

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

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 Similarly
Situated Direct Purchasers of Generic
Lorazepam and Clorazepate Tablets,

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

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

Plaintiffs,

JUDGE: THOMAS F. HOGAN

v.

FILED

APR 27 2001

MYLAN LABORATORIES, INC.,
MYLAN PHARMACEUTICALS, INC.,
UDL LABORATORIES, INC., CAMBREX
CORPORATION, GYMA LABORATORIES
OF AMERICA, INC., PROFARMACO SRL,
and SST CORPORATION,

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Defendants.

**ORDER CONDITIONALLY CERTIFYING SETTLEMENT CLASS
AND PRELIMINARILY APPROVING PROPOSED SETTLEMENT
BETWEEN PLAINTIFFS, THE SETTLEMENT CLASS,
AND DEFENDANT SST CORPORATION**

Upon review and consideration of the Stipulation of Settlement dated February 6, 2001, executed on behalf of plaintiffs Advocate Health Care, St. Charles Hospital and Rehabilitation Center, Dik Drug Company, and Harvard Pilgrim Health Care, Inc. ("Plaintiffs") and the Class (as defined therein) and on behalf of 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. This Court finds that it has jurisdiction over this Action and each of the parties to the Settlement Agreement.

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 6, 7 and 8 of this Order.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby conditionally finds that the prerequisites for a class action have been met and conditionally certifies the following class (the "Settlement Class") for settlement purposes only:

all non-governmental hospitals, health maintenance organizations, health care delivery systems, managed healthcare companies, pharmaceutical wholesalers, distributors, retailers, and other entities that purchased Lorazepam and/or Clorazepate tablets directly from Mylan Laboratories, Inc., Mylan Pharmaceuticals, Inc., or UDL Laboratories, Inc. (individually and collectively, "Mylan") during the period January 1, 1998 through December 31, 2000 (the "Class Period"), including all such entities that purchased Lorazepam and/or Clorazepate tablets at prices contracted for directly with Mylan by a group purchasing organization of which the purchasing entity was a member.

Excluded from the class are Defendants and their respective subsidiaries and affiliates.

4. The Court further hereby conditionally finds that Plaintiffs are adequate class representatives 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 Plaintiffs 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 Plaintiffs as representatives of any putative plaintiff class.

5. Gardner, Carton & Douglas and Pomerantz, Haudek, Block, Grossman & Gross LLP are appointed as Counsel for the Settlement Class (“Class Counsel”).

NOTICE TO POTENTIAL SETTLEMENT CLASS MEMBERS

6. Class Counsel may defer notice of the proposed settlement until the “Notice Date,” which shall be the earlier of: (i) such time as the notice may be combined with other notice to the purported class in the context of potential class certification or a proposed settlement with other defendants in this Action, or (ii) June 30, 2001.

7. On or before May 30, 2001, Class Counsel and Counsel for SST shall jointly submit a proposed Notice and proposed Summary Notice for the Court's approval. If the Parties cannot agree on the form of such notices, the Parties shall submit the issue for the Court for its binding, non-appealable resolution.

8. As soon as practicable after approval of the Notice and Summary Notice, Class Counsel shall cause the Summary Notice to be published in *The Pink Sheet* (published by F.D.C. Reports) and in *Modern Healthcare*, and posted on the Internet, and shall cause copies of the Notice to be mailed by first-class mail, postage pre-paid, to all potential members of the Class, to the extent they can be identified with reasonable diligence, and to all members of the Class who request a copy.

9. Prior to the Fairness Hearing, Class Counsel shall serve and file a sworn statement attesting to compliance with the provisions of Paragraph 8 of this Order.

10. The foregoing notice provisions are hereby found to be the best means of providing 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

11. Any member of the Settlement Class that wishes to be excluded from the Settlement Class shall mail the Notice of Exclusion or other written request for exclusion (“Request for Exclusion”) to Poorman Douglas Corporation (the “Settlement Administrator”), postmarked by a date to be set in a subsequent 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 Sidney S. Rosdeitcher of Paul, Weiss, Rifkind, Wharton & Garrison, counsel to SST (“SST’s Counsel”). On or before a date to be set by a subsequent order of this Court, the Settlement Administrator shall provide to the Clerk of the Court and to Class 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.

12. Any potential member of the Settlement Class that does not properly and timely mail a Request for Exclusion as set forth in Paragraph 11 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 AND REQUESTS FOR EXCLUSION

13. To effectuate the Settlement and the Notice Provisions, Class Counsel has designated Poorman Douglas Corporation 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 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.

14. The Settlement Administrator shall be compensated by Class Counsel pending the Effective Date of the Settlement Agreement, as defined in Paragraph I(I) therein. Class Counsel may move for reimbursement of fees paid to the Settlement Administrator from the proceeds of the SST Settlement Fund, but such fees shall be

drawn from the SST Settlement Fund only after the Effective Date (as defined in the Settlement Agreement).

THE FAIRNESS HEARING

15. The Court defers setting a date for a Fairness Hearing to consider: (a) the fairness, reasonableness and adequacy of the Settlement; (b) the dismissal with prejudice of this action as to SST; and (c) the application for attorneys' fees and reimbursement of expenses to the Plaintiffs (the "Fee Petition"), until after it is determined when notice of the Settlement shall be given. In no event shall the Fairness Hearing be less than sixty (60) days after the deadline for submission of Requests for Exclusion.

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, the dismissal with prejudice of the Action as to SST, or the Fee Petition; provided, however, that no person shall be heard in opposition to the Settlement, dismissal of the Action as to SST 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 in a subsequent order (but in no event less than thirty (30) days before the Fairness Hearing), 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 the Action as to SST or the 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.

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 is hereby stayed and suspended, 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. Pending Final Approval, no Settlement Class member, either directly, representatively, or in any other capacity, shall commence or prosecute against 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

20. 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.

21. 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.

22. In the event the Settlement is terminated 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 Plaintiffs, SST, and the members of the Settlement Class.

23. If the Settlement is terminated or ultimately not approved, the Court will modify any existing scheduling order to ensure that SST will have sufficient time to prepare for the resumption of litigation, including but not limited to the completion of discovery, preparation of expert reports, the filing of a summary judgment motion or motions, and preparation for trial.

SO ORDERED this 27th day of April, 2001.


