

SETTLEMENT AGREEMENT BETWEEN PLAINTIFF STATES AND BRISTOL-MYERS SQUIBB COMPANY REGARDING TAXOL

This Settlement Agreement is made and entered into this 24th day of April, 2003, by and between the States, Commonwealths and Territories (“States”) of Alabama, Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, Wisconsin and Wyoming, and the District of Columbia, plus any other State or Commonwealth that has elected or elects to participate in the terms of the Settlement Agreement, through their respective Attorneys General (“Plaintiff States” defined below), and Bristol-Myers Squibb Company (“BMS”), through its undersigned counsel, (collectively, the “Parties”). Any State electing to enter into this Settlement Agreement shall do so by executing a signature page, which shall be appended to this Agreement.

WHEREAS, many of the Plaintiff States in June, 2002 filed suit against BMS in the United States District Court for the District of Columbia on their own behalf, on behalf of state agencies and consumers, and through their equitable or common law authority or as representative of or *parens patriae* on behalf of natural person citizens of those states, alleging monopolization, attempted monopolization, and agreements in restraint of trade, in violation of federal and state

antitrust and unfair competition or consumer protection laws, and seeking, among other things, damages and injunctive relief;

WHEREAS, a First Amended Complaint will be filed by the Plaintiff States;

WHEREAS, Plaintiff States have conducted an extensive investigation relating to the claims and underlying events and transactions alleged in the Plaintiff States' initial and amended Complaints, as well as extensive legal research, and, as a result, the Plaintiff States are thoroughly familiar with the liability and damages aspects of the claims they have asserted in their initial and amended Complaints;

WHEREAS, as a result of the Parties' extensive arm's-length negotiations, the Plaintiff States have concluded that the proposed settlement embodied in this Settlement Agreement is fair, adequate and reasonable considering the sharply contested legal and factual issues involved in these actions and the risks and costs attendant upon further prosecution of these actions;

WHEREAS, BMS, likewise recognizing the risks and costs attendant upon further litigation of the claims in these actions, and while continuing to deny vigorously the allegations, any violation of law or wrongdoing, and any liability with respect to any and all claims asserted in the Plaintiff States' Complaint, has concluded that it is desirable that all claims asserted against BMS in this action be compromised and settled;

WHEREAS, the Parties have each determined it to be in their respective best interests to resolve this dispute and enter into this Settlement Agreement;

NOW, THEREFORE, WITNESSETH:

I. DEFINITIONS

As used herein:

A. “Action” means *State of Ohio, et al. v. Bristol-Myers Squibb Company*, 1:02-cv-01080 (EGS) (D.D.C.).

B. “Class” means the members of a class to be certified for settlement purposes only pursuant to this Settlement Agreement and Rule 23 of the Federal Rules of Civil Procedure, which shall include all natural person consumers within Plaintiff States where such a class action may be brought, not otherwise represented by the Plaintiff States as *parens patriae*, who purchased Taxol and/or paclitaxel during the Relevant Period.

C. “Consumer Distribution Plan” means the plan or method of allocation of the Consumer Fund, which shall be submitted to the Court for approval, and which is consistent with the Guidelines Governing Development of Consumer Distribution Plan, appended as Attachment 7.

D. “Consumer Fund” means an interest-bearing escrow account, established pursuant to the Final Escrow Agreement and administered by the Escrow Agent. The principal of the Consumer Fund shall be funded as set forth in the Final Escrow Agreement. The Consumer Fund shall be distributed as specified in the Consumer Distribution Plan.

E. “Court” means the United States District Court for the District of Columbia.

F. “Effective Date” means the date on which this Settlement Agreement becomes effective. The Effective Date shall occur when all of the following conditions have been satisfied, unless one or more of such conditions is modified in a writing signed by the Parties:

1. Execution of this Settlement Agreement;
2. Entry by the Court of the Stipulated Injunction;
3. Entry by the Court of a Preliminary Approval Order substantially similar to the form attached hereto as Attachment 3;
4. Expiration of the period within which consumers represented *parens patriae* and members of the proposed Class must exercise their rights to be excluded from *parens patriae* representation or from the Class;
5. BMS has not availed itself of any right to terminate or withdraw from the Settlement;
6. Final approval by the Court of the Settlement embodied herein;
7. Entry by the Court of the Final Judgment and Order substantially in the form appended as Attachment 2; and
8. The Final Judgment and Order shall have become “final”, which shall be deemed to occur upon the expiration of the tenth day after the applicable time for appeals of the Final Judgment and Order (whether as of right or upon showing of excusable neglect or good cause) has expired without any appeal having been taken, or, if an appeal is taken, either upon the expiration of the tenth day after such appeal has been dismissed prior to resolution by the appellate

court or upon the expiration of the tenth day after the Final Judgment and Order is finally affirmed by the appellate court with no possibility of subsequent appeal or judicial review thereof. For purposes of this Subsection, an “appeal” shall include any Petition for a Writ of Certiorari that may be filed in connection with the approval or disapproval of this Settlement Agreement.

G. “Escrow Agent” means the person or entity chosen by the Plaintiff States and designated pursuant to the Final Escrow Agreement to administer the Consumer Fund, the State Agency Account and the State Attorney Fees and Costs Account pursuant to the terms of this Settlement Agreement.

H. “Final Escrow Agreement” means the escrow agreement, substantially in the form of Attachment 1 hereto.

I. “Final Judgment and Order” means the Court's final, appealable order, substantially in the form of Attachment 2 hereto.

J. “Government Compensation Plan” means the plan or method of allocation of the State Agency Account which is consistent with the Guidelines Governing Development of Government Compensation Plan, appended as Attachment 6.

K. “Notice” or “Consumer Notice” means the notice or notices of this Settlement Agreement and hearing thereof that are to be published and/or mailed to members of the Settlement Group pursuant to Section VII.

L. “Notice Plan” means the Court-approved process by which the Plaintiff States will effectuate the Notice.

M. “Paclitaxel” means the generic or bioequivalent version of Taxol sold in the United States during the Relevant Period.

N. “Person” means any natural person, partnership, corporation, or business entity.

O. “Plaintiff States” means every State, Commonwealth or Territory (“State”) which is or which becomes a party to this Settlement Agreement, as provided in Section IX hereof, through the State Attorney General, as authorized by law, in the State’s sovereign capacity, on behalf of past, present and future state departments, state bureaus, state agencies, state self-insured employee benefit plans, and other state government entities that they have authority to represent, on behalf of any local governmental departments, bureaus, agencies or other local entities that they represent in this Action, and on behalf of any of the past, present or future predecessors, successors, assigns or assignors of the foregoing, in a statutory, equitable and/or common law capacity, and as Fed. R.Civ. P. Rule 23 Class representative of and/or *parens patriae* on behalf of all natural person citizens of such state who have purchased Taxol and/or paclitaxel during the Relevant Period.

P. “Plaintiff States’ Complaint” means the complaint filed by the Plaintiff States on June 4, 2002, as amended.

Q. “Preliminary Approval Order” means the Court's order preliminarily approving this Settlement Agreement and establishing a schedule for Notice and further proceedings, as set forth in Section VII below, and substantially in the form of Attachment 3 hereto.

R. “Released Claims” means the claims released in Paragraph IV. E. of this Settlement Agreement.

S. “Releasee” means BMS, including any and all of its former, current and future parents, affiliates, subsidiaries, divisions and other organizational units of any kind, any of the predecessors, successors and assigns of the foregoing, and any of the former, current and future officers, directors, employees, agents, attorneys, representatives, shareholders, partners, trustees, associates, heirs, executors and other persons acting on behalf of any of the foregoing.

T. “Releasers” means Plaintiff States and the Settling Members of the Settlement Group (including the past, present or future legal representatives, trustees, guardians, heirs, executors, assigns, assignors and administrators of the foregoing).

U. “Relevant Period” means the period from January 1, 1999 through February 28, 2003.

V. “Self-Insured Natural Persons” means individuals who purchased Taxol and/or paclitaxel without benefit of insurance during any part of the Relevant Period.

W. “Settlement Group” means all natural person consumers represented by Attorneys General for the Plaintiff States, as authorized by law, in a statutory, equitable and/or common law capacity, as *parens patriae* and/or as representatives of the Class.

X. “Settling Members of the Settlement Group” means each and every member of the Settlement Group who does not exercise his or her right to exclude himself or herself from the Settlement Group pursuant to a proper written request for exclusion postmarked on or before the date to be set by the Court.

Y. “State Agency Account” means an interest-bearing escrow account, established pursuant to the Final Escrow Agreement and administered by the Escrow Agent. The principal of

the State Agency Account shall be funded as set forth in the Final Escrow Agreement. The State Agency Account shall be distributed as specified in the Government Compensation Plan.

Z. “State Attorney Fees and Costs Account” means an interest-bearing account established pursuant to the Final Escrow Agreement and administered by the Escrow Agent. The principal of the State Attorney Fees and Costs Account shall be funded as set forth in the Final Escrow Agreement. The State Attorney Fees and Costs Account shall be distributed in accordance with the Guidelines Governing Payment of Attorneys’ Fees and Costs, appended as Attachment 5.

AA. “State Liaison Counsel” or “Liaison Counsel for Plaintiff States” means the Attorneys General of the States of Ohio, Maryland, and Florida.

BB. “Taxol” means any paclitaxel drug product sold in the United States during the Relevant Period.

II. AGREEMENT

Subject to the approval of the Court, the Parties agree to compromise, settle and fully and finally resolve all Released Claims on the terms set forth herein and as set forth in paragraph VI of the Final Judgment and Order.

III. INJUNCTION

As part of this Settlement Agreement, the Plaintiff States and BMS have agreed to the entry of the Order and Stipulated Injunction in the form of Attachment 4, the terms and conditions of which are incorporated into this Settlement Agreement as though set forth in this Section III in full.

The terms set forth in the Order and Stipulated Injunction shall govern the enforcement of this Section III.

IV. MONETARY PAYMENT AND PROVISION OF PRODUCT

A. BMS has agreed to pay Plaintiff States and the Settling Members of the Settlement Group \$50 million in cash to be allocated to consumers and state agencies. BMS has agreed to pay an additional \$3 million to the Plaintiff States in costs and attorneys' fees and \$2 million in Consumer Notice costs. To the extent that any of the \$3 million is not used to pay for Plaintiff States' costs and attorneys' fees, those monies will be allocated to state agencies in accordance with the Government Compensation Plan. To the extent that any of the \$2 million is not used to pay for Consumer Notice costs, those monies will be allocated to consumers in accordance with the Consumer Distribution Plan. These payments totaling \$55 million are made in full and final settlement of the claims against BMS as set forth in the Plaintiff States' Complaint and in exchange for the release of all Released Claims, as set forth in paragraph E below.

B. The Plaintiff States may apply to the Escrow Agent for release of such funds as are necessary to pay for notice and administrative costs that arise prior to the Effective Date.

C. BMS has agreed to provide the Plaintiff States with 13,000 vials of Taxol free of charge in the following quantities: 5,000 vials 300 mg, 2300 vials 100 mg and 5700 vials 30 mg ("free Taxol") to be equitably distributed to DEA approved health care facilities throughout the Plaintiff States. Delivery of the free Taxol shall be made within a reasonable period of time in amounts and to destinations to be agreed upon by the Parties. Costs of shipment shall be borne by

BMS. Parties agree that the free Taxol shall be administered to patients meeting the following eligibility criteria:

1. Patient must reside in the United States (including territories and possessions) and be receiving the product on an outpatient basis;
2. Patient must have no assistance from third-party private or public sources for the purchase of Taxol or paclitaxel; and
3. Patient must have a limited income and limited liquid assets.

D. The payments and provision of product made by BMS pursuant to this Section IV are not, and shall not be considered the payment or compromise of a penalty or fine under any state or federal laws, rules or regulations or any other applicable statute or provision. Rather, they are, and shall be considered, payments made to compromise claims asserted against BMS, for compensatory and equitable relief.

E. In consideration of the monetary, product and injunctive provisions contained in this Settlement Agreement:

1. Subject to the provisions of paragraph 2, upon the Effective Date, Releasee shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action of every nature, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, fines, penalties and attorneys' fees, in law or equity, that the Releasors (including their past, present or future state departments, state bureaus, state agencies, state self-insured employee benefit plans, and other state government entities

they have the authority to represent and any local governmental departments, bureaus, agencies or other local entities that the Releasors represent in this action), and any natural persons that the Releasors represent (including any of their past, present or future, legal representatives, trustees, guardians, heirs, executors, administrators and assigns), whether directly, representatively, derivatively or in any other capacity and whether or not they make a claim upon or participate in any of the settlement fund, ever had, now has or hereafter can, shall or may have, arising from or relating to the facts, matters, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act set forth or alleged by the Plaintiff States in this Action, under or relating to any federal or state antitrust, unfair competition, unfair practices, or trade practice laws, Section 17200 *et seq.* of the California Business and Professions Code, equity, common law, or any other law or regulation (“Released Claims”). In addition, subject to the provisions of paragraph (2), upon the Effective Date, the Releasors hereby expressly waive and release any and all provisions, rights or benefits conferred by Section 1542 of the California Civil Code,¹ or by any similar, comparable or equivalent law of any state or territory of the United States. Each Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this paragraph, but upon the Effective Date each Releasor hereby expressly waives and fully, finally and forever settles and releases, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject

¹ Section 1542 reads: “*General Release; extent.* A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

matter of the provisions of this paragraph whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

2. “Released Claims” excludes claims that do not arise from or relate to the facts, matters, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act set forth or alleged by the Plaintiff States in this Action. Excluded claims include, but are not limited to, claims relating to Best Price, Average Wholesale Price or Wholesale Acquisition Cost reporting practices or Medicaid Fraud or Abuse.

F. Each Releasor hereby covenants and agrees that it shall not, hereafter, seek to establish liability against Releasee based, in whole or in part, upon any of the Released Claims.

G. BMS warrants that, as of the date of this Settlement Agreement, neither it nor any of its affiliates, is insolvent, nor will any payment to the Consumer Fund and the State Agency Account render it or any of its affiliates insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code. If a case is commenced with respect to BMS or any of its affiliates, under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the payment of the principal amount of the Consumer Fund or State Agency Account, and any accrued interest, or any portion thereof, by or on behalf of BMS or any affiliate of BMS, to be a preference, voidable transfer, fraudulent transfer or similar transaction, and if pursuant to an order of a court of competent jurisdiction monies paid by BMS or any of its affiliates, into the Consumer Fund or the State Agency Account pursuant to this agreement are either

not delivered or are returned to BMS or any of its affiliates, or the trustee, receiver, or conservator appointed by a court in any bankruptcy proceeding with respect to BMS or any of its affiliates, then this Settlement Agreement shall be terminated and cancelled as set forth in Section X herein. Such termination and cancellation will be the sole and exclusive remedy of the Releasors for breach of this warranty.

V. SETTLEMENT ADMINISTRATION

A. The Escrow Agent for the Consumer Fund, the State Agency Account and the State Attorney Fees and Costs Account (collectively, the “Settlement Accounts”) shall be selected by the Plaintiff States based upon a solicitation of competitive bids from five (5) independent financial institutions. The Escrow Agent shall invest the Settlement Accounts in obligations of, or obligations guaranteed by, the United States of America or any of its departments or agencies, or in pre-funded or escrowed municipal bonds which are federally insured, to obtain the highest available return on investment, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. The terms of any such investment shall not exceed ninety days. Any losses shall not be recoverable from BMS and BMS shall have no responsibility for the Escrow Agent’s performance. As long as the Escrow Agent has followed the investment requirements of the Final Escrow Agreement, neither BMS nor Plaintiff States shall direct the Escrow Agent to liquidate any investment in the Escrow Funds prior to its maturity. The Escrow Agent shall bear all risks related to the investment of the Escrow Funds, as defined in the Final Escrow Agreement. All such investments (including principal, interest and sale proceeds) shall at all times constitute a part

of the Escrow Funds, and all income, interest and profits on such investments shall become a part of and credited to the Escrow Funds.

B. The Settlement Accounts shall be administered pursuant to the Consumer Distribution Plan, the Government Compensation Plan, the Escrow Agreement, the Final Escrow Agreement, this Settlement Agreement, and any order of the Court, as applicable.

C. All funds held in the Settlement Accounts shall be deemed to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such Settlement Accounts are fully distributed, or upon further order(s) of the Court.

D. Tax Treatment of Settlement Accounts

1. The Settlement Accounts shall be treated as being at all times qualified settlement funds within the meaning of Treas. Reg. 1.468B-1. The Escrow Agent, and, as required, the Parties shall timely make such elections as necessary or advisable to carry out the provisions of this Section V.D., including the “relation-back election,” as defined in Treas. Reg. 1.468B-1, back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulation. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

2. The Escrow Agent shall be the “administrator” (as defined in Treas. Reg. 1.468B-2(k)(3)) of the Settlement Accounts. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Accounts

(including, without limitation, the returns described in Treas. Reg. 1.468B-2(k) and (l) and the “§ 1.468B-3 Statement”). Such returns (as well as the election described in Section V.D.1.) shall be consistent with this Section V.D and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Accounts shall be paid out of the appropriate Settlement Account as provided in Section V.D.3 herein.

3. All (I) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by a Settlement Account, including any taxes or tax detriments that may be imposed upon BMS with respect to any income earned by a Settlement Account for any period during which such Settlement Account does not qualify as a qualified settlement fund for federal or state income tax purposes (“Taxes”), and (ii) expenses and costs incurred in connection with the operation and implementation of this Section V.D (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Section V.D) (“Tax Expenses”), shall be paid out of the affected Settlement Account.

4. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid by the Escrow Agent out of the appropriate Settlement Account with respect to which such Taxes and/or Tax Expenses have accrued, without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution out of the appropriate Settlement Account any funds necessary to pay such amounts including the establishment for adequate reserves for any Taxes and

Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. 1.468B-2(1) (2)).

5. BMS and the Plaintiff States agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section V.D. For purposes of this Section V.D, references to a Settlement Account shall include such Settlement Account and any earnings thereon.

E. BMS and its counsel will have no responsibility or liability and no person shall have any claim against BMS or its counsel for any distributions of the Settlement Accounts or interest earned thereon, or any reporting requirements that may relate thereto. No person shall have any claim against any of the Plaintiff States, their respective counsel, the Escrow Agent or any agent designated by the Escrow Agent based on any actions undertaken in accordance with this Settlement Agreement and/or any orders of the Court.

VI. SETTLEMENT DISBURSEMENTS

A. Disbursement of Administrative Costs:

1. State Agency Account: The Escrow Agent shall pay from the State Agency Account only those administrative costs and expenses incurred in writing checks and otherwise incurred in administering or distributing the State Agency Account.

2. Consumer Fund: The Escrow Agent shall pay from the Consumer Fund all administrative costs and expenses, other than those identified in Section VI.A.1, above, associated with administering this Settlement, including without limitation, costs and expenses necessary to

secure court approval of the Settlement Agreement, such as an expert's affidavit, costs and expenses for providing proper notice of this Settlement Agreement, the processing and payment of claims and the fees and expenses of the Escrow Agent.

B. Distribution to States:

1. Litigation Costs: The Escrow Agent shall disburse from the State Attorney Fees and Costs Account the amount of attorneys' fees and costs ordered by the Court, and the Plaintiff States will disburse this amount pursuant to Guidelines Governing Payment of Attorneys' Fees and Litigation Costs, appended as Attachment 5 to this Settlement Agreement.

2. Distribution to State Agencies: The Escrow Agent shall distribute all funds in the State Agency Account according to the Government Compensation Plan to be developed by the Plaintiff States. The Government Compensation Plan shall be consistent with the Guidelines Governing Development of the Government Compensation Plan, appended as Attachment 6 to this Settlement Agreement.

C. Distribution to Consumers: The Escrow Agent and/or a claims administrator employed by the Plaintiff States shall distribute and/or administer the distribution of all funds remaining in the Consumer Fund after payment of the costs and expenses set forth in Section VI.A.2 above, according to the Court-approved Consumer Distribution Plan. The Consumer Distribution Plan shall be consistent with the Guidelines Governing Development of Consumer Distribution Plan, appended as Attachment 7 to this Settlement Agreement.

D. Timing of Disbursements:

1. The Escrow Agent shall pay the cost of administering this Settlement Agreement, as specified in Section VI.A. above, as these costs accrue, upon submission to the Escrow Agent of invoices for these costs as provided in the Escrow Agreement.

2. The Escrow Agent shall distribute the portion of the State Agency Account not already distributed pursuant to Section VI.A.1. above, within thirty (30) days after the Effective Date.

3. The Escrow Agent shall, in conjunction with the claims administrator, begin distributing the portion of the Consumer Fund not already distributed pursuant to section VI.A.2. above within thirty (30) days after the Effective Date and shall continue with such distributions according to the terms of the Court-approved Consumer Distribution Plan until the Consumer Fund is fully distributed.

VII. NOTICE AND SETTLEMENT HEARING

A. Within 14 days after execution of this Settlement Agreement, Liaison Counsel for Plaintiff States shall file a motion for Preliminary Approval of the Settlement Agreement with the Court. This motion shall include this Settlement Agreement and attachments, a proposed Notice Plan, the Plaintiff States' Consumer Distribution Plan and the Preliminary Approval Order. The Preliminary Approval Order shall be substantially in the form of Attachment 3.

B. Within ninety (90) days after entry by the Court of the Preliminary Approval Order, Liaison Counsel for Plaintiff States shall effectuate the Notice Plan.

C. The Parties contemplate a notice period of ninety (90) days, or such other time period as set by the Court (“Notice Period”). Within ninety (90) days following the conclusion of the Notice Period, Liaison Counsel for Plaintiff States shall file with the Court a motion seeking final approval of the Final Judgment and Order. The Final Judgment and Order shall be substantially in the form of Attachment 2. Counsel for all of the Parties shall use all reasonable efforts to obtain the entry of the Final Judgment and Order.

VIII. COOPERATION AND IMPLEMENTATION

A. The Parties, and their respective counsel, agree to use all reasonable, practicable efforts and to take all steps reasonably necessary to effectuate this Settlement Agreement.

B. The Parties agree, subject to the approval of the Court, that discovery shall be stayed except to the extent discovery is necessary with respect to opt-outs from the Settling Members of the Settlement Group and for purposes of administering and consummating this Settlement Agreement. In the event that the Settlement Agreement is not approved by the Court or the settlement does not become final, discovery will resume in this Action in a reasonable manner to be approved by the Court.

IX. BENEFIT AND BINDING EFFECT

A. The terms of this Settlement Agreement shall be binding on, and shall inure to the benefit of, the Parties and the Settling Members of the Settlement Group and their predecessors, successors and assigns. The Parties expressly disclaim any intention to create rights under this

Settlement Agreement which may be enforced by any other person under any circumstances whatsoever, except as provided in this Settlement Agreement.

B. The terms of this Settlement Agreement may be entered into by the Attorney General of any state who takes the following actions within 60 days of the execution of this Settlement Agreement:

1. Signs a signature page which will be appended onto the body of the Settlement Agreement consistent with the signature pages attached to this Settlement Agreement; and

2. Designates the Liaison Counsel for Plaintiff States to represent such state and agrees to be named as a plaintiff in the Plaintiff States' First Amended Complaint.

X. EFFECT OF TERMINATION OR DISAPPROVAL

A. If this Settlement Agreement is not approved or is terminated, cancelled, voided or the Effective Date does not occur for any reason, all monies paid into the Consumer Fund Account, the State Agency Account and the State Attorney Fees and Costs Account and any interest accrued thereon, shall be refunded to BMS, reduced by the amount of actual out-of-pocket costs and expenses incurred or committed in the administration of this Settlement Agreement to the date of disapproval, cancellation, termination, voiding or the Effective Date not occurring. Refund to BMS shall occur within ten (10) days of BMS sending notice to the Escrow Agent and State Liaison Counsel of the disapproval, cancellation, termination, voiding or the Effective Date not occurring. In such event, this Settlement Agreement shall become null and void, shall have no further force and

effect, and the Plaintiff States shall retain full rights to assert any and all causes of action against BMS, and BMS shall retain any and all defenses thereto. This action shall thereupon revert forthwith to its procedural and substantive status prior to the date of execution hereof and shall proceed as if this Settlement Agreement, and all other related orders and papers, including the Stipulated Injunction and any order certifying a class, had not been executed, and the Parties shall jointly request that any order contemplated hereby, including the Stipulated Injunction and any order certifying a class, which shall have been entered be vacated. Notwithstanding the foregoing, the provisions of Section XI. I. shall survive the termination of this Settlement Agreement for any reason.

B. If the Court does not enter the orders or judgments contemplated by this Settlement Agreement in substantially the form provided herein, or if the Court enters the orders or judgments and appellate review is sought, and on such review any such order or judgment is materially modified, then this Settlement Agreement can be cancelled and terminated, subject to the provisions of this Settlement Agreement, by any Party to this Settlement Agreement within thirty (30) days from the date of the mailing of such ruling to such Parties, by providing written notice to all other Parties hereto of that Party's belief that a material modification has been made. If thirty (30) days from the mailing of such ruling to the Parties expires, and no notice has been received of a Party's belief that a material modification has been made, the Settlement will proceed. A denial of or modification of the Plaintiff States' request for fees and costs or the Consumer Distribution Plan is not a material modification and shall not be grounds for termination.

C. BMS may elect to terminate this Settlement Agreement if, after the date fixed by the Court for Natural Persons to exclude themselves from participation in this Settlement, the number of Self-Insured Natural Persons in the United States (including Puerto Rico) excluding themselves from this settlement exceeds the number specified in the letter dated April 22, 2003 from Meredyth Smith Andrus to David R. Marriott. Within thirty (30) days following the date fixed by the Court for natural persons in the Plaintiff States to exclude themselves, Liaison Counsel for the Plaintiff States shall provide to BMS by certified mail or overnight delivery service written notice of the identity of all natural persons who have opted out. BMS's option to terminate the Settlement Agreement shall be exercised, if at all, within ten (10) business days of receipt of the information required to be provided by such notice. BMS's election to terminate the Settlement Agreement shall be by written notice served upon all Liaison Counsel for the Plaintiff States by facsimile and by certified mail or overnight delivery service, and BMS shall file a copy of such notice with the Court. In the event BMS exercises this option, this Settlement Agreement shall be null and void.

XI. MISCELLANEOUS

A. This Settlement Agreement and the Attachments contain the entire agreement and understanding of the Parties. There are no additional promises or terms of the Settlement Agreement other than those contained herein.

B. The terms or provisions of this Settlement Agreement may not be changed, waived, modified, or varied in any manner whatsoever unless in a writing duly signed by all Parties. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions

of this Settlement Agreement shall not be deemed a waiver of any of the provisions hereof, and that Party, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Settlement Agreement to be performed by the other Party.

C. The undersigned counsel for each Party hereby represents that he or she is authorized to enter into this Settlement Agreement on behalf of that Party.

D. The Settlement Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

E. The captions contained in this Settlement Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Settlement Agreement or the intent of any provision hereof.

F. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

G. Any and all notices, requests, consents, directives, or communications by any party intended for any other party shall be in writing and shall, unless expressly provided otherwise herein, be given personally, by express courier, or by postage prepaid mail, or by facsimile transmission followed by postage prepaid mail, and shall be addressed as follows:

To Plaintiff States or the Class:

Alan C. Witten
Assistant Attorney General
Office of the Attorney General

Antitrust Section
140 East Town Street
Columbus, Ohio 43215

Meredyth Smith Andrus
Assistant Attorney General
Office of the Attorney General
Antitrust Division
200 St. Paul Place
Baltimore, MD 21202

Nicholas J. Weilhammer
Assistant Attorney General
Office of the Attorney General
PL 01
The Capitol
Tallahassee, FL 32399

To Bristol-Myers Squibb:

Richard J. Stark, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

Any one of the Parties may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner herein above provided.

H. This Settlement Agreement, including, but not limited to, the releases contained herein, shall be governed by, and construed in accordance with, the laws of the State of New York

without regard to its choice of law or conflict of laws principles. The Parties agree that the Final Judgment and Order shall provide that the Court shall retain jurisdiction to enforce all provisions and terms of this Settlement Agreement. This Settlement Agreement shall be enforced in the United States District Court for the District of Columbia. The Parties, on behalf of themselves and the Settling Members of the Settlement Group, waive any objection that each of them may now have or hereafter have to this venue, whether for this Settlement Agreement or for any suit, action or proceeding related to compliance with the terms of this Settlement Agreement and irrevocably consent to the jurisdiction of the Court and agree to accept and acknowledge service in any such suit, action or proceeding.

I. Neither this Settlement Agreement, nor any negotiations preceding it, nor any proceedings undertaken in accordance with the terms set forth herein, shall be construed as or deemed to be evidence of or an admission or concession by BMS as to the validity of any claim that Plaintiff States have or could have asserted against them or as to any liability by them, which liability is hereby expressly denied and disclaimed by BMS. Neither this Settlement Agreement, nor any of its provisions, nor any statement or document made or filed in connection herewith, (including the Stipulated Injunction, its terms, any consent order entered into between BMS and the Federal Trade Commission concerning or relating to the matter alleged in this action and the terms of such consent order), shall be filed, offered, received in evidence or otherwise used in any action or proceeding or in any arbitration, except in connection with the Parties' application for approval or enforcement of this Settlement Agreement and all proceedings incident thereto, including requests

for attorneys' fees, costs and disbursements and compensation to Plaintiff States. The fact of this Settlement will not be used in any proceeding except for the purposes of enforcing this Settlement Agreement.

J. Within 30 days of the Effective Date and at the request of the Party or entity that produced the materials or documents, to the extent allowed by law, the Plaintiff States and BMS shall return all materials and documents produced in this Action by any Party or non-party in this Action to the person or entity that produced the materials or documents. If no request is made within 30 days, and to the extent allowed by law, the materials and documents will be immediately destroyed. In the event that materials or documents are destroyed, the Plaintiff States and BMS shall provide prompt notice to the person or entity that produced them, certifying their destruction. In the event that the Plaintiff States are requested by subpoena or other legal process (including freedom of information requests) to provide materials or documents produced in this Action to any person prior to the time said materials or documents are returned or destroyed in accordance with the provisions stated above, they shall promptly inform BMS of the subpoena or legal process, shall decline to waive any privileges and objections to disclose as may exist, shall reasonably cooperate with BMS who shall have the right and responsibility to challenge such subpoena or legal process.

K. Notwithstanding Section XI.I above, this Settlement Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any of the Released Claims and may be filed, offered and received into evidence and otherwise used for this purpose. The Parties agree that for any such

proceeding, the Court or any court of competent jurisdiction may enter an injunction restraining prosecution of such proceeding. The Parties further agree that this Settlement Agreement may be pleaded as necessary for the purpose of enforcing the Settlement Agreement.

IN WITNESS WHEREOF, Plaintiff States' Representative and BMS have caused this Settlement Agreement to be signed as of the 24th day of April 2003.



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