

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: BLOOD REAGENTS ANTITRUST
LITIGATION

MDL Docket No. 09-2081

THIS DOCUMENT RELATES TO ALL
ACTIONS

HON. JAN E. DUBOIS

FILED

OCT 25 2018

ORDER APPROVING PLAN OF DISTRIBUTION

KATE BARKMAN, Clerk
By _____ Dep. Clerk

Plaintiffs have now reached two separate settlements in this case, each of which has now received final approval from this Court.¹ These settlements have fully resolved Plaintiffs' claims in this litigation, and Plaintiffs now seek to distribute funds from the settlements. Upon consideration of Plaintiffs' Motion for Final Approval of (a) the Settlement with Ortho-Clinical Diagnostics, Inc., and (b) the Plan of Distribution (the "Final Approval Motion"), and all papers submitted in support thereof or in opposition thereto, and after an October 24, 2018 hearing thereon and considering any argument offered, it is hereby ORDERED this 24th day of October, 2018, that the Motion is GRANTED insofar as it concerns the proposed plan of distribution.² It is ORDERED that:

1. The Court has jurisdiction over the subject matter of this litigation.

¹ See ECF No. 204, Immucor Settlement Final Judgment Order; ECF No. ____, Ortho Settlement Final Approval Order. Members of both the Immucor settlement class and the Class defined by these orders are referred to collectively here as the "Combined Settlement Class." The settlement funds established by these settlements are referred to collectively here as the "Combined Settlement Fund." The Combined Settlement Fund less any Court-awarded attorneys' fees, expenses, and service awards is referred to as the "Net Combined Settlement Fund."

² Plaintiffs' request for final approval of the Ortho Settlement is addressed in a separate order.

2. In an order dated July 12, 2018 (the “Preliminary Approval Order”), this Court authorized dissemination of notice of the Ortho Settlement and plan of distribution (the “Notice,” attached as Exhibit A to Exhibit 8 to the Final Approval Motion). Individual notice by first class mail was sent to Combined Settlement Class Members whose names and addresses could be derived from the electronic transactional sales information produced by Defendants, banner advertisements were published in the August 6, 2018 and August 10, 2018 editions of the *AABB News Smart Brief*, an industry newsletter that focuses on the blood banking industry, and the mailed notice was posted on the Internet on a website dedicated to this litigation. The Notice informed members of the Combined Settlement Class of Plaintiffs’ proposed plan of distribution for the Net Combined Settlement Funds; that Plaintiffs would file briefs and material in support of their plan of distribution by September 12, 2018 (including a sample claim form); that any Combined Settlement Class members who objected to the plan of distribution could submit written objections by September 27, 2018; and that the Court would conduct a Fairness Hearing as to the plan of distribution and other matters on October 24, 2018.

3. The details of Plaintiffs’ “Plan of Distribution” are contained in section I.C. of their Memorandum in support of Plaintiffs’ Final Approval Motion. The Plan of Distribution contained in the Final Approval Motion includes the same methodology for allocating the Net Combined Settlement Fund as is contained in the Notice, as well as additional detail regarding the proposed claims process.

4. Proof that mailing, publication, and posting has conformed with the Preliminary Approval Order has been filed with the Court. Due and adequate notice of Plaintiffs’ Plan of Distribution has been provided to potential members of the Combined Settlement Class in compliance with Fed. R. Civ. P. 23 and the requirements of due process.

5. The Court approves Kurtzman Carson Consultants LLC to serve as the Claims Administrator for the purpose of administering the claims process.

6. The Court approves the Plan of Distribution as a fair, reasonable, and adequate method of allocating the monies in the Net Combined Settlement Fund.

7. A Claim Form, substantially in the form attached as Exhibit 4 to the Final Approval Motion, shall be distributed to the members of the Combined Settlement Class in accordance with the Plan of Distribution. The Claims Administrator shall send Claim Forms to members of the Combined Settlement Class by First Class mail by no later than December 22, 2018, or, if this order is appealed, within 30 days following final resolution of such appeal. The Claims Administrator shall also post a blank copy of the Claim Form on the settlement website by the same date.

8. For each Class Member, the Claim Form shall contain a summary of that Class Member's purchases of Traditional Blood Reagents during the period from January 1, 2001 through December 31, 2004 (the "Damages Period"), calculated using the transactional data produced in the litigation, or will reflect that the Class Member only purchased between January 1, 2005 and April 30, 2009. Each Class Member has the option of accepting this calculation as the basis of its claim or providing its own information regarding its relevant purchases, in which case the Class Member must supply the Claims Administrator with supporting documentation.

9. All Claim Forms must be signed and returned to the Claims Administrator, with supporting documentation if applicable, postmarked or emailed no later than 60 days after the Claim Forms are mailed. The Claims Administrator shall review all timely-submitted Claim Forms and resolve any issues concerning the submitted claims. If a disagreement arises with a

claimant that the Claims Administrator cannot resolve, such dispute shall be brought to the Court for resolution.

10. Subject to the exceptions described below, the Claims Administrator shall determine the allocation of the Net Combined Settlement Fund *pro rata* in accordance with each Combined Settlement Class Member's purchases during the Damages Period. Purchases during the Damages Period directly from Ortho-Clinical Diagnostics, Inc. or Immucor, Inc. (collectively, "Defendants") are eligible for claim submission. Each member of the Combined Settlement Class with direct purchases from a Defendant during the Damages Period is guaranteed a minimum distribution of \$250.

11. In determining *pro rata* purchases during the Damages Period, the Claims Administrator shall take the following adjustment into account:

- (a) If a Combined Settlement Class Member opted out of the Immucor settlement, its purchases during the Damages Period will be reduced by 53% because the Immucor settlement makes up 53% of the Combined Settlement Fund, by dollar value. Thus, if a Combined Settlement Class Member opted out of the Immucor settlement, its purchases would be valued at approximately \$0.47 (i.e., \$1 minus \$0.53) on the dollar.

12. Each Combined Settlement Class Member that purchased Traditional Blood Reagents directly from a Defendant from January 1, 2005 through April 30, 2009, but did not purchase Traditional Blood Reagents from either Defendant during the Damages Period, will receive \$250 from the Net Combined Settlement Fund. Any Combined Settlement Class Member that only purchased Traditional Blood Reagents directly from a Defendant after April 30, 2009 will not be eligible to receive a distribution from the Net Combined Settlement Fund.

13. After the Claims Administrator has calculated each claimant's share of the Net Combined Settlement Fund, the Claims Administrator shall submit a proposed Schedule of Distributions to the Court with a declaration that it has calculated the amounts on the Schedule in

accordance with this order. The proposed Schedule of Distributions and related declaration shall be submitted to the Court no later than April 22, 2019. Upon approval of the Schedule by the Court, the Claims Administrator shall mail checks to the claimants at the earliest practicable date.

BY THE COURT:



HONORABLE JAN E. DUBOIS