one or more individual members of the Class Counsel who are selected by the Class Counsel to represent the Class Counsel with respect to those matters specified in this Settlement Agreement.
13. "Class Representatives" shall mean Sheila Brown, Sharon Gaddie, Jose Gaddie, Vivian Naugle, Quentin Layer, Joan S. Layer, Joby Jackson-Reid and Harvey E. Reid, or such other or different persons as shall be designated by the Court as the representatives of the Settlement Class, in the action captioned *Sheila Brown, et al. v. American Home Products Corporation*, Civil Action No. 99-20593, pending in the United States District Court for the Eastern District of Pennsylvania.
14. "Common Benefit Attorneys" shall mean those attorneys who contributed to the creation of the Settlement Trust through work devoted to the "common benefit" of Class Members, including any attorney who reasonably believes that he or she actually conferred benefits upon the Class Members as a whole through state court litigation, subject to determination by the Court.
15. "Court" and/or "Trial Court" and/or "Federal District Court" means the United States District Court for the Eastern District of Pennsylvania presiding over MDL Docket No. 1203.
16. "Credit" has the meaning provided in Section VII.A.
17. "Cross-Claim Credit" has the meaning provided in Section VII.C.1.g.
18. "Date 1" is the date which is 210 days after Final Judicial Approval, by which (1) Class Members in Subclasses 1(a) and 1(b) must register to receive refund and/or Screening Program benefits from Fund A, and (2) Class Members in Subclasses 2(a) and 2(b) must register to receive refund benefits from Fund A.
19. "Date 2" is the date which is 120 days after the end of the Screening Period.
20. "Diet Drug(s)" shall mean Fenfluramine marketed under the brand name Pondimin<sup>®</sup> and/or Dexfenfluramine marketed under the brand name Redux<sup>™</sup>.
21. "Endocardial Fibrosis" is defined as a condition (a) diagnosed by (1) endomyocardial biopsy that demonstrates fibrosis and cardiac catheterization that demonstrates restrictive cardiomyopathy or (2)

autopsy that demonstrates endocardial fibrosis and (b) other causes, including dilated cardiomyopathy, myocardial infarction, amyloid, Loeffler's endocarditis, endomyocardial fibrosis as defined in Braunwald<sup>1</sup> (involving one or both ventricles, located in the inflow tracts of the ventricles, commonly involving the chordae tendineae, with partial obliteration of either ventricle commonly present), focal fibrosis secondary to valvular regurgitation (e.g., "jet lesions"), focal fibrosis secondary to catheter instrumentation, and hypertrophic cardiomyopathy with septal fibrosis, have been excluded.

22. "FDA Positive" is defined as follows:

- a. With respect to a diagnosis based on an Echocardiogram conducted between the commencement of Diet Drug use and September 30, 1999, FDA Positive is a condition in which the Cardiologist interpreting the Echocardiogram, in the ordinary course of medical treatment, has issued a written report which clearly states that the individual has mild or greater regurgitation of the aortic valve and/or moderate or greater regurgitation of the mitral valve; provided however, that this definition shall be applicable only to qualification of a Diet Drug Recipient for Fund A benefits. In order to qualify for Matrix Compensation Benefits, a Diet Drug Recipient must present evidence that he or she had an Echocardiogram prior to the end of the Screening Period that meets the requirements of Section I.22.b below.
- b. With respect to a diagnosis based on an Echocardiogram conducted after September 30, 1999, FDA Positive is defined as mild or greater regurgitation of the aortic valve of the heart and/or moderate or greater regurgitation of the mitral valve of the heart as these levels are defined in Singh<sup>2</sup> (1999) and measured by an echocardiographic examination performed and evaluated by qualified medical personnel following the protocol as outlined in Feigenbaum<sup>3</sup> (1994) or Weyman<sup>4</sup> (1994).

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<sup>1</sup> *Heart Disease: A Textbook of Cardiovascular Medicine* 1433-34 (Eugene Braunwald, 5<sup>th</sup> ed. 1997) [hereinafter "Braunwald I"].

<sup>2</sup> J. P. Singh, et al., *Prevalence of Clinical Determinants of Mitral, Tricuspid and Aortic Regurgitation (The Framingham Heart Study)*, 83 *Am. J. Cardiology* 897, 898 (1999) [hereinafter "Singh"].

<sup>3</sup> Harvey Feigenbaum, *Echocardiography* 68-133 (5<sup>th</sup> ed. 1994) [hereinafter "Feigenbaum"].

<sup>4</sup> Arthur E. Weyman, *Principles and Practice of Echocardiography* 75-97 (2d ed. 1994) [hereinafter "Weyman"].

The degrees of regurgitation are determined as follows:

- Aortic Valve -- Mild or greater regurgitation, defined as regurgitant jet diameter in the parasternal long-axis view (or in the apical long-axis view, if the parasternal long-axis view is unavailable), equal to or greater than ten percent (10%) of the outflow tract diameter (JH/LVOTH).
  - Mitral Valve -- Moderate or greater regurgitation, defined as regurgitant jet area in any apical view equal to or greater than twenty percent (20%) of the left atrial area (RJA/LAA).
23. "Final Judicial Approval" refers to the approval of the Settlement Agreement as a whole by the Federal District Court and such approval becoming final by the exhaustion of all appeals, if any, without substantial modification of the order or orders granting such approval. Final Judicial Approval shall be deemed not to have been obtained in the event that Trial Court Approval is denied, and the period for appealing such denial has expired without any such appeal having been taken.
  24. "Final Judicial Approval Date" shall mean the date on which Final Judicial Approval occurs.
  25. "Fiscal Year" shall mean the partial calendar year and each calendar year after the Final Judicial Approval Date as follows. The first Fiscal Year shall be the partial calendar year beginning on the Final Judicial Approval Date. The second Fiscal Year shall be the calendar year beginning on the first day of the year following the year in which the Final Judicial Approval Date occurs, and so forth. "Fiscal Quarter" shall mean the partial calendar quarter and each calendar quarter after the Final Judicial Approval Date as follows. The first Fiscal Quarter shall be the partial calendar quarter beginning on the Final Judicial Approval Date. The second Fiscal Quarter shall be the calendar quarter beginning on the first day of the calendar quarter following the quarter in which the Final Judicial Approval Date occurs, and so forth.
  26. "Full Credit" has the meaning provided in Section VII.A.4.
  27. "Fund A Amounts" has the meaning provided in Section III.B.1.
  28. "Fund A Escrow Account" has the meaning provided in Section III.B.3.
  29. "Fund B Amounts" has the meaning provided in Section III.C.1.
  30. "Fund B Deposit Amount" has the meaning provided in Section III.C.3.
  31. "Fund B Quarterly Notice" has the meaning provided in Section III.C.3.

32. "Initial Opt-Out Period" shall mean the period to be established by the Court during which Class Members may exercise the Initial Opt-Out right described in Section IV.D.2.
33. "Interim Claims Administrator(s)" shall mean the two persons mutually agreed upon by AHP and Class Counsel subject to approval by the Court pursuant to Section VI.A.2 to exercise all of the functions which are to be exercised by the Claims Administrator and/or the Trustees prior to approval of the Trustees.
34. "Interim Escrow Agent" shall mean the person or entity mutually agreed upon by AHP and Class Counsel subject to approval by the Court pursuant to Section VI.A.1 to receive, hold and disburse Fund A Amounts and Fund B Amounts until Court approval of the Trustees pursuant to Section VI.A.3 herein.
35. [This section intentionally left blank.]
36. "Judgment" has the meaning provided in Section VII.A.4.
37. "Matrix-Level Condition" shall mean a physiological condition with a level of severity meeting any of the criteria specified in Section IV.B.2.c.
38. "Mild Mitral Regurgitation" refers to mild mitral valve regurgitation as that level is defined in Singh<sup>5</sup> (1999) and measured by an echocardiographic examination performed and evaluated by qualified medical personnel following the protocol as outlined in Feigenbaum<sup>6</sup> (1994) or Weyman<sup>7</sup> (1994). That degree of regurgitation is determined as follows: (1) either the RJA/LAA ratio is more than five percent (5%) or the mitral regurgitant jet height is greater than 1 cm from the valve orifice, and (2) the RJA/LAA ratio is less than twenty percent (20%).
39. "Mitral Valve Prolapse" refers to a condition where (a) the echocardiogram video tape or disk includes the parasternal long axis view and (b) that echocardiographic view shows displacement of one or both mitral leaflets >2mm above the atrial-ventricular border during systole, and >5mm leaflet thickening during diastole, as determined by a Board-Certified Cardiologist.<sup>8</sup>

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<sup>5</sup> Singh, *supra* note 2.

<sup>6</sup> Feigenbaum, *supra* note 3.

<sup>7</sup> Weyman, *supra* note 4.

<sup>8</sup> See Lisa A. Freed, *et al.*, *Prevalence and Clinical Outcomes of Mitral Valve Prolapse*, 341 *New Eng. J. Med.* 1, 2 (1999) [hereinafter "Freed"].

40. "Non-AHP Released Parties" shall mean those Released Parties other than the AHP Released Parties.
41. "Nonpayment Hearing" has the meaning provided in Section III.E.6.a.
42. "Plaintiffs' Counsel" shall mean the Class Counsel and the Common Benefits Attorneys.
43. [This section intentionally left blank.]
44. "Preliminary Approval" shall mean the Federal District Court's conditional certification of the Settlement Class and preliminary approval of this Settlement Agreement pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), 23(b)(3), 23(c)(1) and 23(e) and entry of an order or orders providing for issuance of notice to the Settlement Class.
45. "Preliminary Approval Date" shall mean the date on which Preliminary Approval occurs.
46. "Primary Pulmonary Hypertension" ("PPH") is defined as either or both of the following:
  - a. For a diagnosis based on examinations and clinical findings prior to death:
    - (1) (a) Mean pulmonary artery pressure by cardiac catheterization of  $\geq 25$  mm Hg at rest or  $\geq 30$  mm Hg with exercise with a normal pulmonary artery wedge pressure  $\leq 15$  mm Hg<sup>9</sup>; or
    - (b) A peak systolic pulmonary artery pressure of  $\geq 60$  mm Hg at rest measured by Doppler echocardiogram utilizing standard procedures; or
    - (c) Administration of Flolan to the patient based on a diagnosis of PPH with cardiac catheterization not done due to increased risk in the face of severe right heart dysfunction; and
  - (2) Medical records which demonstrate that the following conditions have been excluded by the following results<sup>10</sup>:

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<sup>9</sup> See L. J. Rubin & S. Rich, 99 *Primary Pulmonary Hypertension* (1997) [hereinafter "Rubin & Rich"].

<sup>10</sup> See Eugene Braunwald, *Essential Atlas of Heart Diseases*, Current Med. For Atty's 10-9 (1997) [hereinafter "Braunwald II"].

- (a) Echocardiogram demonstrating no primary cardiac disease including, but not limited to, shunts, valvular disease (other than tricuspid or pulmonary valvular insufficiency as a result of PPH or trivial, clinically insignificant left-sided valvular regurgitation), and congenital heart disease (other than patent foramen ovale); and
  - (b) Left ventricular dysfunction defined as LVEF < 40% defined by MUGA, Echocardiogram or cardiac catheterization; and
  - (c) Pulmonary function tests demonstrating the absence of obstructive lung disease ( $FEV_1/FVC > 50\%$  of predicted) and the absence of greater than mild restrictive lung disease (total lung capacity > 60% of predicted at rest); and
  - (d) Perfusion lung scan ruling out pulmonary embolism; and
  - (e) If, but only if, the lung scan is indeterminate or high probability, a pulmonary angiogram or a high resolution angio computed tomography scan demonstrating absence of thromboembolic disease; and
- (3) Conditions known to cause pulmonary hypertension<sup>11,12,13</sup> including connective tissue disease known to be causally related to pulmonary hypertension, toxin induced lung disease known to be causally related to pulmonary hypertension, portal hypertension, significant obstructive sleep apnea, interstitial fibrosis (such as silicosis, asbestosis, and granulomatous disease) defined as greater than mild patchy interstitial lung disease, and familial causes, have been ruled out by a Board-Certified Cardiologist or Board-Certified Pulmonologist as the cause of the person's pulmonary hypertension.

-OR-

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<sup>11</sup> See Rubin & Rich, *supra* note 9.

<sup>12</sup> See Braunwald I, *supra* note 1 at 796-798.

<sup>13</sup> Stuart Rich, *Executive Summary from the Symposium on Primary Pulmonary Hypertension, Evian, France, co-sponsored by the World Health Organization, September 6-10, 1998*, <<http://www.who.int/ncd/cvd/pph.html>>

- b. For a diagnosis made after the individual's death:
  - (1) Autopsy demonstrating histopathologic changes in the lung consistent with primary pulmonary hypertension and no evidence of congenital heart disease (other than a patent foramen ovale) with left-to-right shunt, such as ventricular septal defect as documented by a Board-Certified Pathologist; and
  - (2) Medical records which show no evidence of alternative causes as described above for living persons.

This definition of PPH ("the PPH Definition") is intended solely for the purpose of describing claims excluded from the definition of Settled Claims and for purposes of Section VII.B.4 and 5, below. The Parties agree that the PPH Definition includes but is broader than the rare and serious medical condition suffered by the individuals described in L. Abenheim, *et al.*, *Appetite-Suppressant Drugs and the Risk of Primary Pulmonary Hypertension*, *International Primary Pulmonary Hypertension Study Group*, 335(9), *New England Journal of Medicine*, 609-16 (1996) (the "IPPHS study"). The subjects in that study exhibited significantly elevated pulmonary artery pressures with an average systolic pulmonary artery pressure of 88 mm Hg and average mean pulmonary artery pressure of 57 mm Hg. Two-thirds of the IPPHS patients demonstrated NYHA Class III or IV symptoms. While the IPPHS subjects would fall within the PPH Definition, the definition also includes persons with a milder, less serious medical condition.

- 47. "Qualified Physician" shall mean a Board-Certified or Board-Eligible Cardiologist.
- 48. "Released Parties" shall mean:
  - a. AHP and each of its subsidiaries, affiliates, and divisions, including, but not limited to, Wyeth-Ayerst Laboratories Division, Wyeth-Ayerst Laboratories Co., Wyeth-Ayerst Pharmaceuticals Inc., and American Cyanamid Corporation, along with each of their respective current and former officers, directors, employees, attorneys, agents, and insurers;
  - b. Any and all predecessors, successors, and/or shareholders of AHP and each of its subsidiaries, affiliates, and divisions; provided, however, that any such person or entity shall be considered a Released Party only to the extent that such person or entity is sued in its capacity as a predecessor, successor, and/or shareholder of AHP or its subsidiaries, affiliates, and divisions;

- c. Any and all suppliers of materials, components, and services used in the manufacture of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>, including the labeling and packaging thereof, along with each such person's or entity's predecessors, successors, parents, subsidiaries, affiliates, and divisions, and each of their respective current and former shareholders, officers, directors, employees, attorneys, agents, and insurers; provided, however, that no person or entity described in this subsection shall be a Released Party with respect to any claims based upon his, her or its own independent negligence or culpable conduct;
- d. All distributors of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>, including wholesale distributors, private label distributors, retail distributors, hospitals and clinics, and their respective predecessors, successors, parents, subsidiaries, affiliates, and divisions, and their respective current and former shareholders, officers, directors, employees, attorneys, agents, and insurers; provided that: (1) such persons and entities described in this section shall be a Released Party only as to claims as to which such persons would have a statutory or common-law right of indemnity against AHP; (2) no person or entity described in this section shall be a Released Party to the extent that any claim is based upon his, her or its own independent negligence or culpable conduct, including, without limitation, negligence or professional malpractice asserted against hospitals, clinics, and diet centers; and (3) no person or entity described in this section shall be a Released Party with respect to the manufacture, sale, or distribution of any Phentermine hydrochloride or Phentermine resin pharmaceutical product.
- e. All physicians who prescribed, and all pharmacists and pharmacies who dispensed, Pondimin<sup>®</sup> and/or Redux<sup>™</sup> to the extent that liability against such physicians, pharmacists or pharmacies is based on:
  - (1) the prescription or dispensing of Pondimin<sup>®</sup> and/or Redux<sup>™</sup> in a manner consistent with the product labeling; and/or
  - (2) the prescription or dispensing of Pondimin<sup>®</sup> for any period longer than a "few weeks"; and/or
  - (3) the prescription or dispensing of Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for concomitant use with Phentermine hydrochloride or Phentermine resin; and/or
  - (4) a claim that the physician's or pharmacist's liability stems solely from having prescribed or dispensed Pondimin<sup>®</sup> and/or Redux<sup>™</sup>; and/or

- (5) a claim that the physician's or pharmacist's liability stems solely from the prescription or dispensing of a defective or unreasonably dangerous product.

Physicians, pharmacists and pharmacies are not Released Parties with respect to any claims based on their independent negligence or culpable conduct, not consisting of the conduct described in paragraphs (1)-(5) of this Subsection I.48.e.

Notwithstanding the foregoing, manufacturers, sellers, wholesalers, or distributors of any Phentermine hydrochloride or Phentermine resin pharmaceutical product are not Released Parties with respect to the manufacture, sale, or distribution of any Phentermine hydrochloride or Phentermine resin pharmaceutical product, and Les Laboratoires Servier S.A. and all of its affiliates and subsidiaries, including, without limitation, Servier S.A.S., Oril, Orsem, Servier Amerique, Science Union et Cie, Institut de Recherches Internationales Servier, Servier Research (collectively hereinafter "Servier") and Interneuron Pharmaceuticals, Inc. (hereinafter "Interneuron") are not Released Parties.

49. "Screening Period" refers to the 12-month period beginning on the Final Judicial Approval Date during which benefits shall be available in the Screening Program. Class Members who have timely registered for benefits by Date 1 and who are otherwise eligible for Screening Program benefits may receive the Echocardiogram and associated interpretative physician visit benefits after the end of this Screening Period, provided that: (i) all such Echocardiograms must be conducted no later than July 3, 2003, unless the Court, upon a showing of good cause and due diligence by or on behalf of a Class Member or group of Class Members, allows the Class Member or group of Class Members to receive an Echocardiogram and associated interpretative physician visit after such date; and (ii) any Class Member who receives an Echocardiogram provided by the Trust after the end of the Screening Period shall be considered to have been diagnosed during the Screening Period for all purposes under this Settlement Agreement, and shall have a period of 120 days after the date of the Echocardiogram to exercise, if otherwise eligible, a right of Intermediate Opt-Out under Section IV.D.3.b.
50. "Screening Program" refers to the program for providing Transthoracic Echocardiograms and associated interpretative physician visit benefits, as set forth in Sections IV.A.1.a and IV.A.2.b.
51. "Security Fund" has the meaning provided for in Section III.E.2.
52. "Security Fund Escrow Account" has the meaning provided in Section III.E.8.

53. "Settled Claims" shall mean any and all claims, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, existing now or arising in the future by any or all members of the Settlement Class arising out of or relating to the purchase, use, manufacture, sale, dispensing, distribution, promotion, marketing, clinical investigation, administration, regulatory approval, prescription, ingestion, and labeling of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>, alone or in combination with any other substance, including, without limitation, any other drug, dietary supplement, herb, or botanical. These "Settled Claims" include, without limitation and by way of example, all claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, for:
- a. personal injury and/or bodily injury, damage, death, fear of disease or injury, mental or physical pain or suffering, emotional or mental harm, or loss of enjoyment of life;
  - b. compensatory damages, punitive, exemplary, statutory and other multiple damages or penalties of any kind;
  - c. loss of wages, income, earnings, and earning capacity, medical expenses, doctor, hospital, nursing, and drug bills;
  - d. loss of support, services, consortium, companionship, society or affection, or damage to familial relations, by spouses, parents, children, other relatives or "significant others" of Settlement Class Members;
  - e. consumer fraud, refunds, unfair business practices, deceptive trade practices, Unfair and Deceptive Acts and Practices ("UDAP"), and other similar claims whether arising under statute, regulation, or judicial decision;
  - f. wrongful death and survival actions;
  - g. medical screening and monitoring, injunctive and declaratory relief;
  - h. economic or business losses or disgorgement of profits arising out of personal injury; and
  - i. prejudgment or post-judgment interest.

Notwithstanding the foregoing, Settled Claims do not include claims based on PPH, including claims for compensatory, punitive, exemplary or multiple damages based on PPH; provided, however, that if a Class Member receives settlement benefits from Fund B, he/she may not bring a

lawsuit based upon a claim for PPH, unless the Class Member was diagnosed with PPH before the Class Member had left-sided heart valve abnormalities (other than those which produce trivial, clinically insignificant left-sided regurgitation) or Endocardial Fibrosis. In addition, notwithstanding the foregoing, Settled Claims do not include claims arising from the exposure of unborn children, *in utero*, to Pondimin<sup>®</sup> or Redux<sup>™</sup>, and persons alleging exposure *in utero* to Pondimin<sup>®</sup> or Redux<sup>™</sup> shall not be considered Diet Drug Recipients eligible for benefits under this Agreement.

54. "Transthoracic Echocardiogram" means a non-invasive, standard Echocardiogram which includes an M-Mode and 2D Echocardiogram, and Doppler and color Doppler evaluations of all four chambers of the heart and all four heart valves.
55. "Trial Court Approval" shall mean the granting, by order, of the approval of the Settlement Agreement by the Federal District Court.
56. "Trial Court Approval Date" shall mean the date upon which Trial Court Approval occurs.
57. "Trust" or "Settlement Trust" shall mean a trust established to receive funds to be paid by AHP as provided in this Settlement Agreement pursuant to a Trust Agreement substantially in the form appended hereto as Exhibit "1."
58. "Trustees" shall mean those individuals approved by the Court as Trustees of the Settlement Trust in accordance with Section VI.A.3 herein.

## II. SCOPE OF THE SETTLEMENT CLASS

A. The Parties shall seek certification by the Federal District Court of a nationwide class solely for Settlement purposes (the "Settlement Class") in the case entitled *Sheila Brown, et al. v. American Home Products Corporation*, Civil Action No. 99-20593, pending in the United States District Court for the Eastern District of Pennsylvania.

B. The Settlement Class will consist of:

All persons in the United States, its possessions and territories who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> ("Diet Drug Recipients"), or their estates, administrators or other legal representatives, heirs or beneficiaries ("Representative Claimants"), and any other persons asserting the right to sue AHP or any Released Party independently or derivatively by reason of their personal relationship with a Diet Drug Recipient, including without limitation, spouses, parents, children, dependents, other relatives or "significant others" ("Derivative Claimants"). The Settlement Class does not include any individuals whose claims against AHP and/or the AHP Released Parties, arising from the use of Diet Drugs, have been resolved by judgment on the merits or by release (other than releases provided pursuant to this Settlement).

C. There will be five subclasses as follows:

1.(a) "Subclass 1(a)" shall consist of all Diet Drug Recipients in the Settlement Class (1) who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty (60) days or less, and (2) who have not been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and September 30, 1999, and all Representative and Derivative Claimants in the Settlement Class whose claims are based on their personal or legal relationship with a Diet Drug Recipient (1) who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for 60 days or less, and (2) who has not been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and September 30, 1999.

1.(b) "Subclass 1(b)" shall consist of all Diet Drug Recipients in the Settlement Class (1) who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty-one (61) or more days, and (2) who have not been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and September 30, 1999, and all Representative and Derivative Claimants in the Settlement Class whose claims are based on a personal or legal relationship with a Diet Drug Recipient (1) who

ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty-one (61) or more days, and (2) who has not been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and September 30, 1999.

- 2.(a) "Subclass 2(a)" shall consist of all Diet Drug Recipients in the Settlement Class (1) who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty (60) days or less, and (2) who have been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram which was performed between the commencement of Diet Drug use and September 30, 1999, and all Representative and Derivative Claimants in the Settlement Class whose claims are based on a personal or legal relationship with a Diet Drug Recipient (1) who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty (60) days or less, and (2) who has been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram which was performed between the commencement of Diet Drug use and September 30, 1999.
- 2.(b) "Subclass 2(b)" shall consist of all Diet Drug Recipients in the Settlement Class (1) who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty-one (61) or more days, and (2) who have been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram which was performed between the commencement of Diet Drug use and September 30, 1999, and all Representative and Derivative Claimants in the Settlement Class whose claims are based on a personal or legal relationship with a Diet Drug Recipient (1) who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty-one (61) or more days, and (2) who has been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram which was performed between the commencement of Diet Drug use and September 30, 1999.
3. "Subclass 3" (which may include persons also included in Subclasses 1(a) and 1(b)) shall consist of all Diet Drug Recipients in the Settlement Class who have been diagnosed by a Qualified Physician as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, but who have not been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, and all Representative and Derivative Claimants in the Settlement Class whose claims are based on a personal or legal relationship with a Diet Drug Recipient who has been diagnosed by a Qualified Physician as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, but who has not

been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period.

### III. AHP'S PAYMENT OBLIGATIONS

#### A. ESTABLISHMENT OF SETTLEMENT TRUST

1. A Settlement Trust shall be established to receive the Fund A Amounts and Fund B Amounts to be paid by AHP under the terms of this Settlement Agreement pursuant to the terms of a Trust Agreement substantially in the form appended to the Settlement Agreement as Exhibit "1."
2. The Parties agree that, as provided in the Trust Agreement, the Trustees of the Settlement Trust will be nominated by the Parties and that each nomination will be subject to agreement of the Parties and subject to approval by the Court consistent with the provisions stated in Section VI.A.3 herein and the Trust Agreement substantially in the form appended to the Settlement Agreement as Exhibit "1."
3. The Settlement Trust will begin as a reversionary trust and will become non-reversionary upon Final Judicial Approval. If Final Judicial Approval is not obtained, or if the Settlement Agreement is terminated in accordance with its terms for any other reason, all amounts remaining in the Settlement Trust after payment of any charges and expenses which the Settlement Agreement expressly authorized or required to be incurred and expended prior to the reversion date, including any amounts expended to assist in seeking Final Judicial Approval, shall be returned to AHP, except as provided in Section V hereof relating to the administration of claims of Class Members who have accepted the Accelerated Implementation Option.
4. AHP shall have no right to any of the funds previously deposited, nor to any of the funds subsequently deposited into the Settlement Trust, as of the date the Trust becomes non-reversionary. AHP shall have no further claim to such funds for any purpose.
5. Subject to the conditions set forth in this Settlement Agreement, AHP shall be obligated to make payments as set forth in Sections III.B ("Fund A") and III.C ("Fund B") below to the Settlement Trust. Such payments shall be made by wire transfer. If any date of payment provided herein is not a Business Day, such payment shall be due and payable on the first Business Day following such date.

**B. FUND A**

1. AHP shall make payments into Fund A as follows (such amounts collectively referred to herein as the "Fund A Amounts"):
  - a. \$50 million five Business Days after the Preliminary Approval Date.
  - b. \$383 million five Business Days after the Trial Court Approval Date.
  - c. \$383 million 180 days after the preceding payment of \$383 million.
  - d. \$184 million five Business Days after the Final Judicial Approval Date.
2. The monies held by Fund A shall be available and shall be used to pay all benefits payable from Fund A, out-of-pocket and pre-settlement litigation expenses of Plaintiffs' Counsel approved by the Court for reimbursement in relation to Fund A, and all proper administrative expenses associated with the administration of the Settlement and the Settlement Trust insofar as they relate to Fund A.
3. In addition to the foregoing, within five Business Days after the Final Judicial Approval Date, AHP shall pay \$200 million into an escrow account under the supervision of the Court (the "Fund A Escrow Account"). The funds in the Fund A Escrow Account shall be used to pay compensation to Plaintiffs' Counsel. In addition, the funds in the Fund A Escrow Account may be used to make incentive awards to the Class Representatives in the following State and Federal Court class actions involving Pondimin® and Redux™: United States District Court for the Eastern District of Pennsylvania, *Brown v. American Home Products Corp.*, C.A. No. 99-20593; *Jeffers v. American Home Products Corp.*, C.A. No. 98-CV-20626 (E.D. Pa.) (*In re Diet Drug Products Liability Litigation*, MDL 1203); New Jersey (*Vadino et al. v. AHP*, Docket No. MID-L-425-98); New York (*New York Diet Drug Litigation*, Index No. 700000/98); Pennsylvania (*Pennsylvania Diet Drug Litigation*, Master Docket No. 9709-3162 C.C.P. Phila.); Washington (*St. John v. AHP*, 97-2-06368-4); Illinois (*Rhyne v. American Home Products*, 98 CH 4099); and Texas (*Earthman v. AHP*, No. 97-10-03970 CV, Dist. Ct. Montgomery Co. Texas). The payment of said compensation, relating to Fund A, to Plaintiffs' Counsel and the certified State and Federal Court Class Representatives shall be in such manner and in such amounts as

the Court, with advice and counsel of the State Court Judicial Advisory Committee, may determine is appropriate, as contemplated by Sections VIII.B.3 and VIII.E.1.a hereof and pursuant to a Fund A Escrow Account Agreement substantially in the form attached hereto as Exhibit "2." AHP shall take no position on the amount of such fees to be awarded as attorneys' fees or incentive awards or the allocation thereof. All Class Members shall have standing to object to or support the award of attorneys' fees and incentive awards for Class Representatives from the Fund A Escrow Account. Any amount in the Fund A Escrow Account not awarded in attorneys' fees shall be returned to AHP by order of the Court.

4. Funds remaining in Fund A shall be transferred to Fund B as follows:
  - a. On the later of (i) January 31, 2003 or (ii) thirty days after the date on which the Trial Court enters an Order approving the Fifth Amendment to the Settlement Agreement, the Trust shall transfer to Fund B all funds remaining in Fund A at such time. The Date of this transfer shall be referred to as the "Merger Date." After the Merger Date, Fund A shall be considered merged into Fund B and the resulting fund shall be referred to as the "Settlement Fund." Before making such transfer, the Trust shall pay refunds under Section IV.A.1.d and reimbursements for privately-obtained echocardiograms under Section IV.A.3.d to those Diet Drug Recipients (or their associated Representative Claimants) that the Trust has determined to be eligible for such benefits by that time and any other benefits from Fund A as are ready for payment at such time. The resulting amount transferred from Fund A to Fund B pursuant to this Section III.B.4.a shall be referred to as the "Fund A Transfer Amount."
  - b. After the Merger Date, all payments that otherwise would have been properly payable out of Fund A for the payment or provision of Fund A benefits under Section IV.A shall be made out of the Settlement Fund. The Trust shall make all such payments as soon as reasonably practicable after the Merger Date. If the balance in the Settlement Fund at the time any such amounts are payable is inadequate to fund the payments, AHP shall, within five Business Days after receipt of a written request from the Trust, deposit the necessary funds into the Settlement Fund. Amounts deposited by AHP into the Settlement Fund for this purpose shall not reduce the Maximum Available Fund B Amount

or the Adjusted Maximum Available Fund B Amount under Section I.1. AHP's obligation for Fund A benefits and the cost of administering such benefits shall not exceed \$1 billion plus the amounts necessary, if any, to pay or provide the additional medical services or cash benefits under Section IV.A.1.c and Section IV.A.2.c to eligible Class Members, provided that any amounts deposited by AHP into the Settlement Fund for such purpose shall not reduce the Maximum Available Fund B Amount.

- c. As of the date on which the Trial Court enters an Order approving the Fifth Amendment to the Settlement Agreement, the Trust and the Settlement Fund shall be deemed to possess sufficient funds to pay refunds under Section IV.A.1.d and reimbursements for privately-obtained echocardiograms under Section IV.A.3.d, and the Trustees shall pay such benefits to eligible Diet Drug Recipients (or their associated Representative Claimants) within forty-five days after the date on which the Trustees receive a completed claim for such benefit, or within such other period as the Trial Court may direct. After the Merger Date, the provisions of this Section III.B.4.c shall supercede the provisions of Section VI.C.3.l and Section VI.C.3.n regarding the time of payment of such benefits.
- d. After the Merger Date, the Fund A Transfer Amount also shall be used by the Trust to pay Matrix Compensation Benefits under Section IV.B. and administrative expenses of the Trust, in addition to the payment and provision of Fund A benefits under Section IV.A, until the balance in the Settlement Fund reaches the Administrative Reserve to be maintained in the Settlement Fund pursuant to Section III.C.3.b or Section III.C.4.e, whereupon the Trust may resume funding the payment of Matrix Compensation Benefits to eligible Class Members pursuant to Settlement Fund Quarterly Notices or such other requests as agreed upon by the Parties. The Fund A Transfer Amount will not reduce the maximum obligation of AHP to make payments to Fund B under Section III.C.

### C. FUND B

- 1. **Fund B Amounts.** Fund B shall consist of (i) the Fund B Initial Payment under Section III.C.2; (ii) all Fund B Deposit Amounts paid pursuant to Fund B Quarterly Notices under Section III.C.3; (iii) all Fund B AIO Deposit Amounts paid pursuant to Requests

for Fund B AIO Payments under Section V.F; and (iv) all interest and other income earned by the Trust on such amounts.

2. **Fund B Initial Payment.** No later than five Business Days after the Preliminary Approval Date, AHP shall pay \$25 million into Fund B.
3. **Additional Fund B Deposits.** Beginning on the Final Judicial Approval Date, the Trustees may request in writing on a quarterly basis (each a "Fund B Quarterly Notice") an additional amount (such amount being referred to as a "Fund B Deposit Amount"):
  - a. to pay claims received which qualify for payment from Fund B pursuant to Section IV.B, awards of counsel fees and costs under Section VIII.E.1.b, and authorized administrative expenses which have not been paid due to an insufficient cash balance in Fund B, and/or
  - b. to maintain a \$50 million reserve in Fund B for administrative expenses (the "Administrative Reserve").

AHP shall pay each Fund B Deposit Amount so requested no later than fifteen (15) days after the date on which AHP receives from the Trustees a Fund B Quarterly Notice requesting such Fund B Deposit Amount; provided, however, that AHP's obligation to pay Fund B Deposit Amounts shall at all times be limited to the Maximum Available Fund B Amount. At any time that the total value of the Security Fund under Section III.E.2 is equal to or greater than the Maximum Available Fund B Amount, the Trustees shall limit requests for deposits for purposes of maintaining the Administrative Reserve in Fund B to those sums that the Trustees believe will be necessary to satisfy the reasonably anticipated administrative expenses of the Trust for the Fiscal Quarter in which the request is made.

4. **Termination of AHP's Fund B Payment Obligations.**
  - a. AHP's obligation to make payments to Fund B shall terminate upon the earlier of: (i) the date of AHP's payment into Fund B of the amount that reduces the Maximum Available Fund B Amount to zero; or (ii) the date of AHP's payment to Fund B of the Final Projected Amount under Section III.C.4.b below. Such payment shall be referred to in this Agreement as the "Final Payment."
  - b. The Final Projected Amount shall be determined as follows:

- (i) As of the end of the sixteenth Fiscal Year, the Trustees shall cause an actuarial determination to be made, based on the experience of the Settlement Trust, as to the amount of additional funds, if any, which will be required to fund payments to Class Members who have qualified or who are likely to qualify in the future for benefits from Fund B in accordance with the provisions of Section IV.B and Section IV.C, determined without regard to any limitation on the obligation of AHP to make Fund B payments under this Agreement, and to fund the payment of associated administrative expenses. The Trustees shall also take into consideration the then cash balance in Fund B (including the Administrative Reserve), its projected future investment and other income, and an estimate of required future administrative expenses.
  
- (ii) No later than thirty (30) days after the date on which the Trustees are required to make the estimate under Section III.C.4.a. (i), the Trustees shall provide a written report (“Final Projected Amount Report”) to Class Counsel and to AHP setting forth the Trustees’ projection of the amount of additional funds, if any, which will be necessary to meet the obligations of Fund B as described in Section III.C.4.a.(i). The Final Projected Amount Report shall contain all supporting information necessary to allow Class Counsel and AHP to evaluate the accuracy and reasonableness of the estimate. Such supporting information shall include, without limitation, the Trustees’ methodology for making the estimate and any assumptions used in making the estimate. AHP and/or Class Counsel shall have the right to obtain from the Trustees any additional information reasonably requested by them relating to the estimate contained in the Final Projected Amount Report.
  
- (iii) Within 30 days after the date of the Final Projected Amount Report, Class Counsel and/or AHP may appeal the Trustees’ estimate to the Court, which shall modify the Trustees’ estimate to the extent appropriate upon a judicial finding that the

Trustees' estimate was either unreasonable or lacking in substantial support. If such an appeal is not taken or if such an appeal is taken and the Court determines not to modify the Trustees' estimate, then the Trustees' estimate, as set forth in the Final Projected Amount Report, will become the "Final Projected Amount" for purposes of this Agreement. If such an appeal of the Trustees' estimate is taken and the Court modifies the estimated amount in connection with such an appeal, then the estimated amount determined by the Court will become the "Final Projected Amount" for purposes of this Agreement. The Parties waive any right to appeal any determination of the Court with respect to the Final Projected Amount.

- (iv) If the Maximum Available Fund B Amount as of the date on which the Final Projected Amount is determined exceeds the Final Projected Amount, then within five business days after the date of the determination of the Final Projected Amount in accordance with this Agreement, AHP shall pay the Final Projected Amount into Fund B and such payment shall constitute the Final Payment under this Agreement. If the Final Projected Amount exceeds the Maximum Available Fund B Amount as of the date on which the Final Projected Amount is determined, then within five business days after the date of the determination of the Final Projected Amount in accordance with this Agreement, AHP shall pay the Maximum Available Fund B Amount into Fund B and such payment shall constitute the Final Payment under this Agreement. In no event shall AHP's payment into Fund B exceed the Maximum Available Fund B Amount.
- c. The monies held by Fund B shall be available and shall be used to pay all benefits payable from Fund B, all attorneys' fees and common benefit fees and costs awarded by the Court in relation to Fund B and all proper administrative expenses associated with the administration of the Settlement and the Settlement Trust insofar as they relate to Fund B, and for the purposes described in Section III.C.4.d.
- d. After the Merger Date, Fund B shall be referred to as the Settlement Fund, all references in this Settlement

Agreement to Fund B shall be read as referring to the "Settlement Fund" rather than to "Fund B", and Fund B Quarterly Notices shall be known as "Settlement Fund Quarterly Notices." After the Merger Date, the Trust shall continue to maintain accurate records of the Maximum Available Fund B Amount and the Adjusted Maximum Available Fund B Amount for purposes of determining AHP's payment obligations to Fund B and the Settlement Fund under Section III.C.4 and the total amount available to the Trust to pay benefits to Class Members and for the costs of administration of such benefits.

- e. The Parties may agree in writing to a more frequent schedule for the Fund B Quarterly Notices, Settlement Fund Quarterly Notices (or such other notices as agreed upon by the Parties), and Fund B Deposit Amounts paid by AHP into Fund B or the Settlement Fund than the schedule provided in Section III.C.3, to eliminate or reduce the administrative reserve in Fund B under Section III.C.3.b, and to increase the principal value of the Security Fund under Section III.E.2 to accommodate such adjustments. The Parties shall report all such agreements to the Court. At any time during which AHP is timely making deposits into Fund B on a schedule at least as often as every two weeks, the Administrative Reserve under Section III.C.3.b shall be no greater than \$5 million. Funds held in the Administrative Reserve shall be considered available for the payment of Matrix Compensation Benefits as and when the Maximum Available Fund B Amount is \$50 million or less, and/or in the Trust's calculation of the Final Projected Amount under Section III.C.4.

#### **D. OTHER PROVISIONS**

1. The Settlement Trust shall be structured and managed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and related regulations and will contain customary provisions for such trusts including obligations of the Settlement Trust to make tax filings and to provide to AHP information to permit AHP to report deductions properly for tax purposes.
2. The Parties agree that all of the amounts being paid pursuant to the terms of this Settlement are being paid as damages (other than punitive damages) on account of alleged physical personal injuries or alleged physical sickness of the members of the Settlement Class as described in Section 104(a)(2) of the Internal Revenue Code of 1986, as amended (the "Code"). The Parties further agree

that the claims set forth in the definition of Settled Claims in Section I.53 have their origin in such alleged physical personal injuries or physical sickness.

3. Except as provided in Section V herein relating to the Accelerated Implementation Option, AHP shall have no financial obligations under this Settlement Agreement other than as explicitly set forth in this Section III (AHP's Payment Obligations). AHP shall have no responsibility for the management of the Settlement Trust or any liability to any Class Member arising from the handling of claims by the Trustees.

#### **E. SECURITY ARRANGEMENTS**

1. During the period beginning on the first Business Day following the Trial Court Approval Date and ending on the fifth Business Day following the Final Judicial Approval Date, AHP shall maintain credit facilities in an aggregate principal amount of One Billion Dollars (\$1,000,000,000) exclusively as security for its obligations under this Settlement Agreement over the sum of (1) the greater of (a) the aggregate minimum principal amount of credit facilities that would be required by Moody's Investors Service to satisfy back-up liquidity on AHP's commercial paper obligations or (b) the aggregate minimum principal amount of credit facilities that would be required by Standard & Poor's Rating Services as sufficient to satisfy back-up liquidity on AHP's commercial paper obligations, *plus* (2) the amount of any uses (other than the payments under this Settlement Agreement) for which such credit facilities have been committed, *plus* (3) outstanding drawings under such credit facilities.
2. Fifteen days after the Final Judicial Approval Date, or the first Business Day thereafter if such fifteenth day is not a Business Day, AHP shall establish and thereafter maintain, subject to all the provisions of this Section III.E, a fund (the "Security Fund") consisting of cash and high-grade marketable commercial securities (which shall consist of the "Permitted Investments," defined herein) selected by AHP having a principal value equal to \$370 million. If at any time the Administrative Reserve in Fund B under Section III.C.3 is required to be no greater than \$5 million, AHP shall deposit into and maintain in the Security Fund cash and/or Permitted Investments having a principal value equal to \$45 million and if, after such deposit, AHP deposits funds to increase the Administrative Reserve above \$5 million, AHP shall be entitled to withdraw from the Security Fund assets and/or cash equal in value to such Administrative Reserve deposits, not to exceed \$45 million. Fifteen days after the Merger Date, or the first

Business Day thereafter if the fifteenth day is not a Business Day, AHP shall deposit cash and/or Permitted Investments into the Security Fund having a principal value equal to 80% of the Fund A Transfer Amount, less any amounts deposited into the Security Fund by AHP before such time (other than the original \$370 million deposit and the \$45 million deposit referred to above) (the "Merger Security Deposit"). AHP may satisfy its obligation to make the Merger Security Deposit by causing a wholly-owned subsidiary of AHP to deposit assets of the subsidiary consisting of cash and/or Permitted Investments into the Security Fund, provided that (i) such subsidiary becomes a primary obligor together with AHP for AHP's funding obligations under the Settlement Agreement to the extent of 110% of the Merger Security Deposit; and (ii) AHP provides to Class Counsel a written opinion satisfactory to Class Counsel that the Merger Security Deposit by the subsidiary is a bona fide transaction supported by good and valuable consideration, is a valid and enforceable obligation of the subsidiary under applicable law, and that the transfer will afford the Trust a valid and enforceable security interest in the Merger Security Deposit to secure to that extent AHP's payment obligations to the Trust under the Settlement Agreement. Any other deposits agreed upon by the Parties and approved by the Court under Section III.C.4.e shall be added to the Security Fund. If the credit rating for AHP as reported by both Moody's Investors Service and Standard & Poor's Rating Services is below investment grade at any time during which the Security Fund must be maintained hereunder, AHP shall deposit additional cash and/or Permitted Investments selected by AHP having an aggregate principal value of an additional \$180 million. For purposes of this Section III.E, the term "Permitted Investments" shall mean any of the following: (a) readily marketable direct obligations of the United States or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of the United States, maturing within 365 days of purchase (in the case of all such obligations other than direct obligations of the United States Treasury); (b) certificates of deposit or time deposits maturing within 365 days of purchase with any commercial bank that (1) has deposits insured by the Federal Deposit Insurance Corporation, (2) is organized under the laws of the United States or any state thereof, (3) has a minimum long-term rating of "A-3" (or the then equivalent) by Moody's Investors Service and a long-term rating of "A-" (or the then equivalent) by Standard & Poor's Rating Services, and (4) has combined capital and surplus of at least \$10 billion; (c) commercial paper issued by any corporation organized under the laws of any state of the United States and rated at least "Prime-1" short-term (or the then

equivalent grade) and “A-1” long-term (or the then equivalent grade) by Standard & Poor’s Rating Services, in each case with a maturity of not more than 180 days from the date of acquisition thereof; or (d) investments, classified as current assets of AHP or any of its subsidiaries under generally accepted accounting principles, in money market investment programs registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions that have the highest rating obtainable from either Moody’s Investors Service or Standard & Poor’s Rating Services, and the portfolios of which are limited solely to investments of the character, quality and maturity described in clauses (a), (b) or (c) of this definition.

3. If at any time the Security Fund Amount is greater than 110% of the Maximum Available Fund B Amount, AHP may withdraw, at its option, free of any lien under Section III.E.5, cash and/or Permitted Investments from the Security Fund, provided that: (i) the Security Fund Amount must at all times equal or exceed 110% of the Maximum Available Fund B Amount; and (ii) AHP may make such withdrawals from the Security Fund no more frequently than once monthly. The Security Fund and the lien under Section III.E.5 shall be terminated completely upon AHP’s making the Final Payment provided for in Section III.C.4.a.
4. AHP shall be entitled to withdraw from the Security Fund all income earned thereby. However, in the event that, and so long as, the credit rating of AHP reported by both Moody’s Investors Service and Standard & Poor’s Rating Services is below investment grade at any time during which the Security Fund must be maintained, AHP shall no longer be entitled to withdraw from the Security Fund the income earned thereby, except that AHP shall thereafter be entitled to withdraw, at each tax payment date, such amount thereof as shall equal all federal, state and local taxes payable by AHP with respect to or on account of the whole amount of the Security Fund. AHP shall be responsible for the payment of all federal, state and local taxes payable with respect to or on account of the Security Fund.
5. AHP shall grant to the Trustees a perfected security interest in the Security Fund as collateral for AHP’s obligations under the Settlement Agreement pursuant to the terms of a Security Fund and Escrow Agreement in the form appended hereto as “Revised Exhibit 3.” No later than the date of the Merger Security Deposit, AHP (or its subsidiary as applicable) shall grant to the Trustees a perfected security interest in the Merger Security Deposit in the Security Fund as collateral for AHP’s obligations under the Settlement Agreement pursuant to the terms of the Security Fund

and Escrow Agreement attached hereto as "Revised Exhibit 3" or such other Security Fund and Escrow Agreement as is agreed upon by the Parties and approved by the Trial Court.

6. For purposes of this Settlement Agreement, an "Uncured Failure to Make Payment" is an event in which:
  - a. AHP fails to make a payment to Fund B which was due and not timely paid, and such failure to make payment was due to either a financial inability to pay or a deliberate unwillingness to pay, such determinations having been made by order of the Court after an evidentiary hearing (a "Nonpayment Hearing"); and
  - b. AHP fails to make that payment within thirty (30) days after such order becomes final after exhaustion of all appeals, if any, or AHP fails to make that payment thirty (30) days after a Trial Court order declaring an Uncured Failure to Make Payment and is unable to obtain a stay of that order pending an appeal from such order.
7. At least thirty (30) days prior to any Nonpayment Hearing, AHP and Class Counsel shall have the right to receive from the Trustees such information as they reasonably request relating to the Trustees' claim that such payment was due and owing, as to which issue the Trustees shall have the burden of proof.
8. In the event of an Uncured Failure to Make Payment, securities and/or cash in the Security Fund having a principal value equal to the entire amount of the Security Fund shall be transferred to the escrow agent of an escrow account to be maintained under the supervision of the Court (the "Security Fund Escrow Account"), without impairing the security interest of the Trust. The portion of the Security Fund Escrow Account, if any, needed to satisfy the obligations of AHP under the Settlement Agreement shall be paid to the Trust pursuant to order of the Court or on agreement of the Parties. Any unused amount of the Security Fund Escrow Account shall be returned to AHP at the time the Final Payment is made or deemed to have been made. Any income earned on the account shall remain the property of the account, and all federal, state and local taxes payable with respect to the Security Fund Escrow Account shall be paid out of the account. Additional conditions and procedures for the establishment, operation and distribution of the Security Fund Escrow Account are set forth in Exhibit "3," which is to be executed substantially in that form by the escrow agent.
9. In the event of the following occurrences:

- a. The occurrence of more than one Uncured Failure to Make Payment within a two-year period; and
- b. The depletion of the amount of the assets which AHP is required to have on deposit in the Security Fund or in the Security Fund Escrow Account described above by more than fifty percent (50%) of the then-required amount of assets; and
- c. A determination by the Court after notice and an opportunity to be heard by all interested parties that the remaining assets in the Security Fund or in the Security Fund Escrow Account are not likely to be sufficient to pay the remaining Fund B obligations to Class Members as of that point in time;

all Diet Drug Recipients who (i) are diagnosed by a Qualified Physician as FDA Positive or as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period and who have registered for settlement benefits by Date 2, or (ii) are diagnosed as having Endocardial Fibrosis by September 30, 2005, and have registered for Fund B benefits by January 31, 2006, together with their associated Representative and/or Derivative Claimants, will have a right to opt out of the Settlement and pursue all of their Settled Claims (except for those claims set forth in subparagraphs (e) and (g) of Section I.53 of this Agreement), against AHP and the other Released Parties, including claims for punitive and multiple damages (hereinafter the "Financial Insecurity Opt-Out Right"), provided such Class Members have not received Matrix-Level V benefits set forth in Section IV.B.2.

10. Within thirty (30) days of the date of the entry of any Order determining that the remaining assets in the Security Fund or in the Security Fund Escrow Account are not likely to be sufficient to pay the remaining Fund B obligations, as referred to in Sections III.E.6.a and III.E.9.c, above, the Trustees and/or Claims Administrator(s) shall provide written notice to all affected Class Members of the circumstances giving rise to the Financial Insecurity Opt-Out Right by first class mail, postage prepaid. Within 120 days of the transmission of that notice, each Class Member who is eligible to exercise a Financial Insecurity Opt-Out Right may send a written notice advising the Trustees and/or Claims Administrator(s) of the Class Member's election to exercise the Financial Insecurity Opt-Out Right on a form prescribed by the Trustees and/or Claims Administrator(s). In the event of such an opt-out, the Class Member may pursue any and all claims (except for those claims set forth in subparagraphs (e) and (g) of Section

I.53 of this Agreement) against AHP in the legal system, and none of the Released Parties may assert any defense to such claims based on any statute of limitations or repose, the doctrine of laches, any other defense predicated on the failure to timely pursue the claim, any defense based on "splitting" a cause of action, any defense based on any release signed pursuant to the Settlement Agreement, and/or any other defense based on the existence of the Settlement Agreement, except to the extent provided in Section III.E.9 of this Agreement. In any legal action commenced by a Class Member exercising a right of opt-out under these circumstances, the Class Member shall reduce the amount of his or her recovery by the amount of any cash that the Class Member has received from AHP and/or the Trust under any terms of the Settlement. There shall be no deduction, offset, or reduction for any Medical Screening or Medical Services received by a Class Member.

11. Nothing contained in this Section of the Agreement shall be construed to be a waiver of or a limitation on rights which the Class Members, Class Representatives or Trustees would otherwise have under the law in the event of a breach of the Settlement Agreement.
12. Immediately upon termination of the Security Fund under Section III.E.3 above, any remaining balance in the Security Fund, including any income earned thereon, shall be released to AHP.

#### **IV. CLASS MEMBER RIGHTS AND BENEFITS**

##### **A. SCREENING/REFUND/MEDICAL SERVICES/CASH/RESEARCH BENEFITS PAYABLE FROM FUND A**

##### **1. BENEFITS FOR CLASS MEMBERS WHO INGESTED PONDIMIN<sup>®</sup> AND/OR REDUX<sup>™</sup> FOR 61 OR MORE DAYS**

- a. **SCREENING PROGRAM:** Diet Drug Recipients in Subclass 1(b) will be eligible for one Transthoracic Echocardiogram and an associated interpretive physician visit. Eligible Class Members must register for this benefit by Date 1. This Screening Program shall be conducted for a twelve-month period after Final Judicial Approval. This period may be extended for up to an additional six months by the Court for good cause shown.
- b. **COST OF TRANSTHORACIC ECHOCARDIOGRAM:** Diet Drug Recipients in Subclass 1(b) who do not elect the Accelerated Implementation Option described in Section V below and who, independent of the Screening Program, obtain an Echocardiogram after the end of the Initial Opt-Out Period but before the Final Judicial Approval Date, may recover from Fund A the lesser of (i) the Trust's direct cost of providing for a Transthoracic Echocardiogram and associated interpretive physician visit under the Screening Program and (ii) the actual amount paid by the Class Member for the Echocardiogram and associated interpretive physician visit, net of amounts paid or reimbursed by an insurance carrier or other third-party payor, but only in the event that the Settlement receives Final Judicial Approval. Eligible Class Members must submit a claim for this benefit by Date 2. Class Members receiving such a payment may not also participate in the Screening Program benefits described in Section IV.A.1.a.
- c. **ADDITIONAL MEDICAL SERVICES OR CASH:** All Diet Drug Recipients in Subclass 2(b) and those Diet Drug Recipients in Subclass 1(b) who have been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, will be entitled to receive, at the Class Member's election, either (i) valve-related medical services up to \$10,000 in value to be provided by the Trust; or (ii) \$6,000 in cash. Such cash payments and funds for such medical services will come from Fund A. Eligible Class Members must register for

this benefit and make the affirmative election as to whether they wish to receive cash or services by Date 2.

- d. **REFUND:** Diet Drug Recipients in Subclasses 1(b) and 2(b), or their associated Representative Claimants, will be eligible for a refund in the fixed amount of \$30 per month of use for Pondimin<sup>®</sup> and \$60 per month of use for Redux<sup>™</sup>, subject to a maximum of \$500 per Class Member; provided, however, that such benefits will be made available to members of Subclasses 1(b) and 2(b) only if, and to the extent that, Fund A possesses sufficient assets to pay such benefits after paying or creating a reserve for payment of all other authorized expenses and benefits to be provided by Fund A. Eligible Class Members must register for this benefit by Date 1.

2. **BENEFITS FOR CLASS MEMBERS WHO INGESTED PONDIMIN<sup>®</sup> AND/OR REDUX<sup>™</sup> FOR 60 DAYS OR LESS:**

- a. **REFUND:** Diet Drug Recipients in Subclasses 1(a) and 2(a) or their associated Representative Claimants will be eligible for a refund in the fixed amount of \$30 per month of use for Pondimin<sup>®</sup> and \$60 per month of use for Redux<sup>™</sup>. Eligible Class Members must register for this refund benefit by Date 1.

b. **SCREENING PROGRAM:**

- (1) In general, members of Subclass 1(a) are not entitled to screening benefits.
- (2) **LIMITED REIMBURSEMENT FOR SCREENING EXAMINATIONS.** If, however, during the Screening Period, a Diet Drug Recipient in Subclass 1(a), independent of the Screening Program, obtains an Echocardiogram and is diagnosed by a Qualified Physician as FDA Positive based on that Echocardiogram, he/she may recover from Fund A the lesser of (i) the direct cost to the Trust of providing a Transthoracic Echocardiogram and an associated interpretive physician visit under the Screening Program, and (ii) the actual amount paid by the Class Member for the Echocardiogram and associated interpretive physician visit, net of amounts paid or reimbursed by an insurance carrier or other third-party payor, but only in the event that the Settlement receives Final Judicial Approval.

Eligible Subclass 1(a) members must register for this benefit by Date 2.

- (3) **COMPASSIONATE AND HUMANITARIAN PROGRAM.** In addition, the Trustees may, in their discretion in appropriate cases for compassionate and humanitarian reasons, provide a Transthoracic Echocardiogram and associated interpretive physician visit during the Screening Period for members of Subclass 1(a) who are Diet Drug Recipients, where the Trustees determine that (a) such persons are in need of such services and are otherwise unable to obtain them; or (b) where there are other compelling reasons to provide such services to such persons. Total disbursements for such services shall not exceed \$20 million. Eligible Subclass 1(a) members must apply for such benefits by Date 1.

- c. **ADDITIONAL MEDICAL SERVICES OR CASH.** All members of Subclass 2(a) who are Diet Drug Recipients as well as those members of Subclass 1(a) who are Diet Drug Recipients and who have been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, will be entitled to receive, at the Class Member's election, either (i) valve-related medical services up to \$5,000 in value to be provided by the Trust or (ii) \$3,000 in cash. Such cash payments and funds for such medical services will come from Fund A. Eligible Class Members must register for this benefit and make the affirmative election as to whether they wish to receive cash or services by Date 2.

### 3. **BENEFITS FOR ALL CLASS MEMBERS**

- a. **MEDICAL RESEARCH AND EDUCATION FUND.** An amount in Fund A not to exceed \$25 million may be used to finance medical research and education related to heart disease. The Medical Research and Education Fund will be funded by the transfer of up to \$25 million from Fund A to an organization formed for that purpose and described in Subsection (c)(3) of Section 501 of the Internal Revenue Code pursuant to Articles of Incorporation and Bylaws substantially in the form appended hereto as revised Exhibit "4." The management of the Medical Research and Education Fund will be by an independent Board of

Directors. The Parties agree that the Directors of the Medical Research and Education Fund will be nominated by the Parties and that each nominee will be subject to agreement of the Parties and subject to Court approval.

- b. **MEDICAL/LEGAL REGISTRY.** The Trustees shall apply a portion of Fund A to establish, operate and maintain a "Registry" to track the medical condition of Class Members, both for purposes of processing claims for benefits under the terms of the Settlement and for purposes of medical research and education. The funds expended to create, maintain and operate this Registry shall be considered administrative expenses of Fund A and shall not reduce the \$25 million which is available for medical education and research.
- c. **ECHOCARDIOGRAM IN THE CASE OF FINANCIAL HARDSHIP.** In addition, the Trustees may, in their discretion, for members of Subclasses 1(a) and 1(b), in cases of true financial hardship provide a Transthoracic Echocardiogram and associated interpretive physician visit to such persons after Trial Court Approval of this Settlement. Total disbursements for such services shall not exceed \$10 million.
- d. **REIMBURSEMENT FOR CERTAIN PRIVATELY-OBTAINED ECHOCARDIOGRAMS.** Diet Drug Recipients or their Representative Claimants will be eligible for reimbursement of the cost of Echocardiograms and associated interpretive visits not otherwise reimbursed under this Agreement where such procedures were performed after the commencement of Diet Drug use; provided, however, that such reimbursement benefits will be made available to Diet Drug Recipients or their Representative claimants only if, and to the extent that, Fund A possesses sufficient assets to pay such benefits after paying or creating a reserve for payment of all other authorized expenses and benefits to be provided by Fund A, except for the refund benefits described in Section IV.A.1.d of the Settlement Agreement, which refund benefits described in Section IV.A.1.d shall be paid only after paying or creating a reserve for the payment of the reimbursement benefit described in this Section IV.A.3.d. The reimbursement to be provided hereunder shall be the lesser of (i) the direct cost to the Trust of providing a Transthoracic Echocardiogram and associated interpretive visit under the Screening Program and (ii) the actual

amount paid by the Class Member for the Echocardiogram and associated interpretive visit, net of amounts paid or reimbursed by an insurance carrier or other third-party payor. Class Members seeking such reimbursement must apply for it by Date 1.

4. **TERMS OF MEDICAL SCREENING PROGRAM AND PROVISION OF ADDITIONAL MEDICAL SERVICES.**

a. In order to supply Transthoracic Echocardiograms and associated interpretive physician visits pursuant to Sections IV.A.1.a, IV.A.1.b, IV.A.2.b.(2), IV.A.2.b.(3) and IV.A.3.c of this Settlement Agreement, and the additional medical services which Class Members are entitled to receive in accordance with Sections IV.A.1.c and IV.A.2.c of this Settlement Agreement, the Trustees and/or Claims Administrator(s) may enter into a contract with a network of providers of health services.

b. The "additional medical services" which eligible Class Members are entitled to receive under Sections IV.A.1.c and IV.A.2.c of this Settlement Agreement shall be determined by the Trustees and may include the following services, when performed, supervised, or prescribed by a physician specializing in internal medicine, cardiology, or cardiothoracic surgery:

- (1) Comprehensive physical examinations;
- (2) Chest x-rays;
- (3) Electrocardiograms;
- (4) Standard laboratory testing;
- (5) Medically-appropriate Echocardiograms;
- (6) Medically-supervised nutritional counseling; and/or
- (7) Any new, accepted technology or modalities for the management of valvular heart disease.

5. **SOURCE OF FUND A BENEFITS.** The benefits referred to in Section IV.A.1 through and including Section IV.A.4 shall be paid only out of Fund A.

**B. COMPENSATION BENEFITS PAYABLE FROM FUND B**

1. **ELIGIBLE CLASS MEMBERS.** The following Class Members, and only such Class Members, shall be entitled to the compensation benefits from Fund B ("Matrix Compensation Benefits"):
  - a. Diet Drug Recipients who have been diagnosed by a Qualified Physician as FDA Positive or as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period and who have registered for further settlement benefits by Date 2;
  - b. The Representative Claimants of Diet Drug Recipients who have been diagnosed by a Qualified Physician as FDA Positive or as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, where either the Diet Drug Recipient or the Representative Claimant(s) for the Diet Drug Recipient has registered for further settlement benefits by Date 2;
  - c. The Derivative Claimants of Diet Drug Recipients who have been diagnosed by a Qualified Physician as FDA Positive or as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, where the Derivative Claimants have registered for further settlement benefits by Date 2, to the extent that such persons have a legally recognized claim for loss of services, consortium, support, or the like, arising from injury to the associated Diet Drug Recipient;
  - d. Diet Drug Recipients who have been diagnosed by a Qualified Physician as having Endocardial Fibrosis by September 30, 2005, and have registered for Fund B benefits by January 31, 2006;
  - e. The Representative Claimants of Diet Drug Recipients who have been diagnosed by a Qualified Physician as having Endocardial Fibrosis by September 30, 2005, where either the Diet Drug Recipient or the Representative Claimant(s) of the Diet Drug Recipient has registered for Fund B benefits by January 31, 2006;

- f. The Derivative Claimants of Diet Drug Recipients who have been diagnosed by a Qualified Physician as having Endocardial Fibrosis by September 30, 2005, where the Derivative Claimants have registered for Fund B benefits by January 31, 2006, to the extent that such persons have a legally recognized claim for loss of services, consortium, support, or the like, arising from injury to the associated Diet Drug Recipient.

**2. BENEFITS AVAILABLE**

- a. For purposes of providing Matrix Compensation Benefits to those Class Members eligible to receive such payments, the following four payment matrices (hereinafter the "Matrices" or "Matrix") are established:

**Matrix A-1** Age at diagnosis/event

Severity	≤ 24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70 - 79
I	\$123,750	\$117,563	\$111,685	\$106,100	\$100,795	\$95,755	\$90,967	\$86,419	\$82,098	\$73,888	\$36,944
II	\$643,500	\$611,325	\$580,759	\$551,721	\$524,135	\$497,928	\$473,032	\$449,381	\$426,912	\$384,221	\$192,111
III	\$940,500	\$893,475	\$848,801	\$806,361	\$766,043	\$727,741	\$691,354	\$656,786	\$623,947	\$561,552	\$280,776
IV	\$1,336,500	\$1,269,675	\$1,206,191	\$1,145,881	\$1,088,587	\$1,034,158	\$982,450	\$933,327	\$886,661	\$797,995	\$398,998
V	\$1,485,000	\$1,410,750	\$1,340,213	\$1,273,202	\$1,209,542	\$1,149,065	\$1,091,612	\$1,037,031	\$985,180	\$886,662	\$443,331

**Matrix A-2** Age at diagnosis/event

Severity	≤ 24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70 - 79
I	\$1,250	\$1,187	\$1,128	\$1,072	\$1,018	\$967	\$919	\$873	\$829	\$739	\$500
II	\$6,500	\$6,175	\$5,866	\$5,573	\$5,294	\$5,030	\$4,778	\$4,539	\$4,312	\$3,842	\$1,921
III	\$9,500	\$9,025	\$8,574	\$8,145	\$7,738	\$7,351	\$6,983	\$6,634	\$6,302	\$5,616	\$2,808
IV	\$13,500	\$12,825	\$12,184	\$11,575	\$10,996	\$10,446	\$9,924	\$9,428	\$8,956	\$7,980	\$3,990
V	\$15,000	\$14,250	\$13,537	\$12,861	\$12,218	\$11,607	\$11,026	\$10,475	\$9,951	\$8,867	\$4,433

**Matrix B-1** Age at diagnosis/event

Severity	≤ 24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70 - 79
I	\$24,750	\$23,513	\$22,337	\$21,221	\$20,159	\$19,152	\$18,194	\$17,284	\$16,420	\$14,778	\$7,389
II	\$128,700	\$122,265	\$116,152	\$110,344	\$104,827	\$99,586	\$94,606	\$89,876	\$85,383	\$76,844	\$38,422
III	\$188,100	\$178,695	\$169,760	\$161,272	\$153,208	\$145,548	\$138,270	\$131,357	\$124,790	\$112,310	\$56,155
IV	\$267,300	\$253,935	\$241,238	\$229,176	\$217,717	\$206,831	\$196,489	\$186,665	\$177,332	\$159,599	\$79,800
V	\$297,000	\$282,150	\$268,043	\$254,641	\$241,908	\$229,813	\$218,322	\$207,406	\$197,036	\$177,332	\$88,666

**Matrix B-2** Age at diagnosis/event

Severity	≤ 24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70 - 79
I	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500
II	\$1,300	\$1,235	\$1,173	\$1,115	\$1,059	\$1,006	\$956	\$908	\$862	\$768	\$500
III	\$1,900	\$1,805	\$1,715	\$1,629	\$1,548	\$1,470	\$1,397	\$1,327	\$1,260	\$1,123	\$562
IV	\$2,700	\$2,565	\$2,437	\$2,315	\$2,199	\$2,089	\$1,985	\$1,885	\$1,791	\$1,596	\$798
V	\$3,000	\$2,850	\$2,707	\$2,572	\$2,444	\$2,321	\$2,205	\$2,095	\$1,990	\$1,773	\$886

- b. Each Matrix describes the amount which an eligible Class Member is entitled to recover based on (1) the level of severity of a Diet Drug Recipient's disease pursuant to Section IV.B.2.c below, and (2) the age at which the Diet Drug Recipient is first diagnosed as suffering from that level of disease severity.
- c. The levels of disease severity in a Diet Drug Recipient which qualify eligible Class Members for payment on the Matrices are as follows:
  - (1) **MATRIX LEVEL I** is severe left sided valvular heart disease without complicating factors, and is defined as one of the following:
    - (a) Severe aortic regurgitation (AR) > 49% jet height/left ventricular outflow tract height (JH/LVOTH)<sup>14</sup> and/or severe mitral regurgitation (MR) > 40% regurgitant jet area/left atrial area (RJA/LAA)<sup>15,16</sup> and no complicating factors as defined below;
    - (b) FDA Positive valvular regurgitation<sup>17</sup> with bacterial endocarditis contracted after commencement of Pondimin<sup>®</sup> and/or Redux<sup>™</sup> use.
  - (2) **MATRIX LEVEL II** is left sided valvular heart disease with complicating factors, and is defined as:
    - (a) Moderate AR (25% - 49% JH/LVOTH)<sup>18</sup> or Severe AR (> 49% JH/LVOTH)<sup>19</sup> with one or more of the following:

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<sup>14</sup> See Singh, *supra* note 2.

<sup>15</sup> See *id.*

<sup>16</sup> See Frederick Helmcke, *et al.*, *Color Doppler Assessment of Mitral Regurgitation with Orthogonal Planes*, 75 *circulation* 175, 177, 183 (1987) [hereinafter "Helmcke"].

<sup>17</sup> See Centers for Disease Control and Prevention, U.S. Dep't of Health and Human Services, *Cardiac Valvulopathy Associated with Exposure to Fenfluramine or Dexfenfluramine: US Department of Health and Human Services Interim Public Health Recommendations*, 46 *Morbidity & Mortality Weekly Rep.* 1061, 1061-1066 (1997).

<sup>18</sup> See Singh, *supra* note 2.

<sup>19</sup> See *id.*

- i) Pulmonary hypertension secondary to severe aortic regurgitation with a peak systolic pulmonary artery pressure > 40 mm Hg measured by cardiac catheterization or with a peak systolic pulmonary artery pressure > 45 mm Hg<sup>20</sup> measured by Doppler Echocardiography, at rest, utilizing standard procedures<sup>21,22</sup> assuming a right atrial pressure of 10 mm Hg;
  - ii) Abnormal left ventricular end-systolic dimension > 50 mm<sup>23</sup> by M-mode or 2-D Echocardiography or abnormal left ventricular end-diastolic dimension > 70 mm<sup>24</sup> as measured by M-mode or 2-D Echocardiography;
  - iii) Ejection fraction of < 50%<sup>25</sup>; and/or
- (b) Moderate MR (20% - 40% RJA/LAA)<sup>26</sup> or Severe MR (> 40% RJA/LAA)<sup>27</sup> with one or more of the following:
- i) Pulmonary hypertension secondary to valvular heart disease with peak systolic pulmonary artery pressure >

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<sup>20</sup> See Braunwald I, *supra* note 1 at 796-98.

<sup>21</sup> See Feigenbaum, *supra* note 3 at 201-03.

<sup>22</sup> See Kwan-Leung Chan, *et al.*, *Comparison of Three Doppler Ultrasound Methods in the Prediction of Pulmonary Artery Disease*, 9 J. Am. C. Cardiology 549, 550 (1987) [hereinafter "Chan"].

<sup>23</sup> See Robert O. Bonow, *et al.*, *Guidelines for the Management of Patients With Valvular Heart Disease: A Report of the American College of Cardiology/American Heart Association Task Force on Practice Guidelines (Committee on Management of Patients With Valvular Heart Disease)*, 32 J. Am. C. Cardiology 1486, 1511 (1998) [hereinafter "Bonow"].

<sup>24</sup> See *id.*

<sup>25</sup> See *id.* at 1512.

<sup>26</sup> See Singh, *supra* note 2.

<sup>27</sup> See *id.*

40 mm Hg measured by cardiac catheterization or with a peak systolic pulmonary artery pressure > 45 mm Hg<sup>28</sup> measured by Doppler Echocardiography, at rest, utilizing the procedures described in Section IV.B.2.c.(2)(a)(i) above;

- ii) Abnormal left atrial supero-inferior systolic dimension > 5.3 cm<sup>29</sup> (apical four chamber view) or abnormal left atrial antero-posterior systolic dimension > 4.0 cm (parasternal long axis view) measured by 2-D directed M-mode or 2-D echocardiography with normal sinus rhythm using sites of measurement recommended by the American Society of Echocardiography;<sup>30</sup>
- iii) Abnormal left ventricular end-systolic dimension  $\geq$  45 mm<sup>31</sup> by M-mode or 2-D Echocardiogram;
- iv) Ejection fraction of  $\leq$  60%<sup>32</sup>;
- v) Arrhythmias, defined as chronic atrial fibrillation/flutter that cannot be converted to normal sinus rhythm, or atrial fibrillation/flutter requiring ongoing medical therapy, any of which are associated with left atrial enlargement; as defined above in Section IV.B.2.c.(2)(b)(ii).

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<sup>28</sup> See Braunwald I, *supra* note 1 at 796-98.

<sup>29</sup> See Weyman, *supra* note 4 at 1290-92.

<sup>30</sup> See Walter L. Henry, et al., *Report of the American Society of Echocardiography Committee on Nomenclature and Standards in Two-dimensional Echocardiography*, 62 *Circulation* 212, 212-13 (1980) [hereinafter "Henry"].

<sup>31</sup> See Bonow, *supra* note 23 at 1533-35.

<sup>32</sup> See *id.*

(3) **MATRIX LEVEL III** is left sided valvular heart disease requiring surgery or conditions of equal severity, and is defined as:

(a) Surgery to repair or replace the aortic and/or mitral valve(s) following the use of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>; or

(b) Severe regurgitation and the presence of ACC/AHA Class I indications for surgery to repair or replace the aortic<sup>33</sup> and/or mitral<sup>34</sup> valve(s) and a statement from the attending Board-Certified Cardiothoracic Surgeon or Board-Certified Cardiologist supported by medical records regarding the recommendations made to the patient concerning valvular surgery, with the reason why the surgery is not being performed; or

(c) Qualification for payment at Matrix Level I(b) (as described in Section IV.B.2.c.(1)(b) above) or Matrix Level II and, in addition, a stroke due to bacterial endocarditis contracted after use of Pondimin<sup>®</sup> and/or Redux<sup>™</sup> or as a consequence of chronic atrial fibrillation with left atrial enlargement as defined in Section IV.B.2.c.(2)(b)(ii) which results in a permanent condition which meets the criteria of AHA Stroke Outcome Classification<sup>35</sup> Functional Level II, determined six months after the event.

(4) **MATRIX LEVEL IV** is defined as follows:

(a) Qualification for payment at Matrix Level I(b) (as described in Section IV.B.2.c.(1)(b) above), II or III and, in addition, a stroke due to Bacterial Endocarditis contracted

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<sup>33</sup> See *id.* at 1510.

<sup>34</sup> See *id.* at 1533-35.

<sup>35</sup> See Margaret Kelley-Hayes, *et al.*, *The American Heart Association Stroke Outcome Classification*, 29 *Stroke* 1274, 1275 (1998) [hereinafter "Kelley-Hayes"]. It should be noted that this classification was approved by the American Heart Association Science Advisory and Coordinating Committee.

after use of Pondimin<sup>®</sup> and/or Redux<sup>™</sup> or as a consequence of chronic atrial fibrillation with left atrial enlargement as defined in Section IV.B.2.c.(2)(b)(ii) which results in a permanent condition which meets the criteria of AHA Stroke Outcome Classification<sup>36</sup> Functional Level III, determined six months after the event; or

- (b) Qualification for payment at Matrix Level I, II, or III and, in addition, a peripheral embolus due to Bacterial Endocarditis contracted after use of Pondimin<sup>®</sup> and/or Redux<sup>™</sup> or as a consequence of atrial fibrillation with left atrial enlargement as defined in Section IV.B.2.c.(2)(b)(ii) which results in severe permanent impairment to the kidneys, abdominal organs, or extremities, where severe permanent impairment means:
  - i) for the kidneys, chronic severe renal failure requiring hemodialysis or continuous abdominal peritoneal dialysis for more than six months;
  - ii) for the abdominal organs, impairment requiring intra-abdominal surgery;
  - iii) for the extremities, impairment requiring amputation of a major limb; or
- (c) The individual has the following:
  - i) Qualification for payment at Matrix Level III; and
  - ii) New York Heart Association Functional Class I or Class II symptoms as documented by the attending Board-Certified Cardiothoracic Surgeon or Board-Certified Cardiologist; and

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<sup>36</sup> See *id.*

- iii) Valvular repair and replacement surgery or ineligibility for surgery due to medical reasons as documented by the attending Board-Certified Cardiothoracic Surgeon or Board-Certified Cardiologist; and
  - iv) Significant damage to the heart muscle, defined as: (a) a left ventricular ejection fraction < 30% with aortic regurgitation or a left ventricular ejection fraction < 35% with mitral regurgitation in patients who have not had surgery and meet the criteria of Section IV.B.2.c.(3)(b) above or (b) a left ventricular ejection fraction < 40% six months after valvular repair or replacement surgery in patients who have had such surgery; or
- (d) The individual has had valvular repair or replacement surgery and has one or more of the following complications which occur either during surgery, within thirty (30) days after surgery, or during the same hospital stay as the surgery:
- i) Renal failure, defined as chronic, severe renal failure requiring regular hemodialysis or continuous abdominal peritoneal dialysis for greater than six months following aortic and/or mitral valve replacement surgery;
  - ii) Peripheral embolus following surgery resulting in severe permanent impairment to the kidneys, abdominal organs, or extremities;
  - iii) Quadriplegia or paraplegia resulting from cervical spine injury during valvular heart surgery; or
- (e) A stroke caused by aortic and/or mitral valve surgery and the stroke has produced a

permanent condition which meets the criteria of the AHA Stroke Outcome Classification<sup>37</sup> Functional Levels II or III determined six months after the event;

- (f) The individual has had valvular repair or replacement surgery and suffers from post operative endocarditis, mediastinitis or sternal osteomyelitis, any of which requires reopening the median sternotomy for treatment, or a post-operative serious infection defined as HIV or Hepatitis C within six months of surgery as a result of blood transfusion associated with the heart valve surgery.
- (g) The individual has had valvular repair or replacement surgery and requires a second surgery through the sternum within eighteen months of the initial surgery due to prosthetic valve malfunction, poor fit, or complications reasonably related to the initial surgery.

(5) **MATRIX LEVEL V** is defined as:

- (a) Endocardial Fibrosis (1) diagnosed by (a) endomyocardial biopsy that demonstrates fibrosis and cardiac catheterization that demonstrates restrictive cardiomyopathy or (b) autopsy that demonstrates endocardial fibrosis and (2) other causes, including dilated cardiomyopathy, myocardial infarction, amyloid, Loeffler's endocarditis, endomyocardial fibrosis as defined in Braunwald (involving one or both ventricles, located in the inflow tracts of the ventricles, commonly involving the chordae tendinea, with partial obliteration of either ventricle commonly present)<sup>38</sup>, focal fibrosis secondary to valvular regurgitation (e.g., "jet lesions"), focal fibrosis secondary to catheter instrumentation, and hypertrophic

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<sup>37</sup> See *id.*

<sup>38</sup> See Braunwald I, *supra* note 1 at 1433-34.

cardiomyopathy with septal fibrosis, have been excluded; or

- (b) Left sided valvular heart disease with severe complications, defined as Matrix Levels I(b) (as described in Section IV.B.2.c.(1)(b) above), III or IV above with one or more of the following:
  - i) A severe stroke caused by aortic and/or mitral valve surgery or due to bacterial endocarditis contracted after use of Pondimin<sup>®</sup> and/or Redux<sup>™</sup> or as a consequence of chronic atrial fibrillation with left atrial enlargement as defined in Section IV.B.2.c.(2)(b)(ii) and the severe stroke has resulted in a permanent condition which meets the criteria of AHA Stroke Outcome Classification<sup>39</sup> Functional Levels IV or V, determined six months after the event;
  - ii) The individual has the following:
    - a) Qualification for payment at Matrix Levels III or IV; and
    - b) New York Heart Association Functional Class III or Class IV symptoms as documented by the attending Board-Certified Cardiothoracic Surgeon or Board-Certified Cardiologist; and
    - c) Valvular repair or replacement surgery or ineligibility for surgery due to medical reasons as documented by the attending Board-Certified Cardiothoracic Surgeon or

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<sup>39</sup> See Kelley-Hayes, *supra* note 35.

Board-Certified Cardiologist;  
and

- d) Significant damage to the heart muscle, defined as: (i) a left ventricular ejection fraction < 30% with aortic regurgitation or a left ventricular ejection fraction < 35% with mitral regurgitation, in patients who have not had surgery and meet the criteria in Section IV.B.2.c.(3)(b) above or (ii) a left ventricular ejection fraction < 40% six months after valvular repair or replacement surgery in patients who have had such surgery; or
- iii) Heart transplant;
- iv) Irreversible pulmonary hypertension (PH) secondary to valvular heart disease defined as peak-systolic pulmonary artery pressure > 50 mm Hg<sup>40</sup> (by cardiac catheterization) at rest following repair or replacement surgery of the aortic and/or mitral valve(s);
- v) Persistent non-cognitive state<sup>41</sup> caused by a complication of valvular heart disease (e.g., cardiac arrest) or valvular repair/replacement surgery supported by a statement from the attending Board-Certified Cardiothoracic Surgeon or Board-Certified Cardiologist, supported by medical records; or

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<sup>40</sup> See Braunwald I, *supra* note 1 at 796-98.

<sup>41</sup> See Encyclopedia of Neuroscience 268 (George Adelman ed., 1987).

- (c) Death resulting from a condition caused by valvular heart disease or valvular repair/replacement surgery which occurred post-Pondimin<sup>®</sup> and/or Redux<sup>™</sup> use supported by a statement from the attending Board-Certified Cardiothoracic Surgeon or Board-Certified Cardiologist, supported by medical records; or
  - (d) The individual otherwise qualifies for payment at Matrix Level II, III, or IV and suffers from ventricular fibrillation or sustained ventricular tachycardia which results in hemodynamic compromise.
- d. The circumstances which determine whether Matrix A-1 or Matrix B-1 is applicable to a claim for Matrix compensation benefits are as follows:
- (1) **FOR MATRIX A-1:** Diet Drug Recipients who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty-one (61) or more days, who were diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, whose conditions are eligible for Matrix payments but who do not have any condition or circumstance which makes Matrix B-1 applicable, or their Representative Claimants, shall be entitled to receive Matrix Compensation Benefits determined by application of Matrix A-1, provided that such Diet Drug Recipients or Representative Claimants have registered (or are deemed to have registered) for settlement benefits by Date 2.
  - (2) **FOR MATRIX B-1:** Diet Drug Recipients who are eligible for Matrix Compensation Benefits and to whom one or more of the following conditions apply, or their Representative Claimants, will receive Matrix Compensation Benefits determined by application of Matrix B-1, provided that such Diet Drug Recipients or Representative Claimants have registered (or are deemed to have registered) for settlement benefits by Date 2:

- (a) For claims as to the mitral valve, Diet Drug Recipients who were diagnosed by a Qualified Physician as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period (regardless of the duration of ingestion of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>); or
- (b) Diet Drug Recipients who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty (60) days or less, who were diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period; or
- (c) Diet Drug Recipients who ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty-one (61) or more days, who were diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, with any of the following conditions:
  - i) With respect to an aortic valve claim:
    - a) The following congenital aortic valve abnormalities: unicuspid, bicuspid or quadricuspid aortic valve, ventricular septal defect associated with aortic regurgitation;
    - b) Aortic dissection involving the aortic root and/or aortic valve;
    - c) Aortic sclerosis in people who are  $\geq 60$  years old as of the time they are first diagnosed as FDA Positive;
    - d) Aortic root dilatation  $> 5.0$  cm;

- e) Aortic stenosis with an aortic valve area < 1.0 square centimeter by the Continuity Equation.
- ii) With respect to a mitral valve claim:
  - a) The following congenital mitral valve abnormalities: parachute valve, cleft of the mitral valve associated with atrial septal defect;
  - b) Mitral Valve Prolapse;
  - c) Chordae tendineae rupture or papillary muscle rupture; or acute myocardial infarction associated with acute mitral regurgitation;
  - d) Mitral annular calcification;
  - e) M-Mode and 2-D echocardiographic evidence of rheumatic mitral valves (doming of the anterior leaflet and/or anterior motion of the posterior leaflet and/or commissural fusion), except where a Board-Certified Pathologist has examined mitral valve tissue and determined that there was no evidence of rheumatic valve disease.
- iii) With respect to claims for the aortic and/or mitral valve(s):
  - a) Heart valve surgery prior to Pondimin<sup>®</sup> and/or Redux<sup>™</sup> use on the valve that is the basis of claim;
  - b) Bacterial endocarditis prior to Pondimin<sup>®</sup> and/or Redux<sup>™</sup> use;

- c) FDA Positive regurgitation (confirmed by Echocardiogram) prior to Pondimin<sup>®</sup> and/or Redux<sup>™</sup> use for the valve that is the basis of claim;
  - d) A diagnosis of Systemic Lupus Erythematosus or a diagnosis of Rheumatoid Arthritis<sup>42</sup> and valvular abnormalities of a type associated with those conditions;<sup>43</sup>
  - e) Carcinoid tumor of a type associated with aortic and/or mitral valve lesions;
  - f) History of daily use of methysergide or ergotamines for a continuous period of longer than 120 days.
- e. Matrix A-2 and Matrix B-2 describe the amount of compensation to which Derivative Claimants are entitled if the Diet Drug Recipient with whom they are associated has a Matrix-Level Condition, to the extent that applicable state law recognizes that they have a claim for loss of consortium, services or support. Derivative Claimants will be paid based on the Matrix-Level Condition and age of diagnosis of the Diet Drug Recipient whose alleged injury forms the basis of their claim for loss of consortium, services, or support under applicable state law. Matrix A-2 will apply if the Diet Drug Recipient, whose alleged injury forms the basis of the claim for loss of consortium, services, or support under applicable state law, meets the criteria for payment under Matrix A-1. Matrix B-2 will apply if the Diet Drug Recipient, whose alleged injury forms the basis of the claim for loss of consortium, services, or support under applicable state law, meets the criteria for payment on Matrix B-1.

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<sup>42</sup> See *Harrison's Principles of Internal Medicine* 1878, 1885 (14<sup>th</sup> ed. 1998).

<sup>43</sup> See C. Otto, *The Practice of Clinical Echocardiography* 589-93 (1997) [hereinafter "Otto"].

- f. If a Diet Drug Recipient qualifies for Matrix payments due to more than one condition, the Diet Drug Recipient and/or his or her associated Representative and Derivative Claimants who have registered (or who are deemed to have registered) for settlement benefits by Date 2 shall be entitled to receive only the higher of such payments, but not both such payments.
- g. Matrices A-1 and B-1 set forth the maximum aggregate amount to which the Diet Drug Recipient or his or her Representative Claimants are collectively entitled to receive from Fund B. Where there is more than one Representative Claimant associated with any particular Diet Drug Recipient eligible for such Matrix Compensation Benefits, the Trustees and/or Claims Administrator(s) shall allocate this amount among all of the Representative Claimants who have made a claim for such benefits according to applicable law. Matrices A-2 and B-2 set forth the maximum aggregate amount to which all Derivative Claimants associated with any particular Diet Drug Recipient are collectively entitled to receive from Fund B. Where there is more than one Derivative Claimant associated with any particular Diet Drug Recipient eligible for such Matrix Compensation Benefits, the Trustees and/or Claims Administrator(s) shall allocate the Matrix amount, *pro rata* among all of the Derivative Claimants who have made a claim for such benefits, to the extent that applicable state law recognizes that they have a claim for loss of consortium, services or support.
- h. Diet Drug Recipients who have been diagnosed by a Qualified Physician as FDA Positive (but not also as having Mild Mitral Regurgitation) by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period and have registered for settlement benefits by Date 2, and their associated Representative and Derivative Claimants who have registered (or who are deemed to have registered) for settlement benefits by Date 2, shall be eligible for Matrix payments for Matrix-Level Conditions resulting from the valve or valves for which there was an FDA Positive diagnosis by a Qualified Physician by the end of the Screening Period, subject to the above provision that if he/she qualifies for more than one benefit, he/she shall be entitled to the higher benefit, but not both.

- i. Diet Drug Recipients who have been diagnosed by a Qualified Physician as having Mild Mitral Regurgitation (but not also as FDA Positive) by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period and have registered for settlement benefits by Date 2, and their associated Representative and Derivative Claimants who have registered (or who are deemed to have registered) for settlement benefits by Date 2, shall be eligible for Matrix payments only for claims based upon the mitral valve, subject to the above provision that if he/she qualifies for more than one benefit, he/she shall be entitled to the higher benefit, but not both.
- j. Diet Drug Recipients who have been diagnosed by a Qualified Physician both as FDA Positive (due to mild or greater aortic regurgitation) and as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period and who have registered for settlement benefits by Date 2, and their associated Representative and Derivative Claimants who have registered (or who are deemed to have registered) for settlement benefits by Date 2, shall be eligible for Matrix payments based upon either the aortic or the mitral valve.
- k. Diet Drug Recipients who have been diagnosed by a Qualified Physician as having Endocardial Fibrosis by September 30, 2005, and have registered for Matrix Compensation Benefits for Endocardial Fibrosis by January 31, 2006, and their associated Representative and Derivative Claimants who have registered (or who are deemed to have registered) for these settlement benefits by January 31, 2006, shall be entitled to the Endocardial Fibrosis benefits as set forth in Sections IV.B.2.a and IV.B.2.c.(5)(a), regardless of whether or not the Diet Drug Recipient had valvular regurgitation.
- l. A Representative Claimant is deemed to have registered for settlement benefits either when the Representative Claimant registers for benefits or, if applicable, as of the date when the Diet Drug Recipient to which the claim relates has registered for settlement benefits.

### C. PAYMENT PROVISIONS

1. The Matrix payment amounts set forth in Section IV.B.2.a above will be increased by two percent (2%) per year, compounded annually, beginning one year after the Final Judicial Approval Date. In the event that the Settlement does not receive Final Judicial Approval or is terminated by AHP in accordance with its terms for any other reason, then for purposes of providing benefits to each Class Member who has entered into an Individual Agreement pursuant to the Accelerated Implementation Option (described in Section V below), the Matrix payment amounts shall be increased by two percent (2%) per year, compounded annually, beginning in the second "AIO Fiscal Year" (as defined in Section I.6 and as discussed in Section V.H.3 hereof).
2. A "Matrix Payment Cut-Off Date" is established for purposes of this Settlement. The Matrix Payment Cut-Off Date shall be a date which is fourteen years from the Final Judicial Approval Date or December 31, 2015, whichever is earlier. Those Class Members who fail to qualify for payment on the Matrices by the Matrix Payment Cut-Off Date shall have no further right to claim benefits under Fund B or to exercise a Back-End Opt-Out (as described in Section IV.D.4 below). However, where a Diet Drug Recipient does qualify for payment on the Matrices by the Matrix Payment Cut-Off Date, the Diet Drug Recipient and/or the associated Representative and Derivative Claimants may continue to receive higher amounts of Matrix Compensation Benefits, if any, if the condition of the Diet Drug Recipient which qualified such person for such payment progresses to a more severe condition after the Matrix Payment Cut-Off Date.
3. Once a Diet Drug Recipient has reached a Matrix-Level Condition before the Matrix Payment Cut-Off Date, the Diet Drug Recipient and any associated Representative and/or Derivative Claimants can step up to higher Matrix-Level Conditions and will be paid the incremental dollar amount, if any, by which the Matrix payment for the higher Matrix-Level Condition exceeds the Matrix payment previously received. Notwithstanding the foregoing, Class Members who seek benefits for Endocardial Fibrosis must qualify for payment on the Matrices for that condition by September 30, 2005, and register (or be deemed to have registered) for Matrix Compensation Benefits for Endocardial Fibrosis by January 31, 2006.
4. Prior to the payment of Fund B benefits to any Class Member, the Trustees and/or Claims Administrator(s) shall deduct the amount

provided for in Section VIII.E.1.b for the payment of attorneys' fees.

**D. OPT-OUT RIGHTS**

1. **DERIVATIVE CLAIMANTS.** As to all opt-outs, where there is both a Diet Drug Recipient or a Representative Claimant and one or more Derivative Claimants, the Diet Drug Recipient's or the Representative Claimant's exercise or failure to exercise an opt-out right shall be binding on the associated Derivative Claimant(s).
2. **INITIAL OPT-OUT**
  - a. **ELIGIBILITY:** All Class Members are eligible to exercise an Initial Opt-Out right.
  - b. **METHOD OF EXERCISE:** Each Class Member wishing to opt out from this Settlement must sign and submit timely written notice to the Claims Administrator(s), with a copy to AHP, clearly manifesting the Class Member's intent to opt out of the Settlement. The Claims Administrator(s) shall then submit all Opt-Out forms to the Court. The Court shall be the official registry of Opt-Outs. This written notice shall be in the form appended hereto as Exhibit "6" or in a substantially identical written manifestation of intent. To be effective, this written notice must be signed and submitted by the expiration of the Initial Opt-Out Period. The Parties will recommend that the Court approve an Initial Opt-Out Period of 120 days from the date on which class notice commences.
  - c. **EFFECT OF EXERCISE:** Any Class Member who timely and properly exercises an Initial Opt-Out right may initiate, continue with, or otherwise prosecute any legal claim against AHP and the Released Parties without any limitation, impediment or defense arising from the terms of the Settlement Agreement and subject to all defenses and rights which AHP and the Released Parties would otherwise have in the absence of the Settlement Agreement. AHP agrees that it will not use the Settlement Agreement or any proceedings connected therewith to cause delay to any Class Member who timely and properly exercises his/her Initial Opt-Out right and initiates, continues with, or otherwise prosecutes a claim against AHP. Lawsuits initiated by Class Members who timely and properly exercise an Initial Opt-Out shall be subject to the provisions of Section VIII.F.3.

- d. **REVOCATION OF EXERCISE:** Any Class Member may revoke an election to exercise a right of Initial Opt-Out and thereby receive the benefits of the Settlement, provided that the revocation takes place with the written consent of AHP, which shall not be unreasonably withheld.

3. **INTERMEDIATE OPT-OUT**

- a. **ELIGIBILITY:** All Diet Drug Recipients (other than those who have entered into AIO Individual Agreements pursuant to the Accelerated Implementation Option) who are not members of Subclasses 2(a), 2(b) or 3, and who have been diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, and their associated Representative and/or Derivative Claimants, are eligible to exercise a right to Intermediate Opt-Out.
- b. **METHOD OF EXERCISE:** Each Class Member who wants to exercise a right of Intermediate Opt-Out must do so by completing, signing, and timely submitting a written notice of the Class Member's intent to do so in the form appended hereto as Exhibit "7." This written notice must be submitted to the Court, the Trustees and/or Claims Administrator(s), and to AHP, no later than Date 2. In that form, the Class Member must clearly express his/her desire to exercise a right of Intermediate Opt-Out, certify that he/she is eligible to do so, and expressly acknowledge an understanding of the Settlement rights and benefits that will be relinquished by the exercise of the Intermediate Opt-Out right. A Class Member may not exercise an Intermediate Opt-Out right after receiving either \$6,000 in cash or any portion of \$10,000 in medical services in the case of members of Subclass 1(b) (pursuant to Section IV.A.1.c above), or \$3,000 in cash or any portion of \$5,000 in medical services in the case of members of Subclass 1(a) (pursuant to Section IV.A.2.c above). If a member of Subclass 1(a) or 1(b) is diagnosed with a Matrix-Level Condition and exercises an opt-out right after the end of the Initial Opt-Out Period, the opt-out shall be deemed a Back-End Opt-Out.
- c. **EFFECT OF EXERCISE:** The Intermediate Opt-Out is subject to the following provisions. A Class Member who timely and properly exercises an Intermediate Opt-Out right may pursue all of his or her Settled Claims (except for those claims set forth in subparagraphs (e) and (g) of Section I.53), against the AHP Released Parties and/or the Non-

AHP Released Parties, but may only assert a claim against AHP Released Parties and/or the Non-AHP Released Parties based on the heart valve of the relevant Diet Drug Recipient which was diagnosed by a Qualified Physician as FDA Positive by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Program. If, at any time after a Class Member exercises an Intermediate Opt-Out right, the Class Member initiates a lawsuit seeking to pursue a Settled Claim against AHP or any other Released Party, the Released Party shall have the right to challenge, in such lawsuit only, whether the opt-out was timely and proper, including whether the Class Member was eligible to exercise such an opt-out right. With respect to each Class Member who timely and properly exercises the Intermediate Opt-Out right and who initiates a lawsuit against any of the Released Parties within one year from the date on which the Intermediate Opt-Out right is exercised, the AHP Released Parties shall not assert any defense based on any statute of limitations or repose, the doctrine of laches, any other defense predicated on the failure to timely pursue the claim, any defense based on "splitting" a cause of action, any defense based on any release signed pursuant to the Settlement Agreement, and/or any other defense based on the existence of the Settlement Agreement, except to the extent provided herein. A Class Member timely and properly exercising an Intermediate Opt-Out right may not seek punitive, exemplary, or any multiple damages against the AHP Released Parties or the Non-AHP Released Parties; provided, however, as consideration for being a Non-AHP Released Party and for receiving the benefit of this waiver of punitive, exemplary, and multiple damages, the Non-AHP Released Party must agree in writing not to assert any defense based on any statute of limitations or repose, the doctrine of laches, or any other defense predicated on the failure to timely pursue the claim, any defense based on "splitting" a cause of action, any defense based on any release signed pursuant to the Settlement Agreement, and/or any other defense based on the existence of the Settlement Agreement, except to the extent provided herein; and provided further that if the Non-AHP Released Party so agrees, then the Class Member may not recover more than the total amount of compensatory damages he or she is entitled to from all persons or entities in connection with any claimed injury arising from his/her use of Diet Drugs, except where such limitation is inconsistent with applicable law. A Class Member timely and properly exercising an Intermediate Opt-Out right may

not use any previous verdicts or judgments against the AHP Released Parties, or factual findings necessary to such verdicts or judgments, for purposes of establishing claims or facts in order to obtain a verdict or judgment against the AHP Released Parties under the doctrines of res judicata, collateral estoppel or other doctrines of claim or issue preclusion. Nor may a Class Member timely and properly exercising an Intermediate Opt-Out right seek to introduce into evidence against the AHP Released Parties, for any purpose, such a verdict, judgment, or factual finding. Lawsuits initiated by Class Members who timely and properly exercise an Intermediate Opt-Out shall be subject to the provisions of Section VIII.F.3.

**4. BACK-END OPT-OUT**

**a. ELIGIBILITY:**

- (1) As to Matrix-Level claims based upon valvular regurgitation, all Diet Drug Recipients (other than those who have entered into AIO Individual Agreements pursuant to the Accelerated Implementation Option) who have been diagnosed by a Qualified Physician as FDA Positive or as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, and who reach a Matrix-Level Condition after September 30, 1999, but before the Matrix Payment Cut-Off Date, and their associated Representative and/or Derivative Claimants, may exercise a Back-End Opt-Out right, provided that the Class Member has registered or is deemed to have registered for settlement benefits by Date 2. Class Members who knew prior to September 30, 1999, that they had injury to one or more of their left-side heart valves and a condition which would entitle them to payments on the Matrices may not exercise a Back-End Opt-Out.
- (2) As to Matrix-Level claims based upon Endocardial Fibrosis, all Diet Drug Recipients who have not received the diagnosis of Endocardial Fibrosis from a Qualified Physician by September 30, 1999, and who have subsequently been diagnosed by a Qualified Physician as having Endocardial Fibrosis by September 30, 2005, and their associated

Representative and/or Derivative Claimants, may exercise a Back-End Opt-Out.

- (3) Class Members who are not eligible for Matrix Compensation Benefits may not exercise the Back-End Opt-Out right provided by this Settlement.
- b. **METHOD OF EXERCISE:** Each Class Member who wishes to exercise a right of Back-End Opt-Out must complete, sign, and timely submit written notice of the Class Member's intention to do so in the form appended hereto as Exhibit "8." This written notice must be submitted to the Court, the Trustees and/or Claims Administrator(s), and to AHP, within 120 days after the date on which the Class Member first knows or should have known in the exercise of reasonable diligence that the relevant Diet Drug Recipient developed a Matrix-Level Condition or by Date 2, whichever is later. In that notice, the Class Member must clearly express his or her decision to exercise a Back-End Opt-Out right, certify that he or she is eligible to do so, and acknowledge an understanding of the Settlement rights and benefits that will be relinquished by the exercise of the Back-End Opt-Out. A Class Member may not exercise a Back-End Opt-Out right after claiming any Matrix Compensation Benefits. For this purpose, a Class Member is claiming Matrix Compensation Benefits if the Interim Claims Administrators and/or the Trust receive: (i) Part I of a GREEN FORM signed by the Class Member (or Representative Claimant of such Class Member); and/or (ii) Part II of a GREEN FORM signed by a physician relating to the Class Member and a BLUE FORM signed by that Class Member (or Representative Claimant of such Class Member) in which the Class Member (or Representative Claimant of such Class Member) indicated a belief or assertion of a Matrix-Level condition.
  - c. **EFFECT OF EXERCISE:** The Back-End Opt-Out is subject to the following provisions. A Class Member who timely and properly exercises a Back-End Opt-Out may pursue all of his or her Settled Claims (except for those claims set forth in subparagraphs (e) and (g) of Section I.53) against the AHP Released Parties and/or the Non-AHP Released Parties, but may only assert a claim against the AHP Released Parties and/or the Non-AHP Released Parties as follows: (i) if such person has opted out by reason of a Matrix-Level Condition of one or more heart valves diagnosed by a Qualified Physician as FDA Positive or

Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, such lawsuit may only assert a claim based on that heart valve or valves and condition; and (ii) if such person has opted out by reason of Endocardial Fibrosis, such lawsuit may only assert a claim based on Endocardial Fibrosis. If, at any time after a Class Member exercises a Back-End Opt-Out right, the Class Member initiates a lawsuit seeking to pursue a Settled Claim against AHP or any other Released Party, the Released Party shall have the right to challenge, in such lawsuit only, whether the opt-out was timely and proper, including whether the Class Member was eligible to exercise such an opt-out right. With respect to each Class Member who timely and properly exercises the Back-End Opt-Out right and who initiates a lawsuit against any of the Released Parties within one year from the date on which the Back-End Opt-Out right is exercised, the AHP Released Parties shall not assert any defense based on any statute of limitations or repose, the doctrine of laches, any other defense predicated on the failure to timely pursue the claim, any defense based on "splitting" a cause of action, any defense based on any release signed pursuant to the Settlement Agreement, and/or any other defense based on the existence of the Settlement Agreement, except to the extent provided herein. A Class Member timely and properly exercising a Back-End Opt-Out may not seek punitive, exemplary, or any multiple damages against the AHP Released Parties or the Non-AHP Released Parties; provided, however, as consideration for being a Non-AHP Released Party and for receiving the benefit of this waiver of punitive, exemplary, and multiple damages, the Non-AHP Released Party must agree not to assert any defense based on any statute of limitations or repose, the doctrine of laches, or any other defense predicated on the failure to timely pursue the claim, any defense based on "splitting" a cause of action, any defense based on any release signed pursuant to the Settlement Agreement, and/or any other defense based on the existence of the Settlement Agreement, except to the extent provided herein; and provided further that if the Non-AHP Released Party so agrees, then the Class Member may not recover more than the total amount of compensatory damages he or she is entitled to from all persons or entities in connection with any claimed injury arising from his/her use of Diet Drugs, except where such limitation is inconsistent with applicable law. A Class Member timely and properly exercising a

Back-End Opt-Out may not use any previous verdicts or judgments against the AHP Released Parties, or factual findings necessary to such verdicts or judgments, for purposes of establishing claims or facts in order to obtain a verdict or judgment against the AHP Released Parties under the doctrines of res judicata, collateral estoppel or other doctrines of claim or issue preclusion. Nor may a Class Member timely and properly exercising a Back-End Opt-Out right seek to introduce into evidence against the AHP Released Parties, for any purpose, such a verdict, judgment, or factual finding. Lawsuits initiated by Class Members who timely and properly exercise a Back-End Opt-Out shall be subject to the provisions of Section VIII.F.3.

5. **SIXTH AMENDMENT OPT-OUT**

- a. **ELIGIBILITY:** A Class Member (a Diet Drug Recipient or Representative Claimant of such Diet Drug Recipient) who would otherwise qualify to exercise a right of Back-End Opt-Out under Section IV.D.4 if the Class Member had not claimed Matrix Compensation Benefits, and who has claimed Matrix Compensation Benefits (within the meaning of Section IV.D.4.b) on or before May 3, 2003, is eligible to exercise a Sixth Amendment Opt-Out if: (i) the Trust has determined, after audit of the claim, that the Class Member qualifies for Matrix Compensation Benefits, including without limitation that the Class Member satisfies the requirements of the Settlement Agreement for medical eligibility for Matrix Compensation Benefits; (ii) the Class Member has not received any Matrix Compensation Benefits from the Trust or received payment of any settlement amount from Wyeth; (iii) the Maximum Available Fund B Amount at such time is \$255 million or less, the Class Member's claim for Matrix Compensation Benefits was included in a Fund B Level Notice (as defined below), a Fund B Quarterly Notice, or Settlement Fund Quarterly Notice, and a Fund B Suspension (as defined below) has occurred; (iv) AHP has elected not to deposit additional funds into Fund B to pay such Class Member's Matrix Compensation Benefits; and (v) the Class Member agrees in writing that if the Class Member files any action as a Sixth Amendment Opt-Out, the Class Member will name only AHP as the defendant and no other defendants, the Class Member (and any Derivative Claimants of such Class Member) will be the sole plaintiff(s) in such action, and the Class Member will not agree to or cause

consolidation of such action with any other claims or actions (other than consolidation for purposes of pretrial discovery pursuant to 28 U.S.C. § 1407 or a similar state statute) and will dismiss such action if consolidation is nonetheless ordered by any court, subject to the right to re-file the action in conformity with this Section IV.D.4.c within 120 days of any such dismissal.

- b. **METHOD OF EXERCISE:** Each Class Member who wants to exercise a Sixth Amendment Opt-Out must do so by completing, signing, and timely submitting an ORANGE FORM #4 (in the form to be adopted by the Trust and the Parties if the conditions giving rise to a Sixth Amendment Opt-Out should occur) to the Trust and AHP postmarked no later than 120 days after the date of a notice from the Trust to the Class Member that the Class Member is eligible for the exercise of a Sixth Amendment Opt-Out.
- c. **EFFECT OF EXERCISE:** The Sixth Amendment Opt-Out is subject to all the provisions of Section IV.D.4.c relating to the Back-End Opt-Out and to the additional provisions imposed pursuant to Section IV.D.5.a(v) above.
- d. **IMPLEMENTATION OF THE SIXTH AMENDMENT OPT-OUT:** To effectuate this Section IV.D.5, if deposit by AHP into the Trust of the amount requested in a Fund B Quarterly Notice or Settlement Fund Quarterly Notice would reduce the Maximum Available Fund B amount to \$255 million or less, the Trust shall notify AHP in writing of this circumstance at the time that it issues such Fund B Quarterly Notice or Settlement Fund Quarterly Notice and set forth the amount that if deposited would cause the Maximum Available Fund B Amount to be reduced below \$255 million (a "Fund B Level Notice"), and shall identify the Class Members whose claims form the basis of the Notice and the gross amount of Matrix Compensation Benefits that the Trust finally determined each Class Member was entitled to be paid. Within fifteen days after receipt of a Fund B Quarterly Notice or Settlement Fund Quarterly Notice accompanied by a Fund B Level Notice, AHP shall advise the Trust as to whether it intends to deposit the full amount requested in the Fund B Level Notice. Any deposits by AHP of amounts described in a Fund B Level Notice shall not reduce the Maximum Available Fund B Amount below \$255 million. If AHP fails to respond timely to a Notice of Fund B Level or notifies the Trust that it does not intend to pay the full

amount requested in the Notice of Fund B Level, then a “Fund B Suspension” has occurred. If a Fund B Suspension has occurred:

- (i) AHP shall not be entitled to claim or receive any Credits under Section VII.A unless such Credits have been claimed and applied to reduce the Maximum Available Fund B Amount before the date of the Notice of Fund B Level that results in a Fund B Suspension;
- (ii) Subject to Section III.C.4 and the Settlement Trust Agreement, within ten Business Days after the date of the Fund B Suspension, and in subsequent Fiscal Quarters within ten Business Days after the date of a Fund B Quarterly Notice or Settlement Fund Quarterly Notice, AHP shall deposit into Fund B the portion of the amount requested in the Fund B Quarterly Notice or Settlement Fund Quarterly Notice attributable to supplemental claims by eligible Class Members for Matrix Compensation Benefits pursuant to Section IV.C.3 (“Supplemental Matrix Claims”) as identified by the Trust in the Fund B Quarterly Notice or Settlement Fund Quarterly Notice and to maintain the Administrative Reserve in Fund B pursuant to Section III.C.3, with such deposit applied to reduce the Maximum Available Fund B Amount, and the Trust shall pay such Supplemental Claims in accordance with this Settlement Agreement;
- (iii) Within ten Business Days after the date of the Fund B Suspension, and in subsequent Fiscal Quarters within ten Business Days after the date of a Fund B Quarterly Notice or Settlement Fund Quarterly Notice, AHP shall elect in writing to the Trust which, if any, of the claims for Matrix Compensation Benefits identified in the Fund B Quarterly Notice or Settlement Fund Quarterly Notice as ready for payment shall be paid by the Trust, and with such election AHP shall deposit into Fund B the amounts necessary for such payments. Deposits for this purpose shall not reduce the Maximum Available Fund B Amount.

- e. **PROCESSING OF CLAIMS IF A FUND B SUSPENSION OCCURS:** If a Fund B Suspension occurs, the Trust shall continue to process

claims for Matrix Compensation Benefits to a Final Determination for each Class Member who has filed a GREEN FORM with the Trust, and shall continue to provide AHP with Fund B Quarterly Notices or Settlement Fund Quarterly Notices stating the amount of Matrix Compensation Benefits subject to Final Determination by the Trust as of the close of the Fiscal Quarter preceding the Fund B Quarterly Notice. Each such Fund B Quarterly Notice or Settlement Fund Quarterly Notice issued by the Trust to AHP shall identify each Class Member whose claim for Matrix Compensation Benefits was subject to a Final Determination by the Trust during the Fiscal Quarter preceding the date of the Fund B Quarterly Notice and shall state the gross amount of Matrix Compensation Benefits that the Trust finally determines each Class Member was entitled to be paid. The provisions of Sections IV.D.5.d(ii) through (iii) above shall apply to each such Fund B Quarterly Notice or Settlement Fund Quarterly Notice.

## V. ACCELERATED IMPLEMENTATION OPTION

- A. All Class Members shall be offered the option of obtaining settlement benefits prior to the Final Judicial Approval Date (the "Accelerated Implementation Option" or "AIO") subject to the conditions defined below.
- B. Any Class Member may elect the AIO at any time from the Preliminary Approval Date until the Final Judicial Approval Date or, unless AHP elects to extend the offer date thereafter, the date on which it is determined that the Settlement Agreement will not receive Final Judicial Approval. Persons electing the AIO will begin receiving benefits thereunder at such time as the Trial Court makes an oral or written ruling on the approval or non-approval of the Settlement or at such time as AHP exercises its "walkaway rights" pursuant to Section VII.E hereof. A Derivative Claimant may not elect the AIO if the Diet Drug Recipient with whom he or she is associated (or the Representative Claimant of the Diet Drug Recipient) has not elected the AIO.
- C. In order to elect the AIO, a Class Member must complete and sign the "PINK FORM" appended to this Settlement Agreement as Exhibit "9" and submit it to the Trustees and/or Claims Administrator(s). Any person properly executing the "PINK FORM" and delivering it to the Trustees and/or Claims Administrator(s) during the period in which AHP is offering the AIO, including any extension of the AIO offer, will have entered into an individual agreement with AHP, separate from this Settlement Agreement, under which the parties thereto shall have all the same rights, benefits and obligations to one another as the rights, benefits and obligations accorded to Class Members and to AHP under the Settlement Agreement, except as provided below. Class Members will have all the rights, benefits and obligations provided in Section IV.A, IV.B, and IV.C, except for Section IV.A.1.b herein. AHP will have all the rights, benefits and obligations provided in Section VII, except subsection E thereof. Such executed and delivered PINK FORMS shall be referred to as "Individual Agreements."
- D. Such Individual Agreements shall be effective prior to the Final Judicial Approval Date and, even if AHP exercises its "walkaway right" under Section VII.E, the Individual Agreements entered into prior to the date of such exercise shall nevertheless be binding and effective. If AHP does not exercise its "walkaway right," and the Settlement Agreement with the Settlement Class does not receive Final Judicial Approval or is terminated for any other reason, such Individual Agreements shall nevertheless continue to be effective and binding.
- E. No person exercising an Initial Opt-Out right will be eligible to enter into an Individual Agreement, unless such Initial Opt-Out has been revoked with AHP's consent pursuant to Section IV.D.2.d hereof. Persons signing

Individual Agreements will, by entering into such Individual Agreements, knowingly and affirmatively waive all Intermediate and Back-End Opt-Out rights otherwise provided for by the Settlement Agreement regardless of whether or not the Settlement Agreement receives Final Judicial Approval. Notwithstanding the preceding sentence, Class Members who enter into Individual Agreements pursuant to the Accelerated Implementation Option will be eligible to exercise the Financial Insecurity Opt-Out Right described in Section III.E.9 above. In addition, such persons will agree not to object to approval of the Settlement by the Court and will agree not to appeal from Trial Court Approval. The Individual Agreements shall also provide for a Screening Period to commence on or about the AIO Start Date and to conclude twelve months after the date on which the Settlement Agreement obtains Final Judicial Approval or the date on which it is determined that the Settlement Agreement will not receive Final Judicial Approval or is otherwise terminated. Persons signing Individual Agreements pursuant to the AIO shall also agree to be bound by the provisions contained in Sections VII.C.1 through VII.C.4 herein with respect to the protection of AHP from claims by Non-Settling Defendants, notwithstanding the absence of any order enjoining and barring all Non-Settling Defendants from commencing or prosecuting any claim against AHP or any other Released Party for contribution and/or non-contractual indemnity as set forth in Section VII.C.1.a and Section VII.C.2 herein.

- F. After Trial Court Approval or in the event Trial Court Approval is denied and an appeal from that denial is taken in a timely manner, but prior to the Final Judicial Approval Date, the following provisions shall apply:
1. Fund A benefits for individuals accepting the AIO will be payable only out of Fund A of the Settlement Trust and AHP's obligation to make payments to Fund A for this and any other purpose shall be unchanged from that set forth in Section III.B hereof;
  2. Fund B benefits for eligible individuals accepting the AIO will be payable only out of Fund B of the Settlement Trust. Beginning on the AIO Start Date, the Trustees may request in writing on a monthly basis (each a "Request for Fund B AIO Payment") payment of an amount (such amount being referred to as a "Fund B AIO Deposit") to pay claims for Fund B benefits by eligible individuals who have accepted the AIO which have not been paid due to an insufficient cash balance in Fund B and to pay the reasonable costs of administration associated with providing such benefits. AHP shall pay the Fund B AIO Deposit amount so requested no later than fifteen (15) days after the date on which AHP receives from the Trustees a Request for Fund B AIO Payment requesting such Fund B AIO Deposit; provided however, that AHP's obligation to pay Fund B Deposits shall at all times be limited to the Maximum Available Fund B Amount. The payment

of attorneys' fees by AHP in the circumstances described by this paragraph shall be in accordance with Sections VIII.E.2, VIII.E.3 and VIII.E.4.

- G.** In the event of Final Judicial Approval, all benefits due under the AIO shall be paid from Fund A or Fund B, as applicable, and AHP shall continue to have obligations as set forth in Sections III.B and III.C hereof to make payments to Fund A and Fund B, but AHP shall have no further obligation to make any Fund B AIO Deposits to Fund B pursuant to Section V.F above for the payment of such AIO benefits. All Individual Agreements shall be administered after Final Judicial Approval in all respects as if they were part of the Settlement, other than as set forth in Section V.E hereof; provided, however, that all persons who have entered into Individual Agreements shall be deemed to have registered for all benefits under the Settlement Agreement. Such persons will be subject to the requirements for submission of documentation and other evidence to establish their entitlement to settlement benefits, including but not limited to submission of the "GREEN FORM" in order to claim Matrix Compensation Benefits.
- H.** If Final Judicial Approval is not obtained or if the Settlement Agreement is terminated by AHP for any reason, the following provisions shall apply with respect to the Individual Agreements which have been entered into pursuant to the AIO:
1. The Settlement Trust shall not automatically terminate, but shall remain in effect to administer the Individual Agreements, subject to Sections V.H.2, V.H.3, V.H.4 and V.H.5 hereof.
  2. Notwithstanding the provisions of Section V.H.1 hereof, within five Business Days after the date on which Final Judicial Approval is not obtained or the date on which Settlement Agreement is terminated for any other reason, the Trustees shall transfer to AHP all amounts in the Settlement Trust after payment of any charges and expenses which the Settlement Agreement expressly authorized or required to be incurred and expended prior thereto, including any amounts expended to assist in seeking Final Judicial Approval, except that the Trust shall retain the sum of \$50 million and any additional amount which the Trustees reasonably determine to be required to provide Fund A and Fund B benefits to individuals who have qualified for benefits pursuant to Individual Agreements but have not yet received them. Thereafter, and subject to any changes negotiated or determined by arbitration pursuant to Sections V.H.4 and V.H.5 hereof, AHP shall make payments to the Trust on a quarterly basis of amounts required by the Trust to provide Fund A and Fund B benefits to individuals who have qualified for such benefits pursuant to Individual

Agreements but have not yet received them and to maintain a \$50 million Administrative Reserve. Such quarterly payments shall be based upon an AIO Fiscal Year. For this purpose, AHP agrees to pay into the Settlement Trust such amount as the Trustees may request in writing on such a quarterly basis, no later than fifteen (15) days after the date on which the Trustees provide AHP with such a quarterly request, subject to Section V.H.3 below.

3. AHP's obligations to make payments pursuant to Individual Agreements, including but not limited to payments to the Trust pursuant to Section V.F and pursuant to Section V.H.2 above, shall be subject in the aggregate to the same maximum limitations on its obligations as would have been applicable to its Fund A and Fund B obligations to the Settlement Trust had the Settlement received Final Judicial Approval, subject to the following modifications:
  - a. The payment amounts specified in Section III.B.1 hereof shall be deemed to be AHP's maximum aggregate obligation pursuant to all Individual Agreements to pay for or otherwise provide benefits or other amounts which would have been payable from Fund A had Final Judicial Approval been obtained and for the cost of administration thereof.
  - b. In calculating the Adjusted Maximum Available Fund B Amount (i) the AIO Fiscal Year shall be used in lieu of the Fiscal Year; and (ii) no deduction shall be made for any Credits pursuant to Section VII.A or any Cross-Claim Credits pursuant to Section VII.C hereof.
4. During the sixty-day period following the termination of the Settlement Agreement, AHP and the Class Counsel shall engage in good faith negotiations with respect to a mechanism to administer the Individual Agreements in a manner designed to assure that individuals electing the AIO have the same rights and benefits as the rights and benefits accorded to Class Members under this Agreement (except as provided in Section V.E hereof); to reduce the cost of administering the Individual Agreements to an amount which is reasonable in relation to the number of such agreements which have been entered into; and to assure that AHP obtains the most favorable tax treatment available under those circumstances, and to assure that AHP receives all information requested by it to permit it to take appropriate tax deductions and otherwise calculate its taxes. Such negotiations shall address, without limitation, the following matters:

- a. whether a different mechanism other than the Settlement Trust should be established for administering the Individual Agreements; whether such an alternative mechanism is necessary to reduce the cost of administering the Individual Agreements to an amount which is reasonable in relation to the number of such agreements which have been entered into; or whether the Settlement Trust shall be retained as the mechanism for administering the Individual Agreements, but with changes in its structure or level of expenditures; provided however that the Settlement Trust shall remain in effect, as modified in accordance with Sections V.H.2 and V.H.3 above, unless and until such changes or alternative mechanisms are agreed upon pursuant to this Section V.H.4 or are determined pursuant to Section H.5;
  - b. whether and to what extent an alternative means for resolving disputes in the administration of the Individual Agreements, including but not limited to disputes as to whether or not AHP has failed to make any required payment, should be used in lieu of the resolution of such disputes by the Court;
  - c. whether and to what extent changes should be made to the Security Fund structure and terms (including a reduction in the amount of collateral and the treatment of the Financial Insecurity Opt-Out Right) in light of the number of such agreements which shall have been entered into and to reflect the different circumstances then in effect;
  - d. in the event that the Settlement Trust is retained for the purpose of administering the Individual Agreements, the amount by which the Administrative Reserve is to be reduced to reflect the reasonable administrative needs of the Trust for the purpose of administering the Individual Agreements, which shall be reasonable in relation to the number of such agreements which have been entered into.
5. In the event that Class Counsel and AHP are not able to reach agreement as to any or all of the matters described in Section V.H.4, such matters shall be resolved by binding arbitration by a panel of three arbitrators, one of whom shall be selected by AHP, one of whom shall be selected by Class Counsel and the third of whom shall be selected by the first two such arbitrators. The cost of such arbitration shall be paid by the Settlement Trust as an administrative expense. Such arbitration shall be conducted under the rules of the American Arbitration Association and shall be

concluded in no more than sixty (60) days after the end of the sixty-day period referred to in Section V.H.4 above, including the rendering of a decision by the arbitrators.

- I. If AHP exercises its "walkaway right" under Section VII.E hereof, the Individual Agreements previously entered into shall nevertheless be binding and effective on AHP and the other parties thereto. The exercise of the "walkaway right" by AHP will not affect its obligations to those Class Members who have accepted the AIO prior to AHP's exercise of its "walkaway right" or during any subsequent period in which AHP continues to offer the AIO, nor those Class Members' obligations to AHP thereunder.
- J. The Parties shall ask the Court to supervise the award of attorneys' fees relating to the Individual Agreements, as set forth in Section VIII.E hereof, whether or not the Settlement receives Final Judicial Approval.

## VI. CLAIMS ADMINISTRATION

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

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

**Note: Section VI.A.3 was changed by Section II.A of the Ninth Amendment**

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

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

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

liability asserted against or incurred by such individual in that capacity or arising from his or her status as an Interim Claims Administrator. Each Interim Claims Administrator shall have a prior lien upon the Trust and the Interim Escrow Account to secure the payment of any amounts payable to such Interim Claims Administrator pursuant to this Section VI.A.6. The Interim Claims Administrators shall not be required to post any bond or other form of surety unless otherwise ordered by the Court.

7. In addition to the duties, obligations and procedures described in this Settlement Agreement, the Interim Claims Administrator(s) (if required), Claims Administrator(s) and Trustees shall hire personnel, including personnel qualified to provide expert medical advice.
8. Until the effective date of the Trust:
  - a. Disbursements for purposes of paying claims or providing benefits under the Settlement Agreement shall be made by the Interim Escrow Agent subject to the direction of the Interim Claims Administrator(s); and
  - b. Disbursements for purposes of claims administration, including the cost of providing notice to the Settlement Class, shall be made by the Interim Escrow Agent subject to the joint direction of AHP and Class Counsel. All disbursements will be subject to review and approval by the Court.
9. As promptly as possible, after the effective date of the Trust, for purposes of administering the Settlement Trust:
  - a. Control over Fund A and Fund B shall be transferred by the Interim Escrow Agent to the Trustees and upon such transfer, the Interim Escrow Agent shall cease to have any responsibility for the future receipt, preservation, maintenance, investment, and disbursement of the Settlement funds;
  - b. The Trustees shall have responsibility for each matter entrusted to the "Trustees and/or Claims Administrator(s)" under the terms of the Settlement Agreement. Until such time as Claims Administrator(s) are appointed and approved by the Court according to Section VI.A.9.c below, the Trustees may delegate any portion of their responsibility for claims administration to the Interim Claims Administrator(s);

- c. The Trustees shall have responsibility for appointing Claims Administrator(s) within 120 days of the date on which the Trustees are appointed by the Court, and the appointment of the Claims Administrator(s) shall be subject to approval of the Court. At the time of such approval, the Interim Claims Administrator(s) shall have no further duties or responsibilities under the Settlement.
10. The Trustees (and the Interim Claims Administrator(s) and Interim Escrow Agent prior to the effective date of the Trust shall make reports to the Court, AHP, and Class Counsel as follows:

**Note: Section VI.A.10 was changed by Section II.F of the Ninth Amendment**

- a. Annual Reporting Obligations
  - (1) On an annual (calendar year) basis, the Trustees shall cause an audit to be performed by a Certified Public Accountant upon the calendar year financial statements of each of the following (each financial statement being prepared in accordance with generally accepted accounting principles) and shall issue a report stating the result of each such audit:
    - (a) the Settlement Trust and each Fund established thereunder;
    - (b) the Security Fund; and
    - (c) each escrow account then in effect hereunder (including, as to the Security Fund Escrow Account, the amounts transferred from the Security Fund upon an Uncured Failure to Make Payment).
  - (2) On an annual basis based on the calendar year, the Trustees shall provide AHP with information sufficient to allow AHP to calculate in a timely fashion its estimated taxes and taxes in connection with payments made by AHP to the Trust, including without limitation the actual payments made by the Trust.
  - (3) The Trustees shall provide annual reports for each Fiscal Year to be sent to AHP and to Class Counsel, reporting, among other appropriate items, the following:
    - (i) the total amount paid out of each of Fund A and Fund B for each category of benefit

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payable by each such Fund for that Fiscal Year and cumulatively from the Preliminary Approval Date;

- (ii) the amounts incurred by the Settlement Trust in administrative expenses and for any other purpose for that Fiscal Year and cumulatively from the Preliminary Approval Date, and how such disbursements have been allocated between Fund A and Fund B;
  - (iii) the amount of cash and other liquid assets held by the Settlement Trust at the end of that Fiscal Year;
  - (iv) the Trustees' calculation of the Fund B amounts paid by AHP during that Fiscal Year;
  - (v) the Trustees' calculation of the Maximum Available Fund B Amount as of the end of the Fiscal Year and appropriate accretions thereto for that Fiscal Year;
  - (vi) the Trustees' calculation of the Credits and Cross-Claim Credits to which AHP became entitled during that Fiscal Year; and
  - (vii) the Trustees' calculation of the accumulated Initial Opt-Out Credits which have become final as of the end of that Fiscal Year, but which have not yet been applied to reduce the Maximum Available Fund B Amount.
- (4) On an annual (calendar year) basis for each year beginning one (1) year after Final Judicial Approval, the Trustees shall issue a report stating the value of Fund B Payment Matrices payments, which are to be increased two percent (2%) per year compounded annually.
- (5) On an annual (calendar year) basis, the Trustees shall cause an audit to be performed by a health care consulting firm nominated and agreed to by the Parties and approved by the Court(s) to conduct an audit regarding the processing of claims and a report based on that audit shall be prepared by the

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health care consulting firm conducting the audit stating the results of the audit. The purpose of this audit shall be to ensure that the claims administration process is being administered in a manner which reasonably ensures that Class Members who claim benefits are actually entitled to receive them and that payments are not made to Class Members who are not entitled to receive them.

b. Quarterly Reporting Obligations

- (1) The Trustees shall cause to be prepared at the end of each of the first three quarters of each calendar year, a quarterly accounting containing unaudited financial statements of the Trust as of the end of such quarter, including without limitation, a balance sheet of the Trust, a statement of receipts and disbursements, a statement of profit and loss prepared on an accrual basis, and a supplementary schedule of investments and assets, listing both principal and income reported on, subject to normal year-end adjustments, as to fairness of presentation in accordance with generally accepted trust accounting principles consistently applied, by the Trustees or by an accountant or financial officer or agent regularly employed by the Trust.
- (2) On a calendar quarter basis, the Trustees shall provide AHP with information sufficient to allow AHP to calculate in a timely fashion its estimated taxes and taxes in connection with payments made by AHP to the Trust, including without limitation the actual payments made by the Trust.
- (3) On a Fiscal Year quarterly basis, the Trustees shall provide AHP and the Class Counsel with a report with respect to each of the items required to be reported annually under Section VI.A.10.a(3) hereof.
- (4) The Trustees shall report, on a quarterly (calendar) basis, the following:
  - (a) Opt-Outs.

**Note: Section VI.A.10 was changed by Section II.F of the Ninth Amendment**

- i) The number and identities of Class Members revoking an Initial Opt-Out;
- ii) The number and identities of Class Members exercising an Intermediate Opt-Out; and
- iii) The number and identities of Class Members exercising a Back-End Opt-Out.

(b) Accelerated Implementation Option.

- i) The number and identities of Class Members electing the Accelerated Implementation Option;
- ii) The number and identities of Initial Opt-Outs who have revoked such opt-out and have elected the Accelerated Implementation Option;
- iii) All amounts paid to provide Fund A benefits to Class Members electing the Accelerated Implementation Option; and
- iv) All payments from Fund B to Class Members electing the Accelerated Implemented Option.

(c) General Registration.

- i) The total number of Class Members who have registered for settlement benefits;
- ii) The number of Subclass 1(a) members who have registered for benefits of any kind, and have not exercised an opt-out right; and
- iii) The number of Subclass 1(b) members who have registered for benefits of any kind, and have not exercised an opt-out right;

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- iv) The number of Subclass 2(a) members who have registered for benefits of any kind, and have not exercised an opt-out right;
  - v) The number of Subclass 2(b) members who have registered for benefits of any kind, and have not exercised an opt-out right; and
  - vi) The number of Subclass 3 members, who have registered for benefits of any kind, and have not exercised an opt-out right.
- (d) Refund Benefits.
- i) The number of Class Members who have registered for refund benefits for use of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>;
  - ii) The number of Subclass 1(a) members who have timely registered for a refund for use of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>; the number of these Subclass 1(a) members who qualify for refund; and the number of these Subclass 1(a) members who do not qualify for refund;
  - iii) The number of Subclass 2(a) members who have registered for a refund for use of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>; the number of these Subclass 2(a) members who qualify for refund; and the number of these Subclass 2(a) members who do not qualify for refund; and
  - iv) Amounts paid from Fund A for refund benefits.
- (e) Screening Program Benefits.
- i) The number of Class Members who register for Screening Program benefits;

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- ii) The number of Subclass 1(a) members who qualify for a Transthoracic Echocardiogram and associated interpretative physician visit for compassionate and/or humanitarian reasons;
  - iii) The amounts paid from Fund A for Transthoracic Echocardiograms and associated interpretative physician visits for compassionate and/or humanitarian reasons;
  - iv) The number of Subclass 1(b) members who have registered for Screening Program benefits; the number of these Subclass 1(b) members who qualify for Screening Program benefits; and the number of these Subclass 1(b) members who do not qualify for Screening Program benefits; and
  - v) The number of Subclass 1(b) members who actually participate in the Screening Program.
- (f) Independent Echocardiogram And Associated Interpretive Physician Visit.
- i) The number of Subclass 1(a) members who have obtained an independent FDA Positive Echocardiogram, and have registered pursuant to Section IV.A.2.b.(2) to obtain the lesser of (i) the Trust's direct cost of providing such an Echocardiogram and an associated interpretive physician visit under the Screening Program, and (ii) the actual amount paid by the Class Member for the Echocardiogram and associated interpretive physician visit, less amounts paid or reimbursed by an insurance carrier or other third-party payor; and the amounts paid from Fund A therefore.

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- ii) The number of Diet Drug Recipients or Representative Claimants who have applied pursuant to Section IV.A.3.d to obtain the lesser of (i) the Trust's direct cost of providing such an Echocardiogram and an associated interpretive physician visit under the Screening Program, and (ii) the actual amount paid by the Class Member for the Echocardiogram and associated interpretive physician visit, less amounts paid or reimbursed by an insurance carrier or other third-party payor; and the amounts paid from Fund A therefore.
  - iii) The number of Subclass 1(b) members who have registered pursuant to Section IV.A.1.b to obtain the lesser of (i) the Trust's direct cost of providing such an Echocardiogram and an associated interpretive physician visit under the Screening Program, and (ii) the actual amount paid by the Class Member for the Echocardiogram and associated interpretive physician visit, less amounts paid or reimbursed by an insurance carrier or other third-party payor; and the amounts paid from Fund A therefore.
- (g) Valve-Related Medical Services or \$6,000 In Cash From Fund A.

The number of Subclass 1(b) and 2(b) members who have registered and have obtained an FDA Positive diagnosis by the end of the Screening Period and have elected to receive either (i) valve-related medical services up to \$10,000 in value to be provided by the Trust; or (ii) \$6,000 in cash from Fund A; the number electing each; and the amount paid in cash from Fund A for such.

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- (h) Valve-Related Medical Services or \$3,000 In Cash From Fund A.

The number of Subclass 1(a) and 2(a) members who have registered and have obtained an FDA Positive diagnosis by the end of the Screening Period and have elected to receive either (i) valve-related medical service up to \$5,000 in value to be provided by the Trust; or (ii) \$3,000 in cash from Fund A; the number electing each; and the amounts paid in cash from Fund A for such.

- (i) Credits To AHP Pursuant To Judgment Or Settlement Of Claims.

All credits to AHP against its Fund B obligations stemming from payments by AHP, pursuant to judgment or settlement, of the claims of Initial, Intermediate and/or Back-End Opt-Outs.

- (j) Subrogation Claims.

- i) All subrogation claims asserted against the Trust; identification of subrogation claims approved for payment; identification of subrogation claims not approved for payment; and amounts to be paid from Fund B in resolution of such.

- ii) All subrogation claims asserted against AHP and/or Released Parties.

- (k) Accelerated Implementation Option (AIO); Attorneys' Fees And Costs.

All amounts deposited for individual attorneys' fees and costs pursuant to the authorized deduction from Fund B benefits paid to claimants accepting the AIO; the applications for payment of individual attorneys' fees and costs from such; and the payments for attorneys' fees and costs being made from such monies.

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- (l) Matrix Level Claims.
  - i) The number of Matrix Level I claims; the number of Matrix Level I claims approved; the number of Matrix I claims rejected; and the total amount of Matrix I claims paid;
  - ii) The number of Matrix Level II claims; the number of Matrix Level II claims approved; the number of Matrix II claims rejected; and the total amount of Matrix II claims paid;
  - iii) The number of Matrix Level III claims; the number of Matrix Level III claims approved; the number of Matrix III claims rejected; and the total amount of Matrix III claims paid;
  - iv) The number of Matrix Level IV claims; the number of Matrix Level IV claims approved; the number of Matrix IV claims rejected; and the total amount of Matrix IV claims paid; and
  - v) the number of Matrix Level V claims; the number of Matrix Level V claims approved; the number of Matrix V claims rejected; and the total amount of Matrix V claims paid.

(m) Assignment Of Indemnity Rights.

The indemnity rights of AHP against Class Members assigned by AHP to the Trustees for which AHP receives a credit against its Fund B obligations, including the amount thereof.

c. Periodic Reporting Obligations.

- (1) The Trustees and/or Claims Administrator(s) shall report within five (5) Business Days all AHP

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payments into the Settlement Trust, including but not limited to:

- (a) All AHP payments deposited into Fund A;
- (b) All AHP payments deposited into Fund B; and
- (c) All requests for additional cash deposits into Fund B and payments deposited in accordance with each request.

- (2) The Trustees and/or Claims Administrator(s) shall report within five (5) Business Days an Uncured Failure To Make Payment by AHP.
- (3) At the conclusion of the Initial Opt-Out Period, the Trustees and/or Claims Administrator(s) shall report within fifteen (15) Business Days the number and identities of Class Members exercising an Initial Opt-Out.

11. The Trustees shall have the duty to administer and resolve all Claims according to the terms of this Agreement, while minimizing the costs of administration of the Trust associated with the processing and resolution of Claims and the operations of the Trust.

**B. NOTICE.**

- 1. Within ten (10) days of the execution of this Settlement Agreement, the parties shall apply to the Court for an Order in the form appended hereto as Exhibit "11":
  - a. Granting Preliminary Approval of the Settlement;
  - b. Approving the appointment of Interim Claims Administrator(s) and an Interim Escrow Agent pursuant to Section VI.A.2 and Section VI. A.1;
  - c. Approving a written notification to the Settlement Class which shall contain A Class Member's Guide to Settlement Benefits (Exhibit "12"), an Official Court Notice Package (Exhibit "13"), and a Matrix Compensation Benefits Guide for Physicians, Attorneys and Class Member (Exhibit "14");

- d. Approving a summary publication notice to the Settlement Class in the form appended hereto as Exhibit "15";
- e. Approving the establishment of and maintenance of a "1-800" telephone number and website to receive requests from Class Members for written notice;
- f. Directing written notice to all those Class Members whose names and addresses are known or presently knowable to the Parties as a result of:
  - (1) The filing of legal claims by Class Members against AHP;
  - (2) The creation and maintenance of a database of Class Members who registered to receive benefits pursuant to a proposed limited fund Class Action Settlement with Interneuron Pharmaceuticals, Inc. in *Sharyn Wish v. Interneuron Pharmaceuticals, Inc.*, Civil Action No. 98-CV-20594 (E.D. Pa.);
  - (3) The establishment and operation of the "1-800-386-2070" telephone number and [www.settlementdietdrugs.com](http://www.settlementdietdrugs.com) website incident to the publication of the Memorandum of Understanding which was executed among the Parties on October 7, 1999;
  - (4) Any database within the possession, custody, or control of AHP which reflects the names and addresses of Class Members;
  - (5) Any database which is readily obtainable from any pharmacy chain which reflects the names and addresses of Class Members;
- g. Directing that the person or entity who will mail the individual notices shall have access to the names and addresses of individuals who requested the mailing of individual notices to them by contacting "1-800-386-2070" and [www.settlementdietdrugs.com](http://www.settlementdietdrugs.com);
- h. Directing that all names and addresses of Class Members collected for the purpose of providing notice shall be kept strictly confidential and shall not be disclosed to any person or used for any purpose other than for issuance of notice to Class Members upon prior order of the Court;

- i. Authorizing Publication Notice in the form appended hereto as Exhibit "15" in accordance with the Plan of Media Notice appended hereto as Exhibit "16";
  - j. Authorizing television notice in accordance with the Script of Television Notice appended hereto as Exhibit "17," and in accordance with the Plan of Media Notice appended hereto as Exhibit "16";
  - k. Authorizing the distribution of Summary Notice to Physicians in the form appended hereto as Exhibit "18," to physicians for display to their patients; and
  - l. Authorizing the distribution of Summary Notice to Pharmacists in the form appended hereto as Exhibit "5," to pharmacists for display to their customers.
2. The Claims Administrator(s) and/or the Interim Claims Administrator(s) shall maintain a list of the names and addresses of each person to whom written notice was transmitted in accordance with any order entered by the Court pursuant to the preceding paragraph of this Settlement Agreement (hereinafter "the Notice List"). These names and addresses shall be kept strictly confidential and shall be used only by appropriate persons for administrative purposes of the Trust, except on prior order of the Court.
3. Within forty-five (45) days after Final Judicial Approval, the Trustees and/or Claims Administrator(s) shall transmit a written notice to all individuals whose names and addresses are contained in the Notice List advising all recipients of the notice that the Settlement has received Final Judicial Approval, advising all Class Members of the day on which Date 1 falls, advising the recipients of the notice that Class Members in Subclasses 1(a) and 1(b) must Register to receive Refund and/or Screening Program benefits from Fund A by Date 1 and that Class Members in Subclasses 2(a) and 2(b) must register to receive Refund Benefits from Fund A by Date 1, advising all recipients of the notice of the period of time in which Date 2 may fall, and advising all recipients of the notice that if they wish to receive Matrix Compensation Benefits in the future they must be registered as having Mild Mitral Regurgitation or an FDA Positive level of valvular regurgitation by Date 2. This notice shall also contain information concerning the rights of certain Class Members to exercise Intermediate and Back-End Opt-Outs. It shall contain the BLUE FORM, GREEN FORM and Intermediate and Back-End Opt-Out forms as described below, which will allow Class Members the opportunity to register for

settlement benefits or exercise Intermediate or Back-End Opt-Out rights. In addition, it will advise members of Subclass 1(a) of their right to obtain payment of the net cost of any FDA Positive Echocardiogram which they may have had during the Screening Period but independent of the Screening Program pursuant to the terms and conditions of Sections IV.A.2.b(2) and shall provide Class Members with the WHITE FORM appended hereto as Exhibit "19" in order to make a claim for such benefits. It will also advise members of Subclass 1(b) of their right to obtain payment of the net cost of a Transthoracic Echocardiogram obtained independent of the Screening Program performed after the end of the Initial Opt-Out Period but before the Final Judicial Approval Date, pursuant to the terms and conditions of Section IV.A.1.b and shall provide Class Members with the WHITE FORM appended hereto as Exhibit "19" in order to make a claim for such benefits. It will also advise Diet Drug Recipients who had an Echocardiogram and associated interpretive visit after the commencement of Diet Drug use, or their Representative Claimants, of their right to seek reimbursement of the net cost of the Echocardiogram and associated interpretive visit, pursuant to and subject to the limitations of, the terms and conditions of Section IV.A.3.d, and shall provide Class Members with the WHITE FORM appended to the Settlement Agreement as Exhibit "19" in order to make a claim for such benefits. The Parties shall prepare this class notice for Court approval. The notice shall reflect the fact that the Settlement Agreement has been approved, that there are no further rights to object to the Settlement, and that there is no longer any Initial Opt-Out right in effect.

4. Three (3) months prior to Date 2, the Trustees and/or Claims Administrator(s) shall transmit a written notice to all individuals whose names and addresses are contained in the Notice List advising all recipients of the notice of the day on which Date 2 falls and advising all recipients of the notice, that if they wish to receive Matrix Compensation Benefits in the future they must be registered as having Mild Mitral Regurgitation or an FDA Positive level of valvular regurgitation by Date 2. This notice shall also contain information concerning the rights of certain Class Members to exercise Intermediate and Back-End Opt-Outs. It shall contain the BLUE FORM, the GREEN FORM and Intermediate and Back-End Opt-Out forms, as described below, which will allow Class Members the opportunity to register for settlement benefits or exercise Intermediate or Back-End Opt-Out rights. In addition, it will advise members of Subclass 1(a) of their right to obtain payment of the net cost of any FDA Positive Echocardiogram which they may have had during the Screening Period but independent of the Screening Program pursuant to the

terms and conditions of Section IV.A.2.b(2) and shall provide Class Members with the WHITE FORM appended hereto as Exhibit "19" in order to make a claim for such benefits. It will also advise members of Subclass 1(b) of their right to obtain a limited refund of the net cost of any Transthoracic Echocardiogram obtained independent of the Screening Program after the end of the Initial Opt-Out Period but before the Final Judicial Approval Date, pursuant to the terms and conditions of Section IV.A.1.b and shall provide Class Members with the WHITE FORM appended hereto as Exhibit "19" in order to make a claim for such benefits. The Parties shall prepare this class notice for court approval. The notice shall reflect the fact that the Settlement has been approved, that there are no further rights to object to the Settlement, that there is no longer any Initial Opt-Out right in effect, and that the time to register for the Screening Program has been completed.

**C. CLAIMS ADMINISTRATION AND CRITERIA FOR BENEFITS DETERMINATIONS.**

**1. ECHOCARDIOGRAM CRITERIA.**

- a. Where a Diet Drug Recipient has had an Echocardiogram between the commencement of Diet Drug use and September 30, 1999, the results of that Echocardiogram as contained in the written report issued by a Qualified Physician shall be used by the Trustees/Claims Administrator(s) to determine the level of mitral and/or aortic valvular regurgitation for that Diet Drug Recipient as of the date of the Echocardiogram for purposes of Fund A benefits determinations under the Settlement Agreement, except (i) where the report of the Echocardiogram does not clearly state the level of valvular regurgitation for the mitral and/or aortic valves or (ii) where in an audit conducted pursuant to Section VI.E, it is determined that the conclusions of the written report are not supported by the videotape or disk of the Echocardiogram.

Such an Echocardiogram shall not be used to qualify a Diet Drug Recipient for Matrix Compensation Benefits unless, upon re-reading, it is determined that (i) prior to the end of the Screening Period, the Diet Drug Recipient met the definition for "FDA Positive" set forth in Section I.22.b and (ii) the Echocardiogram met the criteria set forth in Section VI.C.1.b below. Such a determination may be made by the Trustees and/or Claims Administrator(s) upon submission of a GRAY FORM (appended hereto as Exhibit "20")

which has been completed by a Board-Certified Cardiologist or a Board-Certified Cardiothoracic Surgeon.

- b. Each Echocardiogram performed after September 30, 1999, which is used to determine whether the condition of a Diet Drug Recipient qualifies a Class Member for Fund A or Fund B (Matrix) settlement benefits, shall be one which was:
  - (1) conducted in accordance with the standards and criteria as outlined in Feigenbaum (1994)<sup>44</sup> or Weyman (1994);<sup>45</sup>
  - (2) evaluated following the grading system of valvular regurgitation defined in Singh (1999);<sup>46</sup>
  - (3) conducted by a Diagnostic Cardiac Sonographer who is able to produce and evaluate ultrasound images and related data used by physicians to render a medical diagnosis; and
  - (4) conducted under the supervision of, and read and interpreted by, a Board-Certified Cardiologist or Board-Certified Cardiothoracic Surgeon with level 2 training in echocardiography as specified in the *Recommendations of the American Society of Echocardiography Committee on Physician Training in Echocardiography*.<sup>47</sup>
- c. A Diet Drug Recipient who demonstrates to the Trustees and/or Claims Administrator(s) that he or she had an Echocardiogram conducted between September 30, 1999, and the date of commencement of Class Notice which a Qualified Physician reported as showing that he or she had FDA Positive regurgitation shall not be disqualified from receiving settlement benefits if the Echocardiogram does not meet all of the requirements of Section VI.C.1.b above.

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<sup>44</sup> See Feigenbaum, *supra* note 3.

<sup>45</sup> See Weyman, *supra* note 4.

<sup>46</sup> See Singh, *supra* note 2.

<sup>47</sup> See A.S. Pearlman et al., *Guidelines for Optimal Physician Training in Echocardiography: Recommendations of the American Society of Echocardiography Committee on Physician Training in Echocardiography*, 60 Am. J. Cardiology 158-163 (1987).

- d. A claimant who qualifies for a particular Matrix payment, by virtue of a properly interpreted Echocardiogram showing the required levels of regurgitation and/or complicating factors, after exposure to fenfluramine and/or dexfenfluramine, shall not be disqualified from receiving that Matrix payment in the event that a subsequent Echocardiogram shows that the required levels of regurgitation and/or complicating factors are no longer present.

2. **CLAIMS INFORMATION.**

- a. Each Claim for Benefits under the Settlement Agreement shall be made on one of two forms signed and submitted to the Trustees and/or Claims Administrator(s), as follows:
  - (1) The "PINK FORM" appended to the Settlement Agreement as Exhibit "9" shall be used by Class Members who want to elect the AIO; and
  - (2) The "BLUE FORM" appended to the Settlement Agreement as Exhibit "21" shall be used by all other Class Members who wish to make a claim for the benefits available under the Settlement Agreement.
- b. Submission of a PINK FORM or BLUE FORM that has not been fully completed shall be sufficient to "register" the Class Member for benefits, provided, however, that the missing information must be submitted in order for the Class Member to receive any benefits under this Settlement Agreement.
- c. In addition, each person who wants to make a claim for Matrix Compensation Benefits under Section IV.B of the Settlement Agreement or pursuant to the AIO must complete and submit to the Trustees and/or Claims Administrator(s) the "GREEN FORM" which is appended to this Settlement Agreement as Exhibit "22."
- d. In order to complete the submission of a Claim and to qualify for any benefits under the Settlement Agreement, each Class Member must submit documentary proof to the Trustees and/or Claims Administrator(s) of the period of time for which the Diet Drugs Pondimin<sup>®</sup> and/or Redux<sup>™</sup> were prescribed and dispensed to the Diet Drug Recipient

who is the subject of the Claim. This proof must include one of the following:

- (1) If the diet drug was dispensed by a pharmacy, the identity of each pharmacy that dispensed Diet Drugs to the Diet Drug Recipient, including its name, address, and telephone number, and a copy of the prescription dispensing record(s) from each pharmacy, which should include the medication name, quantity, frequency, dosage and number of refills prescribed, prescribing physician's name, assigned prescription number, original fill date and each subsequent refill date; or,
  - (2) If the diet drug was dispensed directly by a physician or weight loss clinic, or the pharmacy record(s) is unobtainable, the identity of each prescribing physician, including the prescribing physician's name, address, and telephone number and a copy of the medical record(s) prescribing or dispensing the diet drug(s). The medical record(s) must include records which identify the Diet Drug Recipient, the Diet Drug name, the date(s) prescribed, the dosage, and duration the drug was prescribed or dispensed;
  - (3) If the pharmacy records and medical records are unobtainable, an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the Diet Drug Recipient, the drug(s) prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the Diet Drug(s).
- e. In order to complete the submission of a Claim and qualify for Fund A benefits under the Settlement Agreement, where a Class Member relies on a result of an Echocardiogram to establish that a Diet Drug Recipient had FDA Positive levels of regurgitation by the end of the Screening Period and where that Echocardiogram took place between the commencement of Diet Drug use and September 30, 1999, the Class Member must provide the Trustees and/or Claims Administrator(s) with a copy of the report of the results of the Echocardiogram and the videotape or disk of the Echocardiogram. In order to complete the submission of a Claim and qualify for Matrix Compensation Benefits under the Settlement Agreement,

where a Class Member relies on a result of an Echocardiogram to establish that a Diet Drug Recipient had FDA Positive levels of regurgitation or Mild Mitral Regurgitation by the end of the Screening Period and where that Echocardiogram took place between the commencement of Diet Drug use and September 30, 1999, the Class Member must provide the Trustees and/or Claims Administrator(s) with a copy of the report of the results of the Echocardiogram and the videotape or disk of the Echocardiogram and a certification from a Qualified Physician on the GRAY FORM which is appended to the Settlement Agreement as Exhibit "20" or a certification regarding the results of the Echocardiogram on the GREEN FORM which is appended to the Settlement Agreement as Exhibit "22." If the Class Member does not have custody of such videotape or disk, the Class Member must submit an executed authorization which will allow the Trustees and/or Claims Administrator(s) to obtain a videotape or disk of the Echocardiogram from the physician or health care provider who has custody of such videotape or disk as a condition to considering the Class Member's Claim for Benefits. If the videotape or disk is no longer in existence, the Class Member must supply an affidavit under penalty of perjury from the person who last had custody of the videotape or disk stating that the videotape or disk is no longer in existence and describing the circumstances under which it came to be misplaced or destroyed.

- f. In order to complete the submission of a Claim and qualify for benefits under the Settlement Agreement, where a Class Member relies on the results of an Echocardiogram to establish that a Diet Drug Recipient had FDA Positive regurgitation levels of regurgitation or Mild Mitral Regurgitation by the end of the Screening Period and where that Echocardiogram took place after September 30, 1999, and where that Echocardiogram took place outside of the Screening Program, the Class Member must report the results of the Echocardiogram to the Trustees and/or Claims Administrator(s) in the form of a certification from a Board-Certified Cardiologist on the GRAY FORM which is appended to the Settlement Agreement as Exhibit "20," or a certification regarding the results of the Echocardiogram on the GREEN FORM which is appended to the Settlement Agreement as Exhibit "22," and provide the Trustees and/or Claims Administrator(s) with a copy of the videotape or disk which reflects the results of the Echocardiogram. If the Class Member does not have

custody of such videotape or disk, the Class Member must submit an executed authorization which will allow the Trustees and/or Claims Administrator(s) to obtain a videotape or disk of the Echocardiogram from the physician or health care provider who has custody of such videotape or disk as a condition to considering the Class Member's Claim for Benefits. If the videotape or disk is no longer in existence, the Class Member must supply an affidavit under penalty of perjury from the person who last had custody of the videotape or disk stating that the videotape or disk is no longer in existence and describing the circumstances under which it came to be misplaced or destroyed.

- g. Each Cardiologist who is responsible for performing Echocardiograms pursuant to the Screening Program provisions of the Settlement Agreement shall report the results of those Echocardiograms to the Trustees and/or Claims Administrator(s) on the "GRAY FORM" which is appended to the Settlement Agreement as Exhibit "20" and shall supply a copy of the videotape or disk of the results of the Echocardiogram to the Claims Administrator(s) and/or Trustees. If a Class Member submits to the Trustees and/or Claims Administrator(s) a GREEN FORM with the Doctor's Evaluation Form in Part II of such Form (or the equivalent section of the GREEN FORM in any subsequent printing of such forms) properly completed and signed by a Board-Certified Cardiologist or Cardiothoracic Surgeon, that Class Member and Board-Certified Cardiologist or Cardiothoracic Surgeon are not required to submit a GRAY FORM to report on the same Echocardiogram referenced in such GREEN FORM. If, however, a Cardiologist submits a GRAY FORM reporting on an Echocardiogram performed on a Class Member, in order to seek Matrix Compensation Benefits, such Class Member must submit a complete GREEN FORM, including the Doctor's Evaluation Form in Part II (or its equivalent in any subsequent printings) completed and signed by a Board-Certified Cardiologist or Cardiothoracic Surgeon.
- h. In order to complete the submission of a claim and qualify for benefits under the Settlement Agreement, each Class Member who submits a claim as a Representative Claimant must supply the Trustees and/or Claims Administrator(s) with written proof that such person has legal authority to act in a representative capacity.

- i. In order to complete submission of a Claim for reimbursement of the actual amount paid for an Echocardiogram by a Class Member pursuant to Sections IV.A.1.b, IV.A.2.b.(2), or IV.A.3.d above, a Class Member must submit the following documents:
  - (1) A copy of the report of the Echocardiogram;
  - (2) A copy of the bill or invoice reflecting the charges for the Echocardiogram; and
  - (3) A copy of the cancelled check or other documentary evidence of the amount actually paid by the Class Member for the Echocardiogram.
- j. In order to complete the submission of a Claim by a Class Member who has ingested Pondimin<sup>®</sup> and/or Redux<sup>™</sup> for sixty (60) days or less to receive an Echocardiogram and interpretive physician visit for compassionate and humanitarian reasons pursuant to the provisions of Section IV.A.2.b(3), the Class Member must submit documentary proof supporting the Claim that there are compassionate and humanitarian reasons which would justify the Trustees and/or Claims Administrator(s) to exercise their discretion to provide the Diet Drug Recipient with the benefit of a Transthoracic Echocardiogram and associated interpretive physician visit.
- k. In order to complete the submission of a claim and qualify to receive an Echocardiogram after Trial Court Approval but prior to Final Judicial Approval by reason of "true financial hardship" pursuant to Section IV.A.3.c of the Settlement Agreement, a Diet Drug Recipient must provide the Trustees and/or Claims Administrator(s) with documentary proof of the Diet Drug Recipient's financial situation including a copy of the Diet Drug Recipient's most recent federal income tax return or other documentary proof of the Diet Drug Recipient's income where the Diet Drug Recipient submits a sworn declaration, under oath, that he or she has not filed such tax returns.

3. **GENERAL CLAIMS PROCESSING PROCEDURES AND THE REGISTRY.**

- a. Within thirty (30) days of the date on which the Trustees and/or Claims Administrator(s) receive a Claim for

Benefits from a Class Member, the Claims Administrator(s) shall:

- (1) assign a unique identifying number to the Claim;
- (2) review the Claim which has been submitted, together with supporting documentation, and determine whether the Claim is complete or requires a submission of additional information to make it complete;
- (3) confirm that any required physician certification submitted in support of a claim for Matrix Compensation Benefits was submitted by a physician who actually is a Board-Certified Cardiologist, Cardiothoracic Surgeon, Pathologist, Neurologist or Neurosurgeon; and
- (4) inform the Class Member, in writing, of the unique identifying number assigned to the Class Member's Claim and the information which the Class Member must submit to the Trustees and/or Claims Administrator(s), if any, in order for the claim to be completed and ready for processing.

During the first full twelve (12) calendar months following the AIO Start Date, the Trustees and/or Claims Administrator(s) shall take these actions within sixty (60) days of the date on which they receive a Claim for Benefits from a Class Member, rather than the thirty-day period stated above.

- b. With respect to each Claim submitted by a Class Member as part of the claims administration process, the Trustees and/or Claims Administrator(s) shall afford each Class Member at least three (3) separate opportunities to supply any missing or omitted information and documentation which are necessary to support a Claim for Benefits under the Settlement Agreement.
- c. All information submitted by Class Members to the Trustees and/or Claims Administrator(s) shall be recorded in a computerized database suitable for use with standard medical research software such as SAS and for all purposes of claims administration. This database, throughout the duration of its use, shall be kept in a form that can be accessed and read, which may in the future involve, as

evolving technology warrants, placing the information in a more modern database.

d. The database created pursuant to the preceding paragraph shall be maintained as a "Registry" for purposes of administering the Settlement and for purposes of medical education and research. After taking appropriate steps to maintain the confidentiality of Class Members, the Trustees and/or Claims Administrator(s) shall make the database, or any portion thereof, available to qualified scientists, physicians, and other researchers subject to the following conditions:

(1) First, the Trustees and/or Claims Administrator(s) shall make the deidentified<sup>48</sup> database available only to such persons who:

(a) provide the Trustees and/or Claims Administrator(s) with written proof of their training, qualifications, and experience to conduct medical or scientific research;

(b) provide a research protocol setting forth the purposes for which they seek access to the Registry/database, their research methodology, source of funding, a description of how the proposed research will benefit the Settlement Class and any other information that may be requested by the Trustees and/or Claims Administrator(s);

(c) undertake, in writing, to use the information which they receive from the Registry/database solely for medical, scientific, and educational purposes and not to disclose confidential information concerning any Class Member in the event that they should inadvertently come into possession of such confidential information through their access to the database;

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<sup>48</sup> As set forth in Section VI.C.3.f below, "deidentified" shall mean redaction of all patient identifying information, including but not limited to patient name, address, telephone number, e-mail address, social security number and other personal identifying information.

- (d) undertake, in writing, to provide, upon completion of the research, the Trustees and/or Claims Administrator(s), the Court, AHP, and Class Counsel with a copy of any published or unpublished abstract, article, or report which is based, in whole or in part, on the information contained in the Registry/database; and
    - (e) undertake, in writing, not to testify at any time on behalf of any party in any lawsuit relating to the use of Pondimin® and/or Redux<sup>SM</sup>.
  - (2) Second, the Trustees and/or Claims Administrator(s) shall make the deidentified database, or any portion thereof, available to qualified scientists, physicians, and other researchers only when, considering the training, qualifications and experience of such persons and the purposes for which they seek access to the Registry/database, the Trustees and/or Claims Administrator(s) form a reasoned opinion that disclosure of database information to any given scientist, physician, or other researcher will be beneficial to the Settlement Class.
- e. Copies of all videotapes and disks of Echocardiograms submitted by or on behalf of Diet Drug Recipients to the Trustees and/or Claims Administrator(s) shall be preserved and maintained. Copies of these videotapes and disks shall be available to qualified scientists, physicians, and other researchers subject to the conditions stated in Section VI.C.3.d above, and subject to the following additional conditions:
- (1) In making copies of videotapes and disks to be provided to qualified scientists, physicians and other researchers for purposes of medical and scientific research, the Trustees and/or Claims Administrator(s) shall redact all information identifying the Diet Drug Recipient who was the subject of the Echocardiogram; and
  - (2) The Trustees and/or Claims Administrator(s) shall require that the scientists, physicians, and/or other researchers requesting a copy of the videotapes pay

all costs reasonably incurred by the Trustees and/or Claims Administrator(s) in making copies of the videotapes and in redacting patient identifying information from the videotapes as a condition to receiving copies thereof.

f. In making arrangements for the disclosure of information contained in the Medical Registry/database, the Trustees and/or Claims Administrator(s) shall assure that an alphanumeric designation is used for each claimant and that the name, address, telephone number, social security number, e-mail address, and other personal identifying information pertaining to the Diet Drug Recipient and/or Class Member is not disclosed.

g. PROCESSING CLAIMS FOR SCREENING PROGRAM BENEFITS FOR SUBCLASS 1(B) MEMBERS:

(1) Within forty-five (45) days of the date on which the Trustees and/or Claims Administrator(s) receive a completed Claim which adequately documents that a Diet Drug Recipient is a member of Subclass 1(b), the Trustees and/or Claims Administrator(s) shall certify that the Diet Drug Recipient is eligible for a Transthoracic Echocardiogram and associated interpretive physician visit in the Screening Program pursuant to Section IV.A.1.a or Section IV.A.3.c of this Settlement Agreement and shall furnish to the Diet Drug Recipient the appropriate documentation and information to receive such benefits and will provide those benefits in accordance with the timetable set forth in Section VI.C.3.m, below.

(2) Within forty-five (45) days of the date on which the Trustees and/or Claims Administrator(s) receive a completed Claim which adequately documents that a Diet Drug Recipient is a member of Subclass 1(b) and which requests payment of the net cost of an Echocardiogram pursuant to Section IV.A.1.b, the Trustees and/or Claims Administrator(s) shall determine whether the Diet Drug Recipient is entitled to such payment, and if so, the amount of such payment. The Trustees and/or Claims Administrator(s) shall provide such payments in accordance with the timetable set forth in Section VI.C.3.m, below. If the Trustees and/or Claims

Administrator(s) deny such a claim, they shall send the Diet Drug Recipient written notification of that decision and the reasons therefore within this forty-five (45) day period.

h. PROCESSING CLAIMS FOR SCREENING PROGRAM BENEFITS FOR SUBCLASS 1(A) MEMBERS:

- (1) Within forty-five (45) days of the date on which the Trustees and/or Claims Administrator(s) receive a completed Claim which adequately documents that a Diet Drug Recipient is a member of Subclass 1(a) and requests a Transthoracic Echocardiogram and associated interpretive physician visit pursuant to Section IV.A.2.b or Section IV.A.3.c of the Settlement Agreement, the Trustees and/or Claims Administrator(s) shall promptly transmit to each such person the BROWN FORM, appended to the Settlement Agreement as Exhibit "23." The BROWN FORM explains the circumstances under which such Diet Drug Recipients may receive a Transthoracic Echocardiogram and associated interpretive physician visit and allows them to make a request for that benefit by completing, signing and submitting the form, together with supporting documentation, to the Trustees and/or Claims Administrator(s). Within forty-five (45) days after receiving a completed BROWN FORM, the Trustees and/or Claims Administrator(s) shall make a determination concerning whether the Diet Drug Recipient will receive a Transthoracic Echocardiogram and associated interpretive physician visit and will either reject the request for such benefits or shall furnish to the Diet Drug Recipient the appropriate documentation and information to receive such benefits and will provide those benefits in accordance with the timetable set forth in Section VI.C.3.m, below.
- (2) Within forty-five (45) days of the date on which the Trustees and/or Claims Administrator(s) receive a completed Claim which adequately documents that a Diet Drug Recipient is a member of Subclass 1(a) and which requests payment of the net cost of an Echocardiogram pursuant to Section IV.A.2.b.(2), the Trustees and/or Claims Administrator(s) shall determine whether the Diet Drug Recipient is

entitled to such payment, and if so, the amount of such payment. The Trustees and/or Claims Administrator(s) shall provide such payments in accordance with the timetable set forth in Section VI.C.3.m, below. If the Trustee(s) and/or Claims Administrator(s) deny such a claim, they shall send the Diet Drug Recipient written notification of that decision and the reasons therefore within this forty-five (45) day period.

i. PROCESSING CLAIMS FOR ADDITIONAL MEDICAL SERVICES OR CASH FOR SUBCLASS 1(B) AND 2(B) MEMBERS:

Within forty-five (45) days of the date on which the Trustees and/or Claims Administrator(s) receive a completed Claim which adequately documents that a Diet Drug Recipient is a member of Subclass 2(b), or is a member of Subclass 1(b) and obtained an FDA Positive diagnosis by a Qualified Physician after Pondimin<sup>®</sup> and/or Redux<sup>™</sup> use but by the end of the Screening Period, the Trustees and/or Claims Administrator(s) shall, in accordance with the Diet Drug Recipient's election, certify that the Diet Drug Recipient is entitled to either \$6,000 in cash or \$10,000 in valve-related medical services and shall either make payment to the Diet Drug Recipient or furnish to the Diet Drug Recipient the appropriate documentation and information to receive such valve-related services and will provide those benefits in accordance with the timetable set forth in Section VI.C.3.m, below.

j. PROCESSING CLAIMS FOR ADDITIONAL MEDICAL SERVICES OR CASH FOR SUBCLASS 1(A) AND 2(A) MEMBERS:

Within forty-five (45) days of the date on which the Trustees and/or Claims Administrator(s) receive a completed Claim which adequately documents that a Diet Drug Recipient is a member of Subclass 2(a), or is a member of Subclass 1(a) and obtained an FDA Positive diagnosis by a Qualified Physician after Pondimin<sup>®</sup> and/or Redux<sup>™</sup> use but by the end of the Screening Period, the Trustees and/or Claims Administrator(s) shall in accordance with the Diet Drug Recipient's election certify that the Diet Drug Recipient is entitled to \$3,000 in cash or \$5,000 in valve-related medical services and shall either make payment to the Diet Drug Recipient or furnish to the Diet Drug Recipient the appropriate documentation and information to receive such valve-related services and will

provide those benefits in accordance with the timetable set forth in Section VI.C.3.m, below.

k. PROCESSING CLAIMS FOR REFUNDS FOR SUBCLASS 1(A) AND 2(A) MEMBERS:

Within forty-five (45) days of the date on which the Trustees and/or Claims Administrator(s) receive a completed Claim which adequately documents that the Diet Drug Recipient is a member of Subclass 1(a) or 2(a) and which adequately documents the duration of his or her Diet Drug use for which a refund is sought, the Trustees and/or Claims Administrator(s) shall certify the amount of the refund to which that Diet Drug Recipient or the Representative Claimant for that Diet Drug Recipient is entitled and shall make payment to the Diet Recipient or Representative Claimant in accordance with the timetable set forth in Section VI.C.3.m, below.

l. PROCESSING CLAIMS FOR REFUNDS FOR SUBCLASS 1(B) AND 2(B) MEMBERS:

Within ninety (90) days after Date 2, the Trustees and/or Claims Administrator(s) shall determine, pursuant to Section IV.A.1.d, the amount, if any, of the refunds to which Diet Drug Recipients who are members of Subclasses 1(b) or 2(b) or the Representative Claimants for those Diet Drug Recipients are entitled. Within forty-five (45) days of such time, the Trustees and/or Claims Administrator(s) shall pay all Diet Drug Recipients or Representative Claimants who have adequately documented membership in Subclasses 1(b) or 2(b), the refund amounts to which they are entitled, if any. In the event that it is determined that the Settlement Agreement will not receive Final Judicial Approval or in the event that the Settlement Agreement is terminated for any reason, the Trustees and/or Claims Administrator(s) shall determine within ninety (90) days after the conclusion of the period for providing Echocardiograms and associated physician visits to Diet Drug Recipients who have elected the AIO whether there are sufficient assets to make refund payments to Subclass 1(b) or 2(b) members who have entered into Individual Agreements pursuant to the AIO. Within forty-five (45) days of making such determination, the Trustees and/or Claims Administrator(s) shall pay to all Diet Drug Recipients or Representative Claimants who have adequately documented membership in Subclass 1(b) or

2(b) and have entered into Individual Agreements pursuant to the AIO, the amounts to which they are entitled, if any.

m. The timetable for the benefits described in Sections VI.C.3.g-k above shall be as follows:

- (1) For Class Members who have elected the AIO, such benefits cannot be provided until after the AIO Start Date;
- (2) For Class Members who qualify for benefits under Section IV.A.3.c, such benefits cannot be provided until after the Trial Court Approval Date;
- (3) For all other Class Members, such benefits cannot be provided until after the Final Judicial Approval Date.

During the first full twelve (12) calendar months following the AIO Start Date, the time periods for the actions required within forty-five (45) days in Sections VI.C.3.g (1) and (2), Sections VI.C.3.h (1) and (2), Section VI.C.3.i, Section VI.C.3.j, Section VI.C.3.k, and Section VI.C.3.l, are extended to sixty (60) days.

n. PROCESSING CLAIMS FOR REIMBURSEMENT FOR CERTAIN PRIVATELY-OBTAINED ECHOCARDIOGRAMS

Within ninety (90) days after Date 2, the Trustees and/or Claims Administrator(s) shall determine whether a Diet Drug Recipient or Representative Claimant who has submitted a claim requesting reimbursement pursuant to Section IV.A.3.d is entitled to such reimbursement and, if so, the amount of reimbursement. Within forty-five (45) days of such time, the Trustees and/or Claims Administrator(s) shall pay all such Class Members the reimbursement amounts to which they are entitled, if any, subject to the limitation of Section IV.A.3.d that said reimbursement benefits will be paid only if, and to the extent that, Fund A possesses sufficient assets to pay such benefits after paying or creating a reserve for payment of all other authorized expenses and benefits to be provided by Fund A, except for the refund benefits described in Section IV.A.1.d hereof, which shall be subordinate to this reimbursement benefit. In the event that it is determined that the Settlement Agreement will not receive Final Judicial Approval or in the event that the Settlement Agreement is terminated for any reason, the Trustees

and/or Claims Administrator(s) shall determine within ninety (90) days after the conclusion of the period for providing Echocardiograms and associated physician visits to Diet Drug Recipients who have elected the AIO whether there are sufficient assets to make reimbursement payments pursuant to Section IV.A.3.d to Class Members who have entered into Individual Agreements pursuant to the AIO. Within forty-five (45) days of making such determination, the Trustees and/or Claims Administrator(s) shall pay to all such Class Members who have entered into Individual Agreements pursuant to the AIO, the reimbursement amounts to which they are entitled, if any.

**4. ADMINISTRATION OF MATRIX COMPENSATION BENEFIT CLAIMS.**

- a. To receive Matrix benefits, the Class Member must provide the Trustees and/or Claims Administrator(s) with appropriate documentation of the condition of the Diet Drug Recipient that forms the basis for the claim. As set forth in the "GREEN FORM," attached as Exhibit "22," such documentation shall include:
- (1) all hospital reports of the admitting history and physical examination of the Diet Drug Recipient, operative reports, pathology reports, Echocardiogram reports, cardiac catheterization reports, and discharge summaries which relate to the condition of the Diet Drug Recipient that forms the basis of the Claim;
  - (2) a copy of the videotape or disk of the Echocardiogram results which, in whole or in part, forms the basis for the Claim for Matrix Compensation Benefits;
  - (3) a declaration under penalty of perjury from the Diet Drug Recipient that, to the best of his/her knowledge, such condition was not present prior to usage of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>;
  - (4) a declaration under penalty of perjury from a Board-Certified Cardiologist or Cardiothoracic Surgeon setting forth an opinion to a reasonable degree of medical certainty that (a) the Diet Drug Recipient has the condition which qualifies the Class Member for a particular Matrix payment, including, where applicable, that the causation requirements

applicable to conditions (b)(v) and (c) of Matrix-Level V, as defined in Section IV.B.2.c.(5) either are or are not present; (b) to the best of such physician's knowledge after reasonable inquiry, such condition which qualifies the Class Member for a particular Matrix payment was not present prior to usage of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>; and (c) all the conditions set forth in Section IV.B.2.d which determine whether Matrix A-1 or B-1 is applicable, either are present or are not present;

- (5) a declaration under penalty of perjury from a Board-Certified Cardiologist, Cardiothoracic Surgeon, Neurologist or Neurosurgeon with regard to the functional outcome which the patient has had six months after a stroke, if applicable;
- (6) a declaration under penalty of perjury from a Board-Certified Cardiologist, Cardiothoracic Surgeon or Pathologist regarding the existence of the pathological criteria for Endocardial Fibrosis defined in Section I.21, if applicable;
- (7) any other documentation which the Trustees and/or Claims Administrator(s) are otherwise authorized to request under this Settlement Agreement; and
- (8) for an Echocardiogram that took place outside of the Screening Program, and if not previously submitted in a GREEN FORM, a certification from a Qualified Physician on the GRAY FORM which is appended to the Settlement Agreement as Exhibit "20" that the Diet Drug Recipient met the criteria for having FDA Positive regurgitation as defined in Section I.22 or Mild Mitral Regurgitation as defined in Section I.38 prior to the end of the Screening Period.

The records and information described in (1) through (8), inclusive, together with, if applicable, the information described in Section VI.C.4.b below, are referred to as the "Medical Information." Subject to the provisions of Section VI.C.4.b, a Claim for Matrix Compensation Benefits shall not be considered completed within the meaning of Section VI.C.2 and Section VI.C.4 and ready for determination until the Trustees and/or Claims Administrator(s) have received, either from the Class

Member or the healthcare provider or applicable records custodian, all Medical Information and a properly and fully completed GREEN FORM (and GRAY FORM, if applicable) relating to such Claim.

- b. If the Class Member seeking a Matrix payment is unable to obtain the documentation described above through the exercise of reasonable efforts, the Trustees and/or Claims Administrator(s) shall have the right to consider other supporting documentation including but not limited to declarations of other Qualified Physician(s) under penalty of perjury setting forth opinion(s) to a reasonable degree of medical certainty to support the claim that the Class Member's condition entitles him or her to a Matrix payment, subject to review by the Court as set forth in Section VIII.D. If this evidence establishes the Class Member's condition to the satisfaction of the Trustees and/or Claims Administrator(s), the Class Member shall be entitled to receive the appropriate Matrix Compensation Benefits.
- c. Upon receiving a claim for Matrix Compensation Benefits, the Trustees and/or Claims Administrator(s) shall obtain the following information from the Class Member:
  - (1) A copy of any fee agreement between the Class Member and the attorney representing that Class Member which shall be submitted and maintained in confidence;
  - (2) A verified statement of the out-of-pocket costs incurred by the Class Member's individual attorney, which shall be submitted and maintained in confidence;
  - (3) A written representation by the Class Member or the Class Member's attorney, made subject to penalties of perjury, as to whether or not a subrogation lien or claim has been asserted with respect to the Class Member's right to receive benefits under the Settlement and, if so, the name of the subrogee; and
  - (4) If the Class Member is a Representative Claimant, such court approvals or authorizations as may be necessary to authorize that person to consummate a Settlement in a representative capacity.

Until the submission of all of the information referred to in Section VI.C.2, a Claim for Matrix Compensation Benefits shall not be considered "completed" and ready for determination.

- d. Subject to the audit provisions of this Settlement Agreement, Section VI.E and Section VI.F, the Trustees and/or Claims Administrator(s) shall make Matrix Benefits Determinations based upon the Medical Information provided to them by an appropriate Board-Certified physician on or with a properly and fully completed GREEN FORM. In making Matrix Benefits Determinations, if the Trustees and/or Claims Administrator(s) determine any inconsistency in the information provided in a Claim Form, the Trustees and/or Claims Administrator(s) shall review the Medical Information relating to such Claim to determine if the Medical Information resolves such inconsistency.
- e. No earlier than thirty (30) days after AHP receives access to the documents provided to AHP by the Trustees and/or Claims Administrator(s) pursuant to Section VI.F.1, and no later than sixty (60) days after receiving a completed Claim for Matrix Compensation Benefits, the Trustees and/or Claims Administrator(s) shall make a tentative determination:
  - (1) As to whether the Class Member(s) is entitled to compensation under the Matrices, and if so, the amount of compensation to which the individual is entitled, including an apportionment among Derivative and Representative Claimants to the extent necessary;
  - (2) The amount of counsel fees to which the attorney representing the Class Member is entitled, making the appropriate deduction of nine percent (9%) to account for the fees paid to Class Counsel as required by Section VIII.E.1.b or Section VIII.E.3 of this Agreement, whichever is applicable;
  - (3) The amount of reasonable out-of-pocket expenditures which should be reimbursed to the individual attorney representing the Class Member;

- (4) The amount to which any subrogee is entitled in accordance with the provisions of Section VII.D.2 hereof; and
  - (5) The net amount to which the Class Member is entitled after making appropriate deductions for counsel fees, reimbursement of litigation expenses, and payment of all appropriate subrogation liens.
- f. Immediately upon making the determination required by the preceding paragraph, the Trustees and/or Claims Administrator(s) shall notify the Class Members; the attorneys for the Class Members, if any; and the subrogees if any, of the determination and provide them with a period of thirty (30) days in which to contest the tentative determination by the Trustees and/or Claims Administrator(s), and to provide additional information concerning the level of Matrix Compensation Benefits which should be paid as well as the distribution and apportionment of those benefits. At the same time as this notice, the Trustees and/or Claims Administrator(s) shall also notify AHP of the determination required by the preceding paragraph.
- g. Within sixty (60) days of receiving any explanatory or supporting information pursuant to the preceding paragraph or within ninety (90) days of receiving a completed Claim for Matrix Compensation Benefits, whichever is later, the Trustees and/or Claims Administrator(s) shall make a final determination:
- (1) As to whether the Class Member is entitled to compensation under the Matrices, and, if so, the amount of compensation to which the Class Member is entitled, including an apportionment among Derivative and Representative Claimants to the extent necessary;
  - (2) The amount of counsel fees to which the attorney representing the Class Member is entitled, making the appropriate deduction of nine percent (9%) to account for the fees paid to Class Counsel as required by Section VIII.E.3 or Section VIII.E.1.b of this Agreement, whichever is applicable;

- (3) The amount of reasonable out-of-pocket expenditures which should be reimbursed to the individual attorney representing the Class Member;
- (4) The amount to which any subrogee is entitled in accordance with the provisions in Section VII.D hereof; and
- (5) The net amount to which the Class Member is entitled after making appropriate deductions for counsel fees, reimbursement of litigation expenses, and payment of all appropriate subrogation liens.

At the same time as notice is given to the affected Class Member(s), attorney(s), and/or subrogee(s) of the final determination under Section VI.C.4.g, the Trustees and/or Claims Administrator(s) shall also notify AHP of such final determination.

During the first full twelve (12) calendar months following the AIO Start Date, the Trustees and/or Claims Administrator(s) shall make this final determination within sixty (60) days of receiving any explanatory or supporting information pursuant to Section VI.C.4.f above or within 105 days of receiving a completed Claim for Matrix Compensation Benefits, whichever is later, rather than the sixty and ninety day periods stated above.

- h. Within fifteen (15) days of receiving notice of the Trustees' and/or Claims Administrator's(s') final determination, the affected Class Member(s), attorney(s), and/or subrogee(s) may appeal the determination by filing a Notice of Appeal in the form appended hereto as Exhibit "24" with the Trial Court and serving a copy on the Trustees and/or Claims Administrator(s).
- i. In the event of such an appeal, the Court shall refer the matter to Arbitration by a single Arbitrator appointed by the Court from a panel of arbitrators appointed by the Court for that purpose. With respect to an appeal by a Class Member relating to the determination of the gross amount of Matrix Compensation Benefits to which the Class Member is entitled, the Arbitrator shall determine whether the Trustees and/or Claims Administrator(s) have properly applied the criteria set forth in the Settlement Agreement to the information submitted by the Class Member in support of the claim and shall enter a report and award which either

affirms the decision of the Trustees and/or Claims Administrator(s) or directs a different payment than that which was determined by the Trustees and/or Claims Administrator(s). With respect to an appeal relating to the distribution of counsel fees and costs, the Arbitrator shall determine the amount of the attorneys fees to which the attorney is entitled under the provisions of the applicable state law after deducting nine percent (9%) as required by Section VIII.E.1.b of this Agreement and the extent to which the attorney should receive reimbursement for out-of-pocket costs from the Class Member's recovery under applicable state law. In the case of an appeal relating to a subrogation issue, the Arbitrator shall determine the amount to which the subrogee is entitled under applicable law to be consistent with the provisions of Section VII.D.2 of this Agreement.

The costs of such Arbitration, including the fees of the Arbitrator, shall be taxed by the Arbitrator in favor of the party who substantially prevails in the Arbitration if the Arbitrator finds that the appeal was taken or maintained in violation of the standards set forth in Fed. R. Civ. P. 11(b). Otherwise, the costs of such Arbitration shall be paid by the Trust. Any party may appeal from the report and award of the Arbitrator to the Court.

- j. If there is no appeal initiating an Arbitration process, then the decision of the Trustees and/or Claims Administrator(s) with respect to the gross amount to be paid on account of a Claim for Matrix Compensation Benefits shall be final, unless there is a documented change in the physical condition of the Diet Drug Recipient after submission of the claim which justifies consideration for a greater level of Matrix Compensation Benefits than previously applied for or justifies consideration for payment at the same level as previously applied for by reason of a different physical condition than that which was the subject of the prior Claim for Benefits by the Class Member.
- k. If there is no appeal initiating an Arbitration process, then the decision of the Trustees and/or Claims Administrator(s) with respect to the distribution of any portion of any amount paid on account of a Claim for Matrix Compensation Benefits to any attorney or subrogee shall be final.

- l. If an appeal initiating arbitration is taken, the decision of the Arbitrator or, if an appeal from the report and award of the Arbitrator is taken, the decision of the Court shall be final and binding with respect to: (a) The gross amount to be paid on account of a Claim for Matrix Compensation Benefits unless there is a documented change in the physical condition of the Diet Drug Recipient after the submission of the claim which justifies consideration for a greater level of Matrix Compensation Benefits than that previously applied for or for payment at the same level as previously applied for by reason of a different physical condition than that which was the subject of the prior Claim for Benefits by the Class Member; and (b) the distribution of any portion of the gross amount to be paid for Matrix Compensation Benefits to any attorney or subrogee for attorneys' fees, reimbursement of litigation expenses, or subrogation claims.
  
- m. Within forty-five (45) days after the end of each calendar quarter or AIO Fiscal Quarter, whichever is applicable, after the AIO Start Date and prior to Final Judicial Approval, the Trustees and/or Claims Administrator(s) shall pay the Matrix Compensation Benefit claims of all Class Members who:
  - (1) have completed Claims for Matrix Compensation Benefits during the period prior to the commencement of the above-referenced calendar quarter or AIO Fiscal Quarter, whichever is applicable, which have not been previously paid; and
  - (2) have executed Individual Agreements pursuant to the AIO; and
  - (3) whose rights to Matrix Compensation Benefits have become final during the above-referenced calendar quarter or AIO Fiscal Quarter, whichever is applicable under this Section and are not then the subject of an audit under the terms of the Settlement Agreement.

In distributing the amount due with respect to a claim for Matrix Compensation Benefits, the Trustees and/or Claims Administrator(s) shall pay all sums due to the individual attorney for the Class Member for payment of counsel fees and reimbursement of litigation expenses, and all sums due

to any subrogee as determined by the above procedures. The net amount remaining after deducting such payments from the gross amount of the Matrix Compensation Benefits to which a Class Member is determined to be entitled, shall be distributed to the Class Member.

- n. Upon Final Judicial Approval, the preceding paragraph will cease to be effective and the following schedule will apply to the payment of all claims for Matrix Compensation Benefits. Within forty-five (45) days after the close of each Fiscal Quarter, the Trustees and/or Claims Administrator(s) shall pay all Claims for the Matrix Compensation Benefits of all Class Members:
  - (1) who have completed Claims for Matrix Compensation Benefits during the period prior to the commencement of the above-referenced forty-five-day time period which have not been previously paid; and
  - (2) whose rights to Matrix Compensation Benefits have become final during the above-referenced Fiscal Quarter under Section VI.C.5, and are not then the subject of an audit under the terms of the Settlement Agreement.

In distributing the amount due with respect to a claim for Matrix Compensation Benefits, the Trustees and/or Claims Administrator(s) shall pay all sums due to the individual attorney for the Class Member for payment of counsel fees and reimbursement of litigation expenses, and all sums due to any subrogee as determined by the above procedures. The net amount remaining after deducting such payments from the gross amount of the Matrix Compensation Benefits to which a Class Member is determined to be entitled, shall be distributed to the Class Member.

- o. The payment obligations in paragraphs (m) and (n) above are subject to the provisions of Section III.C.
5. Beginning on the Preliminary Approval Date, the Trustees and/or Claims Administrator(s) shall take the steps reasonably necessary to receive and process Claims for Benefits according to the terms of this Agreement, but the time periods provided in Section VI.C for the processing of Claims by Class Members and for any actions by the Trustees and/or Claims Administrator(s) relating to such Claims shall not apply to any Claim until the later of September

30, 2000, or the AIO Start Date. Further, such time periods shall not apply to the Claims of Class Members who have submitted BLUE FORMS until the earlier of the Final Judicial Approval Date or February 1, 2001; provided, however, that the Trustees and/or Claims Administrator(s) shall have the authority to process the Claims of Class Members who have submitted BLUE FORMS before such time if warranted to achieve cost savings in the processing of Claims. At any time, the Court may extend any time period in Section VI.C for good cause shown upon application by the Parties, Trustees, Claims Administrator(s), and/or Interim Claims Administrator(s), after notice to AHP and Class Counsel.

**D. PROCEDURE FOR RECOGNITION OF CREDITS.**

1. AHP shall receive Credits in accordance with Section VII.A of this Settlement Agreement pursuant to the following procedure:
  - a. With respect to each Class Member who has opted out of the Settlement and who has received a payment from AHP for which AHP seeks a Credit under Section VII.A (a "Request for Credit"), AHP shall supply the Trustees and/or Claims Administrator(s) with the following documents and information:
    - (1) a copy of the form through which the Class Member(s) exercised an Opt-Out right;
    - (2) a copy of the report of the Echocardiogram, if any, showing the degree of mitral and/or aortic valvular regurgitation in the Diet Drug Recipient whose condition is at issue prior to September 30, 1999, and/or as of the close of the Screening Period;
    - (3) a copy of the check(s) evidencing payment or other evidence of payment to the Class Member(s) for which AHP seeks credit;
    - (4) a copy of the release(s) executed by the Class Member(s) in favor of AHP;
    - (5) a "RED FORM" for an Initial or Back-End Opt-Out which is appended to this Settlement Agreement as Exhibit "25" completed and signed subject to penalties of perjury by a knowledgeable representative of AHP and a Board-Certified Cardiologist or Board-Certified Cardiothoracic Surgeon;

- (6) all hospital reports of the admitting history and physical examination of the Diet Drug Recipient, medical histories, operative reports, pathology reports, Echocardiogram reports, cardiac catheterization reports and discharge summaries which relate to the condition of the Diet Drug Recipient that forms the basis of the Request for Credit;
- (7) a copy of the videotape or disk of the Echocardiogram results which, in whole or in part, form the basis for the Request for Credit;
- (8) a declaration under penalty of perjury from a Board-Certified Cardiologist or Cardiothoracic Surgeon, regardless of whether that Cardiologist was originally retained by AHP, the plaintiff or neither, setting forth an opinion to a reasonable degree of medical certainty that (1) the Diet Drug Recipient has the condition which would otherwise qualify a Class Member for a particular Matrix payment, including, where applicable, that the causation requirements applicable to conditions (b)(v) and (c) of Matrix-Level V, either are or are not present; (2) to the best of such physician's knowledge after reasonable inquiry, such condition which would otherwise qualify the Class Member for a particular Matrix payment was not present prior to usage of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>; and (3) all the conditions which determine whether Matrix A-1 or B-1 are applicable, either are present or are not present;
- (9) a declaration under penalty of perjury from a Board-Certified Cardiologist, Cardiothoracic Surgeon, Neurologist or Neurosurgeon with regard to the functional outcome which the patient has had six months after a stroke, if applicable;
- (10) a declaration under penalty of perjury from a Board-Certified Cardiologist, Cardiothoracic Surgeon, or Pathologist regarding the existence of the pathological criteria for Endocardial Fibrosis defined in Section I.21 if applicable; and,

- (11) any other documentation which the Trustees and/or Claims Administrator(s) are otherwise authorized to request under this Settlement Agreement.

The records and information described in (1) through (11), inclusive, and/or the information described in Section VI.D.1.b below are referred to as the "Credit Information." Subject to the provisions of Section VI.D.1.b, a Request for Credit shall not be considered completed within the meaning of Section VI.D.1.c and ready for determination until the Trustees and/or Claims Administrator(s) have received all Credit Information and a properly and fully completed RED FORM relating to such Request for Credit.

- b. If AHP is unable to obtain the documentation described above through the exercise of reasonable efforts, the Trustees and/or Claims Administrator(s) shall have the right to consider other supporting documentation including but not limited to declaration(s) of other Qualified Physician(s) under penalty of perjury setting forth opinion(s) to a reasonable degree of medical certainty to support the claim that the Class Member's condition would have otherwise entitled him or her to a Matrix payment for which AHP would be entitled to a Credit, subject to review by the Court as set forth in Section VI.D.1.g. If this evidence establishes the Class Member's condition to the satisfaction of the Trustees and/or Claims Administrator(s), AHP shall be entitled to receive the appropriate credit.
- c. Within forty-five (45) days of receiving a completed Request for Credit from AHP, the Trustees and/or Claims Administrator(s) shall make a preliminary determination as to whether AHP is entitled to a Credit, and, if so, the amount of the Credit to which AHP is entitled, and shall advise AHP and Class Counsel, in writing, of this determination.
- d. AHP and Class Counsel shall have forty-five (45) days from the date of receiving such a preliminary determination to submit additional information concerning the question of whether and to what extent a Credit should be given to AHP.
- e. Within sixty (60) days of receiving any additional information which is submitted pursuant to the preceding paragraph or within ninety (90) days of receiving a completed Request for Credit from AHP, whichever is

later, the Trustees and/or Claims Administrator(s) shall make a final determination as to whether AHP is entitled to a Credit and, if so, the amount of Credit to which AHP is entitled, and shall advise AHP and Class Counsel in writing of this determination.

- f. Within fifteen (15) days of receiving notice of the Trustees' determination, AHP may appeal the determination by filing a notice of the appeal in the form appended hereto as Exhibit "24" with the Trial Court and serving a copy on Class Counsel, and the Trustees and/or Claims Administrator(s).
  - g. In the event of such an appeal, the Court shall refer the matter to Arbitration by a single Arbitrator appointed by the Court for that purpose. The Arbitrator shall determine whether the Trustees have properly applied the criteria set forth in the Settlement Agreement to the information supplied by AHP in support of the Request for Credit and shall enter a report and award, which either affirms the decision of the Trustees, directs a different Credit than that which was determined by the Trustees, or directs that no Credit shall be given to AHP. If the Arbitrator affirms the decision of the Trustees or awards a lower Credit than had been awarded by the Trustees and finds that the appeal was taken or maintained by AHP in violation of the standards set forth in Fed. R. Civ. P. 11(b), the cost of this Arbitration shall be borne by AHP. Otherwise, the costs of such Arbitration shall be paid by the Trust. Any party may appeal from the report and award of the Arbitrator to the Court.
  - h. If there is no appeal initiating an Arbitration process, then the decision of the Trustees with respect to a claim for a Credit shall be final. If an appeal initiating Arbitration is taken, the decision of the Arbitrator or, if an appeal from the report and award of the Arbitrator is taken, the decision of the Court, shall be final and binding.
2. Beginning on the Preliminary Approval Date, the Trustees and/or Claims Administrator(s) shall take the steps reasonably necessary to receive and process Requests for Credits according to the terms of this Agreement, but the time periods provided in Section VI.D for the processing of Requests for Credits by AHP and for any actions by AHP and the Trustees and/or Claims Administrator(s) relating to such Requests for Credits shall not apply until the later of September 30, 2000, or the AIO Start Date. At any time, the

Court may extend any time period in Section VI.D for good cause shown upon application by the Parties, Trustees, Claims Administrator(s), and/or Interim Claims Administrator(s), after notice to AHP and Class Counsel.

3. The RED FORM for a Request for a Credit for Initial Opt-Out Credits and for Back-End Opt-Out Credits shall be submitted by AHP to the Trustees and/or Claims Administrator(s) postmarked on or before the later of: (i) 180 days after the date that is five calendar years after the Final Judicial Approval Date; or (ii) 180 days after the date of the payment by AHP to or for the benefit of the Class Member for which AHP seeks the Credit.
4. Within thirty days after the close of each calendar quarter after December 31, 2002, through the quarter that includes the date that is five calendar years after the Final Judicial Approval Date, AHP shall provide a written report to Class Counsel and the AHP Settlement Trust of the approximate total dollar amount of Back-End Opt-Out Credits under Section VII.A.3 that it reasonably believes would arise from payments made by AHP during the preceding calendar quarter to Class Members.

**E. AUDITS OF CLAIMS BY TRUSTEES AND/OR CLAIMS ADMINISTRATOR(S)**

1. After the AIO Start Date, on a quarterly basis the Trustees and/or Claims Administrator(s) shall audit five percent (5%) of the total Claims for Matrix Compensation Benefits completed (within the meaning of Section VI.C.2 and Section VI.C.4) by Class Members during the prior quarter, and ten percent (10%) of the total Requests for Credits made by AHP during the prior quarter. Claims for Matrix Compensation Benefits and Requests for Credits shall be selected for audit pursuant to this Section of the Settlement Agreement as follows:
  - a. The Trustees and/or Claims Administrator(s) shall retain one or more Board-Certified Cardiologists, who have successfully completed level three training in echocardiography, for purposes of reviewing claims for Matrix Compensation Benefits made by Class Members and Requests for Credits made by AHP (hereinafter "the Reviewing Cardiologist"). The Reviewing Cardiologist shall review a total of ten percent (10%) of the total Claims for Matrix Compensation Benefits completed (within the meaning of Section VI.C.2 and Section VI.C.4) by Class Members during the prior quarter, and ten percent (10%) of the total Requests for Credits made by AHP during the prior quarter. This review shall consist of a comparison

between the Medical Information and the information on the GREEN FORM submitted by a Class Member (in the case of a Claim for Matrix Compensation Benefits) or a comparison between the Credit Information and the information on the RED FORM submitted by AHP (in the case of a Request for Credit) for purposes of determining whether there is a material discrepancy between the Medical or Credit Information submitted in connection with a Claim or Request for Credit and the information on the GREEN FORM submitted by a Class Member or the RED FORM submitted by AHP. In the event that the Reviewing Cardiologist determines that there is such a material discrepancy, then the Claim or Request for Credit shall be referred for audit pursuant to this section of the Settlement Agreement.

- b. In addition to the procedure provided in Section VI.E.1.a, the Trustees and/or Claims Administrator(s) shall select additional Claims for Matrix Compensation Benefits by Class Members and Requests for Credits by AHP during the prior quarter for audit pursuant to an audit plan which shall take into account, among other things:
- (1) The fact that certain Class Members are represented by attorneys who represent what the Trustees and/or Claims Administrator(s) determine to be a disproportionate number of Class Members;
  - (2) The fact that certain Class Members or AHP rely on the certifications of doctors who have provided certifications for what the Trustees and/or Claims Administrator(s) determine to be a disproportionate number of Class Members or Requests for Credits; and
  - (3) The need to incorporate random sampling into the Audit Plan;

provided however, that under this Section VI.E.1.b and Section VI.E.1.a combined the Trustees shall not audit more than five percent (5%) of the total Claims for Matrix Compensation Benefits completed by Class Members during the prior quarter and ten percent (10%) of the total Request for Credits made by AHP during the prior quarter, subject to the provisions of Section VI.F.

2. A Claim may not be paid and a Credit may not be allowed while that Claim or Credit is the subject of an audit or a request for an audit. If a Claim of a Diet Drug Recipient or Representative Claimant is subject to audit or a request for audit, then the Claims of all Derivative Claimant(s) based on that Claim shall also be subject to the audit or audit request, but shall not be considered as part of the percentage of Claims to be audited by the Trustees and/or Claims Administrator(s) in that quarter.
3. With respect to Claims which are selected for audit, the Trustees and/or Claims Administrator(s) may require that the Class Member(s) provide them with the following information as a condition to consideration of the Claim:
  - a. Identification of all general practitioners, family physicians, primary care providers, internists or sub-specialists in internal medicine, surgeons or sub-specialists in surgery, and obstetricians or gynecologists who, at any time during the ten-year period prior to the filing of the Claim subject to audit, rendered any medical care to and/or were consulted by the Diet Drug Recipient whose Claim forms the basis of the Claim subject to audit;
  - b. Fully completed and executed authorizations which will allow the Trustees and/or Claims Administrator(s) to obtain copies of the Class Member's medical records; and
  - c. Such other relevant documents or information within the Class Member's custody, possession, or control as may reasonably be requested by the Trustees and/or Claims Administrator(s).

If the Class Member unreasonably fails or refuses to provide any material documents or information after being afforded an adequate opportunity to do so, the Class Member's Claim shall be denied.

4. With respect to requests for Credit which are selected for audit, the Trustees and/or Claims Administrator(s) may require that AHP provide them with the following information as a condition to consideration of a Request for Credit:
  - a. All medical records relating to the Diet Drug Recipient whose condition is the subject of the Request for Credit, which are in the custody, possession, or control of AHP and its counsel;

- b. All depositions, interrogatories, fact sheets, and like documents relating to the condition and circumstances of the Diet Drug Recipient whose condition is the subject of the Request for Credit, which are in the custody, possession or control of AHP and its counsel;
  - c. Such other relevant documents or information within AHP's or its counsel's custody, possession or control as may reasonably be requested by the Trustees and/or Claims Administrator(s).
5. If AHP unreasonably fails or refuses to provide any material documents or information after being afforded an opportunity to do so, its Request for Credit shall be denied.
6. In conducting an audit of those Claims and Requests for Credit selected for audit, the Trustees and/or Claims Administrator(s) shall follow the following procedure: All Accelerated Implementation Option acceptance form(s) ("PINK FORM"), registration form(s) ("BLUE FORM"), videotapes or disks of Echocardiograms, medical reports, and other information submitted by AHP in support of a Request for Credit or by a Class Member in support of a Claim, together with a copy of the claimant's medical records, and Echocardiogram videotapes or disks obtained by the Trustees/Claims Administrator(s) shall be forwarded to a highly-qualified, independent, Board-Certified Cardiologist (hereinafter referred to as the "Auditing Cardiologist") selected by the Trustees/Claims Administrator(s). After thoroughly reviewing these materials, the Auditing Cardiologist shall make a determination as to whether or not there was a reasonable medical basis for the representations made by any physician in support of the Claim or Request for Credit.
7. If the Auditing Cardiologist makes the determination that there was a reasonable medical basis to support the Class Member's Claim or AHP's Request for Credit and if there is no substantial evidence that the Class Member or AHP intentionally made a material misrepresentation of fact in connection with a Claim or a Request for Credit, then the Claim or Credit shall be allowed. If, on the other hand, the Auditing Cardiologist makes the determination that there was no reasonable medical basis to support any of the material representations made by any physician in support of the Class Member's Claim or AHP's Request for Credit, or if the Trustees and/or Claims Administrator(s) determine that the Class Member or AHP intentionally made a material misrepresentation of fact, the Trustees and/or Claims Administrator(s) shall not pay the Claim or allow the Credit and

shall apply to the Court for an order to show cause why the Claim should be paid or the Credit should be allowed, and for an order to show cause as to why other Claims or Credits involving the same attorney and/or physician should not be subject to an audit.

8. If the Court determines that there was no reasonable medical basis to support a material representation made by a physician in support of a Claim or Request for Credit or that the Class Member or AHP intentionally made a material misrepresentation of fact in connection with Claim or Request for Credit, after the entry of a show cause order and a hearing pursuant to the preceding paragraph, the Court may grant such relief as may be appropriate, including any of the following:
  - a. an order disallowing the Claim or Credit;
  - b. an order directing an additional audit of other Claims or credits involving the same attorneys and/or physicians who were involved in the Claim or Request for Credit which was the subject of the show cause order;
  - c. an order directing such other additional audits as may be appropriate in light of the Court's findings;
  - d. an order imposing penalties including the payment of the Trustees' and/or Claims Administrator's(s') costs and attorneys' fees to the extent permitted by law; and/or
  - e. an order making a referral of the matter to the United States Attorney or other appropriate law enforcement officials for possible criminal prosecution if there is probable cause to believe that the Claim was submitted fraudulently.

For good cause shown, including without limitation the results of audits conducted on any one or more Claims, groups of Claims, and/or requests for Credits made by AHP, the Court at any time, upon its own motion after notice to AHP and Class Counsel, or upon motion by any party and after such notice and hearing as the Court may direct, may order the Trustees and/or Claims Administrator(s) to perform such additional audits and/or adopt such additional claims administration procedures as the Court deems appropriate.

9. The Trustees and/or Claims Administrator shall be authorized to participate in a non-binding mediation program ("Mediation Program") established by the Court to resolve Matrix claims remaining unresolved in the show cause process. Any such Mediation Program shall include the following provisions:

- a. *Mediators.* Mediations in the Mediation Program shall take place before one or more of the persons appointed by the Court to serve on the Panel of Arbitrators under PTO No. 1988, Special Master Gregory Miller, and/or such other person or persons as the Court may direct.
- b. *Wyeth Participation.* Wyeth shall be notified of and shall be a party to all mediation processes in the Mediation Program.
- c. *Resolution.* In any such Mediation Process, the Trustees and/or Claims Administrator is authorized to pay such amounts as are approved by Wyeth, in its sole discretion, to resolve finally the claims that are subject to unresolved show cause proceedings.
- d. *Release.* For any claim that is paid, the Trustees and/or Claims administrator shall, before payment, secure a general release from such Class Members with respect to any and all rights under the Settlement Agreement, except the right to recover Matrix Compensation Benefits if the Trustees and/or Claims Administrator determine that such a Class Member has qualified for Matrix Level Benefits at Matrix Level III, IV, and/or V.

**F. AHP-INITIATED AUDITS OF CLAIMS**

1. AHP may have access to all Claim Forms for Fund A or Fund B benefits submitted to the Trustees and/or Claims Administrator(s) and to all medical records, videotapes or disks of Echocardiograms, forms submitted by Class Members, pharmacy records and all other documents submitted by Class Members in support of their Claims, upon reasonable request to the Trustees. Access to such documents shall be provided to AHP by the Trustees and/or Claims Administrator(s) no later than five (5) days after a Claim is completed (within the meaning of Section VI.C.2 and Section VI.C.4).
2. AHP shall have no right to participate in the claims determination process for a particular Class Member as described in Section VI.C above; provided, however, that AHP shall have the right to submit particular Claims or groups of Claims to the Trustees and/or Claims Administrator(s) for audit, up to a total per quarter of ten percent (10%) of the total Claims for Matrix Compensation Benefits and ten percent (10%) of the total claims for Fund A Benefits completed by Class Members during the prior quarter. Along with such submissions, AHP shall identify to or provide the Trustees and/or Claims Administrator(s) information or documentation in its possession that it believes establishes either

that there was no reasonable medical basis to support the Class Member's Claim or that the Class Member made a material misrepresentation of fact in connection with a Claim.

3. The Trustees and/or Claims Administrator(s) shall audit all Claims properly submitted by AHP for audit under Section VI.F.2 above in a particular quarter. Such Claims shall be in addition to and different from the five percent (5%) of Claims audited by the Trustees and/or Claims Administrator(s) per quarter pursuant to Section VI.E.1. Should any of the Claims submitted for audit by AHP include those selected by the Trustees and/or Claims Administrator(s) for audit in the same quarter, then the Trustees and/or Claims Administrator(s) shall select other Claims for audit to ensure their audit of five percent (5%) of Claims per quarter as required by Section VI.E.1 in addition to the Claims submitted by AHP for audit.
4. If Class Counsel or AHP has a good faith belief that an Auditing Cardiologist employed by the Trustees has failed to perform his/her duties in accordance with accepted standards of medical practice, they may apply to the Court for appropriate relief, including an order disqualifying the Auditing Cardiologist from any further participation in any audits and requiring a re-audit of those Claims or Requests for Credit for which the Auditing Cardiologist made a determination.
5. In connection with any audit initiated by AHP under Section VI.F.2, AHP shall have the right to obtain, at its expense, an independent Transthoracic Echocardiogram of a Diet Drug Recipient who has made a claim for Matrix Benefits under the following circumstances:
  - a. where AHP presents evidence to the Trustees and/or Claims Administrator(s) that the center or physician from which the Echocardiogram was obtained has a disproportionate number of FDA Positive or Matrix-Level Claims; or
  - b. where AHP submits a certification from a Board-Certified Cardiologist under penalty of perjury that the report of the Echocardiogram and/or the videotape or disk deviate materially from accepted standards of practice in the fields of Cardiology or Echocardiography; or
  - c. where AHP submits to the Trustees and/or Claims Administrator(s) evidence that the Class Member or any physician making representations in support of a Class

Member's Claim made material misrepresentations of fact;  
or

- d. where AHP submits a certification from a Board-Certified Cardiologist under penalty of perjury that the videotape or disk of the Echocardiogram cannot properly be read for any reason, including, but not limited to, poor quality, or improper setting.
6. Independent AHP Echocardiograms conducted pursuant to Section V.I.F.5 above, shall be subject to the following conditions:
- a. the affected Class Member will be afforded at least ninety (90) days within which to schedule the Echocardiogram at a time convenient to the Class Member;
  - b. the Echocardiogram shall take place not more than twenty-five (25) miles from the Class Member's place of residence unless AHP provides transportation, but, in no event, more than 100 miles;
  - c. AHP shall pay for the Echocardiogram;
  - d. Echocardiogram shall be conducted pursuant to the procedures set forth in Section I.54.
  - e. a report of the Echocardiogram together with a copy of the videotape and/or disk of the Echocardiogram results shall be submitted to the Trustees and/or Claims Administrator(s) and to the Diet Drug Recipient who was the subject of the Echocardiogram.

If the results of the report of the Independent AHP Echocardiogram obtained by AHP pursuant to this paragraph differ materially and significantly from the results or report of the Echocardiogram submitted by the Class Member in support of the Class Member's Claim for Benefits, then the Trustees and/or Claims Administrator(s) may in their discretion take the results into consideration in connection with their audit.

## VII. AHP RIGHTS AND BENEFITS

### A. CREDITS

1. If a Class Member timely and properly exercises an Initial or Back-End Opt-Out right pursuant to Section IV.D.2 or Section IV.D.4 hereof, asserts a claim and obtains any payment from AHP as a result of such claim (whether pursuant to a pre-Judgment or post-Judgment settlement of such claim or pursuant to a judgment on such claim), AHP shall receive Credits against its Fund B obligations to the extent set forth in this Section VII.A (“Credits”).
2. With respect to an Initial Opt-Out, if (a) a Diet Drug Recipient (or his or her Representative Claimants) timely and properly opts out of this Settlement as an Initial Opt-Out during the Initial Opt-Out Period and the Diet Drug Recipient has a Matrix-Level Condition at the time of such Initial Opt-Out or payment by AHP, and/or (b) a Derivative Claimant of such Diet Drug Recipient is deemed to have opted out of this Settlement pursuant to Section IV.D.2, then AHP shall receive a Full Credit with respect to any amounts paid by AHP to such Diet Drug Recipient (or his or her Representative Claimants) and/or to the Derivative Claimant (“Initial Opt-Out Credits”), regardless of whether such payments were made pursuant to a Judgment or pre-Judgment or post-Judgment settlement, subject to the following:
  - a. Initial Opt-Out Credits shall not exceed the sum of \$300,000,000, in the aggregate.
  - b. Initial Opt-Out Credits shall be applied to reduce the Maximum Available Fund B Amount upon the later of: (i) the date that is five calendar years after the Final Judicial Approval Date; or (ii) the date on which the determination of the Initial Opt-Out Credit becomes final under Section VI.D.1.
  - c. Even though the application of Initial Opt-Out Credits to reduce the Maximum Available Fund B Amount is deferred pursuant to Section VII.A.2.b above, there shall be no accretions on Initial Opt-Out Credits (or any other Credits due AHP) under this Agreement.
3. With respect to a Back-End Opt-Out, if (a) a Diet Drug Recipient (or his or her Representative Claimants) timely and properly exercises a Back-End Opt-Out under this Agreement, and the Diet Drug Recipient has a Matrix-Level Condition at the time of the exercise of such Back-End Opt-Out, and/or (b) a Derivative

Claimant of such Diet Drug Recipient is deemed to have opted out of this Agreement pursuant to Section IV.D.4 or otherwise, then AHP shall receive a Full Credit ("Back-End Opt-Out Credit") with respect to any amounts paid by AHP to such Diet Drug Recipient (or his or her Representative Claimants) and/or to the Derivative Claimant, regardless of whether such payments were made pursuant to a Judgment or pre-Judgment or post-Judgment settlement. Back-End Opt-Out Credits shall be applied to reduce the Maximum Available Fund B Amount upon the later of: (i) the date that is five calendar years after the Final Judicial Approval Date; or (ii) the date on which the determination of the Back-End Opt-Out Credit becomes final under Section VI.D.1.

4. For purposes of this Section VII.A:

"Judgment" shall mean any decision by a court of law or any other authorized tribunal.

"Full Credit" shall mean a Credit in the amount of the lesser of:

- (a) the amount of payment to the Diet Drug Recipient (or his or her Representative Claimant) and/or Derivative Claimant; or
- (b) the Matrix payment for which such Diet Drug Recipient (or his or her representative Claimant) and/or Derivative Claimant would have qualified (as determined at the time such individual opted out of this Agreement or at the time of payment of such amount, whichever is higher), less Common Benefit Attorney's fees (such fees not to exceed nine percent (9%) of such Matrix payment).

"Back-End Opt-Out" includes any Class Member who has exercised or purported to exercise any opt-out right under the terms of this Agreement where: (i) the opt-out right was exercised after the end of the Initial Opt-Out Period; (ii) the relevant Diet Drug Recipient was first diagnosed with a Matrix-Level Condition after September 30, 1999, and before the Matrix Payment Cut-Off Date; and (iii) the Class Member meets the eligibility criteria for a Back-End Opt-Out under Section IV.D.4.a of this Agreement, regardless of the manner in which the Class Member characterized the opt-out.

5. In order to qualify for any of these Credits, AHP must provide the Trustees and/or Claims Administrator(s) with the appropriate Credit Information described in Section VI.D.1.a above.

## **B. EFFECT ON CLAIMS**

1. Effective upon Final Judicial Approval, every Settled Claim of each Class Member against AHP or any other Released Party shall be conclusively compromised, settled and released, and each such Class Member shall be barred from initiating, asserting or prosecuting any Settled Claim against AHP or any other Released Party, except to the extent permitted by this Settlement Agreement for any Class Member who has timely and properly exercised any applicable opt-out right.
2. To confirm the provisions set forth in Section VII.B.1, above, within five (5) days after Final Judicial Approval, the Class Representatives, individually and on behalf of the Settlement Class and all of the Subclasses, shall deliver to AHP a fully executed Release and Covenant Not to Sue in the form attached as Exhibit "27."
3. Each Class Member shall be required to execute an individual Release and Covenant Not to Sue as part of the forms required to be submitted by Class Members in order to seek to participate in the benefits of the Settlement. Such individual releases shall become ineffective, null and void in the event that the Settlement fails to obtain Final Judicial Approval or in the event that AHP terminates this Agreement for any reason, other than as to persons entering into AIO Individual Agreements. Such individual releases shall furthermore be ineffective, null and void as to all Settled Claims except those set forth in I.53(e) and (g) above, with respect to any Class Member who timely and properly exercises any applicable opt-out right granted by this Agreement subsequent to the execution of the releases.
4. For purposes of any statute of limitations or similar time bar, the AHP Released Parties shall not assert that a Class Member actually had PPH unless and until the condition of the Class Member meets the definition of PPH set forth in Section I.46.
5. In the event that a Class Member initiates a claim based on PPH, the AHP Released Parties shall not assert a defense based on "splitting" of claims, causes of action and/or parties by virtue of the fact that the Class Member is included in the Settlement, but the claim based on PPH is not a Settled Claim.
6. The forms of release necessary to effectuate this Settlement and the Accelerated Implementation Option set forth in Section V are set forth in the PINK FORM (for Class Members accepting the AIO)

and the BLUE FORM (for all other Class Members) appended hereto as Exhibits "9" and "21" respectively.

7. The amended complaint in *Sheila Brown, et al. v. American Home Products Corporation*, Civil Action No. 99-20593 (E.D. Pa.), and all Settled Claims which were or could have been asserted, including claims for punitive damages, on behalf of the Settlement Class or any subclass against AHP and/or any Released Parties shall be dismissed with prejudice upon Trial Court Approval. Such dismissal will be vacated in the event that the Settlement does not receive Final Judicial Approval.
8. After Date 2, the following persons shall have no further right to any benefits under the Settlement and shall have no right to pursue any Settled Claims against AHP or any Released Party, except to the extent such persons timely and properly exercise, or have exercised, an Initial, Intermediate, Back-End or Financial Insecurity Opt-Out:
  - a. with respect to all Settled Claims against AHP or any Released Party other than those based on Endocardial Fibrosis, any Class Member asserting a claim based on a Diet Drug Recipient who: (a) has not been diagnosed by a Qualified Physician as FDA Positive nor as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, or (b) has been diagnosed by a Qualified Physician as FDA Positive or as having Mild Mitral Regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the Screening Period, but the Class Member has not registered or been deemed to have registered for settlement benefits by Date 2.
  - b. with respect to Settled Claims against AHP or any Released Party based on Endocardial Fibrosis, any Class Member asserting a claim based on a Diet Drug Recipient who: (a) has not been diagnosed by a Qualified Physician as having Endocardial Fibrosis by September 30, 2005, or (b) has been diagnosed by a Qualified Physician as having Endocardial Fibrosis by September 30, 2005, but the Class Member has not registered or been deemed to have registered for settlement benefits by January 31, 2006.

**C. PROTECTION OF AHP FROM CLAIMS BY NON-SETTLING DEFENDANTS**

1. It is the intent of this Settlement Agreement that no Settlement Class Member shall recover, directly or indirectly, any sums for Settled Claims from AHP or any Released Party other than those received under the Settlement Agreement and that AHP shall make no payments to any third party defined herein as a Non-Settling Defendant for any amounts arising out of a Settled Claim brought by a Class Member against such Non-Settling Defendant, except to the extent that Class Members timely and properly exercise an Initial, Intermediate, or Back-End Opt-Out right provided by the Settlement Agreement. It is the further intent of this Settlement Agreement that Settlement Class Members agree to reduce any judgments against Non-Settling Defendants to the extent necessary, under applicable law, to relieve AHP and the Released Parties of liability for contribution or non-contractual indemnity to any Non-Settling Defendant. In particular:
  - a. The Parties shall seek an order from the Court, which shall be a condition to AHP's obligations under this Agreement as set forth in Section VIII.D hereof, enjoining and barring all Non-Settling Defendants from commencing or prosecuting any claim against AHP or any other Released Party for contribution and/or non-contractual indemnity, arising out of a claim against such Non-Settling Defendant on behalf of any Class Member asserting Settled Claims in any present or future litigation, other than any Class Member who has timely and properly exercised an Initial, Intermediate or Back-End Opt-Out right provided by this Agreement and subject to the provisions of Section VII.C.2 below.
  - b. Nothing in this Agreement is intended to adversely affect any Non-Settling Defendant's right, if any, to set-off or judgment reduction under any state contribution among tortfeasors act or other applicable law. Non-Settling Defendants will be entitled, at a minimum, to whatever set-off or judgment reduction is afforded them by operation of applicable law. Settlement Class Members who do not timely and properly exercise Initial, Intermediate or Back-End Opt-Out rights agree that all defendants are joint tortfeasors in cases in which Settlement Class Members have joined Non-Settling Defendants, AHP, and/or the Released Parties or in any other case in which a Settled Claim is asserted.

- c. The Parties recognize that, under the law of some states, claims for contribution or non-contractual indemnity against a settling defendant survive a Settlement unless the Settlement provides set-off or judgment reduction rights that go beyond those that would otherwise exist by operation of applicable law. In those cases, the Parties intend that Non-Settling Defendants shall be entitled to the additional set-off or judgment reduction necessary under applicable law to extinguish Non-Settling Defendants' claims, if any, for contribution or non-contractual indemnity against AHP and the Released Parties arising from Settled Claims only. Settlement Class Members, however, reserve their right to contend that, due to the nature of the theories of liability alleged or presented against the Non-Settling Defendants (*i.e.*, conspiracy or concert of action), Non-Settling Defendants have no right to contribution or non-contractual indemnity from AHP or the Released Parties as a matter of law even though they are joint tortfeasors.
- d. In the event that any claim that a Non-Settling Defendant would have for contribution or non-contractual indemnity against AHP or the Released Parties in the absence of this Settlement Agreement with respect to a Settled Claim would not be extinguished under applicable law by the set-off or judgment reduction to which the Non-Settling Defendant would be entitled by operation of law, any Settlement Class Member who recovers a judgment against any Non-Settling Defendant with respect to a Settled Claim for which AHP and/or any Released Party would be liable by a claim for contribution or non-contractual indemnity but for the provisions of this Settlement Agreement, shall reduce his judgment against the Non-Settling Defendant by the amount, percentage, or share of such judgment necessary, under applicable law, to relieve AHP and the Released Parties of liability for contribution or non-contractual indemnity. By way of example, under a statute modeled on the 1939 version of the Uniform Contribution Among Tortfeasors Act, Settlement Class Members would reduce their judgments against Non-Settling Defendants in the situation described in this Section to the extent of the pro rata shares (as determined under applicable law) of AHP and any relevant Released Party. In the absence of a statute, Settlement Class Members would reduce their judgments against Non-Settling Defendants in the situation described in this Section by the amount, percentage, or

share of such judgment that would lawfully be attributable to AHP and/or the Released Party or Parties but for the provisions of this Settlement Agreement.

- e. To avoid inconvenience and expense to AHP, the other Released Parties, and the Settlement Class Members, and to eliminate the objection that certain states' law requires that AHP and the Released Parties remain as parties in a lawsuit to facilitate the adjudication of Non-Settling Defendants' set-off or judgment reduction rights with respect to a Settled Claim, the releases provided under this Settlement Agreement shall incorporate, to the extent required by applicable law, what is known in Pennsylvania as a "*Griffin* release" and/or what is known in Wisconsin and elsewhere as a "*Pierringer* release." By this provision, Settlement Class Members and Class Counsel acting on behalf of Settlement Class Members agree that the lack of a judicial determination that the settling defendant is a joint tortfeasor does not preclude Non-Settling Defendants from obtaining set-off or judgment reduction rights they would otherwise have under applicable law in the absence of this Agreement. *See Griffin v. United States*, 500 F.2d 1059 (3d Cir. 1974); *Pierringer v. Hoyer*, 124 N.W.2d 106 (Wis. 1963). By this provision, Settlement Class Members and Class Counsel acting on behalf of Settlement Class Members further agree to waive any rights that they might have against Non-Settling Defendants, the assertion of which would, under applicable law, allow Non-Settling Defendants to add or retain AHP and/or the Released Parties as defendants in actions brought by Settlement Class Members against Non-Settling Defendants with respect to Settled Claims for the purpose of adjudicating Non-Settling Defendants' rights, if any, to set-off or judgment reduction. This provision is intended to obviate the necessity and expense of having AHP and the Released Parties added or remain as parties on the record and obliged to participate in a trial merely for the purpose of determining if in fact they were tortfeasors so as to entitle other tortfeasors to a reduction of any verdict. This provision, however, in no way constitutes an admission of liability by AHP and the Released Parties or an admission by Settlement Class Members that any Non-Settling Defendant is entitled to contribution or non-contractual indemnity from AHP or a Released Party.

- f. The Parties intend that this Settlement Agreement result in the termination or bar of all claims for contribution and/or non-contractual indemnity against AHP and the Released Parties with respect to Settled Claims. To the extent that the Parties' intent is not fully realized, and a Non-Settling Defendant obtains a judgment for contribution or non-contractual indemnity against AHP and/or a Released Party with respect to Settled Claims, Settlement Class Members agree to reduce their judgments against Non-Settling Defendants by the amount, percentage, or share of such judgment necessary to satisfy any such judgment or non-contractual indemnity for the benefit of AHP and/or the Released Party. If, despite the provisions of this section, AHP or any Released Party incurs any judgments due to a claim for contribution or non-contractual indemnification arising out of a claim brought by a Settlement Class Member against a Non-Settling Defendant, such Settlement Class Member shall indemnify AHP and the Released Parties for such amount, provided that AHP and the Released Parties shall have made all reasonable efforts to avoid liability for contribution and/or non-contractual indemnity to Non-Settling Defendants under the Settlement Agreement. In this regard, AHP shall have the right to recover indemnity obligations from any unpaid Matrix payments that may be due to the Class Member.
- g. If, despite the provisions of this section, AHP or any Released Party makes a payment of any judgment due to a claim for contribution and/or non-contractual indemnity arising out of a claim brought by a Settlement Class Member against a Non-Settling Defendant with respect to a Settled Claim, such Settlement Class Member shall indemnify AHP and the Released Parties for such amount, and AHP shall make reasonable efforts to reduce such indemnity obligations to judgment in the underlying litigation involving the Non-Settling Defendant. To the extent that, for any reason, a Settlement Class Member has failed to satisfy an indemnity obligation arising under this paragraph or the prior paragraph (either directly or through recovery of payments for Matrix-Level Conditions otherwise due the Class Member) within ninety (90) days after AHP makes any such payment, AHP may, at any time thereafter, assign its indemnity rights against the Class Member to the Trustees and, in such event, shall receive a credit against its Fund B obligations in the amount of the unsatisfied portion of the indemnity (a "Cross-Claim

Credit"). Cross-Claim Credits shall be applied to reduce the Maximum Available Fund B Amount as of the date on which the determination of the Cross-Claim Credit becomes final.

2. To protect further the Non-Settling Defendants' interests, the Parties have agreed that the bar order shall incorporate the following provisions:
  - a. If, despite the provisions of Section VII.C.1, (i) applicable law precludes a Non-Settling Defendant from obtaining a set-off or judgment reduction to which a Non-Settling Defendant would otherwise be entitled under applicable law in an individual case brought by a Settlement Class Member with respect to a Settled Claim without naming AHP or a Released Party as a party in the lawsuit, and (ii) the Non-Settling Defendant and the Settlement Class Member cannot reach agreement on this issue sufficient to eliminate the Non-Settling Defendant's alleged need to name AHP or a Released Party in the lawsuit, the Non-Settling Defendant may apply to the Court for relief from the bar order.
  - b. The Non-Settling Defendant's application to the Court shall set forth with specificity (i) the facts and law that would give rise to a claim for contribution and/or non-contractual indemnity but for the provisions of this Settlement Agreement; (ii) the efforts that the Non-Settling Defendant has made to reach an accommodation with the Settlement Class Member with respect to the need to name AHP or a Released Party as a defendant in the case; and (iii) the factual and legal bases for the Non-Settling Defendant's claim that, under the particular facts of the case and the particular provisions of applicable law, the Non-Settling Defendant must be permitted to name AHP or a Released Party in the case despite the bar order.
  - c. A copy of the Non-Settling Defendant's application to the Court shall be served on Class Counsel and on counsel for AHP.
  - d. The Court shall modify the bar order to permit a Non-Settling Defendant to name AHP or a Released Party in a particular case brought against a Non-Settling Defendant by a Settlement Class Member with respect to a Settled Claim, only where doing so is essential to protect set-off or

judgment reduction rights to which the Non-Settling Defendant would be entitled under applicable law but for the provisions of this Settlement Agreement. Any order modifying the bar order will contain provisions that protect the interests of AHP and the Released Parties in finality under this Settlement Agreement, including, among other things, provisions affirming that the Settlement Class Member has agreed (i) to forego any direct or indirect recovery from AHP or the Released Parties of sums over and above those received under this Settlement Agreement and (ii) to give up any portion of any judgment obtained against a Non-Settling Defendant that is attributed to AHP or any Released Party with respect to a Settled Claim.

- e. Applications made by Non-Settling Defendants for modification of the bar order will be subject to the provisions of Fed. R. Civ. P. 11.

3. For purposes of this Section VII.C of the Settlement Agreement:

- a. "Non-Settling Defendant" shall mean any person or entity that is not AHP or a Released Party as defined herein, against whom or which a Settled Claim has been or is hereafter made, asserted or commenced. A physician or other Released Party may be a Non-Settling Defendant as to any claim with respect to which he, she, or it is not a Released Party. The term Non-Settling Defendant is not limited to persons or entities who are sued in an action in which AHP or another Released Party is also a party.
- b. "Non-Contractual Indemnity" or "Non-Contractual Indemnification" means a right of indemnity based upon the relationship between or conduct of the parties. These terms include, and the protections provided AHP and the Released Parties herein apply to, a contractual obligation of indemnification voluntarily assumed by AHP to the extent AHP would have been liable to such claimant for indemnity in the absence of such contractual indemnification.
- c. "Settlement Class Member" shall mean any member of the Settlement Class who has not timely and properly exercised an Initial Opt-Out right, an Intermediate Opt-Out right, a Back-End Opt-Out right, or a Financial Insecurity Opt-Out right pursuant to the terms of this Agreement. Upon the timely and proper exercise of any such opt-out rights, the

provisions of this Section VII.C shall become ineffective in connection with any action brought by each Class Member who has timely and properly exercised any such right of opt-out.

4. To implement the bar order provided for in this Section VII.C, all claims pending against AHP or any other Released Party in any court which are prohibited by such bar order shall be dismissed with prejudice upon Trial Court Approval. Such dismissals will be vacated in the event that the Settlement does not receive Final Judicial Approval.
5. In the event any Class Member who has received a payment for a Matrix-Level Condition under this Agreement subsequently obtains a judgment or award against a Non-Settling Defendant, other than a physician, and the Non-Settling Defendant successfully asserts a contractual indemnity claim against AHP and/or a Released Party, then, to the extent not already required by Sections VII.C.1-4 above, the Class Member shall reduce the judgment or award against the Non-Settling Defendant by the percentage of fault, liability or other liability-producing conduct attributable to AHP and/or a Released Party. In the event a Class Member who has not received a payment for a Matrix-Level Condition under this Agreement subsequently obtains a judgment or award against a Non-Settling Defendant, other than a physician, and the Non-Settling Defendant successfully asserts a contractual indemnity claim against AHP and/or a Released Party, then, to the extent not already required by Sections VII.C.1-4 above, the Class Member shall reduce the judgment or award against the Non-Settling Defendant by the percentage of fault, liability or other liability-producing conduct attributable to AHP and/or a Released Party or, in the alternative, shall waive any claim to additional benefits under this Agreement, including payments for a Matrix-Level Condition.

**D. PROTECTION OF AHP FROM POSSIBLE SUBROGATION CLAIMS**

1. To the extent that any person has rights of subrogation by virtue of a payment or payments made to or for the benefit of any specific Class Member who has not properly and timely exercised a right of opt-out, such rights of subrogation may be asserted with respect to the Trustees' obligation to make payments to that Class Member from Fund B but shall not be asserted directly against AHP and/or the Released Parties except to the extent required by applicable Federal or State law. AHP will promptly notify the Trustees and/or Claims Administrator(s), and the affected Class Member of

the assertion of such a subrogation claim against AHP. The Parties shall move the Court, upon granting Trial Court Approval, to enter a bar order to preclude the assertion of such subrogation claims against AHP and/or the Released Parties, except to the extent that it would be impermissible to bar such claims under provisions of applicable law.

2. The Trustees and/or Claims Administrator(s) shall provide notice of subrogation claims received by the Trustees to affected Class Members and afford them an opportunity to contest, otherwise object to or compromise any such claims. In making distribution of any amounts to which Class Members are entitled from Fund B, the Trustees shall recognize and pay subrogation claims from the amount otherwise payable to such Class Member, but only to the extent that the subrogation claim is recognized by applicable law. Unless the law clearly sets forth different principles, the Trustees shall not recognize a subrogation claim unless: (1) it is affirmatively brought to their attention prior to distribution of Funds to a Class Member; (2) it is based on a positive provision of law or a valid enforceable contract; (3) the putative subrogee clearly establishes that the subrogee actually made a payment or payments to or for the benefit of the Class Member which is of a type that the putative subrogee would be entitled to recover against AHP and/or the Released Parties, and then (4) only to the extent of the actual payment made less an equitable debit for attorneys' fees, and any other allowable or appropriate charges against the putative subrogee.
3. In the event that AHP and Class Counsel enter into a settlement agreement with any subrogee in which the subrogee releases its subrogation claims against AHP and the Settlement Class, then after the effective date of the Fifth Amendment to the Settlement Agreement, notwithstanding any other provision of the Settlement Agreement or any previous agreement relating to the settlement of subrogation claims, no amount shall be deducted from any Matrix Compensation Benefits payment due to any Class Member on account of any subrogation claim that has been or could be made by any such subrogee with respect to the recovery of any Class Member, and the Trust shall refund to a Class Member any amount deducted from the Class Member's Matrix Compensation Benefits for such purpose before the effective date of the Fifth Amendment to the Settlement Agreement.

**E. WALKAWAY RIGHTS**

1. AHP shall have the option to terminate and withdraw from the Settlement Agreement, in its sole discretion, based upon the number of persons who have timely and properly elected during the Initial Opt-Out Period to be excluded from the Settlement Class. If AHP elects to exercise this "walkaway right," it shall do so by giving written notice to the Court and to Class Counsel within thirty (30) days of the close of the Initial Opt-Out Period. AHP shall seek to reach its decision with respect to exercise of its "walkaway right."
2. The exercise of this "walkaway right" by AHP will not affect its obligation to provide the benefits to those Class Members who have accepted the Accelerated Implementation Option prior to AHP's exercise of its "walkaway right" or during any subsequent period in which AHP continues to offer the AIO.

**F. LIMITATION ON FINANCIAL OBLIGATIONS**

1. The maximum amount that AHP shall be obligated to pay under this Settlement Agreement shall be AHP's obligation to make the payments to Fund A and the Escrow Agent as specified in Section III.B and AHP's obligation to make payments to Fund B in accordance with Section III.C. These limitations shall also apply to AHP's obligations under Individual Agreements entered into pursuant to the Accelerated Implementation Option.

## VIII. SETTLEMENT IMPLEMENTATION

### A. GENERAL

1. In order to become effective, the Settlement must receive Final Judicial Approval, except as to the Accelerated Implementation Option and as otherwise expressly provided herein.
2. The Parties recommend that the Court establish an Advisory Committee of Class Counsel, which would consist of counsel actively involved in State and Federal Diet Drug Litigation. The purpose of the Advisory Committee of Class Counsel would be to advise the Trustees concerning the proper operation and implementation of the Settlement Agreement.

### B. JURISDICTION

1. The United States District Court for the Eastern District of Pennsylvania will have original and exclusive jurisdiction over all provisions of this Agreement, including the creation and operation of the Settlement Trust and the award of attorneys' fees and reimbursement of litigation expenses, subject to appropriate participation by State Courts in the manner set forth herein. The Parties agree and intend that the Court retain such exclusive jurisdiction for all such purposes: (i) during the pendency of any appeal taken from Trial Court Approval or the denial of Trial Court Approval; and (ii) if Final Judicial Approval is not obtained, subject to Section V.H of this Agreement.
2. In order to become effective as to Class Members who do not exercise the Accelerated Implementation Option, the Settlement contemplated by this Settlement Agreement must receive Final Judicial Approval within the federal judicial system.
3. A State Court Judicial Advisory Committee will be established within fifteen (15) days of Preliminary Approval and will consist of the judges from the State Courts which, as of October 7, 1999, had issued any order certifying state-wide class actions in relation to the effects of Pondimin<sup>®</sup> and/or Redux<sup>™</sup>.
4. The State Court Judicial Advisory Committee shall provide advice and counsel to the Federal District Court on all matters pertinent to the Settlement, including approval of the Settlement, which affect Class Members residing in the States of each committee member. In addition, prior to making any award of counsel fees and reimbursement of litigation expenses, the Federal District Court shall consult with and give substantial deference to the views of

the State Court Judicial Advisory Committee concerning the actual contribution which was made to the overall resolution of the litigation by the attorneys with whom the members of the committee are familiar.

5. The costs incurred by members of the State Court Judicial Advisory Committee in fulfillment of their obligations, such as expenses for travel, shall be reimbursed as administrative expenses of the Settlement Trust.
6. During the period of time from the date on which the Trust is established until December 31, 2004, the majority of the Trustees or Administrators shall be approved by the State Court Judicial Advisory Committee.

### C. APPROVAL PROCESS AND NOTICE PROVISIONS

1. Within ten (10) days after executing this Agreement, the Parties shall jointly move the Court, by filing a motion for the entry of an order granting Preliminary Approval, in the form attached as Exhibit "11." Such Order shall preliminarily and conditionally appoint the Plaintiffs in *Sheila Brown, et al. v. American Home Products Corporation* as the Class Representatives of the Settlement Class and of each of Subclasses 1(a), 1(b), 2(a), 2(b) and 3; preliminarily and conditionally appoint counsel for such plaintiffs as Class Counsel for the Settlement Class; preliminarily and conditionally certify the Settlement Class, for Settlement purposes only; grant Preliminary Approval of this Agreement; approve the appointment of the Interim Escrow Agent and Interim Claims Administrator(s); authorize the dissemination of the Settlement notice in accordance with Section VI.B hereof; designate the Initial Opt-Out Period to terminate ninety (90) days after the date on which publication and/or mailing of the Settlement notice commences in accordance with the Order granting Preliminary Approval; schedule the date for filing objections to the Settlement; and schedule a formal fairness hearing to review comments concerning this Agreement, to consider its fairness, reasonableness and adequacy under Fed. R. Civ. P. 23(e) and to determine whether an Order should be entered granting Trial Court Approval.
2. Fund A will pay fifty percent (50%), and Fund B will pay fifty percent (50%) of the total costs of printing, publishing and otherwise disseminating the notice. In the event that the Settlement does not receive Final Judicial Approval, the costs of printing, publishing or otherwise disseminating notice shall be

borne by AHP, and the Settlement Trust will therefore have no obligation to return or refund such costs to AHP.

3. AHP shall retain its right to contest class certification for litigation purposes.
4. The Parties shall cooperate and assist in all of the filings and proceedings relating to the obtaining of Preliminary Approval as well as Trial Court Approval and in any further filings and proceedings necessary to obtain Final Judicial Approval of the Settlement, and in any related appeals.
5. Upon Final Judicial Approval, the Class Counsel and all Class Members shall cooperate with AHP and any other Released Party to cause the dismissal, with prejudice and without costs, of any action against AHP or any Released Party asserting a Settled Claim brought by or on behalf of any Class Member who has not timely and properly exercised an Initial Opt-Out right, including but not limited to class actions, whether or not certified as such, which are pending in any state, federal or territorial court. Upon Trial Court Approval, the Class Counsel and all such Class Members shall cooperate with AHP and any other Released Party to cause further proceedings in all such settled actions in which the Class Members did not timely and properly opt out to be stayed pending Final Judicial Approval.

#### **D. CONDITIONS**

1. AHP's obligations under this Agreement, other than its obligations to Class Members who accept the AIO during the period in which it is available for acceptance, will be subject to the following conditions:
  - a. Trial Court Approval of the Settlement, which approval order or orders shall:
    - (1) Confirm the certification of the Settlement Class and the creation of Subclasses 1(a), 1(b), 2(a), 2(b), and 3, under Fed. R. Civ. P. 23(a), 23(b)(2), 23(b)(3), 23(c)(1) and 23(e), for Settlement purposes only;
    - (2) Confirm the appointment of the plaintiffs in *Sheila Brown, et al. v. American Home Products Corporation* as the representatives of the Settlement

Class and of each of Subclasses 1(a), 1(b), 2(a), 2(b) and 3;

- (3) Approve this Agreement in its entirety pursuant to Fed. R. Civ. P. 23(e) as fair, reasonable, adequate, and non-collusive;
- (4) Dismiss with prejudice and without costs the Amended Complaint in *Sheila Brown, et al. v. American Home Products Corporation*, as well as all other claims or actions asserting Settled Claims against AHP pending before the Court, with the condition that such complaints may be reinstated in the event that Final Judicial Approval is not obtained;
- (5) Bar and enjoin all Class Members who have not timely and properly exercised an Initial Intermediate, Back-End, or Financial Insecurity Opt-Out right from asserting and/or continuing to prosecute against AHP or any other Released Party any and all Settled Claims which the Class Member had, has, or may have in the future in any federal, state or territorial court;
- (6) Bar and enjoin the commencement and/or prosecution of any claim for contribution and/or non-contractual indemnity, pursuant to Section VII.C hereof and subject to the provisions of Section VII.C.2, in any federal, state or territorial court against AHP or any other Released Party by any Non-Settling Defendant arising from or relating to any Settled Claim asserted by any Class Member;
- (7) Bar and enjoin the commencement and/or prosecution of any claim or action against AHP in any federal, state or territorial court based on rights of subrogation by virtue of a payment or payments made to or for the benefit of a Class Member arising out of or in relation to any Settled Claims, except to the extent that it would be impermissible to bar such claims under provisions of applicable law;
- (8) Reserve the Court's continuing and exclusive jurisdiction over the Parties, including AHP and the Class Members, to administer, supervise, interpret,

and enforce this Agreement in accordance with its terms and to supervise the operation of the Settlement Trust; and

(9) Enter such other orders as are needed to effectuate the terms of the Settlement;

b. Final Judicial Approval of this Agreement.

2. AHP may at its election terminate this Settlement Agreement if the Final Judicial Approval does not meet all the conditions set forth in Section VIII.D.1.a above.

#### **E. ATTORNEYS' FEES**

1. In the event that the Settlement receives Final Judicial Approval, the Court shall award counsel fees and litigation expenses from the Settlement funds to those attorneys who actually contributed to the creation of the Settlement funds through work devoted to the "common benefit" of Class Members, including any attorney who actually conferred benefits upon the class through State Court litigation ("Common Benefit Attorneys") and may award Class Action Representative Incentive Fees to the certified State and Federal Court Class Representatives in accordance with applicable principles of law and subject to the following provisions.

a. As provided in this Section, AHP agrees to pay to Class Counsel, Common Benefit Attorneys and the certified State and Federal Class Action Representatives fees in an aggregate amount of up to \$200,000,000, together with any accrued interest thereon from the date of deposit into the Fund A Escrow Account, for the services related to Fund A, subject to approval by the Court. To the extent that such fees are awarded by the Court, they shall be paid by the Escrow Agent from the escrow account into which AHP is required to deposit said amounts for that purpose, as set forth above in Section III.B.3 (Fund A Escrow Account).

b. Attorneys' fees relating to Fund B shall be paid from Fund B. For purposes of awarding attorneys' fees from Fund B, AHP agrees that attorneys' fees should be awarded and paid as a percentage of or otherwise based on the net present value, as of the Final Judicial Approval Date, of the maximum amounts which AHP may be legally obligated to pay to Fund B for the benefit of the Settlement Class, regardless of the amount of claims actually paid at any

given point in time, pursuant to the principle expressed in the case law, *see Boeing v. Van Gemert*, 444 U.S. 472 (1980). The Parties stipulate that, only for purposes of calculating payment of attorneys' fees, the net present value, as of the Final Judicial Approval Date, of the maximum amounts which AHP may be legally obligated to pay to Fund B for the benefit of the class is \$2,550,000,000. The Parties further agree that the attorneys' fees payable from Fund B to counsel for the Settlement Class ("Class Counsel") and Common Benefit Attorneys from Fund B shall not exceed \$229 million, which is nine percent (9%) of the \$2,550,000,000 dollar amount, and that the actual amount of attorneys' fees shall be as determined by the Court. An amount shall be deducted from each payment made to a Class Member from Fund B in an amount equal to nine percent (9%) of the total Matrix payment due the Class Member before any deductions. Individual Class Members who are represented by attorneys entitled to a contingent fee under any valid written contingent fee agreement with such Class Member shall be subject to a further reduction for attorneys' fees due to their attorney. The amount to be paid to the Class Member's attorney shall be the total attorney's fee due under the terms of the contingency fee arrangement less nine percent (9%) of the total Matrix payment due to the Class Member before any deductions. Fund B payments to any such individually-represented Class Members shall also be reduced by the amount of reasonable out-of-pocket costs of such Class Member's attorney to the extent authorized in the document evidencing such attorney's retention and the individual attorney's agreement with the Class Member and to the extent permitted or allowed by applicable law in which the agreement was entered. It is expected that the Trustees will not honor contingent fee agreements with private counsel which were entered into in violation of applicable law. In the event that the Trial Court has not entered any order with respect to the payment of attorneys' fees from Fund B by the end of the first Fiscal Quarter, then within five (5) business days after the end of the first Fiscal Quarter, AHP shall establish and thereafter maintain an interest-bearing escrow account (the "Fund B Attorneys' Fees Account") in the amount of \$229 million, for payment of the maximum attorneys' fees payable under this section. The establishment and funding of such Fund B Attorneys' Fees Account shall reduce the Maximum Available Fund B Amount as of that time in the same fashion as a Fund B

Deposit Amount. All income earned by the Fund B Attorneys' Fees Account shall remain in and be added to the Fund B Attorneys' Fees Account, except that any taxes payable on such income shall be paid out of such income. The amount in the Fund B Attorneys' Fees Account shall be available to be distributed as attorneys' fees as directed by the Trial Court or by a court with appellate jurisdiction over such ruling. Any portion of the total balance in the Fund B Attorneys' Fees Account not finally awarded as attorneys' fees shall be paid to AHP within five (5) business days after the order regarding such fees becomes final and the Maximum Available Fund B Amount shall be increased as of the date of such payment by the total amount paid to AHP.

- c. If the Court awards less than nine percent (9%) of the present value amount stated above as payment for the attorneys' fees of Class Counsel and Common Benefit Attorneys from Fund B, the Court shall direct that appropriate adjustments be made in the distribution of Fund B amounts to Class Members and their individual attorneys, including, if necessary, additional payments to Class Members and individual attorneys who received Fund B distributions prior to the Court's decision concerning the award of counsel fees to Class Counsel and Common Benefit Attorneys.
2. In the event that the Settlement does not receive Final Judicial Approval or is terminated by AHP for any reason, AHP shall make a payment for attorneys' fees for Fund A benefits paid or provided under the AIO to an account to be established, subject to the supervision of the Court. The first such payment shall be in the amount of twenty percent (20%) of the dollar value of all Fund A benefits paid or provided to individuals under the AIO as of the date of such fee payment. At quarterly intervals thereafter, AHP shall pay into the account an amount equal to twenty percent (20%) of the dollar value of all Fund A benefits paid or provided to individuals under the AIO during the preceding quarter. Any amounts paid into this account which are not awarded in attorneys' fees shall be returned to AHP by order of the Court. Any attorney who reasonably believes that he or she actually conferred benefits upon individuals electing the AIO through State Court litigation, may apply to the Court for a portion of the amount deposited in such account and may receive payment of such common benefit fees in accordance with applicable provisions of law. Those accepting the AIO must expressly agree to this provision regarding

fees as a condition to exercising the option. This paragraph shall not be construed to require AHP to make any payment for attorneys' fees for Fund A benefits prior to Final Judicial Approval unless this Agreement is terminated prior to that date.

3. Prior to the time that the Settlement receives Final Judicial Approval or in the event that the Settlement does not receive Final Judicial Approval or is terminated by AHP for any reason, AHP shall deduct from any Fund B benefits paid to those accepting the AIO an amount equal to nine percent (9%) of the total Matrix payment due to the Class Member before any deductions and shall deposit such amounts in the account to be established pursuant to Section VIII.E.2 above. At such time as the Settlement fails to receive Final Judicial Approval or is terminated by AHP for any reason, any attorney who reasonably believes that he or she actually conferred benefits upon individuals electing the AIO through State Court litigation, may apply to the Court for a portion of the amount deposited in such account and may receive payment of such common benefit fees and costs in accordance with applicable provisions of law. Individual Class Members who are represented by attorneys entitled to a contingent fee under any valid written contingent fee agreement with such Class Member shall be subject to a further reduction for attorneys' fees due to their attorney. The amount to be paid to the Class Member's attorney shall be the total attorney's fee due under the terms of the contingency fee arrangement less nine percent (9%) of the total Matrix payment due to the Class Member before any deductions. Payment of Fund B benefits to any such individually-represented Class Member shall also be reduced by the amount of reasonable out-of-pocket costs of such Class Member's attorney to the extent authorized in the document evidencing such attorney's retention and individual attorney's agreement with the Class Member and to the extent permitted or allowed by law. Those accepting the AIO must expressly agree to this provision regarding fees as a condition to exercising the option. If the Court awards less than nine percent (9%) of the amount stated above as payment for the attorneys' fees of Class Counsel and Common Benefit Attorneys from the amount paid to individuals accepting the AIO, the Court shall direct that appropriate adjustments be made in the distribution of these fund amounts to individuals accepting the AIO and their individual attorneys, including, if necessary, additional payments to individuals who accepted the AIO and their individual attorneys who received payment prior to the Court's decision concerning the award of counsel fees to Class Counsel and Common Benefit Attorneys.

4. In the event that the Settlement receives Final Judicial Approval, no additional attorneys' fees or litigation expenses shall be paid for benefits conferred on those individuals who accepted the AIO.
5. The Parties shall recommend that the Court enter an Order precluding a Class Member's individual attorney from recovering a fee in connection with the recovery of the \$3,000 cash benefit provided by Section IV.A.2.c or the \$6,000 cash benefit provided by Section IV.A.1.c, which is greater than twenty percent (20%) of such amounts. This twenty percent (20%) fee for a Class Member's individual attorney shall not be affected by fees paid to Class Counsel or Common Benefit Attorneys, pursuant to the Court's order.

**F. OTHER PROVISIONS**

1. Any information provided by or regarding a Class Member or otherwise obtained pursuant to this Agreement shall be kept confidential and shall not be disclosed except to appropriate persons to the extent necessary to process Claims or provide benefits under this Agreement or as otherwise expressly provided in this Agreement. All Class Members shall be deemed to have consented to the disclosure of this information for these purposes.
2. This Settlement Agreement shall be binding on the successors and assigns of the Parties.
3. The Parties to the Settlement, including AHP, the Released Parties, or any Class Member, shall not seek to introduce and/or offer the terms of the Settlement Agreement, any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Settlement Agreement, any statements in the notice documents appended to this Settlement Agreement, stipulations, agreements, or admissions made or entered into in connection with the fairness hearing or any finding of fact or conclusion of law made by the Trial Court, or otherwise rely on the terms of this Settlement, in any judicial proceeding, except insofar as it is necessary to enforce the terms of the Settlement. If a Class Member who has timely and properly exercised an Opt-Out right seeks to introduce and/or offer any of the matters described herein in any proceeding, the restrictions of this Section shall not be applicable to AHP and the Released Parties with respect to that Class Member.
4. Neither this Agreement nor any exhibit, document or instrument delivered hereunder nor any of the statements in the notice documents appended to this Settlement Agreement or in

connection herewith, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Agreement, is intended to be or shall be construed as or deemed to be evidence of an admission or concession by AHP or the Released Parties of any liability or wrongdoing or of the truth of any allegations asserted by any plaintiff against it or them, or as an admission by the Class Representatives or members of the Settlement Class of any lack of merit in their claims, and no such statement, transaction or proceeding shall be admissible in evidence for any such purpose except for purposes of obtaining approval of this Settlement Agreement in this or any other proceeding.

5. The headings of the sections and paragraphs of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.
6. As soon as practicable after the execution of the Settlement Agreement, the Parties shall take all steps which are reasonably necessary to enable the Trustees and/or Claims Administrator(s) promptly to provide Fund A benefits upon Final Judicial Approval to all Class Members not exercising Initial Opt-Out rights. This includes reasonable and necessary steps to establish the Settlement Trust; to establish a mechanism to operate the Settlement Trust and administer claims; to solicit, receive and process claims from Class Members which will be necessary to provide benefits to Class Members; to establish a mechanism to provide medical screening, services and cash to members of the class; to communicate with Class Members and like activities. These expenses shall not exceed \$45 million, or such higher amount as may be requested in writing by the Interim Claims Administrator(s) and/or Trustees, agreed upon by the Parties, and approved by the Court. In the event that the Settlement is not approved, AHP will not be entitled to a refund of any of the money spent for these purposes.
7. Any notice, request, instruction or other document to be given by AHP to Class Counsel or Class Counsel to AHP shall be in writing and delivered personally or sent by Federal Express or facsimile as follows, or as otherwise instructed by a notice delivered to the other Party pursuant to this subsection:

a. If to AHP:

Louis L. Hoynes, Jr., Esquire  
Senior Vice President and General Counsel  
American Home Products Corporation

5 Giralda Farms  
Madison, NJ 07940-0874

b. If to the Class Representatives or Class Counsel:

Arnold Levin, Esquire  
Levin, Fishbein, Sedran & Berman  
510 Walnut Street  
Suite 500  
Philadelphia, PA 19106

Gene Locks, Esquire  
Greitzer & Locks  
1500 Walnut Street  
20<sup>th</sup> Floor  
Philadelphia, PA 19102

8. Any form or other documentation required to be submitted under this Agreement shall be deemed timely if postmarked on or before the date by which it is required to be submitted under this Settlement Agreement. Subject to other provisions for eligibility, a properly completed and executed AIO Individual Agreement or Opt-Out Form will be effective on the date it is postmarked.
9. No provision of this Settlement Agreement or any Exhibit thereto is intended to create any third-party beneficiary to this Settlement Agreement.
10. Upon execution of the Memorandum of Understanding dated October 7, 1999 ("MOU"), AHP and Class Counsel jointly established a toll-free telephone number and website for persons requesting additional information regarding the Settlement. This number and website has been and shall continue to be used to record the names and addresses of such individuals and other information, so that individual notice concerning the Settlement may be provided to them. These names and addresses shall be kept strictly confidential and shall not be disclosed to any person or used for any purpose other than for issuance of settlement notice upon prior order of the Court pursuant to Section VI.B.1.f(3). AHP shall pay all costs relating to the toll-free telephone line and website. In the event that the settlement receives Final Judicial Approval, all expenditures made by AHP in relation to the toll-free telephone line and website shall be considered administrative expenses of Fund A, and AHP shall receive a credit in the amount of all such expenditures in calculating its next payment to Fund A.

11. This Agreement contains the entire Agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all previous Agreements, negotiations, and commitments in writings between the Parties hereto with respect to the subject matter hereof, including without limitation the MOU. This Agreement may not be changed or modified in any manner unless in writing and signed by a duly authorized officer of AHP and by a duly authorized representative of the Class Representatives.
  
12. Beginning on March 11, 2002, all references in this Settlement Agreement to "AHP" and "American Home Products" (except for the references to AHP in "AHP Settlement Trust") shall be deemed to refer to Wyeth. This name change does not affect the implementation of this Settlement Agreement or the AHP Settlement Trust.

IN WITNESS WHEREOF, the Parties have duly executed this Nationwide Class Action Settlement Agreement between American Home Products Corporation and the Class Representatives, by their respective counsel as set forth below, on this \_\_\_\_\_ day of November, 1999.

**AMERICAN HOME PRODUCTS CORPORATION**

BY: \_\_\_\_\_  
LOUIS L. HOYNES, JR., ESQUIRE  
GENERAL COUNSEL

CLASS COUNSEL

---

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**FOR THE PLAINTIFFS' MANAGEMENT COMMITTEE**

**FOR SUBCLASS 1(a):**

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513-621-2120

**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

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

Revised as of August 24, 2004

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

Class Counsel and Wyeth (the "Parties") agree that the Nationwide Class Action Settlement Agreement with American Home Products Corporation, as previously amended (the "Settlement Agreement"), is further amended by this Seventh Amendment, subject to the conditions, and effective at such time as, set forth below.

**I. DEFINITIONS.**

**A. *Incorporation of Settlement Agreement Definitions and Section References.***

1. When used in the Seventh Amendment, the capitalized terms used in the Settlement Agreement shall have the same meaning as in the Settlement Agreement.
2. References to a "Section" refer to Sections of the Seventh Amendment, unless otherwise specified.

**B. *Additional Defined Terms.*** For purposes of the Seventh Amendment, these capitalized terms shall have these meanings:

1. "Additional Post-FJA Deposit(s)" is defined in Section V.A.4.
2. "Age at First Diagnosis" means the age of the Diet Drug Recipient (whose condition forms the basis of the claim) as of the date that a High Threshold Condition or Low Threshold Condition is first diagnosed.
3. "Alternative Causation Factors" means, for claims seeking Benefits Subject to Medical Review:
  - a. With respect to a Matrix Claim (or any part of a Matrix Claim) based on the aortic valve:

.....

- (1) Any of the following congenital aortic valve abnormalities: unicuspid, bicuspid or quadricuspid aortic valve, ventricular septal defect associated with aortic regurgitation;
  - (2) Aortic dissection involving the aortic root and/or aortic valve;
  - (3) Aortic sclerosis in people who are  $\geq 60$  years old as of the time they are first diagnosed as FDA Positive;
  - (4) Aortic root dilatation  $> 5.0$  cm;
  - (5) Aortic stenosis with an aortic valve area  $< 1.0$  square centimeter by the Continuity Equation.
- b. With respect to a Matrix Claim (or any part of a Matrix Claim) based on the mitral valve:
- (1) Any of these congenital mitral valve abnormalities: parachute valve, and/or cleft of the mitral valve associated with atrial septal defect;
  - (2) Mitral Valve Prolapse;
  - (3) Chordae tendineae rupture or papillary muscle rupture, or acute myocardial infarction associated with acute mitral regurgitation;
  - (4) Mitral annular calcification;
  - (5) M-Mode and 2-D echocardiographic evidence of rheumatic mitral valves (doming of the anterior leaflet and/or anterior motion of the posterior leaflet and/or commissural fusion); and/or

.....

- (6) Diagnosis of Mild Mitral Regurgitation and not Moderate Mitral Regurgitation or Severe Mitral Regurgitation by the end of the Screening Period.
- c. With respect to Matrix Claims based in whole or in part on the aortic and/or mitral valve(s): heart valve surgery prior to Diet Drug use on the valve that is the basis of the Matrix Claim (or any part of the Matrix Claim), as determined from a review of the Relevant Echocardiogram.

The presence or absence of the medical conditions contained in this definition of Alternative Causation Factors is to be determined solely by review of the Class Member's echocardiographic evidence. Such factors as age and dates of relevant events may be determined from other information submitted by the Class Member.

4. "Amended and Final Category One Class List" is the final list of Diet Drug Recipients (or their Representative Claimants) who have been determined to be Category One Class Members after the close of the Seventh Amendment Opt-Out/Objection Period.
5. "Attesting Physician" means the physician who signed Part II of the Green Form as part of a Matrix Claim by or on behalf of a Class Member.
6. "Audit" shall mean the medical evaluation of claims by a Trust Auditing Cardiologist pursuant to section VI.E of the Settlement Agreement.
7. "Authorization Application" is defined in Section V.G.
8. "Authorization Order" is defined in Section V.H.

9. "Balance of the Individual Payment Amount" is defined in Section XV.R.3.
10. "Benefits Subject to Medical Review" means those benefits described in Sections VII.A.1-7, which may be payable to Category One Class Members based on the Medical Review process described in Section XV.
11. "Cash/Medical Services Benefit" means the Additional Medical Services or Cash benefit described in section IV.A.1.c and/or section IV.A.2.c of the Settlement Agreement.
12. "Category One" is defined in Section III.A.1.
13. "Category One Class Member(s)" means Class Members who meet the criteria for inclusion in Category One.
14. "Category Two" is defined in Section III.A.2.
15. "Category Two Class Member(s)" means Class Members who meet the criteria for inclusion in Category Two, as defined in Sections III.A.2.a-g.
16. "Category Two Election Amount" means an amount equal to \$2,000 multiplied by the number of Diet Drug Recipients (or Representative Claimants) identified on the Category Two Election Certification. In the event that more than 6,400 Diet Drug Recipients (or Representative Claimants) are identified on the Category Two Election Certification, then the Category Two Election Amount shall include an additional amount computed by multiplying \$5,500 times the number of Diet Drug Recipients (or Representative Claimants) identified on the Category Two Election Certification and then subtracting \$35,000,000 from the product of such multiplication.
17. "Category Two Election Certification" is defined in Section VII.C.3.

18. "Category Two Election Form" is defined in Section VII.C.2.
19. "Category Two Payment" means the \$2,000 payment to eligible Category Two Class Members as set forth in Section VIII.A.1.
20. "Category Two Payment List" is defined in Section VIII.B.1.
21. "Common Benefit Percentage" means the percentage, if any, determined by the Court on a preliminary basis (to facilitate distribution of the Individual Payment Amounts without awaiting full adjudication of any fee application or dispute) or final basis before final distribution pursuant to Section XV.R, of the Individual Payment Amounts payable to Category One Class Members who are entitled to receive Benefits Subject to Medical Review:
  - a. Which the Court determines should be allocated and/or paid as common benefit fees to attorneys for professional services that are found by the Court to be of "common benefit" to Category One Class Members; and
  - b. Which may represent an allocable share of or reimbursement to the Fund B Attorneys' Fees Account, a percentage of the Supplemental Class Settlement Fund, or both, as determined by the Court in accordance with applicable law.
22. "Common Benefit Percentage Amount" is defined in Section XV.R.1.
23. "Eligibility List" is defined in Section IX.D.
24. "Enforcement Actions" means civil actions by the Trust, Wyeth, their successors and/or assigns, against any person or entity, including, without limitation, Attesting Physicians, claimants' attorneys, and Class Members, to recover benefits,

including, without limitation, Matrix Compensation Benefits paid by the Trust on or before the Execution Date and/or on a Pre-Stay Payable PADL, costs of administration and investigation, and any compensatory and/or punitive damages with respect to the payment and/or processing of Matrix Compensation Benefits paid by the Trust on or before the Execution Date and/or with respect to any Pre-Stay Payable PADL claims made to and/or processed by the Trust. Use of evidence regarding Matrix Compensation Benefits paid by the Trust on or before the Execution Date and/or on a Pre-Stay Payable PADL in any action or proceeding other than an Enforcement Action shall not be considered as within this definition of Enforcement Actions. Actions that are based on or arise from (i) claims submitted by Class Members who have exercised a Seventh Amendment Opt-Out; (ii) claims for Seventh Amendment Matrix Compensation Benefits; and (iii) Supplemental Claims do not constitute Enforcement Actions as defined in this Seventh Amendment. Without limiting the generality of the foregoing, Enforcement Actions include the civil actions entitled *AHP Settlement Trust v. Linda Crouse, M.D., et al.*, Civil Action No. 03-5252 (E.D. Pa.), and *AHP Settlement Trust v. Richard L. Mueller, M.D.*, Civil Action No. 03-6163 (E.D. Pa.).

25. "Escrow Agent" is defined in Section IV.B.
26. "Examining Physician" means a Board-Certified Cardiologist, a Board-Certified Cardiothoracic Surgeon, or a Qualified Physician, who (i) has treated the Diet Drug Recipient for any of the conditions that form the basis of the Matrix Claim or (ii) demonstrates to the Trust the same familiarity with the Diet Drug Recipient's medical condition, and applying normal clinical practice standards, as a physician who has treated the Diet Drug Recipient for any of the conditions that form the basis of the Matrix Claim.
27. "Execution Date" means July 21, 2004.

28. “Final Judicial Approval of the Seventh Amendment” refers to the approval of the Seventh Amendment by the Court and such approval becoming final by the exhaustion of all appeals (including petitions for writ of certiorari to the United States Supreme Court), if any, without substantial modification of the order or orders granting such approval. Final Judicial Approval of the Seventh Amendment shall be deemed not to have been obtained if Trial Court Approval of the Seventh Amendment is denied and the period for appealing such denial has expired without any such appeal having been taken.
29. “Fund Administrator” means the person appointed by the Court to process benefit claims by Category One Class Members under the Seventh Amendment, as defined in Section IV.A.
30. “High Matrix Level Qualifying Factors” is defined as the original requirements of section IV.B.2.c(3), (4) and (5) of the Settlement Agreement, except as modified and/or clarified as follows:
  - a. With respect to any claim for Matrix Level III, IV, or V benefits that is based, in whole or in part, on surgery to repair or replace the aortic and/or mitral valve(s), “High Matrix Level Qualifying Factors” means that the Diet Drug Recipient actually had surgery to repair or replace the valve or valves that were found to have FDA Positive regurgitation or Mild Mitral Regurgitation before the end of the Screening Period and that is/are the basis of the claim.
  - b. With respect to any claim for Matrix Level IV or V benefits that is based, in whole or in part, on ineligibility due to medical reasons for surgery to repair or replace the aortic and/or mitral valve(s), “High Matrix Level Qualifying Factors” means that the Diet Drug Recipient had ACC/AHA Class I indications for surgery as

described in the Settlement Agreement, but was ineligible for surgery due to medical reasons (other than acute conditions that merely require a postponement of surgery), as documented contemporaneously in the Diet Drug Recipient's medical records by the attending Board-Certified Cardiothoracic Surgeon or Board-Certified Cardiologist and certified to under penalty of perjury by an Examining Physician. The valve or valves that is/are the basis for the Matrix Level IV or V claim must have been found to have FDA Positive regurgitation or Mild Mitral Regurgitation before the end of the Screening Period.

- c. "High Matrix Level Qualifying Factors" do not include the circumstances described in section IV.B.2.c(3)(b) of the Settlement Agreement except to the extent necessary to qualify for Matrix Compensation Benefits at Matrix Level IV or Matrix Level V, as limited by Section I.B.30.b.
- d. For any claim for Matrix Level III, IV, or V benefits that is based on complications of left atrial enlargement with chronic atrial fibrillation, "High Matrix Level Qualifying Factors" means:
  - (1) Left atrial supero-inferior systolic dimension > 5.3 cm (apical four chamber view) or an abnormal left atrial antero-posterior systolic dimension > 4.0 cm (parasternal long axis view) measured by 2-D directed M-mode or 2-D echocardiography using sites of measurement recommended by the American Society of Echocardiography;
  - (2) Chronic atrial fibrillation; and
  - (3) A statement under penalty of perjury from an Examining Physician, along with

contemporaneous medical records, that establish to a reasonable degree of medical certainty and to the reasonable satisfaction of a Trust Auditing Cardiologist, that the Diet Drug Recipient's left atrial enlargement and chronic atrial fibrillation/flutter were a direct consequence of Moderate Mitral Regurgitation or Severe Mitral Regurgitation.

- e. For any claim on Matrix Level V(c) under section IV.B.2.c(5)(c) of the Settlement Agreement, "High Matrix Level Qualifying Factors" means, in addition to the requirements of section IV.B.2.c(5)(c), that the conditions of the Diet Drug Recipient would have qualified for Matrix Compensation Benefits under Matrix Level I or II as defined in the Settlement Agreement as it existed before the Execution Date, and/or under the requirements of Matrix Level III, IV, or V, as modified and/or clarified in this Section I.B.30.
  
- f. For any claim for Matrix Level III, IV, or V benefits, "High Matrix Level Qualifying Factors" means that the Echocardiogram Tape or Disk relied upon by the Class Member to qualify the claim complies with the criteria and requirements for Echocardiograms provided in the Settlement Agreement as it existed before the Execution Date, including the requirements that any copy of the Echocardiogram Tape or Disk:
  - (1) Must be of sufficient quality that a Cardiologist with Level 2 or 3 competency in echocardiography can reliably ascertain the presence or absence of each of the factors that is relevant to the claim; and
  
  - (2) With respect to any claim based on Mitral Regurgitation, the copy must comply with the requirements set forth in Section XV.B.2.b(2).

- g. If a copy of any Echocardiogram Tape or Disk that supports a claim for Seventh Amendment Matrix Compensation Benefits complies with Section I.B.30.f, the existence of those “High Matrix Level Qualifying Factors” that depend on echocardiographic evidence shall be determined in Audit based on such Echocardiogram Tape(s) or Disk(s) without regard to: (i) whether the Echocardiogram Tape or Disk (or any copy thereof) was allegedly obtained without adequate physician supervision; (ii) the identity of the person or entity that performed the Echocardiogram; or (iii) the identity of the attorney(s) representing the claimant; provided, however, that nothing contained in this Section shall prevent the Trust from contesting the validity of any Echocardiogram Tape or Disk where there is substantial evidence that such Tape or Disk constitutes or contains a material misrepresentation of fact under section VI.E of the Settlement Agreement. Lack of adequate physician supervision with respect to an Echocardiogram Tape or Disk shall not constitute a material misrepresentation of fact for this purpose.

31. “High Threshold Condition” means:

- a. Moderate Aortic Regurgitation with one or more of the following complicating factors:
  - (1) Abnormal left ventricular end-systolic dimension > 50 mm by M-mode or 2-D echocardiography or abnormal left ventricular end-diastolic dimension > 70 mm as measured by M-mode or 2-D echocardiography; and/or
  - (2) Ejection fraction of < 50%; and/or
- b. Severe Aortic Regurgitation; and/or

- c. Severe Mitral Regurgitation with one or more of the following complicating factors:
  - (1) Pulmonary hypertension secondary to valvular heart disease with peak systolic pulmonary artery pressure > 40 mm Hg measured by cardiac catheterization or with a peak systolic pulmonary artery pressure > 45 mm Hg measured by Doppler echocardiography, at rest, utilizing standard procedures described in section IV.B.2.c(2)(a)(i) of the Settlement Agreement and assuming a right atrial pressure of 10 mm Hg;
  - (2) Abnormal left ventricular end-systolic dimension  $\geq$  45 mm by M-mode or 2-D Echocardiogram; and/or
  - (3) Ejection fraction of < 50%.

- 32. "Individual Payment Amount" is defined in Section VII.A.7.
- 33. "Initial Category One Class List" is the list appended as Exhibit "B" to this Seventh Amendment and defined in Section XIV.A.
- 34. "Initial Deposit" is defined in Section V.A.1.
- 35. "Initial Post-FJA Deposit" is defined in Section V.A.3.
- 36. "Initial Review" is defined in Section XV.M.
- 37. "Interim Distribution" is defined in Section XV.P.
- 38. "Intermediate Deposit" is defined in Section V.A.2.
- 39. "Low Threshold Condition" means one or more of the following:

- a. Severe Mitral Regurgitation and no High Threshold complicating factors as defined in Section I.B.31.c;
- b. FDA Positive valvular regurgitation with bacterial endocarditis contracted after commencement of Diet Drug use;
- c. Moderate Mitral Regurgitation with one or more of the following:
  - (1) Pulmonary hypertension secondary to valvular heart disease with peak systolic pulmonary artery pressure > 40 mm Hg measured by cardiac catheterization or with a peak systolic pulmonary artery pressure > 45 mm Hg measured by Doppler echocardiography, at rest, utilizing standard procedures and assuming a right atrial pressure of 10 mm Hg; or
  - (2) Abnormal left atrial supero-inferior systolic dimension > 5.3 cm (apical four chamber view) or abnormal left atrial antero-posterior systolic dimension > 4.0 cm (parasternal long axis view) measured by 2-D directed M-mode or 2-D echocardiography with normal sinus rhythm using sites of measurement recommended by the American Society of Echocardiography; or
  - (3) Abnormal left ventricular end-systolic dimension  $\geq$  45 mm by M-mode or 2-D Echocardiogram; and/or
  - (4) Ejection fraction of  $\leq$  60%.

40. "Matrix Claim" means a claim of a Class Member seeking Matrix Compensation Benefits under section IV.B of the Settlement Agreement.

41. “Matrix Election Payment” is defined in Section VII.C.5.
42. “Medical Review” is described in Section XV.M.
43. “Medical Review Coordinating Committee” or “MRCC” is defined in Section IV.C.
44. “Minimum Payment Amount” means \$2,000, as further defined in Section VII.B.1.
45. “Moderate Aortic Regurgitation” or “Moderate AR” means FDA Positive regurgitation of the aortic heart valve in which the ratio between the regurgitant jet height and the left ventricular outflow tract height (JH/LVOTH) is  $\geq 25\%$  and  $\leq 49\%$ , as determined by color flow Doppler echocardiography using the methods described by Singh,<sup>1</sup> and as further described in the Settlement Agreement.
46. “Moderate Mitral Regurgitation” or “Moderate MR” means FDA Positive regurgitation of the mitral heart valve in which the ratio between the regurgitant jet area and the left atrial area (RJA/LAA) is  $\geq 20\%$  and  $\leq 40\%$ , as determined by color flow Doppler echocardiography using the methods described by Singh, and as further described in the Settlement Agreement.
47. “Net Matrix Amount” is defined in Section IX.A.2.
48. “Net Supplemental Class Settlement Fund Amount” is defined in Section VII.A.7.

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<sup>1</sup> J. P. Singh, et al., *Prevalence of Clinical Determinants of Mitral, Tricuspid and Aortic Regurgitation (The Framingham Heart Study)*, 83 AM. J. CARDIOLOGY 897, 898 (1999) (hereinafter “Singh”).

49. "Notice of Default" is the notice that the Fund Administrator and/or the Trust is required to provide to Wyeth under Section XVI.A in the event of a default in Wyeth's obligation to deposit security under Section VI.
50. "Participating Physicians" is defined in Section XV.I.
51. "Preliminary Approval" means the entry of an order in conformity with Section XVII.A.
52. "Pre-Stay Payable PADL" means a Post-Audit Determination Letter issued pursuant to Rules 12 through 17 of the Rules for the Audit of Matrix Compensation Claims approved by the Court in Pretrial Order No. 2807, a notice issued pursuant to paragraph 6 of Court Approved Procedure ("CAP") No. 4, and/or a Post-Audit Determination Letter issued pursuant to section IV.A or IV.B of the Policies and Procedures for Audit and Disposition of Matrix Compensation Claims in Audit approved by the Court in Pretrial Order No. 2457, which meets all of the following criteria:
  - a. It was issued by the Trust on or before May 6, 2004;
  - b. It was issued after a Trust Audit in which the Auditing Cardiologist determined that there was a reasonable medical basis for a Matrix Claim;
  - c. It was issued with respect to a claim for Matrix Level I or Matrix Level II benefits; and
  - d. The affected Class Member(s) has not received any payment based on the Audit outcome with respect to the Matrix Claim as of the Execution Date.
53. "QCC Report" is defined in Section XV.I.
54. "Qualified Cardiology Centers" is defined in Section XV.I.

55. “Relative Payment Grid” is defined in Section VII.A.2.
56. “Relative Payment Grid Levels” are described in Sections VII.A.3-4.
57. “Relative Payment Value” is defined in Sections VII.A.5-6.
58. “Releasing Parties” means each Category One Class Member and each Category Two Class Member, including Derivative Claimants, who does not timely and properly exercise a Seventh Amendment Opt-Out, individually and for his or her heirs, beneficiaries, agents, estates, executors, administrators, personal representatives, attorneys, successors and assigns (and/or if the Class Member is a legal representative of another person, in that capacity).
59. “Relevant Echocardiogram” means an Echocardiogram:
  - a. Performed before the end of the Screening Period, which demonstrates FDA Positive regurgitation or Mild Mitral Regurgitation;
  - b. On the Diet Drug Recipient whose medical condition forms the basis of the Matrix Claim;
  - c. After the Diet Drug Recipient’s ingestion of Diet Drugs;
  - d. As the single Echocardiogram on which the Class Member has based a claim that a Diet Drug Recipient had the Matrix Level condition claimed by the Attesting Physician in Part II of the Green Form submitted in support of the Matrix Claim.

Where a Class Member has had an Echocardiogram performed after Diet Drug use and before the end of the Screening Period which demonstrates FDA Positive regurgitation or Mild Mitral

Regurgitation but which does not otherwise demonstrate either a High Threshold Condition or a Low Threshold Condition, then solely for purposes of determining whether a Category One Class Member is entitled to Benefits Subject to Medical Review, a “Relevant Echocardiogram” also includes the single additional Echocardiogram that purportedly demonstrates the remaining elements of either a High Threshold Condition or a Low Threshold Condition, provided that such Echocardiogram complies with Section I.B.59.b and c.

60. “Revoked Opt-Out” means an Initial Opt-Out, Intermediate Opt-Out, and/or Back-End Opt-Out of a Class Member who has requested that Wyeth consent to revocation of the opt-out, and whose request Wyeth has granted by written notice to the Class Member.
61. “Second Review” is defined in Section XV.M.
62. “Settlement Agreement” means the Nationwide Class Action Settlement Agreement with American Home Products Corporation (now Wyeth by corporate name change as of March 11, 2002), as amended through and including the Sixth Amendment approved by the Court on March 12, 2003, in PTO No. 2778.
63. “Seventh Amendment Liaison Committee” or “SALC” is defined in Section IV.D.
64. “Seventh Amendment Matrix Compensation Benefits” means those Matrix Compensation Benefits which may be paid or claimed for High Matrix Level Qualifying Factors to or by Category One Class Members or Category Two Class Members in accordance with the terms of the Seventh Amendment.
65. “Seventh Amendment Opt-Out/Objection Period” means the 60-day period, or such other period established by the Court,

within which Category One Class Members and Category Two Class Members may object to or opt out of this Seventh Amendment, as defined in Section XII.

66. "Seventh Amendment Security Fund" is defined in Section VI.
67. "Seventh Amendment Walkaway Right" is defined in Section XIII.B.
68. "Severe Aortic Regurgitation" or "Severe AR" means FDA Positive regurgitation of the aortic heart valve, in which the ratio between the regurgitant jet height and the left ventricular outflow tract height (JH/LVOTH) is  $> 49\%$ , as determined by color flow Doppler echocardiography using the methods described by Singh, and as further described in the Settlement Agreement.
69. "Severe Mitral Regurgitation" or "Severe MR" means FDA Positive regurgitation of the mitral heart valve in which the ratio between the regurgitant jet area and the left atrial area (RJA/LAA) is  $> 40\%$  as determined by color flow Doppler echocardiography using the methods described by Singh, and as further described in the Settlement Agreement.
70. "Supplemental Claim" means a claim for incremental Matrix Compensation Benefits under section IV.C.3 of the Settlement Agreement by a Class Member (other than a Category One Class Member or a Category Two Class Member) who was paid Matrix Compensation Benefits on any Matrix Level by the Trust.
71. "Supplemental Class Settlement Fund" is defined in Section V.A.
72. "Third Party Payor" is defined in Section XV.W.

73. “Trial Court Approval of the Seventh Amendment” means entry of an order or orders by the Court approving the Seventh Amendment, which satisfy the conditions specified in Section XVIII.C.7.
74. “Trust” means the AHP Settlement Trust established pursuant to the Settlement Agreement and also shall mean “Trustees and/or Claims Administrator.”
75. “Trust Determination Denying Matrix Benefits” means that as of May 6, 2004, the Trust had issued a Post-Audit Determination Letter and/or a Final Post-Audit Determination Letter on a Matrix Claim (under the Audit Rules approved by PTO No. 2457 and/or by PTO No. 2807), informing the Class Member that the Trust had determined that the Class Member is not entitled to payment of any Matrix Compensation Benefits regardless of whether as of May 6, 2004: (i) the time for the Class Member to Contest a Post-Audit Determination Letter had expired; (ii) the claim was subject to a Contest by the Class Member; (iii) the time for the Class Member to dispute a Final Post-Audit Determination Letter had expired; (iv) the claim was subject to dispute by the Class Member; (v) the claim was the subject of an Application for Show Cause Order; and/or (vi) the claim was the subject of an Order to Show Cause.
76. “Walkaway Period” is defined in Section XIII.A.

**II. SEVENTH AMENDMENT.**

Immediately upon Final Judicial Approval of the Seventh Amendment, it shall become effective as the Seventh Amendment to the Settlement Agreement.

**III. CLASS MEMBERS SUBJECT TO THIS SEVENTH AMENDMENT.**

**A. *Categories of Class Members.*** This Seventh Amendment applies to two categories of Diet Drug Recipients (or their Representative Claimants), as follows:

1. “Category One” consists of all Diet Drug Recipients (or their Representative Claimants) who:
  - a. Have signed a Pink Form, a Blue Form, and/or Part I of a Green Form, and submitted it to the Trust on or before May 3, 2003, and/or on whose behalf a Green Form Part II was substantially completed as further described in Section III.A.1.b(2), signed and submitted by an Attesting Physician to the Trust on or before May 3, 2003; and
  - b. (i) In the case of any Class Members who have exercised an Initial, Intermediate, or Back-End Opt-Out right under the Settlement Agreement, have submitted a Green Form to the Trust before May 6, 2004, and (ii) in the case of any other Class Member, have submitted a Green Form to the Trust, or pursuant to Section XIV.C.4, submits a Green Form to the Trust before the end of the Seventh Amendment Opt-Out/Objection Period:
    - (1) In which Part I was signed by the Class Member and in which Part II was signed by an Attesting Physician; and
    - (2) In which the unaudited answers provided by the Attesting Physician in Part II of the Green Form contain sufficient information on medical conditions to support a claim for Matrix Compensation Benefits on Matrix Level I and/or Matrix Level II of the Settlement Agreement, but which do not support a claim on Matrix Level III,

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Matrix Level IV, or Matrix Level V of the Settlement Agreement; and

- c. Have not received payment of any Matrix Compensation Benefits from the Trust; and
  - d. Have not received, on or before the Execution Date, a Trust Determination Denying Matrix Benefits on the Green Form referred to in Section III.A.1.b; and
  - e. Have not been the subject of a Pre-Stay Payable PADL; and
  - f. Have not signed an individual release of claims arising from the use of Diet Drugs, and/or have not been the subject of a final order dismissing with prejudice an action relating to injuries arising from the use of Diet Drugs, unless such order expressly preserves the Class Member's ability to seek benefits under the Settlement Agreement.
2. "Category Two" consists of all Diet Drug Recipients (or their Representative Claimants) who:
- a. Have submitted a signed Pink Form, Blue Form, Green Form Part I, Green Form Part II, and/or Gray Form to the Trust on or before May 3, 2003, or who presently have a good faith belief that they timely registered for benefits under the Settlement Agreement and are determined by the Court to have been timely registered for benefits under the terms of the Settlement Agreement as it existed before the Seventh Amendment; and
  - b. Have been diagnosed as having Mild Mitral Regurgitation or FDA Positive regurgitation after Diet Drug use and by the end of the Screening Period; and

- c. Have not filed a Green Form Part II with the Trust on or before the end of the Seventh Amendment Opt-Out/Objection Period in which the unaudited answers provided by the Attesting Physician in the Green Form Part II contain sufficient information on medical conditions to support a claim for Matrix Compensation Benefits on Matrix Level III, Matrix Level IV, or Matrix Level V of the Settlement Agreement; and
- d. Have not received payment of any Matrix Compensation Benefits from the Trust; and
- e. Are not members of Category One; and
- f. Have not exercised or attempted to exercise an Initial Opt-Out, Intermediate Opt-Out, or Back-End Opt-Out, unless that opt-out is a Revoked Opt-Out; and
- g. Have not signed an individual release of claims arising from the use of Diet Drugs, and/or have not been the subject of a final order dismissing with prejudice an action relating to injuries arising from the use of Diet Drugs, unless such order expressly preserves the Class Member's ability to seek benefits under the Settlement Agreement.

**B. *Derivative Claimants.*** The Derivative Claimants of Diet Drug Recipients (or their Representative Claimants) in Category One or Category Two shall receive benefits from Category One or Category Two only: (i) if they would have been eligible for Matrix Compensation Benefits under the Settlement Agreement; and if so, (ii) only as expressly provided in this Seventh Amendment. As to all actions under the Seventh Amendment, the Diet Drug Recipient's (or the Representative Claimant's) action or failure to act shall be binding on the associated Derivative Claimant(s) of that Diet Drug Recipient (or Representative Claimant).

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**C. *Progression During Pendency of the Seventh Amendment.***

1. If the valvular heart disease of a Diet Drug Recipient who is a Category One Class Member or Category Two Class Member progresses such that the Diet Drug Recipient becomes qualified for payment of Matrix Compensation Benefits on Matrix Level III, Matrix Level IV, or Matrix Level V of the Settlement Agreement and demonstrates High Matrix Level Qualifying Factors after the Execution Date but before Final Judicial Approval of the Seventh Amendment, then the Diet Drug Recipient's claim shall be processed pursuant to this Section III.C.
  
2. For this purpose, notwithstanding any stay on Trust processing of Matrix Claims submitted by Category One Class Members or Category Two Class Members pending Final Judicial Approval of the Seventh Amendment, the Trust shall process claims by Category One Class Members or Category Two Class Members who submit to the Trust a Green Form Part II signed by an Attesting Physician, in which the unaudited answers by the Attesting Physician contain sufficient information on medical conditions to support a claim for Matrix Compensation Benefits on Matrix Level III, Matrix Level IV, or Matrix Level V of the Settlement Agreement, with High Matrix Level Qualifying Factors. If the Trust determines that the Diet Drug Recipient satisfies these conditions and is eligible for Matrix Compensation Benefits on Matrix Level III, Matrix Level IV, or Matrix Level V of the Settlement Agreement, with High Matrix Level Qualifying Factors, the Trust shall pay such benefits from the Settlement Fund in accordance with the Settlement Agreement. If the Trust determines that the Diet Drug Recipient does not satisfy these conditions, the claim shall return to its classification before submission of a claim for Matrix Level III, IV, or V benefits, as a Category One Class Member or a Category Two Class Member claim.

3. Upon Final Judicial Approval of the Seventh Amendment, the Fund Administrator shall subject to the Medical Review process the claim of each Class Member whose claim is determined by the Trust to satisfy the conditions in Section III.C.2. If the Fund Administrator determines that such Class Member is eligible for Benefits Subject to Medical Review, the Fund Administrator shall calculate the Individual Payment Amount that such Class Member would have received from the Fund Administrator as a Category One Class Member and remit that amount to the Trust. For this purpose:
  - a. The Trust shall furnish a copy of the Relevant Echocardiogram for each such Class Member to the Fund Administrator together with a copy of the claim file maintained by the Trust with respect to such Class Member;
  - b. The Medical Review process shall consist of a review of the Relevant Echocardiogram furnished by the Trust to the Fund Administrator; and
  - c. The Fund Administrator shall determine whether such Class Member is eligible for Benefits Subject to Medical Review based on the results of such review process and the information contained in the claim file furnished to the Fund Administrator by the Trust. Class Members are not required to provide information to the Fund Administrator unless specifically requested by the Fund Administrator to do so.

**IV. APPOINTMENT OF THE FUND ADMINISTRATOR, ESCROW AGENT, MEDICAL REVIEW CONSULTING COMMITTEE, AND THE SALC.**

**A. *The Fund Administrator.***

1. Within 14 days after the Execution Date, Class Counsel and the SALC jointly shall nominate Heffler, Radetich & Saitta, L.L.P., for appointment by the Court to serve as “Fund Administrator” for purposes of administering the terms of the Seventh Amendment pursuant to the terms of a Fund Administrator Agreement to be approved by the Court.
2. If Heffler, Radetich & Saitta, L.L.P., is not appointed as Fund Administrator or becomes unable or unwilling to serve, then Class Counsel and the SALC jointly shall recommend appointment of another natural person, corporation, or other entity to serve as Fund Administrator, and upon appointment by the Court, such natural person, corporation, or other entity thereafter shall serve as Fund Administrator.
3. Except as set forth in Section IV.A.2, the Fund Administrator may be removed or replaced only by order of the Court for good cause shown.

**B. *The Escrow Agent.***

1. Within 14 days after the Execution Date, Class Counsel and the SALC jointly shall nominate PNC Bank, N.A., for appointment by the Court to serve as “Escrow Agent” for purposes of receiving, investing, and disbursing the Supplemental Class Settlement Fund (as defined in Section V.A) pursuant to the terms of an escrow agreement in a form approved by the Court.
2. If PNC Bank, N.A., is not appointed as Escrow Agent or becomes unable or unwilling to serve, then Class Counsel and the SALC jointly shall recommend appointment of another

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financial institution to serve as Escrow Agent, and upon appointment by the Court, such financial institution thereafter shall serve as Escrow Agent.

3. Except as set forth in Section IV.B.2, the Escrow Agent may be removed or replaced only by order of the Court for good cause shown.

**C. *The Medical Review Coordinating Committee.***

1. The Medical Review Coordinating Committee (“MRCC”) shall consist of three Board-Certified Cardiologists with Level 3 training in echocardiography, who shall be appointed by the Court. Within 14 days after the Execution Date, Class Counsel and the SALC jointly shall nominate Dean Karalis, M.D., F.A.C.C., Gregg Reis, M.D., F.A.C.C., and Frank Silvestry, M.D., F.A.C.C., jointly to serve as members of the MRCC pursuant to the terms of an agreement in a form approved by the Court.
2. If any physician proposed for membership in the MRCC is not appointed or if any physician appointed to the MRCC becomes unable or unwilling to serve on the MRCC, then Class Counsel and the SALC jointly shall recommend appointment of another Board-Certified Cardiologist with Level 3 training in echocardiography and, upon appointment by the Court, such physician thereafter shall serve as a member of the MRCC.
3. Except as set forth in Section IV.C.2, the members of the MRCC may be removed or replaced only by order of the Court for good cause shown.

**D. *The Seventh Amendment Liaison Committee.***

1. The Seventh Amendment Liaison Committee (“SALC”) shall assist in the implementation of this Seventh Amendment as

liaison between counsel for Category One Class Members and Category Two Class Members, on the one hand, and Class Counsel, Wyeth and the Court, on the other hand. Subject to approval of the Court, the SALC shall consist of the following attorneys, all of whom represent Category One Class Members and Category Two Class Members and who assisted in the negotiation and finalization of the Seventh Amendment: Jerry Alexander, Esquire; James Doyle, Esquire; Tony Martinez, Esquire; Ellen Presby, Esquire; and Wayne Spivey, Esquire, who shall serve as chair of the Committee.

2. A member of the SALC may be removed or replaced only by order of the Court for good cause shown.
3. The members of the SALC shall be entitled to participate in any common benefit fee which may be awarded by the Court with respect to activities of common benefit in creating, negotiating, obtaining Trial Court Approval of the Seventh Amendment and Final Judicial Approval of the Seventh Amendment, and administering and otherwise implementing the Seventh Amendment.
4. The Parties explicitly acknowledge that the SALC does not act in a representative capacity on behalf of the Class.

**E. *Immunity From Liability.***

1. The Fund Administrator, the Escrow Agent, the MRCC, and the Participating Physicians (as defined in Section XV.I) shall have no liability to any person for any act or transaction taken by them in good faith pursuant to the terms of this Seventh Amendment and/or any procedure, document, rule, or agreement arising from this Seventh Amendment, and shall be entitled to qualified judicial immunity for any action reported to the Court in an Authorization Application (as defined in

Section V.G) and approved by the Court in an Authorization Order (as defined in Section V.H).

2. The Fund Administrator, the Escrow Agent, the MRCC and the Participating Physicians shall be indemnified by the Supplemental Class Settlement Fund with respect to the costs of defending against, and with respect to any and all liability based on, any claim arising from any act, omission or transaction by them in good faith pursuant to the terms of this Seventh Amendment and/or any procedure, document, rule, or agreement arising from this Seventh Amendment.
3. Wyeth shall have no liability or responsibility for any of the actions or omissions of the Fund Administrator, the Escrow Agent, the MRCC, the Participating Physicians, the SALC, Class Counsel, or any agent or contractor of the Supplemental Class Settlement Fund, and none of the foregoing shall have any recourse against Wyeth for any claim against them based upon such actions or omissions.
4. The Fund Administrator shall use its best efforts to procure and maintain commercially reasonable amounts and types of insurance against any liability asserted against or incurred by the Fund Administrator, the Escrow Agent, the MRCC, and the Participating Physicians, in such capacities or arising from their status under the Seventh Amendment, and to provide the indemnification required under this Section IV.E. Such insurance shall be maintained for a period of time at least equal to any statute of limitations periods applicable to potential claims against these parties. The Fund Administrator shall apply to the Court for an order approving the amount and type of coverage it intends to obtain. In the event that the Fund Administrator is unable to obtain such insurance by a date which is 30 days after the date of Trial Court Approval of the Seventh Amendment, then the Fund Administrator shall apply to the Court for an order permitting it to proceed without

obtaining insurance. Wyeth shall have the right to be heard in connection with any application to the Court pertaining to such insurance.

5. If the Supplemental Class Settlement Fund has insufficient funds to satisfy any uninsured or underinsured indemnity obligation to the Fund Administrator, the Escrow Agent, the MRCC, and the Participating Physicians pursuant to Section IV.E.2, then upon application and good cause shown, the Court may authorize the Settlement Fund to indemnify them with respect to the costs of defending against, and with respect to any and all liability based on, any claim arising from any act or failure to act, in good faith, pursuant to the terms of this Seventh Amendment and/or any procedure, document, rule, or agreement arising from this Seventh Amendment. Wyeth and the Trust shall have the right to be heard in connection with any such good cause application to the Court.
6. The order(s) appointing the Fund Administrator, the Escrow Agent, and the MRCC shall include terms sufficient to effectuate the provisions of Section IV.E.

**V. THE SUPPLEMENTAL CLASS SETTLEMENT FUND; WYETH'S ADDITIONAL FINANCIAL OBLIGATIONS; AND OTHER PROVISIONS.**

**A. *Supplemental Class Settlement Fund.*** A "Supplemental Class Settlement Fund" shall be established to receive a total amount of \$1,275,000,000 for the benefit of Category One Class Members, to be paid by Wyeth to the Escrow Agent subject to the conditions set forth in this Seventh Amendment, as follows:

1. Within ten Business Days after the date of Preliminary Approval of the Seventh Amendment, Wyeth shall pay to the Escrow Agent an "Initial Deposit" in the amount of \$5,000,000.
2. Within five Business Days after the date of Trial Court Approval of the Seventh Amendment, Wyeth shall pay to the Escrow Agent an "Intermediate Deposit" in the amount of \$20,000,000. If needed by the Fund Administrator (for the purposes identified in Section V.B) after payment by Wyeth of the Intermediate Deposit and before payment by Wyeth of the Initial Post-FJA Deposit (under Section V.A.3), Wyeth shall pay to the Escrow Agent, within five Business Days after Wyeth's receipt of a written request by the Fund Administrator, such amounts as are reasonably requested by the Fund Administrator, up to a total amount of \$25,000,000, in addition to the Initial Deposit and the Intermediate Deposit.
3. Within five Business Days after the date of Final Judicial Approval of the Seventh Amendment, Wyeth shall pay to the Escrow Agent an "Initial Post-FJA Deposit" of \$400,000,000.
4. After payment of the Initial Post-FJA Deposit, Wyeth shall pay the Escrow Agent "Additional Post-FJA Deposits," up to a total of \$1,275,000,000, less the Initial Deposit, the Intermediate Deposit, the Initial Post-FJA Deposit, and any other amounts previously paid by Wyeth to the Escrow Agent under this

Seventh Amendment, and less the Category Two Election Amount, in such installments as the Fund Administrator shall reasonably request, to fund the payment of benefits to Category One Class Members and associated costs of administration, subject to the terms of this Seventh Amendment, with such payments to be made to the Escrow Agent within five Business Days after Wyeth's receipt of a written request by the Fund Administrator for payment of such an Additional Post-FJA Deposit. Prior to making such written request, the Fund Administrator shall determine the Category Two Election Amount and inform Wyeth of the credit to which it is entitled as a result thereof.

5. The Initial Deposit, Intermediate Deposit, Initial Post-FJA Deposit, Additional Post-FJA Deposits, and any other payments made by Wyeth to the Escrow Agent under Section V.A, collectively, shall comprise the Supplemental Class Settlement Fund and shall be available and shall be used to pay those benefits to which Category One Class Members are entitled under this Seventh Amendment (and all deductions from or payments relating to such benefits), and the associated costs of administration of such benefits.
6. Wyeth's payment of funds to the Escrow Agent under this Section V.A shall be in addition to any of its payment obligations under section III.C of the Settlement Agreement and shall not reduce the Maximum Available Fund B Amount under section I.1 of the Settlement Agreement.
7. Wyeth shall have no financial obligations to the Supplemental Class Settlement Fund other than as explicitly set forth in Section V.A.
8. Wyeth shall have no responsibility for the management or administration of the Supplemental Class Settlement Fund or any liability to any Class Members arising from the processing

of claims by the Fund Administrator and/or the management of the Supplemental Class Settlement Fund.

9. All payments by Wyeth to the Escrow Agent under Section V.A shall be made by wire transfer.

**B. *Use of Funds Before Final Judicial Approval of the Seventh Amendment.*** Before Final Judicial Approval of the Seventh Amendment, the funds paid by Wyeth to the Escrow Agent under Section V.A may be used to:

1. Pay such expenses as may be reasonably necessary to establish a mechanism to administer the payment of benefits to Category One Class Members, including payment of appropriate professional fees to attorneys, accountants, health care providers, insurers, consultants, and other vendors and service providers; and
2. Establish Qualified Cardiology Centers (as defined in Section XV.I), to receive and process information and Relevant Echocardiograms from Category One Class Members, to have such information and Echocardiograms reviewed by the Qualified Cardiology Centers, to obtain QCC Reports (as defined in Section XV.I) and to perform all other administrative activities described in Section XV so that Benefits Subject to Medical Review (as defined in Section I.B.10) may promptly be paid to eligible Class Members as soon after Final Judicial Approval of the Seventh Amendment as is reasonably practicable; and
3. Pay all state and federal income and other taxes or fees of any kind applicable to the Supplemental Class Settlement Fund.

**C. *Notice.***

1. The Parties shall carry out the printing and mailing of a Notice of the Seventh Amendment, in a form approved by the Court,

to all Class Members who have ever registered or purported to register with the Trust or who have submitted any type of form to the Trust (including Class Members who have exercised or attempted to exercise any right of opt-out) and to all known attorneys representing such Class Members, at the addresses reflected in the most recent version of the Trust's database made available to the Parties at the time Notice is disseminated.

2. Where an attorney represents more than one registered Class Member, it shall be sufficient to provide that attorney with a single copy of the Notice.
3. The Notice shall also be posted on the website maintained by the Trust and the official MDL 1203 website.
4. The Trust shall pay the costs of any such Notice out of the Settlement Fund.

**D. *Return of Funds.*** If: (i) Wyeth exercises its Seventh Amendment Walkaway Right (as defined in Section XIII.B); (ii) Trial Court Approval of the Seventh Amendment does not occur; or (iii) Final Judicial Approval of the Seventh Amendment does not occur, then within 30 days after such an event, the Escrow Agent shall return to Wyeth a sum equal to the Initial and Intermediate Deposits, and any other payments by Wyeth to the Escrow Agent before such event, together with the interest and other income accrued thereon, less all expenses reasonably paid or incurred before such event by the Fund Administrator pursuant to Section V.B.

**E. *Impact of Final Judicial Approval of the Seventh Amendment.*** If Final Judicial Approval of the Seventh Amendment occurs:

1. Immediately upon the date of Final Judicial Approval of the Seventh Amendment, the Supplemental Class Settlement Fund shall become non-reversionary and all funds paid by Wyeth to the Escrow Agent by such time shall become irrevocable and not subject to repayment to Wyeth, in whole or in part.

2. The Supplemental Class Settlement Fund shall be structured and managed to qualify as a Qualified Settlement Fund under section 468B of the Internal Revenue Code of 1986, as Amended (the "Code"), and related regulations, and the documents establishing the Supplemental Class Settlement Fund shall contain customary provisions for such funds, including the obligation to make tax filings and to provide to Wyeth information to permit Wyeth to report properly for tax purposes.
  
3. All income earned on monies held by the Escrow Agent on behalf of the Supplemental Class Settlement Fund shall remain the property of the Supplemental Class Settlement Fund. The Supplemental Class Settlement Fund shall be responsible for the reporting and payment of all state and federal income and other taxes or fees of any kind applicable to the Supplemental Class Settlement Fund. Wyeth shall have no responsibility for any such matters.

**F. *Compensatory Damages.*** The Parties agree that all of the amounts paid to Class Members from the Supplemental Class Settlement Fund will be paid as alleged damages (other than punitive damages) on account of personal physical injuries or physical sickness of Class Members as described in section 104(a)(2) of the Code.

**G. *Authorization Applications.*** The Fund Administrator shall not at any time pay any expenses or make any benefit distributions to Category One Class Members without prior approval by the Court. At such intervals as the Fund Administrator determines are appropriate or as otherwise directed by the Court, the Fund Administrator shall prepare and submit to the Court an application for authorization ("Authorization Application") to pay the reasonable expenses incurred for the administration of this Seventh Amendment and to distribute the benefits (including any Interim Distributions) determined to be due to Category One Class Members under the terms of this Seventh Amendment, and in such application shall set forth the basis for the action for which authorization is sought. In addition, the Fund Administrator shall prepare and submit such an

Authorization Application to the Court before incurring any obligation relating to administration costs for payments to any single person or entity, which are reasonably expected to total more than \$1,000,000 in the aggregate. The Fund Administrator shall serve a copy of each Authorization Application on Class Counsel, Wyeth, and the SALC.

**H. *Authorization Orders.*** The Escrow Agent shall make payments and distributions from the Supplemental Class Settlement Fund to the extent expressly ordered by the Court (“Authorization Order”) in response to the Authorization Applications submitted by the Fund Administrator.

**VI. SECURITY ARRANGEMENTS RELATING TO THE SEVENTH AMENDMENT.**

**A. *Seventh Amendment Security Fund.*** Within ten Business Days after the date of Trial Court Approval of the Seventh Amendment, Wyeth shall establish and thereafter maintain a Seventh Amendment Security Fund consisting of cash and/or Permitted Investments in an amount that is equal to that portion of the Supplemental Class Settlement Fund that remains unpaid by Wyeth as of such date, pursuant to the terms of the Seventh Amendment Security Fund Agreement, substantially in the form attached as Exhibit "C" to this Seventh Amendment, with such changes as agreed upon by the Parties.

**B. *Purpose of the Seventh Amendment Security Fund.*** The Seventh Amendment Security Fund shall secure Wyeth's obligation to make deposits into the Supplemental Class Settlement Fund as required in Section V.A and to make deposits to fund the payment of Seventh Amendment Matrix Compensation Benefits pursuant to the provisions of Section IX.

**C. *Impact of No Final Judicial Approval.*** If Final Judicial Approval of the Seventh Amendment does not occur for any reason, the Seventh Amendment Security Fund shall be terminated and all cash and Permitted Investments, and retained income thereon, if any, shall be returned to Wyeth.

**D. *Withdrawals by Wyeth from the Seventh Amendment Security Fund.*** If at any time the balance of the Seventh Amendment Security Fund is greater than 100% of the amount of Wyeth's unpaid obligation to the Supplemental Class Settlement Fund under Section V.A, Wyeth may withdraw, at its option, free of any lien, cash and/or Permitted Investments from the Seventh Amendment Security Fund, provided that:

1. The balance in the Seventh Amendment Security Fund must at all times equal or exceed 100% of the amount of Wyeth's unpaid obligation to the Supplemental Class Settlement Fund under Section V.A;
2. Wyeth may make such withdrawals no more frequently than once monthly; and

3. At any time that the balance of the Seventh Amendment Security Fund is equal to or less than \$255,000,000, no further withdrawals by Wyeth shall be permitted. Wyeth shall maintain the Seventh Amendment Security Fund balance at \$255,000,000 and replenish the balance to such level if it should fall below \$255,000,000 for any reason. The provisions of this Section shall apply until termination of the Seventh Amendment Security Fund under Section VI.E.2.

**E. *Security for Wyeth's Guarantee.***

1. At such time as the Fund Administrator has substantially completed the distribution of the Supplemental Class Settlement Fund to Category One Class Members, the Trust shall have a non-subordinated, perfected security interest in the assets on deposit in the Seventh Amendment Security Fund to secure Wyeth's deposit obligations to fund payment of Seventh Amendment Matrix Compensation Benefits pursuant to Section IX.
2. The security required by this Section VI and the lien of the Supplemental Class Settlement Fund and/or the Trust shall terminate entirely on June 30, 2012, and any amounts remaining in the Seventh Amendment Security Fund for this purpose at that time shall be returned to Wyeth.

**VII. BENEFITS FOR CATEGORY ONE CLASS MEMBERS.**

**A. *Benefits Subject to Medical Review.*** Subject to all provisions of this Seventh Amendment, Category One Class Members shall be eligible to receive Benefits Subject to Medical Review as follows:

1. Each Category One Class Member shall receive monetary benefits from the Supplemental Class Settlement Fund in accordance with the medical condition of the Diet Drug Recipient whose medical condition forms the basis of the claim as determined by the Medical Review process specified in Section XV.
2. For purposes of determining what portion of the Supplemental Class Settlement Fund is payable to Category One Class Members who are entitled to payment of Benefits Subject to Medical Review, a "Relative Payment Grid" is established as follows:

A G E  A T  F I R S T  D I A G N O S I S	≥ 61 Days of Diet Drug Use		≤ 60 Days of Diet Drug Use	
	High Threshold Grid Level Alpha (α)	Low Threshold Grid Level Beta (β)	High Threshold Grid Level Delta (Δ)	Low Threshold Grid Level Epsilon (ε)
≤24	100.00	33.54	20.00	6.71
25-29	95.00	31.87	19.00	6.37
30-34	90.25	30.27	18.05	6.05
35-39	85.74	28.76	17.15	5.75
40-44	81.45	27.32	16.29	5.46
45-49	77.38	25.95	15.48	5.19
50-54	73.51	24.66	14.70	4.93
55-59	69.83	23.42	13.97	4.68
60-64	66.34	22.25	13.27	4.45
65-69	59.71	20.03	11.94	4.01
70-79	29.85	10.01	5.97	2.00

3. This Relative Payment Grid describes the relative value of the claims of Category One Class Members based on the level of severity of the Diet Drug Recipient's medical condition, whether the Diet Drug Recipient used Diet Drugs for 61 days or more, and the Age at First Diagnosis of the Diet Drug Recipient for each "Relative Payment Grid Level."

4. The Relative Payment Grid Levels, the medical conditions, and the period of Diet Drug use that determine which Relative Payment Grid Level is applicable to a Category One Class Member are as follows:
  - a. Relative Payment Grid Level “Alpha” ( $\alpha$ ) is the Level applicable to each Category One Class Member whose claim is based on the ingestion of Diet Drugs by a Diet Drug Recipient:
    - (1) Who ingested Diet Drugs for 61 days or more;
    - (2) Whose Relevant Echocardiogram (or other qualifying medical procedure) demonstrates one or more High Threshold Conditions; and
    - (3) Whose claim is not subject to any Alternative Causation Factor.
  - b. Relative Payment Grid Level “Beta” ( $\beta$ ) is the Level applicable to each Category One Class Member whose claim is based on the ingestion of Diet Drugs by a Diet Drug Recipient:
    - (1) Who ingested Diet Drugs for 61 days or more;
    - (2) Whose Relevant Echocardiogram (or other qualifying medical procedure) demonstrates one or more Low Threshold Conditions; and
    - (3) Whose claim is not subject to any Alternative Causation Factor.
  - c. Relative Payment Grid Level “Delta” ( $\Delta$ ) is the Level applicable to each Category One Class Member whose claim is based on the ingestion of Diet Drugs by a Diet Drug Recipient:

- (1) Who ingested Diet Drugs for fewer than 61 days and/or whose claim is subject to one or more Alternative Causation Factors; and
  - (2) Whose Relevant Echocardiogram (or other qualifying medical procedure) demonstrates one or more High Threshold Conditions.
- d. Relative Payment Grid Level “Epsilon” (€) is the Level applicable to each Category One Class Member whose claim is based on the ingestion of Diet Drugs by a Diet Drug Recipient:
- (1) Who ingested Diet Drugs for fewer than 61 days and/or whose claim is subject to one or more Alternative Causation Factors; and
  - (2) Whose Relevant Echocardiogram (or other qualifying medical procedure) demonstrates one or more Low Threshold Conditions.
5. Based upon the Medical Review process, the Fund Administrator shall determine the Relative Payment Grid Level and Age at First Diagnosis for each Category One Class Member who has been found eligible to receive Benefits Subject to Medical Review, and shall fix the Relative Payment Value for each such Class Member at the amount specified by the Relative Payment Grid in the cell formed by the intersection between the Relative Payment Grid Level and Age at First Diagnosis as determined for each such Class Member, as further defined in Sections VII.A.2-4.
6. Where the medical condition of a Diet Drug Recipient, as determined in the Medical Review process, satisfies the criteria for more than one Grid Level, then the Relative Payment Value for claims arising from the medical condition of that Diet Drug Recipient shall be the single highest value on the Relative

Payment Grid for which the Class Member qualifies and shall exclude all lower values for which the Class Member qualifies on the Relative Payment Grid.

7. Each Category One Class Member who is a Diet Drug Recipient (or Representative Claimant) and who is eligible to receive Benefits Subject to Medical Review shall receive from the Supplemental Class Settlement Fund an amount of money - the "Individual Payment Amount" - determined by applying to the Net Supplemental Class Settlement Fund Amount (as defined in this Section) a fraction, the numerator of which is the Relative Payment Value determined for that Class Member and the denominator of which is the total of all Relative Payment Values for all Category One Class Members whom the Fund Administrator has determined are entitled to receive Benefits Subject to Medical Review and Category One Class Members who progress during the pendency of the Seventh Amendment pursuant to Section III.C. Payment of each Individual Payment Amount shall be subject to the provisions of Section XV, including the provisions for deductions for payments of counsel fees, common benefit fees, reimbursements of out-of-pocket expenses advanced by counsel, subrogation claims, payments to Derivative Claimants and the like. For purposes of this Section, the "Net Supplemental Class Settlement Fund Amount" is \$1,275,000,000, plus any interest accrued on the Supplemental Class Settlement Fund, and less the following amounts:
  - a. The costs and expenses reasonably incurred by the Fund Administrator to administer the benefits provided for in this Seventh Amendment, including the payment of any applicable taxes and an appropriate reserve for any potential uninsured or underinsured liabilities, as well as for costs and expenses that the Fund Administrator reasonably expects to incur after the date on which the Net Supplemental Class Settlement Fund Amount is finally determined; and

- b. All amounts that have been paid and/or reserved for payment of Minimum Payment Amounts (as defined in Section VII.B) and all amounts that have been paid and/or reserved for payment under Section III.C.2 and 3; and
  - c. The Category Two Election Amount.
8. In connection with the filing of any Authorization Application that is based in whole or in part on the computation of the Net Supplemental Class Settlement Fund Amount, Wyeth shall have an opportunity to be heard before the Court concerning any matter related to the computation of that amount.

**B. *Minimum Payment Amount.***

- 1. The Fund Administrator shall pay from the Supplemental Class Settlement Fund the sum of \$2,000 as the “Minimum Payment Amount” to any Category One Class Member (other than a Derivative Claimant) who has furnished to the Fund Administrator proof of Diet Drug use in accordance with section VI.C.2.d of the Settlement Agreement, but who is found by the Fund Administrator to be ineligible to receive Benefits Subject to Medical Review as a result of the Medical Review process, a failure timely to submit or complete a claim, or otherwise. Category One Class Members who receive the Minimum Payment Amount shall not be entitled to any other payment from the Supplemental Class Settlement Fund. Derivative Claimants shall not be entitled to a Minimum Payment Amount or any portion of a Minimum Payment Amount.
- 2. When transmitting a Minimum Payment Amount to a Category One Class Member, the Fund Administrator shall notify the Category One Class Member, using the form of notice attached as Exhibit “D” to this Seventh Amendment, that the endorsement of the payment instrument constitutes agreement

to the release, subrogation and other provisions of this Seventh Amendment, and the Fund Administrator shall place a legend on each payment instrument advising that endorsement constitutes agreement to such terms, as follows: "Endorsement of this check confirms the release of claims and covenant not to sue in accordance with the Seventh Amendment to the Settlement Agreement."

**C. *Category Two Election by a Category One Class Member.***

1. A Diet Drug Recipient (or Representative Claimant) who is identified on the Initial Category One Class List or who otherwise qualified for inclusion on such list as of the Execution Date and who elects, at any time before a date which is 120 days after the end of the Seventh Amendment Opt-Out/Objection Period, to withdraw the Matrix Claim that placed the Class Member in Category One, shall receive benefits as a Category Two Class Member.
2. This election is to be made by completing, executing, and delivering to the Fund Administrator the Category Two Election Form appended as Exhibit "E" to this Seventh Amendment.
3. Within 30 days after Trial Court Approval of the Seventh Amendment, the Fund Administrator shall provide to Wyeth and the Trust a written certification identifying each Diet Drug Recipient (or Representative Claimant) who is a Category One Class Member and who has executed a Category Two Election Form ("Category Two Election Certification").
4. Within 30 days after Final Judicial Approval of the Seventh Amendment, Wyeth shall pay the Trust, for deposit into the Settlement Fund, an amount equal to \$2,000 multiplied by the number of Diet Drug Recipients (or Representative Claimants) identified on the Category Two Election Certification. The payment of that amount by Wyeth to the Trust shall not operate

to reduce or otherwise be credited in reduction of the Maximum Available Fund B Amount.

5. Within 30 days after receiving the deposit of the payment referenced in Section VII.C.4, the Trust shall pay to each Diet Drug Recipient (or Representative Claimant) identified in the Category Two Election Certification the sum of \$2,000 as a "Matrix Election Payment." Class Members who receive the Matrix Election Payment shall not receive a Category Two Payment. Derivative Claimants shall not be entitled to a Matrix Election Payment or any portion of a Matrix Election Payment.
6. When transmitting a Matrix Election Payment (defined in Section VII.C.5) to a Category One Class Member, the Trust shall notify the Category One Class Member, using the form of notice attached as Exhibit "D" to this Seventh Amendment, that the endorsement of the payment instrument constitutes agreement to the release, subrogation and other provisions of this Seventh Amendment, and the Trust shall place a legend on each payment instrument advising that endorsement constitutes agreement to such terms, as follows: "Endorsement of this check confirms the release of claims and covenant not to sue in accordance with the Seventh Amendment to the Settlement Agreement."
7. Wyeth shall receive a credit against its payment obligations to the Supplemental Class Settlement Fund under Section V.A in an amount equal to the Category Two Election Amount.

**D. *Timing and Condition of Payments.*** No payments may be paid by the Supplemental Class Settlement Fund to Category One Class Members until after Final Judicial Approval of the Seventh Amendment. After Final Judicial Approval of the Seventh Amendment, no payments other than the Minimum Payment Amount may be made by the Supplemental Class Settlement Fund to Category One Class Members unless the Fund Administrator has received from the Category One Class Member a properly executed Release and Covenant Not to Sue in the form attached as Exhibit "F."

## VIII. BENEFITS FOR CATEGORY TWO CLASS MEMBERS.

### A. *Category Two Payment.*

1. Each Diet Drug Recipient (or Representative Claimant) who is a Category Two Class Member shall be entitled to receive a "Category Two Payment" of \$2,000 from the Trust upon submission to the Trust of: (i) proof of Diet Drug use in accordance with section VI.C.2.d of the Settlement Agreement; and (ii) a properly completed Gray Form or Green Form (including a copy of the Tape or Disk of the Echocardiogram on which the claim is based) demonstrating that such Diet Drug Recipient was diagnosed by a Qualified Physician as FDA Positive or as having Mild Mitral Regurgitation by an Echocardiogram performed after the commencement of Diet Drug use and before the end of the Screening Period. Derivative Claimants shall not be entitled to a Category Two Payment or any portion of a Category Two Payment.
2. The Category Two Payment amount shall be in addition to the Cash/Medical Services Benefit, if any, to which the Diet Drug Recipient (or Representative Claimant) may be entitled or may have received.

### B. *Administration of Category Two Payments.*

1. Within 30 days after Final Judicial Approval of the Seventh Amendment, Wyeth shall furnish to the Trust, Class Counsel, and the SALC a list that identifies, by the unique Trust-assigned identification number ("DDR Number") and by claimant name, all the Class Members who appear to be Category Two Class Members as of the date of the list and who appear to qualify for the Category Two Payment (the "Category Two Payment List"), based upon Wyeth's review of the most recent version of the database that the Trust has made available to the Parties, and the underlying documents and other relevant information. Within ten days after its receipt of the Category

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Two Payment List, the Trust shall redact the names but not the DDR Numbers of Class Members from the list and shall post the list, without claimant names, on the Trust's website, in a manner that can be read and printed.

2. No later than 60 days after Final Judicial Approval of the Seventh Amendment, the Trust shall pay a Category Two Payment to each Category Two Class Member identified on the Category Two Payment List.
3. No later than 60 days after Final Judicial Approval of the Settlement Agreement, the Trust shall transmit a notice to every potential Category Two Class Member whose name does not appear on the Category Two Payment List, which informs such Class Members that if they are not on the list and believe they are eligible to receive a Category Two Payment from the Trust, they will not receive the Category Two Payment unless such Class Member submits or has submitted to the Trust no later than seven months after the date of Final Judicial Approval of the Seventh Amendment, all of the following:
  - a. An Echocardiogram Tape or Disk for the relevant Diet Drug Recipient, conducted after Diet Drug use and by the end of the Screening Period, and in compliance with the Settlement Agreement, showing FDA Positive regurgitation or Mild Mitral Regurgitation;
  - b. A properly completed and signed Green Form or Gray Form documenting a diagnosis of FDA Positive regurgitation or Mild Mitral Regurgitation based upon such Echocardiogram; and
  - c. Proof of Diet Drug use in accordance with section VI.C.2.d of the Settlement Agreement.

This notice shall also advise Category Two Class Members that if they have already furnished such information to the Trust,

they should either furnish another copy of the information to the Trust or inform the Trust, in writing, that the information has been provided previously.

4. Within 60 days after receiving a submission or other information from a Category Two Class Member in response to any notice sent under Section VIII.B.3, the Trust shall: (i) determine the completeness of the claim and eligibility for the Category Two Payment; (ii) resolve any claims by Class Members that they have previously furnished materials described in Section VIII.B.3; and (iii) pay the Category Two Payment to each Category Two Class Member determined to be eligible for such payment.
5. If a Diet Drug Recipient fails timely to comply with the notice from the Trust sent under Section VIII.B.3, the Trust shall have no further obligation to process the Diet Drug Recipient's claim for a Category Two Payment, and that Diet Drug Recipient's claim for this benefit shall be extinguished.
6. After Final Judicial Approval of the Seventh Amendment, the Trust shall include in its Settlement Fund Quarterly Notices (or such other notices as agreed upon by the Parties pursuant to section III.C.4.e of the Settlement Agreement) funds sufficient to make Category Two Payments to all Category Two Class Members determined by the Trust to be entitled to such payments by such time. Wyeth shall include such amounts in its Fund B Deposit in response to such Notice. Amounts deposited by Wyeth into the Settlement Fund for this purpose shall not reduce the Maximum Available Fund B Amount.

**C. *Timing of Category Two Payments.*** No Category Two Payments may be paid to Category Two Class Members until after Final Judicial Approval of the Seventh Amendment.

**D. *Condition of Category Two Payments.*** When transmitting a Category Two Payment to a Category Two Class Member, the Trust shall notify

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the Category Two Class Member, using the form of notice attached as Exhibit “D” to this Seventh Amendment, that the endorsement of the payment instrument constitutes agreement to the release, subrogation and other provisions of this Seventh Amendment, and the Trust shall place a legend on each payment instrument advising that endorsement constitutes agreement to such terms, as follows: “Endorsement of this check confirms the release of claims and covenant not to sue in accordance with the Seventh Amendment to the Settlement Agreement.”

**IX. BENEFITS FOR CATEGORY ONE CLASS MEMBERS AND CATEGORY TWO CLASS MEMBERS.**

**A. *Seventh Amendment Matrix Compensation Benefits.*** Each Category One Class Member and each Category Two Class Member shall be entitled to receive from the Trust payment of Seventh Amendment Matrix Compensation Benefits, if the Class Member qualifies as follows:

1. Seventh Amendment Matrix Compensation Benefits shall be payable to a Category One Class Member or a Category Two Class Member if, but only if, the Trust determines after Audit of the claim and in accordance with standards and procedures then in effect under the Settlement Agreement and all applicable Court orders that:
  - a. The Diet Drug Recipient whose condition forms the basis for the claim has or had High Matrix Level Qualifying Factors that were diagnosed and occurred by the earlier of: (i) December 31, 2011; or (ii) 15 years after the date of the Diet Drug Recipient's last ingestion of Diet Drugs (as established by the proof of Diet Drug use submitted to the Trust in accordance with section VI.C.2.d of the Settlement Agreement); and
  - b. The Class Member making the claim (i) has submitted a properly completed Green Form and other documentation and materials necessary to support a claim for Seventh Amendment Matrix Compensation Benefits; (ii) qualifies for the payment of benefits on Matrix Levels III, IV or V under the terms of the Settlement Agreement as it existed before the Execution Date; and (iii) qualifies as having the High Matrix Level Qualifying Factors on the same Matrix Level for which the Class Member qualifies for benefits under the Settlement Agreement as it existed before the Execution Date.

2. For each Category One Class Member or Category Two Class Member found to be eligible for Seventh Amendment Matrix Compensation Benefits, the Trust shall calculate as a Net Matrix Amount a sum equal to the gross amount payable to the Diet Drug Recipient or Representative Claimant and their associated Derivative Claimants, if any, on the applicable Matrix under section IV.B.2 of the Settlement Agreement, less Individual Payment Amounts, Minimum Payment Amounts, Matrix Election Payments and/or Category Two Payments paid or payable to the Class Member under the Seventh Amendment. The Trust shall distribute the Net Matrix Amount in accordance with the provisions of section VI.C.4.g of the Settlement Agreement and Section XV.W.
3. No Category One Class Member or Category Two Class Member shall be eligible for or shall receive Seventh Amendment Matrix Compensation Benefits for any conditions that were diagnosed or occurred after the earlier of: (i) December 31, 2011; or (ii) 15 years after the date of the Diet Drug Recipient's last ingestion of Diet Drugs (as established by the proof of Diet Drug use submitted to the Trust in accordance with section VI.C.2.d of the Settlement Agreement).
4. Where the validity of a Class Member's Green Form (as distinguished from the underlying echocardiographic or medical evidence) is contested, the Class Member may submit a substitute Green Form attested to by a different Attesting Physician, under such reasonable conditions as the Trust shall prescribe, based on an Echocardiogram that otherwise complies with the requirements of the Settlement Agreement, as modified by the Seventh Amendment.

**B. *Funding for Seventh Amendment Matrix Compensation Benefits, Effect on MAFBA, and Guarantee by Wyeth.***

1. The Trust shall include in its Settlement Fund Quarterly Notices (or such other notices as agreed upon by the Parties pursuant to section III.C.4.e of the Settlement Agreement) the amounts that it is required to pay as Seventh Amendment Matrix Compensation Benefits to Category One Class Members and Category Two Class Members pursuant to Section IX.A, as well as the reasonable costs of administering claims for such benefits, and Wyeth shall include such amounts in the Fund B Deposits that it is required to make under the terms of the Settlement Agreement.
  
2. Amounts included in Fund B Deposits into the Settlement Fund by Wyeth for payment of Seventh Amendment Matrix Compensation Benefits to Category One Class Members or Category Two Class Members, or for the reasonable costs of administration of such benefits, shall reduce the Maximum Available Fund B Amount under section I.1 of the Settlement Agreement. Notwithstanding the foregoing, if at any time the Maximum Available Fund B Amount has been reduced to \$255,000,000, Wyeth shall continue to deposit funds into the Settlement Fund to pay Seventh Amendment Matrix Compensation Benefits to eligible Category One Class Members and Category Two Class Members, and for the reasonable costs of administration of such benefits, in accordance with this Seventh Amendment, regardless of the Maximum Available Fund B Amount at such time, and such deposits shall not reduce the Maximum Available Fund B Amount.

**C. Funding of Supplemental Claims When MAFBA Reaches \$255,000,000.**

1. At any time that the Maximum Available Fund B Amount is \$255,000,000 or less, the Trust shall pay Matrix Compensation Benefits only with respect to claims for Seventh Amendment Matrix Compensation Benefits (to be funded in accordance with Section IX.B.2) and Supplemental Claims (to be funded in accordance with this Section).
2. Deposits by Wyeth into the Settlement Fund for purposes of paying Matrix Compensation Benefits on Supplemental Claims and the reasonable costs of administering such benefits, shall reduce the Maximum Available Fund B Amount under section I.1 of the Settlement Agreement, regardless of whether the Maximum Available Fund B Amount is \$255,000,000 or less.

**D. Eligibility List.** The Fund Administrator shall create and maintain an “Eligibility List” containing the names and DDR Numbers of all Class Members who are entitled to receive or have received Benefits Subject to Medical Review and Minimum Payment Amounts pursuant to the terms of this Seventh Amendment, and the amount of the benefits paid or expected to be paid by the Fund Administrator to each such person, and shall assure that the Eligibility List is current and accurate and that the Trust has access to the list on an ongoing basis.

**E. No Preclusion.** The Trust, in computing the amount to be paid to a Category One Class Member or Category Two Class Member in relation to a claim for Seventh Amendment Matrix Compensation Benefits, is required to deduct amounts paid to such Class Members as Benefits Subject to Medical Review, Minimum Payment Amounts, Matrix Election Payments or Category Two Payments. Otherwise, the determinations and actions of the Fund Administrator on any aspect of the claim of a Category One Class Member shall have no preclusive or precedential effect of any kind on the Trust in the administration of claims for Matrix Compensation Benefits of Class Members who have exercised Seventh Amendment Opt-Outs or of claims for Seventh Amendment Matrix Compensation Benefits. The determinations and actions of the Trust on any

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aspect of a claim for Cash/Medical Services Benefits of a Category One Class Member or Category Two Class Member, or on any claim for the Matrix Election Payment, or on any claim of a Category Two Class Member for the Category Two Payment, shall have no preclusive or precedential effect of any kind on the Trust in the administration of claims for Matrix Compensation Benefits of Class Members who have exercised Seventh Amendment Opt-Outs or of claims for Seventh Amendment Matrix Compensation Benefits.

**X. EFFECT OF THE SEVENTH AMENDMENT ON CASH/MEDICAL SERVICES BENEFITS OF CATEGORY ONE CLASS MEMBERS AND CATEGORY TWO CLASS MEMBERS.**

**A. *Category One Class Members.*** If not paid by the Trust on or before Final Judicial Approval of the Seventh Amendment, the payment of the Cash/Medical Services Benefit to Category One Class Members, if otherwise eligible under the Settlement Agreement, is subject to the following:

1. Category One Class Members found eligible for Benefits Subject to Medical Review: A Diet Drug Recipient who is a Category One Class Member and whom the Fund Administrator has determined, after the Medical Review process, to be entitled to receive Benefits Subject to Medical Review from the Supplemental Class Settlement Fund, shall not receive the Cash/Medical Services Benefit from the Trust.
  
2. Category One Class Members found after the Medical Review process not eligible for Benefits Subject to Medical Review: Where the Fund Administrator has determined, as a result of the Medical Review process, that a Diet Drug Recipient who is a Category One Class Member (i) does not qualify to receive Benefits Subject to Medical Review, but (ii) the Relevant Echocardiogram for such Diet Drug Recipient demonstrates FDA Positive regurgitation before the end of the Screening Period, such a Category One Class Member shall be entitled to receive the Cash/Medical Services Benefit from the Trust. The Fund Administrator shall certify to the Trust in writing every 30 days the identity of such Category One Class Members who are not qualified to receive Benefits Subject to Medical Review but who have a Relevant Echocardiogram that demonstrates FDA Positive regurgitation before the end of the Screening Period. Within 30 days after receiving such certification, the Trust shall pay the Cash/Medical Services Benefit to each such Category One Class Member, based upon the proof of Diet Drug use submitted by such Category One Class Member to the

Trust in accordance with section VI.C.2.d of the Settlement Agreement, and without further Medical Review or Audit of the claim by the Trust. A Category One Class Member as to whom the Fund Administrator has determined as a result of the Medical Review process that the Relevant Echocardiogram does not show FDA Positive regurgitation before the end of the Screening Period, shall not receive the Cash/Medical Services Benefit, and the Trust shall not process or pay the Cash/Medical Services Benefit for any such Category One Class Member.

**B. *Category Two Election by Category One Class Member.*** If otherwise eligible under the Settlement Agreement, a Diet Drug Recipient who is a Category One Class Member and who makes a Category Two Election shall be eligible as follows to receive Cash/Medical Services Benefits from the Trust if such Diet Drug Recipient has not previously been paid such Cash/Medical Services Benefits by the Trust. The Fund Administrator shall certify in writing, every 30 days to the Trust, the Diet Drug Recipients in Category One who make a Category Two Election. Within 60 days after Final Judicial Approval of the Seventh Amendment, the Trust shall determine the eligibility of such Class Members for the Cash/Medical Services Benefit based upon proof of Diet Drug use in accordance with section VI.C.2.d of the Settlement Agreement and a properly completed Gray Form or Green Form (including submission of an Echocardiogram Tape or Disk) demonstrating that such Class Members have FDA Positive regurgitation before the end of the Screening Period, without further Medical Review or Audit of the claim by the Trust, and either pay the Cash/Medical Services Benefit to the Class Member or inform the Class Member that the Class Member is not eligible for Cash/Medical Services Benefits.

**C. *Category Two Class Members.*** If otherwise eligible under the Settlement Agreement, a Diet Drug Recipient who is a Category Two Class Member shall be eligible as follows to receive Cash/Medical Services Benefits from the Trust if such Diet Drug Recipient has not previously been paid such Cash/Medical Services Benefits by the Trust. The Trust shall, subject to the Audit provisions of section VI.F.2 of the Settlement Agreement, determine the eligibility of such Class Members for the Cash/Medical Services Benefit based upon proof of

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Diet Drug use in accordance with section VI.C.2.d of the Settlement Agreement and a properly completed Gray Form or Green Form (including submission of an Echocardiogram Tape or Disk) demonstrating that such Class Members have FDA Positive regurgitation before the end of the Screening Period, and either pay the Cash/Medical Services Benefit to the Class Member or inform the Class Member that the Class Member is not eligible for Cash/Medical Services Benefits.

**D. *Category One Class Members and Category Two Class Members Who Do Not Qualify for Cash/Medical Services Benefits.*** Category One Class Members and Category Two Class Members who do not qualify to receive the Cash/Medical Services Benefit under Sections X.A.2, X.B, and X.C, are not eligible to receive the Cash/Medical Services Benefits.

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**XI. OTHER EFFECTS OF THE SEVENTH AMENDMENT.**

**A. *Termination of Opt-Out Rights.*** Upon Final Judicial Approval of the Seventh Amendment, any rights that any Category One Class Members and/or Category Two Class Members (who have not timely and properly opted-out of the Seventh Amendment) may have had to exercise a right of: (i) Intermediate Opt-Out under section IV.D.3 of the Settlement Agreement; (ii) Back-End Opt-Out under section IV.D.4 of the Settlement Agreement; (iii) Sixth Amendment Opt-Out under section IV.D.5 of the Settlement Agreement; and/or (iv) Financial Insecurity Opt-Out under section III.E.9 of the Settlement Agreement, and to pursue any opt-out claims against Wyeth and/or any Released Party in litigation or in any manner, are terminated, relinquished, permanently barred, and forever discharged.

**B. *Matrix Compensation Benefits Under the Seventh Amendment.*** Upon Final Judicial Approval of the Seventh Amendment, any rights of Category One Class Members and Category Two Class Members (who have not timely and properly opted-out of the Seventh Amendment) relating to Matrix Compensation Benefits under, or otherwise arising from, section IV.B of the Settlement Agreement as it existed prior to Final Judicial Approval of the Seventh Amendment, are terminated, relinquished, permanently barred, and forever discharged, except as specifically provided in this Seventh Amendment. Upon Final Judicial Approval of the Seventh Amendment, no Class Member may pursue or receive Matrix Compensation Benefits on Matrix Level I or Matrix Level II from the Trust unless such Class Member: (i) received Matrix Compensation Benefits on Matrix Level I before the Execution Date and is pursuing a Supplemental Claim for progression to Matrix Level II; or (ii) has timely and properly exercised a Seventh Amendment Opt-Out (that has not been revoked). Upon Final Judicial Approval of the Seventh Amendment, no Category One Class Member or Category Two Class Member (except a Class Member who has timely and properly exercised a Seventh Amendment Opt-Out) may pursue or receive Matrix Compensation Benefits at Matrix Levels III, IV or V, except as provided in Section IX.A. Receipt of an Individual Payment Amount (or any Interim Distribution) and/or of Seventh Amendment Matrix Compensation Benefits shall constitute receiving “settlement benefits from Fund B” for purposes of claims based on PPH in section I.53 of the Settlement Agreement.

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**C. *Release and Covenant Not to Sue.***

1. Upon Final Judicial Approval of the Seventh Amendment, the following claims of each Releasing Party are hereby released and forever discharged: all Settled Claims against any Released Party; all claims against any Released Party arising from any acts or omissions of the Trust, its officers, agents, employees, attorneys and all other persons acting or purporting to act on the Trust's behalf; and all claims arising out of Wyeth's role in drafting, negotiating, obtaining approval of, or the administration of the Settlement Agreement. Further, each Releasing Party shall be deemed to have reaffirmed each and every release previously provided for the benefit of each and every Released Party from each and every Settled Claim, notwithstanding any event, act, transaction or thing from the beginning of the world until the Execution Date, including, without limitation, the manner in which the Settlement Agreement was negotiated, the alleged inadequacy of representation provided to Class Members in connection with the negotiation of the Settlement Agreement, the alleged inadequacy of notice provided to the Class in connection with the Settlement Agreement, the process by which the Settlement Agreement was approved, the payment of claims to Class Members not qualified to receive benefits under the Settlement Agreement, and any alleged inadequacy of funds available to the Trust to pay all claims for Matrix Compensation Benefits. This Release and Covenant Not to Sue is solely for the benefit of the Released Parties.
  
2. Upon Final Judicial Approval of the Seventh Amendment, each Releasing Party shall not initiate, assert, maintain or prosecute any legal action against any Trustee, officer or employee of the Trust arising from the performance of their duties under the Settlement Agreement, as to which the Trustee and/or Trust officer or employee may have a right of indemnity from the

Settlement Fund or against the Trust with respect to any such claims; provided, however, that nothing contained herein shall preclude any Releasing Party from recovering benefits due under the Settlement Agreement as amended by the Seventh Amendment.

3. Upon Final Judicial Approval of the Seventh Amendment, each Releasing Party shall not initiate, assert, maintain or prosecute any claim released by the foregoing clauses, seek to enforce any such right or claim, including by action, motion, appeal or any other manner, or attempt to establish a right not to be bound by the Settlement Agreement. Each Releasing Party waives and relinquishes any right under any applicable law not to be bound by the Settlement Agreement, which might be established on behalf of Class Members by action taken by any other person.
4. Nothing in Section XI.C shall be interpreted as depriving any Category One Class Member or Category Two Class Member of the right to assert and/or enforce by appropriate legal action rights expressly provided to that Class Member by the Settlement Agreement, as amended by this Seventh Amendment.
5. The releases and covenants contained in this Section XI.C shall become effective when the Seventh Amendment becomes effective, without any further action by the Releasing Party, notwithstanding the delivery of, or failure to deliver, the confirming individual Class Member releases and covenants not to sue, or the failure of a Class Member to negotiate or endorse the payment instrument on any payment under this Seventh Amendment.

**D. Credits.** Upon Final Judicial Approval of the Seventh Amendment, Wyeth shall not be entitled to any Credits against the Maximum Available Fund B Amount under sections VI.D and VII.A of the Settlement Agreement, and those

sections of the Settlement Agreement shall be completely void, inoperative, and of no force and effect.

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**XII. SEVENTH AMENDMENT OPT-OUT.**

**A. *Seventh Amendment Opt-Out.*** Any Diet Drug Recipient (or Representative Claimant) who is a Category One Class Member or Category Two Class Member may elect not to be subject to the Seventh Amendment by exercising an opt-out from the Seventh Amendment (“Seventh Amendment Opt-Out”) and thereby remain subject to the terms of the Settlement Agreement as they existed before the Execution Date. Persons who exercise a Seventh Amendment Opt-Out shall remain members of the Class, and the effect of such an election shall be only as set forth in Section XII.C.

**B. *Method of Exercise.*** To exercise a Seventh Amendment Opt-Out, a Diet Drug Recipient (or Representative Claimant) in Category One or Category Two must notify Wyeth of the intention to do so in a notice postmarked or delivered to Wyeth (c/o BrownGreer PLC, P.O. Box 85006, Richmond, VA 23285-5006) no later than the last day of the Seventh Amendment Opt-Out/Objection Period. To be effective, such notice must (i) clearly identify the name of the Class Member exercising the Seventh Amendment Opt-Out right, the Class Member’s address, DDR Number and Social Security number, and the attorney for such Class Member, if any; (ii) unequivocally state the Class Member’s intention to opt-out of the Seventh Amendment; and (iii) be signed by the Diet Drug Recipient (or Representative Claimant). Class Members may use the form attached as Exhibit “G,” which shall be considered sufficient for this purpose. Within five days after Preliminary Approval of the Seventh Amendment, the Trust shall make the Seventh Amendment Opt-Out Form available on the Trust’s official website in a manner that can be read and printed.

**C. *Effect of Opt-Out.*** Any Class Member who timely and properly exercises a Seventh Amendment Opt-Out shall not be bound by the terms of this Seventh Amendment. Such Class Members remain members of the Class and subject to the terms of the Settlement Agreement as they existed before the Execution Date. Any Category One Class Member or Category Two Class Member who fails timely and properly to exercise a Seventh Amendment Opt-Out shall be bound by all the terms of the Settlement Agreement and of this Seventh Amendment.

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**D. *Derivative Claimants.*** As to all Class Members who have exercised a Seventh Amendment Opt-Out, where there is both a Diet Drug Recipient or a Representative Claimant and one or more Derivative Claimants, the Diet Drug Recipient's or the Representative Claimant's exercise or failure to exercise an opt-out shall be binding on the associated Derivative Claimant(s).

**E. *Revocation of Seventh Amendment Opt-Out.*** At any time prior to the end of the Walkaway Period, a Class Member who has exercised a Seventh Amendment Opt-Out may revoke that opt-out by transmitting written notice of such revocation to Wyeth (c/o BrownGreer PLC, P.O. Box 85006, Richmond, VA 23285-5006). Thereafter, a Class Member who has exercised a Seventh Amendment Opt-Out may request that Wyeth consent to revocation of that opt-out, and Wyeth may grant or deny such request in its sole discretion. For revocations that occur prior to the end of the Walkaway Period, the Class Member shall be considered either a Category One Class Member or a Category Two Class Member, depending upon the Class Member's eligibility. If a revocation occurs after the end of the Walkaway Period, the Class Member shall be considered a Category Two Class Member, if otherwise eligible for inclusion in either Category One or Category Two.

**F. *Seventh Amendment Opt-Out List.***

1. Wyeth shall preserve and retain the Seventh Amendment Opt-Out notices that it receives.
2. No less than once per week during the Seventh Amendment Opt-Out/Objection Period, Wyeth shall furnish the Fund Administrator, Class Counsel, and the SALC with a complete and current list stating the name, DDR Number (if any) and principal attorney for each person who exercised or purported to exercise a Seventh Amendment Opt-Out, which is complete as of 5:00 p.m. of the Friday before the list is furnished.
3. Within 30 days after the end of the Walkaway Period, Wyeth shall prepare a list identifying by name and DDR Number (if any) each Class Member who has timely and properly exercised a Seventh Amendment Opt-Out, and shall furnish an electronic

copy of that list and of the Seventh Amendment Opt-Out notices to the Court and the Trust. The Trust shall be entitled to rely upon that list for purposes of administering the claims of Class Members who have opted out of the Seventh Amendment (“the Seventh Amendment Opt-Out List”).

4. Wyeth periodically shall supplement the Seventh Amendment Opt-Out List with information concerning the identity of Class Members who have properly revoked their Seventh Amendment Opt-Outs and the date on which each such revocation occurred.
5. All disputes concerning whether a Class Member has timely and properly opted out of the Seventh Amendment, including disputes concerning inclusion on or exclusion from the Seventh Amendment Opt-Out List, and including the purported exercise or continued effect of an Intermediate Opt-Out, a Back-End Opt-Out or a Sixth Amendment Opt-Out by a Class Member who did not exercise a Seventh Amendment Opt-Out, shall be decided by the Court or a Special Master appointed by the Court for that purpose.

### **XIII. SEVENTH AMENDMENT WALKAWAY RIGHT.**

**A. *Walkaway Period.*** A “Walkaway Period” is hereby established as the period that ends 60 days after the end of the Seventh Amendment Opt-Out/Objection Period. Upon the agreement of Class Counsel, Wyeth, and the SALC (acting by majority vote), the Court may extend the Walkaway Period.

**B. *Walkaway Right.*** Until the end of the Walkaway Period, Wyeth shall have the option to terminate and withdraw from this Seventh Amendment for any reason in its sole discretion (“Seventh Amendment Walkaway Right”).

**C. *Method of Exercise.*** If Wyeth elects to exercise this Seventh Amendment Walkaway Right, it must do so by written notice of that election to the Court, Class Counsel, and the SALC by 5:00 p.m. ET on the last day of the Walkaway Period. If Wyeth fails to do so, its Walkaway Right shall be terminated, void, and of no further force or effect. For this purpose, the Parties agree that time is of the essence.

**XIV. PROCEDURES TO BECOME ELIGIBLE FOR INCLUSION IN CATEGORY ONE AFTER THE EXECUTION DATE.**

**A. *Initial Category One Class List.*** The “Initial Category One Class List” appended as Exhibit “B” to this Seventh Amendment identifies by DDR Number all of the Class Members who appear to be Category One Class Members as of the Execution Date, as determined by the Parties based on a review of the most recent version of the database that the Trust has made available to the Parties. A copy of the Initial Category One Class List identifying the names and addresses corresponding to the DDR Numbers on Exhibit “B” and identifying the name and address of the principal attorney for each such person, if known, shall be delivered to and maintained by the Fund Administrator subject to the confidentiality provisions of PTO No. 2683, as modified pursuant to Section XVII.A.13. The Fund Administrator shall treat each person identified on the Initial Category One Class List as a Category One Class Member.

**B. *Class Members who Previously Exercised Initial, Intermediate, or Back-End Opt-Outs.***

1. Each Class Member who exercised an Initial, Intermediate, or Back-End Opt-Out, but who satisfied the criteria for inclusion in Category One as of May 6, 2004 (as further described in Section III.A.1) is deemed to have effectively revoked any prior opt-out and to be a member of Category One unless such person exercises a Seventh Amendment Opt-Out pursuant to Section XII.
2. Each Class Member who opted out of the Settlement as an Initial, Intermediate, or Back-End Opt-Out, but who did not satisfy each and every one of the criteria for inclusion in Category One as of May 6, 2004 (as further described in Section III.A.1) is ineligible for inclusion in Category One even if such Class Member effectively revokes the Class Member’s opt-out and/or even if such Class Member purports to comply with Section XIV.C. Such a Class Member may be a

Category Two Class Member if the Class Member otherwise meets the criteria for inclusion in Category Two.

**C. *Inclusion in Category One After the Execution Date.***

1. Within ten days after the date of Preliminary Approval of the Seventh Amendment, the Trust shall post the Initial Category One Class List on the official Settlement website in a manner that permits the list to be read and printed for use by Class Members and shall maintain the list on the website until Final Judicial Approval of the Seventh Amendment.
2. Each Class Member to whom Notice of the Seventh Amendment is mailed has the duty to determine whether the Class Member is a Category One Class Member or a Category Two Class Member.
3. Subject to the express limitations set forth in Sections III.A.1.b and XIV.B (with respect to Class Members who previously exercised an Initial, Intermediate or Back-End Opt-Out), a Class Member who is not listed on the Initial Category One Class List or otherwise is not within the definition of Category One as of the Execution Date may become a Category One Class Member and eligible for Category One Benefits under this Seventh Amendment, if the Class Member:
  - a. Signed a Pink Form, a Blue Form, and/or Part I of a Green Form, and submitted it to the Trust on or before May 3, 2003, and/or had a substantially completed Green Form Part II signed by an Attesting Physician and submitted on his or her behalf to the Trust on or before May 3, 2003;
  - b. Is a Diet Drug Recipient or the Representative Claimant of a Diet Drug Recipient who had an Echocardiogram after Diet Drug use and before the end of the Screening

Period that demonstrated Mild Mitral Regurgitation or FDA Positive valvular regurgitation, and had an Echocardiogram that demonstrates a Matrix Level I or Matrix Level II condition;

- c. Has not timely and properly exercised a Seventh Amendment Opt-Out (that has not been revoked); and
  - d. Satisfies the requirements of Section XIV.C.4.
4. Class Members who satisfy all of the criteria of Section XIV.C.3 and Section III.A.1 except for the criteria of Section III.A.1.b, shall be included as Category One Class Members and eligible to receive Category One Benefits if they submit the following documents to Wyeth, with copies to the Fund Administrator, by the end of the Seventh Amendment Opt-Out/Objection Period:
- a. Proof of Diet Drug use in accordance with section VI.C.2.d of the Settlement Agreement or Section XV.B.1; and
  - b. A Green Form in which: (i) Part I has been signed by the Class Member; (ii) Part II has been signed by a Board-Certified Cardiologist with Level 2 or greater training in echocardiography; and (iii) and the unaudited answers in Part II contain sufficient information on medical conditions to support a claim on Matrix Level I or Matrix Level II; and
  - c. The Relevant Echocardiogram Tape or Disk.

**D. Amended and Final Category One Class List.** Within 120 days after the end of the Seventh Amendment Opt-Out/Objection Period, Wyeth, the SALC, and the Fund Administrator shall review the submissions made pursuant to the preceding Section, shall determine whether each such person should be included

as an additional Category One Class Member, shall notify all persons who made submissions pursuant to the preceding Section of such determination, and shall include all persons who have been determined to be additional Category One Class Members in an “Amended and Final Category One Class List.” Any Class Member not included in Category One as a result of the process described in this Section XIV shall be considered a Category Two Class Member, if otherwise eligible for inclusion in Category Two.

**E. *Disputes.*** Any disputes between or among a Class Member, Class Counsel, Wyeth, the SALC, and/or the Fund Administrator as to whether a Class Member is or should be treated as a Category One Class Member shall be resolved by the Court or a Special Master designated by the Court for that purpose.

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**XV. ADMINISTRATION OF BENEFIT CLAIMS PAYABLE FROM THE SUPPLEMENTAL CLASS SETTLEMENT FUND.**

**A. General.** The Fund Administrator, in consultation with Class Counsel, the SALC, and the MRCC shall establish rules, forms and procedures for use in administering benefit claims by Category One Class Members under the Seventh Amendment.

**B. Proof Requirements.** At a minimum, the Fund Administrator shall require that within six months after the end of the Walkaway Period:

1. All Category One Class Members who claim benefits under this Seventh Amendment shall provide proof of Diet Drug use in accordance with the proof requirements specified in section VI.C.2.d of the Settlement Agreement, except as follows:
  - a. For Class Members who claim benefits based on fewer than 61 days of Diet Drug use, the Class Member must only furnish proof of Diet Drug use and need not furnish proof of duration of use; and
  - b. For Class Members who claim benefits based on 61 or more days of Diet Drug use, such Class Members need not prove with specificity the exact amount of Diet Drug use by the Diet Drug Recipient whose Diet Drug ingestion forms the basis for the claim, so long as they provide proof satisfactory to the Fund Administrator that such Diet Drug Recipient used Diet Drugs for 61 days or longer.
2. All Category One Class Members who claim Benefits Subject to Medical Review (except Derivative Claimants) shall provide to the Fund Administrator a copy of the Relevant Echocardiogram Tape or Disk, which must comply with the following minimum criteria:

- a. The copy must be of sufficient quality that a competent Cardiologist with Level 2 training in echocardiography can reliably ascertain the presence or absence of each of the factors that is relevant to a determination of the Grid Payment Level applicable to the claim; and
- b. The copy must reflect an echocardiographic study that was conducted and recorded in accordance with the following minimum technical criteria, which are not intended to change the technical requirements set forth in the Settlement Agreement and are intended to adopt the Court's interpretations regarding the assessment and measurement of Mitral Regurgitation under the Settlement Agreement as set forth in PTO No. 2640:
  - (1) The Echocardiogram was conducted in accordance with the requirements of Feigenbaum<sup>2</sup> or Weyman<sup>3</sup>; and
  - (2) With respect to any claim based on Mitral Regurgitation, the study meets the following technical requirements:
    - (a) The regurgitant jet must clearly originate from the mitral valve (*i.e.*, there is no black space or apparent void between the valve and the jet);
    - (b) The regurgitant jet must follow the QRS complex and be sustained during systole so

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<sup>2</sup> Harvey Feigenbaum, ECHOCARDIOGRAPHY, 68-113 (5<sup>th</sup> ed. 1994).

<sup>3</sup> Arthur E. Weyman, PRINCIPLES AND PRACTICE OF ECHOCARDIOGRAPHY, 75-97 (2<sup>nd</sup> ed. 1994).

that it is > than 1/10th of a second, and present for more than 2 frames;

- (c) The regurgitant jet must be seen in multiple beats spreading into the left atrium during systole;
  - (d) The regurgitant jet must be seen as aliasing in multiple beats, evidencing high velocity and turbulence in the jet; and
  - (e) The freeze frame evidence shows an aliasing jet with a corresponding loop in real time.
- (3) Where the Class Member directly submits a copy of an Echocardiogram Tape or Disk to the Fund Administrator to support the claim, the Class Member must provide a statement signed under oath subject to the penalties of perjury that the Echocardiogram Tape or Disk submitted to the Fund Administrator is the Relevant Echocardiogram for the claim, as defined in Section I.B.59.

c. All Category One Class Members who claim Benefits Subject to Medical Review (except Derivative Claimants) shall furnish the Fund Administrator with a statement signed under oath subject to the penalties of perjury:

- (1) Setting forth the date of birth for the Diet Drug Recipient whose medical condition forms the basis for the claim;

- (2) Stating the date on which the Relevant Echocardiogram was performed;
  - (3) Furnishing sufficient medical proof that the Diet Drug Recipient has suffered bacterial endocarditis, where such endocarditis is the basis for the claim; and
  - (4) Stating whether the Class Member has previously received any payment of Matrix Benefits from the Trust, or received a Trust Determination Denying Matrix Benefits.
3. If a Category One Class Member does not have possession of a copy of the Relevant Echocardiogram Tape or Disk or proof of Diet Drug use, the Class Member may request in writing, delivered to the Trust in such a manner as to generate a written return receipt, that the Trust provide a copy of such Tape or Disk and/or proof of Diet Drug use to the Fund Administrator. Each person making such a request shall pay the Trust a service fee to cover the cost of providing such copies in the amount of \$50.00 in the case of a request for copies of documents and in the amount of \$100.00 in the case of a request for copies of the Relevant Echocardiogram Tape or Disk. Within 30 days of receipt of such a request and payment, the Trust shall provide to the Fund Administrator a copy of the requested Tape or Disk, clearly labeled with the applicable Diet Drug Recipient's name and DDR Number (if any) and/or the proof of Diet Drug use originally submitted to the Trust and shall supply written confirmation to the Class Member or the Class Member's attorney that it has done so.

**C. Access to Trust Files.** The Trust shall make its electronic files reflecting images of all documents filed by any Class Member available for unlimited access by Wyeth and the Fund Administrator and, upon written request,

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shall promptly furnish the Fund Administrator with copies of any documents previously submitted by any Category One Class Member to the Trust.

**D. *Access to Trust Database.*** To the extent that its “JTS Database” contains information concerning Category One Class Members and the claims made by them, the Trust shall make that entire database available to Wyeth and the Fund Administrator in a format that will permit the Fund Administrator to import the data into its own information processing system.

**E. *Trust Cooperation.*** The Trust shall fully cooperate with the Fund Administrator and the Parties to assure that the Seventh Amendment may be administered as expeditiously as is reasonably possible.

**F. *Technical Deficiencies.*** If the Fund Administrator finds that there are technical deficiencies by a Class Member in compliance with any of the conditions to the processing or payment of claims under this Seventh Amendment, including deficiencies in the Relevant Echocardiogram Tape or Disk that render it uninterpretable, the Fund Administrator shall notify the Class Member or his/her counsel, if represented, of the technical deficiencies by a notice of deficiency and shall allow the otherwise eligible claimant 60 days from the date of receipt of such notice to correct the deficiencies. This notification shall be in writing and delivered by overnight courier or mail in such a manner as to require written acknowledgment of receipt by the addressee. An Echocardiogram performed after the end of the Screening Period may not be relied upon to correct any such deficiencies. If the deficiencies are not corrected within the 60-day period, the Fund Administrator shall reject the claim with prejudice, after which the Class Member will not be provided any further opportunity to qualify for Benefits Subject to Medical Review, and the Class Member shall not be entitled to receive any payment from the Fund Administrator other than the Minimum Payment Amount, distributed as specified in Section XV.V.

**G. *Proof of Diet Drug Use.*** If a Category One Class Member does not timely submit to the Fund Administrator the proof of Diet Drug use required in Section XV.B.1, then that Class Member shall not be entitled to receive any payment from the Supplemental Class Settlement Fund.

**H. *Echocardiograms.*** If a Category One Class Member does not timely submit or cause the Trust to submit to the Fund Administrator the certifications under oath required in Sections XV.B.2.c and a copy of a Relevant Echocardiogram Tape or Disk that meets the requirements of Section XV.B.2.a and b, then the Class Member shall not be entitled to any Benefits Subject to Medical Review under this Seventh Amendment, and the Class Member shall not be entitled to receive any payment from the Fund Administrator other than the Minimum Payment Amount, distributed as specified in Section XV.V.

**I. *Qualified Cardiology Centers.*** The Fund Administrator, with the assistance of the MRCC, Class Counsel, and the SALC shall establish “Qualified Cardiology Centers” which utilize the services of Cardiologists with Level 2 or greater training in echocardiography (“Participating Physicians”) for purposes of reviewing the Relevant Echocardiograms to determine the existence or non-existence of each of the medical criteria described herein for each Relative Payment Grid Level. The Participating Physicians shall report the results of that review in a report, the form of which shall be prescribed by the Fund Administrator (the “QCC Report”).

**J. *Role of the MRCC.*** The MRCC shall:

1. Assist in recruiting Qualified Cardiology Centers;
2. Develop and implement a protocol to train Participating Physicians as to how to employ accepted principles and practices of Cardiology to review the Relevant Echocardiograms to determine and report on:
  - a. Compliance with the criteria specified in Section XV.B.2; and
  - b. The existence or non-existence of each of the medical criteria described herein for each Relative Payment Grid Level;

3. Assist the Fund Administrator in the development and implementation of quality control procedures to secure, to the extent reasonably possible, uniform application of the medical criteria specified by the Seventh Amendment.

**K. Challenges.** In the absence of actual fraud, Class Members shall have no right to challenge any action taken by the MRCC and the Fund Administrator to establish and implement the Medical Review process.

**L. No Contact with Participating Physicians or the MRCC.** Neither Category One Class Members, their counsel, nor anyone acting on their behalf shall have any communication or contact with any Participating Physician or the MRCC with respect to any of their functions under this Seventh Amendment except that Class Counsel and the SALC, acting jointly, in their official capacities, and without reference to any specific claims that may be subject to Medical Review under this Seventh Amendment, may assist the MRCC in performing those activities specified in Section XV.J. An injunction directing compliance with this subparagraph shall be included in any order granting Preliminary Approval of the Seventh Amendment, Trial Court Approval of the Seventh Amendment and Final Judicial Approval of the Seventh Amendment.

**M. Medical Review.** The Fund Administrator shall submit the Relevant Echocardiogram for Medical Review by a Qualified Cardiology Center to determine whether the Relevant Echocardiogram demonstrates or does not demonstrate each of the medical factors that determine the Relative Payment Value applicable to a given Diet Drug Recipient as specified in Section XV.O and shall obtain the QCC Report from the Qualified Cardiology Center concerning the results of its evaluation for each such Class Member (each an "Initial Review"). Within 30 days after receiving the QCC Report, the Fund Administrator shall provide a copy of that report to counsel for the Class Member to whom the report relates or directly to the Class Member, if unrepresented. A Diet Drug Recipient or Representative Claimant may obtain a Second Review of the Relevant Echocardiogram by a different Qualified Cardiology Center than the one that conducted the Initial Review by making a written request for such a Second Review and paying the Fund Administrator a non-refundable fee not to exceed \$2,500 within the time specified by the Fund Administrator to make a request for a

“Second Review.” When a Second Review is requested and conducted in conformity with this provision, the Relative Payment Value applicable to the Class Member who requested a Second Review shall be determined in accordance with the QCC Report submitted by the Qualified Cardiology Center that conducted the Second Review.

**N. *Category One Class Members Found Payable by the Trust.*** A Category One Class Member who, on or before the Execution Date, was found by a Trust Auditing Cardiologist to have a Matrix Level condition on Matrix Level I or Matrix Level II, but whose claim was not, as of the Execution Date, the subject of a Post-Audit Determination Letter issued by the Trust under Audit Rule 12 or 15 of the Rules for the Audit of Matrix Claims approved by the Court in PTO No. 2807 or a CAP 4 notice under Rule 13 of such Audit Rules, and who otherwise qualifies for inclusion in Category One, shall be considered by the Fund Administrator to have been found to demonstrate the medical factors necessary for eligibility for Benefits Subject to Medical Review, without undergoing the Medical Review process, except that the Fund Administrator, with the MRCC as needed, shall determine whether the Class Member’s condition constitutes a High Threshold Condition or a Low Threshold Condition and, under appropriate circumstances, whether there was a fraudulent manipulation of the Echocardiogram Tape or Disk, which shall disqualify the Class Member from receiving Benefits Subject to Medical Review.

**O. *Relative Payment Value.*** The Fund Administrator shall determine the Relative Payment Value applicable to each Category One Class Member who has timely completed a claim for Benefits Subject to Medical Review in accordance with the Fund Administrator’s evaluation of the evidence of duration of Diet Drug use submitted in connection with the claim, the sworn affidavit or declaration of the Class Member submitted under Section XV.B.2.c and the applicable QCC Report. This determination shall be final, binding and, in the absence of actual fraud, shall not be subject to appeal, challenge before, or review of any kind by, any court, agency, arbitrator, mediator or otherwise.

**P. *Interim Distributions.*** After the Fund Administrator has completed the Medical Review process for at least 50% of the claims of Category One Class Members, which appear to qualify for the Medical Review process, the Fund

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Administrator may distribute to eligible Category One Class Members a portion of the Category One Class Member's estimated Individual Payment Amount ("Interim Distribution"). Interim Distributions to a Category One Class Member shall not exceed, in the aggregate, 40% of that Category One Class Member's estimated Individual Payment Amount. No Interim Distribution may be paid unless: (i) the Fund Administrator has determined that such distribution will not put the Supplemental Class Settlement Fund at risk of not being able to pay all Individual Payment Amounts in full to all eligible Category One Class Members; (ii) the Fund Administrator has made an Authorization Application setting forth the grounds for the Fund Administrator's position that it has met its burden prescribed in (i); and (iii) the Court has determined that the Fund Administrator has satisfied its burden of establishing that such distribution should be made. Wyeth shall have the right to be heard before the Court regarding any such Authorization Application, except as to matters pertaining to individual claims or the application of the Medical Review process to individual claims.

**Q. *Payment of Interim Distributions.*** Interim Distributions shall be made by the Escrow Agent pursuant to an Authorization Order by check made jointly payable to each Class Member entitled to participate in the claim proceeds and the Class Member's attorney(s), if applicable, provided that attorneys may recover from such interim reimbursements only:

1. Reimbursement for reasonable out-of-pocket costs expended on their client's behalf; and
2. An attorneys' fee that is equal to the smaller of the percentage specified under the applicable contingent fee agreement or 40% of the Interim Distribution.

**R. *Individual Payment Amount.*** After (i) Final Judicial Approval of the Seventh Amendment and (ii) the Fund Administrator has completed the Medical Review process for Category One Class Members who have timely completed claims for Benefits Subject to Medical Review and has complied with all applicable provisions of the Seventh Amendment, the Fund Administrator shall calculate the Individual Payment Amount for each Class Member qualified to receive distribution of an Individual Payment Amount and shall determine the

portion of the Individual Payment Amount to be paid to such Class Members as follows:

1. The Fund Administrator shall first deduct from the Individual Payment Amount an amount equal to the Individual Payment Amount multiplied by the Common Benefit Percentage, if any (the “Common Benefit Percentage Amount”);
2. The Fund Administrator shall next deduct all Interim Distributions previously made to the Class Members and their attorneys;
3. The balance of the Individual Payment Amount remaining after the deduction of the Common Benefit Percentage Amount, the Interim Distributions, and any other deductions required under this Seventh Amendment (“Balance of the Individual Payment Amount”), shall be paid by the Escrow Agent, upon entry of an appropriate Authorization Order, by a check made jointly payable to each Class Member entitled to participate in the claim proceeds and the Class Member’s attorney(s), if applicable.

**S. *Distribution of Proceeds.*** When a Class Member is represented by an attorney who is named as a joint payee on any check tendered by the Escrow Agent in payment of the Balance of the Individual Payment Amount, the attorney shall hold the proceeds of the check in the attorney’s client escrow and/or trust account and shall distribute such proceeds to persons entitled to participate in such proceeds, including:

1. Any Derivative Claimants to the extent of 2% of the Individual Payment Amount;
2. Any amounts which the Class Member is obligated to pay to any Third Party Payor pursuant to Section XV.W; and

3. Any other persons having a legally recognized right to participate in the settlement proceeds.

Category One Class Members who are not represented by their own counsel shall distribute the proceeds of their check for Benefits Subject to Medical Review to the same groups, if any, identified in Section XV.S.1-3.

**T. Attorneys' Fees.** When a Class Member is represented by an attorney who is named as a joint payee on any check tendered by the Escrow Agent in payment of the Balance of the Individual Payment Amount, the attorney shall distribute the portion of the recovery payable to any and all attorneys as follows:

1. Payment to attorneys shall be in accordance with the terms of any applicable contingent fee contract and applicable law, provided that:
  - a. The attorney or attorneys may not charge or collect a contingent fee that is, in the aggregate, larger than 40% of the total Individual Payment Amount, for all Class Members entitled to participate in the distribution of such Individual Payment Amount, as computed before deduction of the Common Benefit Percentage Amount;
  - b. The Common Benefit Percentage Amount, if any, shall be deducted from the amount of fees to which such attorneys are entitled (as limited in Section XV.T.1.a) and shall not be deducted from the client's share of the recovery; and
  - c. Each such attorney, by making such a distribution, agrees to and shall indemnify and hold harmless the Fund Administrator, the Escrow Agent, Wyeth, Class Counsel, and the members of the SALC, with respect to any and all liability for, and the actual costs of defending against, any and all claims that are or may be made that relate to the distribution of the proceeds by that attorney.

**U. *Distribution of Category Two Payment.*** For every Category Two Class Member who is entitled to receive the Category Two Payment, the Trust shall distribute the amount as follows:

1. If the Class Member is represented by counsel, the Trust shall pay the Class Member's attorney an amount not to exceed \$650 as full compensation for all attorneys' fees and costs to which such counsel are entitled; and
2. The Trust shall make payment of the balance remaining after deduction of such payment to the Class Member's attorney, or the sum of \$2,000 in those instances where the Class Member is unrepresented, to the Diet Drug Recipient whose drug ingestion forms the basis of the claim or to the applicable Representative Claimant(s).

**V. *Distribution of Minimum Payment Amount.*** For Category One Class Members the Minimum Payment Amount shall be distributed as follows:

1. If the Class Member is represented by counsel, the Class Member's attorney shall be entitled to receive an amount not to exceed \$650 as full compensation for all attorneys' fees and costs to which such counsel are entitled; and
2. The balance remaining after deduction of such payment to the Class Member's attorney or the sum of \$2,000 in those instances where the Class Member is unrepresented, shall be paid to the Diet Drug Recipient whose drug ingestion forms the basis of the claim or to the applicable Representative Claimant(s).

**W. *Subrogation and Other Third Party Payor Claims.***

1. Each Category One Class Member and Category Two Class Member, and their attorney(s) if represented, covenants that any lawful outstanding liens or claims, whether asserted or

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unasserted, for reimbursement of medical expenses, including the cost of medical services, by any private subrogee or government entity, including any claims for reimbursement of medical expenses paid by Medicare, shall be satisfied after receipt of payment from the Fund Administrator or the Trust. All such private subrogees and government entities shall be "Third Party Payors" for purposes of this Section.

2. Each Class Member who receives Benefits Subject to Medical Review (other than the Minimum Payment Amount) and/or Seventh Amendment Matrix Compensation Benefits shall be obligated to indemnify and hold harmless the Fund Administrator, the Trust, and Wyeth from and against any claims, suits or demands asserted by any Third Party Payor arising out of or relating to the payment of medical expenses or provision of medical services by such Third Party Payor or the failure of the Fund Administrator or Wyeth to pay the Third Party Payor, including the cost of investigating and defending against such claims, suits or demands, and including any settlement thereof. Each such Class Member shall be obligated to cooperate as reasonably requested by the indemnitee in such investigation and defense. Each Class Member acknowledges that the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(2), may permit recovery of double the amount of such expenses paid by Medicare, and each Class Member agrees that the foregoing indemnity includes the amount of any such double recovery or any other penalty or interest imposed.
3. The Court shall have the power to enforce the obligations under this Section XV.W pursuant to the Court's reserved power to enforce the Settlement Agreement. In addition, the reserve of \$7,000,000 maintained by the Trust pursuant to PTO No. 1823 shall be available to Wyeth from which Wyeth may obtain a further indemnity from and against all such claims, suits or demands, and Wyeth shall be credited from that reserve with any amount the Court authorizes to be credited, upon a

showing by Wyeth that such a claim, suit or demand has resulted in a payment or expenditure by Wyeth, including any settlement and cost of defense, arising from such claim, suit or demand.

4. This Section XV.W shall be the exclusive method for securing the resolution by the Trust of all liens or claims, whether asserted or unasserted, of Third Party Payors with respect to Seventh Amendment Matrix Compensation Benefits for Class Members who are represented by counsel. Section VII.D of the Settlement Agreement and sections VI.C.4.c(3), VI.C.4.e(4) and (5), VI.C.4.f, and VI.C.4.g-o of the Settlement Agreement, to the extent that they relate to subrogation and reimbursement liens or claims of Third Party Payors, shall be inoperative and of no further force and effect as to claims for Seventh Amendment Matrix Compensation Benefits of Class Members who are represented by counsel.
5. Any check issued by the Trust for the amount due to a Class Member who is represented by counsel as Seventh Amendment Matrix Compensation Benefits (after payment of all sums due to the individual attorney for the Class Member for payment of counsel fees and reimbursement of litigation expenses under section VI.C.4.n of the Settlement Agreement) shall be made jointly payable to the Class Member and the Class Member's primary attorney for purposes of securing appropriate payment of the lawful outstanding liens or claims of Third Party Payors that are referred to in Section XV.W.1. Such attorney shall hold the proceeds of such check in the attorney's client escrow and/or trust account and shall pay any such lawful outstanding liens or claims to the Third Party Payor(s).
6. Section VII.D of the Settlement Agreement and sections VI.C.4.c(3), VI.C.4.e(4) and (5), VI.C.4.f, and VI.C.4.g-o of the Settlement Agreement, to the extent that they relate to subrogation and reimbursement liens or claims of Third Party

Payors, shall continue to apply to Class Members who are not represented by their own counsel and who are entitled to Seventh Amendment Matrix Compensation Benefits.

7. The terms of this Section XV.W are without prejudice to the legal rights of Wyeth, the Fund Administrator, the Trust, and Class Members in any legal proceeding regarding the subrogation and reimbursement liens or claims of Third Party Payors.

**XVI. REMEDIES IN THE EVENT OF A BREACH BY WYETH.**

**A. *Notice of Default.*** If Wyeth fails timely to establish or maintain the Seventh Amendment Security Fund or the balance in the Security Fund required by Section VI, the Fund Administrator or the Trust shall transmit a “Notice of Default” to Wyeth advising Wyeth of the default and demanding the correction of the security issue.

**B. *Order of Default.*** If Wyeth fails to cure the default by taking the action demanded in the Notice of Default within five Business Days after its receipt of the Notice of Default, the Fund Administrator or the Trust, Class Counsel or the SALC may apply to the Court for an order determining that Wyeth is in default. In ruling upon such an application, the Court shall determine whether Wyeth failed timely to establish, maintain, or replenish the Seventh Amendment Security Fund or the balance in the Security Fund required by Section VI and whether that default remained uncured after receiving a Notice of Default. If the Court adjudicates Wyeth in material default of such obligations, Wyeth shall have ten days to cure such default. If the Court finds that Wyeth has failed to cure such default timely, then notwithstanding any other provision of the Seventh Amendment, Wyeth shall be considered in material breach of the terms of the Seventh Amendment, and the affected Class Members shall be entitled to such remedies as the Court shall determine are appropriate under applicable law, preserving all appellate rights and remedies of all parties.

**XVII. PRELIMINARY APPROVAL; STAY OF PROCEEDINGS DURING THE OBJECTION/OPT-OUT PERIOD.**

**A. *Preliminary Approval Order.*** Within 15 days after the Execution Date, the Parties shall apply to the Court for an order or orders:

1. Granting Preliminary Approval of the Seventh Amendment;
2. Staying the Claims Integrity Program, all Enforcement Actions, and all Show Cause Proceedings as to any claim that is a Pre-Stay Payable PADL until such time as the Court determines whether to approve the Seventh Amendment unless the Court has already entered an order directing disposition of the Pre-Stay Payable PADLs;
3. Establishing a period of not less than 60 days and not more than 90 days for Category One Class Members and Category Two Class Members either to opt out of or object to the Seventh Amendment and providing that Class Members who wish to object to the Seventh Amendment must file with the Court and serve on Class Counsel (c/o Arnold Levin, 510 Walnut Street, Ste. 500, Philadelphia, PA 19106) and Wyeth (c/o BrownGreer PLC, P.O. Box 85006, Richmond, VA 23285-5006) detailed and specific objections and a memorandum of law in support of those objections by the end of the Seventh Amendment Opt-Out/Objection Period;
4. Scheduling a hearing to determine whether to approve the terms of the Seventh Amendment under the same standard that would be applicable under Fed.R.Civ.P. 23(e);
5. Approving the appointment of the Fund Administrator, the Escrow Agent, the SALC, and the MRCC, pursuant to Section IV;

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6. Approving a written Notice substantially in a form attached as Exhibit “L” to this Seventh Amendment;
7. Directing the Parties to serve such Notice by first-class mail, postage prepaid on all Class Members as specified in Section V.C, and directing the Trust to pay all costs of such Notice;
8. Staying consideration of each of the motions and other matters included and described in Exhibit “H”;
9. Staying the operation of the Trust’s Claims Integrity Program and all discovery, motion practice, and other proceedings with respect to claims by Category One Class Members and Category Two Class Members until the end of the Seventh Amendment Opt-Out/Objection Period as to all such Class Members and thereafter staying the operation of the Trust’s Claims Integrity Program and all discovery, motion practice and other proceedings with respect to claims by Category One Class Members and Category Two Class Members who have not opted out of the Seventh Amendment, until such time as Wyeth exercises its Walkaway Right or it is determined that the Seventh Amendment will not obtain Trial Court Approval or it is judicially determined that the Seventh Amendment will not obtain Final Judicial Approval, provided, however, that the Trust will have the right to investigate whether there has been any material misrepresentations of fact made in connection with claims for Seventh Amendment Matrix Compensation Benefits at Matrix Levels III, IV and V. For this purpose and for purposes of any Enforcement Action specified in Section XVIII.B.1, an investigation, claim or assertion of material misrepresentation shall not be based solely on: (i) whether the Echocardiogram Tape or Disk (or any copy thereof) was allegedly obtained without adequate physician supervision; (ii) the identity of the person or entity that performed the Echocardiogram; or (iii) the identity of the attorney(s) representing the claimant, and lack of adequate physician

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supervision with respect to an Echocardiogram Tape or Disk shall not constitute a material misrepresentation of fact.

10. Staying the initiation or prosecution of all Enforcement Actions, with such stay to remain in place until such time as Wyeth exercises its Seventh Amendment Walkaway Right, or it is determined that the Seventh Amendment will not obtain Trial Court Approval, or it is judicially determined that the Seventh Amendment will not obtain Final Judicial Approval;
11. Staying the processing of all claims for Matrix Level I and Matrix Level II Benefits under the Settlement Agreement, except claims subject to a Trust Determination Denying Matrix Benefits, until the end of the Seventh Amendment Opt-Out/Objection Period and thereafter staying the processing of all claims for Matrix Level I and Matrix Level II benefits under the Settlement Agreement with respect to claims by Category One Class Members and Category Two Class Members who have not opted out of the Seventh Amendment until such time as Wyeth exercises its Seventh Amendment Walkaway Right, or it is determined that the Seventh Amendment will not obtain Trial Court Approval, or it is judicially determined that the Seventh Amendment will not obtain Final Judicial Approval, provided that such stays shall not prevent Class Members from completing claims pursuant to Sections VII, VIII and XIV or from making claims pursuant to Section III.C;
12. Restraining and enjoining Category One Class Members, their counsel, and anyone acting on their behalf from having any communication or contact of any kind with any Participating Physician and the MRCC with respect to any of their functions under the Seventh Amendment, except to the extent that Class Counsel and the SALC, acting jointly, in their official capacities, and without reference to any specific claims that will be subject to Medical Review under the Seventh

Amendment, may assist the MRCC in performing those activities specified in Section XV.J;

13. Designating the SALC, the Fund Administrator, the Escrow Agent, the MRCC and the Participating Physicians as “Authorized Persons” entitled to receive Confidential Information under PTO No. 2683;
14. Authorizing indemnity and immunity for the Fund Administrator, the MRCC, and the Participating Physicians as provided in Section IV.E;
15. Permanently restraining and enjoining, except insofar as is necessary to implement or enforce the Seventh Amendment, each Party to the Seventh Amendment and every Class Member, including without limitation, Class Members who have exercised an Intermediate Opt-Out, a Back-End Opt-Out, a Sixth Amendment Opt-Out or a Seventh Amendment Opt-Out, (i) from seeking to use or using any statement, transaction or proceeding in connection with the negotiation, execution, approval or implementation of the Seventh Amendment or any term or provision thereof for the purpose of seeking to establish or dispute that, under the terms of the Settlement Agreement as it existed prior to the Seventh Amendment, any person is eligible to exercise an Intermediate Opt-Out, Back-End Opt-Out or Sixth Amendment Opt-Out, is entitled to compensation in a judicial proceeding or is eligible for Matrix Compensation Benefits; (ii) from offering and/or introducing any statement, transaction or proceeding in connection with the negotiation, execution, approval or implementation of the Seventh Amendment or any term or provision thereof in any judicial proceeding to support a claim that Wyeth is or is not or should be or should not be found culpable or liable for any Settled Claim; and

16. Directing the Trust to provide all Diet Drug Recipients, within 30 days after a written request, a copy of an Echocardiogram conducted on such Diet Drug Recipient in the Trust's Screening Program, if not previously provided by the Trust.

**B. *Stay of Appeals.*** Within ten days after the Execution Date, the Parties shall apply to the United States Court of Appeals for the Third Circuit for further orders staying consideration of all appeals listed on Exhibit "T" to this Seventh Amendment by filing a motion and memorandum substantially in the form attached as Exhibit "M," until such time as Wyeth exercises its Walkaway Right, or it is determined that the Seventh Amendment will not obtain Trial Court Approval, or it is judicially determined that the Seventh Amendment will not obtain Final Judicial approval. Class Counsel, the SALC, and all Class Members shall cooperate with Wyeth to effect these stays.

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**XVIII. JURISDICTION, EFFECT ON OTHER PROCEEDINGS, AND REMEDIES.**

**A. *Dismissals of Proceedings.*** Upon Final Judicial Approval of the Seventh Amendment, the Parties shall take all reasonable steps to dismiss or otherwise discontinue with prejudice each of the appeals, motions, and other matters included and described in Exhibits “H” and “I” and to obtain an order from the Court directing the Trust permanently to discontinue the operation of the Trust’s Claims Integrity Program insofar as it includes claims by Category One Class Members and Category Two Class Members who have not opted out of the Seventh Amendment. Class Counsel, the SALC, and all Class Members shall cooperate with Wyeth to effect these dismissals.

**B. *Enforcement Actions.***

1. In light of the cost of Enforcement Actions, the likely collectable recoveries therein, and the objectives of the Seventh Amendment to reduce the burden of collateral litigation on the Parties and the Court and to preserve the assets of the Trust for the benefit of eligible Class Members, upon Final Judicial Approval of the Seventh Amendment, the Trust and Wyeth shall not initiate, prosecute, or maintain any Enforcement Action based on or arising out of any claim submitted to the Trust.
2. The terms of the Seventh Amendment are without prejudice to the rights of any person to cooperate in providing evidence to appropriate law enforcement agencies and other appropriate government agencies and officers.

**C. *Conditions.*** The Parties’ respective obligations under this Seventh Amendment, are subject to all of the following conditions:

1. Entry of an order or orders by the Court ordering Notice in accordance with Section XVII.A.6 and 7.

2. Entry of an order on or before the date of Preliminary Approval of the Seventh Amendment in accordance with Section XVII.A, substantially in the form appended to this Seventh Amendment as Exhibit “J,” establishing the procedures to be followed in the adjudication and payment of claims that are subject to Pre-Stay Payable PADLs.
3. Entry of an order or orders granting stays in accordance with Section XVII.A.
4. Entry of an order or orders on or before the date of Preliminary Approval of the Seventh Amendment in accordance with Section XVII.A, authorizing the Parties to engage in the Parallel Processing Program described in Exhibit “K” to this Seventh Amendment and requiring the Trust to cooperate in administering Matrix Compensation Benefits through that program.
5. Entry of an order or orders following Final Judicial Approval of the Seventh Amendment dismissing or otherwise discontinuing with prejudice each of the appeals, motions, and other matters included and described in Exhibits “H” and “I,” and directing the Trust permanently to discontinue the operation of the Trust’s Claims Integrity Program in accordance with the provisions of Section XVII.A.9 insofar as it includes claims by Category One Class Members and Category Two Class Members who have not opted out of the Seventh Amendment.
6. Entry of an order or orders permanently restraining and enjoining Category One Class Members, their counsel, and anyone acting on their behalf from having any communication or contact of any kind with any Participating Physician or the MRCC with respect to any of their functions under the Seventh Amendment, except to the extent that Class Counsel and the SALC, acting jointly, in their official capacities, and without

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reference to any specific claims that will be subject to Medical Review under the Seventh Amendment, assist the MRCC in performing those activities specified in Section XV.J.

7. Except as to actions required by this Seventh Amendment to occur before such time, Trial Court Approval of the Seventh Amendment, which approval order or orders shall:
  - a. Approve this Seventh 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;
  - b. Require compliance with the terms of the Seventh Amendment;
  - c. Bar and enjoin Category One Class Members and Category Two Class Members from pursuing any litigation based on the exercise or purported exercise of any Initial Opt-Out, Intermediate Opt-Out, Back-End Opt-Out, Sixth Amendment Opt-Out, and/or Financial Insecurity Opt-Out;
  - d. Subject to Final Judicial Approval of the Seventh Amendment, permanently restrain and enjoin Wyeth and the Trust from initiating, prosecuting or maintaining any Enforcement Action precluded by Section XVIII.B.1; and
  - e. Subject to Final Judicial Approval of the Seventh Amendment, permanently restrain and enjoin every Class Member, who has not timely and properly exercised a Seventh Amendment Opt-Out, from initiating, prosecuting, or maintaining any claim precluded by Section XI.C.

8. Except as to actions required by this Seventh Amendment to occur before such time, Final Judicial Approval of this Seventh Amendment.

**D. *Retained Jurisdiction.*** The Court shall have original and exclusive jurisdiction over the interpretation and enforcement of this Seventh 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.

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**XIX. OTHER PROVISIONS.**

**A. *Method of Transmission of Notices.*** Whenever this instrument requires delivery of a document by a date certain, such execution and delivery shall be deemed to have taken place either:

1. As of the date of the postmark placed on the envelope in which the document is delivered, provided that the document was deposited in the United States mail, with postage prepaid and properly addressed to the intended recipient thereof; or
2. As of the date on which the document is actually delivered, by private courier or hand delivery, to the intended recipient.

**B. *Recipients of Notices.*** Any notice, request, instruction or other document to be given to Wyeth, BrownGreer, the Fund Administrator, Class Counsel, the SALC, or the Trust, shall be in writing and delivered personally or sent as follows:

1. If to Wyeth, in care of:

Peter L. Zimroth, Esquire  
ARNOLD & PORTER, L.L.P.  
399 Park Avenue  
New York, NY 10022  
and  
Lawrence V. Stein, Esquire  
Senior Vice President  
and General Counsel  
WYETH  
Five Giralda Farms  
Madison, NJ 07940

2. If to BrownGreer, PLC:

Orran L. Brown, Esquire  
BROWNGREER, PLC  
115 South 15<sup>th</sup> Street  
Suite 1400  
Richmond, VA 23219-4209

3. If to the Fund Administrator, at such address as the Fund Administrator shall announce upon his or her appointment.

4. If to Class Counsel, in care of:

Michael D. Fishbein, Esquire  
Laurence S. Berman, Esquire  
LEVIN, FISHBEIN, SEDRAN, & BERMAN  
510 Walnut Street  
Suite 500  
Philadelphia, PA 19106

5. If to the SALC, in care of:

Wayne R. Spivey, Esquire  
SHRAGER, SPIVEY & SACHS  
Two Commerce Square, 32<sup>nd</sup> Floor  
2001 Market Street  
Philadelphia, PA 19103

6. If to the Trust, in care of:

Andrew A. Chirls, Esquire  
WOLF, BLOCK, SCHORR & SOLIS-COHEN  
1650 Arch Street  
22<sup>nd</sup> Floor  
Philadelphia, PA 19103

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**C. *Change in Recipients.*** Any party listed in Section XIX.B may change the identity and/or address or the person to receive notice for that party by written notice given in conformity with Section XIX.B.

**D. *Confidential Information.*** Any information possessed by the Supplemental Class Settlement Fund regarding a Category One Class Member and Category Two Class Member pursuant to this Seventh Amendment shall be considered Confidential Information under PTO No. 2683 (and any subsequent order of the Court concerning such information).

**E. *No Admissions.*** Neither this Seventh Amendment nor any exhibit, document or instrument delivered under this Seventh Amendment, nor any of the statements in the Notice documents appended to this Seventh Amendment or in connection with it, nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Seventh Amendment, nor any term or provision hereof, is intended to be or shall be construed as or deemed to be evidence of an admission or concession by Wyeth or the Released Parties of any liability or wrongdoing or of the truth of any allegations asserted by any Class Member against it or them, or with respect to the Settlement Agreement, or as an admission by the Class Representatives or members of the Settlement Class of any lack of merit in their claims. Nothing contained in this Seventh Amendment will be deemed to make admissible any evidence that is otherwise inadmissible under applicable law.

**F. *Wyeth Cooperation.*** Wyeth shall cooperate, as reasonably requested, with the Fund Administrator, the Escrow Agent, Class Counsel, and the SALC to facilitate the administration of the benefits that are subject to this Amendment.

**G. *Access by Wyeth.***

1. Wyeth shall have the right, upon reasonable request, to obtain from the Fund Administrator payment information regarding the disposition of claims of Category One Class Members and to obtain copies (and/or the originals, if requested) of any Release and Covenant Not to Sue, payment instruments and

communications transmitting payments relating to a Category One Class Member.

2. Wyeth shall have access to any and all information of the Trust pertaining to claims of Category One Class Members and Category Two Class Members.

**H. *Survival of Terms.*** Except as expressly modified in this Seventh Amendment, all terms and provisions of the Settlement Agreement remain in full force and effect.

**I. *Administrative Deadlines.*** Upon good cause shown after a motion filed before the expiration of any time period prescribed by the Settlement Agreement and/or this Seventh Amendment for the administration of claims, the Court may extend such time period as the Court deems appropriate. The failure by the Fund Administrator or the Trust to comply with any such administrative time period shall not be considered a breach by Wyeth of the Settlement Agreement or this Seventh Amendment and shall not render a Class Member eligible for any benefit for which the Class Member is not otherwise eligible. If the Fund Administrator or the Trust fails to comply with an administrative time period prescribed by the Settlement Agreement and/or this Seventh Amendment for the administration of claims, the Class Member may seek from the Court specific performance of the Settlement Agreement and/or this Seventh Amendment, and the Court may grant such specific performance and such other relief as determined appropriate by the Court to afford the Class Member and the Parties the benefits of the Settlement Agreement and/or this Seventh Amendment.

**J. *Seventh Amendment Term Sheet.*** The terms and provisions of this Seventh Amendment shall supercede any and all terms of the Seventh Amendment Term Sheet, appended as Exhibit "A".

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

L. *Counterparts.* This Seventh Amendment may be executed in counterparts by facsimile signature and each such counterpart shall be effective as part of a fully executed original Seventh Amendment.

*IN WITNESS WHEREOF*, the Parties have duly executed this Seventh Amendment to the Settlement Agreement between Wyeth and the Class Representatives, by their respective counsel as set forth below, as of July 21, 2004.

**WYETH**

By: Douglas A. Dworkin  
Douglas A. Dworkin *DDR*  
Vice President and Deputy General Counsel

Date: 8/24/04

CLASS COUNSEL



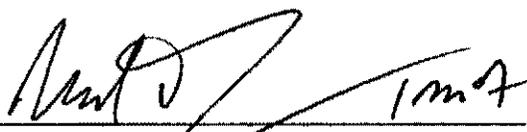
Arnold Levin, Esquire  
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510 Walnut Street, Suite 500  
Philadelphia, PA 19106

Date: 8-24-04



Gene Locks, Esquire  
LOCKS LAW FIRM  
1500 Walnut Street  
Philadelphia, PA 19102

Date: 8-24-04



Michael D. Fishbein, Esquire  
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510 Walnut Street, Suite 500  
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Date: 8-24-04



Sol H. Weiss, Esquire  
ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, P.C.  
1900 Delancey Place  
Philadelphia, PA 19103

Date: 8-24-04



Stanley Chesley, Esquire  
WAITE, SCHNEIDER, BAYLESS &  
CHESLEY  
1513 Central Trust Tower  
Fourth & Vine Sts.  
Cincinnati, Ohio 45202

Date: 8-24-04



Charles R. Parker, Esquire  
LOCKE, LIDDELL & SAPP, LLP  
3400 JP Morgan Chase Tower  
600 Travis  
Houston, TX 77002

Date: 8-24-04

  
\_\_\_\_\_

John J. Cummings, Esquire  
CUMMINGS, CUMMINGS &  
DUDENHEFER  
416 Gravier Street  
New Orleans, LA 70130

Date: 8-24-04

SEVENTH AMENDMENT LIAISON COMMITTEE

Each of the initial members of the Seventh Amendment Liaison Committee hereby accepts membership on that Committee and agrees to fulfill the responsibilities imposed on that Committee and to carry out the powers and functions accorded to that Committee by the terms of this Seventh Amendment for the purpose of implementing this Seventh Amendment.

  
\_\_\_\_\_  
Jerry Alexander, Esquire  
ALEXANDER & ASSOCIATES, P.C.  
Historic Inns of Court Building  
619 North 90<sup>th</sup> Street  
Omaha, NE 68114

Date: 8-24-04

  
\_\_\_\_\_  
Tony Martinez, Esquire  
MARTINEZ, BARRERA & MARTINEZ,  
LLP  
1201 East Van Buren  
Brownsville, TX 78520

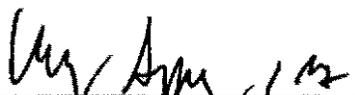
Date: 8-24-04

  
\_\_\_\_\_  
James Doyle, Esquire  
FLEMING & ASSOCIATES, LLP  
1330 Post Oak Boulevard  
Suite 3030  
Houston, TX 77056

Date: 8-24-04

  
\_\_\_\_\_  
Ellen Presby, Esquire  
BARON & BUDD, PC  
The Centrum  
3102 Oaklawn Avenue  
Suite 1100  
Dallas, TX 75215

Date: 8-24-04

  
\_\_\_\_\_  
Wayne Spivey, Esquire  
SHRAGER, SPIVEY & SACHS  
Two Commerce Square, 32<sup>nd</sup> Floor  
2001 Market Street  
Philadelphia, PA 19103

Date: 8-24-04

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

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**IN RE DIET DRUGS  
(PHENTERMINE/FENFLURAMINE/  
DEXFENFLURAMINE) PRODUCTS  
LIABILITY LITIGATION**

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**MDL NO. 1203**

**THIS DOCUMENT RELATES TO:  
ALL ACTIONS**

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**SHEILA BROWN, et al. v. WYETH  
(formerly American Home Products  
Corporation)**

**CIVIL ACTION NO. 99-20593**

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

Dated: May 18, 2005

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

WHEREAS on November 18, 1999, the Parties executed the Nationwide Class Action Settlement Agreement with American Home Products Corporation (now Wyeth by corporate name change as of March 11, 2002), arising from the marketing, sale, distribution and use of the diet drugs Pondimin<sup>®</sup> and Redux<sup>™</sup>; and

WHEREAS the Nationwide Class Action Settlement Agreement was amended in the First through the Eighth Amendments, with such Amendments approved by the United States District Court for the Eastern District of Pennsylvania (collectively, the Nationwide Class Action Settlement Agreement as amended from the First through the Eighth Amendment shall be referred to herein as the "Settlement Agreement"); and

WHEREAS Class Counsel and Wyeth (the "Parties") agree that the Settlement Agreement is further amended by this Ninth Amendment, subject to the conditions and effective at such time as set forth below.

**I. DEFINITIONS AND SECTION REFERENCES**

**A. *Incorporation of Settlement Agreement Definitions.*** The capitalized terms used in this Ninth Amendment and not specifically defined herein shall have the meanings as defined and set forth in the Settlement Agreement.

**B. *Section References.*** References to a "Section" refer to Sections of the Ninth Amendment, unless otherwise specified.

**II. GOVERNANCE OF THE AHP SETTLEMENT TRUST**

**A. *Ninth Amendment Trustee/Claims Administrator.*** The number of Trustees pursuant to Section VI.A.3 of the Settlement Agreement shall be reduced from three to one and the Trust shall be operated, managed and directed by a single Trustee, who also shall serve as the Claims Administrator (hereinafter referred to as the "Ninth Amendment Trustee"). The Ninth Amendment Trustee shall have all the rights and responsibilities of the Claims Administrator(s) and/or Trustees of the Trust under the Settlement Agreement and shall exercise all the functions that were to be exercised by them under the Settlement Agreement. The Ninth Amendment Trustee shall succeed to all the rights and responsibilities of the Trust and Trustees under all contracts to which the Trust is a party and the Trustees shall take all steps reasonably necessary for the complete and prompt transition of all such contracts to the Ninth Amendment Trustee to the extent required by any such contract.

**B. *Amended and Restated AHP Settlement Trust Agreement.*** The September 1, 2000 AHP Settlement Trust Agreement shall be amended and restated in a form substantially the same as the Amended and Restated AHP Settlement Trust Agreement attached as Exhibit A.

**C. *Qualifications of the Ninth Amendment Trustee.*** The qualifications of the Ninth Amendment Trustee shall be as defined in Section VI.A.4 [pp. 72-73] of the Settlement Agreement.

**D. *Appointment of the Ninth Amendment Trustee.*** The Parties shall agree upon and nominate a person to serve as the Ninth Amendment Trustee and shall request that the Court appoint such Ninth Amendment Trustee as part of the request by the Parties for approval of this Ninth Amendment. If the nominee is not approved, the Parties jointly shall nominate another nominee and shall do so until the Court approves the appointment of the Parties' nominee as the Ninth Amendment Trustee. Such Ninth Amendment Trustee shall serve in accordance with the Amended and Restated AHP Settlement Trust Agreement. As of the Effective Date of this Ninth Amendment and the appointment by the Trial Court of the Ninth Amendment Trustee, the term of office of each person then serving as a Trustee of the Trust shall expire. After the date of appointment of the Ninth Amendment Trustee by the Trial Court, the Trustees shall be considered to have hold-over authority, after the expiration of their term under this Section II.D, if necessary, solely for the purpose of effectuating the transfers and assignments required under Section II.A.

**E. *Administration of Claims by the Ninth Amendment Trustee.*** The Ninth Amendment Trustee shall administer all claims by Class Members for any type of benefit under the Settlement Agreement (except benefits subject to administration by the Fund Administrator under the Seventh Amendment), and shall perform all duties of the Trustees and/or Claims Administrator under the Settlement Agreement, pursuant to (i) Court-Approved Procedures agreed upon by the Parties and approved by the Court, after affording notice and an opportunity to be heard concerning such proposed Procedures to all interested persons and/or (ii) as otherwise ordered by the Court. Before submitting for Court approval any proposed Court-Approved Procedure relating to the administration of any benefits created by the Seventh Amendment, the Parties shall consult with the Seventh Amendment Liaison Committee concerning the content of the proposed Court-Approved Procedure.

**F. *Reporting Requirements of the Ninth Amendment Trustee.*** The reporting provisions of Section VI.A.10 [pp. 75-84] of the Settlement Agreement shall not apply to the Ninth Amendment Trustee. The reporting requirements of the Ninth Amendment Trustee shall be determined by a Court-Approved Procedure.

**G. *Access to Information.*** Class Counsel and Wyeth shall have complete and unencumbered access to all information of any kind in the possession of the Ninth Amendment Trustee and/or the Trust, in hard copy or electronic form, to the extent such information is not protected by applicable attorney-client privileges, as requested at any time by Class Counsel or Wyeth. The Ninth Amendment Trustee shall respond timely to any request for information by Class Counsel or Wyeth for information relating to the Settlement Agreement. PTO No. 2683 and any order(s) of the Court governing confidential information relating to the Settlement Agreement shall apply to any information obtained by Wyeth or Class Counsel under this Section II.G to the extent that such information constitutes "Confidential Information" as defined in PTO No. 2683 or other applicable orders of the Court.

### III. APPROVAL AND OTHER TERMS

A. *Request for Approval.* Within five days after the Execution Date, the Parties shall apply to the Court for an order or orders:

- (1) Granting approval by the Trial Court of the Ninth Amendment (“Trial Court Approval of the Ninth Amendment”);
- (2) Approving the Amended and Restated AHP Settlement Trust Agreement; and
- (3) Appointing the Ninth Amendment Trustee.

B. *Conditions.* The Parties’ respective obligations under this Ninth Amendment are subject to all of the following conditions:

- (1) Trial Court Approval of the Ninth Amendment;
- (2) Entry of an order by the Court approving the Amended and Restated AHP Settlement Trust Agreement; and
- (3) Except as to actions required by this Ninth Amendment to occur before such time, Trial Court Approval of this Ninth Amendment, which approval order or orders shall:
  - (a) Approve this Ninth 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;
  - (b) Require compliance with the terms of this Ninth Amendment;
  - (c) Approve the appointment of the Ninth Amendment Trustee nominated by the Parties.

C. *Retained Jurisdiction.* The Court shall have original and exclusive jurisdiction over the interpretation and enforcement of this Ninth 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.

D. *Survival of Terms.* Except as expressly modified in this Ninth Amendment, all terms and provisions of the Settlement Agreement remain in full force and effect.

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

F. **Counterparts.** This Ninth Amendment may be executed in counterparts by facsimile signature. Each counterpart shall be effective as part of a fully executed original Ninth Amendment.

G. **Effective Date.** The Ninth Amendment shall become effective 30 days after the date of entry of the Order by the Trial Court granting Trial Court Approval of the Ninth Amendment ("Effective Date").

H. **Parties.** The Parties to this Ninth Amendment shall be considered to be Class Counsel, as counsel to the Settlement Class, and Wyeth.

**IN WITNESS WHEREOF**, the Parties have duly executed this Ninth Amendment to the Settlement Agreement, by their respective counsel as set forth below, as of ~~April 13~~ <sup>May</sup>, 2005.

By:  **WYETH**  
Douglas A. Dworkin  
Vice President and Deputy General Counsel  
Wyeth  
5 Giralda Farms  
Madison, NJ 07940

Date: 5/18/05

**CLASS COUNSEL**

\_\_\_\_\_  
Arnold Levin, Esquire  
Michael D. Fishbein, Esquire  
LEVIN, FISHBEIN, SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106

Date: \_\_\_\_\_

\_\_\_\_\_  
Gene Locks, Esquire  
LOCKS LAW FIRM  
1500 Walnut Street  
Philadelphia, PA 19102

Date: \_\_\_\_\_

F. *Counterparts.* This Ninth Amendment may be executed in counterparts by facsimile signature. Each counterpart shall be effective as part of a fully executed original Ninth Amendment.

G. *Effective Date.* The Ninth Amendment shall become effective 30 days after the date of entry of the Order by the Trial Court granting Trial Court Approval of the Ninth Amendment ("Effective Date").

H. *Parties.* The Parties to this Ninth Amendment shall be considered to be Class Counsel, as counsel to the Settlement Class, and Wyeth.

*IN WITNESS WHEREOF*, the Parties have duly executed this Ninth Amendment to the Settlement Agreement, by their respective counsel as set forth below, as of ~~April 18~~ <sup>May</sup>, 2005.

WYETH

By: \_\_\_\_\_  
Douglas A. Dworkin  
Vice President and Deputy General Counsel  
Wyeth  
5 Giralda Farms  
Madison, NJ 07940

Date: \_\_\_\_\_

CLASS COUNSEL

  
Arnold Levin, Esquire  
Michael D. Fishbein, Esquire  
LEVIN, FISHBEIN, SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106

Date: 5.4.05

  
Gene Locks, Esquire  
LOCKS LAW FIRM  
1500 Walnut Street  
Philadelphia, PA 19102

Date: 5.4.05

*Sol Weiss*

Sol H. Weiss, Esquire  
ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, P.C.  
1900 Delancey Place  
Philadelphia, PA 19103

Date: 5.4.05

*Stanley Chesley*

Stanley Chesley, Esquire  
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CHESLEY  
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Fourth & Vine Sts.  
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Date: 5.4.05

*Charles R. Parker*

Charles R. Parker, Esquire  
LOCKE, LIDDELL & SAPP, LLP  
3400 JP Morgan Chase Tower  
600 Travis  
Houston, TX 77002

Date: 5.4.05

*John J. Cummings*

John J. Cummings, Esquire  
CUMMINGS, CUMMINGS &  
DUDENHEFER  
416 Gravier Street  
New Orleans, LA 70130

Date: 5.4.05

**TABLE OF EXHIBITS**

**Exhibits to Ninth Amendment**

<b><u>Description</u></b>	<b><u>Exhibit</u></b>
<b>Amended Trust Agreement</b>	<b>A</b>

**Exhibits to Amended Trust Agreement**

<b><u>Description</u></b>	<b><u>Exhibit</u></b>
<b>Insurance Coverages for Trustees and Trust Officers</b>	<b>A</b>
<b>Trust Severance Benefit Plan</b>	<b>B</b>
<b>Trust Executive Retention Plan</b>	<b>C</b>

**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

**TENTH 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 original 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<sup>®</sup> and Redux<sup>™</sup>;

WHEREAS, the Original Settlement Agreement was amended with Court approval on nine different occasions (“Settlement Agreement”);

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, Pfizer Inc. has executed the Guarantee attached to this Tenth Amendment as Exhibit A; and

WHEREAS, Wyeth and Class Counsel (the “Parties”) are desirous of modifying certain terms of the Settlement Agreement in the manner set forth herein in order to further benefit the Class;

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

**I. DEFINITIONS AND SECTION REFERENCES**

- A. The capitalized terms used in this Tenth Amendment and not specifically defined herein shall have the meanings as defined and set forth in the Settlement Agreement.
- B. As used herein the following terms shall have the following meanings:
  - 1. “2015 Class Members” means all Diet Drug Recipients (or the legal representatives of Diet Drug Recipients) who: (a) timely registered for Matrix Compensation Benefits from the Trust; (b) are not Category One Class Members; and (c) are not Category Two Class Members.
  - 2. “Age 80 Class Members” means all Diet Drug Recipients (or the legal representatives of Diet Drug Recipients): (a) who have been determined by the Court in a Pretrial Order or, in the absence of an applicable Pretrial Order, by the Trust in a Post-Audit Determination Letter issued by the Trust, to have developed a Matrix Level condition (as described in Section IV.B.2.c of the Settlement Agreement) by the earlier of December 31, 2015, or the date on which such Diet Drug Recipient reaches the age of 80; and (b) who were 2015 Class Members at the time of such determination.
  - 3. “Average 2015 Claimant Payment Total” is defined as set forth in Section V.C of this Tenth Amendment.

4. "Average Age 80 Claimant Payment Total" is defined as set forth in Section V.E of this Tenth Amendment.
  5. "Trial Court Approval of the Tenth Amendment" means the date of entry of an order or orders by the Court approving the Tenth Amendment, subject to the conditions in Section VII.B.
- C. References to a "Section" refer to a section of this Tenth Amendment, unless otherwise specified.

**II. ADDITIONAL FUNDING FOR THE CARDIOVASCULAR MEDICAL RESEARCH AND EDUCATION FUND.**

- A. Within ten days after Trial Court Approval of the Tenth Amendment, Wyeth shall pay the amount of \$12.5 million to the Cardiovascular Medical Research and Education Fund, Inc. ("CMREF") for the purpose of providing additional financing for medical research related to the treatment and cure of primary pulmonary hypertension and for education relating to primary pulmonary hypertension.
- B. The payment described in Section II.A shall be in addition to and over and above the \$25 million amount previously paid from Fund A to CMREF pursuant to Section IV.A.3.a of the Settlement Agreement.

**III. CALCULATION OF MAFBA.**

For purposes of calculating the Maximum Available Fund B Amount under Section I.1 of the Settlement Agreement, there shall be no Fund B Accretions in any amount for any Fiscal Quarter occurring after December 31, 2011.

**IV. ELIMINATION OF PROVISIONS RELATING TO THE "FINAL PROJECTED AMOUNT."**

- A. Section III.C.4.a and Section III.C.4.b of the Settlement Agreement are deleted in their entirety and shall be of no further force and effect.

- B. Wyeth's obligation to make payments into the Settlement Fund shall terminate upon the earlier of when:
1. Wyeth makes a payment into the Settlement Fund that reduces the Maximum Available Fund B Amount to zero; or
  2. There are no Class Members who remain eligible to receive payment of Matrix Compensation Benefits.

**V. MODIFICATIONS RELATING TO THE SECURITY FUND.**

- A. Nothing contained in this Tenth Amendment shall be deemed or otherwise construed to affect any of the terms of the Seventh Amendment to the Settlement Agreement including, without limitation, the amount of the Seventh Amendment Security Fund created pursuant to Section VI.A of the Seventh Amendment or the terms applicable under Section VI of the Seventh Amendment to the existence, operation, and effect of the Seventh Amendment Security Fund and the corresponding lien.
- B. Within ten days after Trial Court Approval of the Tenth Amendment, the Security Fund established pursuant to Section III.E.2 of the Settlement Agreement shall be reduced to its original level of \$370 million and the balance at such time in the Security Fund in excess of \$370 million shall be released from the Security Fund to Wyeth free and clear of any liens or encumbrances thereon. The amount of the Security Fund shall remain \$370 million until July 1, 2012, subject to Section III.E.3 of the Settlement Agreement. Beginning on July 1, 2012, the amount of the Security Fund shall be determined by Sections V.C through V.J.
- C. On or before March 31<sup>st</sup> of the years 2012, 2013 and 2014, the Trust shall calculate: (a) the total amount of Matrix Compensation Benefits paid to 2015 Class Members (and their associated Derivative Claimants) during the three full calendar years preceding the date on which each such calculation is to be made; and (b) the annual average of such payments over that three year period (each such annual

average calculation being the “Average 2015 Claimant Payment Total”) and shall communicate these calculations to the Parties. Wyeth and Class Counsel shall have until May 31<sup>st</sup> of each such year to resolve by agreement any disputes relating to each such Trust calculation. Thereafter, the Trust shall resolve the disputed issues not resolved by agreement among the Parties, if any, to make a final determination of the Average 2015 Claimant Payment Total for each applicable year in accordance with the agreement of the Parties and the Trust’s resolution of the issues disputed by the Parties, and shall communicate such final determination to the Parties and the Escrow Agent/Securities Intermediary for the Security Fund no later than June 30<sup>th</sup> of the year in which each such determination is to be made. This final Trust determination of the Average 2015 Claimant Payment Total shall not be subject to challenge before the Court by the Parties or any Class Member.

- D. For the period from July 1, 2012 through February 15, 2016, the amount of the Security Fund established pursuant to Section III.E.2 of the Settlement Agreement shall be as follows:
1. For the period from July 1, 2012 through June 30, 2013, the Security Fund shall be in an amount equal to six times the Average 2015 Claimant Payment Total computed for the three-year period from 2009 to 2011;
  2. For the period from July 1, 2013 through June 30, 2014, the Security Fund shall be in an amount equal to five times the Average 2015 Claimant Payment Total computed for the three-year period from 2010 to 2012; and
  3. For the period from July 1, 2014 through February 15, 2016, the Security Fund shall be in an amount equal to four times the Average 2015 Claimant Payment Total computed for the three-year period from 2011 to 2013.
- E. Beginning on January 31, 2016, and on January 31<sup>st</sup> of each calendar year thereafter, the Trust shall calculate: (a) the total amount of Matrix

Compensation Benefits paid and, if not paid, found by the Trust in a Post-Audit Determination Letter issued by the Trust after Audit to be payable to the Age 80 Class Members (and their associated Derivative Claimants) as incremental Matrix Compensation Benefits pursuant to Section IV.C.3 of the Settlement Agreement during the three full calendar years preceding the year in which each such calculation is to be made; and (b) the annual average of such Matrix Compensation Benefits (the “Average Age 80 Claimant Payment Total”) and shall communicate these calculations to the Parties. Wyeth and Class Counsel shall have until February 14<sup>th</sup> of each such year to resolve by agreement any disputes relating to each such Trust calculation. Thereafter, the Trust shall resolve the disputed issues regarding the calculation not resolved by agreement among the Parties, if any, to make a final determination of the Average Age 80 Claimant Payment Total for the applicable year in accordance with the agreement of the Parties and the Trust’s resolution of any issues disputed by the Parties, and shall communicate such final determination to the Parties and the Escrow Agent/Securities Intermediary for the Security Fund no later than February 15<sup>th</sup> of the year in which each such determination is to be made. This final Trust determination regarding the Average Age 80 Claimant Payment Total shall not be subject to challenge before the Court by the Parties or any Class Member.

- F. Beginning February 15, 2016, and on February 15<sup>th</sup> of each year thereafter the amount of the Security Fund established pursuant to Section III.E.2 of the Settlement Agreement shall be in an amount equal to the greater of: (1) six times the Average Age 80 Claimant Payment Total computed by the Trust for that year pursuant to the proceeding subsection of this Tenth Amendment or (2) \$10 million.
- G. The Trust shall maintain accurate records of the Matrix Compensation Benefits paid and/or found by the Trust in a Post-Audit Determination Letter issued by the Trust after Audit to be payable to the Age 80 Class Members and shall regularly report this information to the Parties.
- H. At any time after December 31, 2018, the Security Fund may be terminated if the Court finds that it is no longer reasonably necessary to

secure the payment of Matrix Compensation Benefits to the Age 80 Class Members.

- I. In the event that the balance in the Security Fund at the time of a determination under Section V.D or Section V.F is in excess of the required amount of security hereunder, the amount of any such excess shall be released from the Security Fund to Wyeth free and clear of any liens or encumbrances. In the event that the balance in the Security Fund at the time of a determination under Section V.D or Section V.F is less than the required amount of security hereunder, then Wyeth shall deposit cash and/or Permitted Investments in the amount needed to increase the Security Fund to the level required by such determination. The release of any excess amount on deposit in the Security Fund to Wyeth or the deposit of additional Permitted Investments by Wyeth into the Security Fund pursuant to this subsection shall occur not later than fifteen days from the date of the determination under Section V.D or Section V.F, whichever is applicable, and which results in an adjustment of the required amount of the Security Fund.
- J. The terms of Section V shall be reflected in an amendment to the Security Fund and Escrow Agreement in the form appended hereto as Exhibit "B."

## **VI. CLOSING DATE FOR PAYMENT OF FUND A BENEFITS**

- A. The Parties hereby agree that "Fund A's purposes have been met" within the meaning of Section III.B.4 of the Original Settlement Agreement.
- B. In addition, the deadline to register for the Cash/Medical Services benefit provided by Sections IV.A.1.c and IV.A.2.c of the Settlement Agreement ("CMS Benefits") expired on May 3, 2003, and the deadline to register for the purchase price refund benefit provided by Sections IV.A.1.d and IV.A.2.a of the Settlement Agreement ("Refund Benefits") expired on August 1, 2002.

- C. Therefore, the Trust shall not process or pay any claim for CMS Benefits or Refund Benefits after December 31, 2011, except as follows:
1. The Trust shall pay CMS Benefits and/or Refund Benefits to any person adjudged to be entitled to such benefits as a result of any Show Cause and/or Arbitration proceedings pending as of December 31, 2011;
  2. The Trust shall pay CMS Benefits and/or Refund Benefits as otherwise required by the Court based on applicable law.

## VII. APPROVAL AND OTHER TERMS

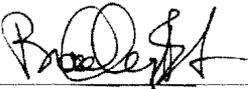
- A. Within five days after the full execution of this Tenth Amendment, the Parties shall jointly apply to the Court for an order granting approval by the Trial Court of the Tenth Amendment. Such joint application shall be filed electronically and served upon all persons who have registered for electronic filing or who are otherwise entitled to receive copies of electronically filed documents in MDL 1203 and Civil Action No. 99-20593. No further notice of the Amendment shall be required. *See In re Diet Drugs*, 93 Fed.Appx. 338, 344 (3<sup>rd</sup> Cir. Feb. 23, 2004).
- B. The Parties' respective obligations under this Tenth Amendment are subject to Trial Court Approval of the Tenth Amendment which approval order shall:
1. Approve this Tenth 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
  2. Require compliance with the terms of this Tenth Amendment.
- C. The Court shall have original and exclusive jurisdiction over the interpretation and enforcement of this Tenth Amendment incident to its exclusive, retained jurisdiction under Section VIII.B.1 of the Settlement

Agreement and Paragraph 11 of Pretrial Order No. 1415 entered by the Court on August 28, 2000.

- D. Except as expressly modified in this Tenth Amendment, all terms and provisions of the Settlement Agreement remain in full force and effect.
- E. The headings of the Sections of this Tenth Amendment are included for convenience only and shall not be deemed to constitute part of this Amendment or affect its construction.
- F. This Tenth Amendment may be executed in counterparts by facsimile signature. Each counterpart shall be effective as part of a fully executed original Tenth Amendment.

IN WITNESS WHEREOF, the Parties have duly executed this Tenth Amendment to the Settlement Agreement by their respective counsel, as set forth below, as of April 15, 2010.

**WYETH LLC**

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

**CLASS COUNSEL**

\_\_\_\_\_  
Arnold Levin, Esquire  
Michael D. Fishbein, Esquire  
LEVIN, FISHBEIN, SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106

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**WYETH LLC**

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

**CLASS COUNSEL**



Arnold Levin, Esquire  
Michael D. Fishbein, Esquire  
LEVIN, FISHBEIN, SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106



Gene Locks, Esquire  
LOCKS LAW FIRM  
1500 Walnut Street  
Philadelphia, PA 19102



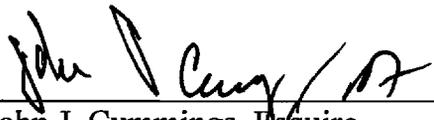
Sol H. Weiss, Esquire  
ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, P.C.  
1900 Delancey Place  
Philadelphia, PA 19103



Stanley Chesley, Esquire  
WAITE, SCHNEIDER, BAYLESS &  
CHESLEY  
1513 Central Trust Tower  
Fourth & Vine Sts.  
Cincinnati, Ohio 45202



Charles R. Parker, Esquire  
LOCKE, LIDDELL & SAPP, LLP  
3400 JP Morgan Chase Tower  
600 Travis  
Houston, TX 77002

  
\_\_\_\_\_  
John J. Cummings, Esquire  
CUMMINGS, CUMMINGS &  
DUDENHEFER  
416 Gravier Street  
New Orleans, LA 70130

## GUARANTEE

THIS GUARANTEE dated as of April 15, 2010 ("Guarantee"), is made by Pfizer Inc., a Delaware corporation (the "Guarantor"), in connection with the Nationwide Class Action Settlement Agreement with American Home Products Corporation, dated November 18, 1999, as amended (the "Settlement Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Settlement Agreement, including the Tenth Amendment (as defined below).

### RECITALS

WHEREAS, on November 18, 1999, American Home Products Corporation and Class Counsel executed the Settlement Agreement arising from the marketing, sale, distribution and use of the diet drugs Pondimin® and Redux™;

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

WHEREAS, on October 16, 2009, Wyeth became a wholly owned indirect subsidiary of Guarantor, and on November 9, 2009, Wyeth converted its corporate status under Delaware law, became a limited liability company and changed its name to Wyeth LLC ("Wyeth"),

WHEREAS, the Settlement Agreement was amended with Court approval on nine different occasions, and this Guarantee shall not become effective unless and until the Tenth Amendment to the Settlement Agreement (the "Tenth Amendment"), including this Guarantee, is properly executed and approved by the Court;

NOW, THEREFORE, in consideration of the premises and the covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor and Class Counsel agree as follows:

#### 1. THE GUARANTEE.

1.1 Guarantee. The Guarantor hereby absolutely, unconditionally and irrevocably guarantees the full and punctual payment when due (as described in Section 1.3 hereof) of the deposits into the Settlement Fund required under Section III.C of the Settlement Agreement relating to Matrix claims, up to the Maximum Available Fund B Amount, pursuant to the terms of the Settlement Agreement and the Amended and Restated AHP Settlement Trust Agreement (the "Trust Agreement") (the "Guaranteed Obligations"). The Guarantee is a guaranty of payment and the Guaranteed Obligations under this Guarantee are absolute and unconditional, irrespective of, and unaffected by any workout, insolvency, bankruptcy proceeding, reorganization, arrangement, liquidation or dissolution by or against Wyeth or any procedure, agreement, order, stipulation, election, action or omission thereunder, including any discharge or disallowance of, or bar or stay against collecting, any Guaranteed Obligation (or interest thereon) in or as a result of any such proceeding. This Guarantee is a continuing guaranty except that the Guarantor's obligations under this Guarantee shall be revoked, discharged and otherwise terminated upon the termination of the obligation of Wyeth to make payments into Fund B pursuant to Section IV.B of the Tenth Amendment (the "Termination Date").

1.2 Demand by Trust and Guarantor Payment. If an Uncured Failure to Make Payment has occurred under Section III.E.6 of the Settlement Agreement thereby causing the assets in the Security Fund to be transferred to the Security Fund Escrow Account under Section III.E.8 of the Settlement Agreement, then thereafter if the assets in the Security Fund Escrow Account are insufficient to fund the deposit of any amount that is required to be deposited into the Settlement Fund in order for the Trust to make payment of Matrix benefits that are due to one or more Class Members and/or to pay the Trust's costs of administering such benefits under the terms of the Settlement Agreement and Wyeth does not timely deposit into the Settlement Fund any amount that is due pursuant to a Fund B Quarterly Notice under the terms of the Settlement Agreement and Section 5.05 of the Trust Agreement, then the Trust shall promptly provide a written notice to Guarantor that Wyeth has failed to pay timely the amount due under any such Fund B Quarterly Notice, together with a copy of any such Fund B Quarterly Notice, and Guarantor shall deposit such amount into the Settlement Fund within five Business Days after the date of such notice from the Trust. As used herein the term "Fund B Quarterly Notice" includes such other periodic notices as may be agreed upon in writing by Wyeth and Class Counsel pursuant to Section III.C.4.e of the Settlement Agreement.

1.3 Benefit of Guarantee. The provisions of this Guarantee are for the benefit of the Settlement Class and nothing herein contained shall impair, as between Wyeth, on the one hand, and the Settlement Class on the other hand, the Guaranteed Obligations of Wyeth under the Settlement Agreement. This Guarantee binds the Guarantor and its successors in interest and the Guarantor shall not assign this Guarantee without the prior written consent of Class Counsel and approval by the Court.

1.4 Reinstatement. This Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against Wyeth for liquidation or reorganization, should Wyeth become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Wyeth's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Guaranteed Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by the Trust, whether as a "voidable preference," "fraudulent transfer," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Guaranteed Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

1.5 Subrogation. Guarantor and Wyeth agree that Guarantor shall be subrogated to the Settlement Class' rights against Wyeth for all Guaranteed Obligations paid by the Guarantor. Wyeth hereby acknowledges the subrogation rights of the Guarantor and agrees to execute such further and other documents as the Guarantor may reasonably request in order to evidence any such subrogation rights, whether before or after the Guarantor incurs any Guaranteed Obligations.

## 2. AGREEMENTS, REPRESENTATIONS AND WARRANTIES.

(a) Guarantor is duly formed, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to execute and deliver this Guarantee and to perform its obligations hereunder.

(b) Guarantor has taken all necessary corporate and legal action to authorize the execution and delivery of this Guarantee and the performance of its obligations hereunder.

(c) This Guarantee has been duly executed and delivered by Guarantor and will constitute the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with the terms of this Guarantee, subject to applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

(d) There is no litigation, investigation or proceeding of or before any arbitrator or other Government Authority pending or threatened against the Guarantor with respect to this Guarantee which has reasonable likelihood of having a material adverse effect on the assets or financial condition of Guarantor except as disclosed in Guarantor's financial statements.

The representations and warranties set forth in this Section 2 shall survive the execution and delivery of this Guarantee.

### 3. CONDITIONS TO EFFECTIVENESS OF THE GUARANTEE.

3.1. Conditions to Effectiveness. This Guarantee will constitute a legal, valid and binding obligation of Guarantor ten days after Trial Court Approval of the Tenth Amendment. This Guarantee shall be null and void and of no further force and effect if Trial Court Approval of the Tenth Amendment does not occur for any reason.

3.2. Final Judicial Approval Contingency. If (a) Final Judicial Approval of the Tenth Amendment is not obtained for any reason and (b) the Security Fund is restored to its level as of the date of the Tenth Amendment pursuant to a Funding Notice made by the Trust, this Guarantee shall be terminated and shall have no further force or effect. "Final Judicial Approval" refers to the approval of the Tenth Amendment by the Court and such approval becoming final by the exhaustion of all appeals, if any, without substantial modification of the order or orders granting such approval. Final Judicial Approval shall be deemed not to have been obtained in the event that Trial Court Approval is denied, and the period for appealing such denial has expired without any such appeal having been taken.

### 4. OTHER TERMS.

4.1. Termination. This Guarantee is a continuing guaranty and shall remain in full force and effect until, and shall automatically expire upon, the Termination Date. Upon termination of this Guarantee, the Class Counsel shall deliver to the Guarantor such documents as the Guarantor may reasonably request to evidence such termination.

4.2. Expenses. Subject to Section III.B.3 of the Settlement Agreement and the terms of Pretrial Order No. 7763 entered by the Court on April 8, 2008, each party will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Guarantee and the transactions contemplated hereby.

4.3. Successors and Assigns. This Guarantee and all obligations of the Guarantor hereunder shall be binding upon the successors and assigns of the Guarantor and shall, together with the rights and remedies of the Class Counsel, for the benefit of the Settlement Class, hereunder, inure to the benefit of the Settlement Class. No sales of participations, other sales,

assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Guaranteed Obligations or any portion thereof or interest therein shall in any manner impair the rights of the Settlement Class, hereunder.

4.4. Headings. The headings in this Guarantee are for convenience of reference only and are not part of the substance of this Guarantee.

4.5. Notices.

(a) Recipients. All notices, demands, requests, directions and other communications required or expressly authorized to be made by this Guarantee (“Notices”) shall be given in writing by certified mail, return receipt requested addressed as follows:

(i) if to the Guarantor, to

Pfizer Inc.  
235 E. 42<sup>nd</sup> Street, 235/22/5  
New York, New York 10017  
Attn: Amy Schulman  
with a copy by electronic mail to  
**GeneralCounsel@Pfizer.com**;

(ii) if to the Class Counsel, to

Levin, Fishbein, Sedran & Berman  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106  
Attn: Michael Fishbein  
with a copy by electronic mail to  
**MFishbein@lfsblaw.com**; and

(iii) if to the Trust, to

AHP Settlement Trust  
555 North Lane #6045  
Conshohocken, PA 19428  
Attn: Martin Rudolph  
With a copy by electronic mail to  
**mrudolph@settlementtrust.com**

Any party may designate a different recipient and/or address for Notices by transmittal of a Notice to that effect in compliance with this Section 4.5(a).

(b) Effectiveness. All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Guarantee shall be effective and be deemed to have been received upon the sender’s receipt of an acknowledgment from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgment); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or

communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

4.6. Governing Law. The construction, validity and performance of this Guarantee and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania applicable to contracts made and performed in such state (without regard to principles of conflict of laws). To the fullest extent permitted by law, Guarantor hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this Guarantee.

4.7. Enforcement and Jurisdiction. Class Counsel and/or the Trust shall have the right to enforce the terms of this Guarantee. No action concerning this Guarantee shall be instituted by any person other than Class Counsel, the Trust or Guarantor and any such action may not be instituted except in the United States District Court for the Eastern District of Pennsylvania, which shall have exclusive jurisdiction with respect to all matters and actions relating to this Guarantee. In connection with any such matters or actions, each of Class Counsel, the Trust and Guarantor waive personal service of any and all process upon it and agree that all such service of process be made by certified or registered mail directed to Class Counsel, the Trust and Guarantor at the addresses set forth on the signature page hereof and service so made shall be deemed to be completed upon actual receipt thereof. Except as set forth in this Guarantee, nothing contained herein shall prevent Class Counsel from bringing any action, enforcing any award or judgment or exercising any rights against any party individually, against any security or against any property of any party within any other county, state or other foreign or domestic jurisdiction.

4.8. Jury Trial Waiver. Guarantor and Class Counsel waive the right to a trial by jury in any action or proceeding based upon or related to the subject matter of this Guarantee. This waiver is knowingly, intentionally and voluntarily made by each party and each party acknowledges that neither the other nor any person acting on behalf of the other has or have made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect.

4.9. Severability. Any provision of this Guarantee being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of this Guarantee or any part of such provision in any other jurisdiction.

4.10. Execution in Counterparts. This Guarantee may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Guarantee by facsimile transmission or electronic signature shall be as effective as delivery of a manually executed counterpart hereof.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guarantee as of the date first above written.

**PFIZER INC.**, as Guarantor

By:   
Name: Amy W. Schulman  
Title: Senior Vice President and General Counsel

Address: 235 E. 42<sup>nd</sup> Street, 235/22/5  
New York, NY 10017

Agreed to and accepted by:

**CLASS COUNSEL**, on behalf of  
Settlement Class

  
\_\_\_\_\_  
Arnold Levin, Esquire

Email address: [ALevin@lfsblaw.com](mailto:ALevin@lfsblaw.com)

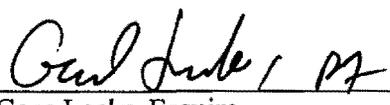
Michael D. Fishbein, Esquire

Email address: [MFishbein@lfsblaw.com](mailto:MFishbein@lfsblaw.com)

LEVIN, FISHBEIN, SEDRAN &  
BERMAN

510 Walnut Street, Suite 500

Philadelphia, PA 19106

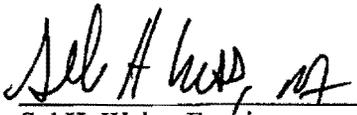
  
\_\_\_\_\_  
Gene Locks, Esquire

Email address: [glocks@lockslaw.com](mailto:glocks@lockslaw.com)

LOCKS LAW FIRM

1500 Walnut Street

Philadelphia, PA 19102

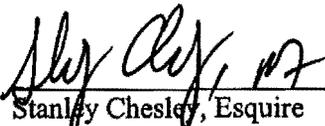
  
\_\_\_\_\_  
Sol H. Weiss, Esquire

Email address: [sweiss@anapolschwartz.com](mailto:sweiss@anapolschwartz.com)

ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, P.C.

1900 Delancey Place

Philadelphia, PA 19103

  
\_\_\_\_\_  
Stanley Chesley, Esquire

Email address: [Wsbclaw@aol.com](mailto:Wsbclaw@aol.com)

WAITE, SCHNEIDER, BAYLESS &  
CHESLEY

1513 Central Trust Tower

Fourth & Vine Sts.

Cincinnati, Ohio 45202



Charles R. Parker, Esquire  
Email address: [cparker@lockeford.com](mailto:cparker@lockeford.com)  
LOCKE, LIDDELL & SAPP, LLP  
3400 JP Morgan Chase Tower  
600 Travis  
Houston, TX 77002



John J. Cummings, Esquire  
Email address: [ccdlawfirm@aol.com](mailto:ccdlawfirm@aol.com)  
CUMMINGS, CUMMINGS &  
DUDENHEFER  
416 Gravier Street  
New Orleans, LA 70130

Address:

Solely for purposes of Section 1.5

WYETH LLC

By:   
Name: Bradley E. Lerman  
Title: Vice President

Address: 235 E. 42nd Street  
27<sup>th</sup> Floor  
New York NY 10017

Solely for purposes of Sections 1.2 and 4.7

**AHP Settlement Trust**

By:   
Name: MARTIN RUDOLPH  
Title: TRUSTEE  
AHP SETTLEMENT TRUST  
Address: 555 NORTH LANE  
# 4045  
CONSHOHOCKEN PA 19428

**FIRST AMENDMENT TO THE AMENDED AND RESTATED  
SECURITY FUND AND ESCROW AGREEMENT**

This FIRST AMENDMENT TO THE AMENDED AND RESTATED SECURITY FUND AND ESCROW AGREEMENT ("First Amendment") dated as of \_\_\_\_\_ 2010, is made by Wyeth LLC (formerly Wyeth), a limited liability company organized under the laws of Delaware ("Wyeth"), the AHP Settlement Trust ("Trust") and Wilmington Trust Company, a Delaware banking corporation, as Securities Intermediary and as Escrow Agent ("Wilmington Trust") (with Wyeth, the Trust and Wilmington Trust referred to collectively as the "Parties").

**W I T N E S S E T H:**

WHEREAS, on November 9, 2009, Wyeth converted its corporate status under Delaware law from a corporation to a limited liability company and changed its name to "Wyeth LLC";

WHEREAS, the Nationwide Class Action Settlement Agreement with American Home Products Corporation dated November 18, 1999 (as amended, the "Settlement Agreement") has been further amended by the Tenth Amendment to Nationwide Class Action Settlement Agreement, dated April 15, 2010 (the "Tenth Amendment"), and the Court has approved the terms of the Tenth Amendment;

WHEREAS, the Tenth Amendment, among other things, permits a release of assets to Wyeth upon Trial Court Approval of the Tenth Amendment from the Security Fund established pursuant to the Security Fund and Escrow Agreement dated as of January 18, 2002, which was amended by the Amendment No. 1 to Security Fund and Escrow Agreement dated as of March 29, 2002, Amendment No. 2 to Security Fund and Escrow Agreement dated as of November 29, 2002, and the Amended and Restated Security Fund and Escrow Agreement, dated January 31, 2003, each among Wyeth, the Trust and Wilmington Trust, as securities intermediary and escrow agent (such Security Fund and Escrow Agreement, as so amended, the "Security Agreement") and establishes a methodology for calculating the required level of the Security Fund beginning on July 1, 2012; and

WHEREAS, pursuant to Section 4.2 of the Security Agreement the Parties desire to amend certain aspects of the Security Agreement to implement the relevant provisions of the Tenth Amendment.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the Parties agree that the Security Agreement is amended as follows:

**1. *Incorporation of Settlement Agreement and Security Agreement Definitions.*** This First Amendment incorporates all defined terms in the Settlement Agreement, the Tenth Amendment and the Security Agreement and all such terms as used in this First Amendment shall have the meanings given to them in those agreements.

**2. *Additional Definitions.*** Any capitalized term defined in this First Amendment shall have the meaning given to it in this First Amendment.

3. ***Withdrawals from the Security Fund.*** Anything in Section 2.1(c) of the Security Agreement to the contrary notwithstanding, Wyeth shall be entitled to withdraw from the Security Fund free of the security interest granted pursuant to Section 2.2 of the Security Agreement or any other Lien any amounts to be released to Wyeth pursuant to Section V.B of the Tenth Amendment or pursuant to Section V.I of the Tenth Amendment, in the manner set forth in this First Amendment. In furtherance but without limitation of the foregoing, The Trust shall file any pertinent amendments to the financing statements filed pursuant to Section 2.2 of the Security Agreement to indicate the release of the security interest or any other Lien covered under this section.

4. ***Deposits into the Security Fund.*** Anything in Section 2.1(b) of the Security Agreement to the contrary notwithstanding, Wyeth shall make such other deposits into the Security Fund as may be required under Section V.I of the Tenth Amendment, in the manner set forth in this First Amendment.

5. ***Implementation of Section V.B of the Tenth Amendment.*** Not earlier than ten days after Trial Court Approval of the Tenth Amendment, Wyeth shall deliver to Wilmington Trust a written instruction (a "Section V.B Notice," substantially in the form of Exhibit A to this First Amendment) signed by the Trust and Wyeth: (a) referring to this Section 5; (b) stating that all assets (whether in cash or Permitted Investments) in the Security Fund in excess of \$370 million shall be withdrawn by Wyeth pursuant to Section V.B of the Tenth Amendment (the "Section V.B Amount"); (c) directing Wilmington Trust to transfer the Section V.B Amount to Wyeth; (d) setting forth complete and accurate wire transfer instructions to the account Wyeth instructs; and (e) attaching a copy of the Order as entered by the Court constituting Trial Court Approval. Upon receipt of the Section V.B Notice, Wilmington Trust shall, prior to the end of the next Business Day, transfer the Section V.B Amount to Wyeth in accordance with the Section V.B Notice in the form of cash and/or Permitted Investments, as directed by Wyeth.

6. ***Implementation of Section V.I of the Tenth Amendment.***

(a) Not later than five Business Days after the date of the final determination of the Trust communicated in writing to Wyeth and Class Counsel of the Average 2015 Claimant Payment Total under Section V.C or of the Average Age 80 Claimant Payment Total under Section V.E of the Tenth Amendment, as applicable, the Trust and Wyeth shall deliver to Wilmington Trust a written instruction (a "Section V.I Notice," substantially in the form of Exhibit B to this First Amendment) signed by the Trust and Wyeth: (a) referring to this Section 6; (b) stating whether a deposit is required of Wyeth into the Security Fund or whether an amount is to be released to Wyeth from the Security Fund; (c) stating the amount of any required deposit by Wyeth into the Security Fund (a "Section V.I Deposit Amount") or the amount of any permitted release to Wyeth (a "Section V.I Withdrawal Amount"); (d) if a release to Wyeth is permitted, directing Wilmington Trust to transfer the Section V.I Withdrawal Amount to Wyeth and setting forth complete and accurate wire transfer instructions to the account Wyeth instructs; and (e) specifying the date that is 15 days after the date of the final determination of the Trust communicated to Wyeth and Class Counsel of the Average 2015 Claimant Payment Total under Section V.C or of the Average Age 80 Claimant Payment Total under Section V.E of the Tenth Amendment, as applicable (the "Section V.I Due Date").

(b) If a Section V.I Deposit Amount is required of Wyeth under a Section V.I Notice, no later than the Section V.I Due Date, Wyeth shall deposit into the Security Fund the Section V.I Deposit Amount in cash and/or Permitted Investments. Any cash so deposited shall be invested by Wilmington Trust in Permitted Investments.

(c) If a Section V.I Withdrawal Amount is permitted under a Section V.I Notice, no later than the Section V.I Due Date, Wilmington Trust shall transfer the Section V.I Withdrawal Amount to Wyeth in accordance with the Section V.B Notice in the form of cash and/or Permitted Investments, as directed by Wyeth.

**7. *Termination of the Security Fund.*** Section 2.1(d) of the Security Agreement is deleted in its entirety and shall be replaced by inserting the following new Section 2.1(d):

Section 2.1(d) Termination of the Security Fund. (i) At any time after December 31, 2018, the Security Fund shall be terminated if the Court issues an Order finding that it is no longer reasonably necessary to secure the payment of Matrix Compensation Benefits to the Age 80 Class Members and that Order is not subject to a stay pending appeal within fifteen days from the date on which such Order was entered.

(ii) If the Court issues an Order pursuant to the preceding paragraph and that Order is not subject to a stay pending appeal within fifteen days from the date on which such Order was entered, the Security Fund and the security interest granted pursuant to Section 2.2 shall be terminated upon delivery to Wilmington Trust by the Trust, Wyeth or Class Counsel of a copy of such Order entered by the Court terminating the Security Fund, together with written instructions for delivery of any remaining assets in the Security Fund.

**8. *Miscellaneous.***

(a) Except as expressly modified in this First Amendment, all terms and provisions of the Security Agreement remain unmodified and in full force and effect and are hereby ratified and confirmed.

(b) The headings of the Sections of this First Amendment are included for convenience only and shall not be deemed to constitute part of this First Amendment or to affect its construction.

(c) All questions concerning the construction, validity, enforcement and interpretation of this First Amendment shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflicts of law thereof.

(d) In the event of a conflict between this First Amendment, the Security Agreement and any other agreement between the Securities Intermediary and the Grantor, the terms of this First Amendment will prevail.

(e) This First Amendment may be executed in counterparts by facsimile or electronic signature. Each counterpart shall be effective as part of a fully executed First Amendment.

IN WITNESS WHEREOF, the Parties have duly executed this First Amendment to the Amended and Restated Security Fund and Escrow Agreement as of the day and year first above written.

WYETH LLC

By \_\_\_\_\_

Name:

Title:

AHP SETTLEMENT TRUST

By \_\_\_\_\_

Name:

Title:

WILMINGTON TRUST COMPANY, as Securities  
Intermediary

By \_\_\_\_\_

Name:

Title:

WILMINGTON TRUST COMPANY, as Escrow Agent

By \_\_\_\_\_

Name:

Title:

**SECTION V.B NOTICE**

**To: Wilmington Trust Company,  
as Securities Intermediary  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890  
Attn: Corporate Trust Custody**

**Re: Security Fund Account Number 57272-0 in the name of "Wyeth LLC" (formerly "Wyeth")**

This Notice is issued pursuant to Section V.B of the Tenth Amendment to the Nationwide Class Action Settlement Agreement with American Home Products Corporation and Section 5 of the First Amendment to the Amended and Restated Security Fund and Escrow Agreement, both dated April 15, 2010. The AHP Settlement Trust and Wyeth LLC hereby represent and certify to Wilmington Trust Company, as Securities Intermediary, the facts and directions stated in this Notice.

<b>1.</b>	<b>Purpose of this Notice</b>	To direct the Securities Intermediary to transfer to Wyeth LLC the Section V.B Amount stated in this Notice.
<b>2.</b>	<b>Section V.B Amount</b>	All assets in the Escrow Account in excess of \$370,000,000.
<b>3.</b>	<b>Directions to Securities Intermediary</b>	The Securities Intermediary is directed to transfer immediately the Section V.B Amount to the account of Wyeth LLC using the Wiring Instructions stated in this Notice.
<b>4.</b>	<b>Wiring Instructions for Wyeth LLC</b>	_____ ABA # Credit Account # Account Name: Attention: Further Credit to: Notify:
<b>5.</b>	<b>Copy of Trial Court Approval of the Tenth Amendment</b>	A true and correct copy of the Order constituting Trial Court Approval of the Tenth Amendment is attached to this Notice as Exhibit 1.

<b>AHP SETTLEMENT TRUST</b>	<b>WYETH LLC</b>
By: _____ Martin Rudolph AHP Settlement Trust 555 North Lane #6045 Conshohocken, PA 19428  Date: _____	By: _____ Orran L. Brown BrownGreer PLC 115 S. 15 <sup>th</sup> Street, Suite 400 Richmond, VA 23219  Date: _____

**SECTION V.I NOTICE**

<b>To: Wilmington Trust Company, as Securities Intermediary Rodney Square North 1100 North Market Street Wilmington, DE 19890 Attn: Corporate Trust Custody</b>	<b>Date by Which Withdrawal or Deposit Must be Effected</b>
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**Re: Security Fund Account Number 57272-0 in the name of "Wyeth LLC" (formerly "Wyeth")**

This Notice is issued pursuant to Section V.I of the Tenth Amendment to the Nationwide Class Action Settlement Agreement with American Home Products Corporation and Section 6 of the First Amendment to the Amended and Restated Security Fund and Escrow Agreement, both dated April 15, 2010. The AHP Settlement Trust and Wyeth LLC hereby represent and certify to Wilmington Trust Company, as Securities Intermediary, the facts and directions stated in this Notice.

<b>1.</b>	<b>Purpose of this Notice</b>	To direct the Securities Intermediary either to (a) transfer to Wyeth LLC the Section V.I Withdrawal Amount stated in this Notice (b) receive from Wyeth LLC the Section V.I Deposit Amount stated in this Notice, as applicable.
<b>2.</b>	<b>Statement of Whether Withdrawal or Deposit Required</b>	<input type="checkbox"/> A Section V.I Withdrawal Amount is to be released to Wyeth LLC from the Security Fund. <input type="checkbox"/> A Section V.I Deposit Amount is to be deposited by Wyeth LLC into the Security Fund.
<b>3.</b>	<b>Section V.I Withdrawal Amount</b>	\$ _____ If an amount is shown in this section, the Securities Intermediary is directed to transfer this Section V.I Withdrawal Amount to the account of Wyeth LLC using the Wiring Instructions stated in this Notice.
<b>4.</b>	<b>Section V.I Deposit Amount</b>	\$ _____ If an amount is shown in this section, the Securities Intermediary is directed to receive this Section V.I Deposit Amount from Wyeth LLC and place such amount into the Security Fund.
<b>5.</b>	<b>Wiring Instructions for Transfer of a Section V.I Withdrawal Amount to Wyeth LLC</b>	_____ Further Credit to: ABA # Notify: Credit Account # Account Name: Attention:

<b>AHP SETTLEMENT TRUST</b>	<b>WYETH LLC</b>
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<b>By:</b> _____ Martin Rudolph AHP Settlement Trust 555 North Lane #6045 Conshohocken, PA 19428	<b>By:</b> _____ Orran L. Brown BrownGreer PLC 115 S. 15 <sup>th</sup> Street, Suite 400 Richmond, VA 23219
<b>Date:</b> _____	<b>Date:</b> _____