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DIET PRODUCT LAWSUIT MAY GROW

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A federal judge in Detroit will decide soon whether to approve a statewide class action against Body Solutions lose-weight-as-you-sleep diet product touted by Michigan disc jockeys and other radio personalities.

The lawsuit was filed by a group of Detroit-area residents who say Body Solutions' Evening Weight Loss Form doesn't work. They also say that, until recently, the company's high-energy supplement, Atomic Energy, contained ephedrine, a potentially harmful stimulant.

"Using Body Solutions will lighten your wallet, but not your belly," Bloomfield Hills lawyer Mark Baumkel said Tuesday.

Baumkel and two other lawyers in the case, **E. Powell Miller** of Troy and William Colovos of Southgate, said hope to win refunds for an estimated 200,000 Michigan residents who paid \$40 to \$60 a bottle for Body Solutions products. They also want advertising, marketing and labeling changes.

Officials at Mark Nutritionals Inc. of San Antonio, which owns Body Solutions, say they are the victims of a frivolous lawsuit filed by opportunistic lawyers hoping to score a hefty legal fee.

Miller and Baumkel were awarded \$1.8 million in legal fees last year in a similar class action against Metabolife International Inc. Metabolife 356 also contains ephedrine, and the company settled the suit by agreeing to give \$5.6 million for obesity research.

U.S. District Judge Avern Cohn, who presided over the Metabolife case, is expected to decide within a few weeks whether to certify the Body Solutions case as a class action.

The lawsuit began as two suits filed in Wayne County Circuit Court last summer. The first suit involved Michael Emch, a Downriver automotive designer who bought a 2-month supply of Evening Weight Loss Formula for a \$80. The other involved Bob Miller, a Wayne truck driver who said he spent more than \$170. Neither man lost weight.

Both heard about the product from Detroit radio personalities who were paid to promote Body Solutions through testimonials.

Emch said he followed the instructions: He stopped eating three hours before bedtime and took 1 tablespoon of liquid Body Solutions with a glass of water before going to sleep.

He and Miller sued after the Free Press published a report that said company research showed faithful users lost an average of only 7 pounds in 90 days and that people who took the product only three times a week gained an average of 3 pounds.

In October, Wayne County Circuit Judge Wendy Baxter authorized a class action in Emch's suit, which prompted copycat lawsuits in four other states.

In February, the dispute was transferred to federal court. The lawsuits were consolidated, plaintiffs were added and complaints about Atomic Energy and ephedrine were raised.

The suit charges that Mark Nutritionals violated state law by failing to disclose results of its research and by making false and misleading claims about its product. It also says the company should have disclosed on Atomic Energy's label that ephedrine can be harmful for people who have heart disease or hypertension.

Mark Nutritionals insists its products are safe, effective and labeled in accordance with state and federal law.

"The company gets literally hundreds of calls a week from satisfied customers on its testimonial line," said J.D. Pauerstein, a San Antonio lawyer for the company. "My mother-in-law has lost 12 pounds on the program."

He added, "We've never had a complaint that anyone was hurt by taking Atomic Energy."

He and company president Harry Siskind, a former National Enquirer photographer, said in court documents that losing weight under the program involves several products designed to help customers acquire new eating habits and start exercising. Both men said the program requires commitment and patience for people to lose weight.

Pauerstein said the company recently removed ephedrine from Atomic Energy late last year to differentiate it from competitors, not because of the lawsuit.

To read the Free Press' June 2001 article about Body Solutions, go to [www.freep.com/news/health/body9_20010609](http://www.freep.com/news/health/body9_20010609.htm)

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