

“Settlement”) was entered into at arm’s length by highly experienced counsel and 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.

CLASS CERTIFICATION

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 “Class” or “Direct Purchaser Class”) for settlement purposes only:

All persons and entities in the United States who purchased Platinol directly from Bristol-Myers Squibb Company or its wholly-owned subsidiary, Oncology Therapeutic Network, Inc., at any time from June 19, 1999 through September 8, 2004 (“Direct Purchaser Class” or the “Class”). Excluded from the Class are Defendant, its parents, employees, subsidiaries and affiliates, and government entities.

4. The Court further hereby conditionally finds that Plaintiff is an adequate representative of the Class under Rule 23(a)(4) of the Federal Rules of Civil Procedure. Among other things, the Court finds that Plaintiff’s interests are aligned with the interests of other members of the Class because all members of the Class allegedly have been forced to pay supra-competitive prices due to the same alleged anticompetitive conduct and all Class members seek recovery based on the same overcharge theory of damages. If the Settlement Agreement is terminated or is not consummated for any reason whatsoever, the certification of the Class shall be void, and Plaintiff and Bristol (the “Settling Entities”) shall have reserved all of their rights to propose or oppose any and all class certification motions on any and all available grounds.

5. The Court hereby appoints Cohen, Milstein, Hausfeld & Toll, P.L.L.C. as the lead Class counsel for the Class (“Lead Counsel”), having determined that the requirements of Rule 23 of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

NOTICE TO POTENTIAL CLASS MEMBERS

6. Within 20 days after the date of entry of this Order, Lead Counsel shall cause copies of the Notices of Proposed Settlement and Settlement Hearing, substantially in the form

attached as Exhibit A hereto, to be mailed by first class mail, postage prepaid, to all members of the Class, to the extent that they can be identified with reasonable diligence.

7. Lead Counsel shall cause to be published a summary notice, which shall be substantially in the form attached as Exhibit B hereto (“Publication Notice”) one day a week for two consecutive weeks in the Modern Healthcare Magazine and The Pink Sheet, as soon as practicable after Mail Notice, and in all events, at least 30 days prior to the Fairness Hearing.

8. Prior to the Fairness Hearing, Lead Counsel shall serve and file a sworn statement attesting to compliance with the provisions of Paragraphs 6 and 7 of this Order.

9. 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 of law.

CLAIMS ADMINISTRATION

10. To effectuate the Settlement and Notice provisions, Lead Counsel has designated Complete Claim Solutions as the Settlement Administrator, which designation is hereby approved, to be responsible for: (a) establishing a P.O. Box and toll-free phone number (to be included in the Notices to the Class) for the purpose of communicating with Class members; (b) disseminating notices to the Class; (c) accepting and maintaining documents sent from Class members including opt-out forms, claim forms, and other documents relating to claims administration; and (d) administering claims for allocation of funds among Class members in association, if necessary, with competent economists.

11. As described in the Notices to the Class, any Class member may opt out of the Class by mailing a completed Request for Exclusion to the Settlement Administrator within 45 days after the date on which Notice is mailed to the Class. Persons or entities that request exclusion from the Class shall not be entitled to share the benefits of Settlement, nor be bound by any judgment, whether favorable or adverse.

12. Any potential member of the Class that does not properly and timely mail a Request for Exclusion as set forth in Paragraph 11 above shall be included in the Class and shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such potential member of the Class shall have objected to the Settlement and whether or not such potential member of the Class makes a claim upon or participates in the Settlement.

FEE PETITION, INCENTIVE AWARD, AND MOTIONS FOR FINAL APPROVAL AND APPROVAL OF PROPOSED PLAN OF ALLOCATION

13. On or before November 22, 2004, counsel for the Class shall file their application for attorneys' fees and expenses (the "Fee Petition"), an application for an incentive award for Plaintiff, a motion for final approval of the Settlement, and a motion for approval of their proposed plan of allocation of net settlement proceeds to the Class.

THE FAIRNESS HEARING

14. A Fairness Hearing is hereby scheduled to be held on November 30, 2004, 11:00 a.m., before the undersigned to consider: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) the Fee Petition and application for an incentive award, and (c) whether to approve the proposed plan of allocation.

15. Any member of the 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 Fee Petition and incentive award, or plan of allocation; provided, however, that no person shall be heard in opposition to the Settlement, the Fee Petition and incentive award, or plan of allocation, 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 November 15, 2004, 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 Fee Petition and incentive award, or plan of allocation 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 Lead Counsel and counsel for Bristol.

16. 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 Class other than that which may be posted at the Court and on the Court's website.

OTHER PROVISIONS

17. 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.

18. 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 Plaintiff, Bristol, and the members of the Class.

19. If the Settlement is terminated or ultimately not approved, the Court will modify any existing scheduling order to ensure that the Plaintiff and Bristol 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.

Signed: Emmet G. Sullivan
United States District Judge
September 28, 2004

U.S. District Court
District of Columbia

Notice of Electronic Filing

The following transaction was received from lcegs1, entered on 9/28/2004 at 5:36 PM and filed on 9/28/2004

Case Name: NORTH SHORE HEMOTOLOGY-ONCOLOGY ASSOCIATES PC
v. BRISTOL-MYERS SQUIBB CO

Case Number: 1:04-cv-248

Filer:

**Document
Number:** 24

Docket Text:

ORDER vacating [23] and granting the Motion to Conditionally Certify the Settlement Class, Preliminarily Approving the Settlement and Authorizing Notice to be Sent to the Class. Signed by Judge Emmet G. Sullivan on September 28, 2004. (lcegs1)

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: O:\ECF ORDERS\Platinol -- revised preliminary approval order.pdf

Electronic document Stamp:

[STAMP dcecfStamp_ID=973800458 [Date=9/28/2004] [FileNumber=553016-0]
[202f8e1da814f76925c63c280afb0b6e2040769c718bc4abc1b7a1aec5281552cef1b
3c966b54e4d6b0d381fed72a4674163672deb4e9b926636de60caeb06fb]]

1:04-cv-248 Notice will be electronically mailed to:

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