

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

| | | |
|---|---|-----------------------|
| IN RE TRICOR DIRECT PURCHASER ANTITRUST LITIGATION |) | |
| |) | CASE NO. 05-340 (SLR) |
| |) | |
| |) | (consolidated) |
| THIS DOCUMENT RELATES TO: |) | |
| |) | |
| <i>Louisiana Wholesale Drug Co., Inc. (05-340)</i> |) | |
| <i>Rochester Drug Co-Operative, Inc. (05-351)</i> |) | |
| <i>Meijer, Inc., et al. (05-358)</i> |) | |
| |) | |

**AFFIDAVIT OF ADAM M. STEINFELD IN SUPPORT
OF DIRECT PURCHASER CLASS PLAINTIFFS'
MOTION FOR AN AWARD OF ATTORNEYS' FEES, ET AL.**

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

Adam M. Steinfeld, being duly sworn, deposes and says:

1. I am an attorney at law of the State of New York, admitted *pro hac vice* in the above-captioned matter to practice before the United States District Court for the District of Delaware, and I am member of the firm Garwin, Gerstein & Fisher, LLP, Lead Counsel for the Direct Purchaser Class.

2. Attached hereto are true and accurate copies of the following:

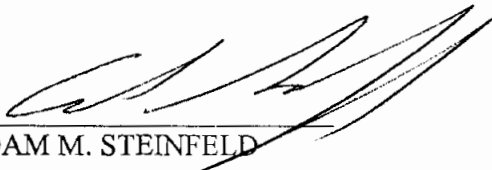
Exhibit 1: Affidavit of Gayle R. White, President and General Manager of Louisiana Wholesale Drug Co., Inc.

Exhibit 2: Declaration of Laurence F. Doud, III In Support of Motion for Final Approval of Settlement, Plan of Allocation, Award of Attorneys' Fees and Expenses, and Incentive Awards to Named Plaintiffs

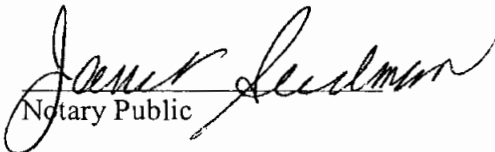
- Exhibit 3: Affidavit of Meijer, Inc. and Meijer Distribution, Inc.
- Exhibit 4: Letter from Steven E. Bizar, Esq., Counsel for AmerisourceBergen Corp. to the Honorable Sue L. Robinson
- Exhibit 5: Letter from Thomas L. Long, Esq., Counsel for Cardinal Health Inc. to the Honorable Sue L. Robinson
- Exhibit 6: Letter from Rick Meehan, President and COO of Optisource, LLC to the Honorable Sue L. Robinson
- Exhibit 7: Affidavit of Joseph T. Lukens, Esq.
- Exhibit 8: Affidavit of Richard A. Arnold, Esq.
- Exhibit 9: Declaration of Faye F. Hutsell

I certify under penalty of perjury that the forgoing is true and correct.

Executed: March 6, 2009


ADAM M. STEINFELD

Sworn to me this
6th day of March, 2009


Notary Public

JANET SEIDMAN
Notary Public State Of New York
No. 24-4705123
Qualified In Kings County
Commission Expires January 31, 20 / 0

EXHIBIT 1

delay marketing their less expensive generic versions of the drugs Cardizem CD and Hytrin. These agreements became known as “reverse payment” or “exclusion payment” agreements. This conduct appeared to LWD to be improper, and increased the costs of purchasing prescription drugs for LWD and others. LWD then contacted The Smith Foote Law firm, LLP (“Smith Foote”) and Odom & Des Roches, LLP, and asked them to investigate whether such conduct was legal.

4. Smith Foote and Odom & Des Roches, together with Garwin Gerstein & Fisher, LLP (“Garwin Gerstein”), investigated these matters and agreed to represent LWD in lawsuits against the manufacturers of brand and generic Cardizem CD and Hytrin. LWD brought these suits in 1998 both in its own name and on behalf of a class of other companies that were forced to purchase all of their Cardizem CD and Hytrin requirements at the higher brand prices, rather than switching most of their purchases of those drugs to less expensive AB-rated generic versions, as normally happens when such generics enter the market.
5. LWD retained Smith Foote, Odom & Des Roches, and Garwin Gerstein (hereinafter “LWD’s Counsel”) to bring these suits on its behalf and the classes of direct purchasers. These law firms agreed to advance all of the costs required to litigate these cases, and to seek reimbursement of such costs, as well as attorneys’ fees, from the court, but only if and when they obtained a recovery for the class. It is my understanding that, if no recovery was achieved, counsel would absorb all of the costs of litigating these cases and would receive no attorneys’ fees. It is also

my understanding and experience that the costs and attorneys' fees incurred in litigating these cases can be quite substantial, usually in the millions of dollars.

6. LWD believed (and still believes) that it was (and is) important to challenge anticompetitive conduct in the pharmaceutical industry, and to retain qualified counsel to challenge such conduct.
7. Because anticompetitive conduct in the pharmaceutical industry has continued over the years, LWD has brought additional lawsuits in this industry, challenging efforts to block or delay generic entry..
8. In early 2005, LWD brought suit in the *Tricor* case. Like the other antitrust cases, payment of attorneys' fees and reimbursement of expenses in this case was wholly contingent upon making a successful recovery for the class.
9. On behalf of LWD, I participated, as a class representative, in various aspects of this litigation, including review of the complaints; consulting with counsel regarding the mechanics of the pharmaceutical industry and the effects of defendants' conduct on purchasers of fenofibrate; producing relevant documents and data; answering interrogatories; preparing and sitting for my deposition; consulting with LWD's Counsel during the settlement negotiations; monitoring the progress of the litigation; and acting as liaison between LWD, its Board and LWD's Counsel in all aspects of this litigation, from inception to present day.
10. LWD is a sophisticated business enterprise, and understands the risks, time and expense associated with litigating complex pharmaceutical antitrust cases like this case. While I am not a lawyer, based on my knowledge and understanding of this

complex litigation, the \$250,000,000 settlement obtained by counsel is an excellent result, and on behalf of LWD, I fully support approval of this settlement. I was kept fully informed by counsel of the progress of the case and settlement negotiations, and I authorized counsel to agree to this settlement.

11. I also support, on behalf of LWD, counsel's request for attorneys' fees of one-third of the gross settlement fund and reimbursement of their expenses. I recognize that counsel expended an enormous amount of time and energy in litigating this case for the benefit of the class, with no guarantee that they would receive any fee.
12. As an on-going business matter LWD wants to incentivize class counsel to undertake these substantial risks on its behalf (and on behalf of the class) in order to address what we perceive to be anticompetitive conduct in the pharmaceutical industry that needlessly increases prices for purchasers. LWD understands that these cases are complex, expensive and time consuming, and often take many years to litigate.
13. LWD also knows that, while class counsel have obtained substantial recoveries on behalf of the class in other cases (*e.g.*, In re Cardizem Antitrust Litigation, In re Hytrin Antitrust Litigation, In re Buspirone Antitrust Litigation, In re Relafen Antitrust Litigation, In re Remeron Antitrust Litigation), and have been awarded fees typically of 33.3% of the gross settlement amount, they have also expended

enormous amounts of time, and millions of dollars in costs, in cases that have been unsuccessful to date (*e.g.*, In re Ciprofloxacin Antitrust Litigation, In re K-Dur Antitrust Litigation, and In re Tiazac Antitrust Litigation), including a case that went to trial on the same day that the Tricor trial started (In re Arava Antitrust Litigation). Based on these factors, and the factors described below, LWD supports class counsel's fee request of 33.3% of the gross settlement amount and reimbursement of their out of pocket expenses, which I understand were in excess of \$2.8 million as of the end of 2008. LWD believes that this request is reasonable and appropriate in this case.

14. The one-third fee request is also consistent with the fee arrangements LWD's shareholders have had with counsel in non-class antitrust cases involving prescription drug pricing. For example, LWD's shareholders (all of whom are or were pharmacists) entered into one-third contingency fee arrangements with Smith Foote and Odom & Des Roches in the In Re Brand Name Prescription Drug Antitrust Litigation to bring individual (non-class) antitrust lawsuits on their behalf. These contingency fee contracts with LWD's shareholders provide for a minimum one-third (33.3%) contingency fee, with a somewhat higher contingency fee in the event the litigation proceeds to trial. Also, LWD entered into a one-third contingency fee agreement with counsel to pursue its individual claims in the In re Hytrin Antitrust Litigation when it appeared the matter may proceed outside of the class context. In my experience, other attorneys in

commercial litigation contingency fee engagements routinely charge fees in the range of one-third or higher.

LOUISIANA WHOLESALE DRUG COMPANY, INC.

BY: Gayle R. White
GAYLE R. WHITE, PRESIDENT
AND GENERAL MANAGER

SWORN TO AND SUBSCRIBED before me, Notary Public, in Alexandria, Rapides Parish, Louisiana, on this 25TH day of February , 2009.

Mark L. Windham
NOTARY PUBLIC
RAPIDES PARISH, LOUISIANA

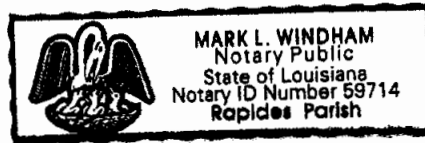


EXHIBIT 2

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

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|--|---|-----------------------|
| IN RE: TRICOR DIRECT PURCHASER ANTITRUST LITIGATION |) | |
| |) | C.A. No. 05-340 (SER) |
| |) | |
| |) | |
| THIS DOCUMENT RELATES TO: ALL ACTIONS |) | Hon. Sue E. Robinson |
| C.A. No. 05-340 (Louisiana Wholesale) |) | |
| C.A. No. 05-351 (Rochester Drug) |) | |
| C.A. No. 05-358 (Meijer, Inc., et al.) |) | |

DECLARATION OF LAURENCE F. DOUD, III
IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT, PLAN
OF ALLOCATION, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND
INCENTIVE AWARDS TO NAMED PLAINTIFFS

LAURENCE F. DOUD, III, subject to the penalties provided by 28 U.S.C. § 1746, does hereby declare as follows:

1. I am the chief executive officer and treasurer of Rochester Drug Co-Operative, Inc. ("RDC"), a named plaintiff and certified representative of the direct purchaser class in this consolidated antitrust class action. RDC is a pharmaceutical wholesale business located in Rochester, New York.
2. As a named plaintiff, RDC has actively participated in this action from its inception. Among other things, RDC has:
 - a. through various of its employees, collected and produced documents and voluminous transactional data regarding its purchases of Tricor and other drugs, in response to defendants' document requests;

b. through a corporate designee (me), answered questions at a deposition taken by defendants' attorneys in June of 2006 pursuant to Federal Rule of Civil Procedure 30(b)(6), for which I was ably prepared and represented by Peter Kohn of Berger & Montague, P.C.;

c. through me, testified on a variety of issues, both on direct and cross examination, at the jury trial of this matter in November of 2008, for which trial appearance I was prepared ably by Peter Kohn and Eric Cramer of Berger & Montague, P.C., and by other counsel for the direct purchaser class, including Stuart Des Roches of Odom & Des Roches, LLP, who conducted my direct examination at trial;


d. through me, kept apprised of the progress of this litigation by maintaining contact with and asking questions of our retained counsel, Berger & Montague, P.C.

3. I am familiar with and wholeheartedly support final approval of the settlement reached between the direct purchaser class and defendants in this case in the amount of \$250,000,000.00. RDC has been involved in several actions alleging that generic drug competition was wrongfully delayed or suppressed. Relative to those cases, this case seemed to me uniquely complicated, risky, and expensive. It was premised on a legal theory (relating to a company's "hopping" from one version of a product to another, while withdrawing the prior version) that I understand was new as applied to the pharmaceutical industry. Given the risks and the novelty of the theory of the lawsuit, the settlement in this matter is truly exceptional.

4. I am familiar with and also support approval of the proposed plan to allocate the net settlement fund among members of the direct purchaser class. I understand that class members will receive a share of the net settlement fund essentially in proportion to their purchases of Tricor during the relevant time period. I believe that is fair and efficient.

5. I am familiar with and also support the application for attorneys' fees and reimbursement of expenses by counsel for the direct purchaser class. I understand that counsel seeks a fee equal to one third of the gross settlement amount, plus expenses. If RDC were pursuing this matter individually, that is a fee arrangement that I would have, in my capacity as CEO of RDC, approved of with a private attorney. I also believe that Berger & Montague, P.C. and the other counsel for the direct purchaser class provided services of the highest quality. I had the opportunity to experience and assess the quality of those services first hand, in particular during the exceptionally-thorough preparation I received prior to my deposition and trial testimony.

I declare under penalty of perjury that the foregoing is true and correct.


LAURENCE F. DOUD, III

Dated: 2/20/09

EXHIBIT 3

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

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|--|--|
| IN RE TRICOR DIRECT PURCHASER ANTITRUST LITIGATION | Lead Case Civil Action No. 1:05cv00340 (SLR) (CONSOLIDATED) |
| THIS DOCUMENT RELATES TO: C.A. No. 05-340 (KAJ) C.A. No. 05-351 (KAJ) C.A. No. 05-358 (KAJ) | |

**AFFIDAVIT OF MEIJER, INC AND
MEIJER DISTRIBUTION, INC.**

STATE OF MICHIGAN)
)
COUNTY OF KENT) ss:

I, Chadwick C. Busk, being duly sworn, affirms and says:

1. I am the Assistant General Counsel for Meijer, Inc. and Meijer Distribution, Inc. (together "Meijer"), 2929 Walker Avenue, NW, Grand Rapids, MI 49544, a named Plaintiff and Class Representative in the Direct Purchaser Class action.

2. As Assistant General Counsel of Meijer, I am authorized to execute this Affidavit on behalf of Meijer.


3. On behalf of Meijer, a Class Representative in the Direct Purchaser litigation, I and others at Meijer participated in and were kept abreast of various aspects of this litigation, including settlement proceedings that resulted in a \$250 million cash settlement for Direct Purchaser plaintiffs which we believe is an excellent result. Meijer, therefore, strongly supports the request for approval of the settlement.

4. As a certified Class Representative, Meijer understands that the amount of attorneys' fees is to be determined and awarded by the Court. However, had Meijer individually retained counsel to represent Meijer in this complex litigation, it would have retained these same attorneys on an hourly or contingency fee arrangement and would have been responsible for out-of-pocket costs and expenses.

5. I understand that the attorneys representing the Direct Purchaser Class in this litigation intend to submit a request to the Court for an award of attorneys' fees of 33 1/3 % plus expenses, and Meijer supports this request. I further understand that the "Big Three" wholesalers, who directly purchased the majority of the Tricor at issue in this litigation, agree with the requested fee.

The foregoing is affirmed to be true and correct, under the penalty of perjury under the laws of the United States.

MEIJER, INC. and MEIJER DISTRIBUTION, INC.

BY: 
Chadwick C. Busk, Assistant General Counsel

SWORN TO BEFORE ME
On this the 27th day of February, 2009


Notary Public

PAT A. BIGOROWSKI
Notary Public, Kent County, Michigan
Acting in Kent County
My Commission Expires July 1, 2012

EXHIBIT 4

Steven E. Bizar
215 665 3826
steven.bizar@bipc.com

1835 Market Street
14th Floor
Philadelphia, PA 19103-2985
T 215 665 8700
F 215 665 8760
www.buchananingersoll.com

February 2, 2009

Honorable Sue L. Robinson
United States District Judge
United States District Court for the District of Delaware
844 N. King Street
Wilmington, DE 19801

Re: *In re Tricor Direct Purchaser Antitrust Litigation, No. 05-340-SLR*

Dear Judge Robinson:

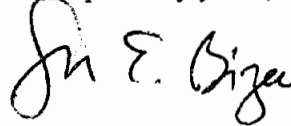
I write on behalf of my client, AmerisourceBergen Corporation ("ABC"), in support of the pending motion seeking final approval of the proposed settlement and fee award in the above-captioned litigation.

ABC, an absent class member in the current litigation, is one of the largest pharmaceutical distributors in the country. As a result, it is likely that our claim to recovery in this case will be one of the four largest claims made to any class member.

ABC is satisfied that the proposed settlement is fair and adequate, and that the proposed attorneys' fee award of one third the settlement amount is appropriate in this case. In addition to the value of the substantial settlement achieved on behalf of the class, this award is justified by the enormous amount of time and expense that class counsel put into prosecuting this complex and hard fought litigation over the course of more than three years.

For this reason, ABC asks the Court to approve the settlement and makes no objection to class counsel's application for attorneys' fees and reimbursement of costs.

Respectfully yours,



Steven E. Bizar
Counsel for AmerisourceBergen Corporation

SEB/ch

EXHIBIT 5

Baker Hostetler

Baker & Hostetler LLP

Capitol Square, Suite 2100
65 East State Street
Columbus, OH 43215-4260

T 614.228.1541
F 614.462.2616
www.bakerlaw.com

January 30, 2009

Honorable Sue L. Robinson
United States District Judge
United States District Court for the District of Delaware
844 N. King Street
Wilmington, Delaware 19801

Thomas L. Long
direct dial: 614.462.2626
tlong@bakerlaw.com

Re: *In re Tricor Direct Purchaser Antitrust Litigation*
C.A. No. 05-340-SLR (Consolidated)

Dear Judge Robinson:

I represent Cardinal Health, Inc. ("Cardinal Health") and write in connection with the motion seeking final approval of the proposed settlement and an award of attorneys' fees and expenses in the above-entitled direct purchaser class action. My client is an absent class member in this matter

Cardinal Health is involved in a variety of businesses in the health care industry including the distribution of brand name and generic prescription pharmaceuticals to customers that include hospitals, institutional care facilities, and retail outlets. Cardinal Health has revenues of billions of dollars per year, and is a Fortune 20 company. My consultation with class counsel leads me to believe that based on Cardinal Health's Tricor purchases it has one of the three largest claims in the above-captioned case.

The purpose of this letter is to offer the Court Cardinal Health's perspective on the proposed settlement and on the accompanying application for attorneys' fees and costs made by class counsel. Cardinal Health is of the view that the proposed settlement is excellent and should be finally approved, and has no objection to the application for attorneys' fees and costs made by class counsel.

By way of background, Cardinal Health has been a class member in several other Hatch-Waxman based antitrust cases in which pharmaceutical companies were alleged to have delayed or impeded market entry of generic pharmaceutical products to the detriment of a class of direct purchasers. Counsel for the direct purchaser class in those other cases are the same attorneys who have so ably represented the direct purchaser class here in

Tricor. Several of those cases have been successfully resolved.¹ We are also aware that these same counsel have aggressively pursued a number of these complex and expensive impeded generic entry cases on behalf of a similar direct purchaser class for many years without resolution.² In each of those past settled cases, as here, Cardinal Health has had one of the three largest percentages of the total claims in the case, and has chosen to remain in the class, support class certification, and have those claims prosecuted by these same class counsel.

Class counsel have, through me, fully informed Cardinal Health of the facts of the case, the legal hurdles and other risks involved in *Tricor*. The settlement in this case — \$250 million dollars — is an excellent result for the direct purchaser class in what was hard-fought, complex, and expensive litigation, representing to our knowledge the first-ever successful conclusion of any antitrust case in the pharmaceutical industry alleging that a defendant's "product-hopping" was anticompetitive. Simultaneously, this is the highest-ever recovery for a direct purchaser class in any Hatch Waxman pharmaceutical antitrust class action alleging impeded or delayed generic competition of which we are aware. That juxtaposition speaks to the excellent result the proposed settlement represents.

Consequently, Cardinal Health fully supports approval of the settlement, and has no objection to class counsel's requested fee of one third of the settlement fund (similar to the fee awarded in the prior cases in which we took part), or to reimbursement of class counsel's expenses. Class counsel have repeatedly shown themselves experienced and highly skilled in cases alleging delayed or impeded generic drug competition. They efficiently provided legal services of the highest quality to the direct purchaser class in this complex case which was not without substantial risk. The benefit conferred upon this large class of direct

¹See *In re Cardizem Antitrust Litig.*, MDL No. 1278 (E.D. Mich.) (\$110 million settlement in 2002); *In re Buspirone Patent & Antitrust Litig.*, MDL No. 1413 (S.D.N.Y.) (\$220 million settlement in 2003); *In re Relafen Antitrust Litig.*, Master File 01-12239-WGY (D. Mass.) (\$175 million settlement in 2004); *North Shore Hematology-Oncology Assoc., Inc. v. Bristol-Myers Squibb*, No. 04-248 (D.D.C.) (\$50 million settlement in 2004); *In re Remeron Direct Purchaser Antitrust Litig.*, 03-0085 (D.N.J.) (\$75 million settlement in 2005); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99-MDL-1317 (S.D. Fla.) (\$74 million settlement in 2005).

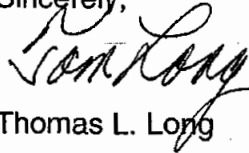
²*E.g.*, *In re K-Dur Antitrust Litig.*, No. 01-1652 (D.N.J.) (filed Apr. 4, 2001); *In re Nifedipine Antitrust Litig.*, No. 03-223 (D.D.C.) (filed Oct. 1, 2002). And, despite the efforts of counsel, and their willingness to take these cases to trial in order to achieve an equitable result for the class, not all have succeeded. See *Louisiana Wholesale Drug Co., Inc. v. Sanofi-Aventis*, No. 07-7343 (S.D.N.Y.) (verdict for defendant in 2008).

Honorable Sue L. Robinson
January 30, 2009
Page 3

purchasers, including my client, by the settlement negotiated by class counsel is substantial. Reaching that result required over 3½ years of continuous litigation, including a partial trial. The litigation was complicated by intellectual property issues, international discovery, and the need for expert testimony and consultation from many different disciplines. Class counsel did not have the benefit of any preceding governmental investigation to guide their litigation strategy. In my view, and based upon my experience, had this litigation not been conducted on a class action basis, a contingency fee contract between a private client and its counsel in a complex case like this that proceeded to trial would have provided for a one-third attorneys' fee or more.

For these reasons, Cardinal Health is supportive of the final approval of the proposed settlement and has no objection to class counsel's application for attorneys' fees and reimbursement of costs.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Long", written over a printed name.

Thomas L. Long

EXHIBIT 6

OptiSource LLC
18422 Bearpath Trail
Eden Prairie, MN 55347
952-937-0901

February 23, 2009

The Honorable Sue L. Robinson
United States District Court Judge
U.S.D.C., District of Delaware
844 N. King Street
Wilmington, Delaware 19801

**Re: *In Re Tricor Direct Purchaser Antitrust Litigation,*
No. 05-340-SLR (consolidated).**

Dear Judge Robinson:

I am writing in my capacity as President and Chief Operating Officer of OptiSource, LLC, a trade association comprised of 14 regional pharmaceutical wholesalers all of whom are class members in the above-captioned case.¹ The OptiSource members have requested that I express their unanimous position about the settlement of the Direct Purchaser Class Antitrust Litigation. Specifically, the OptiSource membership wishes to express strong support for approval of the \$250,000,000 settlement and for the requested fees (1/3 of the gross settlement amount) and expenses of the attorneys representing the Direct Purchaser Class.

The \$250,000,000 settlement represents a significant cash recovery in this case. The OptiSource membership has been kept apprised of the progress of the *Tricor* case through the active participation of Louisiana Wholesale Drug Co., Inc. and Rochester Drug Co-operative, Inc. as named class representatives. The membership -- as sophisticated business operations -- recognizes and understands the risks of litigation, particularly complex business litigation such as this case in the pharmaceutical arena, and therefore believes that the proposed settlement constitutes an outstanding recovery.

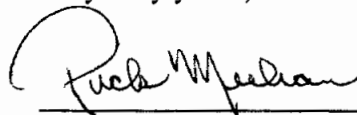
¹ OptiSource's members are Burlington Drug (Vermont), Capital Wholesale (Ohio), Dakota Drug (North Dakota), Dik Drug Company (Illinois), Drogueria Betances, Inc. (Puerto Rico), King Drug (South Carolina), Louisiana Wholesale Drug Company, Inc. (Louisiana), McQueary Bros. Drug Company (Missouri), Miami-Luken, Inc. (Ohio), Prescription Supply, Inc. (Ohio), Smith Drug Co. (South Carolina), Rochester Drug Co-operative, Inc. (New York), Valley Wholesale Drug Co. (California), and Value Drug Company (Pennsylvania).

Also, several of the law firms representing the Direct Purchaser Class, including Garwin Gerstein & Fisher, LLP, The Smith Foote Law Firm, LLP, Odom & Des Roches, LLP, and Berger & Montague, P.C. have represented the interests of all the OptiSource members in past antitrust class cases involving the Hatch-Waxman Act. These law firms, at their own expense, have worked diligently to challenge antitrust violations in the pharmaceutical prescription drug industry. The OptiSource membership is aware that these law firms have litigated numerous cases for the benefit of all direct purchasers of prescription drugs, been instrumental in recovering significant amounts of overcharges for the direct purchasers in this case and others.

As sophisticated business operations, the OptiSource members recognize and appreciate that class counsel have expended many thousands of hours and millions of dollars in pursuing the *Tricor* case through discovery, to trial, and now through the settlement process, without any guarantees of recovery. Moreover, the OptiSource members are well aware that these very same counsel have, in other Hatch-Waxman antitrust matters, expended and risked equally enormous amounts of time and money on behalf of the direct purchaser class, which includes the OptiSource members, for which they will never be compensated or will be compensated only many years from now. We believe that awarding Class Counsel their requested attorneys' fees of 1/3 of the gross settlement amount and expenses in this case is vital to encouraging them to continue to investigate and challenge perceived anticompetitive behavior in the pharmaceutical industry to the benefit of the entire Class.

It is for these reasons that OptiSource and its membership support approval of the \$250,000,000 settlement and the requested attorneys' fees and expenses.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rick Meehan", written over a horizontal line.

Rick Meehan
President and COO of OptiSource, LLC

EXHIBIT 7

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE TRICOR DIRECT PURCHASER
ANTITRUST LITIGATION

Civil Action No. 05-340 (KAJ)

THIS DOCUMENT RELATES TO:
ALL ACTIONS

Affidavit of Joseph T. Lukens, Esq.

1. I am a shareholder in the firm of Hangley Aronchick Segal & Pudlin ("Hangley"). Hangley represented direct purchaser individual plaintiffs CVS and Rite Aid in the above-captioned litigation. As counsel with the day-to-day responsibility for litigating this case on behalf of CVS and Rite Aid, I actively participated in all aspects of this case, and I am fully familiar with the facts set forth herein.

2. As the Court is aware, my clients' cases were coordinated with the other plaintiffs for pre-trial purposes, and consolidated for the liability trial. As a result, I worked closely with counsel for the Direct Purchaser Class throughout this litigation, from the pre-complaint development stage of the case through resolution of the case after the trial began. In particular, throughout this case, I worked closely, often on a daily basis, with Barry Taus and Adam Steinfeld of Garwin Gerstein & Fisher LLP (Lead Counsel for the Direct Purchaser Class), Stuart Des Roches of Odom & Des Roches; and Eric L. Cramer and Peter Kohn of Berger & Montague, P.C. In my opinion, Class Counsel did an outstanding job litigating this case effectively and efficiently on behalf of their clients and the Class.

3. For example, I worked closely with Class Counsel in the pre-complaint investigation of Defendants' conduct in connection with TriCor. Class Counsel were instrumental in honing the theories included in the complaints filed on behalf of the Direct Purchasers, and in developing the theories and strategies pursued by the Direct Purchasers throughout the litigation.

4. Subsequently, Class Counsel, together with myself, Steve Shadowen of my firm, and counsel for the Walgreen's Plaintiffs, took a laboring oar in researching and drafting the direct purchasers' response to Defendants' motion to dismiss, which motion attacked the very core of Plaintiffs' "product hopping" theory. These efforts, as well as similar efforts at the summary judgment stage, were instrumental in defining a viable cause of action that was groundbreaking in the pharmaceutical industry, and set the stage for Plaintiffs to get this case to trial and to successfully resolve it.

5. Moreover, during the discovery phase of the case, Class Counsel played a leading role in formulating the discovery requests served on Defendants and third parties; establishing a document database used collaboratively by all of the Direct Purchaser Plaintiffs; analyzing the million-plus documents in that database in order to identify key evidence to be used in depositions and at trial; developing and successfully arguing motions to compel which led to the production of key evidence supportive of the Direct Purchasers' claims; and skillfully taking depositions of key witnesses with knowledge of the key aspects of the case.

6. In particular, throughout the litigation, I worked very long hours with Class Counsel (including Barry Taus and Adam Steinfeld) in developing the core liability themes and evidence, in particular the evidence regarding whether the newer formulations of TriCor were

improvements over the original (200 mg) formulation. We worked collaboratively in researching, developing, understanding, and addressing the numerous clinical, technical and scientific issues relevant to this issue. The input of many of the Class Counsel, with varied areas of expertise, was extremely useful in dealing with the numerous complex factual and legal issues that arose throughout the course of the entire pre-trial process.

7. I also personally observed the excellent and sophisticated work done by Class Counsel (including Stuart Des Roches) in developing the case from a regulatory perspective. Mr. Des Roches exhibited a particular knowledge and expertise regarding issues relating to FDA regulations and the Hatch-Waxman Act. As a result, Mr. Des Roches took a leading role in discovery, briefing, and arguments regarding such regulatory issues. Mr. Des Roches's firm also took a leading role in litigating issues regarding causation, including whether and when the impeded generic competitors would have been able to come to market in the "but for" world absent Defendants' conduct, and the manufacturing capacity that they would have had in the "but for" world.

8. Likewise, the work of Class Counsel (in particular Eric Cramer and Peter Kohn of Berger & Montague) regarding the economic issues in the case -- including monopoly power/relevant market and the anti-competitive character of Defendants' conduct -- was exemplary. For instance, Mr. Cramer played a key role in developing the economic theories of liability. As a result, he was the lead examiner at the depositions of both of Defendants' economists, Dr. Richard Gilbert (liability and economic harm) and Margaret Guerin-Galvert (damages). Mr. Cramer, along with Mr. Kohn, were the principal drafters of the direct and indirect purchaser plaintiffs' joint brief in opposition to Defendants' motion for summary

judgment relating to monopoly power and relevant market. Mr. Cramer was one of two attorneys selected by all of the plaintiff groups to argue this motion before the Court.

9. Regarding experts, Class Counsel, in collaboration with myself and counsel for the Walgreen's Plaintiffs, worked diligently to identify and closely work with the various experts retained by the direct purchasers to support Plaintiffs' claims and refute Defendants' defenses. In particular, I personally observed the important role Class Counsel took in working with experts regarding cardiology (Dr. Arthur Schwarzbard); pharmacokinetics (Dr. Cheryl Zimmerman); pharmacodynamics (Dr. Eldon Nyhart); FDA regulations (Michael Hamrell); biostatistics (Dr. Phillip Lavin); patent issues (Dr. Edmund Elder and Jack Goldstein, Esq.); and pharmaceutical economics (Dr. Stephen Schondelmeyer). Class Counsel's work with these experts was thorough, sophisticated and critical to the Direct Purchasers' litigation efforts.

10. Class Counsel, in particular Dr. Russ Chorush of Heim Payne & Chorush, LLP, also took a leading role in addressing the patent issues in this case and was instrumental in dealing with many of the scientific issues in the case. Dr. Chorush, who is both a patent lawyer and a Ph.D. in chemistry, played an invaluable role in evaluating the underlying patent record; assessing the viability of the various potential patent claims; working with Direct Purchaser Plaintiffs' patent experts; deposing Defendants' patent experts; and briefing the patent related claims that the Direct Purchaser Plaintiffs pursued. Notably, Dr. Chorush took a lead role in drafting the Direct Purchasers Plaintiffs' brief in opposition to Defendants' motion for summary judgment relating to the sham litigation claims relating to the '726 patent on the capsule formulation of TriCor (claims that initially were plead only by the Direct Purchaser Plaintiffs, and which were the only patent related claims that withstood Defendants' summary judgment

motion). Because of his background, skills and knowledge, Dr. Chorush's work on the scientific issues was especially invaluable and resulted in an efficiency gain for all of the Direct Purchaser Plaintiffs.

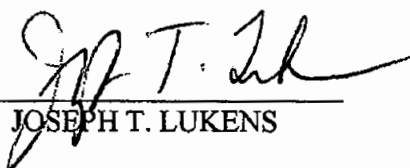
11. I also worked closely with Class Counsel in addressing one of the most significant logistical challenges that the Direct Purchasers faced in this case – coordinating pre-trial and trial strategies with the other plaintiff groups, in particular Teva and Impax. As I know the Court is aware, the lawyers representing Teva and Impax are excellent lawyers, and did excellent work in the case. Nevertheless, the fact that the Direct Purchasers were consolidated for trial of the liability phase of the case together with Teva and Impax required significant effort in coordinating and reconciling the sometimes differing interests of the different plaintiff groups, and the differing viewpoints of their lawyers. It was a significant challenge to ensure that all plaintiffs' interests, and the views of the lawyers representing those plaintiffs, were presented to the Court – both in pre-trial proceedings and at trial – in a persuasive and efficient way.

12. Coordinating trial preparation was an equally challenging task, especially in light of the number and complexity of the issues to be tried, and the need to efficiently present the case in the amount of trial time that the various plaintiff groups had to share. Class Counsel took a leading role in formulating the themes and strategies that were pursued at trial; coordinating with counsel for Teva and Impax regarding these themes and strategies; developing the opening statements presented at trial; and selecting and preparing the fact and expert witnesses for trial. Class Counsel was quite vigilant (and successful) in advocating for their views of how the case should be tried, the themes that should be emphasized, and the evidence that should be proffered to support these themes. As a result, Class Counsel played an integral role in conducting the

opening day of the trial, with Mr. Des Roches being the first to address the jury at trial, and Class Counsel would have played an integral role in the remainder of the trial if the case had not settled.

13. In sum, in my opinion, based on my personal observations and experience both in the prosecution of this case and in my fifteen years of practice litigating complex antitrust matters, Class Counsels' work in developing and litigating this case was of the highest caliber. They worked skillfully and efficiently, and for many long hours, to bring this case to a successful resolution.

The foregoing is declared true and correct under the penalty of perjury under the laws of the United States.



JOSEPH T. LUKENS

Sworn to this 4th day of
March, 2009.

EXHIBIT 8

3. During thirty-five years in litigation practice, I have been lead counsel for substantial purchaser plaintiffs in a number of major antitrust cases including *In re Infant Formula*, MDL No. 878, *In re Brand Name Prescription Drugs*, MDL No. 997, *In re Vitamins*, MDL No. 1285, *In re Cardizem CD*, MDL No. 1278, *In re Hytrin Terazosin*, MDL No. 1317, *In re Relafen*, Master File No. 01-12239-WGY, *In re Linerboard*, MDL No. 1261 and *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720. This is only a partial list of a number of complex federal court cases in which I have played a prominent role. It is my extensive experience in those matters that informs my statements regarding the high quality and focused dedication of the attorneys representing the direct purchaser class ("Class Counsel") in the TriCor Direct Purchaser Litigation.

4. During the preparation of the TriCor case, I worked very closely with Class Counsel. Together we planned, discovered, prepared for and conducted the trial in this action. In those efforts, I worked closely with Barry Taus of Garwin Gerstein & Fisher LLP, Stuart Des Roches of Odom & Des Roches, and Eric Cramer of Berger & Montague. This was an interesting, complicated and difficult case to prepare and prosecute. Messrs. Taus, Des Roches and Cramer were superb in identifying and developing the themes and strategies that the direct purchasers wished to employ at trial. In my opinion, Class Counsel did an outstanding job in this litigation, and achieved an excellent result. In both quality of work and results achieved, I would classify the work of these attorneys as exceptional.

5. Due to a very active litigation practice, my intense involvement in the case began in July 2008, when counsel for the various direct purchaser plaintiffs (the Walgreen's Plaintiffs, CVS/Rite Aid and the Direct Purchaser Class Plaintiffs) conducted a coordinated, two day jury focus

session in Wilmington. This jury focus session was carefully designed to test the key themes that the direct purchaser plaintiffs intended to press at trial, as well as the themes that we anticipated that defendants would press at trial. Class Counsel did an excellent job in presenting the direct purchasers' case to several groups of mock jurors regarding key issues in the case, including whether the new versions of TriCor were an improvement over the prior versions (Barry Taus), and whether defendants' "product hopping" was consistent with the purpose and spirit of the Hatch-Waxman Act (Stuart Des Roches).

6. Subsequently, Class Counsel continued to work diligently and effectively in preparing for trial, including conducting another coordinated jury focus session with the Walgreen's and CVS Plaintiffs in September 2008 to follow-up on critical issues identified by previous jury focus work. Eric Cramer and Peter Kohn, both from Berger & Montague, played an integral role, and did particularly excellent work, with regard to these issues.


7. Class Counsel's excellent work continued through the pre-trial conferences conducted by the Court on October 6, 2008 and October 18, 2008. Messrs. Taus, Des Roches and Cramer were integral to the Direct Purchasers' efforts to push for their vision of how the case should be presented at trial, both with the Court and the other plaintiff groups, especially Teva and Impax. Their work was an important part of plaintiffs' efforts to obtain favorable pre-trial rulings regarding issues such as the standards for evaluating claims of product improvement, how the jury should be instructed regarding the Hatch-Waxman Act, and whether monopoly power can be proven through direct evidence.

8. Class Counsel continued to play a leading role in trial preparation and development through the first day of trial, after which the direct purchasers (including my clients) settled. I

worked intimately with Class Counsel for the months leading up to the trial in reviewing the mountain of evidence developed in discovery, deciding what small portion of that evidence should be used in the limited amount of time the plaintiffs had to try the case, and which witnesses should be used to rebut defendants' claims.

9. Class Counsel also played an integral role in resolving the challenges and difficulties posed by conducting a consolidated trial with Teva/Impax, who had different interests, and lawyers with different views about what strategies to pursue and what evidence and themes to emphasize at trial. The Court's ruling that the Direct Purchasers and the Generic Plaintiffs try their cases together in a consolidated two week trial presented all plaintiffs counsel with considerable challenges of consolidating presentations, utilizing available trial time and merging occasionally antagonistic legal theories. All Plaintiffs' counsel acquitted themselves in a highly professional manner, but during these protracted and delicate negotiations among Plaintiffs' counsel, Class Counsel played a critical role in pulling the joint litigation plan together. The smooth and coordinated pretrial and trial presentation was due in no small part to the exceptional efforts of Class Counsel.

10. In summary, I have worked very closely with Class Counsel in this case. I believe that Class Counsel are highly experienced and capable litigators, particularly in the field of pharmaceutical antitrust. Based on my personal interaction with Class counsel, I believe they did an outstanding job in litigating this complex case, in developing the themes and strategies that all plaintiff groups would ultimately adopt at trial, and in achieving an excellent result on behalf of the Direct Purchaser Class.



Richard Alan Arnold

The foregoing instrument was acknowledged before me on this 6th day of March, 2009, by Richard Alan Arnold, who is personally known by me and who did take an oath.

Sandra M. Scott
Notary Public, State of Florida at Large

SANDRA M. SCOTT
[Print Name of Notary]

My Commission Expires:

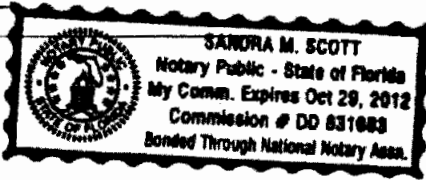


EXHIBIT 9

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

| | | |
|---------------------------------|---|-----------------------------|
| IN RE: TRICOR® DIRECT PURCHASER | : | Civil Action No. 05-340-SLR |
| ANTITRUST LITIGATION | : | (Consolidated) |
| | : | |
| | : | |
| | : | |

DECLARATION OF FAYE F. HUTSELL

I, Faye F. Hutsell, declare as follows:

1. I am a Project Manager (Account Executive) working in the Class Action & Claims Solutions division of EPIQ Systems, Inc. (hereinafter known as “Epiq”), the Administrator in the above-captioned case. I am fully familiar with the actions taken by Epiq as described below.

2. I submit this declaration to describe and provide proof of: (1) the preparation and mailing of the TRICOR® DIRECT PURCHASER Notice of Class Action Settlement.

3. Except as otherwise stated, I am fully familiar with, and have personal knowledge of, the matters stated in this declaration and am competent to testify about them if called upon to do so.

OVERVIEW OF EPIQ'S RESPONSIBILITIES IN THIS CASE

4. Epiq was retained by the Parties to serve as the Administrator in the Tricor Direct Purchaser Antitrust litigation.

5. Epiq's responsibilities included:

- (a) receiving and formatting data for mailing the Notice Package;
- (b) updating all recipient addresses;
- (c) causing the Notice Package to be mailed to potential Class Members;
- (d) receiving and processing objections to the settlement;

MAILING OF NOTICE

6. Epiq received an electronic file containing information on 522 potential Class Members. These records were sent through the National Change of Address (NCOA) database to ensure that the most current available addresses were captured and used for the notice mailing. The class list was also processed for duplicate elimination, and none were identified. Epiq then proceeded to enter the correct records into a specialized database.

7. On January 28, 2009, at the direction of Counsel, Epiq sent the Notice Package via U.S. First-Class Mail, postage prepaid, to 522 Class Members. A sample of the Notice Package sent to Class Members is attached as Exhibit A.

8. As of March 6, 2009, Epiq has received 31 Notice Packages returned as undeliverable by the United States Postal Service. These records were sent for more advanced address research via commercially available databases. Epiq has remailed 6 Notice Packages to new addresses obtained through this research.

9. Epiq designated a post office box (under the name of In re Tricor Direct Purchaser Antitrust Litigation, PO Box 3775, Portland, OR 97208-3775) to receive correspondence and objections to the settlement from potential Class Members. The post office box address was published in the Notice Package mailed to Class Members.

10. As of March 6, 2009, Epiq has received no objections and no requests to appear at the Fairness Hearing

11. I declare under penalty of perjury under the laws of the United States, and the state of Oregon that the foregoing is true and correct and that this declaration was executed on March 6, 2009 in Beaverton, Oregon.



R. Borges
3/6/09

FAYE F. HUTSELL
PROJECT MANAGER
EPIQ SYSTEMS INC.

In re Tricor Direct Purchaser Antitrust Litigation
P.O. Box 3775
Portland, OR 97208-3775

Name of Recipient
Address
Barcode

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

NOTICE OF CLASS ACTION SETTLEMENT

YOUR LEGAL RIGHTS MIGHT BE AFFECTED BY THIS SETTLEMENT
IF YOU PURCHASED TRICOR® DIRECTLY FROM ABBOTT LABORATORIES

A federal court authorized this notice. It is not a solicitation from a lawyer.

- You may have recently received a notice alerting you to the existence of a Class Action Lawsuit (the "Lawsuit") brought by Direct Purchasers of Tricor® against Abbott Laboratories ("Abbott") and Fournier Industrie et Santé and Laboratoire Fournier S.A. (together, "Fournier") (collectively, "Defendants"), and giving you the opportunity to exclude yourself from the Lawsuit by taking action **before November 3, 2008**. The Action claims that Abbott and Fournier violated the federal antitrust laws in connection with their sale of Tricor®.
- This *additional notice* is to inform you that the Court has preliminarily approved a proposed settlement of the Lawsuit (the "Settlement") between Defendants and a Class that includes all entities that purchased Tricor® directly from Defendants at any time between April 9, 2002 and August 18, 2008 except for certain entities that excluded themselves from the Class by **November 3, 2008**. (See answer to Question 7 below for a list of those excluded entities). The Settlement will provide for payment of \$250 million (two-hundred and fifty million dollars) into an escrow account (the "Settlement Fund"), will also provide for allocation of the net Settlement Fund to the members of the Class, and will provide for compensation of Class Counsel for expenses and attorneys' fees out of the Settlement Fund as approved by the Court.
- The Court has scheduled a hearing on final approval of the Settlement, the plan for allocating the Settlement Fund to members of the Class (summarized in question 8 below), and Class Counsel's request for reimbursement of costs and for attorneys' fees out of the Settlement Fund. The hearing, before United States Judge Sue L. Robinson, has been scheduled for April 23, 2009 at 3:30 p.m. Eastern time, at the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Courtroom 6B, Wilmington, Delaware 19801.
- This Notice contains summary information with respect to the Settlement. The terms and conditions of the Settlement are set forth in a Settlement Agreement, dated January 6, 2009 (the "Settlement Agreement"). A complete copy of the Settlement Agreement is available through any of the methods listed in response to Question No. 21 below.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY.

IF YOU ARE A CLASS MEMBER TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT | |
|---|---|
| YOU CAN DO NOTHING. NO ACTION IS NECESSARY NOW TO RECEIVE PAYMENT. | If the Settlement is approved by the Court and you are a Class Member, you will not need to do anything right now to receive a payment. In a few months, a claim form will be mailed to all Class Members setting out each Class Member's recovery from the Settlement Fund. The portion, if any, of the Settlement Fund to be allocated to you will be calculated on a <i>pro rata</i> basis based on your purchases of Tricor® during the Class Period as part of the implementation of the Settlement. To receive your share, you will need to sign and return the claim form as directed. |
| OBJECT | If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you do not approve of the Settlement. |
| GO TO A HEARING | If you have submitted a written objection to the Settlement, you may (but do not have to) attend the Court hearing about the Settlement and present your objection to the Court. You may attend the hearing even if you do not file a written objection, but you will only be allowed to speak at the hearing if you file written comments in advance of the hearing. |

- These rights and options - and the deadlines to exercise them - are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement.

SUMMARY OF SETTLEMENT

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

Pages 4-7

1. Why did I get this notice?
2. What is this lawsuit about?
3. What is a class action?
4. Why is this lawsuit a class action?
5. What has happened in the case so far?
6. Why is there a Settlement?
7. How do I know whether I am part of the Settlement?

THE SETTLEMENT BENEFITS – WHAT YOU GET

Pages 7-9

8. What does the Settlement provide?
9. How much will my payment be?
10. How can I get a payment?
11. When would I get my payment?
12. Can I get out of the Settlement?

THE LAWYERS REPRESENTING YOU

Pages 9-10

13. Do I have a lawyer in this case?
14. Should I get my own lawyer?
15. How will the lawyers be paid?

THE COURT'S FAIRNESS HEARING

Pages 10-11

16. When and where will the Court decide whether to approve the Settlement?
17. How do I tell the Court that I do not like the Settlement?
18. Do I have to come to the hearing?
19. May I speak at the hearing?

IF YOU DO NOTHING

Page 12

20. What happens if I do nothing at all?

GETTING MORE INFORMATION

Page 12

21. How do I get more information?

SUMMARY OF SETTLEMENT

A Settlement Fund consisting of \$250 million in cash, plus interest, is being established in this case. The net cash amount in the Settlement Fund, after payment of any taxes, expenses, Court approved attorneys' fees and costs, and any incentive awards to the named Direct Purchaser Plaintiffs who served as class representatives in this case, will be allocated among Class Members pro rata, according to a Plan of Allocation, approval of which will simultaneously be sought from the Court as part of the Settlement.

As with any litigated case, Plaintiffs would face an uncertain outcome if this Lawsuit were to continue against the Defendants. Continued litigation could result in a judgment or verdict greater or less than the recovery under the Settlement Agreement, or in no recovery at all.

Throughout this case, the Plaintiffs and the Defendants have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the Plaintiffs were to prevail at trial. The Defendants have denied and continue to deny the claims and contentions alleged by the Plaintiffs, that they are liable at all to the Class, or that the Class has suffered any damages for which the Defendants could be legally responsible. Nevertheless, the Defendants have taken into account the uncertainty and risks inherent in any litigation, particularly in a complex case such as this, and have concluded that it is desirable that the Lawsuit be fully and finally settled as to them on the terms and conditions set forth in the Settlement Agreement.

BASIC INFORMATION

1. Why did I get this notice?

You received this notice because you may have purchased Tricor® directly from Abbott between April 9, 2002 and August 18, 2008.

You may have previously received an earlier notice that explained that the Court had allowed, or "certified," a class action lawsuit in this case. That earlier notice explained the basis for the Lawsuit and the legal rights and options that you could exercise before the Court holds a trial. It also gave you an opportunity to exclude yourself, or "opt out" of the Lawsuit by mailing an exclusion notice by November 3, 2008 to *In re Tricor Direct Purchaser Antitrust Litigation*, P.O. Box 3775, Portland, OR 97208-3775.

You have received this current notice because, as a potential member of the Class certified by the Court, you have a right to know about the Settlement, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the net amount of the Settlement Fund will be allocated among Class Members according to a Court-approved Plan of Allocation (summarized below in question 8). This notice describes the Lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is this lawsuit about?

As explained in the previous notice that was sent to you, this Lawsuit claims that Defendants violated federal antitrust laws with respect to the sale of the prescription drug Tricor®. The active ingredient in Tricor® is fenofibrate. The Lawsuit claims that Defendants impeded competition from less-expensive generic versions of Tricor® by taking various actions, including asserting allegedly meritless lawsuits, introducing reformulated products, and persuading physicians to write prescriptions for the reformulated products prior to the introduction of generic fenofibrate products, AB-rated to the prior formulations. The Lawsuit claims that by engaging in this conduct, Defendants were able to maintain a Tricor® monopoly improperly, causing direct purchasers of Tricor to pay artificially inflated prices for fenofibrate products.

Abbott and Fournier (the Defendants) continue to deny that they did anything wrong and say that any conduct they engaged in was reasonable and based upon independent, legitimate business and economic justifications, without the purpose or effect of injuring competition. Defendants also say that their actions have had pro-competitive effects that benefited competition and patients. In addition, Defendants claim that they do not have a monopoly, that Plaintiffs always had the option of choosing generic fenofibrate products, and that state regulations, not Defendants' conduct, were the reason why Plaintiffs did not purchase more generic fenofibrate products.

The Lawsuit asks the Court to declare that Abbott's and Fournier's actions were anticompetitive in violation of the federal antitrust laws and award damages representing three times the amount that direct purchasers overpaid as a result of the allegedly illegal conduct, plus interest, attorneys' fees and costs.

The Court has not decided whether Abbott or Fournier violated any laws.

The Lawsuit is known as *In re Tricor Antitrust Litigation, Civ. No. 05-340 SLR (Consolidated)*. Judge Sue L. Robinson of the United States District Court for the District of Delaware is overseeing this class action.

3. What is a class action?

In a class action, one or more entities called "Class Representatives" sue on behalf of other entities with similar claims. In this case, there are three Class Representatives: Louisiana Wholesale Drug Co., Inc.; Rochester Drug Co-Operative, Inc.; and Meijer, Inc. and Meijer Distribution, Inc. (collectively, "Meijer"). The Class Representatives and the entities on whose behalf they have sued are together a "Class" or "Class Members." They are also called the Plaintiffs.

The companies that have been sued are called the Defendants. In this case, there are three Defendants: Abbott Laboratories ("Abbott") and Fournier Industrie et Santé and Laboratoire Fournier S.A. (the Fournier entities together are referred to as "Fournier").

In a class action lawsuit, one court resolves the issues for everyone in the Class - except for those who exclude themselves from the Class by a Court imposed deadline, a process which has already taken place in this case (the deadline for exclusion was November 3, 2008).

4. Why is this lawsuit a class action?

The Court has decided that this Lawsuit can be a class action because it found that the Lawsuit meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts.

Specifically, the Court has found that:

- There are likely 400 or more members of the Class with common legal or factual issues relating to the claims in this case.
- The claims of the Class Representatives are typical of the claims of the rest of the Class.
- The Class Representatives and the lawyers representing the Class will fairly and adequately protect the Class's interests.
- The common legal questions and facts are more important than questions affecting only individual members of the Class, and this Lawsuit will be more efficiently conducted as a class action than as multiple individual lawsuits.

5. What has happened in the case so far?

Extensive fact and expert discovery has been taken in this Lawsuit. Discovery has now closed. The Court denied Defendants' motion to dismiss on May 26, 2005, ruling that Plaintiffs had properly pled violations of §§ 1 and 2 of the Sherman Act and the Lawsuit was entitled to continue. On August 18, 2008, the Court denied Defendants' motion for summary judgment regarding relevant market definition. The Court also denied Defendants' motion for leave to file a motion for summary judgment on antitrust injury, ruling that the issue of antitrust injury was not suitable for a decision before trial. The Court also granted in part and denied in part Defendants' motion for summary judgment related to the propriety of their filing and prosecuting various patent litigations against potential manufacturers of generic versions of Tricor.

The Court set aside November 10th through 24th 2008 for a trial on all issues except damages and the legality of Defendants' various patent litigations. If Plaintiffs had succeeded at the trial, there would have been a separate trial to determine the amount of damages Defendants must pay, if any. A jury was selected and Plaintiffs began presenting their case on November 10th. Plaintiffs had called several witnesses to testify at the trial when the parties reached the Settlement. Because the parties reached a Settlement, the trial did not conclude.

6. Why is there a Settlement?

This Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel. After years of working on the case, and after thoroughly investigating the facts and legal issues involved, the Defendants agreed to pay a total of \$250 million to resolve the antitrust claims the Plaintiffs brought against them. The Court has not decided in favor of Plaintiffs or Defendants. The Class Representatives and the lawyers representing them and the Class believe that the \$250 million cash Settlement is fair and in the best interests of all Class Members. By agreeing to the Settlement, the parties will avoid the cost of completing the trial against each other and avoid the risks that they would lose the trial, risks involved with a subsequent trial to determine the amount of damages, if any, or subsequent appeals of either or both trials. As a result of the Settlement, Class Members will be guaranteed compensation without undue delay.

7. How do I know whether I am part of the Settlement?

The proceeds of this Settlement will be allocated only to members of the Class on a pro rata basis, and then only according to a Court-approved Plan of Allocation. You are a member of the Class if you fall within the Class definition approved by United States Judge Sue L. Robinson. In her Order certifying the Class in this case, Judge Robinson decided that all entities in the United States that purchased Tricor directly from Abbott at any time between April 9, 2002 and August 18, 2008 are Class Members. She excluded from the Class Defendants and their officers, directors, management, employees, subsidiaries and affiliates. Also excluded are Federal Government entities.

In the Settlement Agreement the parties also agreed that the claims of Ahold a/k/a American Sales Corp., Albertson's Inc.; CVS Pharmacy, Inc.; CVS Corporation; Eckerd Corporation; Maxi Drug, Inc. d/b/a Brooks Pharmacy; Hy-Vee, Inc.; Kroger Co.; Rite Aid Corporation; Rite Aid Hdqtrs. Corp.; Safeway, Inc. and Walgreens Co., which had excluded themselves from the Class during the Court prescribed opt-out period and filed separate claims on their own behalf, would not be compensated through the Settlement Fund. The parties further agreed to exclude the following additional entities that excluded themselves from the Class during the Court prescribed opt-out period: State of Oregon (all government entities); State of Washington (all government entities); Maryland State Employee and Retiree Health and Welfare Benefits Program and the Maryland Pharmacy Program; Connecticut Department of Social Services; State of New York (all government entities); State of Texas Health and Human Services Commission; Commonwealth of Massachusetts Executive Office of Health and Human Services Office of Medicaid (MassHealth); Pennsylvania Department of Public Works and Department of Aging; and Overman & Stevenson Pharmacists.

If you are not sure whether you are included, you may call or write to the lawyers in this case at the telephone numbers or addresses listed in question 13 below.

8. What does the Settlement provide?

A Settlement Fund consisting of \$250 million in cash, plus interest, has been established in this case. The net amount in the Settlement Fund, after payment of (and establishment of reserves for) any taxes and Court-approved costs, attorneys' fees, and expenses, including any Court-approved incentive awards to be paid to the Class Representatives, will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Generally, the Class Representatives and the Class Members will release the Defendants from all claims arising out of conduct that was or could have been asserted in the Lawsuit.

All costs, fees and expenses related to this litigation and the Settlement are to be paid solely out of the proceeds of the Settlement Fund. Class Counsel intend to seek, solely from the Settlement Fund, attorneys' fees totaling up to 33 1/3% of the Settlement Fund plus the reimbursement of reasonable costs and expenses incurred in the prosecution of the Lawsuit. Class Counsel's application for an award of attorneys' fees will be filed with the Court and made available for download and/or viewing on or before **March 9, 2009** on the following internet sites maintained by Class Counsel: www.garwingerstein.com, www.bergermontague.com, and www.kaplanfox.com. An application will also be made to the Court for an incentive award of \$75,000 each for the three Class Representatives, to compensate them for their participation in, and prosecution of, this case on behalf

of the Direct Purchaser Class, which has included, among other things, production of documents, providing written discovery responses, sitting for depositions, regular communication with counsel, and preparation for, and appearance at, the trial of the Lawsuit. Class Counsel will file their application for an award of attorneys' fees, reimbursement of costs and expenses, and for incentive awards for the Class Representatives with the Clerk of the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, Delaware 19801, on or before **March 9, 2009**. The application will be available for inspection during normal business hours at the office of the Clerk, in addition to, the websites noted above.

This is only a summary of the proposed Settlement and is qualified in its entirety by the terms of the actual Settlement Agreement. A copy of the Settlement Agreement, including the releases, is on public file with the United States District Court for the District of Delaware at the above address during normal business hours and is also available for download and/or viewing on the following internet sites maintained by Class Counsel: www.garwingerstein.com, www.bergermontague.com, and www.kaplanfox.com.

The Court has scheduled a Fairness Hearing in order to determine whether the proposed Settlement, request for attorneys' fees and costs, and Class Representative incentive awards should be finally approved. If the Court finally approves the Settlement, the Court will also establish a Plan of Allocation that will be followed to distribute the net Settlement Fund to Class Members, following the payment of attorneys' fees and expenses, costs, taxes, and any incentive awards for the Class Representatives.

9. How much will my payment be?

Your share of the net Settlement proceeds will depend on the amount of Tricor that you purchased from Abbott during the Class Period (April 9, 2002 to August 18, 2008). Those who purchased more Tricor will get more money than those who purchased less Tricor during that period. Each Class Member's proportionate, pro-rata, recovery will be determined using a Court-approved Plan of Allocation. You are not responsible for calculating the amount you may be entitled to receive under the Settlement. This calculation will be done using sales data provided by Defendants during the Lawsuit as part of the implementation of the Settlement.

Money from the Settlement will only be distributed to Class Members if the Court grants final approval of the Settlement.

10. How can I get a payment?

If the Settlement is approved by the Court, all Class Members will receive a Claim Form to request a pro rata share of the Settlement Fund. Class Members will be asked to verify the accuracy of the information in the Claim Form, and to sign and return the form according to the directions on the Form.

11. When would I get my payment?

Payment is conditioned on several matters, including the Court's approval of the Settlement and such approval being final and no longer subject to any appeals to any court. Upon satisfaction of various conditions, the net Settlement Fund will be allocated to Class Members on a pro rata basis pursuant to

the Plan of Allocation as soon as possible after final approval has been obtained for the Settlement. Any appeal of the final approval could take several years. Any accrued interest on the Settlement Fund will be included, pro rata, in the amount paid to the Class Members. The Settlement Agreement may be terminated on several grounds, including if the Court does not approve or materially modifies the Settlement. Should the Settlement Agreement be terminated, the Settlement will be terminated and the Lawsuit will proceed as if the Settlement had not been reached.

12. Can I get out of the Settlement?

All Class Members are bound by the result of the Settlement if it is finally approved by the Court. This case was, a short time ago (on August 18, 2008), certified by this Court as a class action under Federal Rule of Civil Procedure 23, because the Court determined the requirements of that rule was satisfied. Notification of the Court's determination was at the time mailed to Class Members and Class Members were afforded an opportunity to exclude themselves from the Class by November 3, 2008. If you previously excluded yourself from the Class by November 3, 2008, you are no longer a member of the Class. It is no longer possible for Class Members to exclude themselves from the Class. As a Class Member you will be bound by any judgments or orders that are entered by the Court in this case, including the Settlement, if it is finally approved by the Court. Although you can no longer opt out of the Lawsuit, you can object to the Settlement, or any part of it, and you may ask the Court not to approve it, using the procedure described below.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Judge Robinson previously decided that the lawyers listed below were qualified to represent you and all Class Members. Together the law firms are called "Class Counsel." They are experienced in handling similar cases against other companies. You will not be charged directly by any of these lawyers. The lawyers include:

Garwin Gerstein & Fisher, LLP
1501 Broadway, Suite 1416
New York, NY 10011
(212) 398-0055
www.garwingerstein.com

Berger & Montague, P.C.
1622 Locust Street
Philadelphia, PA 19103
(215) 875-3000
www.bergermontague.com

Odom & Des Roches, LLP
Poydras Center, Suite 2020
650 Poydras Street
New Orleans, LA 70130
(504)-522-0077
www.odrlaw.com

The Smith Foote Law Firm,
LLP
720 Murray Street
Post Office Box 1632
Alexandria, LA 71309
(318) 445-4480
www.smithfoote.com

Kaplan Fox & Kilsheimer LLP
850 Third Avenue, 14th Floor
New York, NY 10022
(212) 687-1980
www.kaplanfox.com

14. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you wish to do so, you may retain your own lawyer at your own expense.

15. How will the lawyers be paid?

If the Court approves the Settlement, the Court will be asked to approve a fee to Class Counsel and reimburse them for the costs and expenses they have paid in conducting the litigation solely out of the Settlement Fund. Class Counsel intend to seek, solely from the Settlement Fund, attorneys' fees of up to 33 1/3% of the gross Settlement Fund. In addition, Class Counsel intend to seek from the Settlement Fund reimbursement of reasonable costs and expenses incurred in the prosecution of this case. If the Court grants Class Counsel's requests, the fees and expenses would be deducted from the Settlement Fund, and thus no Class member will be asked to pay attorneys' fees or expenses out of pocket in connection with this Lawsuit.

THE COURT'S FAIRNESS HEARING

16. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on **April 23, 2009 at 3:30 p.m. Eastern time**, at the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Courtroom 6B, Wilmington, Delaware 19801. At this hearing, the Court will consider: (1) whether the Settlement is fair, reasonable and adequate; (2) the proposed Plan of Allocation for the Settlement Fund among Class Members; (3) Class Counsel's application for an award of attorneys' fees and disbursement of expenses and costs; and (4) the application for incentive awards for the Class Representatives. If there are objections, the Court will consider them. Judge Robinson will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement.

17. How do I tell the Court that I don't like the Settlement?

If you do not like the Settlement or any of its provisions, you may tell the Court that you object to the Settlement. Objecting is simply telling the Court that you do not like something about the Settlement. If you object, you can give reasons why you think the Court should not approve the Settlement, the attorneys' fee request, or any other aspect of the relief requested, and the Court will consider your views. To object, you must send a letter via first class U.S. mail saying that you object to the Settlement of *In re Tricor Antitrust Litigation, Civ. No. 05-340 SLR*. You must include in a prominent location the name of the case (*In re Tricor Antitrust Litigation*), the Case No. (*Civ. No. 05-340 SLR*) and the Judge's name (Hon. Sue L. Robinson). Be sure to include your name, address, telephone number, your signature and the reasons you object to the settlement. Mail the objection so that it is received **no later than March 23, 2009**, to *In re Tricor® Direct Purchaser Antitrust Litigation*, Clerk of the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, Delaware 19801. You must also send a copy of your objection to Class Counsel and to Counsel for Defendants, whose addresses are:

Bruce E. Gerstein, Esq.
Barry S. Taus, Esq.
Adam Steinfeld, Esq.
Garwin Gerstein & Fisher, LLP
1501 Broadway, Suite 1416
New York, NY 10011
(212) 398-0055
Lead Counsel for the Class

Jeffrey I. Weinberger, Esq.
Stuart N. Senator, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue
Los Angeles, CA 90071
(213) 683-9100
Attorneys for Defendant Abbott Laboratories

William Baer, Esq.
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
*Attorneys for Defendant Fournier
Industrie et Santé and Laboratories
Fournier S.A.*

18. Do I have to come to the hearing?

No. Class Counsel (the lawyers representing the Plaintiffs and the Class) will answer any questions that Judge Robinson may have. You are welcome to come to the hearing at your own expense. If you send a written objection, you do not have to come to the Court to talk about it. So long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but that is not necessary.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. Otherwise, you will not be allowed to speak at the Fairness Hearing. If you wish to speak at the Fairness Hearing, or you wish to have an attorney representing you at your own expense speak at the Fairness Hearing, you must mail a Notice of Intention to Appear to be received no later March 23, 2009 to the the Clerk of the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, Delaware 19801. Your Notice of Intent must include in a prominent location the name of the case (*In re Tricor Antitrust Litigation*), the Case No. (*Civ No. 05-340 SLR*) and the Judge's name (Hon. Sue L. Robinson). Be sure to include your name, address, telephone number, and your signature. You must also send a copy of your request to Class Counsel and to Counsel for Defendants, whose addresses are:

Bruce E. Gerstein, Esq.
Barry S. Taus, Esq.
Adam Steinfeld, Esq.
Garwin Gerstein & Fisher, LLP
1501 Broadway, Suite 1416
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Lead Counsel for the Class

Jeffrey I. Weinberger, Esq.
Stuart N. Senator, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue
Los Angeles, CA 90071
(213) 683-9100
Attorneys for Defendant Abbott Laboratories

William Baer, Esq.
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
*Attorneys for Defendant Fournier
Industrie et Santé and Laboratories
Fournier S.A.*

IF YOU DO NOTHING

20. What happens if I do nothing at all now?

If you are a Class Member and you do nothing, you will participate in the Settlement as described in this notice if the Settlement is approved. However, in the future, you will need to sign and return the Claim Form once it is sent to you.

GETTING MORE INFORMATION

21. How do I get more information?

This notice summarizes the proposed Settlement. The complete Settlement is set forth in the Settlement Agreement. You may obtain a copy of the Settlement Agreement or any other documents relating to the proposed Settlement (such as the motion seeking the Court's preliminary approval of the Settlement and the motion seeking payment to Class Counsel of attorneys' fees, costs, and expenses), in any one of the following ways:

1. By making a written request to the counsel listed in response to question 13;
2. By visiting the following internet sites maintained by Class Counsel: www.garwingerstein.com, www.bergermontague.com, and www.kaplanfox.com ;
3. By making a written request to the Claims Administrator at the following address: In re Tricor Direct Purchaser Antitrust Litigation, P.O. Box 3775, Portland, OR 97208-3775; or
4. By visiting in person the office of the Clerk of the United States District Court for the District of Delaware.

If your name or address needs to be corrected, you must send a correction, in writing, to the Claims Administrator at the following address: *In re Tricor Direct Purchaser Antitrust Litigation*, P.O. Box 3775, Portland, OR 97208-3775.

**PLEASE DO NOT WRITE OR CALL THE COURT
OR THE CLERK'S OFFICE FOR INFORMATION.**

DATE: January 28, 2009

BY ORDER OF THE COURT