

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

THE STATE OF FLORIDA, ex rel.	)	
ROBERT A. BUTTERWORTH, and by	)	
and through ROBERT A. BUTTERWORTH	)	
as assignee of Toys "R" Us, Inc.,	)	
Publix Super Markets, Inc. and	)	
Winn-Dixie Stores, Inc.,	)	
	)	
Plaintiff,	)	Case No.
	)	91-40002-MP
v.	)	
	)	
ABBOTT LABORATORIES, <u>et al.</u> ,	)	<u>INDIVIDUAL CASE</u>
	)	
Defendants.	)	
	)	

AGREEMENT OF SETTLEMENT AND RELEASE

This Agreement of Settlement and Release ("Agreement") is entered into by and among plaintiff the State of Florida (on its own behalf (including its departments) and as assignee of the Florida claims of Toys "R" Us, Inc., Publix Super Markets, Inc. and Winn-Dixie Stores, Inc.) (all of the above hereinafter collectively "Plaintiff") and defendant American Home Products Corporation. The parties to this Agreement are referred to collectively hereinafter as "the Parties."

WHEREAS, the above-captioned action (the "Action") is currently pending in the United States District Court for the Northern District of Florida (the "Court");

WHEREAS, the complaint and amended complaint in the Action allege, among other things, that American Home Products Corporation and/or divisions or subsidiaries of that company (collectively "AHP") participated in a conspiracy with Abbott Laboratories, Bristol-Myers Squibb Company, and Mead Johnson & Company and/or with divisions, subsidiaries or affiliates of those companies (all of the above collectively hereinafter the "Defendants") in violation of federal and/or state antitrust laws regarding pricing and marketing of infant formula products, or otherwise violated such laws;

WHEREAS, Plaintiff alleges that pricing and marketing practices of AHP were unlawful only if such practices were done pursuant to a contract, combination or conspiracy with competitors; Plaintiff did not, does not, and does not intend to allege that any purely unilateral practices of AHP regarding pricing or marketing of infant formula products (such as unilaterally deciding to market infant formula products to and through health care professionals and unilaterally refraining from advertising such products directly to consumers) have been or are unlawful;

WHEREAS, Plaintiff recognizes that certain pricing and marketing practices of AHP differentiate AHP from the remaining Defendants;

WHEREAS, AHP has denied and does deny all charges of wrongdoing of any kind whatsoever and has asserted affirmative defenses against the claims alleged in the complaint and amended complaint in the Action; and

WHEREAS, AHP, without admitting any of the allegations of the complaint or amended complaint or any liability whatsoever, has agreed to enter into this Agreement of Settlement and Release ("Agreement") in order to reduce further expense, inconvenience and the distraction of burdensome and protracted litigation, and to obtain the order, judgment, releases and covenants contemplated by this Agreement.

NOW, THEREFORE, in consideration of the premises, covenants and agreements herein set forth, the sufficiency of which the Parties hereby acknowledge, it is agreed by and between the undersigned that the claims of Plaintiff against AHP be settled and compromised on the following terms and conditions:

1. As used in this Agreement, the term "Infant Formula Product" means any milk-based or soy-based infant formula product in either concentrated, powdered or ready to feed form, as described in the Infant Formula Act of 1980.
2. Simultaneously with the signing of this Agreement, the Parties shall execute for filing with the Court a Stipulation of Dismissal with Prejudice and

Consent to Entry of Judgment (the "Stipulation of Dismissal") in the form annexed hereto as Exhibit A, together with an attachment consisting of an Order and Judgment (the "Order and Judgment") in the form annexed hereto as Exhibit B. The fully executed Stipulation of Dismissal, along with the Order and Judgment, shall be given and entrusted to counsel for AHP for filing with the Court. The Parties agree that they will exercise their best efforts to obtain entry of the Order and Judgment and will not take any action, directly or indirectly, which might prevent or delay the Order and Judgment from becoming final.

3. Plaintiff, all of its respective officers, officials, agents, employees, predecessors, successors, departments, divisions, sections, agencies, affiliates and representatives, and all of the respective assignors (past, current, or future) and assignees (past, current, or future) of Plaintiff or any of the other persons or entities listed above in this sentence covenant and agree that they are hereby forever barred from instituting, assigning, maintaining, collecting, assisting, or prosecuting against AHP or any of its past, present or future officers, directors, agents, employees, attorneys, affiliates, predecessors, shareholders, subsidiaries, divisions, successors, assigns, indemnities and legal representatives any and

all claims, demands, actions, causes of action or liability of any nature, whether known or unknown, whether at law or equity, whether for damages or injunctive relief, which they ever had, now have, or could have had against AHP with respect to any and all purchases (whether made directly from AHP or another Defendant or from another party other than a Defendant), sales, marketing, pricing or advertising of, or any other conduct relating to, any Infant Formula Product prior to the date of this Agreement, whether based on federal or state antitrust laws or any other laws, or which could have been asserted or might in the future be asserted against AHP arising out of or related to any of the facts alleged in the complaint or amended complaint in the Action, whether based on federal or state antitrust laws or any other laws (all of the above collectively hereinafter the "Claims").

4. Plaintiff, all of its respective officers, officials, agents, employees, predecessors, successors, departments, divisions, sections, agencies, affiliates and representatives, and all of the respective assignors (past, current, or future) and assignees (past, current, or future) of Plaintiff or any of the other persons or entities listed above in this sentence hereby release and discharge AHP and its past, present or future officers, directors, agents, employees, attorneys,

affiliates, predecessors, shareholders, subsidiaries, divisions, successors, assigns, indemnities and legal representatives from any and all liability in respect of the Claims. Plaintiff shall advise counsel for AHP of any future assignment of claims to Plaintiff relating to the subject matter of this Action within one business day of said assignment, and shall confirm in writing that the covenants and releases of paragraphs 3 and 4 of this Agreement are applicable to such assigned claims.

5. (A) If the Court signs and enters the Order and Judgment, and if the Order and Judgment becomes final and is no longer subject to appeal, then AHP shall deliver to Plaintiff the sum of \$1,000,000.00 (the "Settlement Fund") by transferring said amount by wire transfer into an account or accounts in Plaintiff's name with a national banking corporation or trust association, to be designated by Jerome W. Hoffman, Esq., Chief, Antitrust Section, on Plaintiff's behalf. This payment shall be in full, complete and final settlement of the claims asserted by Plaintiff against AHP in the Action, including but not limited to claims for damages, interest thereon, civil penalties, injunctive relief, attorneys' fees, expenses and costs. It is expressly understood, however, that notwithstanding the fact that AHP's payment of the Settlement Fund shall be in full, complete and final

settlement of all the claims asserted by Plaintiff against AHP in the Action, the Settlement Fund is not, and Plaintiff may not characterize the Settlement Fund as, anything other than a payment in respect of the claims assigned to the State of Florida by Toys "R" Us, Inc., Publix Super Markets, Inc. and Winn-Dixie Stores, Inc. In particular, no portion of the Settlement Fund is, and Plaintiff may not characterize any portion of the Settlement Fund as, a civil penalty or payment in respect of claims asserted by the State of Florida in its own right.

(B) If the Court declines to sign and enter the Order and Judgment, or if the Order and Judgment is modified, reversed or set aside for any reason whatsoever by a court and such court's order becomes final and is not subject to further appeal, then the following shall occur simultaneously:

(i) this entire Agreement, with the exception of paragraphs 7 and 8 below, shall be completely rescinded and shall be deemed void ab initio, and of no force or effect, without prejudice to the claims, defenses or rights of the Parties;

(ii) all of Plaintiff's claims against AHP and all of AHP's answers and defenses thereto shall be immediately reinstated in the Action, as if this Agreement had never been entered;

(iii) the covenants and releases referred to in paragraphs 3 and 4 above shall be deemed null and void and of no force and effect; and

(iv) AHP shall have no obligation to deliver the Settlement Fund or any other sum of money to Plaintiff.

6. A primary objective of AHP in entering into this Agreement is to eliminate the burden and expense of continuing to participate in litigation. Accordingly, upon execution of this Agreement, Plaintiff (i) will withdraw all of its outstanding discovery requests against AHP (except as may be agreed by the Parties) and AHP's expert witnesses, (ii) will not seek any further discovery from AHP or its expert witnesses, (iii) will not seek to compel any further production of documents, interrogatory answers or responses to requests for admission from AHP or its expert witnesses, (iv) will not seek to depose or participate in any deposition of any current or former employee of AHP or any of its expert witnesses, and (v) will not directly or indirectly initiate or encourage any other plaintiff in any other action to engage in any deposition or other discovery directed at, or compel any deposition or other discovery from, AHP or its expert witnesses. The Parties further agree that pending the entry of a final judgment and the resolution of all appeals as to all



parties in the Action, counsel for Plaintiff may retain the documents heretofore produced by AHP in MDL No. 878, and, subject to the terms of the Protective Order on Consent in MDL No. 878, dated July 11, 1991, may seek to use said documents, as well as AHP's answers to interrogatories and the deposition transcripts of AHP officers and employees, as evidence in the Action.

7. The Parties agree that, pending filing of the Stipulation of Dismissal, entry of the Order and Judgment, and the Order and Judgment becoming final and no longer subject to appeal, no aspect of the monetary terms of this Agreement shall be communicated, disseminated, or otherwise disclosed to any third party. It is expressly understood that this prohibition extends not merely to disclosure of the precise amount of the Settlement Fund, but also to any disclosure even suggesting the size of the Settlement Fund, its value relative to any other settlement or proposed settlement in this or any other action or actions pending in MDL No. 878 or elsewhere, or any of the Parties' satisfaction or dissatisfaction with the size of the Settlement Fund; provided, however, that nothing in this paragraph shall prohibit AHP from making disclosures as to the materiality or nonmateriality of the Settlement Fund under applicable securities laws. It is also expressly understood that this provision does not apply

to any Court-ordered disclosure in connection with any post-judgment set-off deliberation or related post-judgment proceedings in MDL No. 878.

8. This Agreement (i) shall not be deemed or construed to be an admission by any party of any fact or matter, (ii) does not constitute any evidence against or admission of liability by AHP with respect to any claim that was or could have been asserted against AHP by Plaintiff, and (iii) may not be used as evidence or in any other way in this Action or in any other proceeding or litigation.

9. This Agreement does not settle or compromise any claim by Plaintiff asserted in the complaint or amended complaint in this Action against any Defendant other than AHP, and all of Plaintiff's rights against any other Defendant are specifically reserved. The sales of Infant Formula Product by AHP remain in this Action as a basis for damages claims against such nonsettling Defendants.

10. It is expressly understood that the terms stated in this Agreement are contractual and not merely recitals.

11. This Agreement may be executed in counterparts by the Parties.

12. The Court shall retain jurisdiction over the interpretation, effectuation and implementation of this Agreement.

13. This Agreement shall become effective upon its execution by all of the undersigned and cannot be amended or modified without the agreement in writing of all of the undersigned.

14. Plaintiff warrants that the assignments it has previously received that are covered by this Agreement were duly authorized by the corporate assignors.

15. The undersigned represent that they are fully authorized to enter into this Agreement on behalf of the respective Parties.

Dated: September 23, 1992



Robert A. Butterworth  
Attorney General

On behalf of Plaintiff The State of Florida (on its own behalf (including its departments) and as assignee of Toys "R" Us, Inc., Publix Super Markets, Inc. and Winn-Dixie Stores, Inc.)



Michael N. Sohn  
ARNOLD & PORTER

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American Home Products  
Corporation