

# **EXHIBIT 12**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

<b>IN RE: AGGRENEX ANTITRUST LITIGATION</b>	<b>Master Docket No. 3:14-cv-02516 (SRU)</b>  <b>Judge Stefan R. Underhill</b>
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**AFFIDAVIT OF STUART E. DES ROCHES OF ODOM & DES ROCHES, LLC,  
IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT AND IN SUPPORT  
OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

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STATE OF LOUISIANA     )  
  ) ss.: 433-23-6752  
PARISH OF ORLEANS     )

**STUART E. DES ROCHES**, being first duly sworn, deposes and says:

I am a partner in the law firm of Odom & Des Roches, LLC (hereinafter “the firm” or “ODR”). I submit this affidavit in support of the Motion for Approval of the Settlement and in support of the Motion for an Award of Attorneys’ Fees and Expenses filed in connection with services rendered, and expenses incurred, in the above-captioned case.

**Involvement in the Case**

1. The firm has participated in this case as co-counsel for the Direct Purchaser Class Plaintiffs.

2. The firm has been actively involved in this matter from the initiation of the pre-filing investigation, to the filing of the complaint, throughout the discovery process, and throughout the mediation and settlement processes which resulted in the settlement now before this Court.
3. ODR was involved in conducting a pre-filing investigation relating to (a) the various agreements between Boehringer Ingelheim Pharmaceuticals, Inc. ("BIPI") and Barr Pharmaceuticals, Inc. ("Barr"); (b) the applicable regulatory background underlying and pertaining to branded Aggrenox and the underlying patent litigation between BIPI and Barr, including BIPI's possession of a 30-month stay against the approval of Barr's Abbreviated New Drug Application ("ANDA") for a generic version of Aggrenox as a result of having filed suit against Barr over the '577 patent; and (c) the ability and willingness of BIPI, Barr and other generics to enter the market earlier with less-expensive generic versions of Aggrenox "but for" the existence of the '577 patent, the '577 patent litigation, the challenged reverse payment agreements, and in the context of the applicable Food and Drug Administration ("FDA") regulatory scheme.
4. After commencement of this case, the firm participated in the following detailed litigation tasks: (a) drafting portions of the opposition to Defendants' motion to dismiss; (b) submitting discovery requests on Defendants and leading extensive meet and confer sessions with both BIPI and Barr concerning the production of documents; (c) serving document production subpoenas on various third parties including Barr's ingredient suppliers for its generic Aggrenox product and on other generic Aggrenox ANDA filers, engaging in the meet and confer processes with those third parties, and engaging in

motion practice against one of those third parties; (d) review and analysis of extensive document productions by BIPI, Barr, and third parties; (d) evaluating the prospects of Barr entering the market earlier “but for” the challenged agreements particularly relating to its ability to earlier manufacture commercial quantities of generic Aggrenox or obtain commercial quantities from other sources; (e) analyzing the ability of other generic Aggrenox ANDA filers to similarly enter earlier; (f) evaluating the prospects of BIPI entering the market earlier with its own less expensive, “authorized generic” version of Aggrenox had it not entered into the challenged agreements; and (g) preparing for and participating in mediation.

**Attorneys’ Fees and Costs/Expenses**

5. Prosecution of this case has been a difficult task in terms of the complex antitrust theories involved; the complexity of the pharmaceutical, regulatory, patent, economic, scientific, and manufacturing issues underlying the reverse payment antitrust claims, which required detailed analysis by lawyers and experts in various fields; the volume of information and documents obtained, reviewed and analyzed; the number of parties involved; and outstanding defense counsel.
6. Based on my nineteen (19) years of litigating reverse payment Hatch-Waxman antitrust cases on behalf of direct purchaser classes, I can attest to the risk of non-recovery in this matter. Some of these other cases have been lost at the motion to dismiss, motion for summary judgment or jury trial stages, after the expenditure of enormous resources. The risk of non-recovery here was very real given the hotly contested nature of the legal standard surrounding reverse payment analysis, which continues to evolve even to this

day, and the complicated defenses raised by BIPI and Barr.

7. Contained below is a chart demonstrating the time spent on this case by each ODR attorney and paralegal, and the lodestar calculation based on the firm's current billing rates for complex antitrust litigation. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by the firm, which are available for the Court's inspection if necessary. Time expended in preparing the application for fees and reimbursement of expenses has not been included.

Name & Position	Hourly Rate	Total Hours	Lodestar
Stuart E. Des Roches (Partner)	\$800	770.50	\$616,400.00
Andrew W. Kelly (Partner)	\$725	25.75	\$18,668.75
Chris Letter (Partner)	\$600	122.75	\$73,650.00
Craig Glantz (Of Counsel)	\$650	1,053.75	\$684,937.50
John E. Fitzpatrick (Associate)	\$400	304.25	\$121,700.00
Annie M. Schmidt (Associate)	\$400	1,328.25	\$531,300.00
Dan C. Chiorean (Associate)	\$425	1409.00	\$598,825.00
Chris Stowe-Serge (Associate)	\$400	41.00	\$16,400.00
Amy Kennelly (Paralegal)	\$175	104.75	\$18,331.25
Kim Fontenot (Paralegal)	\$200	183.00	\$36,600.00
		<b>Total Hours: 5,343.00</b>	<b>Total Lodestar: \$2,716,812.50</b>

8. The total number of hours expended on this case by the firm is 5,343.00. The total lodestar for the firm is \$2,716,812.50.

9. In addition, ODR has incurred a total of \$108,745.79 in un-reimbursed expenses in connection with the prosecution of this case. The expenses and costs incurred in this action are reflected in the firm's detailed Work-In-Progress ("WIP") Report, which is available to the Court upon request. The WIP Report is prepared from expense vouchers, check records and other source materials and are an accurate recordation of the actual expenses and costs incurred. No "premium" or other additional charge has been added to these figures. The categorical breakdown of the un-reimbursed costs and expenses is as follows:

Advances to litigation fund	\$95,000.00
Copy costs	\$1,111.35
Postage/Courier Services	\$31.60
Travel expenses	\$10,969.94
Service of subpoenas	\$1,560.00
Computer research	\$72.90
<b>Total</b>	<b>\$108,745.79</b>

**Experience of ODR**

10. With respect to the standing of counsel, attached hereto as Exhibit "A" is a brief biography of the firm and attorneys who were involved in this case. Also, the firm has engaged in antitrust litigation for many years, including over nineteen years of litigating

Hatch-Waxman antitrust cases on behalf of direct purchaser class plaintiffs.

11. Also, in previous years ODR has engaged in non-class contingency fee litigation, including non-class antitrust litigation in the pharmaceutical industry. The firm's typical contingency fee arrangement in those matters, including in prior non-class antitrust cases involving the pharmaceutical market, was to be compensated at least one-third of any recovery, and usually more, for any case that goes to trial.

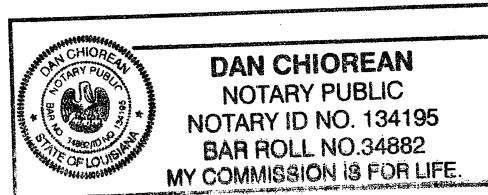
SO SWORN, this 27<sup>TH</sup> day of September, 2017, at New Orleans, Louisiana.

  
Stuart E. Des Roches, Esq.

Sworn to before me, this 27<sup>th</sup>  
day of September, 2017.



Notary Public



**ODOM & DES ROCHES, LLC**  
*A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS*  
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**650 POYDRAS STREET**  
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**Firm Resume**

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Odom & Des Roches, LLC, engages in multi-party litigation of complex civil matters throughout the United States. The firm's clients include local businesses, national and international companies, and private individuals.

The lawyers of Odom & Des Roches, LLC, have particular depth of experience in antitrust litigation, corporate litigation, and pharmaceutical industry litigation. The firm routinely handles complex class action cases and other matters both inside and outside the Multi-District Litigation context. The firm's partners have served as lead trial counsel in several national antitrust class cases that have gone to trial in various federal courts around the country.

The firm has been intimately involved in, among others, the following national antitrust class action and non-class action cases:

- *In re AndroGel Antitrust Litig.*, Civil Action No. 09-md-2084, N.D. Ga. (district court appointment to executive committee for Sherman Act Class Plaintiffs) (case pending).
- *In re Brand Name Prescription Drugs Antitrust Litig.*, Civil Action No. 94-C-897, E.D.N.Y. (representation of 3,800 non-class independent retail pharmacy operations) (private settlements reached with many defendants).
- *In re Buspirone Antitrust Litig.*, MDL Docket No. 1410, S.D.N.Y. (district court appointment to steering committee representing Sherman Act Class Plaintiffs) (district court-approved settlement of \$220,000,000).



- *In re Cardizem CD Antitrust Litig.*, MDL Docket No. 1278, E.D. Mich. (district court appointment to discovery committee representing Sherman Act Class Plaintiffs) (district court-approved settlement of \$110,000,000).
- *In re Hypodermic Direct Purchaser Antitrust Litig.*, Civil Action No. 05-1602, D.N.J. (district court appointment to executive committee representing Sherman Act Class Plaintiffs) (district court-approved settlement of \$45,000,000).
- *In re K-Dur Antitrust Litig.*, MDL Docket No. 1419, D.N.J. (district court appointment to executive committee representing Sherman Act Class Plaintiffs) (settlement of \$62,000,000 – district court approval pending).
- *In re Lamictal Direct Purchaser Antitrust Litig.*, Civil Action No. 2:12-cv-00995 D.N.J. (counsel for Sherman Act Class Plaintiffs) (case pending).
- *In re Neurontin Antitrust Litig.*, MDL Docket No. 1479, D.N.J. (counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$190,000,000).
- *In re Nexium (Esomeprazole) Antitrust Litig.*, Civil Action No. 1:12-md-02409, D. Mass. (counsel for Sherman Act Class Plaintiffs) (settlement with 1 defendant for \$24,000,000).
- *In re Relafen Antitrust Litig.*, Master File No. 01-12239, D. Mass. (counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$175,000,000).
- *In re Remeron Antitrust Litig.*, Civil Action No. 03-CV-0085, D.N.J. (counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$75,000,000).
- *In re: Suboxone (Buprenorphine Hydrochloride and Nalaxone) Antitrust Litig.*, MDL No. 2445, E.D. Pa. (counsel for Sherman Act Class Plaintiffs) (case pending).
- *In re Terazosin Hydrochloride Antitrust Litig.*, MDL Docket No. 1317, S.D. Fla. (counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$72,500,000).
- *In re TriCor Direct Purchaser Antitrust Litig.*, Civil Action No. 05-340, D. Del. (district court appointment to plaintiffs' executive committee representing Sherman Act Class Plaintiffs; served as lead trial counsel) (district court-approved settlement of \$250,000,000).
- *King Drug of Florence, Inc., et al. v. Cephalon, Inc., et al.*, Civil Action No. 2:06-cv-01797, E.D. Pa. (district court appointment to executive committee for Sherman Act Class Plaintiffs) (district court- approved settlement of \$512,000,000; case pending

against remaining defendants).

- *Meijer, Inc. et al. v. Abbott Laboratories*, Civil Action No. 4:07-cv-05985, N.D. Cal. (counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$52,000,000).
- *Natchitoches Parish Hospital Service District, et al. v. Tyco International (US), et al.*, Civil Action No. 05-12024, D. Mass. (counsel for Sherman Act Class Plaintiffs; served as lead trial counsel) (district court-approved settlement of \$32,500,000).

The core of the firm's philosophy and practice is its commitment and ability to try jury cases, and its lawyers structure their strategy from the outset of an engagement with an eye towards eventual appearances in the courtroom for motion practice and jury trials. It is the firm's philosophy and experience that being prepared for the rigors of motion practice and trial maximizes the opportunities for the client to obtain favorable results. In addition to its active jury trial practice, the firm has extensive appellate experience, and its senior partner argued and won the unanimous reversal of a federal circuit court of appeals before the United States Supreme Court. Odom & Des Roches, LLC, which is rated "AV" by Martindale-Hubbell, maintains offices in New Orleans, Louisiana and Hahira, Georgia. The firm is listed in Martindale-Hubbell's "Bar Register of Preeminent Lawyers".

## PARTNERS

**John Gregory Odom, PLC.** Mr. Odom was born in Hahira, Lowndes County, Georgia on November 29, 1951, and was admitted to the bar of the State of Georgia in 1978, the District of Columbia in 1982, and the State of Louisiana in 1983. He is also admitted to the bars of numerous United States District Courts and Courts of Appeals throughout the country, as well as the United States Supreme Court. He practiced with a leading Savannah firm for several years, and was a business litigation partner in the second-largest firm in Louisiana for seven years before leaving to form his own firm in 1990.

Mr. Odom was educated at Yale University (B.A., cum laude, 1973); The Queen's College, Oxford University (B.A. (hons.), 1975; M.A., 1981); and the University of Virginia School of Law (J.D., 1978). He is the author of "Recent Developments in Litigation Under the Racketeer Influenced and Corrupt Organizations Act and Federal Securities Law," Manual of Recent Developments in the Law, Louisiana State Bar Association, 1987-1990, and "Creative Applications of Civil RICO," 11 Am. J. Trial Adv. 245, Fall, 1987. His regular areas of practice include corporate litigation; healthcare industry litigation; securities litigation; RICO litigation; professional liability litigation; class action litigation; and antitrust litigation.

**Stuart E. Des Roches, LLC.** Mr. Des Roches was born in New Orleans, Louisiana on August 12, 1966, and was admitted to the bar for the State of Louisiana in 1992. He has

practiced continuously with Mr. Odom since 1992 and was made a partner in the firm in 1998. He is admitted to practice in numerous United States District Courts and Courts of Appeals throughout the country, as well as the United States Supreme Court. Mr. Des Roches was educated at the University of New Orleans (B.A., 1989), and Tulane University School of Law (J.D., 1992), and is a member of the New Orleans, Louisiana, and American Bar Associations, and the United States Supreme Court Historical Society.

Mr. Des Roches has routinely practiced antitrust law for the more than twenty years, and has particular experience in antitrust litigation relating to the Hatch-Waxman Act, the pharmaceutical industry, and medical devices. Mr. Des Roches served as the lead trial lawyer for the class of direct purchasers in *In re Tricor Direct Purchaser Antitrust Litigation* (D. Del.), which resulted in the largest settlement at that time of a Hatch-Waxman antitrust case (\$250,000,000) after commencement of trial. He also served as co-lead trial counsel with the firm's partner Mr. Kelly in *Natchitoches Parish Hospital Service District, et al. v. Tyco Healthcare, et al.* (D. Mass.), which settled for \$32,500,000 after three weeks of trial and on the eve of closing arguments. He has also been involved in various other litigation matters, including numerous trials, in the areas of general business and accountant's liability defense.

**Andrew W. Kelly.** Mr. Kelly was born in Bellefonte, Pennsylvania on December 6, 1966, and was admitted to the bar for the States of California and Louisiana in 1994. He is admitted to practice in the United States District Courts for the Eastern, Middle, and Western Districts of Louisiana, and the Southern District of California; and the United States Court of Appeals for the Fifth Circuit. Mr. Kelly was educated at the University of California at Berkeley (B.A., 1988), and the University of San Diego School of Law (J.D., 1994). He served as law clerk to the Honorable John Minor Wisdom, of the United States Court of Appeals for the Fifth Circuit. His regular areas of practice include business litigation; class action litigation; and antitrust litigation. Along with Mr. Des Roches, Mr. Kelly served as co-lead trial counsel for the class of direct purchasers in *Natchitoches Parish Hospital Service District, et al. v. Tyco Healthcare, et al.* (\$32,500,000 settlement three weeks into trial). He is also available for counseling on criminal defense matters.

**Chris Letter.** Mr. Letter was born in Philadelphia, Pennsylvania on August 30, 1974. He earned a J.D. from Loyola University of New Orleans School of Law in 2007 and received a Bachelor of Arts degree in history from the University of New Orleans in 1998. Mr. Letter is admitted to practice in the Louisiana Supreme Court and the several courts of the State of Louisiana. He is also admitted to practice in the United States District Courts in Louisiana, and the Fifth Circuit Court of Appeals. He actively participates in the firm's antitrust litigation practice.

#### ASSOCIATES

**Annie M. Schmidt.** Ms. Schmidt was born in New Orleans, Louisiana on May 11, 1985. She earned a J.D. from Loyola University School of Law in 2010, and received a Bachelor of Arts degree from Spring Hill College in 2007. Ms. Schmidt is admitted to practice

before the Louisiana Supreme Court and the several courts of the State of Louisiana. She actively participates in the firm's antitrust litigation practice.

**Dan Chiorean.** Mr. Chiorean was born in Oradea, Romania in April 1980, and emigrated to the United States at the age of 11. He holds a Bachelor of Science in Industrial and Operations Engineering from The University of Michigan, where he was recognized on the Dean's List and University Honors List. Mr. Chiorean earned his *Juris Doctor* in May, 2012 from Tulane Law School, where he served on Moot Court Board. He joined Odom & Des Roches as an Associate in March, 2014 and is admitted to practice before the Louisiana Supreme Court and the several courts of the State of Louisiana, the United States District Court for the Eastern District of Louisiana, and the United States District Court for the Northern District of Georgia. Mr. Chiorean is a member of the Louisiana State Bar Association, the New Orleans Bar Association, and the Federal Bar Association.

**Christopher Stow-Serge.** Mr. Stow-Serge was born in Fort Lauderdale, Florida in February of 1985. He earned a Bachelor of Arts degree from Tulane University in 2007 and a J.D. from Tulane Law School in 2012, where he graduated *magna cum laude*. Mr. Stow-Serge is admitted to practice law in the state courts of Louisiana as well as the U.S. District Court for the Eastern District of Louisiana, the U.S. District Court for the Western District of Louisiana, and the U.S. Fifth Circuit Court of Appeals. He actively participates in the firm's antitrust litigation practice.

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