

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 :
v. :
AMERICAN HOME PRODUCTS :
CORPORATION : CIVIL ACTION NO. 99-20593

PRETRIAL ORDER NO. 3066

AND NOW, this 10th day of October, 2003, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

- (1) the motion of class member Merle Hall for relief from Pretrial Order No. 2912 is GRANTED; and
- (2) the injunction entered in Pretrial Order No. 2912 is VACATED.

BY THE COURT:

Lawrence Bartlett
J.

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MEMORANDUM AND PRETRIAL ORDER NO. 3066

Bartle, J.

October 10, 2003

Class member Merle Hall has pending a lawsuit against Wyeth in the District Court of Jefferson County, Texas in which she has asserted a claim based on primary pulmonary hypertension ("PPH"). In Pretrial Order ("PTO") 2912, we enforced PTO 1415 (which approved the Nationwide Fen-Phen Class Action Settlement Agreement and enjoined class members from bringing certain actions) and enjoined Ms. Hall from proceeding with her underlying state court action because she had not shown that she had met the criteria for PPH as set forth in the Settlement Agreement. See also PTO 2383. Linda Boderek v. American Home Products, Cause No. A-160872, Jefferson County, Texas. We did so on the record then before us. Specifically, it was found that the Board Certified Pulmonologist who diagnosed Ms. Hall with PPH had not ruled out connective tissue disease or gastroesophageal

reflux disease (GERD) as a cause of her condition. See PTO 2912. Ms. Hall now seeks to have PTO 2912 vacated based on a July 10, 2003 letter from Dr. Joan Appleyard, a rheumatologist, which was written after we entered PTO 2912.

In that letter Dr. Appleyard states, among other things, "I do not find any evidence on the medical record or on my review of Ms. Hall to diagnose her with gastroesophageal reflux disease [GERD]." She continues, "I have, in fact, ruled out connective tissue disease in this patient and any statement to the contrary would be a misrepresentation of my medical opinion." Class Member Merle Hall's Motion for Relief from Pretrial Order 2912, Exhibit F.

In paragraph D of PTO 2383, we stated "[a] determination of whether a putative PPH plaintiff has been diagnosed with PPH, as defined by Section I.46 of the Settlement Agreement, is a threshold question that determines the eligibility of that Class Member to assert such a claim." Under paragraph 12 of PTO 2383, a resolution of this issue "[i]n most if not all instances" will result from an examination of medical records and a comparison with the criteria for PPH set forth in the Settlement Agreement. Extensive hearings with testimony were not contemplated.

With this latest submission from Dr. Appleyard, the key omission in the record has been rectified. Ms. Hall now satisfies the threshold requirements for a diagnosis of PPH as defined under Section I.46 of the Settlement Agreement. It is

not the function of this court to pass upon Dr. Appleyard's credibility. Whether or not Ms. Hall actually suffers from PPH and is entitled to damages from Wyeth is a matter for the fact finder at her trial in the state court.

Accordingly, we will vacate PTO 2912 and allow Ms. Hall to proceed with her underlying lawsuit in the District Court of Jefferson County, Texas. Wyeth, of course, is not precluded from challenging her PPH claim in the state court. See PTO 2383 at ¶ 13.