Exhibit A

UNITED STATES DISTRICT COURT

IN RE:	:	01-MD-1410
BUSPIRONE PATENT	:	April 11, 2003
	:	500 Pearl Street
	:	New York, New York

TRANSCRIPT OF CIVIL CAUSE FOR SETTLEMENT AND ATTORNEY'S FEES
BEFORE THE HONORABLE JOHN G. KOELTL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Bristol-Myers:	RICHARD STARK, ESQ. LEE BICKLEY, ESQ.
For Louisiana Wholesalers:	BRUCE GERSTEIN, ESQ. BRETT CEBULASH, ESQ.
For the Plaintiff States:	RICHARD SCHWARTZ, ESQ.
For Direct Purchaser Class:	RICHARD DRUBEL, ESQ. KIMBERLY SCHULTZ, ESQ. ERIC KRAMER, ESQ.
For the Defendants:	RICHARD STARK, ESQ.
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UNITED STATES DISTRICT COURT

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THE CLERK: In Re: Buspirone. All parties please state who they are for the record.

MR. STARK: Good afternoon, Your Honor. Richard Stark from Cravath, Swaine & Moore representing Bristol-Myers Squibb Company, and with me this afternoon is my associate Lee Bickley.

THE COURT: Good afternoon.

MR. GERSTEIN: Good afternoon, Your Honor. Bruce Gerstein of Garwin, Bronzaft, Gerstein & Fisher and I'm here together with my partner Brett Cebulash, and we represent Louisiana Wholesaler Drug Company, Inc. as class representative for the direct purchaser class.

MR. SCHWARTZ: Richard Schwartz, New York State Attorney General's Office on behalf of the plaintiff states. Good afternoon, Your Honor.

MR. DRUBEL: Good afternoon, Richard Drubel, Boise, Schiller & Flexner, co-lead counsel for the direct purchaser class, and with me today is my associate Kimberly Schultz.

MR. KRAMER: Good afternoon, Your Honor. My name is Eric Kramer for the steering committee for the direct purchaser class and also represent Louisiana Wholesaler.

THE COURT: Anyone else? All right. This is a hearing on the final approval of the settlement and the application for attorney's fees. So I'll

listen to the parties.

MR. GERSTEIN: Your Honor, again for the record, I'm Bruce Gerstein, Garwin, Bronzaft, Gerstein & Fisher. I together with Mr. Drubel, our co-lead counsel on behalf of the direct purchaser class, and I move this Court pursuant to Federal Rules of Civil Procedure 23(e) to approve this settlement as fair, reasonable and adequate.

For the record, we have previously provided to the Court a number of documents, including our motion, specifically with our memorandum of law supporting our application for this Court's approval of the settlement as fair, reasonable and adequate. We've also included therewith affidavits from the administrator who we retained who complied with this Court's order of January 31, 2003 which was at the preliminary approval hearing provided for notice to be provided to the class pursuant to a direct mailing which was on January 24, 2003 as well as publications on two occasions and the pink sheets which was on February 24, 2003 and March 3, 2003.

I believe the notice was sent out February 21, 2003, direct notice, and that's contained in our motion. We've also provided to this Court a joint affidavit by co-lead counsel detailing what we -- the services that we've rendered and the work that we performed in this matter and why we believe is the settlement is fair and reasonable as well as our application for attorney's fees, and we've also provided to

this Court our plan of allocation regarding how we propose that the funds shall be allocated to the various class members.

Your Honor, we divided up our argument into three parts. One is I'm going to handle the application for this Court's approval of the fairness. I have Mr. Kramer available to talk specifically as to the allocation plan and Mr. Drubel will be handling the fee request. Of course we'll all be available to answer any questions that the Court has.

Your Honor, the case law in a small thumbnail sketch really calls for various formulations on what to determine as to a fairness of a settlement, but in reality it comes down to a simple formulation and that is a way of -- the risks of future litigation versus the results obtained. Or, stated another way, is it likely that better results could be obtained with further litigation and at what cost. It's really looking or having this Court determine similarly what a private litigant would do in determining whether or not to accept this settlement. And there are three basic criteria to this settlement that we think really call for this Court to approve the settlement as fair, reasonable and adequate.

The first instance is the settlement amount. The settlement is for $220 million plus interest in an escrow fund which has been accruing, that against what is the potential damages suffered and there are

two basic criteria that we have. One is if measured during what we believe to be the full damage period, which would go out from the beginning of the class period, which is November 1997 through 2006, April 2006, which we believe the future sales are effective on certain purchases generic going forward, we've accomplished based on the work of our expert, Dr. Leitzinger, a settlement of 95 percent of that total damages. If the damages are measured just to the date of generic entry, which would be to the end of March 2001, the settlement is 157 percent of the damages suffered. Of course, there are arguments going both ways, but clearly we believe under any standard this settlement not only is a tremendous result based on the absolute magnitude of the dollars, but measured against the criteria which any litigant would be measuring and that is what's the potential recovery.

THE COURT: That's before the deduction for attorney's fees.

MR. GERSTEIN: Well, even if you take the deduction for attorney's fees, Your Honor --

THE COURT: Then it comes down to 65 percent or so.

MR. GERSTEIN: It depends on how you measure it. I'm sure Mr. Drubel will deal with this. But if it's measured at the time of generic entry, which is a strong argument, it's over 100 percent even after attorney's fees because the amount of damages to that point is about $140

million. So if you add up the additional it's even more at that point. I think that's a significant factor.

But besides the absolute amount and the fairness settlement, consider other factors which the courts look to, one of which is the response of the class members. We think this is particularly critical here. As this Court has recognized, this is a unique class. These are sophisticated businesses. The class, according to our understanding, is approximately 125 members of which three of them have a stake for about 90 percent of the overall sales and a significant part of the damages. There has not been one single objection. We have been in constant communication with the three largest class members. The settlement has been explained to them prior to the mailing of the notice as we told you at the preliminary approval. We sent separate correspondence to them and of course we reviewed in detail the specifics of the settlement. Nobody has objected to the settlement even though those entities were represented by their own counsel who was sophisticated and clearly have the ability to make an assessment and if they were unhappy clearly would have objected, which they didn't. Nobody objected.

In addition, as I've told you the last time, I had communications with counsel for Kaiser Health Plan who basically asked significant questions. They came to my office and asked questions regarding not only the analysis as to how we evaluate the settlement but also the allocation

and the allocation plan and spent considerable time doing that and they also support the settlement. Counsel happens to be in court with us as we speak. Not a single class member has --

THE COURT: Is Kaiser Health Plan one of the members of the class?

MR. GERSTEIN: Yes.

THE COURT: But not one of the big three?

MR. GERSTEIN: Right. Your Honor, it's important to note not a single member of the class has objected to the settlement and we think that that is a very critical factor to be considered by the Court particularly in this case.

Two is, besides no objection, the stage of the litigation is --

THE COURT: Well, before you leave the objectant. There are two opt outs.

MR. GERSTEIN: There's actually -- there are two opt outs. There's actually only one. One of the opt outs didn't have positive sales. We had no idea until we actually communicated with these people as to specifically whether or not everybody on the list that we had was actually a class member. There were numerous people who had products shipped who had greater returns or specifically didn't buy directly, et cetera, but there's actually one opt out who specifically has opted out and we have not been able to get in

touch with.

There's another opt out, Valley Drug Wholesaler, who is revoked. So there's that one opt out for -- I think they have sales of like $1 million over the entire period.

THE COURT: The one footnote indicated that at that time there were two opt outs for about a million. So the one opt out is still only about a million?

MR. GERSTEIN: Right. No, I think that there was -- I think one was more than --

[Pause in proceedings.]

MR. GERSTEIN: I think one was the $3 million. That was Valley. They revoked their opt out. One was for a million.

THE COURT: I thought that the papers -- that when you had submitted the papers and listed the opt outs I thought that you calculated as just about a million point five percent or something.

MR. GERSTEIN: I have to check that, Your Honor. I'm told that the entire amount --

[Pause in proceedings.]

MR. GERSTEIN: It's clearly a relatively small amount in the scheme of things, Your Honor, but I'm being told by Mr. Stark he believes it's around $230,000.00 for the one opt out.

THE COURT: Your motion at Page 12, Footnote 2 only two requests for exclusion total purchases of slightly over $1

million.

MR. GERSTEIN: The reason for that is, Your Honor, is --

THE COURT: Or .05.

MR. GERSTEIN: I understand now what the difference is. I can explain that. There is also the reference to what we consider an untimely opt out which was in addition to that. That was the Valley Drug. Valley Drug did not untimely opt out. We had thought that their opt out was untimely. Nonetheless, they opted back in. So this is still referring to the same two entities. One of them specifically had -- did not have positive purchases. It had basically greater returns than they had purchases. And the other one was that last entity, Bellamy. Our numbers seem to indicate that it's the same $1 million and Mr. Stark says that he thinks it's closer to $230,000.00. Whatever it is it's a relatively small amount.

THE COURT: Okay.

MR. GERSTEIN: But that explains -- the other disclosure happened to deal with the -- what we considered at the time an untimely opt out, but it doesn't matter because it's moot because Valley has opted back in.

THE COURT: Whether it's $230,000.00 or $1 million it's still an exceedingly small fraction of the direct Buspar purchases.

MR. GERSTEIN: That's correct, Your Honor.

In addition to considering the views of the class

members, which as I said I think are critical here, is the other factors that the courts typically look at is the stage of litigation. The lawyers who had negotiated the settlement, where they in the position to make an informed judgment in negotiating settlement. We think you have to make an assessment of what are the risks of future litigation versus how does the -- the numbers achieved relate to the damages that are out there and have to be proven, et cetera.

In this case, as we documented in our affidavit, there has been substantial, substantial, substantial work done before the settlement negotiations at risk in a very, very aggressive litigation posture. Specifically, we've documented the significant depositions that were taken. I think there were approximately thirty. The Court is aware of the extensive motion practice having decided a number of the matters yourself as well as Magistrate Judge Gorenstein who has decided numerous motions before him and I'm sure has also reported to the Court regarding the comment of counsel in those matters. So it's clear that counsel were in a strong position to be able to negotiate the settlement and I believe that as a result of the record obtained in this case it allowed us to press for the highest possible settlement possible.

As we emphasize in our papers, is that the direct purchaser class basically discovered and the Schein claim and developed it and prosecuted it and it clearly -- inure to the class' benefit which was allowing us to prosecute a claim for

damages that went from November '97 instead of a damage period that would have been starting in the year 2001, and that's rather significant -- or at least the end of 2000. That's rather significant and I think clearly inure to the benefit to the class and is reflected in the settlement.

As I said, the last factor is weighing all these matters specifically as to could a larger amount be achieved after litigation. It's our view that not only is it possible that a large amount wouldn't be achieved, but even if successful it's clear that there could be a challenge to our damage analysis, to our damage formulation, to the timing that we rely on for the damage period, et cetera, and we could have actually recovered a lot less.

Taking all that into account, we believe that the $220 million settlement is more than fair, reasonable and adequate and should be approved by the Court. Unless Your Honor has any specific questions for me, I'm going to conclude my presentation and basically if you have any questions regarding the allocation plan, I can hand that over to Mr. Kramer. If not, I will address whatever you'd like and then Mr. Drubel is prepared to speak to the fee.

THE COURT: No, fine. I'll listen to Mr. Kramer, sure.

MR. KRAMER: There are two documents that are relevant to the allocation plan. The first is the allocation plan that was submitted itself and the second is the

declaration that Dr. Leitzinger wrote and submitted. That addresses essentially two things, the aggregate for damages analysis and assumptions and then -- in calculation, and then the allocation plan itself. Dr. Leitzinger, who is a very experienced [inaudible] economist that has a lot of experience in complex litigation developed in conjunction with counsel in order to come up with a plan that would fairly and efficiently and accurately allocate damages to all claimants on a pro rated basis essentially based upon what their damages would be if calculated [inaudible].

The plan and Dr. Leitzinger, those two documents, specifically go into the damages model that Dr. Leitzinger used and employed in this case in the course of settlement discussions and that model was developed over a significant period of time. Dr. Leitzinger has been involved in several of these types of cases. So the model has been refined and developed over time and we have the benefit of this perfected model to use here in this case.

Dr. Leitzinger's affidavit not only discusses the model but then discusses the assumptions that he plugged into the model in order to come up with his aggregate damages analysis for this case. Then the declaration discusses the results of his computations from various different perspectives.

The model is designed to and does capture the total aggregate overcharged damages in the direct purchaser class.

Then with some modifications we propose to use that same model to allocate damages to individual claimants and class members.

I'd like to do here today what is most helpful to the Court. I can go through in some more detail and tell the Court and tell you and help you and help you to understand the models that we used, the assumptions that we employed and the calculation and computation that we did and then show how we modified that model to employ and use and propose an allocation plan. I can summarize that for you here. I can address any specific questions that the Court has.

THE COURT: I actually think I understand it but I'm happy to have you summarize it for me.

MR. KRAMER: That's what I'll do. I'll try to be brief. I'll first explain the aggregate damages calculation so the Court understands how we got to the $230 million number and then show how the allocation plan will be -- use the modified model in some of those assumptions in order to allocate damages to individual claimants.

THE COURT: Did you say 230?

MR. KRAMER: $230 million was the total number from November 1997 through April 2006. That was the total amount of damages throughout the entire damages period and that includes what we call the tail. It includes a period of damages that goes five years after, after generic entry. I think in Dr. Leitzinger's declaration he also gives another number. If you were to cut off damages at the end of last month so that

damages went from November 1997 through March 31, 2003, the total aggregate damages incurred as to that date would be $195 million. I think that -- since that point Dr. Leitzinger refined the analysis a little bit in numbers more like $200 million just so the Court is clear.

THE COURT: Because it's not the same as the total amount of the settlement. Yes?

MR. KRAMER: That is correct. The total amount of the settlement is $220 million and the total amount of damages throughout the entire class period is $230 million. If we were to cut off damages as of March 31st, as I said, the damages would be about $200 million.

THE COURT: Okay.

MR. KRAMER: The model, as I said, was developed not only by Dr. Leitzinger in conjunction with counsel but also involved Dr. Steven Scholermeyer who is one of the country's foremost experts in the field of pharmaceutical economics. The model draws upon governmental studies, including those of the Food and Drug Administration, and the Congressional Budget Office. The government has been substantially involved in trying to determine what the effects are in pharmaceutical markets of generic entry and then what the effects are of delaying or preventing that generic entry. The government has a significant involvement in trying to figure out what that is in conjunction with the Hatch-Waxman Act and other policy efforts to bring generic drugs onto the market. So there is --

the government has designed and developed a model to do that and our model is based in part on what the government has done.

There's also substantial published economic literature that the model is developed from. Dr. Leitzinger cites in a footnote two pieces. One by Vovowski and Vernon [Ph.] and another by Rosen and Berkowitz. Both of pieces address specifically the effects of delaying and preventing generic entry into markets that were formally dominated by a brand name drug. It looks specifically -- if the Court were to read the Rosen and Berkowitz study, it is almost a one-to-one correspondence between analysis done in that published economic literature and type of analysis that we did here. In fact, we refined it further than what's done in that public work. But I just want to give the Court an idea as to the detail and analysis and refinement that has gone into the model that we've used here. Finally --

THE COURT: The model has never been tested at trial I take it?

MR. KRAMER: That is correct, it has never been tested at trial though in past litigation it has been tested under cross-examination of Dr. Leitzinger, but it has not been tested at trial, that's correct.

That's why I think, Your Honor, I'm trying to explain -- trying to show some of the bona fides of the model. This is not something that was just devised out of thin air. It is something that is built upon published work by the

government, published studies by distinguished economists and thirdly, pharmaceutical company, internal documents and analyses. Pharmaceutical companies themselves, Bristol-Myers, generic companies have an interest in trying to determine what the effects on their own profits, sales, volumes, prices of generic entry or delaying generic entry. So, in this case we have seen a number of documents, internal industry -- pharmaceutical company documents which run through a similar type of analysis that we've employed here.

THE COURT: But part of your argument for the approval of the settlement is that the model is not so bullet proof that it would necessarily prevail at trial.

MR. KRAMER: I think what the argument actually is -- and that's true, but I think more specifically our argument is that some of the assumptions that we plugged into the model may not hold up at trial. For example, the five-year period after generic entry. That may be something that would not hold up at trial and other particular aspects of the assumptions that go into the model. I think the model itself would hold up at trial most likely. But I think where some of the real litigation risks might be is what the Court might say or what the jury might say in evaluating some of the assumptions that we plugged into the model because those are based on evidence we've gathered in this case. They're based on constructing a but for world which by its very nature includes a lot of uncertainty. Nobody knows precisely what would have happened

in a world in which there was no shine agreement. It involves hypothesizing about something that would have happened that didn't actually happen. So there are a lot of unknowns in putting that together.

THE COURT: BMS argued to me that -- on the class action motion that the big three would have done better, that they weren't harmed at all.

MR. KRAMER: Well, I think that is a significant factor. In fact, I think that is something that BMS would argue at trial. That is that big chunk -- I think one of their arguments would be that a large portion of the class did not suffer any damages at all. Now, we disagree obviously with that. We think the damages need to be measured as the overcharge and lost sales which was part of BMS' argument does not come into that, but obviously that's a risk. If that argument were to have prevailed at trial, damages would have been reduced to near zero or, in fact, damages would be negative because part of what BMS was arguing was that the big three not only did not -- was not damaged by delayed generic entry but that the big three actually profited by delayed generic entry. That was a big part of their argument.

So I think they could continue to make that argument at trial and at the very least it might have an effect on what a jury might do. So that's something to consider and that is our -- our model is based upon our view of what the overcharge damage is and how it should be measured and that is something

that has not been tested, you're right, and that is something that could have resulted in a pure victory at trial.

THE COURT: Go ahead.

MR. KRAMER: The model is essentially what's called a but for analysis. It compares a world, the actual world or as is world to a but for world, a hypothetical world that we must create using two different sources of information. We use actual volumes of prices that exist after generic entry, the model what would have happened had the generic entry early and then we use benchmarks, other drugs, other areas where there has been a certain type of generic entry and what happened in those particular markets in particular situations. We used the combination of those two things, benchmarks and actual data in order to evaluate what the total value is worth here.

I think I'll -- I think it's explained very well in the papers and I'll skip over for this moment, but Dr. Leitzinger in Paragraphs 8 through 17 of the declaration describes the three different damage elements that are separately calculated in the aggregate damages model and also would be separately calculated in the allocation plan. The brand, generic damages or substitution damages are the main form of damages, the brand brand damages and the generic generic damages, and move to some of the assumptions that we employed in -- plugged into the model for purposes of calculating what the total damages are here and then also for purposes of allocating those damages to class members.

The first assumption and probably the most important assumption is trying to determine what the hypothetical but for world would look like, when would generics enter in that world. What we did was we assumed that absent a Schein agreement, if there was no Schein agreement that Watson or predecessors to Watson would have entered the market on a license from Bristol-Myers Squibb. We assumed that both Watkins and Bristol-Myers would have had an incentive to engage in such a license agreement because it would allow them an alternative to continuing litigation which could have resulted in a validation of the patent and competition, more competition for both BMS and the Watson predecessors.

So a licensing agreement is a way that brand and generic companies often resolve patent disputes. It is an arguably a pro-competitive way to resolve disputes whereas a reverse payment like the Schein agreement is inarguably an anti-competitive way to resolve a patent dispute. So we modelled the world in which Watson would have been able after solving some production and other issues that it had with its product to come onto the market in December 1996.

The second part of the but for world then assumes that as of November 2000 the additional generics would have come on the market. It assumes that Bristol-Myers would not have engaged in investing the time, money and energy in developing and then listing a 365 patent if they already lost a significant share of the Buspirone market. By our calculation,

about 65 percent of the market by that time. So there never would have been a 365 patent. It would not have been listed and then the additional generics would come on the market as they actually did in March 2001. They'd come on five months earlier. So you have a licensing portion of this but for world and then what we've called the unfettered generic entry portion of the but for world.

So those are model -- the licensing portion, a model based on benchmarks of other license situations and then this unfettered generic entry portion of the but for world is a model based on the actual data. We did that because we had no -- there was no actual license. So we had to look elsewhere. We couldn't use the actual data reflecting an unlicensed world to model one-to-one the licensed world. It looked like in some of these benchmarks for that. We used three benchmarks and were able to triangulate those benchmarks and come up with what we think would have happened during that licensing period and then for the unfettered entry period we just shifted what actually happened back five months and then were able to create the but for world that way.

To describe the -- to just give some of the numbers I think Mr. Gerstein went through them. The aggregate calculation was a $230 million total through April 2006. The number was about $200 million through March 2003 and $140 million through March 2001. We point that out to the Court because there is a possibility, we don't think a likely

possibility, but certainly there's a risk at trial in going further that the Court might say that damages test, the time that generics actually were on the market are not the proper form of damages or a jury might conclude that. So we point out to the Court that the $140 million may be all that was possible as a result of carrying this case further. So, there's a risk there.

One thing that Mr. Gerstein pointed out was the additional benefit that the Schein agreement or litigating the Schein agreement and pushing that part of the case forward vis-a-vis merely looking at the 365 claim which was five months of delay as opposed to the Schein agreement which had years of delay. We did a calculation and if we had litigated merely based on the 365 claim alone the total damages would have been somewhere south of $85 million and that includes damages all the way through 2006. And another thing to point out about the 365 claim is that that provides much more heavily on damages after the period that generics were actually on the market. So if the Court or a jury were in the future to determine that those were not a valid form of damages that $85 million number would shrink to about $40 million.

So the direct purchaser class by discovering and prosecuting the Schein agreement added a substantial amount of value to this case over and above the value that was added by prosecuting the 365 claim.

The allocation plan is a modification of the

aggregate damages model. It calls for breaking up the damages, total damages net settlement amount that's available for class members into three pools according to the three forms of damages that are separately calculated under the model and then essentially breaks up the world into three different periods and evaluate what the individual claimant damages would have been in those periods that uses volumes, amount of purchases as a proxy for what -- for damages and asks that claimants put forward -- provides for the plan's administrator to purchase data and that can be used to determine what the actual damages of individual claimants are.

I can go into that in more detail, but I think it's described in detail in both the allocation plan and in Dr. Leitzinger's declaration. I could tell the Court that we're involved right now, and Dr. Leitzinger is specifically involved in allocating damages in the Cardizem case and a similar methodology is being used and we were able to --

THE COURT: I think that's what I -- go ahead.

MR. KRAMER: We were able to use our experience, some of the problems that we had allocating the damages there, not major problems, but issues with getting some of the data from the claimants, and so in Buspar here we narrowed the type and data that we're asking the class they wish to produce and we've learned from some of the -- not mistakes, but some of the issues and concerns that came up in terms of allocating the damages in the Cardizem case. So I think we can assure the

Court that we've learned from what we've done, had experience doing it, and I think we've gone above and beyond what is typically done in large class settlements where the allocation is turned over almost entirely to the settlement administrator and they're asked to follow a somewhat simple formula whereas here we are actually involving and paying Dr. Leitzinger and his staff of economists to compute damages for each individual claimant. I think we needed to do that because we wanted to use our model. We think it's the fairest most efficient and best way to allocate damages and it can't merely be done by a settlement administrator who wasn't involved in designing the model and executing the model. So that's what we've done here.

Ultimately, what the model does is allows us to distribute damages to class members based on their pro rata share of what their overcharges would be if we were to calculate their individual benefits.

THE COURT: This plan really requires that you wait until all of the potential claimants have submitted their claims, all of their information, you make all of the detailed calculations based on the allocation plan and then come up with what each of them get. It's a non-reversion plan. BMS has placed the money in escrow and it will be divided up among the class based on the complicated allocation plan. Is that the way in which it's being done in Cardizem also?

MR. KRAMER: Yes.

THE COURT: Other than Cardizem, is that being done

in other cases? It's different from an individual overcharge based on purchases or an individual difference if it were an alleged stock fraud case, for example.

MR. KRAMER: Yes, it is. It is different than that and that's why we decided that it was important to use -- to involve Dr. Leitzinger and his staff in the allocation process because they are the people who know the model, built the model and are doing it in the Cardizem case.

THE COURT: Other than Cardizem, is it being done in other cases?

MR. KRAMER: We hopefully will do it in other cases but we have not yet.

THE COURT: Is Cardizem the only kind of sort of cap non-reversionary total fund wait for everyone to put in their claims and then based on the allocation -- based upon the complicated allocution formula you decide how much each one -- each claimant will get?

MR. KRAMER: No, I don't think there's anything particularly unusual about non-reversionary plan that waits until all of the information is supplied and then a pro rated share of that -- if you're giving up pro rata shares that requires that you wait for all of the information and all the calculations. So that type of allocation is what is typically done in large complex anti-trust settlements. I think what is -- what we could have done here is what typically happens, which is there is some determination that the overcharge on the

product was ten percent and what the -- ten percent or fifteen percent and then break up among subcategories of the classes and then what the claimants do is submit their purchase data and depending upon their volume and their purchases that gets multiplied by ten percent and then a pro rata number is determined and that is distributed in that fashion.

So the only thing that is different here in Cardizem is that we're trying to be more fair and accurate to individual class members. I think that's in part because the class is of manageable size. This is not a class of thousands of mom and pop stores or hundreds of millions of claimants, individuals. This is a class of 124, 125 sophisticated businesses that have staffs with the ability to put things on computer and submit that into the claims administrator. So I think we designed a plan with a particular class in mind.

I can tell Your Honor that we have been involved, and I personally have been involved in the process of dealing with the allocation in the Cardizem case and I've talked to probably thirty or forty individuals class members about the types of data that we need to reassure them about the dates and other information. So we've been in contact with the same entities that are going to be putting in claims in this case.

THE COURT: The members of the Cardizem class are the direct purchasers in the Cardizem class?

MR. KRAMER: Precisely. There's not a one-to-one correlation between the class here and the class in Cardizem,

but it's very close. The only difference is that Bristol-Myers may have sold to a couple of different entities than dentists, pharmaceuticals sold Cardizem to, but the class of Cardizem is about 80 individual entities. The class here is about 125 individual entities and I would imagine that nearly all of those 80 Cardizem class members are in the -- certainly all of the significant substantial class members are the same, the same counsel and the same people involved in the allocation.

So unless Your Honor has any other questions or issues.

THE COURT: Who are -- if you can say, who are the counsel for the three major participants?

MR. KRAMER: The main counsel that we're dealing with for Cardinal Healthcare is a lawyer named Tom Long. He is with the firm of Baker & Hosteffor. The main counsel that we deal with in Makeser [Ph.] is a man -- a lawyer named Peter Houston from Latham & Watkins in San Francisco, and the counsel for Amerisource Bergen is Howard Scheer at McKenna & Ingersoll in Philadelphia, and we've been in constant contact with them throughout this litigation and the Cardizem litigation in explaining the settlement as Mr. Gerstein said and going through the allocation plan and working with them to try to make sure that they were satisfied with the result. Bruce was correct. They are extremely pleased with the result.

THE COURT: Okay.

MR. KRAMER: Thank you, Your Honor.

MR. DRUBEL: Good afternoon, Your Honor. Richard Drubel. I'd like to address for a minute or two the -- our application for attorney's fees and expenses in this case.

I think based upon what Your Honor has heard this afternoon and is reflected in our papers we believe this settlement is among the top tier of class action recoveries as measured against a percentage of recoverable damages. Your Honor addressed some of the different ways to measure this recovery. I think one of the most relevant ones is one Mr. Gerstein mentioned and Mr. Kramer alluded to in passing and that is the damages calculated by Mr. Leitzinger for the period that generic competition was kept off the market. This is, after all, the essence of this case is a denial, prevention of generic competition.

So the period of recoverable damages measured from November of 1997 through the time in which generic competition first came on the market at the end of March, I think it's March 28, 2001, is a very relevant time period. Now, I will hasten to say and -- I don't want Mr. Kramer to jump out of his chair at me. The damages beyond that time period we certainly have pled and we would argue for and we think we're entitled to, but it is -- I think it would be unrealistic not to recognize that the damages in the so-called tail period after generics come on the market may well be harder to get the jury to award or a court to allow than damages during the period which generics were kept off the market.

One juror or judge might very well ask, as I believe Your Honor did at our preliminary approval hearing, how do you explain how you get damages based upon denial of generic entry after generics had entered. So if one looks at this core damage period of November of 1997 through March of 2001, Dr. Leitzinger estimates that the damages for that period are $140,459,820.00. If you measure the settlement achieved in this case, $220 million in cash with no reversion to the defendants, that represents 156 percent of that -- of those recoverable damages during the period that generics were kept off the market. Net of the requested attorney fees and expenses the settlement fund is $146,920,542.00 which is still over 104 percent of these core overcharged damages.

In other words, class counsel, Your Honor, in this case were sufficiently successful that the entire attorney fee and expenses requested in this case can be paid out of the excess of the overcharge during this core period.

Now, I think there are not many class action recoveries, certainly not by way of settlement which can make that kind of a claim and that is perhaps one of the reasons why in this class, which is comprised of businesses -- we are not talking about widows and orphans here. We're talking about businesses several of which are very large sophisticated businesses. You heard some of the law firms that are representing the big three. They're very -- these folks can afford to and regularly employ lawyers. Not one of them has

objected to the attorney's fees.

Now, we addressed in our moving papers, Your Honor, the role of class counsel in this case and achieved as a result which was no accident. I mean we described that in detail in our fee affidavit, our joint affidavit which is Exhibit 1 of the fee petition. We believe that the settlement here was the result of hard work, creativity and skill of class counsel and was achieved despite the very skilled and determined efforts of one of the best corporate defense firms in the country sitting across the table from you right now, Cravath, Swaine & Moore representing -- defending BMS. It was achieved despite the fact -- despite the lack of any governmental prosecution or proceeding to prepare the way.

As we described in our affidavit, it was direct purchaser class counsel that independently discovered the secret illegal 1994 Schein agreement which opened this case up to a much larger case than had been envisioned when it was originally filed. The direct purchaser class counsel filed the first complaint alleging violations of Section 1 and 2 of the Sherman Act based upon the Schein agreement which was soon followed by others. The purchaser class counsel worked diligently to address both the complexity of the anti-trust patent and FDA law presented in this case which can be horrific. It's one of the, in fact, the complexity, the legal complexity involved in an intersection of patent, anti-trust and FDA law. I think it's one of the most difficult areas of

the law as well as mastering the substantial causation defenses presented by Bristol-Myers Squibb who respect to the Schein agreement certainly had a number of respectable arguments that, in fact, Schein wouldn't' have been able to come on the market, at least not when we said they would. Maybe not at all.

The result of what we believe is our hard work, preparation and skill is the $220 million cash settlement that's before you today. In light of the results obtained, we think, Your Honor, an award of fees and expenses of 33-1/3 percent of the settlement fund is fair and reasonable. The courts in this Circuit have awarded fees ranging between 15 percent and 50 percent of the settlement fund. That's noted in the Mailey [Ph.] case at 186 F.Supp. 370 that we cite in our brief. Last year, of course, this Court awarded 33-1/3 percent fee on a $58 million settlement in the Deutsche Bank case.

The Kirzweil [Ph.] case, another Southern District of New York case, awarded a fee of 30 percent on $123.8 million recovery. That case is also cited in our brief as well as other cases cited at Pages 15 and 16 of our brief.

Courts have awarded comparable percentage fees to what we are requesting on recoveries almost as large or in fact larger than ours. I would just draw to the Court's attention three of those. First, the Rite-Aid case out of the Eastern District of Pennsylvania cited in our brief in which the District Court awarded a 25 percent fee on $193 million recovery plus additional costs. In our case, of course, we are

asking for one-third of the settlement fund to cover both fees and expenses.

In the Vitamin case, Your Honor, a case cited out of the District of Columbia, it's a case that was not cited in our brief but should have been especially since my firm was co-lead counsel in that case and I would appreciate it if you wouldn't mention that to Mr. Boise. In that case, the District Court awarded us 34 percent of $359 million, and the cite on that case is 2001 U.S. District Lexis 25067.

Finally, the In re: Brand Name Prescription Drug litigation out of the Northern District of Illinois. It's a case in which the District Court awarded 25 percent fee on $696 million.

These percentages, the percent of 33-1/3 that we are seeking, Your Honor, are consistent with the studies cited in our brief by the Federal Judicial Center, a 1996 study which found that most of the awards were between 20 to 40 percent of the settlement. Also, the Mirror Study, shareholder class actions which they found the fee awards --

THE COURT: If I averaged out those percentages I would probably come closer to 30 than 33-1/3.

MR. DRUBEL: Well, I guess, Your Honor, it depends on how you weight them. Between 20 and 40 percent and 32 percent --

THE COURT: No, no. You gave me 25 percent on $193 million, 34 percent on $359 million and 25 percent on $696

million. I realize that there's a range. Whether you say it's between 15 and 50 or 20 and 40, there's a range.

MR. DRUBEL: Absolutely. There is a range, Your Honor, and I think what it comes down to in our case is we feel that given the extraordinary result compared to the -- measured against provable damages or recoverable damages given the statute of limitations that we have on us, that this -- that really this is just an extraordinary settlement and deserves an extraordinary fee.

I will also point out to Your Honor that the Rite-Aid Corp. as cited in our brief, 146 F.Supp 2d at 735, 736 mentions that on average, the average percentage fee in settlements between $100 and $200 million is 28.1 percent. We do not think this is an average settlement, Your Honor. We think it is a very much above average settlement.

The requested fee moreover in this case is consistent with what the market would pay for such a result in a comparable non-class case. We've cited a number of cases, Your Honor, in which the courts take that into consideration. There are, of course, Judge Posner, Judge Estabrook's opinion in Sinthroid [Ph.] and Continental. There's also the Mailey case in the Southern District of New York, and also Judge Sweet's opinion in the Lloyd's case all look at as one of the relevant factors what the market would bear -- would pay for a comparable result in a comparable case.

We have put forward to Your Honor evidence showing

that class counsel -- we've submitted affidavits from some of us attesting to the fact that they have made such contracts at 33-1/3, between 33-1/3 and 50 percent even in non-class classes for fees in comparable commercial litigation. I think that Your Honor can also take notice of the fact as we point out at Pages 18 and 19 of our brief that attorneys regularly contract for contingent fees between 30 and 40 percent in non-class commercial litigation.

Importantly also in this case, Your Honor, Exhibit 16 is an affidavit from the class representative client in this case in which -- Louisiana Wholesalers in which they attest to the fact that they would have been willing to enter into a one-third contingent fee contract in this case if the fee had not been set by the Court. They support, as do all the other class members that we're aware of, including all the large ones, they support our request for the fee in this case.

In terms of the Loadstar multiplier, Your Honor, the requested fee represents an 8.46 multiplier which is certainly within the range of multipliers --

THE COURT: Certainly at the high end.

MR. DRUBEL: It certainly is at the high end, Your Honor. We make no apologies for that. We think our settlement is in the high end. In fact, again, as measured against recoverable damages we think it's among the highest. Judge Sweet --

THE COURT: I'm sorry. You say your percentage

recovery is among the highest.

MR. DRUBEL: Yes.

THE COURT: You're not saying that your multiplier is among the highest.

MR. DRUBEL: No, Your Honor.

THE COURT: What does that work out to be for an hourly fee?

MR. DRUBEL: There are so many -- there are different hourly -- there are different hourly rates. We could divide the total by the total number of hours if Your Honor would like us to do that.

THE COURT: You must have done that.

MR. DRUBEL: We've not done that, Your Honor.

THE COURT: $73 million divided by 28,000 hours, isn't it?

MR. DRUBEL: We have 28,727 hours. It looks to be about $2,500.00.

Now, if we compare the multiplier here to some of the multipliers that have been approved including, for example, Judge Sweet in the Lloyds of America Trust Fund litigation, he cited a number of cases in which multipliers of eight or more have been awarded including the Cosgrow case, Your Honor, from the Southern District of New York at 759 F.Supp. 166, a 1991 case in which this Court approved a 8.74 multiplier for plaintiff's counsel.

The Rite-Aid case from the Eastern District of

Pennsylvania approved multipliers ranging from 4.5 to 8.5 in making its percentage fee award in that case, and in RJR Nabisco, another case from the Southern District of New York, the Court approved a percentage award over objections that the amount constituted a multiplier of 6.

So, in each of these cases, Cosgrow, Rite-Aid, we have a situation in which the multipliers in those cases approved by the Court are greater than what we have here.

We address, Your Honor, on Pages 22 and 23 of our brief the Golberger factors relating to the reasonableness of the fee, but as Goldberger notes the quality of representation is best measured by result. We think that the extraordinary result in this case, Your Honor, justifies the award of fee and expenses requested.

MR. GERSTEIN: Your Honor, one further point. We've also sought court approval for a request for the main plaintiff, an incentive award of $25,000.00. I just wanted to bring that to the attention of the Court. We specifically addressed cases on that point from Pages 40 to 41 of our brief and if you want I can address them, but I think it's something routine. The plaintiff here not only stepped forward, but was actively involved from the beginning of the case, was deposed and has clearly executed its role in supervising and doing its role as a class representative. We think that it's appropriate and we ask the Court to also approve that request.

THE COURT: All right. Thank you, Mr. Gerstein. Mr.

Stark.

MR. STARK: Your Honor, I have nothing to add really to what the three gentlemen preceding me said. We certainly commend the settlement with the Court's approval as being imminently fair and adequate and we have no objection to the fees requested.

THE COURT: All right. Does anyone else wish to be heard?

[No response.]

THE COURT: First of all, I'll approve the settlement as fair, reasonable and adequate. I have the proposed order and final judgment which makes the recitations with respect to the fair, reasonable and adequate nature of the settlement as well as the adequacy of the notice that's been submitted and circulated, and all of that is plainly true. Measured against the standards for the approval of a class action settlement, this settlement is plainly fair, reasonable and adequate to the members of class. Applying the variety of factors, it is apparent that the settlement was arrived at in good faith after extensive arm's length negotiations.

It was arrived at after there had been significant discovery, both deposition discovery and documentary discovery, thirty depositions, a million pages of documentary discovery. It was arrived at when there were various issues that had yet to be resolved in discovery, including various attorney-client privilege issues which were being vigorously contested, but

it's plain that there was sufficient discovery in order to be able to arrive at a conclusion with respect to the adequacy and fair and reasonable nature of the settlement.

The lawyers in the case are experienced in this type of litigation. The lawyers on both sides have vigorously contested the litigation and all lawyers asked me to approve the settlement.

The settlement class is a relatively small class of about 125 people. There are no objections. There are many sophisticated members of the class with large stakes involved in the litigation. The fact that no one has objected to the settlement is an important factor in explaining the -- in supporting the fairness and reasonableness and adequacy of the settlement. The fact that there's only one opt out with only about .05 percent of the purchases of Buspar also underlines the fact that the members of the class wish to participate in this settlement even though by participating in the settlement they finally resolve any claims that they have relating to the subject matter of the litigation.

Applying the Grinnell standards this is a very complex litigation with numerous complex issues of fact and law. While the plaintiffs believe that they have a strong case, they similarly understand that there are significant risks of litigation which could substantially reduce their recovery even if they were able to succeed ultimately at trial. As I've noted, the reaction of the class to the settlement

certainly supports the settlement. The stage of the proceedings supports the settlement because there has been sufficient discovery to allow the analysis of the settlement, but there remains a significant amount of work yet to be done in the case if the case were to go forward. There's expert discovery, which has not been completed in the case. There are issues relating to attorney-client privilege with respect to the documents. There would be substantial litigation with respect to dispositive motions. If the case survived dispositive motions, the case would go forward to extensive motions in limine, a joint pretrial order and what would be a lengthy trial.

So settling at this point saves the cost and expenses of the future litigation but at the same time can be based upon a more than adequate record.

With respect to the risks of establishing liability, there are risks involved in the case. There are significant legal issues involved and even though the Court has resolved some of the issues in the way that the Court believed was correct, those are issues which would still be subject to appeal.

With respect to the risks of establishing damages, damages depend upon various expert calculations and expert models and upon some assumptions which have certainly been questioned by BMS experts and whether the plaintiffs' damages models would eventually succeed would certainly be a risk,

which is also one of the risks of maintaining the action through trial although it is unlikely that there would be a decision that the class could not survive as a class through trial.

Another Grinnell factor is the ability of the defendant to withstand a greater judgment which is not a significant factor in this case given the amount of the settlement even though it's plain that the defendant could pay a higher judgment, or at least the papers do not dispute that.

Perhaps most importantly the reasonableness of the settlement against possible recovery and factoring in the risks of litigation the amount of the settlement both absolutely and judged against possible, the possible recovery in the case is very high. There's no question that this is a real settlement with a substantial amount of recovery for the class and that the various damages models suggest that it is a substantial percentage recovery for the class.

So taking all of the factors into account, there's no question that the settlement is fair, reasonable and adequate.

With respect to the issue of attorney's fees, the one-third percentage that is sought in this case satisfies the various criteria that are set out in the cases for approving a reasonable attorney's fee. I've looked at the calculations, studied the calculations, including the Loadstar calculations as a means of checking the percentage fee in terms of hours and rates that went into the Loadstar, and I'll come back to the

Loadstar in a moment.

The fee of one-third falls within the range of rates that have been approved in other class actions. Determining then whether the percentage fee is a reasonable fee in this case applying the traditional standards it's clear for the reasons that I already said in approving the settlement that this is a very large and complex litigation. There is always risk involved in the litigation. The fee that's being sought is a completely contingent fee. The case was taken on plainly on a contingent fee basis and that is entitled to greater weight than simply an hourly rate because the lawyers could have walked away having done substantial work with no recovery. This is not a case where the ground was substantially plowed before. While issues were raised with respect to the 365 patent, they remained to be litigated and there were substantial issues which had to be decided in this case with respect to whether there could be recovery over the allegations relating to the 365 patent, and those were issues which had not even -- have not been tested on appeal.

The Schein agreement was developed -- the arguments with respect to the Schein agreement and recovery with respect to the Schein agreement were developed completely in this case so that the attorneys were able to establish a basis for recovery which benefitted the class. The quality of representation was very high. The case was vigorously litigated on both sides and the quality of the lawyers in the

case was excellent.

The requested award in relationship to the settlement, the plaintiff's counsel are correct that the settlement is a very good settlement for the class. It is a high percentage of possible recovery for the class and the percentage fee is within the range of reasonableness for other contingent fees. There is certainly a public policy favoring the pursuit of anti-trust litigation on the part of consumers.

Looking at the Loadstar as a check on the one-third requested contingent fee suggests that this fee is at the high end because the relationship between the Loadstar and the fee indicates a multiplier of 8.46 and plainly results in a very -- in a high hourly rate. That is mitigated to some degree in the case in my view because the case has settled before a substantial amount of additional work has been done which would have to be done if the case went forward to complete discovery, substantive, motions, pretrial preparations and trial, to say nothing of appeal.

During all of that period the number of hours spent would have significantly increased. So the Loadstar would have gone up and the multiplier would have gone down. Without any reason to believe that the ultimate recovery would have been any greater for the class and the use of the Loadstar has been criticized in some cases as not being a very useful measure because it encourages unproductive work and excessive hours without any assurance that the results will be better for the

class -- I've looked at the rates and the hours and the rates and the hours appear to be reasonable. So that the beginning Loadstar -- the beginning for the Loadstar calculation is a wholly reasonable beginning and given the stage in the litigation and the possibility that hours would have to be substantially increased without any assurance that there would be any additional money for the class leads to me think that the Loadstar is less useful here as a measure of reasonableness than the one-third contingent fee, which is what ultimately is being sought, one-third fee to include expenses.

Ultimately, one of the most important factors in my judgment as to the reasonableness of the fee is the reaction of the class. The defendant doesn't object to the fee, but of course the defendant has no interest in the size of the fee in this case because the settlement is a non-reversionary settlement which has been put up by the defendant and whether that amount of money goes to increase somewhat what the class gets or increase somewhat what the class' lawyers get is of no economic consequence to the defendant. But the members of the class have a significant interest in determining whether this is a reasonable fee because any of the members of the class could have come forward with objections to the size of the fee and raised any of the issues with respect to the Loadstar or the number of hours or the ultimate hourly rates for the lawyers.

The class in this case is a relatively small class, a

sophisticated class represented by sophisticated lawyers who with the best interests of their clients looked at the fee request and made a determination not to object to the fee request even though had there been an objection to the fee request and the Court had to decide that request that amount of money could have only benefitted the class. But having looked at all of the factors that go into account for determining the reasonableness of a fee, the class decided not to raise any objections to the fee. So that is a very important factor in assessing the reasonableness of the fee sought in this case.

So one reason that I go through this is it's a matter of some concern that other fee requests in other cases get cited back without any differentiation for what went on in the fee applications in the individual cases. It makes a difference, for example, whether there is as plaintiff's counsel pointed out a class of very small consumers who may not have the incentive to and the wherewithal to be heard on the issue of fees. The nature of the class makes a difference. In Bucksbaum, which is also cited to me, there were sophisticated investors who also could have been heard on the nature of the fee. That cautions against simply looking at the amounts involved and the ranges involved in other cases in an undifferentiated case in a undifferentiated way.

So looking at all of the factors in this case that I've gone through at the end I will grant the fee request for a one-third contingent fee and expense and the $25,000.00

incentive payment for the individual plaintiff that was sought which is a wholly reasonable amount and perfectly consistent with other cases.

There are only -- I've gone over the proposed judgment. As I've said, I will -- unless anyone wants to be heard before I sign the order and final judgment. No.

I haven't heard anything from the states today. Just watching?

MR. SCHWARTZ: We're just monitoring the proceedings, Your Honor. Thank you.

THE COURT: All right. I've signed the order and final judgment. I will see that it's entered. If you choose to wait a moment, we would probably make a copy for you of what's been signed if you wish. Otherwise it will appear in the normal course.

Anything else? No. All right. Good evening all. It's good to see you all. Have a good weekend. Let my clerk know if you want a copy before you leave.

* * * * *

I certify that the foregoing is a court transcript from an electronic sound recording of the proceedings in the above-entitled matter.

Shari Riemer

Dated: 4/23/03