

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

FILED

2009 DEC -1 P 4: 03

THE UNITED STATES)
OF AMERICA,)
Plaintiff,)

U.S. DISTRICT COURT
N.D. OF ALABAMA

v.)

Civil Action No.

James J. Stricker;)
Daniel R. Benson;)
Kasowitz, Benson, Torres)
& Friedman, LLP; Donald)
W. Stewart d/b/a as)
Donald W. Stewart, PC;)
Don Barrett; The Barrett)
Law Firm, PA; Charles E.)
Fell, Jr.; Charles L.)
Cunningham, Jr.;)
Cunningham & Fell, PLLC;)
Johnston Druhan, LLP;)
Greg Cusimano; Cusimano,)
Keener, Roberts & Raley,)
PC; The Cody)
Law Firm, PC; Monsanto)
Company; Solutia, Inc.;)
Pharmacia Corporation;)
Travelers Companies,)
Inc., d/b/a The)
Travelers Indemnity)
Company; American)
International Group,)
Inc.,)

CV-09-PT-2423-E

Defendants,)

COMPLAINT

The United States of America files this civil

action to recover costs of medical care provided or paid for by the United States, based upon rights conferred under the Medicare Secondary Payer ("MSP") Statute, 42 U.S.C. § 1395y(b)(2), and regulations promulgated thereunder, 42 C.F.R. §411.20 et seq., pursuant to which the United States may recover reimbursement for conditional Medicare payments from entities that are required or responsible to make payment with respect to covered items or services under a liability insurance policy or plan (including a self-insured plan) and entities and persons receiving such payments. In support of its complaint, the United States makes the following allegations:

PARTIES

The United States files this action pursuant to the MSP Statute, on behalf of the Secretary of Health and Human Services ("HHS"). The Secretary of HHS is the federal official vested with primary responsibility for oversight of the Medicare program, which pays for health benefits to specified elderly and disabled individuals pursuant to 42 U.S.C. § 1395 et seq. The

Secretary has delegated responsibility for administration of the Medicare program to the Centers for Medicare & Medicaid Services ("CMS"). 42 U.S.C. §§ 1935hh and ii.

1. Upon information and belief, Monsanto Company ("Monsanto") is a Delaware corporation with its principal place of business in St. Louis, Missouri.

2. Upon information and belief, Pharmacia Corporation ("Pharmacia") is a Delaware corporation with its principal place of business in New York, New York.

3. Upon information and belief, Solutia, Inc. ("Solutia"), is a Delaware corporation with its principal place of business in St. Louis, Missouri.

4. Upon information and belief, Travelers Companies, Inc., d/b/a The Travelers Indemnity Company ("Travelers"), is a Connecticut corporation with its principal place of business in Hartford, Connecticut.

5. Upon information and belief, American International Group, Inc. ("AIG"), is a Delaware

corporation with its principal place of business in New York.

6. Upon information and belief, the individuals who received settlement payments in the matters styled Abernathy v. Monsanto Company, CV-01-832, Circuit Court of Etowah County, Alabama (which is a consolidated action composed of matters styled Abernathy v. Monsanto Company, CV-96-269, Abbott v. Monsanto Company, CV-97-967, Nelson v. Monsanto Company, CV-99-502, Long v. Monsanto Company, CV-96-268, Margie Suggs v. Monsanto Company, CV-01-0874, Circuit Court of Calhoun County, Alabama), and Brown v. Monsanto Company, CIV 97-ETC-1618-E, (N.D. Ala.) ("Abernathy Plaintiffs") were and/or continue to be represented by several attorneys and law firms as detailed in §§ 7 through 17 below (collectively "Abernathy Counsel").

7. Upon information and belief, Daniel R. Benson and James J. Stricker each represented and/or continues to represent the Abernathy Plaintiffs, and are partners at Kasowitz, Benson, Torres & Friedman, LLP, 1633 Broadway, New York, New York 10019.

8. Upon information and belief, the law firm of Kasowitz, Benson, Torres & Friedman, LLP, represented and/or continues to represent the Abernathy Plaintiffs. It is a domestic registered limited liability partnership registered in New York with its principal place of business at 1633 Broadway, New York, New York 10019.

9. Upon information and belief, Donald W. Stewart, d/b/a as Donald W. Stewart, PC, represented and/or continues to represent the Abernathy Plaintiffs. Upon information and belief, Donald W. Stewart's principal place of business is at 1000 Quintard Avenue, Anniston, Alabama 36202.

10. Upon information and belief, Don Barrett, represented and/or continues to represent some or all of the Abernathy Plaintiffs and is a partner at The Barrett Law Firm, 404 Court Square North, Lexington, Mississippi 39095.

11. Upon information and belief, the Barrett Law Firm, PA, represented some or all of the Abernathy Plaintiffs. The Barrett Law Firm is a professional

association incorporated in Mississippi, with its principal place of business at 404 Court Square North, Lexington, Mississippi 39095.

12. Upon information and belief, Charles E. Fell, Jr., and Charles L. Cunningham, Jr., each represented some or all of the Abernathy Plaintiffs and were partners at Cunningham & Fell, PLLC, 701 West Jefferson Street, Louisville, Kentucky 40202.

13. Upon information and belief, the law firm of Cunningham & Fell, PLLC, which is registered in Kentucky, with its principal place of business at 701 West Jefferson Street, Louisville, Kentucky 40202, represented some or all of the Abernathy Plaintiffs.

14. Upon information and belief, Johnston Druhan, LLP is a limited liability partnership registered in Mobile County, Alabama with its principal place of business at 5 Dauphine Street, Suite 201, Mobile, Alabama 36602. Johnston Druhan represented some or all of the Abernathy Plaintiffs.

15. Upon information and belief, Greg Cusimano represented some or all of the Abernathy Plaintiffs. Mr. Cusimano is a lawyer with Cusimano, Keener, Roberts & Raley, PC, at 153 South Ninth Street, Gadsden, Alabama 35901.

16. Upon information and belief, Cusimano, Keener, Roberts & Raley, PC, represented some or all of the Abernathy Plaintiffs. Cusimano, Keener, Roberts & Raley is a professional corporation incorporated in Etowah County, Alabama, with its principal place of business at 153 South Ninth Street, Gadsden, Alabama 35901.

17. Upon information and belief, The Cody Law Firm, P.C., represented some or all of the Abernathy Plaintiffs. The Cody Law Firm, PC, is a professional corporation incorporated in Jefferson County, Alabama, with its principal place of business at Lorna Oaks Professional Center, 3141 Lorna Road, Suite 202, Birmingham, Alabama.

JURISDICTION AND VENUE

18. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, 28 U.S.C. § 2201, and the MSP Statute, 42 U.S.C. § 1395y(b)(2).

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

BACKGROUND

20. This controversy arises from a \$300 million settlement ("Abernathy Settlement") by and among Abernathy Plaintiffs and defendants Monsanto, Pharmacia, and Solutia in the Abernathy action. Exh. 1.

21. Upon information and belief, persons receiving payment under the Abernathy Settlement include approximately 907 Medicare beneficiaries.

22. Distribution of the settlement monies was contingent on certification to the court that 97% of the Abernathy Plaintiffs had signed releases. Abernathy Counsel filed that certification with the court on December 2, 2003. Exh. 2.

23. Upon information and belief, the 907 Medicare beneficiaries sought compensation for, inter alia, medical expenses in their underlying complaints and released those claims in executed releases, as referenced in Exh. 2 hereto.

24. Upon information and belief, the Abernathy Settlement mandated that the settlement fund established thereunder ("Abernathy Settlement Fund") be an interest-bearing account. Exh. 1 at 8.

25. Upon information and belief, prior to and/or at the time of the Abernathy Settlement, Solutia, a party to the Abernathy Settlement, maintained product liability insurance policies with Travelers and AIG.

26. Upon information and belief, Travelers and AIG paid portions of the \$300 million Abernathy Settlement.

27. Monsanto, Solutia, and Pharmacia paid portions of the \$300 million Abernathy Settlement.

28. Solutia filed for Chapter 11 bankruptcy on December 17, 2003. HHS filed a proof of claim to recover Medicare conditional payments paid on behalf of Medicare beneficiaries who received payments in the

Abernathy Settlement. HHS's claim survived the bankruptcy and was not discharged.

29. The Abernathy Settlement provided for the distribution of \$171 million to the Abernathy Plaintiffs, with supplemental annual amounts of \$1.5 million to be paid from 2004 through 2013 by Monsanto to Abernathy Counsel to be allocated within their sole discretion, for the plaintiffs' benefit.

30. The Abernathy Settlement provided payment to Abernathy Counsel of \$129 million in attorney's fees and costs, including \$1 million annually from 2004 through 2013.

Medicare's Conditional Payments and Causes of Action

31. The United States, through CMS, as the administrator of the Medicare program, made conditional payments, on behalf of its Medicare beneficiaries, for illnesses and injuries released in the Abernathy Settlement.

32. A series of statutes known collectively as the MSP Statute, 42 U.S.C. §1395y(b)(2), requires available private insurance, including self insurance, to make

the primary payment for services provided to Medicare beneficiaries, leaving Medicare to pay only secondary benefits. The law provides, in pertinent part, that Medicare may not make payments with respect to any item or service for which payment has been made or can reasonably be expected to be made under a liability policy or plan. 42 U.S.C. § 1395y(b)(2)(A)(ii); 42 C.F.R. § 411.20(a)(ii).

33. The MSP Statute authorizes the Medicare program to pay conditionally for a beneficiary's medical care in instances where payment under a liability insurance policy or plan does not transpire "promptly," as that term is defined in regulations. 42 U.S.C. §1395y(b)(2)(B)(i); 42 C.F.R. §§ 411.21 and 411.52. However, such payments are subject to reimbursement to the appropriate Medicare Trust Fund once it is demonstrated that a primary plan has or had responsibility to pay with respect to such items or services. 42 U.S.C. §1395y(b)(2)(B)(ii); 42 C.F.R. § 411.24. Responsibility for such payments may be demonstrated by a judgment, a payment conditioned upon

the beneficiary's compromise, waiver, or release (irrespective of the existence of a determination or admission of liability) or payment for items and services included in a claim against a primary plan or the primary plan's insured. 42 U.S.C.

§1395y(b)(2)(B)(ii). The United States may initiate recovery of Medicare conditional payments when it learns that payment "has been or could be made" under a liability insurance policy or plan. 42 C.F.R. § 411.24(b).

34. The United States may bring an action to recover conditional Medicare payments with respect to an item or service, against "any or all entities that are or were required or responsible . . . to make payments with respect to the same item or service (or any portion thereof) under a primary plan." 42 U.S.C. § 1395y(b)(2)(B)(iii). The MSP Statute also confers upon the United States a right of action against "any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to any entity. . . ." Id.

35. The MSP Statute defines the term "primary plan" to include a plan of self-insurance, specifying that "[a]n entity that is engaged in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise), in whole or in part." 42 U.S.C. § 1395y(b)(2)(B)(ii); see also 42 C.F.R. § 411.50(b). Applicable regulations define the term "plan" to refer to any arrangement, oral or written, to provide health benefits or assume legal liability for injury or illness. 42 C.F.R. § 411.21. "Liability insurance" is "insurance (including a self-insured plan) that provides for payment based upon legal liability for injury or illness or damage to property," including product liability insurance. 42 C.F.R. § 411.50(b). Under the regulations, a "liability insurance payment" includes an out-of-pocket payment (such as payment of a deductible under a liability insurance policy) by any individual or entity that carries liability insurance or is covered by a self-insured plan. Id.

36. If a third-party payer learns that Medicare has paid for services for which the third-party has made or should have made primary payment, it must notify the United States. 42 C.F.R. § 411.25(a). An entity that receives payment under a primary plan (including a beneficiary, physician, supplier, or attorney) must reimburse the United States within sixty (60) days after receiving conditional Medicare payments made on a beneficiary's behalf. 42 C.F.R. § 411.24(h); see also 42 U.S.C. § 1395y(b)(2)(B); 42 C.F.R. § 411.24(g) & (h). If the United States does not receive such reimbursement, the third-party payer is required to reimburse the United States even if it has already paid a beneficiary or other party. 42 C.F.R. § 411.24(i)(1). This same rule applies in instances where a third-party payer makes its payment to an entity other than the United States when it knows or should be aware that conditional Medicare payments have been made. 42 C.F.R. § 411.24(i)(2).

37. The United States may collect double damages from any entity responsible to make payment under a primary plan which fails to provide for primary payment or appropriate reimbursement of conditional Medicare payments. 42 U.S.C. §§ 1395y(b)(2)(B)(ii); 42 C.F.R. § 411.24(c)(2).

Abernathy Counsel's Failure to Comply with the MSP

Statute

38. Upon information and belief, Abernathy Counsel have received and continue to receive payments from the Abernathy Settlement. These payments constitute payments under a primary plan that entitle the United States to recover conditional Medicare payments on behalf of beneficiaries participating in the Abernathy Settlement.

39. No later than the date that Abernathy Counsel caused payments to be made to settling claimants, Abernathy Counsel knew or should have known that one or more settlement claimants were Medicare-eligible individuals on whose behalf the United States was

entitled to recover to the extent of any conditional Medicare payments made.

40. Abernathy Counsel have made no payment to the United States on behalf of any claimant who received or will receive settlement payments and whose medical care was paid for by the Medicare program. Contrary to the MSP Statute, the United States has yet to be reimbursed for Medicare conditional payments made on behalf of these beneficiaries.

Defendants Travelers' and AIG's

Failure to Comply with the MSP Statute

41. Defendants Travelers and AIG each were required to and did make payments under a "primary plan," as that term is defined in the MSP Statute and regulations. Upon information and belief, defendant Solutia purchased various product liability insurance policies from Travelers and AIG to mitigate the financial risks arising from claims of injury or illness relating to Solutia's operations, including manufacturing PCBs, that was the subject of the claims

for which Medicare beneficiaries received compensation in the Abernathy Settlement.

42. The terms of the Abernathy Settlement rendered these defendants required or responsible to pay under a primary plan, and those payments into the Abernathy Settlement Fund constituted payments under a "primary plan" that entitled the United States to reimbursement for Medicare conditional payments made on behalf of Medicare beneficiaries participating in the Abernathy Settlement.

43. Upon information and belief, Defendants Travelers and AIG did not ascertain whether any settling plaintiffs were Medicare beneficiaries prior to making, or causing to be made, payment of those settlement amounts. Defendants Travelers and AIG also did not identify any amount(s) owed the United States as reimbursement for Medicare conditional payments made on behalf of Medicare beneficiaries prior to their payments to the Abernathy Settlement Fund.

44. At the time they paid into the Abernathy Settlement Fund, Travelers and AIG knew or should have known that one or more Abernathy Plaintiffs were Medicare beneficiaries on whose behalf the United States was entitled to recover to the extent of any Medicare conditional payments made.

45. Defendants Travelers and AIG have made no payment to the United States on behalf of any Medicare beneficiaries who received (or will receive) payments pursuant to the terms of the Abernathy Settlement. Contrary to the MSP Statute, Travelers and AIG have yet to reimburse the United States for its Medicare conditional payments made on behalf of its Medicare beneficiaries.

**Corporate Defendants Monsanto's, Solutia's, and
Pharmacia's
Failure to Comply with the MSP Statute**

46. Upon information and belief, Defendants Monsanto, Solutia, and Pharmacia were required to and did make payments under a "primary plan," as that term is defined in the MSP Statute and regulations.

47. The terms of the Abernathy Settlement rendered these defendants required or responsible to pay under a primary plan, and Monsanto's, Solutia's, and Pharmacia's payments into the settlement funds constitute payments under a primary plan that entitle the United States to reimbursement for Medicare conditional payments made on behalf of Medicare beneficiaries participating in the Abernathy Settlement.

48. Additionally, or in the alternative, upon information and belief, Defendants Monsanto, Solutia, and Pharmacia received some or all of their payments to the Abernathy Settlement from third-party payers, i.e., insurers or other primary plans. To the extent that any or all of these Defendants received payment from a third party prior to depositing those monies into the Abernathy Settlement Fund, Defendants Monsanto, Solutia, and Pharmacia are entities that received payment under a primary plan from whom the United States may recover reimbursement for Medicare conditional payments.

49. Upon information and belief, Defendants Monsanto, Solutia, and Pharmacia did not ascertain whether any Abernathy Plaintiffs were Medicare beneficiaries prior to making, or causing to be made, payment of those settlement amounts. Upon information and belief, Defendants Monsanto, Solutia, and Pharmacia also failed to identify any amount(s) owed the United States as reimbursement for Medicare conditional payments made on behalf of Medicare beneficiaries prior to their payments to the Abernathy Settlement Fund.

50. At the time they paid into the Abernathy Settlement Fund, Monsanto, Solutia, and Pharmacia knew or should have known that one or more settling plaintiffs were Medicare beneficiaries on whose behalf the United States was entitled to recover to the extent of any Medicare conditional payments made.

51. Defendants Monsanto, Solutia, and Pharmacia have made no payment to the United States on behalf of any Medicare beneficiaries who received (or will receive) payments pursuant to the terms of the Abernathy Settlement. Contrary to the MSP Statute, the

United States has yet to be reimbursed for Medicare conditional payments made on behalf of its Medicare beneficiaries.

Count I

Against Monsanto, Solutia, and Pharmacia

as Primary Payers

52. The United States repeats and incorporates the allegations in paragraphs 1 through 51, above.

53. Defendants Monsanto, Solutia, and Pharmacia are required to reimburse the United States for conditional Medicare payments made on behalf of settlement claimants for medical items and services related to the Abernathy Settlement.

54. The United States claims reimbursement from these Defendants as a third-party payers liable under the MSP Statute, and demands payment of its outstanding conditional Medicare payments, plus interest.

Count II

Double Damages Against Monsanto, Solutia, and

Pharmacia as Primary Plans

55. The United States repeats and incorporates the allegations in paragraphs 1 through 51, above.

56. Defendants Monsanto, Solutia, and Pharmacia are required to reimburse the United States for conditional Medicare payments made on behalf of settlement claimants for medical items and services related to the Abernathy Settlement.

57. The United States claims reimbursement from these Defendants as primary plans liable under the MSP Statute, and demands payment of double the amount of its outstanding conditional Medicare payments, plus interest, because it has been necessary to initiate this suit. 42 U.S.C. § 1395y(b)(2)(b), 42 C.F.R. § 411.24(c)(2).

Count III

Against Travelers and AIG As Primary Plans)

58. The United States repeats and incorporates the allegations in paragraphs 1 through 51, above.

59. Defendants Travelers and AIG are required to reimburse the United States for conditional Medicare payments made on behalf of settlement claimants for

medical items and services related to the Abernathy Settlement.

60. The United States claims reimbursement from these Defendants as a third-party payers liable under the MSP Statute, and demands payment of the amount of its outstanding conditional Medicare payments, plus interest.

Count IV

Double Damages Against Travelers and AIG

as Primary Plans

61. The United States repeats and incorporates the allegations in paragraphs 1 through 51, above.

62. Defendants Travelers and AIG are required to reimburse the United States for conditional Medicare payments made on behalf of settlement claimants for medical items and services related to the Abernathy Settlement.

63. The United States claims reimbursement from these Defendants as primary plans liable under the MSP Statute, and demands payment of double the amount of its outstanding conditional Medicare payments, plus

interest, because it has been necessary to initiate this suit. 42 U.S.C. § 1395y(b)(3), 42 C.F.R. § 411.24(c)(2).

Count V

Against Abernathy Counsel, Monsanto, and Pharmacia,
as Entities That Received Payment

64. The United States repeats and incorporates the allegations in paragraphs 1 through 51, above.

65. Defendants Monsanto, Pharmacia, and Abernathy Counsel are entities or persons that have received payment under a primary plan for purposes of the MSP Statute, and are required to reimburse the United States for outstanding conditional Medicare payments (plus interest) to the extent of any such payments received.

Count VI

Declaratory Relief

The United States repeats and incorporates the allegations in paragraphs 1 through 51, above.

66. Pursuant to 28 U.S.C. § 2201, and Fed. R. Civ. P. 57, the United States is entitled to a Declaration as

follows:

- a. that, to the extent the United States has not previously been reimbursed, Monsanto, Pharmacia, Travelers, AIG, and Abernathy Counsel are legally obligated to reimburse the United States for past Medicare payments made on behalf of Abernathy Settlement claimants in accord with the terms of the MSP Statute;
- b. that the Defendants must give CMS notice of all future payments to Medicare beneficiaries pursuant to 42 C.F.R. § 411.25; and
- c. that all Defendants must ensure before any future settlement payment is made to any claimant that appropriate payment is made to the United States.

Prayer For Relief

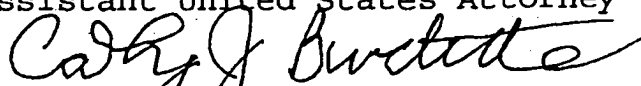
The United States respectfully demands (i) payment of damages by the Defendants as specified herein, together with interest; (ii) declaratory relief against all Defendants as specified herein; and (iii) any other relief this Court deems just and proper.

Dated: December 1, 2009

TONY WEST
Assistant Attorney General

JOYCE WHITE VANCE
United States Attorney

RICHARD E. O'NEAL
Assistant United States Attorney



J. CHRISTOPHER KOHN
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ATTORNEYS FOR THE UNITED STATES

IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

SABRINA ABERNATHY, ET AL.,)
)
 Plaintiffs,)
)
) Civil Action No. CV-01-832
)
)
 MONSANTO COMPANY, ET AL.,)
)
)
 Defendants.)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into by, between and among the aggregated plaintiffs and each and every individual plaintiff, by and through their counsel of record, in the matters styled Abernathy, et al. v. Monsanto Company, et al., Civil Action No. CV-01-832, Circuit Court of Etowah County, Alabama (which is a consolidated action composed of matters styled Abernathy, et al. v. Monsanto Company, et al., Civil Action No. CV-96-269, Abbott, et al. v. Monsanto Company, et al., Civil Action No. CV-97-967, Nelson, et al. v. Monsanto Company, et al., Civil Action No. CV- 99-502, Long v. Monsanto Company, et al., Civil Action No. CV-96-268), Margie Suggs, et al. v. Monsanto Company, et al., Civil Action No. CV-01-0874, Circuit Court of Calhoun County, Alabama)), and Brown v. Monsanto Company, et al., Civil Action No. 97-ETC-1618-E, United States District Court, Northern District of Alabama, and amici curiae and each individual amicus curiae in United States v. Pharmacia Corporation, et al., Civil Action No. 02-C-07409-E, United States District Court, Northern District of Alabama (collectively referred to herein as "plaintiffs"), and Solutia Inc. ("Solutia"), Pharmacia Corporation, formerly known as Monsanto Company ("Pharmacia"), and new Monsanto Company ("Monsanto") (collectively referred to herein as the "Interested Parties").

This Settlement Agreement is being entered into concurrently with a Global Settlement Agreement among the parties to this Settlement Agreement and the parties to a Settlement Agreement in the matter styled Tolbert, et al. v. Monsanto Company, et al., Civil Action No. CV-01-C-1407-S, and other cases described in that Settlement Agreement for the Tolbert matter and its related actions and claims ("Tolbert Settlement Agreement"). The parties agree that the agreements and obligations set forth and described in this Settlement Agreement are conditional and contingent upon the parties to the Tolbert settlement signing the Tolbert Settlement Agreement and the entry of an Order and Judgment by the Honorable U. W. Clemon approving the Global Settlement Agreement and the Tolbert Settlement Agreement. The purpose of this Settlement Agreement is to effectuate the Global Settlement Agreement which is incorporated herein.

1. The Interested Parties, jointly and severally, agree to pay the total sum of Three Hundred Million Dollars (\$300,000,000.00) into the various settlement funds to be established as set forth below. All monies due under this Settlement Agreement shall be deposited by wire transfer pursuant to the following schedule:

- a. On or before 5:00 p.m. CDT on August 26, 2003, the sum of Seventy-Five Million Dollars (\$75,000,000.00) shall be wire transferred to SouthTrust Bank to an interest bearing account of the Circuit Court of Calhoun County (the Honorable R. Joel Laird) (the "Court") as follows: State of Alabama, Ted Hooks, Clerk, CV-2001-874, Account Number 69530631, Routing Number 062000080 (the "Settlement Account");

- b. On or before 5:00 p.m. CDT on the seventh day (or the next business day thereafter if the seventh day falls on a Saturday or Sunday) following the execution and filing of this Settlement Agreement with the Court, the sum of Two Hundred Million Dollars (\$200,000,000.00) shall be wire transferred to the Settlement Account;
- c. On or before 5:00 p.m. CDT on August 26, 2004, and on each August 26 of each year thereafter (or the next business day thereafter if August 26 falls on a Saturday or Sunday) up to and including August 26, 2013, the sum of Two Million, Five Hundred Thousand Dollars (\$2,500,000.00) shall be wire transferred in accordance with paragraph 3.h. of this Settlement Agreement.

2. The funds described in paragraph 1 above shall not be distributed from the Settlement Account in accordance with the provisions of this Settlement Agreement until all the following conditions have been met:

- a. the Court has entered an order approving this Settlement Agreement in substantially the form set forth in Exhibit A;
- b. the Court has approved the settlement of the claims of the plaintiffs who are minors as set forth below;
- c. Plaintiffs' counsel notifies the Court and counsel of record for the Interested Parties that the Relocation/Property Adjustment Fund account and the corporation, foundation, trust, or other entity described in

paragraph 3.d. have been established or selected.

3. The funds in the Settlement Account shall be distributed as follows once all conditions of paragraph 2 are satisfied:

- a. Each plaintiff who is an adult, a representative of the estate of a deceased plaintiff (including any administrator ad litem appointed by the Court), or is a church, business or other entity (hereinafter collectively referred to as the "adult plaintiffs"), as a condition of receiving any payment to or on behalf of such plaintiff from any of the separately available funds established under this paragraph 3, shall be required to sign a general release of all claims in the form of the release document attached hereto as Exhibit B (the "Release"). The term "Released Parties," as used in this Settlement Agreement, shall mean all persons and entities defined as "Released Parties" in the Release, including without limitation, the Interested Parties and their past, present and future affiliates, and their respective officers, directors, employers and agents.
- b. Within ninety days after the signing of this Settlement Agreement (which period will be extended for 30 days upon request of plaintiffs' counsel (and thereafter upon mutual agreement of the parties hereto)) (such 90-day period, together with any extensions, being hereinafter referred to as the "Release Period"), plaintiffs' counsel shall use diligent efforts to secure signed Releases from the adult plaintiffs, which Releases plaintiffs'

counsel shall hold in escrow. Plaintiffs' counsel shall also use diligent efforts during the Release Period to obtain Court approval of the settlement of the claims of the plaintiffs who are minors. Plaintiffs' counsel may, prior to the end of such 90-day period, together with any extensions, notify the Court and the Interested Parties that they have completed such diligent efforts. If such notice is given, the Release Period shall end on the date of such notice.

- c. When plaintiffs' counsel have obtained signed Releases from at least 75% of the adult plaintiffs, plaintiffs' counsel shall so certify to the Court and the Interested Parties. Immediately upon such certification, all funds in the Settlement Account, including any interest accrued during the time such money was on deposit in the Settlement Account, shall be wire transferred to an interest bearing plaintiffs' attorneys' escrow account ("Escrow Account") designated by plaintiffs' counsel and approved by the Court.

After plaintiffs' counsel have obtained court approval of the settlement of the claims of the plaintiffs who are minors and plaintiffs' counsel have obtained signed Releases from the adult plaintiffs and those minor and adult plaintiffs (counting each estate represented by any court-appointed administrator ad litem separately) total at least 97% of the plaintiffs on the Plaintiff List described in paragraph 7, plaintiffs' counsel shall so certify to the Court and the Interested Parties and shall release such signed

Releases from escrow and shall deliver such signed Releases to the Interested Parties. The Interested Parties shall have three business days from the receipt of the Releases to verify the number, content and execution of the Releases, to verify the number of minor plaintiffs whose claims have been settled through the Court approval process, and to raise any issues relating to the Releases or the minors' settlement with plaintiffs' counsel. Any dispute relating to the Releases or to the count of the Releases or the minors whose claims have been settled by Court approval shall be resolved by the Court.

At the end of this three-day verification period or following the resolution by the Court of any disputes brought to the Court under this subparagraph, if plaintiffs' counsel have obtained signed Releases from the adult plaintiffs and court approval of the claims of the minor plaintiffs that total at least 97% of the plaintiffs on the Plaintiff List, plaintiffs' counsel shall distribute the funds in the Escrow Account as set forth in paragraphs 3.d. through 3.h. The Releases and the Court approval of the settlement of the claims of minors shall not be enforceable until such distribution of funds commences.

- d. Seventy-Five Million Dollars (\$75,000,000.00), plus any interest accrued on such amount during the time such money was on deposit in the Settlement Account and the Escrow Account, shall be paid directly from the Escrow Account to plaintiffs' counsel and to plaintiffs as follows:

- i. Thirty Million Dollars (\$30,000,000.00), plus any interest accrued on such amount during the time such money was on deposit in the Settlement Account and the Escrow Account, shall be paid to plaintiffs' counsel for attorneys' fees.
 - ii. The remaining Forty-Five Million Dollars (\$45,000,000.00), plus any interest accrued on such amount during the time such money was on deposit in the Settlement Account and the Escrow Account, shall be paid from the Escrow Account to pay the claims of each settling plaintiff
- e. Fifteen Million Dollars (\$15,000,000.00), plus any interest accrued on such amount during the time such money was on deposit in the Settlement Account and the Escrow Account, shall be paid directly to plaintiffs' counsel, such amount being assessed as costs in the above referenced matter.
- f. One Hundred and Fifty Million Dollars (\$150,000,000.00), plus any interest accrued on such amount during the time such money was on deposit in the Settlement Account and the Escrow Account, shall be paid directly from the Escrow Account to plaintiffs' counsel and to a fund or funds established by plaintiffs' counsel for relocation/property adjustment payments to plaintiffs as follows:
 - i. Sixty Million Dollars (\$60,000,000.00), plus any interest accrued

on such amount during the time such money was on deposit in the Settlement Account and the Escrow Account, shall be paid to plaintiffs' counsel for attorneys' fees;

- ii. The remaining Ninety Million Dollars (\$90,000,000.00), plus any interest accrued on such amount during the time such money was on deposit in the Settlement Account and the Escrow Account, shall be paid to a Relocation/ Property Adjustment Fund Account or Accounts designated by plaintiffs' counsel for payments for the benefit of the approximately 920 plaintiff property owners and other plaintiff residents for property relocation/adjustment. The Relocation/Property Adjustment Fund shall be used for the payment of monies for the benefit of plaintiff property owners and/or plaintiff residents in accordance with a matrix to be developed by plaintiffs' counsel in their sole discretion. Such matrix will consider such factors as, among other things, jury verdicts, proximity to the Anniston facility and drainage pathways or waterways, including Snow Creek and Choccolocco Creek, sampling results, fair market value of property, size of property, and use of property.
- g. Thirty-Five Million Dollars (\$35,000,000.00), plus any interest accrued on such amount during the time such money was on deposit in the Settlement Account and the Escrow Account, shall be paid directly from the Escrow

Account to plaintiffs' counsel and to a corporation, foundation, trust or other appropriate entity designated by plaintiffs' counsel as follows:

- i. Fourteen Million Dollars (\$14,000,000.00), plus any interest accrued on such amount during the time such money was on deposit in the Settlement Account and the Escrow Account, shall be paid to plaintiffs' counsel for attorneys' fees;
- ii. Twenty-One Million Dollars (\$21,000,000.00), plus any interest accrued on such amount during the time such money was on deposit in the Settlement Account and the Escrow Account, shall be used by the corporation, foundation, trust or other appropriate entity for the following general purposes, and the corporation, foundation, trust or other entity will have the authority to expend funds for such purposes, but will not be required to perform every such purpose:
 - (1) To provide primary health care and/or to assist in gaining access to primary health care and other health care services (including but not limited to lab, dental, outreach, prenatal care, radiology, case management, pharmacy, preventive medicine, holistic medicine and other health care programs) by making grants or payments for the actual benefit of persons meeting the criteria of the corporation, foundation,

trust or other entity;

- (2) To provide educational grants, scholarships or loans to persons meeting the criteria of the corporation, foundation, trust or other entity for purposes including but not limited to those described in subparagraph (5) below;
- (3) To provide health education and instruction to or on behalf of persons meeting the criteria of the corporation, foundation, trust or other entity;
- (4) To provide such other programs or payments relating to health, education and community welfare that would benefit such persons meeting the criteria of the corporation, foundation, trust or other entity; and
- (5) To create an educational trust fund to endow scholarships, grants or loans for purposes including but not limited to the evaluation of and development of personal education plans, pre-kindergarten program participation, after-school program participation, tutoring, participation in remedial programs or individual enrichment programs, computer training programs, SAT/ACT or other examination preparation programs, and participation in technical training, vocational, GED, college or adult educational

programs.

h. The annual payments of Two Million, Five Hundred Thousand Dollars (\$2,500,000.00) shall be paid directly from the Interested Parties to plaintiffs' counsel and to the corporation, foundation, trust or other appropriate entity designated by plaintiffs' counsel pursuant to paragraph 3.g. as follows:

- i. One Million Dollars (\$1,000,000.00) shall be paid to plaintiffs' counsel for attorneys' fees;
- ii. One Million Five Hundred Thousand Dollars (\$1,500,000.00) shall be paid to the corporation, foundation, trust or other appropriate entity established or selected in accordance with paragraph 3.g. hereof for the purposes outlined in paragraph 3.g. hereof.

4. Within seven (7) days of the signing of this Settlement Agreement, plaintiffs' counsel shall deliver to the Court and to the Interested Parties a list ("Plaintiff List") of the names of all plaintiffs, with a designation of which plaintiffs are minors, who are subject to the Release provisions or Court approval of the claims of minors under this Settlement Agreement. The Plaintiff List shall not include (a) plaintiffs who died more than two years prior to the date of this Settlement Agreement and for whom Suggestions of Death have been on file for at least six months and for whom there has been no substitution as plaintiff, or (b) plaintiffs who, prior to and including August 31, 2003, have moved to withdraw from the actions included within this Settlement Agreement. Within seven days of delivery of the Plaintiff List, the Interested Parties

shall deliver to plaintiffs' counsel a list of any additions or changes to the Plaintiff List they may propose based in good faith on their records. Any dispute as to the Plaintiff List shall be resolved by the Court.

5. At the end of the Release Period, plaintiffs' counsel shall deliver to the Court and the Interested Parties a list of all adult plaintiffs, if any, who have not signed their respective Releases ("Unsigned Plaintiffs") and all minor plaintiffs who have not had their claims included within and resolved through the Court approval process ("Unresolved Minor Plaintiffs"), and the following provisions shall apply:

- a. If fewer than all of the adult plaintiffs have signed Releases and/or fewer than all of the minor plaintiffs have had their claims included within and resolved through court approval of the settlement of the minors' claims, the amounts to be distributed pursuant to paragraph 3 hereof shall be reduced by:
 - i. any payments that would otherwise be made to the Unsigned Plaintiffs and the Unresolved Minor Plaintiffs, if any, representing the net settlement proceeds from the fund established in paragraph 3.d.;
 - ii. any payments or grants that would otherwise be made to or for the benefit of the Unsigned Plaintiffs, if any, from the Property Relocation/Adjustment Fund established under paragraph 3.f.;
 - iii. any payments or grants that would otherwise be made to or for the

benefit of the Unsigned Plaintiffs and the Unresolved Minor Plaintiffs, if any, from the funds described in paragraphs 3.g. and h.

- b. If the adult plaintiffs who have signed Releases and the minor plaintiffs covered by the court approval of the minors' settlement total fewer than 97% of the plaintiffs on the Plaintiff List, then the Interested Parties, at their sole discretion and election, may, during the period thirty-one (31) to sixty (60) days after the end of the Release Period except as provided in paragraph c.iii. below, give written notice to plaintiffs' counsel that this Settlement Agreement is null and void. If the Interested Parties give such written notice, plaintiffs' counsel shall have sixty (60) days to return any and all monies provided for hereunder to the Interested Parties. In that event, the plaintiffs reserve their right to file a motion with the Court requesting that the jury trial in the Abernathy case be resumed from the point at which it was stayed. If the Interested Parties do not give such written notice, plaintiffs' counsel shall distribute the funds in the Escrow Account as set forth in this Settlement Agreement.
- c. Notwithstanding paragraphs 5.a. and 5.b. hereof, if the Court dismisses the claims of the Unsigned Plaintiffs and the Unresolved Minor Plaintiffs, if any, with prejudice, no later than thirty (30) days after the end of the Release Period, then:

- i. if the claims of all Unsigned Plaintiffs and the Unresolved Minor Plaintiffs are dismissed with prejudice and no notice of appeal from such dismissal is filed within forty-two (42) days ("Appeal Period") of such dismissal, this Settlement Agreement shall remain in full force and effect and there shall be no reduction in the amounts provided for in paragraph 3 hereof;
- ii. with respect to Unsigned Plaintiffs or Unresolved Minor Plaintiffs, if any, who file such notices of appeal within their respective Appeal Periods and Unsigned Plaintiffs and Unresolved Minor Plaintiffs, if any, whose claims are not so dismissed, the reduction provided for in 5.a. shall remain in effect, with respect to the amounts payable to such Unsigned Plaintiffs or Unresolved Minor Plaintiffs.
- iii. if the number of Unsigned Plaintiffs or Unresolved Minor Plaintiffs, if any, who file such notices of appeal within their respective Appeal Periods plus the number of Unsigned Plaintiffs and Unresolved Minor Plaintiffs, if any, whose claims are not so dismissed amount to more than 3% of the plaintiffs on the Plaintiff List, then the Interested Parties shall retain their right to cancel this Settlement Agreement under paragraph 5.b. hereof by written notice during the period thirty (30) days after the end of the last respective Appeal Period.

6. No payments may be made to or for the benefit of any minor plaintiffs from any of the separately available funds established under paragraph 3 hereof until the Court approves the settlement of the minors' claims. No payments may be made to minors from the Property Relocation/Adjustment Fund.

7. Within sixty (60) days after the end of the Release Period (or, if claims of Unsigned Plaintiffs or Unresolved Minor Plaintiffs are dismissed under paragraph 5.c. hereof, within sixty (60) days of the end of the Appeal Period), plaintiffs' counsel shall return to the Interested Parties from the Escrow Account the amounts, if any, by which the amounts to be distributed pursuant to paragraph 3 are reduced under the terms hereof on account of Unsigned Plaintiffs and Unresolved Minor Plaintiffs. Within thirty (30) days after the end of the Release Period, plaintiffs' counsel shall also provide the following reports to the Interested Parties:

- a. a report for each such Unsigned Plaintiff or Unresolved Minor Plaintiff of the amounts calculated for payments and/or grants to or for the benefit of that Plaintiff for the purposes of paragraphs 5.a.i., ii. and iii; and
- b. with respect to each Unsigned Plaintiff or Unresolved Minor Plaintiff, if any, who, despite plaintiffs' counsel's good faith efforts, cannot be located, a report of the good faith efforts to locate such plaintiff.

8. Any dispute regarding the amount of the monies, if any, to be returned to the Interested Parties pursuant to paragraphs 5 and 7 above shall be referred to Resolutions LLC for resolution, and the decision of Resolutions LLC shall be binding upon the parties to this Settlement Agreement.

9. Plaintiffs acknowledge that the remediation obligations of the Interested Parties and the obligations, if any, of their affiliates and other persons or entities designated in Exhibit B as "Released Parties" are governed by the Revised Partial Consent Decree entered August 4, 2003. Upon delivery of the Releases from the adult plaintiffs pursuant to paragraph 3.c. hereof, plaintiffs agree to withdraw as amici curiae in the matter styled United States of America v. Pharmacia Corporation, et al., Civil Action No. 02-C-0749-E, and to forego any right to appeal any decision of the United States District Court regarding the Revised Partial Consent Decree.

10. It is specifically acknowledged and agreed that the agreements and obligations of the Interested Parties under this Settlement Agreement are conditioned upon the concurrent execution of the Global Settlement Agreement and the execution of the Tolbert Settlement Agreement and entry of the Order and Judgment in Tolbert.

11. Upon delivery of the Releases from the adult plaintiffs pursuant to paragraph 3.c. hereof, and the Court's approval of the minors' settlement, the plaintiffs and the Interested Parties shall jointly file motions for dismissal with prejudice, along with proposed orders, to effectuate the dismissal of all released claims in the cases referenced in the first paragraph of the preamble to this Settlement Agreement other than United States v. Pharmacia Corporation, et al. The orders in the state court cases shall provide that the Honorable R. Joel Laird, Jr., Calhoun County Circuit Court, retains continuing jurisdiction in those cases for the purpose of enforcing this Settlement Agreement.

12. The parties make no representations or warranties of any kind to each other except as specifically set out in the Global Settlement Agreement and this Settlement Agreement

and on the record before the Honorable U. W. Clemon and the Honorable R. Joel Laird, Jr. on August 20, 2003.

13. The Global Settlement Agreement and this Settlement Agreement and the attached Exhibits supersede all prior discussions, negotiations and agreements between the parties with respect to the settlement of the litigation. The Global Settlement Agreement, this Settlement Agreement and the attached Exhibits, and the representations made on the record on August 20, 2003, before the Honorable U. W. Clemon and the Honorable R. Joel Laird, Jr. contain the sole and entire agreement between the parties with respect to the settlement of the plaintiffs' claims.

14. This Settlement Agreement shall not be modified or amended except by an instrument in writing signed by or on behalf of the parties hereto and approved by the Court. No such modification or amendment shall modify or amend any Release without the written consent of the affected released party or parties.

15. It is understood and agreed by plaintiffs that the Global Settlement Agreement and this Settlement Agreement are a complete resolution, settlement and compromise of disputed claims, and neither the Global Settlement Agreement, this Settlement Agreement, the consideration, nor any discussions regarding the Global Settlement Agreement and this Settlement Agreement shall constitute an admission of liability or wrongdoing on the part of the Released Parties. It is expressly acknowledged by plaintiffs that the Released Parties deny any liability or wrongdoing whatsoever.

16. The parties agree that upon payment to or on behalf of the plaintiffs of the

amounts (as they may be adjusted) set forth in paragraph 3d. through g. hereof and the agreement to pay the amounts set forth in paragraph 3.h. hereof, any liability for punitive damages or penalties against Pharmacia Corporation, Solutia Inc., Monsanto Company, or any of the Released Parties relating to the manufacture, use, release or disposal of polychlorinated biphenyls at or from the Anniston plant or Anniston property owned or controlled by the Released Parties is extinguished and that an assessment of punitive damages or penalties against Pharmacia Corporation, Solutia Inc., Monsanto Company, or any of the Released Parties relating to the manufacture, use, release or disposal of polychlorinated biphenyls at or from the Anniston plant or Anniston property owned or controlled by the Released Parties would not be warranted.

17. The Global Settlement Agreement and this Settlement Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Alabama.

18. Plaintiffs, by and through their counsel of record, represent and warrant that plaintiffs' counsel have express authority to enter into the Global Settlement Agreement and this Settlement Agreement. The Interested Parties, by and through their undersigned counsel, represent and warrant that their undersigned counsel have express authority, pursuant to their respective Articles of Incorporation, By-Laws, Board of Directors' resolutions, or other governing corporate policy or procedure, to enter into the Global Settlement Agreement and this Settlement Agreement on behalf of the Interested Parties.

19. The Global Settlement Agreement and this Settlement Agreement shall apply to, be binding upon, and inure to the benefit of all of the plaintiffs and the Released Parties as well

as their respective heirs, legal representatives, successors in interest and assigns. Nothing in this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity other than the plaintiffs and the Released Parties.

20. The parties to this Settlement Agreement and their counsel shall use best efforts to effectuate the terms and purposes of this Settlement Agreement.

21. All notices or other communications to any party to this Settlement Agreement shall be in writing (and shall include facsimile or similar writing) and shall be given to the respective parties hereto at the following addresses. Plaintiffs' counsel and the Interested Parties may change the name and address of the person(s) designated to receive notice on behalf of such party by notice given as provided in this paragraph.

Plaintiffs:

Donald W. Stewart, Esq.
1131 Leighton Avenue
P. O. Box 2274
Anniston, Alabama 36202
Facsimile: (256) 237-0713

Daniel R. Benson, Esq.
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, New York 10019
Facsimile: (212) 506-1800

Interested Parties:

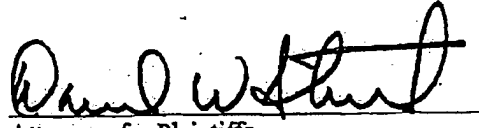
William S. Cox, III, Esq.
Lightfoot, Franklin & White, L.L.C.
The Clark Building
400 20th Street North
Birmingham, AL 35203-3200

22. All obligations of the Interested Parties pursuant to this Settlement Agreement (including, but not limited to, all payment obligations) are intended to be, and shall remain, joint and several.

23. Except as otherwise provided in the Global Settlement Agreement or this Settlement Agreement, all parties shall bear their own expenses of litigation and attorneys' fees which have arisen or will arise in connection with the litigation referenced in the preamble to this Settlement Agreement, the Global Settlement Agreement, this Settlement Agreement, or any other matters or documents related thereto.

24. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise a single instrument.

Dated: 9/9, 2003


Attorneys for Plaintiffs

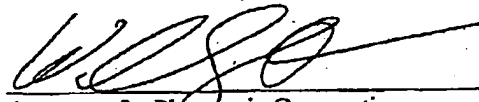
Dated: 9/9, 2003


Attorneys for Monsanto Company

Dated: 9/9, 2003

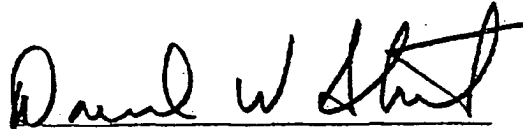

Attorneys for Solutia Inc.

Dated: 9/9, 2003


Attorneys for Pharmacia Corporation

attached as Exhibit C. A copy of the list of adult and minor plaintiffs from whom plaintiffs' counsel have obtained signed Releases or on behalf of whom an Order has been entered is attached as Exhibit D.)

Dated: This 2nd day of December, 2003.



DONALD W. STEWART
Attorney for Plaintiffs
Donald W. Stewart, P.C.
P.O. Box 2274
Anniston, Alabama 36202
(256) 237-9311
(256) 237-0713 (Facsimile)

CERTIFICATE OF SERVICE

This is to certify that I have this date served counsel for all parties to this action with a copy of the within and foregoing document by hand delivery and/or by facsimile transmission and/or by depositing same in the United States mail in a properly addressed envelope with adequate postage affixed thereon and addressed as follows:

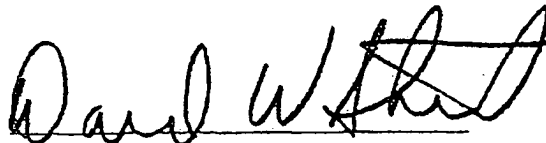
Warren B. Lightfoot, Esq.
Lightfoot, Franklin & White, LLC
The Clark Building
400 North 20th Street
Birmingham, Alabama 35203

This 2nd day of December, 2003.

FILED

DEC 02 2003

BILLY YATES
CLERK, CIRCUIT COURT



DONALD W. STEWART
Attorney for Plaintiffs