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01-MD-01407-EXII

FOR SETTLEMENT ONLY

**Dexatrim Case Scoring System & Matrix**

For the Chattem Dexatrim Class Action Settlement

## **Dexatrim Case Scoring System & Matrix**

### **For the Chatten Dexatrim Class Action Settlement**

This Dexatrim Case Scoring System and Matrix (the "Chatten Matrix" or the "Matrix") is the system for scoring claims to be submitted pursuant to the Dexatrim Class Action Settlement ("DCAS"). In addition to Plaintiffs, the Matrix applies only to Chatten, Inc. and Sidmak Laboratories, Inc. (the "Dexatrim Defendants"). The Chatten Matrix cannot be used for any purposes in contravention of Federal Rule of Evidence 408. The Chatten Matrix does not reflect, and is not intended to reflect, the litigation positions of either the Dexatrim Defendants or Plaintiffs and is intended solely to facilitate the resolution of the litigation brought by Plaintiffs who allege injuries based on ingestion of Dexatrim appetite-suppressant products that contained phenylpropanolamine ("PPA").<sup>1</sup>

#### **I. The Dexatrim Case Scoring System & Matrix**

##### **A. Overview of the Scoring System**

In order to distinguish between cases and grade them consistently, the attached Matrix is based on a Case Scoring System. This System has seven components:

1. Product Identification;
2. Temporal Relationship;
3. The Liability and Causation Score;
4. The Damages Score;
5. Adjustment for Ischemic Stroke
6. Adjustment for Statute of Limitations; and
7. Adjustment for Other Independent, Potentially Liable Defendants.

Product Identification and Temporal Relationship are threshold inquiries. If a case passes the Product Identification and Temporal Relationship threshold inquiries, the resulting scores from each component (Product Identification; Temporal Relationship; Liability and Causation Score; Damages Score) are then added together to arrive at a Total Matrix Score.

The range of possible Total Matrix Scores are then assigned to a Matrix Level of Severity. The resulting Settlement Amount is then adjusted in the event that other independent, potentially liable defendants are involved in the lawsuit, and adjusted by the remoteness of the filing of Plaintiff's Complaint to Plaintiff's injury. Unless otherwise noted, scoring within each category is not cumulative. Within a scoring category, the point value that results in the greatest addition or greatest deduction is to be applied (e.g., A plaintiff who uses 4 pills per day for 6 months receives a deduction of -3 for Overdose, but not an additional deduction of -1 for Disregard of Labeling).

##### **B. The Matrix**

The Matrix has a vertical axis consisting of: (i) injuries other than stroke or cardiac ("Other Injuries")<sup>2</sup>, (ii) "Cardiac Injuries"<sup>3</sup> and (iii) seven levels of "Stroke Injuries"<sup>4</sup> - with Level 0 assigned the least and Level VI the highest level of resulting severity. The horizontal axis of the Matrix consists of six (6) age ranges, with the Plaintiff's age at the date of injury as the focal point as follows:

- 0 - 20 years
- 21 - 29 years

30 – 39 years  
40 – 49 years  
50 – 59 years  
60 and older

A range of values has been ascribed to each injury type and stroke level. The values have then been assigned in equal amounts across the horizontal axis ("Age Increments"). The Matrix is attached as Exhibit A.

## II. Product Identification

This component of the Case Scoring System operates as a threshold issue. If a Plaintiff scores "-3" on this issue, that Plaintiff is not eligible for further consideration under the Matrix. If a Plaintiff scores "-2" or higher, the score is incorporated into the Case Scoring System for Stroke Injuries or Cardiac Injuries.

<u>Factor</u>	<u>Score</u>
Positive product identification <i>(e.g., initial injury hospitalization records refer to brand name of PPA product sold by Thompson Medical or Chattem; blood toxicology test<sup>5</sup> specifically for PPA is positive, packaging from ingested product)</i>	0
Testimony of plaintiff or third party who has personal knowledge	-1
Urinalysis Negative for PPA <i>(Urinalysis test performed for either: (i) phenylpropanolamine specifically; or (ii) sympathomimetic amines generally (provided that the nature or protocol of the test for sympathomimetic amines would reasonably be expected to identify phenylpropanolamine if it were present in the urine); and the urine for the toxicology test must have been drawn within 18 hours of the alleged ingestion of Dexatrim.)</i>	-1
Strong evidence that plaintiff did not use Dexatrim <i>(e.g., incorrect description of product, medical records from initial hospitalization for injury reflect use of non-prescription product (except OTC pain medication taken in response to symptoms relating to stroke) but do not mention OTC appetite suppressants or the brand name of PPA product sold by Thompson Medical or Chattem)</i>	-2
No product identification	-3
Conclusive evidence that plaintiff did not use Dexatrim <i>(e.g., alleged ingestion predates manufacture of product, blood toxicology test specifically for PPA is negative)</i>	-3

**III. Temporal Relationship of Last Dose of Dexatrim to Onset of Symptoms**

This component of the Case Scoring System also operates as a threshold issue. If a Plaintiff scores "-3" on this issue, that Plaintiff is not eligible for further consideration under the Matrix and shall receive \$200 in Settlement Compensation for Stroke Injuries or Cardiac Injuries, and zero compensation for Other Injuries. If a Plaintiff scores "-2" or higher, the score is incorporated into the Case Scoring System for Stroke Injuries or Cardiac Injuries. Temporal relationship is to be established by showing that the alleged ingestion of Dexatrim occurred within 96 hours of the onset of symptoms (it being understood that such onset of symptoms must be established through medical records that were generated at or about the time of the onset of symptoms).<sup>6</sup>

<u>Time between alleged ingestion of Dexatrim and the onset of symptoms</u>	<u>Score</u>
0 minutes – 60 minutes <sup>7</sup>	-1
>60 minutes – 24 hours	0
>24 hours – 72 hours	-1
>73 hours – 96 hours	-2
>96 hours	-3

IV. Liability/Causation Score

This component of the Case Scoring System operates to assign a separate score for factors that influence the relative strength of the Plaintiff's case. This component is broken down into three sections: General Liability/Causation Factors that apply to all cases, and sections for the specific injuries Hemorrhagic Stroke and Ischemic Stroke. Other Injuries and Cardiac Injuries are to be scored under Sections II, III, VIII, IX, and are exempt from scoring under Sections IV, V, VI, VII, X, and XI. A scoring sheet for Hemorrhagic Stroke is attached at Exhibit E, a scoring sheet for Ischemic Stroke is attached at E Adjustment for Statute of Limitations Exhibit F, a scoring sheet for Other Injuries and Cardiac Injuries is attached at Exhibit G.

<b>A. <u>General Liability/Causation Factors</u></b>	<u>Score</u>
<b>Exposure to PPA<sup>8</sup></b>	
Use of PPA within 24 hours of injury and no use of PPA during preceding 14 days	+2
Use of PPA within 48 hours of injury and no use of PPA during preceding 14 days	+1
Use of PPA within 0-48 hours and intermittent use of PPA during preceding 14 days, <i>(without 3 or more consecutive days of use the latest of which occurred within 96 hours of injury)</i>	0
Use of PPA for 3 or more consecutive days prior to injury, the latest of which occurred within 96 hours of injury	-1
<b>Date of Injury (Warning)</b>	
Before June 1, 1994	0
June 1, 1994 - May 10, 2000	-2
After May 10, 2000	0

Misuse of Product

Overdose (3 or more daily doses <sup>9</sup> of PPA)	-3
Disregard of labeling	-1
<i>(Use for more than 3 consecutive months; use of more than one pill within 24 hours; use by person under 12; use by person between 12-18 or over 60 without consultation of doctor; use while being treated for depression or eating disorder; use by person with heart disease, diabetes, thyroid disease, pregnancy, nursing a baby without consultation of doctor; use by someone with nervousness, dizziness, sleeplessness, palpitations, headache; concomitant use of any other PPA product; or use within 2 weeks of use of MAOI.)</i>	

**B. Hemorrhagic Stroke Factors<sup>10</sup>** (Use Score Sheet at Exhibit E)

Head trauma within 7 days of onset	
Severe (Glasgow coma scale 8 or less)	-10
Moderate (Glasgow coma scale 9-12)	-4
Mild (Glasgow coma scale 13-15)	0
Medically documented but not severity not noted	-1
Prior stroke <sup>11</sup>	
Prior hemorrhagic stroke	-3
Prior ischemic stroke	-1
Family history of stroke <sup>12</sup>	-1
Chronic Hypertension	
Previously Diagnosed and Uncontrolled	-4
Previously Diagnosed and Controlled	-1
Previously Unknown	-2
<i>(Medically diagnosed at time of stroke with previously undiagnosed chronic hypertension)</i>	
Aneurysm (medically documented, at stroke site <sup>13</sup> )	
Diameter 24 mm or greater	-7
Diameter 10-23 mm	-4
Diameter less than 10 mm	-1
Diameter not measured	-3
Family History	-1
AVM	
Medically Documented at stroke site	-6
Medically Documented not at stroke site	-3
Family History	-1
Brain tumors	
Medically Documented at stroke site	-6
Medically Documented not at stroke site	-3
Family History	-1
Leukemia, Medically Documented	-4
Pre-existing bleeding disorders, Medically Documented	-3
<i>(hemophilia, Disseminated Intravascular Coagulation, Sickle</i>	

*Cell Anemia, any disease causing coagulopathy or autoanticoagulation)*

Use of anticoagulants, within 7 days of injury <i>(Use of prescribed anticoagulants (e.g. Heparin, Coumadin, Warfarin; excluding aspirin))</i>	-1
Age	
66 and older	-3
55-65	-1
18-54	0
1-17	+3
Cocaine/PCP Use/Unprescribed Amphetamine	
Within 24 hours of injury	-7
Within 24-96 hours of injury	-4
Prescribed Amphetamine	
Within 24 hours of injury	-4
Within 24-96 hours of injury	-2
Other illicit drug use	
Within 24 hours of injury	-1
Smoking <sup>14</sup>	
No smoking	0
1-20 cigarettes per day	-1
Over 20 cigarettes per day	-3
Alcohol consumption <sup>15</sup>	
0-5 drinks per day	0
Over 5 drinks per day	-3
Exercise & Exertion <sup>16</sup>	
At or within 6 hours of onset	+1
Other	0

**C. Ischemic Stroke Factors (Use Score Sheet at Exhibit F)**

Head trauma within 7 days of onset	
Severe (Glasgow coma scale 8 or less)	-6
Moderate (Glasgow coma scale 9-12)	-3
Mild (Glasgow coma scale 13-15)	0
Medically documented but not severity not noted	-1
Prior Transient Ischemic Attack	
0-2 years	-4
3-5 years	-3
over 5 years	-2
Prior stroke <sup>17</sup>	
Prior ischemic stroke	-3
Prior hemorrhagic stroke	-1

Family history of stroke <sup>18</sup>	-1
<b>Chronic Hypertension</b>	
Previously Diagnosed and Uncontrolled	-4
Previously Diagnosed and Controlled	-1
Previously Unknown	-2
<i>(Medically diagnosed at time of stroke with previously undiagnosed chronic hypertension)</i>	
<b>Brain tumors</b>	
Medically Documented at, or near, stroke site	-6
Medically Documented not at stroke site	-3
Family History	-1

Cancer <sup>19</sup>	-4
<i>(Systemic cancer, i.e., cancer with documented metastasizes and/or distant lymph node infiltration OR cancer in situ treated with chemotherapy)</i>	
Coronary Artery Disease	-4
Carotid Artery Disease/Stenosis	
Severe	-4
<i>(stenosis <math>\geq</math> 70%; diastolic vel. &gt; 79cm/sec <u>and</u> systolic vel. &gt; 125cm/sec)</i>	
Moderate	-2
<i>(stenosis 50-69%; systolic vel. &gt; 124cm/sec)</i>	
Mild	0
<i>(stenosis &lt; 50%)</i>	
Severity unknown, but disease medically documented	-2
Prior myocardial infarction	
0-30 days	-5
31 days-1 year	-3
more than 1 year to 2 years	-1
more than 2 years	0
unspecified	-1
Heart Disease or Defect	-4
<i>(e.g. Dilated cardiomyopathy, left-sided heart valve disease (moderate or greater left-sided valvular regurgitation<sup>20</sup>), q wave infarction, tumors, atrial myxoma, patent foramen ovale, replaced valve, endocarditis)</i>	
Cerebral Venous Thrombosis	-3
Peripheral Arterial Disease	
medical records note as severe, symptomatic, or contain reference to claudication	-3
mild or moderate or condition not defined	-1
Previous Embolism	
Medically Documented organic embolism at any time	-3
<i>(excluding reference to a suspected embolism in medical records without proof of a test having been performed)</i>	
Embolism caused by trauma within 30 days prior to stroke	-2
Embolism caused by trauma more than 30 days prior to stroke	0
Atrial fibrillation (preexisting and medically documented history at initial hospitalization for stroke), concurrent with stroke	-1

Major surgery/trauma within 14 days prior to stroke <sup>21</sup>	-2
Cholesterol problems (High blood cholesterol (240 mg/dL or higher), high LDL cholesterol (greater than 100 mg/dL), or low HDL cholesterol (less than 40 mg/dL))	-1
Diabetes Type I	
Onset more than 6 years preceding stroke	-4
Onset between 3 and 6 years preceding stroke	-2
Onset within 3 years preceding stroke	0
Unknown	-2
Diabetes Type II	
Onset more than 8 years preceding stroke	-4
Onset between 4 and 8 years preceding stroke	-2
Onset within 4 years preceding stroke	0
Unknown	-2
Bleeding/Clotting disorders <sup>22</sup> , Medically Documented	
Previously Diagnosed and Uncontrolled	-3
Discontinuance of anticoagulants within 90 days <sup>23</sup>	-2
Previously Diagnosed and Controlled	-1
Unknown	-2
Age	
66 and older	-3
55-65	-1
18-54	0
1-17	+3
Gender	
Women	0
Men	-1
Heroin/Cocaine/PCP Use/Unprescribed Amphetamine	
Within 24 hours of injury	-7
Within 24-96 hours of injury	-4
Prescribed Amphetamine	
Within 24 hours of injury	-4
Within 24-96 hours of injury	-2
Other illicit drug use	
Within 24 hours of injury	-1
Smoking <sup>24</sup>	
No smoking	0
1-20 cigarettes per day	-1
Over 20 cigarettes per day	-3
Concomitant use of oral contraceptives and cigarette smoking in any amount	-1

(within the 2 years prior to stroke)

Alcohol consumption <sup>25</sup>	
0-5 drinks per day	0
Over 5 drinks per day	-3

V. Damages Score for Strokes

A. Overview

The Damages Score for Strokes is a combination of the first 2 Components for AHA's Stroke Classification System, the Barthel Index which measures Basic Activities of Daily Living ("BADL") and the Lawton/Brody Scale, which measures Instrumental Activities of Daily Living ("IADL"). If Plaintiff has suffered more than one stroke, the damages calculation is made only from the stroke which Plaintiff alleges was preceded by Dexatrim ingestion by 96 hours or less.

B. Components of AHA Stroke Classification System

1. **Number of Domains Impaired.** The domains evaluated are: Motor, Sensory, Vision, Language, Cognition and Affect. See Exhibit C for a description of each domain. The AHA classification is 0 to 3 as follows:
  - 0 = 0 domains impaired
  - 1 = 1 domain impaired
  - 2 = 2 domains impaired, and
  - 3 = more than 2 domains impaired
  
2. **Severity of Impairment.** – See Exhibit C for a description of the three grades:
  - A. No or minimal deficit due to stroke in any domain
  - B. Mild to moderate deficit due to stroke in 1 or more domain
  - C. Severe deficit due to stroke in 1 or more domains

C. **Basic Activities of Daily Living.** – See Exhibit D for a description of guidelines.

<b>Feeding</b>		
unable		0
needs help cutting, spreading butter, etc., or requires modified diet		5
independent		10
<b>Bathing</b>		
dependent		0
independent (or in shower)		5
<b>Grooming</b>		
needs to help with personal care		0
independent face/hair/teeth/shaving (implements provided)		5
<b>Dressing</b>		
dependent		0
needs help but can do about half unaided		5
independent (including buttons, zips, laces, etc.)		10
<b>Bowels</b>		
incontinent (or needs to be given enemas)		0
occasional accident		5
continent		10
<b>Bladder</b>		
incontinent, or catheterized and unable to manage alone		0
occasional accident		5
continent		10
<b>Toilet Use</b>		
dependent		0
needs some help, but can do something alone		5
independent (on and off, dressing, wiping)		10
<b>Transfers (bed to chair, and back)</b>		
unable, no sitting balance		0
major help (one or two people, physical), can sit		5
minor help (verbal or physical)		10
independent		15
<b>Mobility (on level surfaces)</b>		
immobile or < 50 yards		0
wheelchair independent, including corners, > 50 yards		5
walks with help of one person (verbal or physical) > 50 yards		10
independent (but may use any aid) > 50 yards		15
<b>Stairs</b>		
unable		0
needs help (verbal, physical, carrying aid)		5
independent		10

**D. Instrumental Activities of Daily Living.**

<b>Ability to Use a Telephone</b>	
Operates telephone on own initiative	1
Dials a few well known numbers	1
Answers telephone but does not dial	1
Does not use telephone at all	0
<b>Shopping</b>	
Takes care of all shopping needs independently	1
Shops independently for small purchases	0
Needs to be accompanied on any shopping trip	0
Completely unable to shop	0
<b>Food Preparation</b>	
Plans, prepares, and serves adequate meals independently	1
Prepares adequate meals if supplied with ingredients	0
Prepares meals but does not maintain adequate diet	0
Needs to have meals prepared and served	0
<b>Housekeeping</b>	
Maintains house alone or with occasional assistance	1
Performs light daily tasks such as dish washing, bed making	1
Performs light daily tasks but cannot maintain acceptable level of cleanliness	1
Needs help with all home maintenance tasks	1
Does not participate in any housekeeping tasks	0
<b>Laundry</b>	
Does personal laundry completely	1
Launders small items	1
All laundry must be done by others	0
<b>Mode of Transportation</b>	
Travels independently on public transportation or drives own car	1
Arranges own travel via taxi, but does not otherwise use public transportation	1
Travels on public transport when accompanied by another	1
Travel limited to taxi or vehicle with assistance of another	0
Does not travel at all	0
<b>Responsibility for Own Medication</b>	
Is responsible for taking medication in correct dosage at correct time	1
Takes responsibility if medication is prepared in advance in separate dosages (may need reminding)	0
Is not capable of dispensing own medication	0
<b>Ability to Handle Finances</b>	
Manages financial matters independently	1
Manages day-to-day purchases, but needs help with banking major transactions	1
Incapable of making financial decisions or handing money	0

## E. Scoring

For purposes of scoring, the first two components (Number of Domains Impaired and Severity of Impairment) are evaluated as of the date of discharge from the Plaintiff's initial hospitalization and at six months after the stroke. If six month records are not available, use the records as close to six months as possible that were created more than six months after the stroke, but not more than nine months after the stroke. If no records exist that were created between six months and nine months after the stroke, use records as close to six months after the stroke as possible that were created between three and six months after the stroke. If records between three and six months after the stroke are unavailable, use the next closest records, but the final score will be subject to review by the Administrator.

For purposes of scoring, the second two components (Basic Activities of Daily Living and Instrumental Activities of Daily Living) are evaluated as of one year after the stroke. If one year records are not available, use the records as close to one year as possible that were created more than one year after the stroke, but not more than eighteen months after the stroke. If no records exist that were created between one year and eighteen months after the stroke, use records as close to one year after the stroke as possible that were created between six months and one year after the stroke. If records between six months and one year after the stroke are unavailable, use the next closest records, but the final score will be subject to review by the Administrator.

### 1. Domain/Severity Score

Calculate the Domain/Severity Score as follows:

- Determine the Number of Domains Impaired and Severity of Impairment as of the day the Plaintiff was released from in-patient care (acute care and in-patient rehabilitation). Using the tables below at Section IV.E.4.(1). and IV.E.4.(2)., assign the appropriate score for each component.
- Add the scores together to arrive at the "Discharge Score."
- Next, calculate the Number of Domains Impaired and the Severity of Impairment as of 6 months after the stroke. Using the tables below at Section IV.E.4.(1). and IV.E.4.(2)., assign the appropriate score for each component.
- Add the scores together to arrive at the "6 Month Score."
- Average the Discharge Score and the 6 Month Score to arrive at the "Average Score."
- If the Average Score is more than 3 points lower than the Discharge Score, subtract 3 points from the Discharge Score to arrive at the "Domain/Severity Score."
- If the Average Score is 3 or less points lower than the Discharge Score, the Average Score is the Domain/Severity Score.<sup>26</sup>

### 2. BADL/IADL Scores

Calculate the BADL Score by determining Plaintiff's level of functioning one year after the stroke and assigning the appropriate point values as indicated in Section IV.C. Add the points for the BADL component and using the table below at Section IV.E.4.(3)., compute the BADL Score.

Calculate the IADL Score by determining Plaintiff's level of functioning one year after the stroke and assigning the appropriate point values as indicated in Section IV.D. Add the points for the IADL component and using the table below at Section IV.E.4.(4)., compute the IADL Score.

### 3. Total Damages Score

Calculate the Total Damage Score by adding together the Domain/Severity Score, BADL Score, IADL Score, Inpatient Treatment Score, and Outpatient Rehabilitation Score.

4.	<u>Component Subpart</u>	<u>Number of Points</u>
(1)	<u>Number of Domains Impaired</u>	
	0	+2
	1	+4
	2	+6
	3 or more	+8
(2)	<u>Severity of Impairment</u>	
	A	+2
	B	+6
	C	+10
(3)	<u>BADL Factors</u>	
	81-100	+2
	61-80	+3
	41-60	+4
	21-40	+5
	0-20	+6
(4)	<u>IADL Factors</u>	
	7-8	+2
	5-6	+3
	3-4	+5
	0-2	+6
5.	<u>Inpatient Treatment</u>	
	Less than one day	0
	1-14 days	+1
	15-28 days	+2
	More than 28 days	+3
6.	<u>Outpatient Rehabilitation for stroke related deficits</u>	
	None	0
	1-60 days	+1
	More than 60 days	+2

Using this system, the Damages Score for any one case can range from a low of 8 to a maximum of 35.

**F. Plaintiffs Who Leave Medical Treatment Against Medical Advice**

In the event that medical records show that Plaintiff left his or her initial hospitalization against medical advice, Plaintiff's Total Adjusted Settlement Compensation shall be reduced by 10%.

If Plaintiff believes that the Total Adjusted Settlement Compensation should be reduced by 5% or less, or should not be reduced, Plaintiff shall have the opportunity to challenge the 10% adjustment and shall have the burden of proof by clear and convincing evidence (that was generated prior to the date of the MOU) that the Total Adjusted Settlement Compensation should be reduced by 5% or less, or not reduced at all.

If a Dexatrim Defendant believes that the Total Adjusted Settlement Compensation should be reduced by 15% or more, the Dexatrim Defendant shall have the opportunity to challenge the 10% adjustment and shall have the burden of proof by clear and convincing evidence (that was generated prior to the date of the MOU) that the Total Adjusted Settlement Compensation should be further reduced. In no event shall the Total Adjusted Settlement Compensation be reduced by more than 50%.

Adjustments to the Total Adjusted Settlement Compensation shall be within the sole discretion of the Settlement Administrator. The parties shall meet and confer prior to any arbitration proceeding.

**G. Deceased Plaintiffs**

Deceased Plaintiffs, whose death was causally related to their stroke, will be scored according to the Scoring Criteria, however, they will be assigned an Damages Score of 35. Ten years will be added to a Deceased Plaintiff's age at injury for purposes of placing that plaintiff on the Matrix. For plaintiffs who were 60 or older at the age of injury, their Settlement Compensation shall be reduced by one Age Increment for the category into which they are placed by virtue of their Total Matrix Score.

## **VI. The Total Matrix Score**

The Product Identification, Temporal Relationship, Liability and Causation Factors Scores and the Damages Score are then added together to arrive at a combined Total Matrix Score. A Case Scoring Sheet is attached as Exhibit C. Once a Total Matrix Score is determined, the case is assigned to a particular Matrix Level as follows:

<u>Matrix Level</u>	<u>Scoring Range</u>
Level 0	less than 0 points
Level I	0 – 5 points
Level II	6 – 10 points
Level III	11 – 17 points
Level IV	18 – 24 points
Level V	25 – 37 points
Level VI	38 or more points <sup>27</sup>

## **VII. Adjustment for Ischemic Stroke Cases**

After calculating the appropriate matrix level for ischemic stroke cases, the Gross Settlement Compensation is to be reduced by 15%.

## **VIII. Adjustment for Statute of Limitations/Repose**

After calculation of the Settlement Compensation, a reduction of the Settlement Compensation shall be made based on the application of the following principles that relate to statutes of limitations and repose that apply to a particular claim. Attached as Exhibit D is a list of the applicable time frames from the statutes of limitations and statutes of repose for each state. Upon review, the time frames set forth in Exhibit D may only be altered by the Settlement Administrator.

### **A. Cases filed prior to the announcement of the settlement**

- 0% *Timely cases:* The lawsuit was filed before the applicable statute of limitations had run assuming no discovery rule in the forum state and state of Plaintiff's residence at the time of injury.
- 66% *No discovery rule or discovery of injury cases:* Both the forum state and the state of residence at the time of injury do not recognize a discovery rule (or recognizes only a rule of discovery of injury) for statute of limitations purposes. The lawsuit was filed after the statute of limitations had run.
- 13% *No Conflict/False Conflict cases:* The forum state and the state of Plaintiff's residence at the time of the injury recognize the same discovery rule for statute of limitations purposes. The lawsuit was filed within the applicable statute of limitations assuming the statute of limitations commenced on November 6, 2000, pursuant to a discovery rule, but after the statute of limitations had run without respect to any discovery rule.
- 15% *Conflict cases:* The forum state and the state of Plaintiff's residence at the time of the injury recognize different laws regarding discovery or limitations rules. The lawsuit was filed within the applicable statute of limitations assuming the statute of limitations commenced on November 6, 2000, pursuant to a

discovery rule, but after the statute of limitations: (i) had run without respect to any discovery rule; and (ii) had run in either of the forum or residence states.

- 66% *Untimely cases:* The lawsuit was filed after the applicable statute of limitations had run assuming a discovery rule in both the forum state and state of Plaintiff's residence at the time of injury starting on November 6, 2000.
- \$200 In Stroke Injury and Cardiac Injury cases where the forum and residence both have a statute of repose that would bar the lawsuit, or the forum state's statute of repose would bar the lawsuit.
- \$100 In Other Injury cases where the forum and residence both have a statute of repose that would bar the lawsuit, or the forum state's statute of repose would bar the lawsuit.
- 66% In cases in which a statute of repose in the residence state would bar the lawsuit and the forum state is not FL, NY, or NJ.
- 25% In cases in which a statute of repose in the residence state would bar the lawsuit and the forum state is FL, NY, or NJ.

**B. Lawsuits Filed or Claims Made After November 6, 2003**

If a claim is made or a lawsuit is filed after November 6, 2003, and after the statute of limitations had run in either the forum state or the state of plaintiff's residence at the time of the injury, the amount of the award shall be not more than \$200 for Stroke Injuries and Cardiac Injuries, and not more than \$100 for Other Injuries, provided Plaintiff's ingestion of Dexatrim or OTC appetite suppressant is documented in the medical records of the initial hospitalization. If Plaintiff's ingestion of Dexatrim or OTC appetite suppressant is not documented in the medical records of the initial hospitalization, Plaintiff is not eligible for any compensation under this Dexatrim Scoring System and Matrix. For purposes of this sub-section VII.B., all statutes of limitations shall be deemed to have commenced on the later of November 6, 2000, or the date of injury.

Attorneys who entered into contingency fee agreements after November 6, 2003, are entitled only to reasonable fees for filling out claim forms and consulting with their clients, up to a cap of 10% of Plaintiff's Total Settlement Compensation, or \$10,000, whichever is less.

**IX. Adjustment for Other Independent, Potentially Liable Defendants**

Several Plaintiffs claim that they took other products at or near the time that they ingested Dexatrim.<sup>28</sup> In those cases in which another PPA or ephedrine product is implicated an adjustment to the Plaintiff's Settlement Compensation under this Matrix shall be made as follows:

	1 other product	2 other products	3 other products
Same day (0-24 hours) co-ingestion	-40%	-45%	-50%
Dexatrim ingestion stopped between 24-96 hours prior to injury, other product(s) consumed between 0-24 hours prior to injury	-55%	-65%	-75%
Other product(s) stopped between 24-96 hours prior to injury, Dexatrim consumed between 0-24 hours prior to injury	-15%	-25%	-35%

**X. Application of Adjustments**

Adjustments for Ischemic Stroke, Statutes of Limitations/Repose, and other Independent, Potentially Liable Defendants (Co-Ingestion Adjustment") are to be applied sequentially as follows:

Ischemic Adjustment — Reduce Gross Settlement Compensation by 15%

Statute of Limitations/Repose Adjustment — After Ischemic Stroke Adjustment is applied, reduce net subtotal by the applicable Statute of Limitations/Repose adjustment, but if Ischemic Stroke Adjustment is inapplicable, reduce Gross Settlement Compensation by the applicable Statute of Limitations/Repose Adjustment

Co-Ingestion Adjustment — After Ischemic Stroke Adjustment is applied, and/or after Statute of Limitations/Repose Adjustment is applied, reduce net subtotal by the applicable Co-Ingestion Adjustment; but if neither Ischemic Stroke Adjustment nor Statute of Limitations/Repose Adjustment is applicable, reduce Gross Settlement Compensation by the applicable Co-Ingestion Adjustment.

**XI. Extraordinary Injury Fund**

**A. Eligibility Requirements for the Extraordinary Injury Fund**

An Extraordinary Injury Fund (the "EIF") in the amount of \$5 million will be established from which any Plaintiff who meets the eligibility requirements set forth in this Section X (an "Eligible Plaintiff") shall receive an amount equal to his/her Documented Non-Reimbursed/Non-Reimbursable Economic Damages (as defined below), subject to the following adjustments (the "EIF Award"):

1. First, such Eligible Plaintiff's Documented Non-Reimbursed/Non-Reimbursable Economic Damages shall be subject to reduction by the same percentage adjustments set forth in Section IV F. (Plaintiffs Who Leave Medical Treatment Against Medical Advice), Section VI (Adjustment for Other Independent, Potentially Liable Defendants), Section VII (Adjustment for Statute of Limitations/Repose, and Section VIII (Adjustment for Ischemic Stroke Cases) to which such Eligible Plaintiff's Gross Settlement Compensation is subject under this Dexatrim Case Scoring System and Matrix;
2. Second, if the total of all Eligible Plaintiffs' Documented Non-Reimbursed/Non-Reimbursable Economic Damages, after adjustment pursuant to Paragraph 1 above, exceeds \$5 million, each Eligible Plaintiff's Documented Non-Reimbursed/Non-Reimbursable Economic Damages (after any applicable adjustment pursuant to Paragraph 1) of the \$5 million EIF fund shall be the product of \$5 million multiplied by a fraction:
  - (1) the numerator of which shall be the Eligible Plaintiff's Documented Non-Reimbursed/Non-Reimbursable Economic Damages (after any applicable adjustment pursuant to Paragraph 1); and
  - (2) the denominator of which shall be the total of all Eligible Plaintiffs' Documented Non-Reimbursed/Non-Reimbursable Economic Damages, after any applicable adjustment pursuant to Paragraph 1.

In order for a Plaintiff to receive an EIF Award, he or she (a) must fall within Matrix Levels IV, V or VI; and (b) must have documented, Non-Reimbursed/Non-Reimbursable Economic Damages (as defined below) totaling at least \$250,000.

"Non-Reimbursed/Non-Reimbursable Economic Damages" is comprised of any one or more of the following Documented<sup>29</sup> categories:

- Non-reimbursed out-of-pocket past medical expenses;
- Non-reimbursable future medical expenses;
- Non-reimbursable future living expenses;
- Non-reimbursed lost wages;
- Non-reimbursable future lost wages;
- Non-reimbursable loss of earning capacity (both past and future); and
- Other documented non-reimbursed/non-reimbursable economic damages.

Any and all determination(s) regarding a Plaintiff's eligibility and EIF Award amounts will be made by the EIF Administrator, as identified by the parties in the applicable Settlement Agreement(s) or other document(s).

## **XII. Miscellaneous Provisions**

### **A. Attorney Fees & Costs**

Plaintiffs' attorney fees and costs will be paid only from the Total Adjusted Settlement Compensation (including any EIF Award) awarded to individual Plaintiffs. That the Dexatrim Defendants will set aside from the Total Adjusted Settlement Compensation and pay to the MDL assessment fund the amount required by CMOs 8 and 16. The Dexatrim Defendants will not contribute to any other separate fund for attorney's fees or costs.

### **B. Liens**

Plaintiffs will be responsible for all lien payments.

### **C. Derivative Claims**

The treatment of an injured plaintiff ("Primary Claimant") under the settlement shall be cumulative of the derivative claims of any spouse, child or other individuals related to, or who have some other personal relationship with the Primary Claimant. The derivative claims of such related parties shall be deemed released by the treatment afforded the claims of the Primary Claimant under the settlement.

## **XIII. Administration**

### **A. Administrator**

The Parties shall employ a mutually-acceptable Administrator. The Administrator shall, where necessary, create Claims Administration Procedures that provide specific details about how claims are administered. The Claims Administration Procedures promulgated by the Administrator shall comply with the terms set forth in the Matrix and other relevant documents.

### **B. Amended or Changed Factual Allegations**

Any amendment or change to factual allegations (other than those required by CMO 15 and 15A) after the date of the MOU shall be subject to a rebuttable presumption that the change should be disregarded for purposes of calculating Plaintiff's Total Adjusted Settlement Compensation under this Dexatrim Scoring System & Matrix. The presumption can be overcome by clear and convincing evidence at the sole discretion of the Administrator.

### **C. Fraudulent Claims or Allegations**

In the event that the Administrator determines that any Plaintiff has submitted fraudulent claims or allegations, the Administrator may reduce the amount of that Plaintiff's Total Adjusted Settlement Compensation by any amount deemed appropriate by the Administrator. In addition to reducing or eliminating a Plaintiff's compensation under the settlement, the Administrator, in his or her discretion, may refer and recommend to the MDL Court or any other appropriate court, monetary or injunctive sanctions against the Plaintiff or Plaintiff's

counsel including, but not limited to, forfeiture of attorney fees and costs, or the institution of grievance proceedings.

**Exhibit A**  
**Injury Matrix**

<b>Severity</b>	<b>0 - 20</b>	<b>21 - 29</b>	<b>30 - 39</b>	<b>40 - 49</b>	<b>50 - 59</b>	<b>60 Greater</b>
<b>Other Injury</b>	\$1,000	\$820	\$640	\$460	\$280	\$100
<b>Cardiac Injury</b>	\$2,000	\$1,640	\$1,280	\$920	\$560	\$200
<b>Stroke Level 0</b>	\$2,000	\$1,640	\$1,280	\$920	\$560	\$200
<b>Stroke Level I</b>	\$100,000	\$95,000	\$90,000	\$85,000	\$80,000	\$75,000
<b>Stroke Level II</b>	\$450,000	\$420,000	\$390,000	\$360,000	\$330,000	\$300,000
<b>Stroke Level III</b>	\$850,000	\$775,000	\$700,000	\$625,000	\$550,000	\$475,000
<b>Stroke Level IV</b>	\$2,000,000	\$1,800,000	\$1,600,000	\$1,400,000	\$1,200,000	\$1,000,000
<b>Stroke Level V</b>	\$4,000,000	\$3,620,000	\$3,240,000	\$2,860,000	\$2,480,000	\$2,100,000
<b>Stroke Level VI</b>	\$5,000,000	\$4,800,000	\$4,600,000	\$4,400,000	\$4,200,000	\$4,000,000

## Exhibit B

### Components of the Domains/Severity Score

The six domains that are to be considered for scoring purposes are listed and described below. Under each description of the domain is the description of the severity of impairment that is to be considered for each domain. To establish the severity of impairment, documentary evidence (including medical records) from the initial hospitalization and at or about six months after injury, or a sworn statement from Plaintiff's treating physician must show at least one of the components listed under the appropriate deficit level.

Plaintiff's most severe injury under each domain should be used for scoring purposes. For example, a Plaintiff who has minor to partial paralysis of face (*mild to moderate deficit under Motor Domain*) and negligible or no movement of the left arm (*severe deficit under Motor Domain*) should be scored as having a severe deficit.

• **Motor:** Motor impairments are the most prevalent of all deficits seen after stroke, usually with involvement of the face, arm, and leg, alone or in various combinations. Motor functions assessed in the AHA.SOC include cranial nerve function (including speech and swallowing), muscle power and tone, reflexes, balance, gait, coordination, and apraxia.

#### Severity of impairment

*No or minimal deficit:* normal movement of face and limbs; no drift in arms (arm holds 90 degrees for full 10 seconds); no drift in legs (leg hold at 30 degrees for 5 seconds); normal extension of fingers; no ataxia of limbs.

*Mild to moderate deficit:* minor to partial paralysis of face (asymmetry with smiling and spontaneous speech, or definite weakness, but some movement remains); or arm drift (e.g. arm holds 90 degrees, but drifts down before full 10 seconds); or arm has some effort against gravity, but cannot get to or maintain 90 degrees; or leg drift (e.g. leg holds at 30 degrees but falls by end of 5 seconds); or leg has some effort against gravity but falls to bed before 5 seconds; or some extension of fingers, but full extension in 5 seconds not attainable; or ataxia present in one limb.

*Severe deficit:* substantial paralysis of one or both sides of the face (absence of facial movement in the upper and lower face); limbs have negligible or no effort against gravity or negligible or no movement; negligible or no voluntary extension of fingers; or ataxia present in more than one limb.

• **Sensory:** Sensory deficits range from loss of primary sensations to more complex loss of perception. Patients may describe numbness, tingling, or altered sensitivity. The more complex sensory losses include astereognosis, agrapha, and extinction to double simultaneous stimuli.

#### Severity of impairment

*No or minimal deficit:* normal, no sensory loss

*Mild to moderate deficit:* Plaintiff experiences some numbness, tingling or altered sensitivity. With pinprick test, Plaintiff feels pinprick (or other pain/tactile evaluation) is less sharp or is dull on the affected side; or there is a loss of superficial pain but Plaintiff is aware that he/she is being touched.

*Severe deficit:* Plaintiff is not aware of being touched in the face, arm or leg.

• **Vision:** Stroke can cause monocular visual loss, partial or complete hemianopia, or cortical blindness.

#### Severity of impairment

*No or minimal deficit:* no visual loss

*Mild to moderate deficit:* partial hemianopia (vision loss in up to half the field)

*Severe deficit:* substantial, complete or bilateral hemianopia (vision loss in more than half the field)

- **Language:** Dysphasia may be exhibited by disturbances in word-finding, comprehension, naming, repetition, fluency, reading, or writing.

Severity of impairment

*No or minimal deficit:* no impairment

*Mild to moderate deficit:* some obvious loss of fluency or facility of comprehension without significant limitation on ideas expressed or form of expression; or word-finding difficulty, or reduction of speech and/or comprehension makes conversation difficult. Slurs words, and, at worst, can be understood with some difficulty.

*Severe deficit:* all verbal communication is through fragmentary expression, great need for inference, questioning and guessing by the listener. Range of information that can be exchanged is limited; listener carries the burden of communication. Slurring of words makes speech unintelligible.

- **Cognition:** Stroke can cause impairments in memory, attention, orientation, calculation abilities, intelligence and construction. It is important to assess ability to learn and retain new information in the cognitive evaluation.

Severity of impairment

*No or minimal deficit:* Impairment levels are compatible with all useful functioning.

*Mild to moderate deficit:* Impairment levels are compatible with some, but not all, useful functioning—Plaintiff experienced at least one of the following: 1) impaired ability to understand, remember, or carry out instructions; 2) impaired ability to maintain attention for extended periods of time; 3) impaired ability to sustain an ordinary routine without special supervision; or 4) impaired ability to perform tasks at a consistent pace without an unreasonable number of rest periods; 5) moderate decrease from pre-stroke intelligence; or 6) impaired ability to safely operate a motor vehicle (assuming the loss is not the result of an impairment in a different domain, such as motor skills or vision).

*Severe deficit:* Impairment levels preclude or significantly impede useful functioning—Plaintiff experienced at least one of the following: 1) inability to understand, remember, or carry out instructions; 2) inability to maintain attention for extended periods of time; 3) inability to sustain an ordinary routine without special supervision; 4) inability to perform tasks at a consistent pace without an unreasonable number of rest periods; 5) significant decrease from pre-stroke intelligence; or 6) complete loss of the ability to safely operate a motor vehicle (assuming the loss is not the result of an impairment in a different domain, such as motor skills or vision).

- **Affect:** Depression is the most common affective disturbance seen after stroke. It tends to be observed more often in the months after stroke than during the acute event. Symptoms may include loss of energy, lack of interests, loss of motivation, listlessness, loss of appetite, insomnia, sexual dysfunction, irritability, lack of inhibition, anxiety, apathy, withdrawal from social activities, or emotional disturbances.

Assessment of affect and/or depression is based on the Plaintiff's ability to engage in useful functioning, which includes activities of daily living, social functioning, concentration, and adaptation. Limitation in one's activities of daily living must be related to the affect disorder flowing from the stroke, as opposed to impairment from some other domain. "Social functioning" refers to an individual's capacity to interact appropriately and communicate effectively with other individuals. Concentration is necessary for task completion, which refers to the ability to sustain focused attention long enough to permit a timely completion of tasks commonly found in activities of daily living or work setting. Adaptation refers to one's ability to adapt to stressful circumstances.

Severity of Impairment

*No or minimal deficit:* Impairment levels are compatible with all useful functioning.

*Mild to moderate deficit:* Impairment levels are compatible with some, but not all, useful functioning—Plaintiff experienced at least one of the following: 1) impaired ability to function in activities of daily living and requires dependency on another person for care; 2) impaired ability to engage in meaningful social contact with others; 3) impaired ability to attend to any conversation or any productive task; or 4) impaired ability to tolerate any change in routines or in environment; or 5) limited ability to resume pre-stroke sexual activity.

*Severe deficit:* Impairment levels preclude or significantly impede useful functioning—Plaintiff experienced at least one of the following: 1) inability to function in activities of daily living and requires dependency on another person for care; 2) negligible or no ability to engage in meaningful social contact with others; 3) negligible or no ability to attend to any conversation or any productive task; 4) negligible or no tolerance for any change at all in routines or in environment; or 5) inability to resume pre-stroke sexual activity.

Exhibit C

The Barthel ADL Index: Guidelines

The index should be used as a record of what a patient does, not as a record of what a patient could do.

The main aim is to establish degree of independence from any help, physical or verbal, however minor and for whatever reason.

The need for supervision renders the patient not independent.

A patient's performance should be established using the best available evidence. Asking the patient, friends/relatives and nurses are the usual sources, but direct observation and common sense are also important. However direct testing is not needed.

Usually the patient's performance over the preceding 24-48 hours is important, but occasionally longer periods will be relevant.

Middle categories imply that the patient supplies over 50 per cent of the effort.

Use of aids to be independent is allowed.

Exhibit D

Applicable Statutes of Limitation and Repose

STATE	SOL	SOR
Alabama	2N	N/A
Alaska	2D	N/A
Arizona	2D	N/A
Arkansas	3D	N/A
California	1D	N/A
Colorado	2D	N/A
Connecticut	3D	N/A
Delaware	2N	N/A
DC	3D	N/A
Florida	4D	N/A
Georgia	2D	10R
Hawaii	2D	N/A
Idaho	2N	N/A
Illinois	2N	10R
Indiana	2D	10R
Iowa	2D	15R
Kansas	2N	N/A
Kentucky	1D	8R
Louisiana	1D	N/A

Maine	6N	N/A
Maryland	3D	N/A
Massachusetts	3D	N/A
Michigan	3D	N/A
Minnesota	6D	N/A
Mississippi	3D	N/A

STATE	SOL	SOR
Missouri	5D	N/A
Montana	3D	N/A
Nebraska	4N	N/A
Nevada	2D	N/A
New Hampshire	3D	N/A
New Jersey	2D	N/A
New Mexico	3D	N/A
New York	3N	N/A
North Carolina	3N	6R
North Dakota	6N	N/A
Ohio	2D	N/A
Oklahoma	2D	N/A
Oregon	2N	8R
Pennsylvania	2D	N/A

Rhode Island	3D	N/A
South Carolina	3D	N/A
South Dakota	3N	N/A
Tennessee	1D	6R
Texas	2D	N/A
Utah	4D	N/A
Vermont	3D	N/A
Virginia	2N	N/A
Washington	3D	N/A
West Virginia	2D	N/A
Wisconsin	3D	N/A
Wyoming	4D	N/A

\* "D" indicates a discovery rule; "N" indicates no discovery rule or discovery of injury; "R" indicates statute of repose. Thus, 3D means the state has a 3 year statute of limitations and a discovery rule that requires discovery of cause or wrongdoing.

Exhibit E

**Matrix Scoring Worksheet for Hemorrhagic Stroke Cases**

<b>Plaintiff Name:</b>		<b>Date of Injury:</b>	
		<b>Rating</b>	<b>Score</b>
<b>Part II - Product Identification Score</b>			
<b>Part III - Temporal Relationship Score</b>			
<b>Part IV - Liability/Causation Score</b>			
	Exposure to PPA		
	Date of Injury		
	Misuse of Product		
	Head trauma		
	Prior stroke		
	Hypertension		
	Aneurysm		
	AVM		
	Brain tumors		
	Leukemia		
	Bleeding disorders		
	Anticoagulants		
	Age		
	Cocaine/Amphetamine/PCP Use		
	Prescribed Amphetamine		
	Other illicit drug use		
	Smoking		
	Alcohol consumption		
	Exercise & Excretion		
<b>Product ID, Temporal Relationship, Liability/Causation Subtotal:</b>			
			<i>Continued</i>
<b>Plaintiff Name:</b>		<b>Date of Injury:</b>	
		<b>Rating</b>	<b>Score</b>
<b>Part V - Damages Score</b>			
		<b>Discharge</b>	<b>6 Month</b>
	<b>Number of Domains Affected</b>		
	<b>Level of Severity</b>		
	Subtotal:		
	Average Score:		
<b>Domain/Severity Score:</b>			
	<b>BADL Factors</b>		
	Feeding		
	Bathing		
	Grooming		
	Dressing		

	Bowels		
	Bladder		
	Toilet Use		
	Transfers		
	Mobility		
	Stairs		
	<b>BADL Total:</b>		
	<b>IADL Factors</b>		
	Telephone		
	Shopping		
	Food Preparation		
	Housekeeping		
	Laundry		
	Mode of Transportation		
	Responsibility for Medication		
	Ability to Handle Finances		
	<b>IADL Total:</b>		
	<b>Inpatient Treatment</b>		
	<b>Outpatient Rehabilitation</b>		
	<b>Damages Score Subtotal:</b>		
	<b>Product ID, Temporal Relationship, Liability/Causation Subtotal:</b>		
	<b>Total Matrix Score:</b>		
	<b>Matrix Level:</b>		
	<b>Age on Stroke Date:</b>		
	<b>Gross Settlement Compensation:</b>		
			<i>Continued</i>
<b>Part VIII - Statute of Limitations/Repose Adjustment (if applicable)</b>			
	Time elapsed from injury to filing:	years, months	
	Residence	Forum	
	% deduction from Gross Settlement Compensation		
	<b>Adjustment for statute of limitations/repose:</b>		
	<b>Subtotal:</b>		
<b>Part IX - Co-Ingestion Adjustment (if applicable)</b>			
	Products Ingested	Date and Time of Ingestion	
	% deduction from Statute of Limitation Adjustment		
	<b>Subtotal</b>		

	Adjustment for co-ingestion:	
	Total Adjusted Settlement Compensation:	

Exhibit F

**Matrix Scoring Worksheet for Ischemic Stroke Cases**

Plaintiff Name:		Date of Injury:	
		Rating	Score
<b>Part II - Product Identification Score</b>			
<b>Part III - Temporal Relationship Score</b>			
<b>Part IV - Liability/Causation Score</b>			
	Exposure to PPA		
	Date of Injury		
	Misuse of Product		
	Head trauma		
	Prior Transient Ischemic Attacks		
	Prior Stroke		
	Hypertension		
	Brain tumors		
	Cancer		
	Coronary Artery Disease		
	Carotid Artery Disease/Stenosis		
	Prior Myocardial Infarction		
	Heart Disease or Defect		
	Cerebral Venous Thrombosis		
	Peripheral Arterial Disease		
	Previous Embolism		
	Atrial Fibrillation		
	Major Surgery/Trauma		
	Cholesterol Problems		
	Diabetes		
	Bleeding/Clotting Disorders		
	Age		
	Gender		
	Heroin/Cocaine/PCP Use/Unprescribed Amphetamine		
	Prescribed Amphetamine		
	Other illicit drug use		
	Smoking		
	Oral Contraceptive + smoking		
	Alcohol consumption		
<b>Product ID, Temporal Relationship, Liability/Causation Subtotal:</b>			
			<i>Continued</i>
<b>Part V - Damages Score</b>			
		Discharge	6 Month
	<b>Number of Domains Affected</b>		

	<b>Level of Severity</b>		
		<b>Subtotal:</b>	
		<b>Average Score:</b>	
		<b>Domain/Severity Score:</b>	
	<b>BADL Factors</b>		
	Feeding		
	Bathing		
	Grooming		
	Dressing		
	Bowels		
	Bladder		
	Toilet Use		
	Transfers		
	Mobility		
	Stairs		
		<b>BADL Total:</b>	
	<b>IADL Factors</b>		
	Telephone		
	Shopping		
	Food Preparation		
	Housckeping		
	Laundry		
	Mode of Transportation		
	Responsibility for Medication		
	Ability to Handle Finances		
		<b>IADL Total:</b>	
	<b>Inpatient Treatment</b>		
	<b>Outpatient Rehabilitation</b>		
		<b>Damages Score Subtotal:</b>	
		<b>Product ID, Temporal Relationship, Liability/Causation Subtotal:</b>	
		<b>Total Matrix Score:</b>	
		<b>Matrix Level:</b>	
		<b>Age on Stroke Date:</b>	
		<b>Gross Settlement Compensation:</b>	
			<i>Continued</i>
	<b>Part VII - Ischemic Stroke Adjustment</b>		
	15% deduction from Gross Settlement Compensation:		
		<b>Adjustment for ischemic stroke:</b>	
		<b>Subtotal:</b>	
	<b>Part VIII - Statute of Limitations/Repose Adjustment (if applicable)</b>		

	Time elapsed from injury to filing:	years, months	
	Residence	Forum	
	% deduction from Ischemic Stroke Adjustment Subtotal		
	Adjustment for statute of limitations/repose:		
	Subtotal:		
	Part IX - Co-Ingestion Adjustment (if applicable)		
	Products Ingested	Date and Time of Ingestion	
	% deduction from Statute of Limitations Adjustment Subtotal:		
	Adjustment for co-ingestion:		
	Total Adjusted Settlement Compensation:		

**Exhibit G**

**Matrix Scoring Worksheet for Other Injuries and Cardiac Injuries**

<b>Plaintiff Name:</b>		<b>Date of Injury:</b>	
		<b>Rating</b>	<b>Score</b>
<b>Part II - Product Identification Score</b>			
<b>Part III - Temporal Relationship Score</b>			
		<b>Matrix Level:</b>	
		<b>Age on Stroke Date:</b>	
		<b>Gross Settlement Compensation:</b>	
<b>Part VIII - Statute of Limitations/Repose Adjustment (if applicable)</b>			
	Time elapsed from injury to filing:	years,	months
	<b>Residence</b>	<b>Forum</b>	
	<b>% deduction from Gross Settlement Compensation:</b>		
	<b>Adjustment for statute of limitations/repose:</b>		
	<b>Subtotal:</b>		
<b>Part IX - Co-Ingestion Adjustment (if applicable)</b>			
	<b>Products Ingested</b>	<b>Date and Time of Ingestion</b>	
	<b>% deduction from Statute of Limitations Adjustment</b>		
	<b>Subtotal:</b>		
	<b>Adjustment for co-ingestion:</b>		
	<b>Total Adjusted Settlement Compensation:</b>		

1 Products marketed, distributed and/or manufactured by Thompson Medical Company, Inc. (succeeded by  
The Delaco Company) that contained phenylpropanolamine include, but are not limited to, the brand names  
Dexatrim<sup>®</sup>, Control<sup>®</sup>, Appedrine<sup>®</sup>, Prolamine<sup>®</sup>, Anorexin<sup>®</sup>, Coffec, Tea, and a New Me<sup>®</sup>, Grapefruit  
Plus<sup>®</sup> and Vita Slim<sup>®</sup>. All of these products are collectively referred to throughout this document as  
"Dexatrim".

2 "Other Injuries" are limited to seizures, transient ischemic attacks and hypertensive crisis where medical  
documentation contemporaneous with the injury establishes the injury and indicates that the Plaintiff  
consumed Dexatrim within the 96 hours prior to the injury.

3 "Cardiac Injuries" means myocardial infarction/heart attack.

4 "Stroke Injuries" means hemorrhagic stroke and ischemic stroke, but does not mean transient ischemic  
attacks.

5 "Blood Toxicology Test" means a toxicology test performed for either: (i) phenylpropanolamine  
specifically; or (ii) sympathomimetic amines generally (provided that the nature or protocol of the test for  
sympathomimetic amines would reasonably be expected to identify phenylpropanolamine if it were present  
in the bloodstream); and the blood for the toxicology test must have been drawn: (a) within 34 hours of the  
alleged ingestion of sustained-released Dexatrim; or (b) within 24 hours of the alleged ingestion of  
immediate release Dexatrim.

6 The terms "onset of symptoms", "injury" and "stroke" are used interchangeably throughout this document,  
unless the context suggests otherwise.

7 This deduction applies where a plaintiff ingested Dexatrim one hour or less before the injury *and did not*  
ingest Dexatrim at any other time in the 96 hours before the injury. In the event that a plaintiff ingested  
Dexatrim one hour or less before the injury *and* consumed Dexatrim more than one hour, but less than 96  
hours, before the injury, the time of the dose that was taken more than one hour, but less than 96 hours,  
before the injury should be used for scoring this factor. The following examples illustrate how this factor is  
to be scored: (i) if Plaintiff consumed Dexatrim 35 minutes before the injury and had not consumed any  
PPA product at any other time in the week preceding the injury, the score for this factor would be -1 (0 - 60  
minutes); (ii) if Plaintiff consumed Dexatrim 35 minutes before the injury and also consumed Dexatrim 7  
hours before the injury, without taking any PPA in between, the score for this factor would be 0 (61  
minutes - 24 hours); (iii) if Plaintiff consumed Dexatrim 35 minutes before the injury and also consumed  
Dexatrim 36 hours before the injury, with no doses of PPA in between, then the score for this factor would  
be -1 (24 - 72 hours); (iv) if Plaintiff consumed Dexatrim 35 minutes before the injury and also consumed  
Dexatrim 98 hours before the injury, with no doses of PPA in between, then the score for this factor would  
be -1 (0 - 60 minutes).

8 The following examples illustrate how this factor is to be scored: (i) if Plaintiff took PPA on the day of the  
injury, but had not consumed PPA for 14 days or more prior to that dose, the score for this factor is +2; (ii)  
if Plaintiff took PPA on the day of the injury, and had consumed PPA every other day for a week prior to  
that dose, the score for this factor would be 0; (iii) if Plaintiff took PPA for 5 days in a row, stopped taking  
PPA for 2 days, then resumed taking PPA and the injury occurred on the day that Plaintiff resumed taking  
Dexatrim, the score for this factor would be -1.

9 "Daily dose" means the dosage indicated on the labeling of the PPA product(s) ingested. For instance, the  
daily dose of Maximum Strength Dexatrim is one 75 mg time-released capsule per 24 hours period;  
cough/cold medicines commonly recommend four 25 mg immediate-release doses per 24 hour period. For  
purposes of this factor, using the above-described daily doses, four 25 mg doses of a PPA containing  
cough/cold medicines (1 daily dose) and two 75 mg Dexatrim pills (2 daily doses) within a 24 hour period

(3 daily doses total) is an overdose. Conversely, using the above-described daily doses, two 25 mg doses of a PPA containing cough/cold medicine (1/2 daily dose) and two 75 mg Dexatrim pills (2 daily doses) within a 24 hour period (2 1/2 daily doses total) is not an overdose, but, rather, is disregard of labeling.

- 10 "Hemorrhagic Stroke" means primary hemorrhagic stroke. In other words, an ischemic stroke that results in a hemorrhagic conversion will not be scored under this Section IV.B., but rather will be scored under Section IV.C., the ischemic stroke factors portion of the Dexatrim Scoring System & Matrix.
- 11 Prior stroke does not include cardiac injuries, seizures, transient ischemic attacks, hypertensive crisis, or any injury other than hemorrhagic or ischemic stroke.
- 12 Family history of stroke only applies if Plaintiff does not receive deductions for Chronic Hypertension, Aneurysm, AVM, Brain Tumors, Leukemia or Pre-Existing Bleeding Disorders.
- 13 "Stroke site" means the location in the brain in which the bleed or blockage occurred.
- 14 The largest quantity of cigarettes regularly smoked within the period of five years prior to the stroke should be used for scoring purposes. For example, if Plaintiff smoked 1 ppd for three years immediately preceding the stroke, and smoked 1½ ppd for two years before that (4 and 5 years before the stroke), then the score for this factor is -3. By way of further example, if Plaintiff quit smoking within the two years immediately preceding the stroke, and smoked 15 cigarettes per day for two years before that (3 and 4 years before the stroke), then the score for this factor is -1.
- 15 The largest quantity of alcohol regularly consumed within the period of five years prior to the stroke should be used for scoring purposes. For example, if Plaintiff consumed 3 drinks per day for the three years immediately preceding the stroke, and drank 6 drinks per day for two years before that (4 and 5 years before the stroke), then the score for this factor is -3.
- 16 Documentary evidence of any such exercise and/or exertion must have been in existence prior to the date that the MOU was signed.
- 17 Prior stroke does not include cardiac injuries, seizures, transient ischemic attacks, hypertensive crisis, or any injury other than hemorrhagic or ischemic stroke.
- 18 Family history of stroke only applies if Plaintiff does not receive deductions for Chronic Hypertension, Brain Tumors, Cancer, Coronary Artery Disease, Carotid Artery Disease/Stenosis, Prior Myocardial Infarction, Heart Disease or Defect, Cerebral Venous Thrombosis, Peripheral Artery Disease, Previous Embolism, Atrial Fibrillation, Cholesterol Problems, or Diabetes.
- 19 This deduction does not apply to primary brain tumors, which are addressed in the Matrix as a separate category.
- 20 Right-sided valvular disease is excluded, unless the medical records show that it actually was the cause of stroke.
- 21 "Major Surgery" means intra-abdominal, knee or hip surgery (specifically excluding arthroscopic surgery) or any surgical procedure that involves general anesthesia or respiratory assistance, or is generally recognized to carry a risk of a thrombotic or embolic event (vaginal childbirth is excluded unless a general anesthesia or respiratory assistance was required). "Major Trauma" means serious bodily injury or shock that is generally recognized to carry a risk of a thrombotic or embolic event. This factor is not to be

considered if a Plaintiff receives a score for head trauma or prior embolism caused by trauma.

- 22 Bleeding/Clotting disorder does not include clotting problems from a surgical procedure or trauma that occurred 14 days prior to stroke.
- 23 Discontinuance must have been upon medical advice. Discontinuance without medical advise is considered "uncontrolled."
- 24 The largest quantity of cigarettes regularly smoked for the period of five years prior to the stroke should be used for scoring purposes. For example, if Plaintiff smoked 1 ppd for three years immediately preceding the stroke, and smoked 1½ ppd for two years before that (4 and 5 years before the stroke), then the score for this factor is -3. By way of further example, if Plaintiff quit smoking within the two years immediately preceding the stroke, and smoked 15 cigarettes per day for two years before that (3 and 4 years before the stroke), then the score for this factor is -1.
- 25 The largest quantity of alcohol regularly consumed within the period of five years prior to the stroke should be used for scoring purposes. For example, if Plaintiff consumed 3 drinks per day for the three years immediately preceding the stroke, and drank 6 drinks per day for two years before that (4 and 5 years before the stroke), then the score for this factor is -3.
- 26 For instance, if the Discharge Score is 18 and the 6 Month Score is 10, the Average Score would be 14 and the Domain/Severity Score is 15. If, however, the Discharge Score is 18 and the 6 Month Score is 12, the Average Score would be 15 and the Domain/Severity Score would be 15.
- 27 To be eligible for Level VI, Plaintiffs must have positive product identification (i.e., a score of 0 on Product Identification). Deceased Plaintiffs are not eligible for Level VI.
- 28 Legal or factual contentions made by Plaintiffs in Complaints, Fact Sheets, Affirmations, deposition testimony, and other documents will be strictly construed against the Plaintiffs so that this provision applies.

In cases where Plaintiff sued a defendant(s) in addition to the Dexatrim Defendants and claimed that the other defendant(s) is jointly responsible for Plaintiffs' injuries due to that defendant's responsibility for a product other than Dexatrim, co-ingestion of that other product(s) will be deemed to have occurred on the same day as Dexatrim if it is unclear when such PPA or other product was ingested in relation to the alleged ingestion of Dexatrim, based on a review of information in that Plaintiff's Complaints, Fact Sheets, Affirmations, deposition testimony, or medical record (and which medical record is generated in the ordinary course of medical treatment contemporaneous with the Plaintiff's injury).

If Plaintiff has sued no other defendant, and Plaintiff's Complaints, Fact Sheets, Affirmations, deposition testimony, or medical record (and which medical record is generated in the ordinary course of medical treatment contemporaneous with the Plaintiff's injury) indicate that a product containing PPA (other than Dexatrim) was ingested by Plaintiff within 96 hours before that Plaintiff's injury, but it is unclear when such other PPA product was ingested in relation to the alleged ingestion of Dexatrim, then co-ingestion of that other product will be deemed to have occurred on the same day as Dexatrim.

- 29 "Documented" means medical records, billing records, tax returns, social security earnings statements, expert reports (e.g. economists, Life Care planners, neurologists, physiatrists, etc.) or any other documentation or evidence requested by, or otherwise found acceptable by, the EIF Administrator.