

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1 2 3 4 5 6	IN RE: OPANA ER ANTITRUST LITIGATION	} } } }	Case No. 14 CV 10150 Chicago, Illinois June 28, 2022 9:20 a.m.
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TRANSCRIPT OF TELEPHONIC PROCEEDINGS
BEFORE THE HONORABLE HARRY D. LEINENWEBER

APPEARANCES:

10 11 12	For the Direct Purchaser Plaintiffs: (via telephone conference call)	BERGER MONTAGUE PC 1818 Market Street, Suite 3600 Philadelphia, PA 19103 215-875-3000 BY: MR. DAVID F. SORENSEN
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13 14 15 16	For Defendant Impax Laboratories: (via telephone conference call)	KIRKLAND & ELLIS LLP 601 Lexington Avenue New York, NY 10022 212-446-4800 BY: MR. PATRICK J. GALLAGHER
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17 18 19	For Defendant Endo Pharmaceuticals: (via telephone conference call)	DECHERT LLP Cira Centre 2929 Arch Street Philadelphia, PA 19104 215-994-2000 BY: MR. GEORGE G. GORDON
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21 22 23 24 25	Court Reporter:	CHARLES R. ZANDI, CSR, RPR, FCRR Federal Official Court Reporter United States District Court 219 South Dearborn Street, Room 2144-D Chicago, IL 60604 Telephone: (312) 435-5387 charles_zandi@ilnd.uscourts.gov
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09:19:33 1 (Proceedings heard in open court:)

09:19:33 2 THE CLERK: 14 C 10150, In Re: Opana.

09:19:54 3 Did you want to pass that one, Judge?

09:19:59 4 MR. GALLAGHER: Good morning, your Honor. Patrick
09:20:01 5 Gallagher from Kirkland & Ellis on behalf of defendant Impax
09:20:06 6 Laboratories, Incorporated.

09:20:06 7 THE COURT: Good morning.

09:20:08 8 MR. SORENSON: Good morning, your Honor. David
09:20:10 9 Sorenson on behalf of the direct purchaser class plaintiffs.

09:20:15 10 THE COURT: This is the motion for approval of the
09:20:19 11 settlement, class settlement, for the end payors, is that
09:20:25 12 correct?

09:20:27 13 MR. SORENSON: No, your Honor. This is David
09:20:30 14 Sorenson. This is for preliminary approval for the settlement
09:20:34 15 for the direct purchaser class, not the end payors, the direct
09:20:37 16 purchaser class.

09:20:38 17 THE COURT: Okay. The direct purchasers class.

09:20:41 18 I reviewed the settlement, obviously, since I heard
09:20:44 19 the trial, so I'm very familiar with the facts of the case;
09:20:47 20 and I certainly agree that this is an excellent settlement
09:20:52 21 for the class.

09:20:53 22 The one question I had, maybe you can answer. It's
09:20:57 23 my understanding the way that you proposed to divvy up the
09:21:03 24 settlement is by the -- tell me how you'd end up divvying up
09:21:14 25 the settlement.

09:21:14 1 MR. SORENSON: Yeah. In terms of the -- in terms of
09:21:16 2 payments to the class members, your Honor? Is that your
09:21:19 3 question?

09:21:20 4 THE COURT: Yes, right.

09:21:22 5 MR. SORENSON: Yes. According to the plan of
09:21:24 6 allocation that we submitted, which is Exhibits 2 and 3, it's
09:21:28 7 pro rata based on class members' purchases. This is the same
09:21:32 8 kind of method we've been using in many prior similar cases.

09:21:37 9 We use -- we and our expert, which is Dr. Leitzinger,
09:21:42 10 who would have testified at the damage trial if we had gotten
09:21:45 11 to that phase, he's the same expert we use for damages. He
09:21:51 12 already has in his possession data on class members' purchases
09:21:57 13 of brand and generic Opana that we obtained during discovery,
09:22:01 14 and he will use that to do a pro rata or percentage
09:22:06 15 calculation of each class member's share of the net settlement
09:22:11 16 fund.

09:22:11 17 So, you start with the total of 145 -- let's assume
09:22:15 18 there's one distribution. I can come back to whether there
09:22:18 19 will be more than one because of the timing of the payments,
09:22:20 20 but let's assume you're using the entire settlement of
09:22:24 21 \$145 million.

09:22:26 22 You subtract whatever the Court ultimately ends up
09:22:29 23 awarding in terms of attorney's fees, reimbursement expenses,
09:22:33 24 and service awards and the like. So, you subtract that.
09:22:37 25 You're left with some number.

09:22:39 1 That number is then multiplied by each class member's
09:22:42 2 pro rata share. So, if you have 10 percent of the purchases,
09:22:46 3 you get 10 percent of what's left.

09:22:49 4 It's -- there's a little bit more of a
09:22:52 5 complication -- not a complication, but the units that are
09:22:57 6 being used, which is their purchases of brand and generic
09:23:03 7 Opana, are weighted slightly differently, meaning a purchase
09:23:07 8 of a brand and a purchase of a generic are not considered the
09:23:12 9 same. A purchase of a generic is considered basically
09:23:17 10 40 percent of a purchase of a brand. And that's because the
09:23:22 11 damages that were alleged and calculated by Dr. Leitzinger,
09:23:27 12 the damages are higher on a per-unit basis for purchases of
09:23:33 13 each brand unit than the generic.

09:23:36 14 THE COURT: Yeah.

09:23:37 15 MR. SORENSON: The generic overcharge --

09:23:40 16 THE COURT: That wasn't my question. I understand
09:23:41 17 that, and I agree with that.

09:23:42 18 MR. SORENSON: I'm sorry. I'm sorry.

09:23:45 19 THE COURT: Is it by milligram? In other words --

09:23:48 20 MR. SORENSON: It's by -- yes, by milligrams. We'll
09:23:50 21 add up all the milligrams, and then --

09:23:53 22 THE COURT: The question I had was, there were -- I
09:23:56 23 think there was 10, 15, 25, and 40, something like that.

09:24:03 24 MR. SORENSON: Right.

09:24:04 25 THE COURT: The question I had was if you bought a

09:24:08 1 40-milligram, you would pay normally less, I think, per
09:24:13 2 milligram than if you bought four 10 pills with -- like if I
09:24:21 3 buy a gallon of milk, it's cheaper than if I bought four
09:24:29 4 quarts.

09:24:30 5 And I was wondering what was the justification for
09:24:33 6 doing it by milligram rather than -- I assume -- maybe it
09:24:36 7 isn't. Maybe it was priced based upon milligrams, but that
09:24:41 8 would -- I just thought that that would be unusual, that if
09:24:44 9 you bought a 40-milligram pill, it would not be four times
09:24:53 10 more costly, I don't think, than four 10-milligrams.

09:24:58 11 Does that question make sense?

09:25:02 12 MR. SORENSON: Yeah, I think I understand what you're
09:25:05 13 asking. I think -- I don't have a precise answer for you on
09:25:08 14 this phone call. I don't know if any of my colleagues who
09:25:12 15 worked on the plan of allocation do. I think that, you know,
09:25:17 16 the experts are just looking at total milligrams for purposes
09:25:21 17 of this allocation, which is -- I don't -- you know, if there
09:25:27 18 are nuances in overcharge paid, you know, as you posit paying
09:25:34 19 for one 40-milligram pill versus four 10-milligrams, I don't
09:25:42 20 know that that's the case. We can certainly investigate that
09:25:45 21 with our expert and address that if you'd like us to.

09:25:50 22 You know, the allocation is meant to be a reasonable
09:25:55 23 approximation of each class member's claimed damages. It's
09:26:01 24 not -- I don't think it's meant to be, nor is it required to
09:26:04 25 be, an extremely precise, you know, "This is your exact

09:26:10 1 damages" calculation. I don't think that's the standard for a
09:26:14 2 settlement allocation.

09:26:16 3 So, it may be that there is a slight difference in
09:26:20 4 the way the price is per milligram, and we can investigate
09:26:30 5 that; but even if it were, I don't -- my reaction is this is
09:26:36 6 still a reasonable approximation for purposes of allocating
09:26:39 7 the settlement.

09:26:40 8 But again, I can investigate that, and we can file
09:26:42 9 something addressing it specifically if that's what you'd like
09:26:45 10 us to do.

09:26:46 11 THE COURT: Does anybody have any comments on that
09:26:50 12 on -- I mean, if the question makes sense. I guess that's my
09:26:54 13 question. That's the reason I asked it is: Is that a
09:27:02 14 reasonable inquiry?

09:27:05 15 MR. SORENSON: I don't know, your Honor. Without
09:27:07 16 talking with our experts, I don't know --

09:27:09 17 THE COURT: No, I obviously don't want to queer the
09:27:13 18 settlement because I think it's a great settlement for the
09:27:16 19 class. And I don't want to delay it, either.

09:27:20 20 So, I mean, I have -- I just -- it just occurred to
09:27:25 21 me that there would be a price differential probably between
09:27:34 22 the person who buys the more -- the larger one.

09:27:37 23 I'll give preliminary approval of the settlement
09:27:42 24 anyway, and perhaps you can check it out and let me know.
09:27:49 25 Because I think it's a great settlement, obviously. If they

09:27:52 1 had stayed in the case, they would probably get -- well,
09:27:55 2 eventually, there will be an appeal. I don't know what's
09:27:58 3 going to happen, but it's an excellent settlement for the
09:28:02 4 class. So, I'll --

09:28:05 5 MR. SORENSON: Well, thank you, your Honor. And --
09:28:08 6 go ahead. I'm sorry.

09:28:09 7 THE COURT: I'll grant preliminary approval. But
09:28:13 8 check that out because I don't want to make this problem --
09:28:21 9 and obviously, it's easier to do it that way. It might be
09:28:25 10 extraordinarily difficult to do it another way.

09:28:30 11 MR. SORENSON: Right. We -- I will -- we will follow
09:28:33 12 up with our experts, your Honor; and if there's some -- I
09:28:36 13 mean, if you'd like, we can file some kind of written report
09:28:41 14 to your Honor, whatever you'd like, whatever you'd prefer.

09:28:47 15 THE COURT: Yeah, I would like just a report saying
09:28:51 16 that it's not feasible or it makes sense and should be done or
09:28:54 17 whatever.

09:28:54 18 MR. SORENSON: Okay. We will do that. We will do
09:28:56 19 that, your Honor. We will do that.

09:28:58 20 THE COURT: Okay. Does anybody want to make a
09:29:00 21 comment on the settlement or -- I assume there's no objectors
09:29:06 22 present.

09:29:07 23 MR. GALLAGHER: Yes, your Honor. This is Patrick
09:29:12 24 Gallagher on behalf of Impax. No objection, and we agree with
09:29:15 25 plaintiffs' counsel and your Honor's characterization that

09:29:18 1 it's an excellent settlement and agree that preliminary
09:29:21 2 approval should be granted.

09:29:23 3 THE COURT: All right.

09:29:25 4 MR. GORDON: And, your Honor, this is George Gordon
09:29:29 5 on behalf of Endo. We have no position.

09:29:31 6 THE COURT: Okay. The motion is granted. So, thank
09:29:35 7 you.

09:29:36 8 MR. SORENSON: Your Honor, just -- yeah, we need a
09:29:39 9 date for final approval hearing, and then we will fill in the
09:29:43 10 interim dates just working backwards from whatever final
09:29:46 11 approval hearing date you set.

09:29:48 12 And it needs to be at least, I would say -- and
09:29:51 13 counsel for Impax can address this. It needs to be at least
09:29:55 14 90 days from when CAFA notice is made and class action
09:30:01 15 fairness notice is made by Impax. I don't think that has yet
09:30:05 16 occurred. I think it's occurring today perhaps or tomorrow.
09:30:10 17 Perhaps counsel can address it.

09:30:12 18 But to be safe, your Honor, I think that the final
09:30:14 19 approval date can be no earlier than 90 days from August 1st.
09:30:19 20 So, if you count out 90 days from August 1st on your calendar,
09:30:23 21 from that point on, whatever date, you know, works for you is
09:30:28 22 fine.

09:30:29 23 THE COURT: All right, Mel. I'll let you do the
09:30:32 24 calculating.

09:30:33 25 THE CLERK: Thursday, November 3rd at 9:30 a.m.

09:30:38 1 MR. SORENSON: 9:30 a.m.?

09:30:41 2 THE CLERK: 9:30 a.m. Thursday, November 3rd.

09:30:44 3 MR. SORENSON: Okay.

09:30:45 4 THE COURT: Now, does that -- will that have to be in
09:30:48 5 court, in person, or by telephone, or how's --

09:30:52 6 MR. SORENSON: Well, your Honor, normally these are
09:30:56 7 in person. They are open to the public and members of the
09:30:59 8 class, obviously. So, if -- ideally, it would be, you know,
09:31:05 9 open court, yes.

09:31:07 10 THE COURT: All right. So, we'll -- Mel, is that --
09:31:12 11 make it for in-court then.

09:31:14 12 THE CLERK: Okay. Sounds great. Will do.

09:31:17 13 MR. SORENSON: Your Honor, I'm sorry. One last
09:31:19 14 thing, your Honor, while we have you. And this is a
09:31:21 15 housekeeping matter.

09:31:22 16 On the form of judgment, which you did enter an
09:31:26 17 amended form of judgment. I apologize for this, but I think
09:31:30 18 my colleagues and I are going to ask for a couple of
09:31:33 19 additional changes in the nature of housekeeping. You know,
09:31:38 20 we apologize for that, but -- and we'll put it in writing,
09:31:41 21 obviously, but just to give you the information.

09:31:44 22 The caption says Rochester Drug Cooperative, Inc.,
09:31:49 23 plaintiff. We believe that should be corrected to say the
09:31:52 24 In Re: Opana ER Antitrust Litigation, instead of Rochester
09:31:59 25 Drug as the only plaintiff. And, in fact, Rochester Drug

09:32:02 1 dismissed its case some time ago.

09:32:04 2 And two, since this is a judgment that's partial in
09:32:08 3 terms of the defendants, we believe at the end of the sentence
09:32:12 4 in the middle of the page where it says, "against plaintiff,"
09:32:16 5 it should say basically something from Rule 54(b) that, "This
09:32:21 6 is pursuant to Rule 54(b), there being no just reason for
09:32:25 7 delay."

09:32:25 8 THE COURT: Right.

09:32:26 9 MR. SORENSON: Because the rule does -- so, we'll be
09:32:29 10 filing that. I just wanted to let you know that while we were
09:32:31 11 on the phone.

09:32:33 12 THE COURT: All right. We can take care of that.
09:32:35 13 All right.

09:32:35 14 MR. GALLAGHER: And, your Honor, just one final
09:32:38 15 thing. Patrick Gallagher for Impax. Just to confirm
09:32:41 16 plaintiff counsel's question, CAFA notice will be sent out
09:32:45 17 either today or tomorrow. And so the date that you set for
09:32:47 18 the final preliminary hearing is well within the 90 days after
09:32:51 19 that notice will be sent out, November 3rd.

09:32:55 20 THE COURT: Thank you.

09:32:55 21 MR. GALLAGHER: Thank you, your Honor.

09:32:56 22 MR. SORENSON: Thank you, your Honor.

23 (Which were all the proceedings heard.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Charles R. Zandi

August 4, 2022

Charles R. Zandi
Official Court Reporter

Date