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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Southern Division

JUL 19 2002

CLARENCE MADDOX
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IN RE: TERAZOSIN HYDROCHLORIDE
ANTITRUST LITIGATION

MASTER FILE NO. 99-MDL-1317
MDL DOCKET NO. 1317

THIS DOCUMENT RELATES TO:

Hon. Patricia A. Seitz
Magistrate Judge Ted E. Bandstra

Walgreen (No. 99-1938)
CVS (No. 99-3512)

**ABBOTT LABORATORIES' MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
OBJECTIONS TO MAGISTRATE'S ORDER DENYING THEIR MOTION TO
INVALIDATE JUDGMENT SHARING AGREEMENT**

The Individual Plaintiffs' objections to Magistrate Judge Bandstra's Order denying their motion to invalidate the Abbott-Geneva judgment sharing agreement (JSA) ignore the controlling standard of review: the Order may be set aside only if it is "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); *Steinig v. McDonald's Corp.*, No. 97-3781-Civ.-Nesbitt, 1998 WL 1064841, at *1 (S.D. Fla. Jan. 12, 1998). Plaintiffs cannot even claim that Magistrate Judge Bandstra made a clear error in finding that the JSA does not "prohibit or unduly restrict" the potential settlement of these cases (*see* Order at 3-4). Likewise, plaintiffs do not and cannot point to any antitrust case in which any court has ever invalidated a JSA or any other legal


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authority that would support an argument that the Order was contrary to law. As explained in the briefs submitted to Magistrate Judge Bandstra, there was no basis for invalidating the JSA. Indeed, on the specific argument made by plaintiffs Congress, the courts and commentators alike have repeatedly noted that “claim reduction” provisions like those included in the JSA prevent unfair “sweetheart” *partial* settlements with individual defendants and thereby promote the *overall* settlement of complex cases like this one. *See, e.g., In re Brand Name Prescription Drugs Antitrust Litig.*, 1995 WL 221853, at *1-2 (N.D. Ill. Apr. 11, 1995) (noting that JSA’s are a “means of discouraging coerced settlements” with individual defendants) (citing Senate Report); Report of the ABA Antitrust Section on Proposed Amendment to Clayton Act, 49 Antitrust L.J. 291, 295 (1979) (noting that JSA’s ensure that “settlement occurs on a more rational basis”). Of course, it is only overall settlements that promote judicial economy while ensuring an equitable allocation of responsibility for the conduct at issue. Plaintiffs’ suggestion that the JSA’s \$58 million cap on Geneva’s liability is somehow unreasonable is premised on the idea that their own prior partial settlement with Geneva was the very type of sweetheart deal that Congress has recognized is appropriately discouraged by a judgment sharing agreement. It illustrates that Magistrate Judge Bandstra’s order was not clearly erroneous in finding that the JSA here does not improperly interfere with settlement.

For these reasons, as well as for the reasons set forth in Geneva's brief, the Order should be upheld.

Dated: July 19, 2002

Respectfully submitted,

By: 
MUNGER, TOLLES & OLSON LLP
Jeffrey I. Weinberger
Stuart N. Senator
Stephen E. Morrissey
355 South Grand Avenue
Los Angeles, California 90071
(213) 683-9100

Jon W. Zeder (Fla. Bar No. 98432)
Ferrel Schultz Carter
Zumpano & Fertel
201 Bisbayne Blvd.
34th Floor Miami Center
Miami, FL 33131
(305) 371-8585

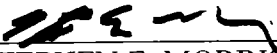
Attorneys for defendant Abbott Laboratories

Of Counsel:

Laura J. Schumacher
Legal Division
Department 324, Building AP6D
ABBOTT LABORATORIES
100 Abbott Park Road
Abbott Park, IL 60064
(847) 937-5726

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were furnished by facsimile and overnight mail this 19th day of July 2002 to all liaison counsel on the attached Service List.



STEPHEN E. MORRISSEY

SERVICE LIST
(as of 03-05-02)

Case No. 99-MDL- 1317 (ALL CASES) SEITZ/GARBER

LIAISON COUNSEL

Barry S. Taus, Esq.
Garwin, Bronzaft, Gerstein & Fisher L.L.P.
1501 Broadway, Suite 1416
New York, NY 10036
Tel: (212) 398-0055
Fax: (212) 764-6620

Mitchell W. Berger, Esq.
Berger, Davis & Singerman, P.A.
350 East Las Olas Boulevard, Suite 350
Fort Lauderdale, FL 33301
Tel: (954) 525-9900
Fax: (954) 523-2872

Daniel Berger, Esq.
Berger & Montague, P.C.
1622 Locust Street
Philadelphia, PA 19103
Tel: (215) 875-3026
Fax: (215) 875-4671

Scott E. Perwin, Esq.
Kenny Nachwalter Seymour Arnold Critclilow & Spector, P.A.
1100 Miami Center
201 South Biscayne Boulevard
Miami, FL 33131-4327
Tel: (305) 373-1000
Fax: (305) 372-1861

Richard B. Drubel, Esq.
Boies Schiller & Flexner L.L.P.
26 South Main Street
Hanover, NH 03755
Tel: (603) 643-9090
Fax: (603) 643-9010

Robert C. Gilbert, Esq.
Robert C. Gilbert, P.A.
Commerce Bank Center
220 Alhambra Circle, Suite 400
Coral Gables, FL 33134
Tel: (305) 529-9100
Fax: (305) 529-1612

Steve D. Shadowen, Esq.
30 North Third Street, Suite 700
Harrisburg, PA 17101-1713
Tel: (717) 231-4000
Fax: (717) 231-4012

Jason L. Solotaroff, Esq.
Stammell & Schager, LLP
One Liberty Plaza, 35th Floor
New York, NY 10006-1404
Tel: (212) 566-4047
*Fax: (212) 566-4061 *By Email @ solotaroff@ssnyc.com

Steven Lowey, Esq.
Richard W. Cohen, Esq.
Geoffrey M. Horn, Esq.
Lowey Dannenberg Bemporad & Selinger, P.C.
The Gateway, 11th Floor
One North Lexington Avenue
White Plains, NY 10601
Tel: (914) 997-0500
Fax: (914) 997-0035

Daniel Small, Esq.
Cohen, Milstein, Hausfeld & Toll P.L.L.C.
1100 New York Avenue, NW.
West Tower, Suite 500
Washington, DC 20005-3934
Tel: (202) 408-4600
Fax: (202) 408-4699

Gerson A. Zweifach, Esq.
Kevin M. Downey, Esq.
Williams & Connolly LLP
725 Twelfth Street, NW.
Washington, DC 20005-590 1
Tel: (202) 434-5000
Fax: (202) 434-5029

Wayne Cross, Esq.
Robert A. Milne, Esq.
Dewey Ballantine, LLP
1301 Avenue of the Americas
New York, NY 10019
Tel: (212) 259-8000
Fax: (212) 259-6333

Barbara Smithers
Assistant Attorney General
Florida Office of the Attorney General
Century Plaza
135 W. Central Blvd.
Orlando, FL 32801
Tel: (407) 317-7007 x 1039
Fax: (407) 316-3584

Devin Laiho
Assistant Attorney General
Colorado Office of the Attorney General
1525 Sherman St., 5th St.
Denver, CO 80203
Tel: (303) 866-5079
Fax: (303) 866-5443

Rex G. Beasley
Assistant Attorney General
Kansas Office of the Attorney General
120 S.W. 10th Ave., 2nd Fl.
Topeka, KA 66612-1597
Tel: (785) 296-3751
Fax: (785) 291-3699