

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE LORAZEPAM AND CLORAZEPATE
ANTITRUST LITIGATION

) CASE NUMBER MDL 1290 (TFH)
)
)

ARKANSAS CARPENTERS HEALTH AND
WELFARE FUND, on behalf of itself and all
others similarly situated,
1 Riverfront Place, Suite 700
North Little Rock, Arkansas 72114,

) CASE NUMBER 1:01-CV-00159
)

) JUDGE: THOMAS F. HOGAN
)

) Plaintiff,
)

) v.
)

MYLAN LABORATORIES, INC.
130 Seventh Street
1030 Century Building
Pittsburgh, Pennsylvania 15222

MYLAN PHARMACEUTICALS, INC.
781 Chestnut Ridge Road
Morgantown, West Virginia 26505

CAMBREX CORPORATION
One Meadowlands Plaza
East Rutherford, New Jersey 07073

) - and -
)

GYMA LABORATORIES OF AMERICA,
INC.
135 Cantiague Rock Road
Westbury, New York 11590,

) Defendants.
)

FILED

FEB 09 2001

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

**ORDER CONDITIONALLY CERTIFYING SETTLEMENT CLASS
AND PRELIMINARILY APPROVING PROPOSED SETTLEMENT**

Upon review and consideration of the Stipulation of Settlement dated January 29, 2001, executed on behalf of plaintiff and the Class (as defined therein) and on behalf of defendants and SST Corporation (“SST”), and the exhibits attached thereto (the “Settlement Agreement”), it is hereby ORDERED as follows:

**PRELIMINARY APPROVAL OF SETTLEMENT AND
CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

1. The Court finds that it has jurisdiction over this action and each of the parties.
2. The terms of the Settlement Agreement are hereby preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. The Court finds that the settlement encompassed by the Settlement Agreement (the “Settlement”) is sufficiently within the range of reasonableness so that notice of the Settlement should be given as provided in paragraphs 5 and 6 of this Order.
3. The Court hereby conditionally certifies the following class for settlement purposes only:

All Third Party Payors (as described below) that have reimbursed or otherwise paid, in whole or in part, for prescriptions of tablets of generic Lorazepam or generic Clorazepate filled during the period January 1, 1998 through December 31, 1999 for natural persons resident in Alaska, Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Hawaii, Iowa, Idaho, Illinois, Indiana, Kentucky, Maryland, Missouri, Mississippi, Montana, Nebraska, New Hampshire, Nevada, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Utah, Virginia, Vermont, Washington and/or Wyoming (the “Settlement Class”). “Third Party Payor” means any non-governmental entity that is (i) a party to a contract, issuer of a policy, or sponsor of a plan, which contract, policy or plan provides prescription drug coverage to natural persons, and is also (ii) at risk, pursuant to such contract, policy or plan, to pay or reimburse the amount associated with the cost of prescription drugs to natural persons covered by such contract, policy, or plan (subject to such natural persons satisfying any obligation to pay a deductible and/or co-payment).

The Court further hereby conditionally finds that plaintiff is an adequate class representative for the Settlement Class. If the Settlement Agreement is terminated or is not consummated for any reason whatsoever, the certification of the Settlement Class shall be void, and plaintiff, defendants and SST (the "Settling Entities") shall have reserved all of their rights to propose or oppose any and all class certification motions and to contest the adequacy of plaintiff as representative of any putative plaintiff class.

4. Robert S. Schachter of Zwerling, Schachter & Zwerling, LLP and Bernard Persky of Goodkind Labaton Rudoff & Sucharow LLP, appointed by this Court's Order of March 9, 2000 as co-lead counsel for the indirect purchaser cases, for the purposes of the Settlement are appointed as Indirect Purchaser Lead Counsel. Joe R. Whatley, Jr. of Whatley Drake LLC, for purposes of the Settlement is designated as Third Party Payor Lead Class Counsel. Indirect Purchaser Lead Counsel, Third Party Payor Lead Class Counsel, Michael Hamilton of Provost Umphrey Law Firm, LLP and Joseph Arshawsky of Youngdahl & Sadin, P.C., are designated as Class Counsel.

NOTICE TO POTENTIAL SETTLEMENT CLASS MEMBERS

5. At a date to be set by further order of this Court, Indirect Purchaser Lead Counsel shall cause copies of the Notice of Settlement of Class Action, substantially in the form attached as Exhibit D to the Settlement Agreement (the "Mail Notice"), the Proof of Claim, substantially in the form attached as Exhibit G to the Settlement Agreement (the "Proof of Claim") and the Notice of Exclusion Form substantially in the form attached as Exhibit E to the Settlement Agreement, to be mailed by first class mail, postage pre-paid, to all potential members of the Settlement Class, to the extent that they can be identified with reasonable diligence, and to the Third Party Payors who request a copy of the Mail Notice.

6. At a date to be set by further order of this Court, Indirect Purchaser Lead Counsel shall cause to be published the Summary Notice of Settlement of Class Action, substantially in the form attached as Exhibit I to the Settlement Agreement (the "Publication Notice"), once in the *National Underwriter: Life & Health/Financial Edition* and in *Benefits & Compensation Solutions* and posted on the Internet.

7. Prior to the Fairness Hearing, Indirect Purchaser Lead Counsel shall serve and file or cause to be served and filed a sworn statement attesting to compliance with the provisions of paragraphs 5 and 6 of this Order.

8. The notice to be provided as set forth in paragraphs 5 and 6 of this Order (the "Notice Provisions") is hereby found to be the best practicable notice under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS

9. Any member of the Settlement Class that wishes to be excluded from the Settlement Class shall mail a written request for exclusion ("Request for Exclusion") to Complete Claim Solutions, Inc. (the "Settlement Administrator"), postmarked by a date to be set by further order of this Court, and clearly stating: (i) the name and address of the entity that wishes to be excluded from the Settlement Class; and (ii) a person who, if necessary, may be contacted in connection with the Request for Exclusion, and such person's telephone number. Upon receipt, the Settlement Administrator shall promptly provide copies of each Request for Exclusion to Indirect Purchaser Lead Counsel and James B. Weidner of Clifford Chance Rogers

& Wells LLP, counsel for Mylan Laboratories, Inc. and Mylan Pharmaceuticals, Inc. (“Mylan’s Counsel”), and Sidney S. Rosdeitcher of Paul, Weiss, Rifkind, Wharton & Garrison, counsel to SST (“SST’s Counsel”). On a date to be set by further order of this Court, the Settlement Administrator shall provide to the Clerk of the Court and to Indirect Purchaser Lead Counsel, Mylan’s Counsel and SST’s Counsel (collectively, “Counsel to the Settling Entities”) a schedule of those members of the Settlement Class that have timely excluded themselves from the Settlement.

10. Any potential member of the Settlement Class that does not properly and timely mail a Request for Exclusion as set forth in ¶ 9 above shall be included in the Settlement Class and shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such potential member of the Settlement Class shall have objected to the Settlement and whether or not such potential member of the Settlement Class makes a claim upon or participates in the Settlement.

PROOFS OF CLAIM

11. To effectuate the Settlement and the Notice Provisions, Indirect Purchaser Lead Counsel have designated Complete Claim Solutions, Inc. as the Settlement Administrator, which designation is hereby approved, to be responsible for the receipt of all Requests for Exclusion and Proofs of Claim. The Settlement Administrator shall preserve all Requests for Exclusion, Proofs of Claim, and any and all other written communications from members of the Settlement Class in response to the Notice Provisions until January 1, 2003, or pursuant to further order of the Court. All written communications received by the Settlement Administrator from members of the Settlement Class relating to the Settlement Agreement shall be available at all reasonable times for inspection and copying by Counsel to the Settling Entities.

12. The Settlement Administrator shall be compensated pursuant to ¶ (III.) (D.) (1.) of the Settlement Agreement.

13. In order to be entitled to participate in the Settlement if it is effected in accordance with all of the terms and conditions set forth in the Settlement Agreement, each member of the Settlement Class shall take the following actions and be subject to the following requirements:

(a) Each Settlement Class member that wishes to receive a distribution from the Settlement must mail a properly executed and verified Proof of Claim to the Settlement Administrator at the address indicated in the Mail Notice on or before a date to be set by further order of this Court. Each Proof of Claim shall be deemed to have been submitted when actually postmarked for mailing to the Settlement Administrator by first class mail;

(b) Each Proof of Claim filed by each member of the Settlement Class must satisfy the following conditions: (i) the Proof of Claim must be properly completed in accordance with this subparagraph and submitted in a timely manner in accordance with subparagraph (a) of this paragraph; (ii) the Proof of Claim for each member of the Settlement Class may be accompanied by documentation supporting the claim as described in the instructions to the Proof of Claim; (iii) the Proof of Claim must be signed and certified under oath; (iv) if the person executing the Proof of Claim is acting in a representative capacity, certification of such person's authority to act on behalf of the claimant must be furnished with the Proof of Claim; and (v) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein;

(c) Each Proof of Claim shall be submitted to and reviewed by the Settlement Administrator, who shall make a recommendation to the Court, as to the extent, if any, to which each claim shall be allowed;

(d) The Settlement Administrator will notify each member of the Settlement Class of any recommendation of disallowance, in whole or in part, of the Proof of Claim submitted by such Settlement Class member and will set forth the reasons for any such disallowance. Settlement Class members shall be permitted a reasonable period of time to cure any deficiency with respect to their respective Proofs of Claim. A copy of such notification shall also be sent by the Settlement Administrator to Counsel for the Settling Entities;

(e) All members of the Settlement Class that do not submit timely Proofs of Claim, or submit Proofs of Claim that are disallowed, shall be barred from participating in the Settlement (except to the extent that a Proof of Claim may be partially allowed) but otherwise shall be bound by all of the terms and provisions of the Settlement Agreement; and

(f) Each member of the Settlement Class that submits a Proof of Claim shall thereby expressly submit to the jurisdiction of the Court with respect to the claims submitted and shall (subject to final approval of the Settlement) be bound by all the terms and provisions of the Settlement Agreement.

CONFIDENTIALITY

14. Any information received by the Settlement Administrator in connection with this Settlement that pertains to a particular member of the Settlement Class or information contained in a Request for Exclusion (other than the identity of the entity requesting exclusion), shall not be disclosed to any other person or entity other than Counsel to the Settling Entities, any other Class Counsel or the Court.

THE FAIRNESS HEARING

15. A hearing on final settlement approval (the “Fairness Hearing”) will be scheduled by further order of this Court to be held before the undersigned in Courtroom No. 14, United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001 to consider:

(a) whether the Settlement Class should be finally certified; (b) the fairness, reasonableness and adequacy of the Settlement, the dismissal with prejudice of this action as to the defendants and all other released parties, and the entry of final judgment in the action; and (c) the application for attorneys’ fees and reimbursement of expenses, and incentive awards (the “Fee Petition”).

16. Any member of the Settlement Class that has not filed a Request for Exclusion in the manner set forth above may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the Settlement and the dismissal with prejudice of the action as to the defendants and all other released parties, and the entry of final judgment or the Fee Petition; provided, however, that no person shall be heard in opposition to the Settlement, dismissal and/or entry of final judgment or the Fee Petition, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless on or before a date to be set by further order of this Court, such person: (a) files with the Clerk of the Court a notice of such person’s intention to appear as well as a statement that indicates the basis for such person’s opposition to the Settlement, the dismissal of claims and/or the entry of final judgment or Fee Petition and any documentation in support of such opposition; and (b) serves copies of such notice, statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon Counsel to the Settling Entities and Third Party Payor Lead Class Counsel.

17. The date and time of the Fairness Hearing shall be set forth in the Mail Notice and Publication Notice, but shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted at the Court and on the Court's web site.

18. All discovery and other pretrial proceedings in this action among the Settling Entities are stayed and suspended as of January 29, 2001, pending the Effective Date of the Mylan Settlement and Effective Date of the SST Settlement as defined in the Settlement Agreement ("Final Approval"), except such proceedings as are provided for in the Settlement Agreement, or which may be necessary to implement the terms of the Settlement Agreement, the Settlement, or this Order.

19. Any pleadings or memoranda in support of the Settlement and Settlement Agreement shall be filed with the Court by a date to be set by further order of the Court. Pleadings or memoranda with respect to the Fee Petition shall be filed by a date to be set by further order of this Court.

20. Any Settlement Class member may hire an attorney at his or her or its own expense to appear in the action. Such attorney shall serve a Notice of Appearance on the Counsel for the Settling Entities by a date to be set by further order of this Court and file it with the Court by a date to be set by further order of this Court.

21. Pending Final Approval, no Settlement Class member, either directly, representatively, or in any other capacity, shall commence or prosecute against defendants or SST, any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released by the Settlement Agreement upon Final Approval, and, upon Final Approval, all Settlement Class members that do not file a timely Request for

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

OTHER PROVISIONS

22. The Court hereby approves the terms of the Escrow Agreement, attached as Exhibit B to the Settlement Agreement.

23. The Court preliminarily approves the Allocation and Distribution Plan, attached as Exhibit 2 to the Affidavit of Bernard Persky.

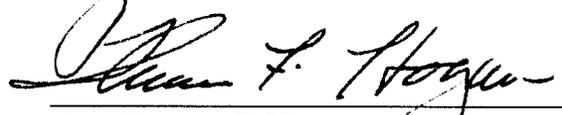
24. Terms used in this Order that are defined in the Settlement Agreement are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreement.

25. Upon Final Approval, each and every term and provision of the Settlement Agreement shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of the Court.

26. In the event the Settlement is terminated with respect to defendants or SST in accordance with the provisions of the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of the plaintiff, defendants, SST and the members of the Settlement Class.

27. All proceedings in the action against the defendants and SST are hereby stayed until such time as the Court renders final decision regarding the approval of the Settlement and, if it approves the Settlement, enters final judgment as provided in the Settlement Agreement.

SO ORDERED this 9th day of February 2001.



Hon. Thomas F. Hogan
United States District Judge