

UNITED STATES DISTRICT COURT  
THE DISTRICT OF DELAWARE

IN RE TRICOR INDIRECT PURCHASER ANTITRUST LITIGATION	)	
THIS DOCUMENT RELATES TO:	)	C.A. No. 05-360 (SLR)
ALL ACTIONS	)	(consolidated)

~~PROPOSED~~ <sup>SLR</sup> ORDER PRELIMINARILY APPROVING CLASS ACTION  
SETTLEMENT, CONDITIONALLY CERTIFYING SETTLEMENT CLASS,  
APPROVING FORM AND MANNER OF NOTICE,  
AND SCHEDULING FINAL APPROVAL HEARING

At Wilmington this 8<sup>th</sup> day of May, 2009, upon consideration of Indirect Purchaser Plaintiffs' Motion for Preliminary Approval of Settlement, the Memorandum of Law, declarations and exhibits in support of the Motion, the settlement agreement attached thereto ("Settlement Agreement") and the proposed form of class notice submitted therewith; and for good cause shown;

IT IS ORDERED as follows:

1. This Court has jurisdiction over these actions and jurisdiction over the parties.
2. It appearing, solely for purposes of the proposed settlement, that all requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied, the Court conditionally certifies a class (the "Class") for settlement purposes only, defined as follows:

All persons or entities throughout the United States and its territories who purchased, paid for and/or reimbursed for fenofibrate products, including TriCor® tablets and TriCor® capsules, intended for consumption by themselves, their families,

or their members, employees, plan participants, beneficiaries or insureds during the period April 9, 2002 through the date the Court issues an order preliminarily approving the settlement (the "Class Period"), excluding (a) Defendants and their respective subsidiaries and affiliates and (b) all government entities (except for government-funded employee benefit funds), and (c) all persons or entities that purchased fenofibrate products for purposes of resale or directly from any of the Defendants to the extent and solely to the extent of such purchases for purposes of resale or such direct purchases.

Also excluded are PacifiCare Health Plan Administrators, Inc. as well as the separately-settling health plans ("SHPs") listed on Attachment A hereto.

3. The Court finds that the requirements of Rule 23(a) are satisfied for settlement purposes only, as follows:

(a) Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Class are so numerous that joinder of all members is impracticable.

(b) Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the court determines that, in the context of settlement, there are common issues of law and fact as follows:

(i) Whether the conduct challenged in the complaint (C.A. No. 05-360, D.I. 24) violated Section 2 of the Sherman Act, 15 U.S.C. §2 and similar state antitrust and consumer protection statutes;

(ii) Whether the conduct challenged in the complaint (C.A. No. 05-360, D.I. 24) constitutes unjust enrichment under various state laws;

(iii) Whether the settlement amount and other terms of the Settlement Agreement are fair and reasonable;

(c) Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the Representative Plaintiffs (as defined below) are typical of the claims of the Class in that the Representative

Plaintiffs allege that they have purchased and/or paid for fenofibrate products during the Class Period.

(d) Pursuant to Fed. R. Civ. P. 23(a)(4), in the context of settlement, the Representative Plaintiffs will fairly and adequately protect and represent the interests of all members of the Class, and the interests of the Representative Plaintiffs are not antagonistic to those of the Class. The Representative Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action antitrust litigation.

4. The Court further finds that the requirements of Rule 23(b)(3) are satisfied for settlement purposes only, as follows:

(a) Questions of law and fact common to the members of the Class, as described above, predominate over questions that may affect only individual members; and

(b) A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

5. Plaintiffs Cindy Cronin, Diana Kim, Sandra Krone, Alberto Litter, Neil and Helena Perlmutter, Elaine M. Pullman, Lula Ramsey, Charles M. Shain, Hector Valdes, Richard G. Wilde, Allied Services Division Welfare Fund, Sheet Metal Workers International Association Local Union 28, Painters' District Council No. 30 Health and Welfare Fund, Pennsylvania Employees Benefit Trust Fund, Philadelphia Federation of Teachers Health and Welfare Fund, Vista Healthplan, Inc. (collectively "Representative Plaintiffs") are hereby appointed Class representatives for settlement purposes only.

6. The following firms are appointed as Co-lead Class Counsel: Cafferty Faucher LLP; Labaton Sucharow LLP; Spector Roseman Kodroff & Willis, P.C.; and Hagens Berman Sobol Shapiro LLP. The law firm of Chimicles & Tikellis LLP is appointed Liaison Counsel.

7. The Settlement Agreement between Representative Plaintiffs (on behalf of the Class) and Defendants, attached as Exhibit 1, together with all Exhibits thereto, to the Declaration of David S. Nalven dated May 4, 2009 ("Nalven Dec."), was entered into at arm's length by highly experienced counsel, falls within the range of reasonableness for a settlement of this matter, and is hereby preliminarily approved, subject to further consideration at the fairness hearing as described below ("Fairness Hearing").

8. The proposed Plan of Allocation, attached as Exhibit 2 to the Nalven Dec., also appears to be appropriate and is preliminarily approved, subject to further consideration at the Fairness Hearing.

9. The Notice Program attached to the Declaration of Katherine Kinsella dated May 4, 2009 ("Kinsella Dec."), and the proposed forms of notice[s] attached thereto, satisfy the requirements of due process and of Rule 23(e) of the Federal Rules of Civil Procedure, are otherwise reasonable and fair, and are thus approved for dissemination to the Class. The Claims Administrator (as defined below) shall mail a copy of the notice to each third-party payor Class member, by first-class mail, postage prepaid, who can be identified with reasonable effort, and to any other potential class member that requests one; and shall make summary notice available to the rest of the Class as stated in the proposed notice plan. Such notice shall constitute due and sufficient notice of the proposed settlement and Fairness Hearing to all class members as required by Rule 23, Fed. R. Civ. P.

10. The claim forms attached as Exs. 5 and 6 to the Nalven Dec. satisfy the requirements of due process and of Rule 23(e) of the Federal Rules of Civil Procedure are thus approved for dissemination to the Class. The Claims Administrator shall mail a copy of the third-party payor claim form to each third-party payor Class member with notice, and to any

other potential class member that requests one.

11. The Fairness Hearing shall be held in this Court for the purpose of considering:

(a) whether the proposed settlement is fair, reasonable and adequate and should be granted final approval by the Court; (b) whether to approve the proposed plan of allocation and distribution of the settlement funds; and (c) whether Class Counsel's application for attorneys fees and expenses, and for any incentive awards for the Class Representatives, should be granted.

However, the Fairness Hearing may be adjourned by the Court without further notice to the Class other than that which may be posted at the Court and/or on the Court's and Claims Administrator's websites.

12. Class Counsel shall file their motion for final approval of the proposed settlement, together with any request for attorneys' fees, incentive awards, and reimbursement of costs and expenses.

13. Persons wishing to object to the proposed settlement and/or to be heard at the Fairness Hearing shall follow the following procedures:

a. To object, a Class member, individually or through counsel, must file a written objection with the Clerk, and must also mail a copy thereof to the following:

Pamela Tikellis  
CHIMICLES & TIKELLIS LLP  
P.O. Box 1035  
Wilmington, DE 19801

*Liaison Counsel for Plaintiffs*

Jeffrey I. Weinberger  
Stuart N. Senator  
Munger, Tolles & Olson LLP  
355 South Grand Avenue  
Los Angeles, CA 90071  
(213) 683-9100

*Attorneys for Abbott Laboratories*

William Baer  
James L. Cooper  
Arnold & Porter LLP  
555 Twelfth Street, NW  
Washington, DC 20004-1206  
(202) 942-5000

*Attorneys for Fournier Industrie et Sante and Laboratoires Fournier S.A*

b. Any Class member who files and serves a written objection by the deadline may also appear at the Fairness Hearing, either in person or through a lawyer hired at the Class member's expense, to object to the fairness, reasonableness or adequacy of the proposed settlement. Any lawyer representing a Class member for the purpose of making objections must also file a Notice of Appearance with the Clerk, and must also serve copies by mail to the counsel listed above.

c. Class members or their lawyers intending to appear at the Fairness Hearing must serve on Class Counsel and Counsel for Defendants, and file with the Clerk, a Notice of Intent to Object, which includes: (i) the name, address and telephone number of the Class member and, if applicable, the name, address and telephone number of the Class member's attorney (who must file a Notice of Appearance); (ii) the objection, including any papers in support thereof; and (iii) the name and address of any witnesses to be presented at the Fairness Hearing, together with a statement as to the matters on which they wish to testify and a summary of the proposed testimony.

d. Any Class member who does not timely file and serve a Notice of Intent to Object, and any witness not identified in the Notice of Intent to Object, shall not be permitted to object or appear at the Fairness Hearing, except for good cause shown, and shall be deemed to

have waived, forfeited, and shall be barred from raising, any objection to the proposed settlement made at the Fairness Hearing, and shall be bound by all of the terms of the settlement and by all orders of the Court.

14. The schedule by which the events referenced in ¶¶ 9-13 above shall occur pursuant to the following schedule:

<u>EVENT</u>	<u>DATE</u>
Notice of Class Action Settlement and Claim Forms To be Mailed to TPPs and Posted on Internet	June 1, 2009
Notice of Class Action Settlement to be Published in National Media	June 22, 2009 to August 18, 2009
Affidavit of Compliance with Notice Requirements	September 1, 2009
Postmark/Filing Deadline for Requests for Exclusions, Objections, and Filing Claims	September 15, 2009
Filing Motion for Final Approval, Attorney Fees, Reimbursement of Expenses, and Incentive Awards To be Filed by Class Counsel	September 18, 2009
Service/Filing Notice of Appearance at Fairness Hearing	September 25, 2009
Fairness Hearing	September 30, 2009 or after
	<i>October 9, 2009 at 1:30 p.m.</i> (court scheduled date)

15. The Court hereby appoints the claims administrator proposed by Indirect Purchaser Plaintiffs, Rust Consulting, Inc. (the "Claims Administrator"). Responsibilities of the Claims Administrator shall include: (a) establishing a post office box for purposes of communicating with Class members; (b) disseminating notice to the Class; (c) develop a website enabling Class members to access documents and answers to Frequently Asked Questions related

to the settlement; (d) establishing a telephone hotline to allow the Claims Administrator to respond timely to inquiries from Class members; (e) accepting and maintaining documents sent from Class members, relating to claims administration; and (f) distributing settlement checks to Class members.

16. The Court hereby approves the Escrow Agreement attached as Exhibit 7 to the Nalven Dec. and appoints the escrow agent proposed by Indirect Purchaser Plaintiffs, SunTrust Bank, to hold the settlement fund established pursuant to the Settlement Agreement (the "Settlement Fund") in escrow.

17. The Court finds that the Settlement Fund is a "qualified settlement fund" as defined in Section 1.468B-1(a) of the Treasury Regulations in that it satisfies each of the following requirements:

- a. the Settlement Fund is established pursuant to an order of this Court and is subject to the continuing jurisdiction of this Court;
- b. the Settlement Fund is established to resolve or satisfy one or more claims that have resulted or may result from an event that has occurred and that has given rise to at least one claim asserting liabilities; and
- c. the assets of the Settlement Fund are segregated from other assets of the Defendants, the transferor of payments to the Settlement Fund.

18. Under the "relation-back" rule provided under section 1.468B-1(j)(2)(i) of the Treasury Regulations, the Court finds that:

- a. the Settlement Fund met the requirements of paragraphs 15(b) and (c) of this Order prior to the date of this Order approving the establishment of the Settlement Fund subject to the continued jurisdiction of this Court; and

- b. Defendants and Claims Administrator may jointly elect to treat the Settlement Fund as coming into existence as a "qualified settlement fund" on the later of the date the Settlement Fund met the requirements of paragraphs 15(b) and (c) of this Order or January 1 of the calendar year in which all requirements of paragraph 15 of this Order are met. If such a relation-back election is made, the assets held by the Settlement Fund on such date shall be treated as having been transferred to the Settlement Fund on that date.

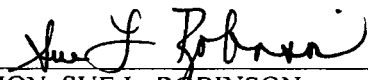
19. In the event the Settlement Agreement and the proposed settlement are terminated in accordance with the applicable provisions of the Settlement Agreement, the Settlement Agreement, the proposed settlement, and all related proceedings shall, except as expressly provided to the contrary in the Settlement Agreement, become null and void, shall have no further force and effect, and Indirect Purchaser Plaintiffs shall retain all of their current rights to assert any and all claims against Defendants and any other released party, and the Defendants and any other released parties shall retain any and all of their current defenses and arguments thereto (including but not limited to arguments that the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are not satisfied for purposes of continued litigation). These actions shall thereupon revert forthwith to their respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and all other related orders and papers had not been executed.

20. Neither this Order nor the Settlement Agreement nor any other settlement-related document nor anything contained herein or therein or contemplated hereby or thereby nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or

herein or in any other settlement-related document, shall constitute, be construed as or be deemed to be evidence, of or an admission or concession by Defendants as to, the validity of any claim that has been or could have been asserted against any or all of them or as to any liability by any or all of them as to any matter set forth in this Order, or as to the propriety of class certification for any purposes other than for purposes of the current proposed settlement.

21. All other proceedings in these actions are hereby stayed until such time as the Court renders a final decision regarding approval of the proposed settlement. Neither this Order nor the Settlement Agreement shall constitute any evidence or admission of liability by any Defendant.

SO ORDERED.

  
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HON. SUE L. ROBINSON  
UNITED STATES DISTRICT JUDGE