

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUN 25 1997
NANCY D. ...
CLERK

STATE OF TEXAS, ex rel. §
Attorney General DAN MORALES, §
§
STATE OF ALABAMA, ex rel. §
Attorney General BILL PRYOR, §
§
STATE OF ALASKA, ex rel. §
Attorney General BRUCE M. BOTELHO, §
§
STATE OF ARIZONA, ex rel. §
Attorney General GRANT WOODS, §
§
STATE OF ARKANSAS, ex rel. §
Attorney General WINSTON BRYANT, §
§
STATE OF CALIFORNIA, ex rel. §
Attorney General DANIEL E. LUNDGREN, §
§
STATE OF COLORADO, ex rel. §
Attorney General GALE A. NORTON, §
§
STATE OF CONNECTICUT, ex rel. §
Attorney General RICHARD BLUMENTHAL, §
§
STATE OF DELAWARE, ex rel. §
Attorney General M. JANE BRADY, §
§
DISTRICT OF COLUMBIA, ex rel. §
Interim Corporation Counsel JO ANN ROBINSON, §
§
STATE OF GEORGIA, ex rel. §
Attorney General MICHAEL J. BOWERS, §
§
STATE OF HAWAII, ex rel. §
Attorney General MARGERY S. BRONSTER, §
§
STATE OF IDAHO, ex rel. §
Attorney General ALAN G. LANCE, §
§
STATE OF ILLINOIS, ex rel. §
Attorney General JIM RYAN, §

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CIVIL ACTION
NO. _____

SETTLEMENT AGREEMENT

STATE OF NEVADA, ex rel. §
Attorney General FRANKIE SUE DEL PAPA, §
§
STATE OF NEW HAMPSHIRE, ex rel. §
Attorney General JEFFREY R. HOWARD, §
§
STATE OF NEW MEXICO, ex rel. §
Attorney General TOM UDALL, §
§
STATE OF NEW YORK, ex rel. §
Attorney General DENNIS C. VACCO, §
§
STATE OF NORTH CAROLINA, ex rel. §
Attorney General MICHAEL F. EASLEY, §
§
STATE OF NORTH DAKOTA, ex rel. §
Attorney General HEIDI HEITKAMP, §
§
STATE OF OHIO, ex rel. §
Attorney General BETTY D. MONTGOMERY, §
§
STATE OF OKLAHOMA, ex rel. §
Attorney General W. A. DREW EDMONDSON, §
§
STATE OF OREGON, ex rel. §
Attorney General HARDY MYERS, §
§
COMMONWEALTH OF PENNSYLVANIA, ex rel. §
Attorney General D. MICHAEL FISHER, §
§
COMMONWEALTH OF PUERTO RICO, ex rel. §
Attorney General JOSE FUENTES AGOSTINI, §
§
STATE OF RHODE ISLAND, ex rel. §
Attorney General JEFFREY B. PINE, §
§
STATE OF SOUTH CAROLINA, ex rel. §
Attorney General CHARLES MOLONY CONDON, §
§
STATE OF SOUTH DAKOTA, ex rel. §
Attorney General MARK W. BARNETT, §
§

The States have been conducting an investigation (hereinafter the "Agricultural Chemical Products Investigation") into the resale pricing practices of manufacturers and distributors of certain crop protection chemicals, as defined below.

The States allege that certain of Zeneca's marketing programs and policies constituted vertical price fixing, in violation of the Sherman Act, 15 U.S.C. § 1, and various related state antitrust and unfair competition laws as more completely alleged in the States' Complaint.

Zeneca denies that any of its conduct violated the antitrust laws of the United States or any related state antitrust or unfair competition laws.

The States and Zeneca have determined that it is in their mutual best interests to resolve this dispute and that all of the States' claims set forth in the Complaint should be settled in order to avoid the expense, delay, uncertainty and distraction that protracted, complex antitrust litigation would involve.

NOW, THEREFORE, without adjudication of any issue of fact or law, or admission of wrongdoing, and upon the agreement of the Parties and in consideration of the mutual covenants and undertakings set forth in the Settlement Documents as defined herein, the Parties enter into this Settlement Agreement and agree to and understand the terms of this Settlement Agreement set forth herein.

I. DEFINITIONS

The following definitions shall apply to this Settlement Agreement, the Consent Decree, and the Side Letter referenced herein:

A. "Attorneys General" shall mean the attorneys general of the states and commonwealths identified in the caption of the Settlement Agreement, and the Corporation Counsel of the District of Columbia.

B. "Crop Protection Chemicals" or "CPC" shall mean chemical products that are used, among other things, to control or eliminate unwanted disease, insects, plants, fungus, and rodents around crops including, but not limited to, those crop protection chemicals covered by Zeneca's stewardship bonus programs.

C. "Distributor" shall mean a business entity that purchases CPC from a manufacturer, including Zeneca, for resale to retail dealers, farmers, growers, or others, including governmental entities; a single distributor may be integrated, usually through separate corporate divisions, in reselling CPC at both the wholesale and retail levels.

D. "Gross margin," as used and defined by Zeneca for purpose of its stewardship bonus programs, shall mean and is calculated as, the net resale price, as defined below, minus the wholesale price of the CPC (taking into account discounts and other price terms of sale) that was paid by the Distributor, divided by the net resale price.

E. "Manufacturer" shall mean a manufacturer or producer of CPC that sells to Distributors, retail dealers, and/or agricultural cooperatives.

F. "Net resale price" shall mean the f.o.b. delivered resale price of the CPC sold by the Distributor, taking into account returns, discounts for cash, blanket credit memos, rebates, free equipment, or other equipment unsupported by a bona fide lease or purchase order, trips, free product, and all other discounts, incentives and other value given by the Distributor to its

customer which result in a reduction of the true bottom line price actually charged to the customer.

G. "Parties" shall mean the signatories to this Settlement Agreement and the entities they represent as defined herein.

H. "Resale Price" shall mean any price, price floor, price ceiling, price range or any mark-up formula or margin of profit used by any Distributor for the resale pricing of any CPC to dealers, farmers, growers or other purchasers, including government entities.

I. "Settlement Administrator" shall mean the Antitrust Unit of the New Mexico Attorney General's Office.

J. "States" shall mean those states and commonwealths identified in the caption of the Settlement Agreement (including the Commonwealth of Puerto Rico) and the District of Columbia in their sovereign capacities; their departments; agencies; and other political subdivisions or units of government which, under applicable state law, are considered to be part of the state and are legally represented by the Attorneys General in this matter, or in fact are being legally represented by the Attorneys General in this matter, including, cities, counties, municipalities, parishes, townships, boroughs, taxing districts, special districts or other local units of government; and, with respect to Louisiana, their growers, farmers and natural persons. This definition of "States" also shall apply to the Agreement as to Assertion by Zeneca of Statute of Limitations (the "Tolling Agreement"), and all extensions thereto, except that, as to the Tolling Agreement, such definition shall not include the fourteen states and commonwealths, and the District of Columbia, who are identified in the caption of the Settlement Agreement but who

were not parties to the Tolling Agreement, their departments, agencies, and other political subdivisions or units of government.

K. "Trade Regulation Laws" shall include federal and the State's antitrust and unfair acts, practices or competition laws (whether constitutional, statutory or common laws, administrative rules or regulations, or ordinances; and including, without limitation, consumer protection, consumer fraud, unfair trade practices, and deceptive trade practices laws, and any laws that form the legal basis for any claims alleged in the Complaint); or other similar Constitutional provisions, statutes, regulations, rules, ordinances or laws.

L. "Zeneca" shall mean Zeneca Inc, formerly ICI Americas Inc., including its affiliates, direct and indirect parents, subsidiaries, divisions and other organizational units of any kind that sold CPC; their successors and assigns; their officers, directors and employees; and, to the extent acting at their direction and on their behalf, their agents, representatives and other persons.

II. BENEFIT AND BINDING EFFECT

A. All of the obligations of this Settlement Agreement that are binding upon Zeneca shall also be binding upon its successors, assigns and legal representatives.

B. The terms of this Settlement Agreement shall be binding on, and shall inure to the benefit of, the Parties and their successors and, to the extent provided in Section VI of this Settlement Agreement, to Zeneca's Distributors.

III. SETTLEMENT AGREEMENT AND RELATED DOCUMENTS

This Settlement Agreement is one of five documents to be filed contemporaneously in court. The Complaint, Answer, Stipulation, Consent Decree and this Settlement Agreement shall be filed under the same case number and shall relate to the same operative facts, theories and claims for relief set forth in the Complaint. In addition, there is a side letter dated June 6, 1997 (the "Side Letter") signed by counsel for the States and counsel for Zeneca. This Settlement Agreement, the Stipulation, the Consent Decree, and the Side Letter ("the Settlement Documents") represent the complete agreement of the parties and, accordingly, are to be read together. In the event the parties agree, or the court determines, that the Settlement Documents cannot be read consistent with one another because a provision of one conflicts with a provision of another, the Consent Decree shall control over any of the other Settlement Documents, and the Settlement Agreement shall control over the Side Letter.

IV. PAYMENT TO THE STATES

A. In full and final settlement of all of the States' claims set forth in the complaint, Zeneca Inc. shall pay to the States the total sum of \$3.9 million (the "Settlement Amount"). A minimum of \$1.2 million of the Settlement Amount shall constitute reimbursement of the States' costs and expenses, including attorneys fees; the remainder shall be a contribution to the States. The Settlement Amount shall be made to the Settlement Administrator either by certified check or by wire transfer within ten (10) business days after the court signs the Consent Decree in this matter.

B. The apportionment of each State's share shall be determined exclusively by the Attorneys General and such shares shall be used and distributed in accordance with the terms of paragraphs C and D of this Section IV.

C. A portion of the Settlement Amount shall be apportioned among those States identified in Appendix A of the Consent Decree, and such amounts shall be used to benefit the agricultural community in each such individual State, at the sole discretion of the Attorney General of each State so designated. Each designation shall be specified in Appendix A; and Appendix A shall be attached to the Consent Decree and incorporated therein.

D. The remainder of the Settlement Amount not covered by paragraph V C above, shall be apportioned among the States in the amounts as indicated in Appendix B to the Consent Decree; and Appendix B will also be attached to the Consent Decree and incorporated therein. Each State's share of the amounts indicated in Appendix B shall be used by such State for one or more of the following six (6) purposes, as determined by the attorney general of each such State at his or her exclusive option, and as otherwise consistent with law:

1. Reimbursement of the costs and expenses of this investigation, including attorneys fees, that were incurred by such states or their agencies;
2. Antitrust or consumer protection enforcement by the attorney general of such state;
3. Deposit into a state antitrust/consumer protection revolving account for use in accordance with the state laws governing that account;

4. Deposit into a fund exclusively dedicated to assisting the state attorney general to defray the cost of experts, economists, and consultants in multistate antitrust investigations and litigations;
5. Deposit into the National Association of Attorneys General Antitrust Education and Training Fund; and/or
6. Such other use the respective States' attorneys general deem appropriate.

V. WAIVERS, RELEASES AND COVENANTS NOT TO SUE

A. Waiver and Release The States, and each of them, waive, release, compromise and discharge all civil, criminal, injunctive, or equitable claims or causes of action regarding Zeneca's past conduct which they currently possess against Zeneca or may in the future possess against Zeneca as a result of a change of law, and covenant not to sue or prosecute Zeneca on any such claim or cause of action.

B. Covenant Not to Sue The States, and each of them, covenant not to exercise any rights they currently possess against Zeneca, or may in the future possess against Zeneca as a result of a change of law, to bring claims or causes of action of the type referenced in paragraph A above in any representative capacity on behalf of any persons, entities, political subdivisions, or governmental units not encompassed within the definition of "States," including as parens patriae either in furtherance of the general economic welfare of their States or pursuant to any statutory or other authority.

C. The waiver, release, compromise, discharge, and covenants not to sue referenced in paragraphs A and B are limited to the civil, criminal, injunctive, or equitable claims or causes of action referenced therein which are based solely on Zeneca's past conduct and relate to:

1. Any of the operative conduct, acts, or conspiracies alleged in the Complaint;
2. The resale pricing of Zeneca's CPC; or
3. Any conduct, acts, or conspiracies of any kind affecting or relating to the resale pricing of Zeneca's CPC or programs or policies employed by Zeneca in connection with the resale pricing of its CPC;

and Trade Regulation Laws as they relate to the conduct, activities and programs described in C1, C2 or C3.

D. Zeneca forgives, releases, discharges, and covenants not to sue or prosecute the States, officers, employees, agents or attorneys for reimbursement of any and all costs incurred in producing documents and answers to written interrogatories in response to investigative demand(s) issued by the New York Attorney General's office in this matter since March 1995 or for any other causes of action arising out of or relating to this litigation or the States' related investigation.

VI. LIMITED COVENANT NOT TO SUE DISTRIBUTORS

A. The States covenant not to sue any of Zeneca's Distributors for criminal or civil penalties, or for damages under federal law or their counterpart state laws where the sole and exclusive theory of liability in such action or any count of such action, without more, is:

1. That the Distributor adhered to or participated in Zeneca-sponsored stewardship programs between 1986 and 1993; and/or

2. That the Distributor attended and/or was involved in Zeneca-sponsored meetings (such as Executive Club meetings) or activities regarding the Zeneca-sponsored stewardship programs.

B. However, this limited covenant not to sue does not extend to any Distributor's adherence, participation, attendance or involvement in any Zeneca-sponsored stewardship program, meeting or activity that resulted in the formation, ratification, implementation, monitoring or enforcement of a contract, combination or conspiracy, if any, between two or more Distributors not involving Zeneca to fix the prices of Zeneca's CPC.

C. In any complaint(s) filed by the States, or any of them, against any other Manufacturer or Distributor of CPC alleging resale price maintenance of CPC, the complaint(s) shall not identify Zeneca by name or by use of such descriptive terms that Zeneca may be recognized as the entity being described in such complaint.

VII. LIMITATIONS TO RELEASES AND COVENANTS NOT TO SUE

A. The waivers, releases, discharges and covenants not to sue set forth in this Settlement Agreement are not intended to, and do not in any way, enhance, impair or otherwise affect the rights of any persons or entities other than the States as defined herein.

B. Although the States are barred by the waivers, releases and covenants not to sue from bringing an action in their own behalf or in such a representative capacity as set forth in Section V of this Settlement Agreement, such waivers, releases and covenants not to sue are not intended to, and do not in any way, enhance, impair or otherwise affect the rights of any persons or entities who are not encompassed within the definition of "States." Provided, however, that with respect to the state of Louisiana, such waivers, releases and covenants not to sue shall apply

as well to all Louisiana state Trade Regulation Law claims relating to all persons and entities on whose behalf Louisiana could bring parens patriae claim(s) under its Trade Regulation Laws and under the legal theories set forth in the complaint.

C. Except as set forth in Section VI(A), the States expressly reserve their rights to file an action against any person or entity other than Zeneca for any claims for relief or causes of action the States deem appropriate.

VIII. COMPLIANCE WITH CONSENT DECREE

In addition to the rights and obligations for monitoring compliance with the Consent Decree as set forth therein:

A. Zeneca shall distribute in a timely manner, a copy of the injunctive provisions of the Consent Decree to all persons in the employ of its agricultural chemical products business who have the titles of President, Vice-President responsible for Business Strategy and Marketing, Customer Team Leads, Sales Leads, and Market Leads, or superseding titles thereto.

Furthermore, at least once a year during the term of the Consent Decree, Zeneca will distribute a copy of the injunctive provisions of the Consent Decree to persons who have newly assumed these positions.

B. Zeneca shall submit to the Antitrust Unit of the Oregon Department of Justice c/o Andrew E. Aubertine, 1162 Court Street, NE, Salem, Oregon 97310, an annual declaration under oath, by a company designee who has responsibility for ensuring compliance with this section, as to the fact and manner of its compliance with the provisions of this section.

IX. OPT OUT CLAUSE

A. Zeneca has the sole and exclusive right to opt-out of this Settlement Agreement and the Consent Decree if by June 6, 1997 or such later time as may be mutually agreed to in a writing executed by Andrew E. Aubertine, Assistant Attorney General, State of Oregon, acting as authorized representative on behalf of the States, and counsel for Zeneca, ("the Opt-Out Triggering Date"), less than fifty-one (51) attorneys general representing the individual States, the District of Columbia and the Commonwealth of Puerto Rico are Parties to this Settlement Agreement and Consent Decree.

B. If Zeneca is eligible to opt out of this Settlement Agreement pursuant to paragraph A above, and wishes to do so, it must exercise said opt-out right in writing (using the form attached hereto as Attachment A no later than 11:59 p.m. P.S.T. on the fifth business day after the Opt-Out Triggering Date. Zeneca's exercise of its opt-out right shall be deemed effective as to all States at the time such notice is sent by facsimile or deposited with an express mail service (such as, for example, Federal Express) for next day delivery to the State of Oregon c/o Andrew E. Aubertine, Assistant Attorney General, Oregon Department of Justice, Civil Enforcement Division, 1162 Court Street, NE, Salem, Oregon.

C. Failure to exercise the opt-out in accordance with this Section shall constitute Zeneca's full and complete waiver of this option.

D. This entire section IX shall become null and void if and when fifty-one (51) attorneys general representing the individual states, the District of Columbia and the Commonwealth of Puerto Rico are Parties to this Settlement Agreement and Consent Decree as of the Opt-Out Triggering Date.

X. CONDITIONS PRECEDENT TO SETTLEMENT TAKING EFFECT

This Settlement Agreement shall become effective once all Parties have signed this document and the court has approved and signed the Consent Decree. The Parties will exercise their best efforts to obtain entry of the Consent Decree by the court in the form agreed to by the Parties. The Parties will not seek to appeal such entry or approval, and/or take any action, directly or indirectly, which might prevent or delay the Consent Decree from becoming final.

XI. MISCELLANEOUS

A. Each signatory to this document, by his or her signature, expressly represents that he or she is fully authorized to execute this Settlement Agreement by the Party he or she represents, including without limitation, all who are encompassed within the definitions of State and Zeneca as applicable to that signatory. This Settlement Agreement may be executed on separate signature pages or in counterparts with the same effect as if all Parties had signed the same instrument.

B. If, for any reason, the court declines to approve, sign and enter the Consent Decree in the form agreed to by the Parties within 120 calendar days after submission to the court, or if the Consent Decree is subject to modification pursuant to a successful appeal of the court's entry of the Consent Decree in the form agreed to by the Parties, this entire Settlement Agreement and all terms, conditions and obligations herein, including without limitation the waivers, releases, and covenants in Sections V and VI, are rescinded and become null and void. The parties may extend the date for court approval. Such extension shall be in writing and shall become effective when authorized representatives of all of the Parties sign such extension.

C. If this Settlement Agreement becomes null and void pursuant to the provisions of paragraph B of this Section:

1. All of the States' claims against Zeneca and its Distributors shall be immediately reinstated and considered as if this Settlement Agreement had never been entered;
2. All of Zeneca's and its Distributors' defenses, challenges of whatever kind (whether legal, factual, equitable or otherwise), claims and counterclaims, if any, shall be immediately reinstated and considered as if this Settlement Agreement had never been entered; provided, however, that any assertion by Zeneca of any statute of limitations defenses against those certain states which are parties to the "Agreement as to Assertion by Zeneca of Statute of Limitations," and the extensions thereto, shall be subject to that agreement and those extensions;
3. The States and Zeneca shall forthwith file a stipulation of dismissal of this action, said dismissal to be without prejudice; and
4. Neither the States nor Zeneca may file any suit against one another arising from same facts, circumstances, transaction and occurrences set forth in the Complaint or Answer until 12:00 noon Eastern Standard Time of the tenth business day following the date of entry by the Court of such an order of dismissal.

D. If the "Agreement as to Assertion by Zeneca of Statute of Limitations," and the extensions thereto, expires prior to 5:00 P.M. Pacific Time of the eleventh business day following the date of entry by the Court of an order of dismissal without prejudice, then said

Agreement shall be deemed to be extended through the time and date set forth in paragraph C(4) of this Section.

E. Subsequent to entry of the Consent Decree by the Court, any request to the Court that the Consent Decree be modified, (other than as specified in section IV of the Consent Decree) shall be governed by applicable legal principles relating to changes in consent decrees. If, subsequent to entry of the Consent Decree by the Court, the Court determines that the Consent Decree should be modified (whether pursuant to section IV of the Consent Decree or otherwise), such determination shall have no effect on the Settlement Agreement, Stipulation and Side Letter which shall, in all respects, remain in full force and effect.

F. Except as otherwise provided in this Settlement Agreement, neither the States nor Zeneca shall have the right to withdraw from this Settlement Agreement once the Settlement Agreement has been executed by the Parties and presented to the court for approval and entry.

In addition:

1. In the event fewer than all fifty-one (51) States have executed this Settlement Agreement, but Zeneca elects not to exercise its right to opt out and instead executes the Settlement Agreement, the Settlement Agreement shall be binding as to Zeneca and those states which have executed it; and

2. Neither the States nor any of them shall have the right to withdraw from this Settlement Agreement once they have executed and presented it to Zeneca but before either (a) Zeneca has executed it, or (b) Zeneca has declined to execute it.

G. This Settlement Agreement and the Side Letter shall not be modified except in writing, signed by each of the Parties hereto or by their authorized representative; provided, however, that the States and Zeneca may jointly modify the terms of this Settlement Agreement and the Side Letter solely for the purpose of facilitating the details of settlement administration.

H. No part of the Settlement Amount constitutes, nor shall it be construed or treated as constituting, a payment in lieu of damages, treble damages, fines, penalties, forfeitures or punitive recoveries, nor have the States sought the imposition of any of the foregoing as part of the Settlement Agreement in this action.

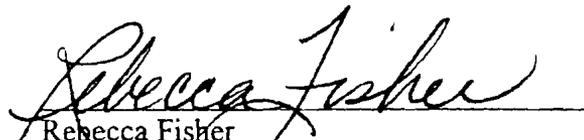
AGREED AND CONSENTED TO:

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

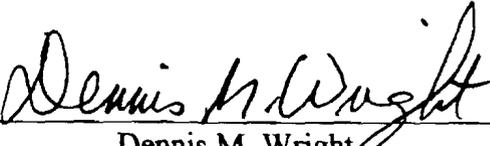
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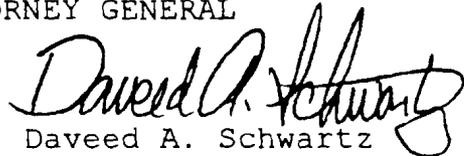
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State of Texas et al. V. Zeneca

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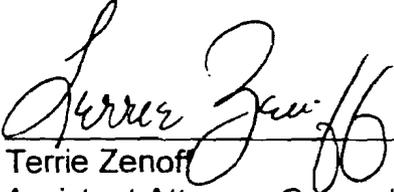


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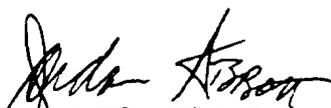
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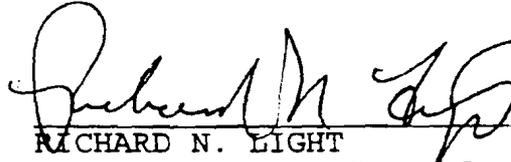
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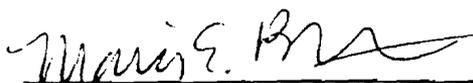
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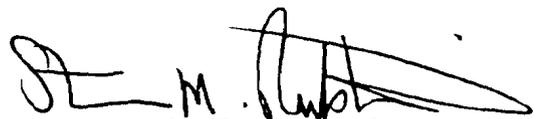
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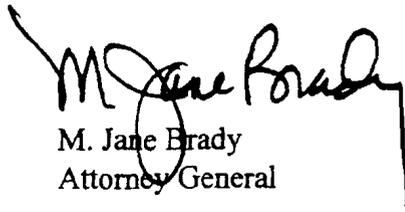


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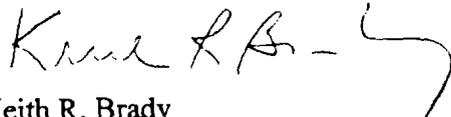
RICHARD BLUMENTHAL
Attorney General of Connecticut

A handwritten signature in black ink, appearing to read "S. M. Rutstein", written over a horizontal line.

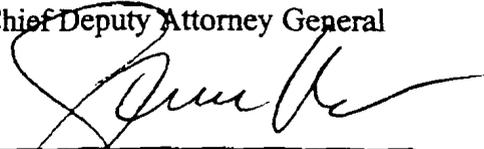
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State of Texas et. al. v. Zeneca

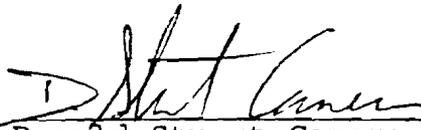
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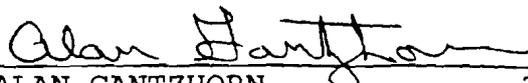


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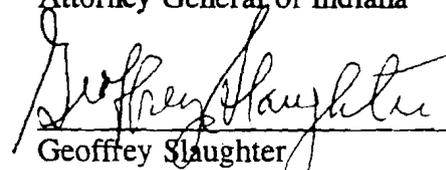
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State of Texas et al. v. Zeneca

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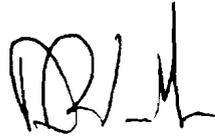
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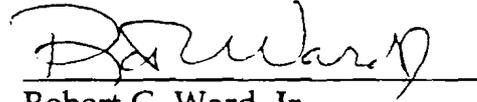
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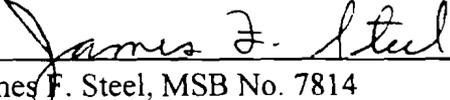
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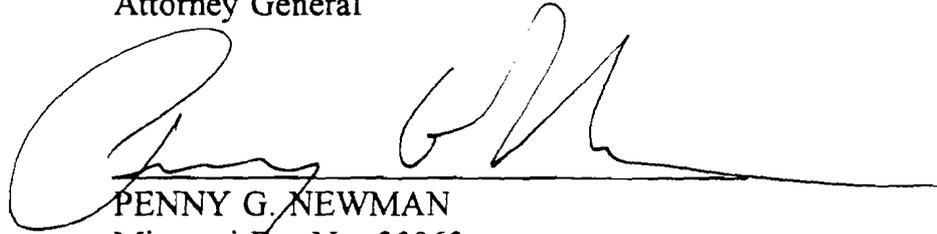

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State of Texas et al. V. Zeneca

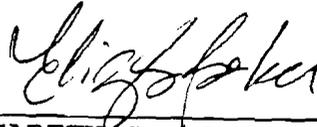
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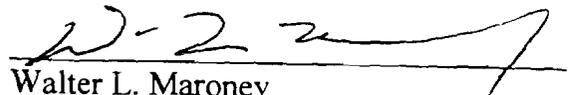
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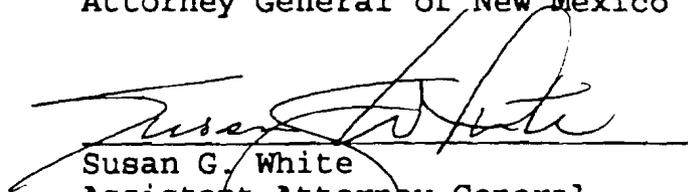
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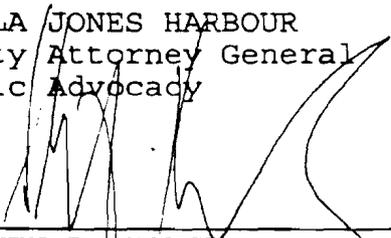
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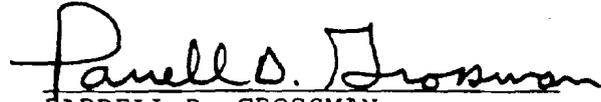
State of Texas et al. v. Zeneca

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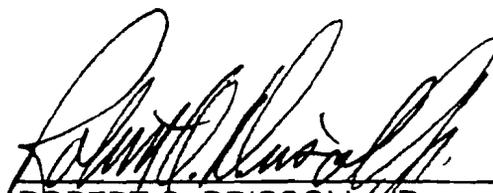


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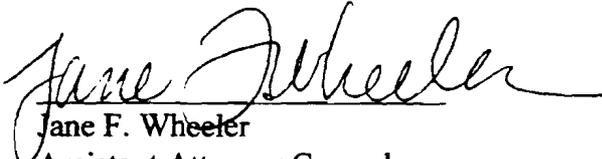
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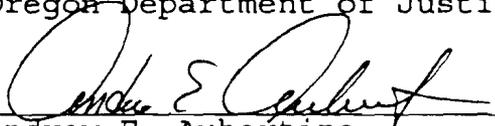
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State of Texas et al v. Zeneca

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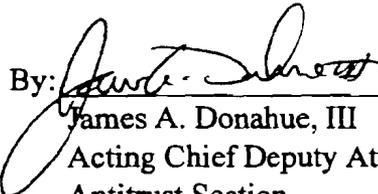
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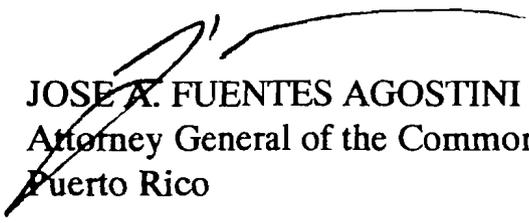
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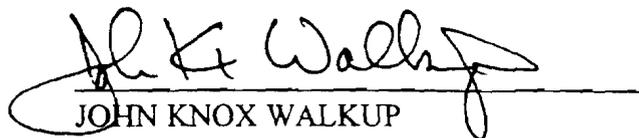
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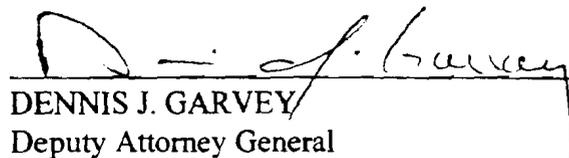
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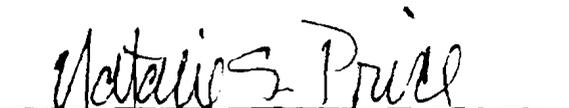
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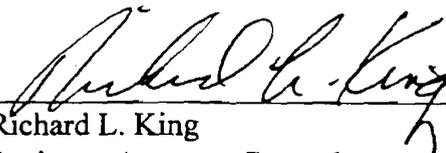
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State of Texas, et al. v. Zeneca

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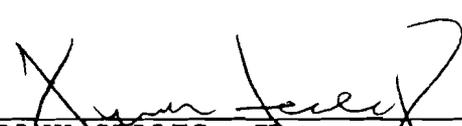
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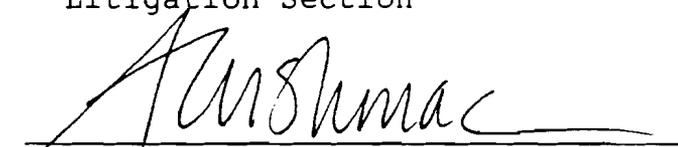
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ELECTION FORM

Attachment A to Settlement Agreement

In the matter of State of Texas, et al. v. Zeneca Inc., Zeneca exercises its right under Section IX A of the Settlement Agreement and elects to opt-out of the settlement in this matter, the terms of which are set forth in the Stipulation, proposed Consent Decree, Settlement Agreement, and Side Letter presented to Zeneca's attorneys on June 6, 1997.

Dated this ___ day of _____, 1997.

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Chris S. Coutroulis, Esq.
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