

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

---

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

MDL NO. 1203

---

THIS DOCUMENT RELATES TO: SHEILA  
BROWN, ET AL. V. AMERICAN HOME  
PRODUCTS CORPORATION

---

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

## TABLE OF CONTENTS

I.	DEFINITIONS. ....	1
	A. <i>Incorporation of Settlement Agreement Definitions and Section References</i> .....	1
	B. <i>Additional Defined Terms.</i> .....	1
II.	SEVENTH AMENDMENT .....	19
III.	CLASS MEMBERS SUBJECT TO THIS SEVENTH AMENDMENT .....	20
	A. <i>Categories of Class Members.</i> .....	20
	B. <i>Derivative Claimants.</i> .....	22
	C. <i>Progression During Pendency of the Seventh Amendment</i> .....	23
IV.	APPOINTMENT OF THE FUND ADMINISTRATOR, ESCROW AGENT, MEDICAL REVIEW CONSULTING COMMITTEE, AND THE SALC. ....	25
	A. <i>The Fund Administrator.</i> .....	25
	B. <i>The Escrow Agent</i> .....	25
	C. <i>The Medical Review Coordinating Committee.</i> .....	26
	D. <i>The Seventh Amendment Liaison Committee</i> .....	26
	E. <i>Immunity From Liability.</i> .....	27
V.	THE SUPPLEMENTAL CLASS SETTLEMENT FUND; WYETH’S ADDITIONAL FINANCIAL OBLIGATIONS; AND OTHER PROVISIONS. ....	30
	A. <i>Supplemental Class Settlement Fund.</i> .....	30

B.	<i>Use of Funds Before Final Judicial Approval of the Seventh Amendment.</i>	32
C.	<i>Notice.</i>	32
D.	<i>Return of Funds.</i>	33
E.	<i>Impact of Final Judicial Approval of the Seventh Amendment</i>	33
F.	<i>Compensatory Damages</i>	34
G.	<i>Authorization Applications</i>	34
H.	<i>Authorization Orders</i>	35
VI.	SECURITY ARRANGEMENTS RELATING TO THE SEVENTH AMENDMENT	36
A.	<i>Seventh Amendment Security Fund.</i>	36
B.	<i>Purpose of the Seventh Amendment Security Fund</i>	36
C.	<i>Impact of No Final Judicial Approval</i>	36
D.	<i>Withdrawals by Wyeth from the Seventh Amendment Security Fund</i>	36
E.	<i>Security for Wyeth's Guarantee</i>	37
VII.	BENEFITS FOR CATEGORY ONE CLASS MEMBERS	38
A.	<i>Benefits Subject to Medical Review</i>	38
B.	<i>Minimum Payment Amount</i>	43
C.	<i>Category Two Election by a Category One Class Member</i>	44

D.	<i>Timing and Condition of Payments</i>	45
VIII.	BENEFITS FOR CATEGORY TWO CLASS MEMBERS	46
A.	<i>Category Two Payment</i>	46
B.	<i>Administration of Category Two Payments</i>	46
C.	<i>Timing of Category Two Payments</i>	48
D.	<i>Condition of Category Two Payments</i>	48
IX.	BENEFITS FOR CATEGORY ONE CLASS MEMBERS AND CATEGORY TWO CLASS MEMBERS	50
A.	<i>Seventh Amendment Matrix Compensation Benefits</i>	50
B.	<i>Funding for Seventh Amendment Matrix Compensation Benefits, Effect on MAFBA, and Guarantee by Wyeth</i>	52
C.	<i>Funding of Supplemental Claims When MAFBA Reaches \$255,000,000.</i>	53
D.	<i>Eligibility List</i>	53
E.	<i>No Preclusion</i>	53
X.	EFFECT OF THE SEVENTH AMENDMENT ON CASH/MEDICAL SERVICES BENEFITS OF CATEGORY ONE CLASS MEMBERS AND CATEGORY TWO CLASS MEMBERS	55
A.	<i>Category One Class Members</i>	55
B.	<i>Category Two Election by Category One Class Member.</i>	56
C.	<i>Category Two Class Members</i>	56

D.	<i>Category One Class Members and Category Two Class Members Who Do Not Qualify for Cash/Medical Services Benefits</i>	57
XI.	OTHER EFFECTS OF THE SEVENTH AMENDMENT.	58
A.	<i>Termination of Opt-Out Rights</i>	58
B.	<i>Matrix Compensation Benefits Under the Seventh Amendment</i>	58
C.	<i>Release and Covenant Not to Sue</i>	59
D.	<i>Credits</i>	60
XII.	SEVENTH AMENDMENT OPT-OUT	62
A.	<i>Seventh Amendment Opt-Out</i>	62
B.	<i>Method of Exercise</i>	62
C.	<i>Effect of Opt-Out</i>	62
D.	<i>Derivative Claimants</i>	63
E.	<i>Revocation of Seventh Amendment Opt-Out</i>	63
F.	<i>Seventh Amendment Opt-Out List</i>	63
XIII.	SEVENTH AMENDMENT WALKAWAY RIGHT	65
A.	<i>Walkaway Period</i>	65
B.	<i>Walkaway Right</i>	65
C.	<i>Method of Exercise</i>	65

XIV. PROCEDURES TO BECOME ELIGIBLE FOR INCLUSION IN CATEGORY ONE AFTER THE EXECUTION DATE .....	66
A. <i>Initial Category One Class List</i> .....	66
B. <i>Class Members who Previously Exercised Initial,         Intermediate, or Back-End Opt-Outs</i> .....	66
C. <i>Inclusion in Category One After the Execution Date</i> .....	67
D. <i>Amended and Final Category One Class List.</i> .....	68
E. <i>Disputes</i> .....	69
XV. ADMINISTRATION OF BENEFIT CLAIMS PAYABLE FROM THE SUPPLEMENTAL CLASS SETTLEMENT FUND .....	70
A. <i>General</i> .....	70
B. <i>Proof Requirements</i> .....	70
C. <i>Access to Trust Files</i> .....	73
D. <i>Access to Trust Database</i> .....	74
E. <i>Trust Cooperation</i> .....	74
F. <i>Technical Deficiencies</i> .....	74
G. <i>Proof of Diet Drug Use.</i> .....	74
H. <i>Echocardiograms</i> .....	75
I. <i>Qualified Cardiology Centers.</i> .....	75
J. <i>Role of the MRCC.</i> .....	75

K.	<i>Challenges.</i> . . . . .	76
L.	<i>No Contact with Participating Physicians or the MRCC.</i> . . .	76
M.	<i>Medical Review.</i> . . . . .	76
N.	<i>Category One Class Members Found Payable by the Trust</i> . . . . .	77
O.	<i>Relative Payment Value</i> . . . . .	77
P.	<i>Interim Distributions.</i> . . . . .	77
Q.	<i>Payment of Interim Distributions</i> . . . . .	78
R.	<i>Individual Payment Amount</i> . . . . .	78
S.	<i>Distribution of Proceeds</i> . . . . .	79
T.	<i>Attorneys' Fees</i> . . . . .	80
U.	<i>Distribution of Category Two Payment</i> . . . . .	81
V.	<i>Distribution of Minimum Payment Amount</i> . . . . .	81
W.	<i>Subrogation and Other Third Party Payor Claims</i> . . . . .	81
XVI.	REMEDIES IN THE EVENT OF A BREACH BY WYETH . . . . .	85
A.	<i>Notice of Default.</i> . . . . .	85
B.	<i>Order of Default</i> . . . . .	85
XVII.	PRELIMINARY APPROVAL; STAY OF PROCEEDINGS DURING THE OBJECTION/OPT-OUT PERIOD . . . . .	86
A.	<i>Preliminary Approval Order.</i> . . . . .	86

	B.	<i>Stay of Appeals.</i>	90
XVIII.		JURISDICTION, EFFECT ON OTHER PROCEEDINGS, AND REMEDIES.	91
	A.	<i>Dismissals of Proceedings</i>	91
	B.	<i>Enforcement Actions</i>	91
	C.	<i>Conditions</i>	91
	D.	<i>Retained Jurisdiction</i>	94
XIX.		OTHER PROVISIONS	95
	A.	<i>Method of Transmission of Notices</i>	95
	B.	<i>Recipients of Notices.</i>	95
	C.	<i>Change in Recipients</i>	97
	D.	<i>Confidential Information</i>	97
	E.	<i>No Admissions</i>	97
	F.	<i>Wyeth Cooperation</i>	97
	G.	<i>Access by Wyeth</i>	97
	H.	<i>Survival of Terms</i>	98
	I.	<i>Administrative Deadlines</i>	98
	J.	<i>Seventh Amendment Term Sheet</i>	98
	K.	<i>Headings</i>	98
	L.	<i>Counterparts</i>	99

## TABLE OF EXHIBITS

<u>Description</u>	<u>Exhibit</u>
Seventh Amendment Term Sheet	A
Initial Category One Class List	B
Seventh Amendment Security Fund Agreement	C
Notice Regarding Endorsements on Payments	D
Category Two Election Form	E
Release and Covenant Not To Sue	F
Seventh Amendment Opt-Out Form	G
Matters Subject to Stays in District Court	H
Matters Subject to Stays in the Court of Appeals	I
Pre-Stay Payable PADL Order	J
Parallel Processing Program	K
Notice to Class Members	L
Motion and Memorandum to Extend Stays in Court of Appeals	M

**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.

---

<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,

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).

**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

.....

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” (ε) 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

.....

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

.....

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

.....

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

.....

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.

.....

**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.

**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.

.....

**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.

.....

**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 Walkway 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.

.....

**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

---

<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,

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

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

.....

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;

.....

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

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 "I" 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.

**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

.....

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.

.....

**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

.....

**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 to this Seventh Amendment 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 *ellr*  
Vice President and Deputy General Counsel

Date: 8/24/04

CLASS COUNSEL



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

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*

---

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