IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

IN RE	)	JUDGE JOHN F. GRADY
	)	
FACTOR VIII OR IX CONCENTRATE BLOOD PRODUCTS LITIGATION	)	MDL-986
	)	
	)	Docket No. 93-C-7452
	)	
	)	

OBJECTIONS TO MOTION OF PLAINTIFFS' STEERING COMMITTEE FOR SUPPLEMENTAL DISTRIBUTION FROM THE PRE-TRIAL ORDER 57 OPT-OUT ESCROW ACCOUNT AND FOR OTHER RELIEF

The Plaintiffs' Steering Committee (PSC) has filed a motion for a supplemental distribution from the Pre-Trial Order 57 Opt-out Escrow Account and for other relief. Pursuant to Court Order, this objection is filed by the objector, attorney for plaintiffs in the E.D., T.D., M.D. and C.D., V.C. and J.D. cases.

I. Objector's Statement of the Case

The first involvement of the undersigned, attorney-objector, with MDL-986 and related cases was in the matters of Estate of Tarkisha DeLane and Estate of Anthony Turner, both of which were opt-in cases. At that time, the undersigned signed a Confidentiality and Work Product Agreement for plaintiffs' depository (Ex. A). However, since those cases were both opt-in, it was never necessary for those claimants to pursue discovery in MDL-986, and therefore the undersigned neither obtained nor sought any discovery materials or other materials from the plaintiffs' depository,

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nor was any other information or aid sought from the PSC by the undersigned. My involvement for those cases were merely pro-forma for the purpose of processing the opt-in documents.

Subsequent to the resolution of the aforementioned cases, the undersigned became attorney of record in the matters of J.D., V.C., E.D., T.D., M.D. and C.D., all of which were opt-out cases. J.D. was settled pursuant to New Jersey State Court Order dated September 7, 2000, as reflected by the Court Order prepared by the undersigned at the direction of the New Jersey Superior Court, which provided that the percentage of plaintiffs' attorney's fees to be deposited into the PSC fund were to be held in escrow pending final resolution of the issues regarding MDL-986, Pre-Trial Order 57 (Ex. B). The settlement in the V.C. case was pursuant to mediation. The settlement agreement did not specify that the payments by defendants were to be part of the Pre-Trial Order 57 escrow fund (Ex. C). Nevertheless, the releases in both J.D. and V.C. provided that 7% of the total settlement amount in each instance was to be paid into the "MDL Assessment Fund", pursuant to Pre-Trial Order 57 (Ex. D and Ex. E, respectively).

At no time during the pre-trial discovery or trial preparation periods in the V.C. and J.D. matters did plaintiffs receive or request any discovery materials. Furthermore, in the E.D. matter, plaintiffs requested certain information from lead counsel David Shrager, Esq. of the PSC, (Ex. F), but was advised that those materials should be received through the depository (Ex. G). Although telephone calls were made to the depository requesting the information, it was never received. Accordingly, at no time have plaintiffs ever received information from the depository or the PSC and, in fact, plaintiffs represented by the undersigned have never received any cooperation at all from the PSC or the depository despite requests by the undersigned.

The objector asks this Court for relief from Pre-trial Order 57. The grounds for this request are that (1) this Court has no jurisdiction to assess the state court cases which are not included in the

global settlement, (2) the primary purpose of Pre-Trial Order 57 (assuring compensation for otherwise compensated MDL effort) has been satisfied out of the *Walker* Cost and Fee Fund, the May, 2000 order authorizing distribution of the existing balance of the Escrow Fund, and the opt-out cases which have been settled by Steering Committee members, and (3) the secondary purpose of Pre-Trial Order 57 (protection of the Steering Committee from free riders) is not implicated with regard to objector. Since objector did not use any of the post-*Walker* work that was done by the Steering Committee, he should not be required to pay for it.

II. Argument

A. The Court has no jurisdiction to assess non-MDL cases.

The Steering Committee led this Court to err when it requested an assessment order applicable to non-MDL litigation. While MDL courts do have jurisdiction to impose assessments for the purpose of compensating steering committees, this jurisdiction does not extend to persons who are not before the Court. "The authority for consolidating cases on the order of the judicial panel on multi-district litigation...is merely procedural and does not expand the jurisdiction of the district court to which the cases are transferred." *In re Showa Denko K.K. L-Tryptophan Prods. Liability Litigation-II*, 953 F.2d 162 (4th Cir. 1992); *Hartland v. Alaska Airlines*, 544 F.2d 992 (9th Cir. 1976). Thus, a transferee MDL court has no jurisdiction to order plaintiffs in cases not included in multi-district litigation to pay a percentage of settlement or verdict amounts to an escrow account.

> Lead and liaison counsel sometimes have sought to compel such contributions from persons whose claims were not encompassed by the consolidation, if those persons benefited in any way from the discovery taken in the consolidated cases. **Courts have balked at that, citing the absence of authority to enter such an order**. *See In re Showa Denko K.K. L-Tryptophan Prods. Liab. Litig.*, 953 F.2d 162, 166 (4th Cir. 1992) (reversing, as beyond the power and jurisdiction of the court, an order providing a funding mechanism to reimburse plaintiffs' lawyers for discovery-generated expenses, insofar as the order applied to persons with claims based on injury

> from L-Tryptophan but who did not have cases within the multidistrict litigation; the court found, inter alia, that the order also threatened to interfere with discovery in state court proceedings); *Hartland v. Alaska Airlines*, 544 F.2d 992 (9th Cir. 1976) (holding that the court had no jurisdiction to require persons not parties to multidistrict litigation to contribute to a fund to cover costs and attorneys' fees attributable to establishing defendant's liability); *In re Aircraft Disaster at Juneau, Ala., on Sept. 4, 1971*, 64 F.R.D. 410, 415 (N.D. Cal. 1974) (enforcing an order compelling plaintiffs in consolidated litigation to contribute a fund for plaintiffs' lawyers).

Joan Steinman, *The Effects of Case Consolidation on the Procedural Rights of Litigants: What They Are, What They Might Be Part II: Non-Jurisdictional Matters*, 42 UCLA L. Rev. 967, 1068 (1995).

The very cases cited by the Steering Committee in support of its previous request for an assessment make clear that this Court lacks jurisdiction to impose such a tax except on the cases that are otherwise within its subject matter jurisdiction, regardless of whether that tax is directed at the litigant or his attorney. Those cases hold that the authority of an MDL court to divert settlement proceeds to a plaintiffs' committee derives from the benefit received by a litigant from the efforts of the court-appointed plaintiffs' committee whose work has created a common fund in the form of the litigants' settlement proceeds. *See Vincent v. Hughes Air West*, 557 F.2d 759 (9th Cir. 1977); *In re Air Crash Disaster*, 549 F.2d 1006, 1027 (5th Cir. 1977)[1] Indeed, the Steering Committee itself argued in its previous request for assessment that the basis for this Court's authority to create a litigation fund from assessments arose from the existence of the common benefit services it provided, asserting that the application of the common benefit doctrine is not limited to class actions and should be applied by this Court to escrow settlement proceeds to compensate the Steering Committee. However, the courts that have invoked the common benefit doctrine to assess

[1] The *In re Air Crash Disaster* court's alternative rationale for its decision the inherent powers of an MDL transferee court must be reevaluated in light of the Supreme Court's recent pronouncement that the font of any such powers is shallow, if existent at all. *See Lexecon, Inc. v. Milberg, Weiss, et al*, 523 U.S. 26, 118 S.Ct. 596 (1999) (holding that no inherent power exists in transferee court to transfer a case to itself for trial). *Lexecon* holds that an MDL has no powers that extend beyond management of pre-trial proceedings, which once concluded must result in a remand.

settlements have stressed that the common fund theory cannot be applied if the settlement proceeds which constitute the fund do not arise from a case pending before the court asserting control over the fund. *see Vincent, supra*, 557 F.2d at 770 (What is crucial is that the court can legitimately exercise authority or control over the asset); *In re Air Crash Disaster, supra*, 549 F.2d at 1018 n. 16 (while control should be broadly construed, central of course, is authority to adjudicate the rights and duties of interested parties). An MDL does not extend the jurisdiction of the transferee court to cases not consolidated into the MDL, *see In re Showa Denko, supra*, nor afford it control over settlement proceeds generated in cases not before it. *Vincent* demonstrates this. While the court in that case did authorize an assessment against litigants and their attorneys whose claims had been pending in the MDL at issue, it excused from that assessment a litigant who had negotiated her own settlement, and who did not have a claim pending in the MDL. In so doing, the court noted that the common fund doctrine requires that the district court's control over the fund be legitimate, and the court had no legitimate control over settlement proceeds that did not arise from an MDL case. *See Vincent, supra*, 557 F.2d at 770.n 11.

The Court's jurisdiction (either over the subject matter or the person) is not enlarged by the presence of an attorney of record also present in other litigation. *See Sea Marsh Group, Inc. v. SC Ventures, Inc.*, 94-1140 (4th Cir. 4/23/97) (unpublished), citing *Trinity Indus., Inc. v. Myers and Assoc., Ltd.*, 41 F.3d 229, 230 (5th Cir.), *cert. denied*, 116 S.Ct. 52 (1995), (An attorney's entry of a court appearance *pro hac vice* in the forum state, without more, is not a substantial enough contact to permit that court to exercise jurisdiction over his person.). *Cf. Winkler v. Eli Lilly Co.*, 101 F.3d 1196, 1203 (7th Cir. 1996) (MDL injunction which sought to prohibit attorneys in state court cases from conducting discovery if they are or have been of record in MDL 907 was invalid where it

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Given that, it may be that this Court lacks control over any of the settlements that have occurred post-remand, and that the Steering Committee is relegated to asserting a claim for reimbursement in each of the transferor courts.

sought to extend the reach of the court to cases that were not, and were never, part of the MDL; since the court had no power to enjoin the litigation itself, it could not control it by enjoining the attorneys).

Aside from the lack of jurisdiction necessary to impose a judgment against the attorney, an assessment against the attorney (instead of merely a levy against the fund itself) is expressly forbidden by the common fund doctrine, which has as one of its central elements an exclusive focus upon the fund without any judgment directed at the fund's beneficiaries. *See Vincent, supra*, 557 F.2d at 769 (one of the elements of the common fund is that the parties are not personally liable for the litigation costs and any claim must be satisfied out of the fund.).[2] To the extent that Pre-Trial Order 57 attempts to impose an assessment against specific persons, such as attorneys, instead of merely assessing a fund of money arising out of litigation pending before the Court, the order loses its common fund doctrine footing, and therefore falls.

Accordingly, since this Court has no control over the funds created from settlement of non-MDL cases, it cannot bootstrap such control through the expedient of an assessment levied against attorneys in those cases. The attorney assessment requires as a precondition legitimate control over the fund, not *vice versa*. Since this Court has no jurisdiction over the settlement proceeds paid in state court cases, it cannot create a fund to assess in order to gain the necessary control, especially through the imposition of what amounts to a personal judgment against the attorneys in those state court cases.

2. Pre-Trial Order 57 is no longer needed to compensate the Steering Committee.

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[2] In *Vincent*, this element was satisfied because the assessment was not directed at any person. Lead counsel were given a charge on the Special Class Fund, not a personal judgment against any claimant or nonlead counsel. 557 F.2d at 770. In *In re Air Crash Disaster*, the assessment was directed at counsel fees, but this was acceptable since it was only an indirect means of achieving what the Court could have achieved directly -- an assessment against the fund, with a corresponding credit to private attorneys' fees awarded to the litigant whose fund was assessed. *See* 549 F.2d at 1018-19. Because the assessment only applied to cases that were before the court, there was a fund over which the court could exercise control. *Id.*, at 1018.

Pre-Trial Order 57 was designed by its very terms to secure a fund from which the Steering Committee could be paid for its work in the event that no other source of compensation was available. The Order expressly states that no work will be compensated from the Fund except to the extent such services and expenses are not otherwise compensated out of the Cost and Fee Fund.

In limiting the scope of the escrow to otherwise uncompensated work, this Court stood on solid ground. Steering committees are not entitled to compensation in the nature of royalty by virtue of their appointment by the Court.

> Courts must recognize that while such [a steering committee] arrangement may be a necessary concomitant to skillful case management of mass tort suits, it nevertheless significantly interferes with an attorney's expectations regarding the fees that his or her client has agreed to pay. Conversely, lead counsel are typically volunteers, as in this case, and, as such, they have no right to harbor any expectation beyond a fair day's pay for a fair day's work if a fee fund develops. *Cf.* Matthew 20:1-16 (recounting parable of the laborers in the vineyard).

In re Thirteen Appeals, 56 F.3d 295, 310 (1st Cir. 1995).

The MDL 986 Steering Committee has been amply compensated for all of the work that it did. It has reported that 66,582 attorney hours and 44,938 paralegal hours have been expended on MDL common benefit work, exclusive of settlement implementation efforts which were compensated separately.[3] The Steering Committee claimed that the lodestar compensation due for this effort was $20,614,193.00.[4] The Steering Committee actually received over $23,300,000 : $22,784,500.00 from the *Walker* Cost and Fee Fund + $634,730 from the Pre-Trial Order 57 Escrow Fund (20% of the $3,173,652.90 in fees disbursed from that fund thus far). Additionally, post-

[3] This figure is found in Lead Class Counsel's Second Supplemental Submission with Respect to Attorney's Fees, at pages 43-44.

[4] It should be noted that a significant portion of this common benefit effort did not produce work product useful for the opt-outs. For example, Dianne Nast's office, who handled all class action issues including the failed *Wadleigh* class, reported 11,040 attorney hours (the highest number of attorney hours claimed by any single Steering Committee member and 16% of the total) and 5,594 paralegal hours.

settlement litigation work by the four Steering Committee members who performed such services has been compensated to the extent of $1,260,461.16 from the Pre-Trial Order 57 Escrow Fund (40% of the $3,173,652.90 in fees disbursed from that fund thus far).

On top of this generous compensation, most Steering Committee members (or at least those who actually performed litigation work useful to the opt-outs) have settled cases for individual opt-out clients, and have received significant fees as a result. While these amounts are not presently known, this information is highly relevant to the determination of whether any of these persons should receive yet more compensation from the Pre-Trial Order 57 Fund.

In short, the primary purpose of the Pre-Trial Order 57 Escrow Fund has been satisfied. In fact, it was arguably satisfied entirely out of the *Walker* Cost and Fee Fund itself, which more than amply compensated the Steering Committee for all of its efforts, despite the Steering Committee's vague assertion that there is a rough correlation between the amount of *post-Walker* uncompensated work and the amount it claims from the Escrow Fund (assuming a very high lodestar rate).

3. The Objector is not a free rider.

Pre-Trial Order 57 recognizes that where a settlement is produced independently of the work product generated by the Steering Committee, an assessment should not be levied, although the standard it adopts for determination of that exemption and the burden of proof are incorrect. Instead of requiring that the assessed attorney prove that he or she never used or even considered *any* Steering Committee work product, the proper test is whether the Steering Committee proves that its work product was necessary to the settlement. The Steering Committee's own case law makes this clear: the common fund doctrine requires that the work of the attorney seeking an extra fee be a cause-in-fact of any claimed benefit to the fund and its beneficiaries. *Vincent, supra* 557 F.2d at 770, n.10. This requirement is reflective of the obvious fact that one who hires and pays his own

attorney is not a free rider if the attorney is a contributor to the final results. *In re Air Crash Disaster, supra*, 549 F.2d at 1019.

The objector is not a free rider in that the scope and magnitude of his own efforts matched, if not exceeded in key areas, the work done by the Steering Committee. While the MDL's focus was cast upon the *Walker* settlement, the objector was preparing for the litigation phase which he knew would follow the settlement's conclusion. A searchable computer database was created, and many thousands of documents relating to hemophilia and HIV from every source of public record available was added. Depositions taken in cases all over the country, as well as transcripts of key trials, were added to the searchable database, all of which were obtained independently of the PSC.

Based upon what was known from all of this, the objector believed that ultimate success depended in large measure on charting a new course. In fact, the clients that had selected the objector had done so with the express instruction that they wanted their cases in the hands of a person not wedded to the Steering Committee's theories or evidence.

As the plaintiffs' cases began to take shape, experts were retained, and with the exception of Don Francis and Dr. James Mosely, none of them had been used by the Steering Committee in the MDL. Dr. Francis' testimony was confined largely to matters that had not been explored with him in depth by the Steering Committee -- the Fractionators' use of so called high risk donors.

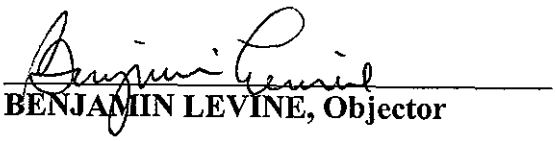
Under any definition, the objector was not a free rider. He had his own theories and strategies and, through hard work and determination, the objector obtained substantial settlements for clients with cases that had been declared by the Steering Committee to be unwinnable, and worthy only of participation in the *Walker* settlement. It would be bitter irony for the Steering Committee to now be awarded a percentage of the very cases it eschewed, which settled based upon work product it disparaged.

III. Conclusion.

For the reasons expressed herein, the objector requests that this Court exempt from Pre-Trial Order 57 the proceeds of the settlements of the claims identified on Exhibit H, and order the prompt return and reimbursement of the funds already withheld from those settlements.

Dated: January 25, 2002

Respectfully submitted,



BENJAMIN LEVINE, Objector

One Gateway Center, Suite 2500
Newark, New Jersey 07102
(973) 639-1315

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE	)	
	)	MDL - 986
FACTOR VIII OR IX CONCENTRATE	)	
	)	No. 93 C 7452
PRODUCTS LIABILITY LITIGATION	)	

CONFIDENTIALITY AND WORK PRODUCT AGREEMENT
PLAINTIFFS' DEPOSITORY

The undersigned represents that he/she is (please check one)

_____ a plaintiff / ___✓___ an attorney for plaintiff(s)

in a lawsuit which is part of the MDL-986 proceeding and/or the Class Action, Wadleigh, et al. v. Rhone-Poulenc Rorer, Inc., et al, Case No. MDL 93-C-5969, U.S. District Court, Northern District of Illinois. In recognition of the work performed by the Plaintiffs' Steering Committee, the undersigned agrees and covenants as follows:

1. The undersigned has been provided a copy of the Court's Order No. 2 (copy attached), and has read and understands its terms and agrees to be bound thereby.

2. The undersigned agrees to pre-pay all charges for copies or services provided by the depository, consistent with the policies set forth in the Court's Order No. 2.

3. The undersigned recognizes that attorney work-product is being provided, and agrees to maintain the confidentiality of all work-product provided.

4. The undersigned agrees to preserve and respect the confidentiality of all information provided by the depository for use only in connection with pending litigation and, with respect to documents marked "confidential," to strictly adhere to the provisions of Pretrial Order No. 2 relating thereto.

5. The undersigned agrees to provide all documents relating to the subject matter of the litigation (which is not plaintiff specific) , including deposition/trial transcripts and exhibits thereto that relate to an HIV or hepatitis contaminated blood factor concentrate case presently in his/her possession, and on an ongoing basis hereafter, to the depository.

6. The undersigned agrees to share in the out-of-pocket expenses reasonably related to the processing and supply of documents.

7. The undersigned agrees to share in the expenses reasonably related to the processing and supply of documents to the undersigned, pursuant to the following schedule (which may later be amended by the Steering Committee): [1]

   A. A reasonable charge for the entire index of documents and any future supplements (charge will vary based upon medium used (hard copy, CD-ROM or Microfiche) and number ordered);

   B. One dollar ($1.00) per page of index produced in response to a specific search request; [2]

   C. Twenty-five cents (25¢) per page for the first 100 pages, fifteen cents (15¢) per page thereafter of documents copied from the depository, plus fax or express mail charges if requested. [3]

   D. Seventy-five dollars ($75.00) per hour for any additional services performed by the paralegal staff at the request of the undersigned.

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[1] These charges are subject to change without notice.

[2] This will cover not only copying costs, but also staff time in performing the research.

[3] This will cover not only copying costs, but also staff time and mailing (regular U.S. mail) costs. Expenses and other services will be billed to you at cost. We can use your Federal Express account number.

8. The undersigned agrees to pay any other costs and/or fees (including Steering Committee Attorneys' fees) if so ordered by the Court.

Benjamin Levine, Esq.
Name (Please print)

Signature

Date: March 2, 1998

Mailing Address:
1 Gateway Center, Suite 2500

Newark, New Jersey 07102

Phone Number: 973-639-1315

Fax Number: 973-639-1326

If an attorney, please list the plaintiff(s) you represent (name, title of case (if one has been filed), court, and case number):

Estate of Anthony James Turner, deceased, by Erma Jean Clyburn, Administratrix ad Pros.; Estate of Tarkisha DeLane, deceased, by Theodore DeLane, Administrator ad Pros; et al. v. Rhone-Poulenc Rorer, Inc.; et al. - United States District Court for the Norther District of Illinois Eastern Div., MDL-986; No. 93 C 7452; 97 C.820

BENJAMIN LEVINE, ESQ.
ONE GATEWAY CENTER, SUITE 2500
NEWARK, NEW JERSEY 07102
(973) 639-1315
Attorney for Plaintiffs

J.D., Individually, and as Executrix of The Estate of N.D.,	SUPERIOR COURT OF NEW JERSE LAW DIVISION: MIDDLESEX COU DOCKET NO. L-7382-93
Plaintiffs,	
vs.	CIVIL ACTION
ARMOUR PHARMACEUTICAL COMPANY; BAXTER HEALTHCARE CORPORATION, HYLAND THERAPEUTICS DIVISION; et al.,	CONSENT ORDER DIRECTING DEPOSIT OF CONFIDENTIAL SETTLEMENT FUNDS
Defendants.	

This matter having come before the Court pursuant to R.4:44-3, and the attorn the parties having reported to the Court that a settlement of the captioned matter ha arrived at between the plaintiffs and the defendants, and the Court having then taken pr the record and having approved said settlement;

IT IS ON THIS 7th DAY OF September, 2000,

ORDERED that the Confidential Settlement Funds be paid by defendants A Pharmaceutical Company; Baxter Healthcare Corporation, Hyland Therapeutics Di Alpha Therapeutic Corporation; Cutter Laboratories, A Division of Miles, Inc.; as follo

A. 20% of plaintiffs' attorney's fees to be deposited into the Plaintiffs' S Committee Fund to be held in escrow pending final resolution of the issues regardin No. 986 Pretrial Order No. 57;

B. $625.00 to be paid by defendants to James Stahl, Esq., court appointed Master on behalf of C.D.;

C. $17,500.00 to be paid to J.D., Guardian ad Litem of C.D. and to the Surrogate Bergen County for the benefit of C.D. The Guardian ad Litem shall endorse the check a deliver it to the Surrogate of Bergen County who shall deposit it in the Surrogate of Berg County Intermingled Account in the name of C.D. Thereafter, monies are to be paid fro said account only upon further order of the Superior Court of New Jersey, Law Divisio Probate Part, or upon the minor attaining majority under the law; and

D. 25 percent attorney's fee less the deduction of 20% of the fee paid to the Plaintiff Steering Committee Fund, plus expenses in the amount of $2,613.74 be paid by defendants t plaintiffs' attorney Benjamin Levine; and

E. the remainder, the amount of which shall remain confidential, shall be paid by defendants to J.D.; and

IT IS FURTHER ORDERED that J.D., Guardian ad Litem of C.D., immediately make application to the Surrogate of Bergen County for the appointment as Guardian of C.D. Upon qualifying as Guardian, the posting of a bond by J.D. is dispensed with; and

IT IS FURTHER ORDERED that the attorney for the plaintiffs deliver a copy of this Order to the Surrogate of Bergen County within 7 days of the date hereof.

HON. DOUGLAS E. WOLFSON, J.S.C.

I hereby consent to the terms
of the within Consent Order.

BENJAMIN LEVINE, ESQ.
Attorney for Plaintiffs

DECHERT, PRICE & RHOADS

BY: Bruce W. Clark, Esq.
Attorneys for Defendant Baxter Healthcare Corporation

SILLS CUMMIS ZUCKERMAN RADIN
TISCHMAN EPSTEIN & GROSS

BY: Kathleen Gengaro, Esq.
Attorneys for Defendant Miles, Inc.

DRINKER, BIDDLE & SHANLEY

BY: Susan M. Sharko, Esq.
Attorneys for Defendants Armour Pharmaceutical
and Rhone-Poulenc Rorer, Inc.

CHASE KURSHAN SUHR WEIDENFELD
HERZFELD & RUBIN, LLC

BY: Maureen Doerner Fogel, Esq.
Attorneys for Defendant Alpha Therapeutic Corp.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
CIVIL ACTION

V.C., an infant, by his Guardian ad Litem, R.C. and R.C., individually,

Plaintiffs,

v.

Docket No. L-7381-93

ARMOUR PHARMACEUTICAL COMPANY; BAXTER HEALTHCARE CORPORATION, HYLAND THERAPEUTICS DIVISION; ALPHA THERAPEUTICS CORPORATION; CUTTER LABORATORIES, A DIVISION OF MILES, INC.; et al.,

Defendants.

/

SETTLEMENT AGREEMENT

The parties agree:

1. The above-captioned case shall be dismissed with prejudice, each party to bear its own costs and attorneys' fees.

2. Defendants shall pay Plaintiffs $500,000.00, upon execution of an appropriate general release in a form reasonably satisfactory to the parties; the release shall cover all claims relating to V.C.'s use of factor concentrate and shall meet the requirements of Alfone v. Sarno. The parties may agree to structure some portion of the settlement proceeds; if such agreement is not made before February 1, 2000, the payment obligation shall be in cash only. Defendants make no representation as to the tax consequences of any structured settlement finally agreed to.

3. The parties agree to keep confidential the terms of

settlement.

4. Plaintiffs shall satisfy all liens. Defendants shall extend reasonable cooperation in assisting Plaintiffs in their efforts to resolve medical lien issues.

Done January 24, 2000 in Newark, New Jersey.

Peter J. Grilli, Esq.
Florida Bar No. 237851
Mediator
Peter J. Grilli, P.A.
Post Office Box 953
Tampa, Florida 33601-0953
(813) 221-4515
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Plaintiff Valentino Chiaviello, Jr.

Plaintiff Rosemary Chiaviello

Valentino Chiaviello, Sr.

Counsel for Plaintiffs

Defendant Armour Pharmaceutical Company's corporate representative

Counsel for Defendant Armour Pharmaceutical Company

Defendant Baxter Healthcare Corporation's corporate representative

Counsel for Defendant Baxter Healthcare Corporation

Defendant Alpha Therapeutics Corporation's
corporate representative

Counsel for Defendant Alpha Therapeutics Corporation

Defendant Bayer Corporation's
corporate representative

Counsel for Defendant Bayer Corporation

CONFIDENTIAL SETTLEMENT AGREEMENT AND FULL RELEASE OF ALL CLAIMS

JOSEPHINE DILENA, individually, in her capacity as Executrix of the Estate of the late Nicholas Dilena, and in her capacity as parent of Carly Dilena, a minor (the "RELEASORS"), and ALPHA THERAPEUTIC CORPORATION, ARMOUR PHARMACEUTICAL COMPANY, BAXTER HEALTHCARE CORPORATION, MILES INC. and others (the "RELEASEES" as defined in paragraph 1(b) of this Agreement) are parties in an action entitled J.D. v Armour Pharmaceutical Company, et al., Docket No. MID-L-7382-93, in the Superior Court of New Jersey, in which claims were made against the Releasees for damages for personal injury and death in respect to the illness of Nicholas Dilena (the "CLAIM").

The RELEASORS and RELEASEES wish to resolve the dispute which has arisen between them relating to Nicholas Dilena's use of blood derivatives or components, including but not limited to the claims which are or could have been the subject of the allegations contained in the lawsuit, and without admitting or determining any liability whatsoever in order to avoid the uncertainties, expense and delay of litigation,

The RELEASORS and the RELEASEES agree as follows:

1.0 Definitions

(a) "RELEASORS" refers jointly and severally to Josephine Dilena, individually, as the Executrix of the Estate of Nicholas Dilena, and in her capacity as the parent of Carly Dilena, a minor.

(b) "RELEASEES" refers jointly and severally to the persons and entities which were or could have been named as defendants to this claim and to their respective past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, insurers, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated, including but not limited to: Alpha Therapeutic Corporation, Armour Pharmaceutical Company, Rhone-Poulenc Rorer, Inc., Plasma Alliance, Inc. Baxter Healthcare Corporation, Hyland Therapeutics Division, Miles Inc., Cutter Laboratories, Bayer Corporation, Bayer, A.G., Merieux American Holdings Inc., Seralc Corporation, Seralc Investment Corporation, Biotest A.G., Biotest Diagnostics Corporation, Biotest Pharma GmBH, Englewood Hospital, Bergen Community Regional Blood Center, and prescribing and or treating physicians of Nicholas Dilena.

2.0 Release and Discharge

2.1 In consideration of the payment set forth in Section 3.0, the receipt and sufficiency of which is hereby acknowledged, RELEASORS, on behalf of themselves, each of their estates, heirs, executors, administrators, personal representatives, successors and assigns, and the Estate of Nicholas Dilena and its heirs, executors, administrators, personal representatives, successors and assigns, hereby completely release, acquit and forever discharge each of the RELEASEES of and from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, claims for loss of services, comfort and society, rights, damages, costs, liabilities, expenses and compensation of any kind or nature whatsoever, whether for compensation or punitive damages, whether based on a tort, contract,

statute or other theory of recovery, and whether known or not known, which the RELEASORS have, had, may have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way arise out of, or are in any manner related to any of the following: (a) Nicholas Dilena's infusion of or use of or exposure to any anti-hemophilic factor concentrate processed or sold by RELEASEES at any time up to the date of this Settlement Agreement; (b) the development by Nicholas Dilena of any injury, condition, illness, disorder, ailment, sign or symptom as a result of the above described infusions, uses or exposures; (c) the death of Nicholas Dilena as a result of the above described infusions, uses or exposures; (d) any per quod or loss of consortium claims of Josephine Dilena, Nicole Dilena or Carly Dilena; (e) any personal injury claims of Josephine Dilena; (f) any event described in the CLAIM; (g) any event, cause or matter which is in whole or part the subject of the CLAIM, or which is, or may be, stated, claimed or alleged in the CLAIM; (h) claims of pecuniary loss, injury or damages as defined in New Jersey's Wrongful Death Act, N.J.S.A. 2A:31-1, et seq., and Survivorship Act, N.J.S.A. 2A:15-3, et seq.; and (i) the costs, expenses or attorneys' fees incurred in connection with the CLAIM.

2.2 Neither this Settlement Agreement nor the payments made by the RELEASEES shall be construed as an admission of liability on the part of the RELEASEES. RELEASEES admit no liability, negligence, fault, wrongdoing or other tortious conduct in any way connected with anti-hemophilic factor concentrate processed or sold by RELEASEES.

2.3 RELEASORS agree that if any claims are made against RELEASEES at any time in the future, directly or indirectly, by or on behalf of Nicholas Dilena's heirs or others, directly or in a representative capacity, for pecuniary losses, injury or damages arising from the personal injury or wrongful death of Nicholas Dilena, RELEASORS and the Estate of Nicholas

Dilena and his heirs, executors, administrators or personal representatives shall, jointly and severally, indemnify and hold harmless RELEASEES for attorneys' and expert fees, costs of suit, and any sum paid by way of judgment, settlement or otherwise on account of such claims.

3.0 Payments

3.1 In consideration of this Settlement Agreement, the RELEASEES have paid to Josephine Dilena, individually and as the Executrix of the Estate of Nicholas Dilena, and to Carly Dilena, in trust, and their attorneys, the aggregate sum of $250,000.00 at the time this Settlement Agreement is executed by the RELEASORS. All of this sum constitutes damages on account of personal injuries and sickness, within the meaning of Section 104 (a) (2) of the Internal Revenue Code of 1986, as amended.

3.2 RELEASORS agree to satisfy any and all subrogation interests and liens, whether statutory or otherwise. RELEASORS shall defend, indemnify and save RELEASEES, and each of them, free and harmless from each and every claim, demand, cause of action, liability and loss which is based on the assertion of any such subrogation interest or lien.

4.0 Attorney's Fees

The RELEASORS shall bear all attorney's fees and costs arising from the actions of any of their own counsel in connection with the CLAIM, this Settlement Agreement, and all related matters.

5.0 Representation of Comprehension of Document

In entering into this Settlement Agreement, RELEASORS represent that they have relied upon the advice of attorneys of their own choice concerning the legal consequences and the federal, state and local tax consequences of this Settlement Agreement. The terms of this Settlement Agreement are fully understood and voluntarily accepted by the RELEASORS.

6.0 Warranty of Capacity to Execute Agreement

RELEASORS represent and warrant that they are the sole and lawful owners of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and that they have the exclusive authority to execute this Settlement Agreement and receive the sums specified in it.

7.0 Confidentiality

RELEASORS and their attorneys shall keep and maintain confidential all terms of this Settlement Agreement and all terms and conditions of the settlement of the CLAIM, and they shall not voluntarily disclose to anyone any of the provisions or terms of such settlement or of this Settlement Agreement, including, without limitation, the amount, terms and conditions of any sums payable to RELEASORS hereunder.

8.0 Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of New Jersey. It shall not be construed against the party on whose behalf it was drafted solely because that party drafted it.

9.0 Additional Documents

RELEASORS agree to cooperate fully and execute all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to this Settlement Agreement. Nothing herein is intended to affect the terms of this Settlement Agreement. In the event of any disputes between the parties to this Settlement Agreement, the parties agree to accept the ruling of a Court of appropriate jurisdiction.

10.0 Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between the RELEASORS and the RELEASEES with regard to the matters set forth in it and supersedes any and all prior agreements and understandings, written or oral, of the parties. This Settlement Agreement may be amended, or any right or condition hereunder waived, only by written instrument signed by that party against whom such amendment or waiver is sought to be enforced.

Dated: 1/17/2000

Josephine Dilena, individually, as the
Executrix of the Estate of Nicholas Dilena,
and as the parent of Carly Dilena, a minor

The above Confidential Settlement Agreement and Full Release of All Claims has been read and the terms thereof explained to the RELEASORS and the form of the same is hereby approved.

Dated: 1/17/00

Benjamin Levine, Esq.
Attorney for Releasors

State of New Jersey)
) SS:
County of Essex)

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared, Josephine Dilena, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was her act.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19th day of January, ~~1999.~~ 2000

Tammy S. Frodelly
Notary Public

(SEAL)
My Commission expires: 2/22/04

TAMMY S. FRODELLY
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/22/2004

CONFIDENTIAL SETTLEMENT AGREEMENT
AND FULL RELEASE OF ALL CLAIMS

NOTE: The terms of this document are confidential as provided herein and shall not be disclosed except pursuant to order of Court.

This Confidential Settlement Agreement and Full Release of All Claims (the "Settlement Agreement") is made and entered into by and between VALENTINO CHIAVIELLO, ROSEMARY CHIAVIELLO, AND VALENTINO CHIAVIELLO, Sr. (collectively "Releasors") and ARMOUR PHARMACEUTICAL COMPANY, RHÔNE-POULENC RORER, INC., PLASMA ALLIANCE, INC., BAXTER HEALTHCARE CORPORATION, HYLAND THERAPEUTICS DIVISION, ALPHA THERAPEUTIC CORPORATION, CUTTER LABORATORIES, MILES INC., BAYER CORPORATION, BAYER A.G., BERGEN COMMUNITY REGIONAL BLOOD CENTER, ENGLEWOOD HOSPITAL, HOLY NAME HOSPITAL.

RECITALS

A. RELEASORS commenced an action titled V.C., AN INFANT BY HIS GUARDIAN AD LITEM, R.C., AND R.C., INDIVIDUALLY v. ARMOUR PHARMACEUTICAL COMPANY, et al., Docket No. L-7381-93 in the Superior Court of New Jersey, Law Division, Middlesex County ("the Lawsuit") wherein claims were made against RELEASEES (as defined in paragraph 1.0(d)) and other parties for damages for personal injury in respect to the illness of Valentino Chiaviello and for damages for personal injury to Rosemary Chiaviello and Valentino Chiaviello, Sr.;

B. Valentino Chiaviello suffers from a congenital disease known as hemophilia A, and in order to treat such disease has received over his lifetime various blood derivatives and blood

products, including antihemophilic factor concentrates processed by RELEASEES (as defined in paragraph 1.0(d));

C. Valentino Chiaviello has become infected with Human Immunodeficiency Virus ("HIV"), the virus causally related to the development of Acquired Immune Deficiency Syndrome ("AIDS"); and the future medical condition and prognosis of RELEASORS is unknown and uncertain, but it is anticipated that RELEASORS may ultimately die therefrom;

D. The parties hereto wish to compromise and resolve the dispute which has arisen between them growing out of and relating to Valentino Chiaviello's use of blood derivatives or components, including but not limited to the claims which are or could have been the subject of the allegations contained in the lawsuit, and without admitting or determining any liability whatsoever in order to avoid the uncertainties, expense and delay inherent in litigation;

E. RELEASORS have at all times been represented in the Lawsuit by their own counsel, Benjamin Levine, who has provided advice and counsel to the RELEASORS concerning the terms and conditions of this Confidential Settlement Agreement and Full Release of All Claims;

NOW THEREFORE, it is hereby agreed by and between RELEASORS and RELEASEES (as defined in paragraph 1.0(d)) as follows:

AGREEMENT AND RELEASE

1.0 Definitions

The following definitions apply to this Settlement Agreement:

(a) "CLAIM" refers to the lawsuit described above in Recital A.

(b) "RELEASORS" refers jointly and severally to Valentino Chiaviello, Rosemary Chiaviello, and Valentino Chiaviello, Sr.

(c) "DEFENDANTS" refers jointly and severally to the persons and entities which were or could have been named as defendants to this claim and to their respective past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, insurers, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated, including but not limited to: Armour Pharmaceutical Company; Rhône-Poulenc Rorer, Inc.; Plasma Alliance, Inc.; Baxter Healthcare Corporation; Hyland Therapeutics Division; Alpha Therapeutic Corporation; Miles Inc.; Cutter Laboratories; Bayer Corporation; Bayer A.G.; Bergen Community Regional Blood

Center; Englewood Hospital; and Holy Name Hospital.

(d) "RELEASEES" refers jointly and severally to DEFENDANTS, suppliers, distributors, prescribing and/or treating physician(s) of Valentino Chiaviello and/or Rosemary Chiaviello and Valentino Chiaviello, Sr., and any other individual or entity which may have been involved with Valentino Chiaviello's use of antihemophilic factor concentrate before the date of this Agreement.

(e) As used in this Settlement Agreement, the masculine gender includes masculine feminine and neuter, where applicable; and use of the singular includes the plural, where applicable.

2.0 Release and Discharge

2.1 In consideration of the payments set forth in Section 3.0, the receipt and sufficiency of which are hereby acknowledged, RELEASORS, for themselves and for their respective estates, heirs, executors, administrators, personal representatives, successors and assigns, hereby completely release, acquit and forever discharge each of the RELEASEES of and from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, claims for loss of services, comfort and society, rights, damages, costs, liabilities, expenses and compensation of any kind or nature whatsoever, whether for compensation or punitive damages, whether

based on a tort, contract, statute or other theory of recovery, and whether known or not known to RELEASORS, which the RELEASORS have had, may have, now has, or which may hereafter accrue or otherwise acquired, on account of, or may in any way arise out of, or are in any manner related to any of the following: (a) Valentino Chiaviello's infusion of or use of or exposure to any antihemophilic factor concentrate processed or sold by RELEASEES at any time up to the date hereof; (b) the past or future development by RELEASORS of any injury, condition, illness, disorder, ailment, sign or symptom as a result of the above described infusions, uses or exposures; (c) the death of Valentino Chiaviello, as a result of the above described infusions, uses or exposures; (d) the death of Rosemary Chiaviello and Valentino Chiaviello, Sr.; (e) any event described in the CLAIM; (f) any event, cause or matter which is in whole or part the subject of the CLAIM, or which is, or may be, stated, claimed or alleged in the CLAIM; (g) the claims of Rosemary Chiaviello and Valentino Chiaviello, Sr., individually and per quod or loss of consortium claims of Rosemary Chiaviello and Valentino Chiaviello, Sr.; and (h) the costs, expenses or attorneys' fees incurred in connection with the CLAIM.

2.2 This release on the part of RELEASORS shall be a fully binding and complete settlement among the RELEASORS and the RELEASEES, and their respective heirs, successors, and assigns. RELEASORS are bound by this RELEASE. RELEASORS expressly acknowledge, understand and agree that anyone who succeeds to their rights and responsibilities, such as their heirs or the administrator or executor of their estates, is also bound. RELEASORS specifically understand that all of the terms and conditions of the

release are for the benefit of and binding on them, their heirs, the administrator or executor of their respective estate and anyone else who succeeds to their rights and responsibilities.

2.3 RELEASORS acknowledge and agree that the release and discharge set forth above is a general release of the RELEASEES. RELEASORS expressly waive, and assume the risk of, any and all claims for damages which exist as of this date, but of which the RELEASORS do not know or suspect to exist, whether through ignorance, oversight, error, negligence, incomplete medical or scientific knowledge or uncertain or incomplete prognosis, or otherwise, and which, if known, would materially affect their decision to enter into this Settlement Agreement. RELEASORS further agree that they have accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. RELEASORS understand and agree that if the law or facts with respect to which this Settlement Agreement is executed be found hereafter to be other than, or different from, the law and facts now believed by RELEASORS to be true, RELEASORS expressly accept and assume the risk of such possible difference in law or facts and agree that this Settlement Agreement shall be and remain effective notwithstanding any such difference. As an inducement for RELEASEES to pay to RELEASORS the consideration set forth below in Section 3.0, RELEASORS voluntarily assume any and all risks that, as a result of the ingestion, use, exposure, injuries or events described above in paragraph 2.1, any RELEASORS may in the future suffer some further harm, disorder or ailment (including mental, emotional and nervous disorders) which is now unknown or unsuspected to RELEASORS, and RELEASORS forever release

RELEASEES, and each of them, from all claims having to do with any such future harm, disorder or ailment and the risk thereof.

2.4 This is intended as a full settlement and compromise of each, every and all of the above-described claims, demands, actions and causes of action, of every kind and nature which RELEASORS ever had, now have, or may have in the future. No such claim, demand, action or cause of action, whether known or unknown or suspected or unsuspected to RELEASORS, is reserved by RELEASORS.

2.5 RELEASORS agree that the payment of the sums specified herein and the execution of this Settlement Agreement are done entirely for the purpose of compromise and settlement of a disputed claim. Neither the payment of such sums nor the compromise and settlement of such claim shall be construed as an admission of liability on the part of the RELEASEES, by whom liability is expressly denied.

2.6 RELEASORS shall not bring, commence, institute, maintain, prosecute or voluntarily aid in any action at law, proceeding in equity or any other legal proceeding against any of the RELEASEES based in whole or in part upon any event, right, claim, demand, cause of action, obligation, damage or liability referred to above in paragraph 2.1.

2.7 RELEASORS by signing this Settlement Agreement and Release, specifically release and give up any and all rights to and claims of pecuniary loss, injury or damage as those terms are defined in the New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1, et seq., the New Jersey Survivorship Act, N.J.S.A. 2A:15-3, and as interpreted by the Courts of New Jersey, which might accrue to

RELEASORS, their estates and others by virtue of the death of RELEASORS, whether such claims are pursued directly or indirectly or by some person or persons in a representative capacity, if such claims arise in any way from or are in any way connected or related to the infusion, use of or exposure to antihemophilic factor concentrate processed, distributed or sold by RELEASEES. It is expressly understood and agreed by RELEASORS and RELEASEES that a substantial reason and consideration of RELEASEES in forbearing from any further steps in defending this claim and agreeing to pay and paying the money set forth in this Settlement Agreement is the settlement, release and elimination at this time of any and all claims that RELEASORS or others have now or in the future might have, absent this Release, for the wrongful death of RELEASORS. RELEASORS further understand and agree that under the present state of the law in New Jersey that absent this Release and regardless of the entry of any judgment which might result in litigation by RELEASORS against RELEASEES, certain of their relatives, dependents or others might have claims for the death of RELEASORS against RELEASEES, see Alfone v. Sarno, 87 N.J. 99 (1981); Garde v. Wasson, 251 N.J. Super. 608 (App. Div. 1991), certif. den. 127 N.J. 560 (1992), and RELEASORS further understand and agree that by executing this Release and accepting the money paid, RELEASORS acknowledge that they have received fair, just and adequate consideration for any claims for the wrongful death of RELEASORS and RELEASORS further understand and agree that by executing this Release and accepting the money paid, RELEASORS have forever remised, released, discharged and given up any and all claims that RELEASORS or others might have against RELEASEES for the wrongful

death of RELEASORS, arising from or alleged to arise from or in any manner related to the infusion, use or exposure to antihemophilic factor concentrate processed, distributed or sold by RELEASEES.

2.8 RELEASORS further understand and agree that if any claims are made at any time in the future, directly or indirectly, or by or on behalf of their respective heirs or others, directly or by some person in a representative capacity, for pecuniary losses, injury or damages arising from the wrongful death of RELEASORS, against RELEASEES, that RELEASEES shall be entitled to be indemnified by the respective Estates of RELEASORS and/or their heirs, executors, administrators or personal representatives for any sums expended in defending against said claims, including but not limited to, attorneys' fees and all costs of suit together with any sum paid by way of judgment, settlement or otherwise on account of these claims.

2.9 RELEASORS also understand that by entering into the settlement with RELEASEES which resulted in the execution of this Release, that RELEASEES admit no liability, negligence, fault, wrongdoing or other tortious conduct in any way connected with antihemophilic factor concentrate processed or sold by RELEASEES.

3.0 Payments

3.1 In consideration of the release set forth in Section 2.0 above, RELEASEES have paid to RELEASORS and their attorney, Benjamin Levine, good and valuable consideration. This consideration constitutes damages on account of personal injuries and sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

3.2 RELEASORS agree to satisfy any and all subrogation interests and liens, whether statutory or otherwise. RELEASORS shall defend, indemnify and save RELEASEES, and each of them, free and harmless from each and every claim, demand, cause of action, liability and loss which: (a) is based on or alleges facts inconsistent with any of the representations and warranties contained in this Settlement Agreement; (b) seeks repayment or reimbursement for monies or other benefits paid or provided to or on behalf of RELEASORS as a result of, or in any way connected with, the infusion, use, exposure, injuries, events and claims referred to above in paragraph 2.1 (including, without limitation, benefits such as workers' compensation, Social Security, insurance, PIP benefits or payments, governmental, medical, unemployment and disability benefits); or (c) is the result of, or in any way connected with, the ingestion, use, exposure, injuries, events and claims referred to above in paragraph 2.1.

3.3 RELEASORS understand and agree that RELEASEES are required to withhold 7% of the total settlement amount for payment into the MDL assessment fund. Such amount shall be transferred by RELEASEES by wire transfer into the escrow account established by MDL Pretrial Order No. 57.

4.0 Attorney's Fees

Except as may be expressly set forth herein, RELEASORS shall bear all attorney's fees and costs arising from the actions of their own counsel in connection with the CLAIM, the Settlement Agreement, the matters and documents referred to herein, and all related matters.

5.0 Representation of Comprehension of Document

In entering into this Settlement Agreement, RELEASORS represent that they have relied upon the advice of attorney(s) of their own choice, concerning the legal and federal, state and local tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read by RELEASORS and explained to them by their attorney(s); and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by the RELEASORS.

6.0 Warranty of Capacity to Execute Agreement

RELEASORS represent and warrant: that they are the sole and lawful owner of, and that no other person or entity has, or has had, any interest in, the claims, demands, obligations, or causes of action referred to in this Settlement Agreement; that they have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement; that they have the legal capacity to enter into this Settlement Agreement; and that this Settlement Agreement constitutes the legal, valid, binding and enforceable obligation of RELEASORS.

7.0 Confidentiality

RELEASORS and their attorneys named herein shall keep and maintain confidential all terms of this Settlement Agreement and all terms and conditions of the settlement of the CLAIM, and they shall not voluntarily disclose to anyone any of the provisions or terms of such settlement or of this Settlement Agreement,

including, without limitation, the amount, terms and conditions of any sums payable to RELEASORS hereunder.

8.0 Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of this State of New Jersey. It shall not be construed against the party on whose behalf it was drafted solely because of the fact that party drafted it.

9.0 Additional Documents

RELEASORS agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

10.0 Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between RELEASORS and the RELEASEES with regard to the matters set forth in it and supersedes any and all prior agreements and understandings, whether written or oral, of the parties hereto relating to the subject matter hereof. This Settlement Agreement may be amended, or any right or condition hereunder waived, only by written instrument signed by that party against whom such amendment or waiver is sought to be enforced. This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto and the executors, administrators, personal representatives, heirs, successors and assigns or each. In addition, RELEASORS expressly intend that the release set forth in Section 2.0 hereof inure to the benefit of any and all RELEASEES, suppliers and distributors, and that each such person or entity shall have the

right to enforce the release set forth in Section 2.0 hereof against RELEASORS.

DATED: 1/24/00

VALENTINO CHIAVIELLO

DATED: 1/24/00

ROSEMARY CHIAVIELLO

DATED: 1/24/00

VALENTINO CHIAVIELLO, Sr.

The above Settlement Agreement has been read and the terms thereof explained to RELEASORS and the form of the same is hereby approved.

BENJAMIN LEVINE
Attorney for Releasors

State of New Jersey)
)SS:
County of)

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared, Valentino Chiaviello, Rosemary Chiaviello, and Valentino Chiaviello, Sr., known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that the same was their act.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 24th day of January, 2000.

BENJAMIN LEVINE Benjamin Levine
Notary Public
Attorney-at-law of New Jersey

[SEAL]
My Commission expires:

_____

CERTIFIED BY THE NEW JERSEY SUPREME COURT AS A CIVIL TRIAL ATTORNEY

MEMBER NJ & NY BARS

BENJAMIN LEVINE
ATTORNEY AT LAW
ONE GATEWAY CENTER
SUITE 2500
NEWARK, NEW JERSEY 07102
TELEPHONE: (973) 639-1315
TELECOPIER: (973) 639-1326

בס"ד

FILE NO.

June 26, 2000

David S. Shrager, Esq.
Shrager McDaid Loftus Flum & Spivey
Two Commerce Square, 32nd Floor
2001 Market Street
Philadelphia, PA 19103

Re: E.D. v. Armour, et al.

Dear David:

It has just come to my attention that there are a number of transcripts which we need for the E.D. case which are part of the MDL and which we were told to seek through someone by the name of Angel in your office. We have been in touch with Angel who has told us that she is not authorized to release any information to us since she does not have the designation which makes us part of the MDL. Nevertheless, and especially since I am now being assessed pursuant to the MDL arrangements which you and I had already discussed and resolved, I will appreciate your stepping in to see to it that we can get these transcripts without further ado. The materials we need to obtain are as follows:

Murray Gardner, M.D. - 11/2/95 - video and exhibits
Theodore Koerner, M.D. - 2/14/96 and 2/15/96 - video and exhibits
W. Patrick Noonan - 2/27/96 - video, exhibits and ASCII disk of transcripts
Carlos Nick Pace - 10/18/95 - video and exhibits
Francis Eric Preston - 10/4/95 - video and exhibits

Your cooperation in this matter is greatly appreciated

Very truly yours,

BENJAMIN LEVINE

BL/tsf
via telecopier and regular mail

EX. F

DAVID S. SHRAGER
EDWARD B. McDAID
JOANNA HAMILL FLUM
WAYNE R. SPIVEY
*MICHAEL S. BLOOM
*ROBERT L. SACHS, JR.
*DANIEL S. WEINSTOCK
*also member New Jersey Bar

Shrager McDaid Loftus Flum & Spivey
ATTORNEYS AT LAW

TWO COMMERCE SQUARE
32nd FLOOR
2001 MARKET STREET
PHILADELPHIA, PA 19103
(215) 568-7771 FAX (215) 568-7495

NANCY FORMAN, OF COUNSEL
WILLIAM A. LOFTUS, (1978-1991)

June 27, 2000

FAX TRANSMISSION - 973-639-1326

Benjamin Levine, Esquire
One Gateway Center
Suite 2500
Newark, NJ 07102

RE: *E.D. v. Armour, et al.*

Dear Ben:

I have your letter of June 26. I am confused.

Would you send me a note indicating what you understand to be the resolution of the case with respect to an assessment. If you are in agreement that your cases are subject to the assessment (limited, as we discussed, because of the New Jersey situation), then the easiest and most direct way for you to proceed would be through the depository. That is the way in which all of us proceed since their records are necessarily very much more complete than our material.

As you can imagine there is a huge amount of information available and individual counsel could hardly store the items in his or her office. The depository has an agreement for signature. Why would there be any reluctance at this stage to your signing the agreement given the fact that the assessment issue has been resolved to your satisfaction?

Sincerely,

David S. Shrager

DSS/tah

EX. G

Cases in which Objector is Counsel

J.D. v. Armour Pharmaceutical Company, et al.
Docket No. MID-L-7382-93

V.C. v. Armour Pharmaceutical Company, et al.
Docket No. MID-L-7381-93

E.D., T.D., M.D. and C.D. v. Armour Pharmaceutical Company, et al.
Docket No. CAM-L-5994-01
(Formerly Docket No. MID-L-3173-95)

EX. H