

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

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

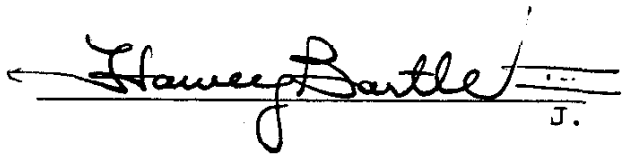
PRETRIAL ORDER NO. 3058

AND NOW, this 7<sup>th</sup> day of October, 2003, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of Sherman Salkow Petoyan & Weber, P.C., to strike notice of lien asserted by John W. Hornbeck, Jr., Esquire (Doc. No. 203773) is GRANTED; and

(2) Escrow Agent, Gregory P. Miller, Esquire, is directed to pay \$2,438,024.16 from the MDL 1203 Fee and Cost Account to Sherman Salkow Petoyan & Weber, P.C. This payment is without prejudice to any right John W. Hornbeck, Jr., Esquire may have against Sherman Salkow Petoyan & Weber, P.C.

BY THE COURT:

  
J.

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MEMORANDUM AND PRETRIAL ORDER NO. 3058

Bartle, J.

October 7, 2003

Before the court is a motion brought by the law firm of Sherman Salkow Petoyan & Weber, P.C., ("the Sherman firm") to strike notices of lien asserted by John W. Hornbeck, Esquire (Doc. No. 203773).

In Pretrial Order ("PTO") No. 2622, the court awarded interim counsel fees and costs and established a Fee and Cost Allocation Committee ("Committee") to recommend how the award should be divided among the various attorneys. In PTO 2859, this court approved the Committee's recommendation that the Sherman firm should be paid \$2,438,024.16 in counsel fees and costs from the MDL 1203 Fee and Cost Account ("MDL 1203 Account"). However, in an April 22, 2003 letter to Edward Radetich and Charles Long, Consultants to the Escrow Agent for the MDL 1203 Account, Mr. Hornbeck stated he was asserting a lien against any moneys to be

paid to the Sherman firm from the MDL 1203 Account and asked that the allocation for his services be mailed directly to him. Pending the determination of the viability of this lien, these funds have not been released.

From the record before us, Mr. Hornbeck was apparently engaged by the Sherman firm to perform certain legal work for its clients who had claims against Wyeth in this multidistrict litigation involving the diet drugs Pondimin and/or Redux. Mr. Hornbeck was also a member and did work on the MDL 1203 Discovery Committee. His appointment to this committee by my predecessor, Judge Louis C. Bechtel, was a result of his association with the Sherman firm. A dispute with the Sherman firm has now arisen as to what compensation he should receive for his services under his contract.

Both Mr. Hornbeck and the Sherman firm were located in California at all relevant times. Under California law, an attorney may create a lien only by contract and only within the context of a direct attorney-client relationship. Carroll v. Interstate Brands Corp., 99 Cal. App. 4th 1168, 1172 (Cal. App. 2002). There are no liens under California law in matters between attorneys. Id. The fees in dispute were incurred pursuant to a contractual relationship between Mr. Hornbeck and the Sherman firm, and not between claimants and Mr. Hornbeck. Therefore, he may not assert a lien. Whether he is entitled to some or all of the funds in question is not a matter for this court to decide.

Because the purported lien is invalid, we will order the disputed fees and costs to be paid to the Sherman firm. The payment is without prejudice to Mr. Hornbeck's right to file the appropriate action against the Sherman firm to collect what he views is due and owing him.