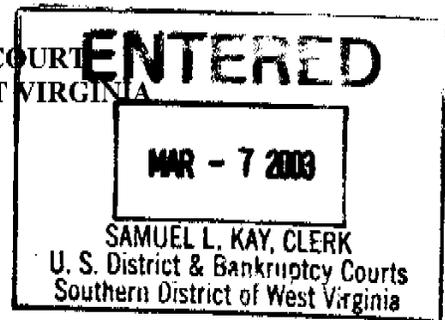


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: SERZONE
PRODUCTS LIABILITY LITIGATION



MDL NO. 1477

THIS DOCUMENT RELATES TO ALL CASES

ORDER

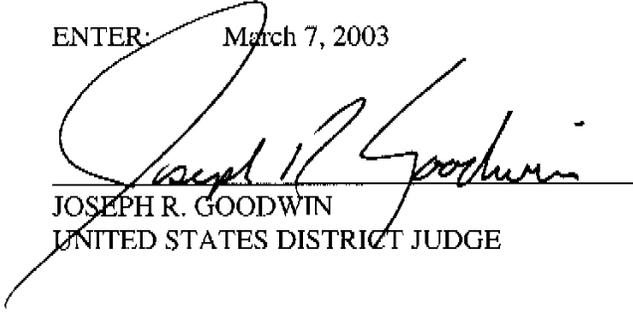
Bristol-Myers Squibb Company (BMS) has filed a response to the plaintiffs' motion to establish an equitable reserve for future allocation of common benefit fees and costs. This response was filed February 18, 2003, after this court's entry of Pretrial Order #5 granting the plaintiffs' motion on February 11, 2003. Because Pretrial Order #5 was entered before the fourteen days had elapsed in which BMS was entitled to file a response, the court will consider the response notwithstanding the prior entry of Pretrial Order #5.

In its response, BMS acknowledges the propriety of establishing an equitable reserve for cost and fee sharing among the plaintiffs, but argues that it is premature for the court to determine the amount of any such assessment. In reply, the court would point out that the nine percent assessment established in Pretrial Order #5 does not represent the amount to which the plaintiffs' attorneys will ultimately be entitled as fees and costs expended for the common benefit of all plaintiffs. First of all, the order provides that the Cost and Fees Account need not be established unless and until BMS makes any claim payments. It is possible, of course, that no payments will ever be made, in which

case no funds in any amount will be set aside. Secondly, the order specifically provides that no party or attorney has any entitlement to the funds in the Cost and Fees Accounts, that the funds are held at the discretion of the court, and that funds will be disbursed to plaintiffs' attorneys only by order of the court after a proper showing. Finally, the order provides that any funds held in the account that are deemed unnecessary for the payment of fees and costs will be returned on a pro rata basis. Accordingly, nothing in Pretrial Order #5 dictates or even suggests that the nine percent assessment represents the amount that the plaintiffs' attorneys will ultimately receive from the Cost and Fees Accounts. The order simply provides for the establishment a fund – only if and when the need arises – from which fees and costs may be paid in the future with reliability, if and when the court orders disbursement, and in whatever amount the court may order. The court construes BMS's response as an objection to Pretrial Order #5, and **OVERRULES** that objection.

The court **DIRECTS** the Clerk to send a copy of this Order to Defendant's Liaison Counsel and Plaintiffs' Liaison Counsel.

ENTER: March 7, 2003



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE