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AMERICAN HOME PRODUCTS SETTLES FEN-PHEN CASES FOR \$4.8 BILLION

INJURED TO RECEIVE \$37K TO \$1.5 MIL.

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American Home Products, the lead defendant in the massive fen-phen diet drug litigation, has agreed to pay more than \$4.8 billion in a global settlement that will provide medical monitoring for the 5.8 million overweight Americans who took its drug in a cocktail form, as well as graduated compensation for those who actually suffer from heart valve disease as a result.

If the settlement wins court approval, injured class members will receive payments ranging from \$36,944 to \$1.485 million depending on their age and the severity of their injuries.

Those who accept less than the maximum payment will also have the right to come forward later and ask for more money if their medical conditions worsen.

AHP will shell out a total of \$3.75 billion over 16 years which, once invested, will provide for the total \$4.85 billion settlement fund, lawyers said.

The outlays will begin with a \$25 million payment five days after the settlement receives preliminary court approval followed by a \$625 million payment after final approval is granted and payments of more than \$182 million each year for the next 14 years, ending with a balloon payment of \$480 million in the final year.

A second fund for medical monitoring will also be established through payments of \$50 million after preliminary approval, two later payments of \$383 million and a final payment of \$184 million.

AHP is also donating \$25 million for medical research and education on heart valve disease.

The team of plaintiffs lawyers who negotiated the settlement will have the right to petition the court for up to \$429 million in fees.

AHP manufactures Pondimin, the brand name for fenfluramine. In 1992, dieters began taking the drug in a cocktail with phentermine, hence the nickname fen-phen.

But in 1997, researchers announced that the drug combo caused a rare form of heart valve disease that results in the regurgitation of blood throughout the heart as the heart beats. Pondimin and a third drug, Redux, that was also used with it, were removed from the market, but phentermine, which is considered safe when used alone, remains for sale.

A massive wave of lawsuits followed and all of the federal cases were assigned to Senior U.S. District Judge Louis C. Bechtel in Philadelphia under the Multi-District Litigation program, although thousands of other cases remained pending in state courts around the country.

At a press conference yesterday, attorney Michael D. Fishbein of Levin Fishbein Sedran & Berman, one of the eight chief negotiators for the plaintiffs, explained that the settlement divides the plaintiffs into five sub-classes based on the severity of their injuries.

But because heart valve disease can progress over time, Fishbein said, the settlement was designed to allow claimants to re-petition for additional payments if their conditions worsen.

Attorney Arnold Levin said the settlement was designed to win court approval by eliminating many aspects that have been criticized by the courts in recent years in other mass tort global settlements.

The opt-out provisions are especially lenient, Levin said, allowing claimants to abandon the settlement and pursue their own lawsuit even years down the road if their condition worsens and they decide that the payment it provides is inadequate.

AHP has agreed not to assert a statute of limitations defense in such cases, Levin said.

And even before the settlement is approved, Levin said, claimants can begin taking advantage of its medical monitoring provisions immediately if they agree not to opt out.

Attorney Gene Locks of Greitzer & Locks, one of the chief negotiators who represented the state-court plaintiffs, said "offering medical screening and monitoring to those whose health may have been affected by these drugs is an assurance that now, and in the future, class members can obtain the medical monitoring they may require."

Locks said two judges acted as catalysts to spur the settlement talks -- Bechtel in Philadelphia and New Jersey Superior Court Judge Marina Corodemus.

Speculation that a global settlement was imminent began last week when Judge Corodemus abruptly ended the class-action trial she was holding after two months of testimony.

Bechtel, in a statement issued yesterday, said he looks forward to working with state court judges around the country who are currently presiding over fen-phen cases.

"While there are differences in state law among the affected states in this regard, there are also many areas where the standards and the policies are the same," Bechtel said. "To the extent that differences are germane, they will be addressed among us with a view toward a solution."

In addition to Fishbein, Locks and Levin, the class-action plaintiffs' team included: Stanley Chesley of Waite Schneider Bayless & Chesley in Cincinnati; John J. Cummings of Cummings Cummings & Dudenhefer of New Orleans; Sol H. Weiss of Anapol Schwartz Weiss Cohan Feldman & Smalley in Philadelphia; Christopher Placitella of Wilentz Goldman & Spitzer in Woodbridge, N.J.

Five lawyers have also been named to serve as counsel for each of the subclasses: Dianne Nast of Roda & Nast in Lancaster, Pa.; Richard Lewis of Cohen Milstein Hausfeld & Toal in Washington, D.C.; R. Eric Kennedy of Weisman Goldberg Weisman & Kaufman in Cleveland; Richard Wayne of Strauss & Troy in Cincinnati; and Mark W. Tanner of Feldman Shepherd & Wohlgelernter in Philadelphia.