

KAREN CASSIDY,
on behalf of herself and
all others similarly situated
P.O. Box 71
Cheyney, PA 19193,
Plaintiffs,

v.

SMITHKLINE BEECHAM
1 Franklin Plaza
Philadelphia, PA 19105,
Defendant.

COURT OF COMMON PLEAS
CHESTER COUNTY

CLASS ACTION

NO. 99-10423

OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

03 JUL - 1 AM 9:54

FILED

**JUDGMENT, FINAL ORDER
AND DECREE GRANTING FINAL APPROVAL
OF THE CLASS ACTION SETTLEMENT**

This matter is before the Court on the motion for final class certification and final approval of the settlement with defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("SB").

By Order Conditionally Certifying Settlement Class; Granting Motion for Preliminary Approval of Class Action Settlement; and Scheduling Hearing on Final Settlement Approval dated July 12, 2002 ("Preliminary Approval Order"), this Court conditionally certified the Settlement Class as a class action and granted preliminary approval to the Settlement. The Court also ordered that a summary notice of this settlement be published in USA Today, and a detailed notice be published on the internet. In compliance with that Order, the summary notice was published on August 21, 2002 in USA Today, and the detailed notice was published on the internet beginning on August 21, 2002 and continuously thereafter to the present.

On October 18, 2002, the parties appeared at the final approval and fairness hearing (the "Settlement Hearing") represented by their respective attorneys of record. The Court, having some remaining questions following the hearing on October 18, 2002, convened a supplemental Settlement Hearing on May 31, 2003. An opportunity to be heard was given to all persons requesting to be heard. The Court presided at the Settlement Hearing. The Court has reviewed and considered all of the pleadings filed in connection therewith, all the presentations and evidence submitted at the Settlement Hearing in support of the Settlement, the Fee and Expense Amount and the submissions and arguments of all objectors.

The entire matter of the proposed Settlement having been duly noticed, and having been fully considered by the Court,

IT IS HEREBY ADJUDGED, ORDERED AND DECREED that:

1. This Court has jurisdiction over the claims of the Settlement Class members asserted in this action, personal jurisdiction over the settling parties (including the Settlement Class members), and subject matter jurisdiction to approve the Settlement Agreement.

2. Notice given was reasonably calculated under the circumstances to apprise the members of the Settlement Class of the pendency of the Class Action, all material elements of the proposed Settlement, and/or the Fee and Expense Amount and their opportunity to exclude themselves from, to object to, or to comment on the Settlement and/or the Fee and Expense Amount and to appear at the Settlement Hearing; was reasonable notice under the circumstances, considering the extent and nature of the Settlement Class, the relief requested, the cost of notifying Settlement Class members, and the possible prejudice to be suffered by Settlement Class Members if notice was not received; was due, adequate, and sufficient notice to all members of the Settlement Class; and complied fully with due process, the Pennsylvania Rules

of Civil Procedure, and any other applicable rules of the Court. A full opportunity has been afforded to the members of the Settlement Class to participate in the Settlement Hearing, and all Settlement Class Members and other persons wishing to be heard have been heard. Accordingly, the Court determines that all members of the Settlement Class are bound by this Judgment, Final Order and Decree.

3. One member of the Settlement Class requested to be excluded from this settlement, identified as Exhibit A hereto.

4. On July 12, 2002, this Court preliminarily approved certification of a Settlement Class defined as:

All individuals who have been administered the Lyme disease vaccine [Recombinant OspA], commonly known as Lymerix®.

5. Pursuant to Pennsylvania Rule of Civil Procedure 1702, the Court finds for the purposes of settlement that: (i) the people in the Settlement Class are so numerous that joinder of all members would be impractical; (ii) there are questions of law or fact common to the Settlement Class; and (iii) Plaintiff's claims are typical of the claims of the Settlement Class.

6. Pursuant to Pennsylvania Rules of Civil Procedure 1702 and 1709, the Court finds for the purposes of settlement that Plaintiff will fairly and adequately assert and protect the interests of the Settlement Class under the criteria set forth in Pennsylvania Rule of Civil Procedure 1709. Specifically, the Court finds that:

(i) Class Counsel will adequately represent the interests of the Settlement Class;

(ii) Plaintiff has no conflict of interest in maintaining the class action;

(iii) Plaintiff has or can acquire adequate financial resources to assure that the interests of the Settlement Class will not be harmed.

7. Pursuant to Pennsylvania Rules of Civil Procedure 1709 and 1708, the Court finds for the purposes of settlement that a class action provides a fair and efficient method for adjudication and resolution of the controversy under the criteria set forth in Pennsylvania Rule of Civil Procedure 1708. Specifically, the Court finds that:

(i) common questions of law or fact predominate over any question affecting only individual members;

(ii) a class action for purposes of this settlement would be fair and efficient considering the size of the class and the difficulties likely to be encountered in the management and settlement of the action as a class action and the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;

(iii) the prosecution of separate actions by individual members of the Settlement Class may create a risk of

(a) inconsistent or varying adjudications with respect to individual members of the class which would confront SB with incompatible standards of conduct;

(b) adjudications with respect to individual members of the Settlement Class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(iv) the court is an appropriate forum for the litigation and resolution of the claims of the entire Settlement Class;

(v) in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members may be insufficient in amount to support separate actions;

(vi) the benefit of the proposed settlement to individual class members with respect to the Released Claims (as defined below) is sufficient in relation to the expense and effort of administering a class action for the purposes of settlement as to justify a class action for settlement purposes.

(vii) the actions of SB alleged in the Released Claims, if proven, were on grounds generally applicable to the class, thereby making the relief proposed under the settlement appropriate with respect to the class.

8. Accordingly, pursuant to Pennsylvania Rules of Civil Procedure, the Court makes final its conditional certification of the Settlement Class for settlement purposes only.

9. The Court finds that arms length negotiations have taken place in good faith between Plaintiff's counsel and SB, resulting in the settlement.

10. The Court hereby grants final approval to the Settlement and finds that it is in all respects fair, reasonable, and adequate, and in the best interests of the Settlement Class.

11. The Court adjudges that the Fee and Expense Amount in the total amount of \$926,250.00 and reimbursement of costs in the total amount of \$137,997.00 to Plaintiff's Counsel is fair, reasonable and adequate, and that said attorneys' fees and expenses shall be paid to Seth R. Lesser, Bernstein, Litowitz, Berger & Grossman, LLP for allocation and distribution to Plaintiff's Counsel.¹

¹ After careful review of the declaration of Seth Lesser, Esquire in support of an award of attorney's fees and consideration of testimony elicited at the hearing on May 31, 2003, we determined that the request for attorney's fees and costs should be reduced by five (5%) percent. Although we realize that all counsel contributed numerous hours to the research, litigation and final settlement of this case, we have unanswered concerns regarding the size of the award of counsel fees in relation to the outcome of the litigation. This lawsuit has two primary purposes at its inception: to warn patients of the drug's potential dangers, and to provide funds to Plaintiffs for ongoing medical monitoring. The first goal is met by removal of the drug from the market; the second was not pursued because it was deemed unnecessary.

A further concern raised by the number of attorneys and paralegals who have submitted bills for work performed is the fact that having thirty-four professionals handle a single case

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12. The Court finds, pursuant to Rule 1715 of the Pennsylvania Rules of Civil Procedure, that there is no just reason for delay, and expressly directs to the Prothonotary to enter this Judgment, Final Order and Decree, and hereby decrees, that upon entry, it be deemed as a final judgment and appealable with respect to all claims by Settlement Class members, in accordance with the terms of the Settlement.

13. SB and its present and former parents subsidiaries, divisions, affiliates, stockholders, officers, directors, employees, agents and any other of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") are hereby released and forever discharged from all manner of claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that any Class Plaintiff or Plaintiffs or any member or members of the Settlement Class who have not timely excluded themselves from the Class Action (including their heirs, executors, administrators, representatives and assigns) and whether or not they object to the settlement and whether or not they make a claim upon or participate in the settlement, whether directly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have, relating in any way to any conduct prior to the date hereof (the "Release Period") including, without limitation, claims which have been asserted or could have been asserted in any litigation against the Released Parties or any one of them, or which arise under or relate to any federal or state law, or other law or regulation, or common law, including, without limitation the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. C.S. S 201 et seq., during the Release Period, concerning the manufacturing, marketing, distribution or sale of

LYMERix®, all as alleged in the Class Action Complaint (hereinafter the “Released Claims”); except that, nothing in the Settlement Agreement shall be construed as releasing any claim of any Class Member for personal injury arising out of vaccination with LYMERix® or for the out-of-pocket purchase price of LYMERix®

14. No member of the Settlement Class shall, hereafter, be permitted to assert any claim, demand, action, suit, cause of action, whether class or individual, against any Released Party based, in whole or in part, upon any of the Released Claims.

15. With respect to the Released Claims, in addition to the provisions of paragraphs 13 and 14, each member of the Settlement Class is hereby deemed to have expressly waived and released, upon any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. Certain Claims Not Affected by General Release.

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

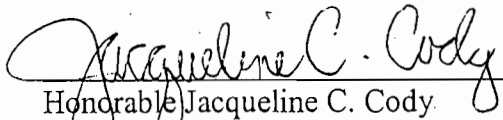
or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each member of the Settlement Class may hereafter discover facts other than or different from those which he knows believes to be true with respect to the Released Claims which are the subject matter of the provisions of paragraphs 13 and 14, but each member of the Settlement Class is hereby deemed to have expressly waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the Released Claims which are subject matter of the provision of paragraphs 13 and 14, whether or

not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

16. Without affecting the finality of this Judgment, Final Order and Decree, the parties have submitted to the exclusive and continuing jurisdiction of this Court, and this Court reserves exclusive and continuing jurisdiction over the settlement and the Settlement Agreement, including the administration and consummation of the settlement.

17. The Settlement Agreement is expressly incorporated herein by this reference, and has the full force and effect of an Order of this Court. The parties shall consummate the Settlement Agreement according to its terms.

18. The class action is dismissed with prejudice as to the Settlement Class and, except as provided herein or in the Settlement Agreement, without attorneys' fees and costs.



Honorable Jacqueline C. Cody
Judge of the Court of Common Pleas of
Chester County

Dated: June 30, 2003

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2. Notice given was reasonably calculated under the circumstances to apprise the members of the Settlement Class of the pendency of the Class Action, all material elements of the proposed Settlement, and/or the Fee and Expense Amount and their opportunity to exclude themselves from, to object to, or to comment on the Settlement and/or the Fee and Expense Amount and to appear at the Settlement Hearing; was reasonable notice under the circumstances, considering the extent and nature of the Settlement Class, the relief requested, the cost of notifying Settlement Class members, and the possible prejudice to be suffered by Settlement Class Members if notice was not received; was due, adequate, and sufficient notice to all members of the Settlement Class; and complied fully with due process, the Pennsylvania Rules

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3. One member of the Settlement Class requested to be excluded from this settlement, identified as Exhibit A hereto.

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6. Pursuant to Pennsylvania Rules of Civil Procedure 1702 and 1709, the Court finds for the purposes of settlement that Plaintiff will fairly and adequately assert and protect the interests of the Settlement Class under the criteria set forth in Pennsylvania Rule of Civil Procedure 1709. Specifically, the Court finds that:

(i) Class Counsel will adequately represent the interests of the Settlement Class;

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(a) inconsistent or varying adjudications with respect to individual members of the class which would confront SB with incompatible standards of conduct;

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(iv) the court is an appropriate forum for the litigation and resolution of the claims of the entire Settlement Class;

(v) in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members may be insufficient in amount to support separate actions;

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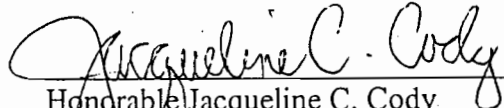
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¹ After careful review of the declaration of Seth Lesser, Esquire in support of an award of attorney's fees and consideration of testimony elicited at the hearing on May 31, 2003, we determined that the request for attorney's fees and costs should be reduced by five (5%) percent. Although we realize that all counsel contributed numerous hours to the research, litigation and final settlement of this case, we have unanswered concerns regarding the size of the award of counsel fees in relation to the outcome of the litigation. This lawsuit has two primary purposes at its inception: to warn patients of the drug's potential dangers, and to provide funds to Plaintiffs for ongoing medical monitoring. The first goal is met by removal of the drug from the market; the second was not pursued because it was deemed unnecessary.

A further concern raised by the number of attorneys and paralegals who have submitted bills for work performed is the fact that having thirty-four professionals handle a single case

builds in a considerable overlap of effort. The only evidence presented to justify the use of so many different attorneys and paralegals was the assertion that there were several personnel turnovers at various firms during the litigation. Although we do not question whether the hours were actually worked, we question whether the efforts were reasonably efficient. Our concern in this regard was not relieved when, at the supplemental hearing on May 31, 2003, a truck appeared at the Courthouse loading dock, filled with boxes of files allegedly compiled by Plaintiff's attorneys over the course of the litigation. The wasteful expense of such a grandstanding gesture is precisely the type of abuse that casts doubt on the documented hours and expenses of dedicated professionals of high integrity.

12. The Court finds, pursuant to Rule 1715 of the Pennsylvania Rules of Civil Procedure, that there is no just reason for delay, and expressly directs to the Prothonotary to enter this Judgment, Final Order and Decree, and hereby decrees, that upon entry, it be deemed as a final judgment and appealable with respect to all claims by Settlement Class members, in accordance with the terms of the Settlement.

13. SB and its present and former parents subsidiaries, divisions, affiliates, stockholders, officers, directors, employees, agents and any other of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") are hereby released and forever discharged from all manner of claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that any Class Plaintiff or Plaintiffs or any member or members of the Settlement Class who have not timely excluded themselves from the Class Action (including their heirs, executors, administrators, representatives and assigns) and whether or not they object to the settlement and whether or not they make a claim upon or participate in the settlement, whether directly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have, relating in any way to any conduct prior to the date hereof (the "Release Period") including, without limitation, claims which have been asserted or could have been asserted in any litigation against the Released Parties or any one of them, or which arise under or relate to any federal or state law, or other law or regulation, or common law, including, without limitation the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. C.S. S 201 et seq., during the Release Period, concerning the manufacturing, marketing, distribution or sale of

LYMERix®, all as alleged in the Class Action Complaint (hereinafter the “Released Claims”); except that, nothing in the Settlement Agreement shall be construed as releasing any claim of any Class Member for personal injury arising out of vaccination with LYMERix® or for the out-of-pocket purchase price of LYMERix®

14. No member of the Settlement Class shall, hereafter, be permitted to assert any claim, demand, action, suit, cause of action, whether class or individual, against any Released Party based, in whole or in part, upon any of the Released Claims.

15. With respect to the Released Claims, in addition to the provisions of paragraphs 13 and 14, each member of the Settlement Class is hereby deemed to have expressly waived and released, upon any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. Certain Claims Not Affected by General Release.

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

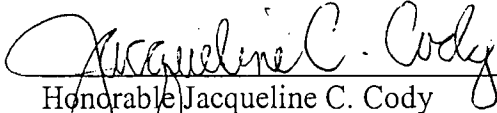
or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each member of the Settlement Class may hereafter discover facts other than or different from those which he knows believes to be true with respect to the Released Claims which are the subject matter of the provisions of paragraphs 13 and 14, but each member of the Settlement Class is hereby deemed to have expressly waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the Released Claims which are subject matter of the provision of paragraphs 13 and 14, whether or

not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

16. Without affecting the finality of this Judgment, Final Order and Decree, the parties have submitted to the exclusive and continuing jurisdiction of this Court, and this Court reserves exclusive and continuing jurisdiction over the settlement and the Settlement Agreement, including the administration and consummation of the settlement.

17. The Settlement Agreement is expressly incorporated herein by this reference, and has the full force and effect of an Order of this Court. The parties shall consummate the Settlement Agreement according to its terms.

18. The class action is dismissed with prejudice as to the Settlement Class and, except as provided herein or in the Settlement Agreement, without attorneys' fees and costs.



Honorable Jacqueline C. Cody
Judge of the Court of Common Pleas of
Chester County

Dated: June 30, 2003