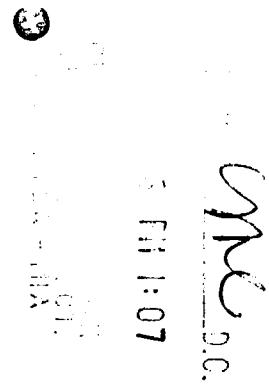
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 99-1317-MDL-SEITZ/BANDSTRA

IN RE: TERAZOSIN HYDROCHLORIDE ANTITRUST LITIGATION.
_____/

THIS DOCUMENT RELATES TO:

ALL CASES
_____/



ORDER DENYING PLAINTIFFS' MOTION TO INVALIDATE JOINT-SHARING AGREEMENT

THIS CAUSE came before the Court on Plaintiffs' Motion to Invalidate Joint-Sharing Agreement filed on April 9, 2002. On May 13, 2002, this motion was referred to the undersigned for appropriate resolution pursuant to 28 U.S.C. § 636(b) and Rule 1 of the *Magistrate Rules of the Southern District of Florida*. Accordingly, the undersigned conducted a hearing on this motion on May 31, 2002. Following full review of the pleadings, applicable law, and oral argument of counsel, it is hereby

ORDERED AND ADJUDGED that Plaintiffs' Motion to Invalidate Joint-Sharing Agreement is **DENIED** for reasons stated below.

ANALYSIS

The Sherman Act Class Plaintiffs ("plaintiffs") move to invalidate the joint-sharing agreement ("agreement") between Defendants Abbot Laboratories ("Abbott") and Geneva Pharmaceuticals, Inc. ("Geneva"), entered into on or about November 30, 2001, on the ground that the agreement "prohibits a settlement with Geneva alone and is therefore void as against public policy." Motion pg. 1. Plaintiffs particularly

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complain about the "claim-reduction" portion of the agreement, contained in Section 3.2(c)(i)-(iii), which essentially provides that in order for Geneva to separately settle with plaintiffs, Geneva must include in its settlement agreement a provision whereby plaintiffs agree to reduce their claim against Abbott by 40%, without regard to the dollar amount of the settlement between plaintiffs and Geneva. Abbott contends that this provision, coupled with Geneva's maximum financial responsibilities of $58 million in the judgment-allocation clause contained in the agreement, imposes a severe financial penalty on plaintiffs, as large as $542 million, so that the judgment-sharing agreement absolutely prohibits any independent settlement between plaintiffs and Geneva and should be declared null and void as violative of public favoring settlement in civil cases.

Reviewing the judgment-sharing agreement, defendants' position on this motion, and applicable law, the Court finds that the agreement does not necessarily prohibit a partial settlement with Geneva or Abbott--or otherwise bar a settlement with either defendant so that it does not violate public policy. Initially, the Court notes the parties' concession that very few courts have rendered relevant decisions on the validity of judgment-sharing agreements in antitrust litigation. The two district court decisions which discuss such agreements at all, as cited by the parties, provide little guidance here. Most recently, an Illinois District Court, in In Re: Brand Name Prescription Drugs Antitrust Litigation ("BNPD"), 1995 WL 21853 (N.D. Ill. 1995), noted that joint-sharing agreements provides a means of discouraging coerced settlements by commonly providing:

> ... that if any signatory defendant settles, it must require the plaintiff to reduce any ultimate judgment against the other signatories by the settling defendant's percentage share of liability under the agreement.

Id. at *3 (citing Hearings before the United States House of Representatives Committee on the Judiciary, Subcommittee on Monopolies and Commercial Law, on Antitrust Damage Allocation, 97th Cong., 1st & 2nd Sessions, at 135 (1982) (prepared statement of Robert P. Taylor).

In another recent decision, In Re: San Juan DuPont Plaza Hotel Fire Litigation ("DuPont Plaza"), 1989 WL 996278 (D. Puerto Rico 1989), the district court struck down a judgment-sharing agreement between defendants in multiparty litigation after finding that the agreement "flatly prohibit[ed] individual settlements" in violation of public policy.

On close review, this Court finds that neither BNPD nor DuPont Plaza leads to a result here. Rather, the Court finds that the validity of the joint-sharing agreement between Geneva and Abbott largely depends on the parties' widely divergent estimates concerning defendants' liability and potential damages resulting therefrom. Plaintiffs' estimate damages, as high as $1.5 billion which, under the agreement, would result in a significant impairment to settlement with Geneva under the terms of the agreement. Defendants estimate damages far lower and, if accurate, would present no impairment whatsoever to an individual settlement one or both defendants.

Finding no basis to accurately access the parties' estimate of liability and damages, the Court can only examine the judgment-sharing agreement itself. Doing so, this Court finds the agreement does not necessarily prohibit or unduly restrict a

partial or global settlement between plaintiffs and these defendants. Therefore, the Court **DENIES** Plaintiffs' Motion to Invalidate the Judgment-Sharing Agreement at this time.

DONE AND ORDERED in Chambers at Miami, Florida this 25th day of June, 2002.

TED E. BANDSTRA
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Honorable Patricia A. Seitz

All counsel appearing on attached Service List

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