

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Southern Division

IN RE: TERAZOSIN HYDROCHLORIDE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

*United Wisconsin Services, Inc., et al. v. Abbott
Laboratories*, N.D. Ill. C.A. No. 99-C-7410(JBZ)

Grosskrueger v. Abbott Laboratories, et al., N.D. Ill. :
C.A. No. 99C-7883(JBZ)

Reid v. Abbott Laboratories, et al., D.D.C. C.A. No. 00-323

Scafani v. Abbott Laboratories, et al., N.D. Cal.
C.A. No. 00-00508-SBA

Mednick v. Abbott Laboratories, et al., No. 2:00-3468:

O'Keefe v. Abbott Laboratories, S.D. Fla. C.A. No. _____

O'Neal v. Abbott Laboratories, et al., No. 00-J-1504-S

Grund v. Abbott Laboratories, et al., No. _____

*Blue Cross and Blue Shield of Alabama, Inc. v. Abbott
Laboratories, et al.*, No. 00-1303-Civ.-Lenard

Bernstein v. Abbott Laboratories, E.D. Mich.
C.A. No. 2:00-CV-72974

*Blue Cross and Blue Shield of Michigan v. Abbott
Laboratories, et al.*, No. 5:01-CV-95

Alabama Medicaid Agency v. Abbott Laboratories, et al.,
Civil Action No. 01-129-C (S.D. Ala.)

Hopper v. Abbott Laboratories, et al.,
E.D.N.C. 4:01-CV-160-H(3)

MASTER FILE NO. 99-MDL-1317
MDL DOCKET NO. 1317

Hon. Patricia A. Seitz
Mag. Judge Ted E. Bandstra

**INDIRECT PURCHASER PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED PARTIAL
SETTLEMENT WITH DEFENDANT IVAX
PHARMACEUTICALS, INC. AND FOR APPROVAL OF
THE FORM AND MANNER OF NOTICE TO THE CLASS**

Indirect Purchaser Plaintiffs, by and through their undersigned counsel, hereby respectfully move the Court for an order: (i) preliminarily approving the settlement between the Indirect Purchaser Plaintiffs and defendant IVAX Pharmaceuticals, Inc. (“IVAX”) (formerly known as Zenith Goldline Pharmaceuticals, Inc.), dated May 30, 2002; (ii) certifying the settlement class defined in the Settlement Agreement at ¶ 1; (iii) approving the forms of mail and publication notice attached to this motion at Exhibits B and C and directing the mailing and publication of those notices; and (iv) setting an expedited schedule for proceedings on the proposed Settlement. In support of the motion, Indirect Purchaser Plaintiffs respectfully show the Court as follows:

1. Indirect Purchaser Plaintiffs (“Plaintiffs”) and IVAX have entered into a Settlement Agreement (the “Proposed Settlement,” attached hereto as Exhibit A), subject to Rule 23(e) of the Federal Rules of Civil Procedure and Court approval, whereby, in exchange for a cash payment of \$600,000 and up to an additional \$100,000 for administration and notice expenses from IVAX, the Indirect Purchaser Plaintiffs have agreed to release all claims that were or could have been asserted against IVAX in the class action and for any claim of fraudulent inducement to enter into the Proposed Settlement, subject to certain specified limitations. (Exhibit A, paragraphs 15-19.)

2. The Proposed Settlement is a partial settlement of the above litigation, which will continue against the remaining defendants, namely Abbott Laboratories, Inc. (“Abbott”) and Geneva Pharmaceuticals, Inc. (“Geneva”) (collectively, the “Non-Settling Defendants”). The Proposed Settlement also provides for reasonable cooperation by IVAX with the Indirect Purchaser Plaintiffs in their continuing litigation against the Non-Settling Defendants. (Exhibit A, paragraphs 22-23.)

3. The Proposed Settlement was achieved as a result of vigorous arm's length negotiations between co-lead counsel for Plaintiffs and counsel for IVAX.

4. The Proposed Settlement will confer substantial benefits on the Settlement Class, including (a) a financial recovery that can be used to pay costs in the on-going litigation against defendants Abbott Laboratories, Inc. and Geneva Pharmaceuticals, Inc.; (b) a cooperation agreement from IVAX; and (c) the elimination of litigation risks against IVAX. The Settlement is within the range of possible approval by the Court.

5. Preliminary approval is the first step of a two-step process for approval of proposed class action settlements under Rule 23 of the Federal Rules of Civil Procedure. In the first step, the Court determines whether the Proposed Settlement falls within the range of possible approval. *See* MANUAL FOR COMPLEX LITIGATION (THIRD) (1995), § 30.41. In the second step, after notice of the Proposed Settlement to the Class and an opportunity for Class members to object or otherwise be heard, the Court will determine whether to grant final approval of the Proposed Settlement as fair and reasonable under Fed. R. Civ. P. 23.

6. As set out more fully in the accompanying memorandum of law, the Proposed Settlement satisfies all of the factors required for preliminary approval of a class action Proposed Settlement under Rule 23, in that it falls within the range of possible approval, and thus the Proposed Settlement should be preliminarily approved and notification of the Proposed Settlement's terms should be provided to the Class as provided by this motion.

7. The forms of mail and publication notice, attached hereto as Exhibit B (Notice of Proposed Partial Settlement and Hearing Regarding Settlement) and Exhibit C (Summary Notice of Proposed Partial Settlement and Hearing Regarding Settlement), will notify settlement class members of their rights with respect to the Proposed Settlement and comply with the requirements of due process.

8. Plaintiffs ask the Court to approve the following proposed schedule for proceedings on the Proposed Settlement:
- (a) Mailed Notice to be sent on or before September 1, 2002;
 - (b) Notice published in the publications identified in the Proposed Order no later than September 19, 2002;
 - (c) Deadline for exclusions from the Settlement Class and any objections to the Settlement to be filed on or before November 1, 2002;
 - (d) Plaintiffs' Memorandum In Support of Final Approval of the Settlement to be filed on or before November 8, 2002;
 - (e) Hearing before the Court on final approval of the Settlement on November 15, 2002, subject to the Court's convenience.
9. Plaintiffs are submitting with this motion their supporting Memorandum.
10. A proposed Order is attached as Exhibit D.

WHEREFORE, Indirect Purchaser Plaintiffs respectfully move the Court to enter an Order:

- A. Granting preliminary approval of the Settlement with IVAX in the form attached hereto as Exhibit A;
- B. Certifying a settlement class as defined in the Settlement Agreement;
- C. Approving the forms of notice attached hereto as Exhibits B and C, and ordering the mailing and publication of those notices; and
- C. Setting a date for the hearing on final approval. A proposed order is attached as Exhibit D.

Respectfully submitted,

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