

FILED

JUN 16 2003

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

IN RE LORAZEPAM AND
CLORAZEPATE ANTITRUST
LITIGATION)

CASE NUMBER MDL 1290
Misc. No. 99-276 (TFH/JMF)

ADVOCATE HEALTH CARE,
ST. CHARLES HOSPITAL and
REHABILITATION CENTER, DIK DRUG
COMPANY and HARVARD PILGRIM
HEALTH CARE, INC., and On Behalf
of Themselves and On Behalf of
All Others Similarly Situated,)

CASE NUMBER 1:99-CV-00790
CONSOLIDATED WITH
CASE NUMBER 99 C2228

(U.S. DISTRICT COURT FOR
THE NORTHERN DISTRICT OF
ILLINOIS)

Plaintiffs,)

CONSOLIDATED WITH
CASE NUMBER 02 CIV. 4598

v.)

(SOUTHERN DISTRICT
OF NEW YORK)

MYLAN LABORATORIES, INC.,
MYLAN PHARMACEUTICALS, INC.,
UDL LABORATORIES, INC., CAMBREX
CORPORATION, GYMA LABORATORIES
OF AMERICA, INC., and MILAN PUSKAR,)

JUDGE: THOMAS F. HOGAN

Defendants.)

**FINAL ORDER AND JUDGMENT APPROVING SETTLEMENT
BETWEEN PLAINTIFFS AND DEFENDANTS MYLAN LABORATORIES, INC.,
MYLAN PHARMACEUTICALS, INC., UDL LABORATORIES, INC., CAMBREX
CORPORATION, PROFARMACO S.R.L., GYMA LABORATORIES OF AMERICA,
INC., AND MILAN PUSKAR**

These Direct Purchaser Actions having come before this Court for a hearing, as noticed, on June 16, 2003, pursuant to this Court's Order Preliminarily Approving Proposed Settlement Between Plaintiffs and Defendants Mylan Laboratories, Inc., Mylan Pharmaceuticals, Inc., UDL Laboratories, Inc., Cambrex Corporation, Profarmaco S.r.l., Gyma Laboratories of America, Inc., and Milan Puskar, dated April 11, 2003 (the "Preliminary Approval Order") to consider and

determine the matters set forth in the Preliminary Approval Order; and due notice of said hearing having been published and given; and all entities that made timely objections to the proposed settlement set forth in the Stipulation of Settlement dated March 31, 2003 (the "Settlement Agreement") and described in the Notice of Proposed Settlement and Summary Notice, having been given an opportunity to present such objections to the Court; and the Court having considered the matter, including all papers filed in connection therewith, and the oral presentations of counsel at said hearing; and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction over these Direct Purchaser Actions and each of the parties to the Settlement Agreement.
2. As required by this Court in its Preliminary Approval Order: (a) Notices of Proposed Settlement were mailed by first-class mail to all Class members whose addresses could be obtained with reasonable diligence, and to all potential Class members who requested a copy; and (b) a Summary Notice was published in *Modern Healthcare Magazine* and *The Pink Sheet* (published by the F.D.C. reports) and posted continuously on the Internet, all as more fully set forth in the Affidavit of Richard Cody Bland dated May 16, 2003. Such notice is hereby determined to be fully in compliance with requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and is found to be the best notice practicable under the circumstances and to constitute due and sufficient notice to all entities entitled thereto.
3. Due and adequate notice of the proceedings having been given to the Class and a full opportunity having been offered to the Class to participate in the hearing, it is hereby determined that all Class Members are bound by this Final Order and Judgment.

4. The settlement of these Direct Purchaser Actions was not the product of collusion between Plaintiffs and Defendants or their respective counsel, but rather was the result of *bona fide* and arm's-length negotiation conducted in good faith by the Parties and their counsel.

5. The Settlement Agreement and the settlement set forth therein are hereby approved and found to be fair, adequate, reasonable, in the best interest of the Class as a whole, and in satisfaction of Rule 23 of the Federal Rules of Civil Procedure and due process requirements. The terms and phrases used in this Final Order and Judgment shall have the same definition and meaning as in the Settlement Agreement, unless otherwise defined herein.

6. As set forth in more detail in the Settlement Agreement, Defendants collectively have agreed to pay a total of thirty-five million dollars (\$35,000,000) in Settlement of these Direct Purchaser Actions. In accordance with the Settlement Agreement, Defendants have deposited by wire transfer \$35,000,000 into the Direct Purchaser Settlement Fund Account. All interest on this Account from the date of deposit shall accrue to the benefit of the Class. The Direct Purchaser Settlement Fund also includes the funds received, under a prior partial settlement of the Direct Purchaser Actions, from SST Corporation ("SST"), which remain in the SST Direct Purchaser Account, plus any interest earned or accrued thereon, after previous distribution of the amounts of the SST Settlement allocated to the Indirect Purchaser Plaintiffs and the Plaintiff States in Related Actions, as well as payment to Class Counsel of incurred actual notice costs associated with the distribution of the Notice of Partial Settlement, pursuant to Order of this Court dated June 21, 2002. The \$35,000,000 (plus any interest earned or accrued thereon) contributed by Defendants pursuant to the Settlement Agreement, together with the funds from SST which remain in the SST Direct Purchaser Account, are collectively referred to herein as the Direct Purchaser Settlement Funds.

7. The Court approves the Allocation and Distribution Plan as proposed by Class Counsel and summarized in the Notice of Proposed Settlement, and directs Poorman-Douglas Corporation, the firm retained by Class Counsel as Class Administrator, to distribute the Direct Purchaser Settlement Funds in the manner provided in the Allocation and Distribution Plan.

8. The Court hereby dismisses these Direct Purchaser Actions on the merits, with prejudice, and without costs, with such dismissal subject only to compliance by the Parties with the terms and conditions of the Settlement Agreement and this Final Order and Judgment.

9. Terms used in this Final Order and Judgment that are defined in the Settlement Agreement are, unless otherwise defined herein, used in this Final Order and Judgment as defined in the Settlement Agreement.

10. All Class Members shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released by the Settlement Agreement, and all such Class Members shall be deemed to have forever released any and all such matters, claims and causes of action as provided for in the Settlement Agreement.

11. Without any further action by anyone, Releasors, for good and sufficient consideration, are hereby deemed to have released and forever discharged the Releasees, and each of them, from any and all Released Claims.

12. Releasors are hereby severally and permanently barred and enjoined, to the fullest extent permitted by law, from filing, commencing, instituting, maintaining, prosecuting or participating in a lawsuit or any other proceeding against any of the Releasees involving or based on any of the Released Claims, either directly or indirectly, representatively, derivatively, or in any other capacity.

13. The Court awards Class Counsel 30 % of the Direct Purchaser Settlement Funds (“Funds”) as attorney’s fees, to be allocated by agreement among Class Counsel, as well as \$ 1,075,071.81 in costs, disbursements, and expenses, with interest from the date of the deposit of the Funds at the same rate earned by the Funds, and \$ 20,000 each to the Class Representatives as incentive awards for their services in discovery and their role in bringing about this recovery on behalf of the Class. All of the foregoing amounts are to be paid exclusively out of the Direct Purchaser Settlement Funds without additional contribution or payment by Defendants. Any appeal from this paragraph shall not affect the finality of the remainder of this Final Order and Judgment, including but not limited to the date on which the Settlement will be deemed final under the terms of the Settlement Agreement.

14. Neither this Final Order and Judgment, the Settlement Agreement, nor any of its terms or the negotiations or papers related thereto shall constitute evidence or an admission by any Releasee, that any acts of wrongdoing have been committed, and they shall not be deemed to create any inference that there is any liability therefor. Neither this Final Order and Judgment, nor the Settlement Agreement, nor any of its terms or the negotiations or papers related thereto shall be offered or received in evidence or used for any purpose whatsoever, in this or any other matter or proceeding in any court, administrative agency, arbitration, or other tribunal, other than as expressly set forth in the Settlement Agreement.

15. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds that there is no just reason for delay and therefore directs entry of this Final Order and Judgment as a final judgment that is immediately appealable.

16. Without in any way affecting the finality of this Final Order and Judgment, the Court hereby retains exclusive jurisdiction over these Direct Purchaser Actions until the

Settlement Agreement has been consummated and each and every act agreed to be performed by the Parties thereto shall have been performed, and thereafter for all other purposes necessary to effectuate the terms of the Settlement Agreement.

SO ORDERED this the 16 day of June, 2003.



Thomas F. Hogan
United States District Judge

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