UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

IN RE TERAZOSIN HYDROCHLORIDE
ANTITRUST LITIGATION
_____/

ORDER AFFIRMING MAGISTRATE JUDGE BANDSTRA'S ORDER DENYING PLAINTIFFS' MOTION TO INVALIDATE JUDGMENT SHARING AGREEMENT

THIS CAUSE is before the Court on the Individual Plaintiffs' Objections to Magistrate Judge Bandstra's Order Denying Plaintiffs' Motion to Invalidate Judgment Sharing Agreement. On or about November 30, 2001, Defendant Abbott Laboratories ("Abbott") and Defendant Geneva Pharmaceuticals ("Geneva") entered into a judgment sharing agreement whereby if Geneva unilaterally settles any claim in this case, it shall require, as a condition of settlement, that the settling Plaintiff(s) agree to reduce the amount collectable from Abbott on any final judgment by forty-percent. The Sherman Act Class Plaintiffs and the Individual Plaintiffs argued that the agreement prohibits settlement with Geneva and thus moved to invalidate the agreement as violative of public policy. On May 13, 2002, the Court referred Plaintiffs' motion to Magistrate Judge Bandstra for appropriate resolution pursuant to 28 U.S.C. § 636(b)(1)(A) and Rule 1 of the Magistrate Judge Rules for the Southern District of Florida. After hearing oral argument on May 31, 2002, Magistrate Judge Bandstra concluded that the judgment sharing agreement "does not necessarily prohibit or unduly restrict" settlement and thus denied Plaintiffs' motion. On July 3, 2002, the Individual Plaintiffs[1] filed timely objections to Magistrate Judge Bandstra's Order.

The standard for overturning a Magistrate Judge's order is very stringent. Pursuant to Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(A), any portion of a Magistrate Judge's order found to be clearly erroneous or contrary to law may be set aside or modified. The United States Supreme Court has defined the clearly erroneous standard as follows: "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a

[1] The Sherman Act Class Plaintiffs did not file objections.

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mistake has been committed." Pullman-Standard v. Swint, 453 U.S. 273, 285 n. 14 (1982) (citation omitted).

The basis of Abbott and Geneva's judgment sharing agreement is the arguably arbitrary premise that any judgment in favor of Plaintiffs shall be allocated: forty-percent to Geneva and sixty-percent to Abbott. (Affidavit of Wayne Cross ("Cross Aff."), Ex. 2, § 2.1). Under this theoretical framework, were Plaintiffs to obtain a $1 billion judgment, Abbott would be responsible for $600 million, and Geneva $400 million. The agreement provides, however, "that once Geneva has made aggregate payments of $58 million, all further payments in satisfaction of any Final Judgment shall be allocated to Abbott." (Cross Aff., Ex. 2, § 2.1). Thus, using the same example of a $1 billion judgment, Geneva would pay $58 million and Abbott would pay the balance of $942 million.

With respect to settlement, the agreement specifically states that either party is free to settle unilaterally at any time. (Cross Aff., Ex. 2, § 3.2(a)). This appears, however, to be mere window dressing for the agreement's true effect. In practice, for Geneva to unilaterally settle, and not forfeit the $58 million cap mentioned above, Plaintiffs must agree to reduce their claim against Abbott by forty-percent. (Cross Aff., Ex. 2, § 3.2(c)(i)). In other words, Plaintiffs, in order to settle with Geneva, must accept Abbott and Geneva's sixty-forty allocation. Consequently, in order to settle for $58 million with Geneva,[2] Plaintiffs must waive potentially $600 million in claimed damages against Abbott.[3] From a reasonable person's perspective, waiving a potential $600 million damage claim in exchange for $58 million simply does not make sense.[4]

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[2] In light of the $58 million payment cap, it is unlikely that Geneva would agree to pay more in a settlement. Moreover, Geneva had previously entered into agreements potentially settling the Sherman Act Class Plaintiffs' claims against it for $30.7 million and the Individual Plaintiffs' claims for a proportionate amount. Because, however, the number of opt-outs exceeded the agreed upon threshold, Geneva exercised its right to withdraw from the settlement.

[3] This figure is based on Plaintiffs' claimed damages of more than $500 million, or more than $1.5 billion trebled; forty-percent of $1.5 billion is $600 million. While Defendants obviously dispute Plaintiffs' damages estimate, in actuality, Geneva's $58 million payment will be forty-percent only if the total damage award is $145 million (forty-percent of $145 million is $58 million).

[4] Moreover, $542 million of the $600 million is money that Abbott would be obligated to pay under the judgment sharing agreement.

Therefore, Plaintiffs maintain that because the judgment sharing agreement essentially precludes settlement with Geneva, it violates public policy and should be invalidated.

The Court agrees with Plaintiffs that the terms of this judgment sharing agreement greatly diminish the possibility of a settlement between Plaintiffs and Geneva, and will likely result in the furtherance of this expensive litigation. However, under the clearly erroneous standard of review, a court should not reverse a Magistrate Judge's determination simply because it might have decided the matter differently. See Anderson v. City of Bessemer City, 470 U.S. 564, 574 (1985).

Moreover, the Court agrees with Magistrate Judge Bandstra that because the agreement does not necessarily prohibit settlement,[5] it does not rise to the level of a contract that is violative of public policy.[6] And because there appears to be a dearth of case law on this issue, it cannot be said that Magistrate Judge Bandstra's Order is contrary to established law. In fact, because there is joint and several liability and no statutory right to contribution in antitrust cases, Texas Indus., Inc. v. Radcliff Materials, Inc., 451 U.S. 630 (1981), the majority of commentators tend to view such agreements with guarded approval. See, e.g., REPORT OF THE COMMITTEE ON THE JUDICIARY OF THE UNITED STATES SENATE, No. 97-359, at 2 (1982) ("[judgment sharing] agreements are consistent with public policy and the effective enforcement of the antitrust laws"). But see MANUAL FOR COMPLEX LITIGATION (Third) § 23.23 (1995) (acknowledging that while judgment sharing agreements "are generally appropriate, the court may refuse to approve or enforce such agreements where they would violate public policy").

Therefore, having found that Magistrate Judge Bandstra's Order was not clearly erroneous or

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[5] The judgment sharing agreement explicitly provides that "[e]ither party may at any time unilaterally enter into a Settlement of any claim against it." (Cross Aff., Ex. 2, § 3.2(a)).

[6] It is only in the most exceptional cases that a court will find a private contract so offensive as to warrant invalidating it as violative of public policy. See, e.g., Hurd v. Hodge, 334 U.S. 24, 34-35 (refusing to enforce racially restrictive covenant); Fomby-Denson v. Dep't of Army, 247 F.3d 1366, 1377-78 (refusing to enforce agreement not to report a possible crime). See also T.C.B. v. Fla. Dep't of Children and Families, 816 So.2d 194, 196 (Fla. 1st D.C.A. 2002) ("[a] contract is void as against public policy when it is injurious to the interests of the public, or contravenes some established interest of society.") (citations omitted).

contrary to law, it is

ORDERED that the Individual Plaintiffs' Objections to Magistrate Judge Bandstra's Order Denying Plaintiffs' Motion to Invalidate Judgment Sharing Agreement are OVERRULED. Magistrate Judge Bandstra's June 25, 2002 Order is AFFIRMED.

DONE and ORDERED in Miami, Florida, this 23rd day of August, 2002.

PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

Copies to:
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All counsel on attached service list

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