

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

IN RE: DIET DRUGS (PHENTERMINE/  
FENFLURAMINE/DEXFENFLURAMINE) : MDL DOCKET NO. 1203  
PRODUCTS LIABILITY LITIGATION :  
: :  
THIS DOCUMENT RELATES TO: :  
: :  
ALL ACTIONS :  
: :  
: :

PRETRIAL ORDER NO. 2023

(PROCEDURE FOR AWARD OF COUNSEL FEES  
& REIMBURSEMENT OF LITIGATION EXPENSES)

AND NOW, TO WIT, this 14<sup>th</sup> day of June, 2001, in order to provide for the orderly and efficient presentation and determination of requests for the award of attorneys' fees and reimbursement of litigation expenses from: (1) the MDL 1203 Fees and Costs Account established and maintained pursuant to Pretrial Orders Nos. 467 and 517 and (2) from the funds available for an award of counsel fees and reimbursement of litigation expenses pursuant to the Nationwide Class Action Settlement Agreement with American Home Products Corporation (the "Settlement Agreement"), which was approved by this court in Pretrial Order No. 1415 (collectively the "Diet Drug Common Benefit Fee Sources"), IT IS ORDERED that:

1. No later than August 30, 2001, the auditor appointed by the court, Alan B. Winikur, CPA (the "Auditor"), shall complete his audit of the professional time and expenses reported by counsel as being eligible for payment or reimbursement from the Diet Drug Common Benefit Fee Sources through June 30, 2001, in accordance

with the applicable orders of this court including Pretrial Orders Nos. 16, 467, 517, 1164, 1415, 1434, 1793 and 1892 (the "Relevant Fee Orders").

2. No later than September 28, 2001, the Auditor shall file with the court a report setting forth the results of the audit described in paragraph 1 of this Order. For each law firm, attorney or other person who submitted time and expense records pursuant to the Relevant Fee Orders (each an "Applicant"), the Auditor's report shall set forth the professional time which the Auditor believes to be eligible for compensation and/or reimbursement and the amount of any submitted time or expense which the Auditor believes should be disallowed along with the reasons for the proposed disallowance.

3. In conducting his audits, the Auditor shall disallow each of the following:

- A. Any submission or report of professional time and expense in which the hours of service were not properly coded in accordance with Pretrial Order No. 16;
- B. Any item of expense for which proper receipts or other proof of payment has not been submitted;
- C. Any item of time or expense which was incurred in connection with the litigation of any individual case or group of individual cases

involving a person or persons who used the diet drugs Pondimin or Redux (each a "Diet Drug Recipient"), unless counsel was authorized by either the Co-Chairs of the Plaintiffs' Management Committee ("PMC") or the Co-Chairs of the Discovery Committee in MDL 1203 to perform such work primarily for the common benefit of the litigants in MDL 1203 and the state litigation with which it is coordinated pursuant to the terms of Pretrial Orders Nos. 467 and 517;

- D. Any submission or report of professional time which does not provide a cumulative loadstar figure for the Applicant on a quarterly basis;
- E. Any submission or report of professional time which does not provide hourly rates and/or descriptions of the professional status (i.e., partner, associate, paralegal, law clerk) of each person whose professional time is the subject of the submission or report;
- F. Any submission or report of professional time which does not provide cumulative totals for the reimbursable expenses claimed by the Applicant on a quarterly basis;

- C. Any submission which is not based on time which was contemporaneously recorded in the books and records of the Applicant at the time the professional services were rendered;
- H. Any item of expense which does not meet the requirements of Pretrial Order No. 16, ¶ B;
- I. Any item of time or expense which is not described in sufficient detail to determine the nature and purpose of the service or expense involved (entries such as "research", "telephone call to PMC", "conference with JB", without further description, are to be disallowed);
- J. Any item of professional time which was expended to "review" pleadings, correspondence and similar items unless such "review time" was directly related to and reasonably necessary for the performance of other compensable services;
- K. Any submission of professional time in which the amount of "review" time is excessive as a whole when judged in reference to the role which the Applicant had in the litigation of the Class Actions certified by this Court in Pretrial Orders Nos. 865 and 1415, in the

litigation of any state court class action which substantially benefitted the class certified in Pretrial Order No. 1415, or in performing common benefit functions on behalf of the Diet Drug Recipients who were subject to consolidated pretrial proceedings in MDL 1203 and the state court litigation with which it was coordinated pursuant to Pretrial Orders Nos. 467 and 517;

- L. Any submission of time and expense which is grossly excessive on its face, when considered as a whole in light of the role which the Applicant had in the litigation of the Class Actions certified by this Court in Pretrial Orders Nos. 865 and 1415, in the litigation of any state court class action which substantially benefitted the class certified in Pretrial Order No. 1415, or in performing common benefit functions on behalf of the Diet Drug Recipients who were subject to consolidated pretrial proceedings in MDL 1203 and the state court litigation with which it was coordinated pursuant to Pretrial Orders Nos. 467 and 517;

- M. Any item of time and expense for "monitoring" or review of the Settlement Agreement or any proceedings involving the approval of the Settlement Agreement unless such time was authorized or expended by Class Counsel;
- N. Except for time which was performed pursuant to duties specifically imposed incident to the Court's appointment of liaison counsel for the Diet Drug Recipients who objected to the Settlement Agreement, any submission of time and expense for services performed on behalf of Diet Drug Recipients who objected to the Class Action Settlement, all such objections having been withdrawn with prejudice and without effectuating any changes in the terms of the Settlement Agreement;
- O. Any item of time or expense which was not reasonable, necessary, and part of a bona fide effort in state or federal litigation which actually advanced the interests of the classes certified in Pretrial Orders Nos. 865 & 1415, and the common interests of the Diet Drug Recipients who were plaintiffs in the actions subject to consolidated pretrial proceedings in MDL 1203 and any state court proceedings

with which it was coordinated pursuant to Pretrial Orders Nos. 467 and 517.

4. Prior to disallowing any item or submission of time and expense, the Auditor shall afford the affected Applicant at least ten days' notice of the proposed disallowance and an opportunity to cure the deficiency which would otherwise result in the disallowance.

5. The Auditor may use standard accounting procedures, including sampling, to examine the time and expense which is subject to his review. In the event that the Auditor determines after review of a sufficient sample of the time and expense records of an Applicant that there are a material number of items which should be disallowed pursuant to the terms of this order or any other Relevant Fee Order, and if such deficiencies remain uncured after affording the Applicant an opportunity to do so pursuant to the terms of paragraph 4 of this Order, then the entire submission of the Applicant shall be disallowed by the Auditor.

6. No later than October 15, 2001, each Applicant shall submit to Arnold Levin as Plaintiffs' Liaison Counsel in MDL 1203 ("Plaintiffs' Liaison Counsel"), a "Fee Presentation" in the form of a sworn affidavit based on personal knowledge, which shall include the following information:

A. A narrative statement detailing and describing with particularity the professional services performed and the contribution provided by the

Applicant for the benefit of the classes certified in Pretrial Orders Nos. 865 and 1415, any class of Diet Drug Recipients subject to class certification proceedings in any state court litigation, or for the "common benefit" of plaintiffs who were subject to consolidated pretrial proceedings in MDL 1203 and the state litigation with which it was coordinated under the terms of Pretrial Orders Nos. 467 and 517. This narrative statement shall not exceed one page for each 500 hours of attorney time which is eligible for compensation under the terms of this order.

- B. A biographical sketch for each attorney seeking an award of fees and reimbursement of expenses, setting forth the qualifications of the attorney and his or her law firm. This description shall not exceed one page for each such attorney.
- C. A list of the current and historical hourly billing rates for each attorney and paraprofessional whose professional time is the subject of the Fee Presentation, from the inception of this litigation to the present.

- D. A summary of the professional time for which compensation or reimbursement is claimed, stated separately by year and by attorney and/or paralegal, and a summary of expenses for which reimbursement is claimed, stated separately by quarter for each year and expense category.
- E. Verified copies of all pertinent time records which were maintained contemporaneously by the Applicant throughout this litigation and reported in accordance with the Relevant Fee Orders. These records should set forth the date the service was performed, describe the service in reasonable detail, and state the time expended in performing the service.
- F. COUNSEL SHALL NOT INCLUDE IN THEIR FEE PRESENTATION ANY PROFESSIONAL TIME WHICH WAS EITHER DISALLOWED OR SUBJECT TO DISALLOWANCE BY THE AUDITOR PURSUANT PARAGRAPH 3 OF THIS ORDER.
- G. A description of each item of expense for which reimbursement is claimed, the date it was expended, the person or entity to whom that amount was paid and a certification that the amount has not been reimbursed by any

individual client, group of individual clients or any other person or entity.

- H. A description of any arrangement or agreement under which the Applicant is obligated or expects to pay any portion of any fee awarded by the Court from any of the Diet Drug Common Benefit Fee Sources to any other person;
- I. A description of any arrangement or agreement under which the Applicant is entitled or expects to receive any portion of any fee awarded by the Court to persons other than the Applicant;
- J. For all members of the PMC, a description of any arrangement or agreement under which the PMC member has received or expects to receive payment for services provided in the course of any Diet Drug litigation except to the extent that such arrangements or agreements involve payment of fees and reimbursement of costs to PMC members by individual Diet Drug Recipients who are clients of the PMC members and their respective law firms.

7. Where the Applicant seeks an award of fees or reimbursement of expenses for time and expense which may be allowable under the provisions of paragraph 3(C) of this order in

connection with the representation of individual Diet Drug Recipients or groups of individual Diet Drug Recipients, the Fee Presentation shall contain a statement itemizing the gross recoveries by all individual Diet Drug Recipients in which the Applicant had a direct or indirect fee interest, through contingent fee contract, referral arrangement, fee sharing agreement or otherwise, the total amount of attorneys' fees received by the Applicant in connection with such recoveries, and a detailed itemization of all expenses incurred by and reimbursed to the Applicant in connection with the representation of such individual Diet Drug Recipients.

8. The Fee Presentations should be delivered via certified mail, return receipt requested, addressed to Arnold Levin, Plaintiffs' Liaison Counsel, MDL 1203, 510 Walnut Street, Suite 500, Philadelphia, PA 19106 .

9. Where the request for fees relates to the services of more than one attorney employed by or associated with any law firm, only one Fee Presentation should be submitted to Plaintiffs' Liaison counsel in support of the request.

10. No later than November 15, 2001, Plaintiffs' Liaison Counsel shall compile all of the Fee Presentations which were timely submitted to him and which comply with the terms of this order into a single indexed pleading and shall file that compilation of Fee Presentations with the court. At the same time, Plaintiffs' Liaison Counsel shall submit to the court a generic,

consolidated, joint petition (the "Joint Petition") for an award of attorneys' fees and reimbursement of expenses. The Joint Petition shall encompass all timely Fee Presentations which conform with this order. The inclusion of a Fee Presentation in the Joint Petition is a matter of administrative convenience for the court and will not have any substantive significance in any ruling by the court as to the amount of fees to be awarded and reimbursement to be allowed from the Diet Drug Common Benefit Fee Sources, either in the aggregate or as to any attorney, law firm or other person.

11. To the extent that an Applicant wants to receive an award of attorneys' fees or reimbursement of expenses based on time or expense which is not presented in the Joint Petition and which has not already been presented to the Court in the petitions required to be filed under Pretrial Order No. 1892, such Applicants may present their request to the Court by way of a separate petition. Such separate petitions shall be accompanied with a Fee Presentation which conforms with all of the provisions of Paragraphs 6 & 7 of this order except subparagraph 6(F), shall be delivered via certified mail, return receipt requested, addressed to Arnold Levin, Plaintiffs' Liaison Counsel, MDL 1203, 510 Walnut Street, Suite 500, Philadelphia, PA 19106 no later than November 21, 2001, and shall not exceed twenty (20) pages of text in 12 point font with one inch margins, exclusive of exhibits, any supporting Fee Presentation and other supporting materials. No later than November 29, 2001 Plaintiffs' Liaison Counsel shall

compile all of the separate petitions and supporting Fee Presentations which were timely submitted to him pursuant to this paragraph into a single indexed pleading and shall file that compilation of separate petitions with the court.

12. To the extent that any person wishes to file a memorandum of law in opposition to any petition for the award of attorneys' fees and costs from any of the Diet Drug Common Benefit Fee Sources, such memoranda shall be filed no later than December 21, 2001, and shall not exceed twenty (20) pages of text in 12 point font with one inch margins, exclusive of exhibits and supporting material.


13. No deadline provided in this order or in the Relevant Fee Orders shall be extended except for good cause shown.

14. Any attorney, law firm or other person who does not timely submit their professional time and expenses for audit pursuant to the Relevant Fee Orders shall not be eligible to receive an award of attorneys' fees and reimbursement of litigation expenses from any of the Diet Drug Common Benefit Fee Sources, except by leave of court upon a showing of good cause.

15. Any intentional violation of the terms of this order is grounds for the court to deny a request for payment of counsel fees or reimbursement of litigation expenses in whole or in part as well as for such other sanctions and penalties as may be appropriate under the law.

16. A hearing on all petitions for an award of attorneys' fees and reimbursement of costs shall be scheduled by subsequent order of the court.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Louis C. Bechtel, J.", written in a cursive style. The signature is positioned above a horizontal line.

Louis C. Bechtel, J.