UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE MCKESSON GOVERNMENTAL ENTITIES AVERAGE WHOLESALE PRICE LITIGATION	)	
THIS DOCUMENT RELATES TO: The Board of County Commissioners of Douglas County, Kansas, et al. v. *McKesson Corp.*, No. 1:08-CV-11349-PBS	)	Civil Action No. 1:08-CV-10843-PBS

Saris, U.S.D.J.

ORDER AND FINAL JUDGMENT
April 30, 2012

This Court, having considered: (a) the Settlement Agreement and Release, dated October 24, 2011, (the "Settlement Agreement" or "Settlement"),[1] including all Exhibits[2] thereto; (b) the Motion for Final Approval of Class Settlement filed by the parties on January 6, 2012, and all of the supporting material

[1] Unless otherwise provided herein, the terms defined in the Settlement Agreement shall have the same meaning in this Order.

[2] At the preliminary approval hearing, Class Counsel advised the Court that the parties had agreed to modest changes in the claim form (*i.e.*, a revised proxy period and an increase of the minimum payment from $500 to $1,000). These changes, which also relate to the plan of allocation, were contained in the notice and claim form disseminated to the Class and referenced in Class Counsel's memorandum in support of final approval. *See* Declaration of Markham Sherwood re Dissemination of Notice to Potential Class Members [Docket No. 275], Exhibit A; Memorandum in Support of Class Plaintiffs' Motion for Final Approval of the Governmental Payor Class Action Settlement with McKesson [Docket 294] at 14-15.

submitted in conjunction with such motion; and (c) plaintiffs' counsel's Motion for Approval of an Award of Attorneys' Fees and Memorandum in Support thereof; and having held a Final Approval Hearing regarding the Settlement on April 19, 2012, and having considered the record of these proceedings, the representations, argument, and recommendation of counsel for the moving parties, and the requirements of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant to 28 U.S.C. § 1331.

2. Venue is proper in this District.

3. The Court previously certified a class (hereinafter referred to as the "Governmental Payor Settlement Class") in its March 4, 2011 Order (Dkt. No. 194), as amended March 30, 2011 (Dkt. No. 200), which orders are incorporated herein. As stated in the Settlement Notice, the Court certifies the following class for purposes of liability and damages:

> All non-federal and non-state governmental entities in the United States and its Territories that paid for any of the drugs listed in Appendix A to the Second Amended Complaint ("Marked-Up Drugs") based on AWP from August 1, 2001 to October 6, 2006 and that used First DataBank or Medi-Span data derived from First DataBank data in determining the AWP of the Marked-Up Drugs.

Excluded from the Governmental Payor Settlement Class are Defendant, its respective present and former, direct and indirect, parents, subsidiaries, divisions, partners and affiliates; the United States government, its officers, agents,

agencies and departments, and the States of the United States and their respective officers, agents, agencies and departments.

4. The Court finds that the relief provided through the Settlement Agreement is enforceable and binding on the Releasers and satisfies the due process requirements of Rule 23(b)(3) because this Court, pursuant to its plenary powers under Rule 23(c)(2) and 23(d)(1), provided notice to the Releasers of the Settlement and of each Releaser's right to exclude itself from the class certified in the Court's Order of March 4, 2011 (Dkt. No. 194), as amended March 30, 2011 (Dkt. No. 200).

5. The Court reconfirms the appointment of the class representatives.

6. The Court approves the Settlement Agreement, on file with the Court as Exhibit 1 to the Preliminary Approval Motion, as being fair, adequate, and reasonable and in the best interests of the Class, satisfying Rule 23(e) and the fairness and adequacy requirements of this Circuit. In particular, the Court makes the following findings:

a. The Court finds that the Settlement Agreement is fair, adequate, and reasonable. The facts and circumstances of the negotiations set forth in counsels' declarations and papers demonstrate that there has been considerable arm's-length bargaining and discovery in this case. A proposed class action settlement is considered presumptively fair where, as here, sufficient discovery has been provided and

the parties have engaged in arm's-length negotiations. *See City P'Ship Co. v. Atlantic Acquisition Ltd. P'Ship*, 100 F.3d 1041, 1043 (1st Cir. 1996).

b. Although there is no single test in the First Circuit for determining the fairness, reasonableness, and adequacy of a proposed class action settlement, *See In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F. R. D. 197, 206 (D. Me. 2003), courts in the First Circuit consider factors indicating whether there has been arm's-length bargaining. *See City P'Ship*, 100 F.3d at 1043. Those factors include: (i) comparison of the Settlement with the likely result of litigation; (ii) reaction of the class to the settlement; (iii) stage of the litigation and the amount of discovery completed; (iv) quality of counsel; (v) conduct of the negotiations; and (vi) prospects of the case, including risk, complexity, expense, and duration. *See In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 206 (D. Me. 2003) (citations omitted).

c. *Comparison of Settlement With Likely Result of Litigation*. Although Class Counsel have consistently asserted their confidence in the strength of their case, this is complex litigation for which the outcome is uncertain and unpredictable. In order to succeed on the merits, plaintiffs would need to prevail on several complex and hotly disputed legal and factual issues. The relief

contemplated in the Settlement Agreement is fair, adequate, and reasonable. This result, coupled with the uncertainty of protracted litigation and trial, weighs heavily in favor of final approval of the Settlement.

d. *Reaction of Class Members to the Settlement*. Those members of the Settlement Class who had opted out of the class certified by the Court on March 4, 2011, as amended March 30, 2011, had until January 31, 2012, to revoke their opt-out decision. In addition, members of the Governmental Payor Settlement Class had until January 31, 2012, to object to the Settlement. After an extensive Notice Program ordered by the Court, there have been no objections filed with the Court. In addition, the Claims Administrator received 372 opt in forms, many from members of the Governmental Payor Settlement Class that were not sure whether they had previously opted out. The overall reaction to the Settlement has been overwhelmingly positive.

e. *State of the Litigation*. This litigation has been pending for almost four years. During that time (and even well before the instant case was brought), Class Counsel engaged in extensive investigation and discovery, including the analysis of voluminous records of parties and non-parties, extensive data review with health care economists, and interviews or depositions of witnesses. Fact discovery has been completed on both sides, and the parties reached

agreement on the Settlement shortly before trial. Class Counsel has done sufficient work and generated sufficient information to permit an informed assessment of the prospects for success in this litigation. Although extensive discovery has been conducted to ensure that the settlement is fair, adequate, and reasonable, there would remain (absent settlement) substantial litigation ahead, including trial preparation and the trial itself, which would require millions of dollars in additional fees and expenses. Given that the parties have undertaken comprehensive discovery to ensure the fairness, reasonableness, and adequacy of the Settlement, expenditure of such resources would be wasteful and unnecessary. The state of the litigation therefore weighs in favor of final approval of the Settlement.

f. *Quality of Counsel*. Class Counsel are very well-qualified and experienced. Class Counsel regularly engage in complex litigation similar to the present case and have dedicated substantial resources to the prosecution of this matter. The experience and skill of all counsel involved weighs in favor of final approval of the Settlement.

g. *Conduct of Negotiations*. Class Counsel and McKesson's Counsel have engaged in extensive, arm's-length negotiations assisted by an experienced mediator, Retired Magistrate Judge Edward Infante. The complexity and duration

of these negotiations weighs in favor of final approval of the Settlement.

h. *Case Prospects, Including Risk, Complexity, Expense, and Duration*. This case has the potential to impose enormous further litigation costs on all parties. Indeed, although the ultimate result of a trial cannot be foreseen, absent a settlement, an expensive, complex and time-consuming process is assured. In light of the high stakes involved, a lengthy and costly appeal is certain to follow any trial regardless of the outcome. Thus, the complexity, expense and likely duration of the litigation weigh heavily in favor of final approval of the Settlement.

7. The Court holds that the Settlement Notices and Notice Program as carried out satisfy the requirements of Rule 23(e) and due process. This Court previously held that the Settlement Notices and Notice Program are the best practicable method under the circumstances for providing notice to the Governmental Payor Settlement Class.

8. The Court holds that the notice provisions set forth under the Class Action Fairness Act, 28 U.S.C. § 1715, were complied with in this case.

9. The Court holds that the Class Escrow Account established to hold the Settlement Fund is approved in order that it may be a Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1.

10. The Court reconfirms the appointment of Hagens Berman Sobol Shapiro LLP; Richardson, Patrick, Westbrook & Brickman, LLC; McCulley McCluer PLLC; and Kotchen & Low LLP as Class Counsel for the Governmental Payor Settlement Class.

11. Except as to the claims of any entities that have validly and timely requested exclusion from the Class (the names of whom are identified in Exhibit 1 hereto), the Released Claims, the Class Action, and all claims asserted or contained in the Class Action, are HEREBY DISMISSED WITH PREJUDICE against McKesson and all Released Parties. Plaintiffs and McKesson are to bear their own costs, except as otherwise provided in the Settlement Agreement.

12. By operation of this Judgment (and regardless of whether they have signed and delivered a Proof of Claim and Release), the Releasers shall release all Released Claims, as set forth in Paragraph 15 of the Settlement Agreement, which is incorporated by this reference. By operation of this Judgment, the Releasers are forever barred and enjoined from seeking to establish liability against any Released Party or any Prescription Drug Provider based in whole or in part on any of the Released Claims, as set forth in Paragraph 15 of the Settlement Agreement, which is incorporated by this reference, and are barred and enjoined from asserting any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims, including Unknown Claims, without regard to the subsequent discovery or existence

of different or additional facts, against any Released Parties or any Prescription Drug Provider.

13. Pursuant to the All Writs Act, 28 U.S.C. § 1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court, that threatens to undermine the settlement in this case and this Final Order and Judgment. In addition, the Court reserves exclusive and continuing jurisdiction over the Class Action, the Class, and the Released Parties for the purposes of (a) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Plan of Allocation, and this Judgment, and (b) supervising the distribution of the Settlement Fund.

14. The Court also finds, following an evaluation of Class Counsels' fee petition against the factors set forth in *In re Lupron Mktg. & Sales Practices Litig.*, that the fees IN THE AMOUNT OF 23% OF THE Common Fund (which include expenses) are reasonable and employ a reasonable percentage of the actual benefit of the class settlement to the Class and that Class Counsel's unopposed Motion for Approval of an Award of Attorneys' Fees is hereby approved. 2005 U.S. Dist. LEXIS 17456, at *12 (D. Mass. Aug. 17, 2005) (citing *Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 255-56 (1985)). With respect to the *Lupron* factors most relevant here, the Court finds that Class Counsel have expended considerable time and labor in

the negotiation and implementation of the Settlement, and that this work will be ongoing; that the efforts of Class Counsel have resulted in a resolution that confers substantial benefits on members of the Governmental Payor Settlement Class, and that those benefits are comparable to other similar settlements and were achieved sooner than most, if not all, similar settlements; that Class Counsel undertook this matter with no guarantee of payment and thus shouldered considerable risk; and that the attorneys' fees award in this case is not inconsistent with awards in similar cases. Reversal or modification on appeal of the Court's award of attorneys' fees and expenses to Class Counsel shall not affect the finality of this Judgment as it relates to McKesson and the Released Parties and shall not constitute grounds for cancellation or termination of the Settlement.

15. The Plan of Allocation submitted by Class Counsel and any orders entered regarding the Plan of Allocation shall be considered to be separate from this Judgment. Reversal or modification on appeal of the Plan of Allocation or any orders regarding the Plan of Allocation shall not affect the finality of this Judgment as it relates to McKesson and the Released Parties and shall not constitute grounds for cancellation or termination of the Settlement.

16. Neither the Settlement Agreement nor the settlement contained therein, nor any act performed or document executed

pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

17. FINAL JUDGMENT is hereby ENTERED directing McKesson Corporation, the Class Representatives, and the Members of the Governmental Payor Settlement Class to comply and perform in accordance with the terms of the Settlement Agreement, and dismissing with prejudice all claims asserted against McKesson on behalf of the Governmental Payor Settlement Class.

DATED: This 30, day of April, 2012

/s/ PATTI B. SARIS
PATTI B. SARIS
United States District Judge