

ATTACHMENT 1

TAXOL FINAL ESCROW AGREEMENT

This Escrow Agreement pertains to settlement of the case captioned, **State of Ohio, et al. v. Bristol-Myers Squibb, Co.**, (Docket #1-02-01080, D.D. C.) and is made and entered into by and among the defendant Bristol-Myers Squibb, Company ("BMS"), the Huntington National Bank ("Escrow Agent") and plaintiff States, Commonwealths and Territories of: Ohio (through the Office of the Ohio Attorney General, the "Plaintiff States' Representative"), Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, North Mariana Islands, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, U.S. Territory of America Samoa, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, Wisconsin and Wyoming (collectively, the "Plaintiff States").

WHEREAS:

- A. On January 8, 2003, the Plaintiff States and BMS entered into a Memorandum of Understanding to settle the above-entitled litigation commenced by the Plaintiff States against BMS (the "Litigation").
- B. In order to finalize and complete the terms of the Memorandum of Understanding, the Plaintiff States and BMS have entered into a Stipulated Injunction, a Settlement Agreement (the "Settlement Agreement") to which this Final Escrow Agreement is attached (see Exhibit A) and related instruments to implement the settlement.
- C. The Plaintiff States and BMS have entered into the Settlement Agreement to settle the Litigation, which Settlement requires Court approval, whereby, on January 31, 2003, BMS paid into an Interim Escrow Account--for the benefit of the Plaintiff States--fifty-five million dollars (\$55,000,000.00) (the "Settlement Amount").
- D. In furtherance of finalizing the Settlement Agreement, the parties desire to revise the Interim Escrow Agreement entered into by the parties on January 31, 2003, in order to provide for the disbursement of the Settlement Amounts pursuant to the terms of this Final Escrow Agreement (the "Escrow Accounts").

NOW THEREFORE, for good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree to the foregoing and as follows:

DEFINITIONS:

All capitalized terms used herein shall have the same meaning as provided for in the Settlement Agreement, unless the capitalized term is expressly defined herein.

a. "Escrow Funds" shall mean the funds deposited by BMS or any other funds deposited pursuant to paragraph one (1) below with the Escrow Agent including interest and income earned thereon and any and all earnings and/or interest from investments of said monies.

b. "Escrow Agent" shall mean Huntington National Bank, 7 Easton Oval – EA4E63, Columbus, Ohio 43219, or any successor agent appointed pursuant to the provisions contained in paragraph fifteen (15) below.

c. "Defendant" shall mean Bristol-Myers Squibb, Company ("BMS").

d. "Plaintiff States' Representative" shall mean Jim Petro, Attorney General of the State of Ohio, or any other person or persons designated by him or any official successors.

e. "Settlement Agreement" and/or "Settlement" shall mean the settlement between the Plaintiff States and BMS.

f. "Joint Written Notice" shall mean a written notification, signed by the Plaintiff States' Representative and counsel for BMS in the form attached hereto as Exhibit B such that each Joint Written Notice direction shall include a certification by the Plaintiff States' Representative and counsel for BMS that the instructions in the notification are being made pursuant to the terms of the Settlement Agreement and this Final Escrow Agreement.

g. "Written Direction" shall mean a written notification, signed by the Plaintiff States' Representative, in the form attached hereto as Exhibit C. Each Written Direction shall include a certification by the Plaintiff States' Representatives that the instructions in the notification are being made pursuant to the terms of the Settlement Agreement and this Final Escrow Agreement.

h. "Court" means the United States District Court for the District of Columbia.

i. "Effective Date" means the date on which the Settlement Agreement becomes effective. The Effective Date shall occur when all of the following conditions have been satisfied, unless one or more of such conditions is modified in a writing signed by the Parties:

(1) Execution of the Settlement Agreement;

(2) Entry by the Court of the Stipulated Injunction;

(3) Entry by the Court of a Preliminary Approval Order;

(4) Expiration of the period within which consumers represented *parens patriae* and members of the proposed Class must exercise their rights to be excluded from *parens patriae* representation or from the Class;

(5) Defendant has not availed itself of any right to terminate or withdraw from the Settlement pursuant to the terms of the Settlement Agreement;

(6) Final approval by the Court of the Settlement;

(7) Entry by the Court of the Final Judgment and Order; and

(8) The Final Judgment and Order shall have become "final", which shall be deemed to occur upon the expiration of the tenth day after the applicable time for appeals of the Final Judgment and Order (whether as of right or upon showing of excusable neglect or good cause) has expired without any appeal having been taken, or, if an appeal is taken, either upon the expiration of the tenth day after such appeal has been dismissed prior to the resolution by the appellate court or upon the expiration of the tenth day after the Final Judgment and Order is finally affirmed by the appellate court with no possibility of subsequent appeal or judicial review thereof. For purposes of this Subsection, an "appeal" shall include any Petition for a Writ of Certiorari that may be filed in connection with the approval or disapproval of the Settlement Agreement.

AGREEMENT:

1. At the direction of Plaintiff States' Representative, the Escrow Agent shall maintain the Escrow Accounts which were established on January 31, 2003, as follows: \$3.0 million plus any accrued interest or income shall remain, until further Joint Written Notice is provided, in an account entitled, "BMS Antitrust Action: State Attorney Fees and Costs Account"; \$14.5 million (which includes \$2.0 million for Settlement Administration and Notice Costs) plus any accrued interest or income shall remain, until further Joint Written Notice is provided, in an account entitled, "BMS Antitrust Action; Consumer Fund Account;" and \$37.5 million plus any accrued interest or income shall remain, until further Joint Written Notice is provided, in an account entitled, " BMS Antitrust Action; State Agency Account". The Escrow Agent agrees to hold, invest and disburse all of the Escrow Funds including interest earned thereon (the "Escrow Amounts") in accordance with the terms of this Final Escrow Agreement.

2. The Escrow Funds shall be held separately and segregated from all other funds or accounts held by the Escrow Agent.

3. The Escrow Agent shall invest the Escrow Funds in obligations of, or obligations guaranteed by, the United States of America or any of its departments or agencies, or in pre-refunded or escrowed municipal bonds which are federally insured, to obtain the highest available return on investment, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. The terms of any such investment shall not exceed ninety (90) days. Any losses shall not be recoverable from BMS or its counsel and BMS and its counsel shall have no responsibility for the Escrow Agent's performance. So long as the Escrow Agent has followed the investment requirements of this Escrow Agreement, neither BMS nor Plaintiff States' Representative shall direct the Escrow Agent to liquidate any investment in the Escrow Funds prior to its maturity. The Escrow Agent shall bear all risks related to the investment of the Escrow Funds. All such investments (including principal, interest, income and sale proceeds) shall at all times constitute a part of the Escrow Funds, and all income, interest and profits on such investments shall become a part of and credited to the Escrow Funds.

4. This Final Escrow Agreement may be amended at any time by a written instrument signed by all of the parties other than the Escrow Agent, except any modification which shall affect the duties or responsibilities of the Escrow Agent may be made only upon written agreement of all parties including the Escrow Agent.

5. The Escrow Agent shall be compensated for investment services in accordance with Exhibit D attached hereto. The Escrow Agent is authorized to, and may, disburse to itself from the Escrow Funds, the amount of any compensation due and payable hereunder. Such compensation shall not be recoverable from BMS or its counsel but may be directly disbursed by the Escrow Agent to itself from the Escrow Funds on a monthly basis, thirty (30) days after giving written notice, consisting of an itemization of compensation earned, to BMS and Plaintiff States' Representative.

6. If the Settlement Agreement is not approved, or is terminated, cancelled, voided invalidated, or overturned on appeal, or if the Effective Date does not occur, for any reason, the Escrow Agent shall within ten (10) days following written notice to the Escrow Agent and Plaintiff States' Representative by counsel for BMS of such termination or invalidation return the Escrow Funds to BMS, reduced prorated by the amount of actual out of pocket costs and expenses and

Escrow Agent fees reasonably incurred up to the date of such termination.

7. The Escrow Agent shall treat the Escrow Funds as being at all times “qualified settlement funds” as provided in Treas. Reg. §1.468B-1. The Escrow Agent and, as required, the parties hereto shall jointly and timely make such elections as necessary or advisable to carry out the provisions of this Escrow Agreement and the Settlement Agreement, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulation. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. The Escrow Agent shall be deemed the “administrator” (as defined in Treasury Regulation 1.468B-2(k)(3)) of the Escrow Funds. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Escrow Funds (including without limitation the returns described in Treas. Reg. §1.468B-2(k) and (l) and the “§1.468B-3 Statement” described in Treas. Reg. §1.468B-3(e)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Escrow Funds shall be paid out of the Escrow Funds. All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Escrow Funds, including any taxes or tax detriments that may be imposed upon BMS with respect to any income earned by the Escrow Funds for any period during which the Escrow Funds do not qualify as “qualified settlement funds” for federal or state income tax purposes (“Taxes”), and (ii) expenses and costs incurred in connection with the operation and implementation of this Paragraph (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described herein) (“Tax Expenses”), shall be paid out of the Escrow Funds. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Escrow Funds and shall be timely paid by the Escrow Agent out of the Escrow Funds and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2 (l) (2)). BMS is not responsible and shall have no liability therefore or for any reporting requirements that may relate to this Paragraph. The parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Paragraph. The Escrow Agent shall indemnify and hold BMS and the Plaintiff States harmless for Taxes and Tax Expenses (including, without limitation, taxes payable by reason of any such indemnification).

8. The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Final Escrow Agreement, and no implied duties or obligations shall be inferred or otherwise imposed upon or against the Escrow Agent, and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set out in this Final Escrow Agreement.

9. Disbursement of Escrow Funds:

a. The Escrow Agent shall disburse the Escrow Funds only as provided for in this Final Escrow Agreement or as authorized by the terms of the Settlement Agreement, or as directed by specific order of the Court.

b. After the Court grants Preliminary Approval of the Settlement, then, upon Joint Written Notice from the Plaintiff States' Representative and BMS, the Escrow Agent shall pay from the Consumer Fund Account: (1) \$38,600.00 as the fixed fee escrow expense of the Escrow Agent; and (2) on a monthly basis, the costs and expenses associated with administering the Settlement, including, without limitation, costs and expenses for providing proper notice of the Settlement, consulting fees, and other necessary fees of the Settlement Administrator. Taxes and Tax Expenses shall be paid from the Consumer Fund Account as provided for herein.

c. The Escrow Agent shall receive Joint Written Notice that the Effective Date--as defined herein and consistent with the terms of the Settlement Agreement--has occurred.

d. After the Effective Date, the Escrow Agent shall distribute Escrow Funds from the Consumer Fund Account and State Agency Account pursuant to the Consumer Distribution Plan and the Government Compensation Plan. The Escrow Agent shall, upon Written Notice from Plaintiff States' Representative, continue to pay the Settlement Administrator from the Consumer Fund Account the additional costs and expenses associated with administering the Settlement, including, without limitation, costs and expenses for providing proper notice of the Settlement, the remaining expert or consulting fees, the fees for processing and payment of claims, and other necessary fees and expenses of the Settlement Administrator. The expenses incurred in writing checks and distribution of the money from the State Agency Account shall be paid from the State Agency Account.

e. After the Effective Date, upon Written Notice from Plaintiff States' Representative, the Escrow Agent shall distribute the Consumer Fund in accordance with the Consumer Distribution Plan as approved by the Court. Upon Written Notice from Plaintiff States' Representative, and in accordance with the Consumer Distribution Plan as approved by the Court, after payments are made to consumers, the Escrow Agent shall distribute any residue and/or interest remaining in the Consumer Fund Account to the Litigating Plaintiff States for *cy pres* distribution by their respective Attorneys General.

f. After the Effective Date, and upon Written Direction from Plaintiff States' Representative, the Escrow Agent shall distribute the State Agency Fund Account for compensation to state agencies in accordance with the Government Compensation Plan. Taxes and tax expenses shall be paid from the State Agency Fund Account as provided for herein.

g. After the Effective Date, upon Written Direction from Plaintiff States' Representative, the Escrow Agent shall distribute Escrow Funds from the State Attorney Fees and Costs Account for reimbursement of the Litigating Plaintiff States' attorney fees and costs incurred in the investigation/litigating up to the maximum amount in the State Attorney Fees and Costs Account. Taxes and tax expenses shall be paid from the State Attorney Fees and Cost Account as provided for herein.

10. Neither BMS nor its counsel shall have responsibility for (except to the extent that Joint Written Directions are specifically required herein, which shall not be unreasonably withheld) or liability related to the administration of or disbursement from the Escrow Funds.

11. At the request of BMS or Plaintiff States' Representative, the Escrow Agent shall

provide a report in a form that is acceptable to the requesting party, reflecting income and disbursement activity of the Escrow Funds for the period year to date. The Escrow Agent shall, upon request of any party, advise counsel for the parties of any maturities, conversion privileges and other similar matters concerning the investments held in accordance with this agreement. The Escrow Agent shall, upon the request of any party, furnish to counsel for the parties statements of transactions which statements shall be certified by the Escrow Agent.

12. The Escrow Agent is authorized, in its sole discretion, to disregard any and all notices or instructions given by any person, except such notices or instructions as are provided for herein. In executing its duties and responsibilities hereunder, the Escrow Agent may reasonably rely only upon a written notice, demand, certificate, or other document provided for by this Escrow Agreement as valid authorization and direction to the Escrow Agent.

13. Copies of all notices and correspondence sent pursuant to this Final Escrow Agreement shall be served by mail upon all undersigned counsel and the Escrow Agent.

14. This Final Escrow Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, provided, however, that no party may assign its interest under this Final Escrow Agreement without the prior written consent of all other parties to this Agreement. Such consent shall not be unreasonably withheld.

15. The Escrow Agent may resign from the performance of its duties hereunder at any time by giving sixty (60) days prior written notice to BMS and Plaintiff States' Representative or may be removed, with or without cause, by BMS or Plaintiff States' Representative, at any time by the giving of thirty (30) days prior Joint Written Notice to the Escrow Agent. Such resignation or removal shall take effect upon the appointment of a successor Escrow Agent as provided herein. Upon any such notice of resignation or removal, Plaintiff States' Representative shall appoint a successor Escrow Agent hereunder. The successor Escrow Agent must sign and agree to be bound by the terms of the Taxol Final Escrow Agreement. Upon the acceptance in writing of any appointment as Escrow Agent hereunder by a successor Escrow Agent, such successor Escrow Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Escrow Agent, and the retiring Escrow Agent shall be discharged from its duties and obligations under this Final Escrow Agreement, but shall not be discharged from any liability for actions taken as Escrow Agent hereunder prior to such succession. The retiring Escrow Agent shall transmit all records pertaining to the Escrow Accounts and shall pay the Escrow Funds to the successor Escrow Agent, after making copies of such records as the retiring Escrow Agent deems advisable and after deduction by and payment to the retiring Escrow Agent (after written notice to BMS and Plaintiff States' Representative) of all fees and expenses incurred by or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

16. Neither the Plaintiff States, their agencies or departments, nor any member of any *parens patriae* or consumer class, shall have any rights or title to or interest in any portion of the Escrow Funds, except as provided herein. There shall be no distribution of funds unless otherwise provided for herein or as specified in the attached Settlement Agreement.

17. The Escrow Agent is and shall be independent, and neither BMS nor Plaintiff

States' Representative shall have any authority whatever relative to the investment of the Escrow Funds, provided that, as parties hereto, Plaintiff States' Representative and BMS shall be entitled to institute actions to compel or require performance by the Escrow Agent of its obligations hereunder.

18. All communications hereunder shall be in writing. All communications and deliveries hereunder shall be deemed to have been duly given if addressed and delivered or deposited in the U.S. mails by registered or certified mail, return receipt requested, postage prepaid, to the respective parties at the following addresses:

Escrow Agent:

Huntington National Bank
7 Easton Oval – EA4E63
Columbus, Ohio 43219
Attn: Candada J. Moore
Corporate Trust Dept.

The Plaintiff States

Plaintiff States' Representative
Mitchell L. Gentile
Principal Attorney
Office of the Ohio Attorney General
140 East Town Street, 12th Floor
Columbus, Ohio 43215

BMS:

Counsel for BMS
Richard J. Stark
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019

19. This Final Escrow Agreement may be executed in a number of counterparts, all of which together shall be deemed to constitute one agreement. Any party may execute this Escrow Agreement and become a party hereto by signing any such counterpart.

20. The signatories hereto represent and warrant that they are fully authorized to enter into and execute this Final Escrow Agreement on behalf of the respective parties hereto.

21. The Escrow Agent shall treat the fact of the settlement and the Settlement Agreement attached hereto, as well as all facts and other information pertaining to the settlement, as confidential and shall not disclose or use such information in any way other than as necessary to fulfill its role as Escrow Agent, including, but not limited to, tax filings or legal disclosures required in furtherance of the escrow duties described herein.

22. To the extent that there is any ambiguity or inconsistency between the terms of the Settlement Agreement and the Final Escrow Agreement, the terms of the Settlement Agreement shall control.

23. The Escrow Agent, the Plaintiff States and BMS hereby agrees to submit to the jurisdiction and venue of the Federal District Court, District of Columbia, where the instant case captioned, State of Ohio, et al. v. Bristol-Myers Squibb Co., (Docket #1-02-01080, D.D.C.), is currently pending, with respect to issues relating to the Final Escrow Agreement and Escrow Funds for purposes of enforcement, clarification or amendment of the provisions of this Escrow Agreement and to comply with all directions given by that Court.

IN WITNESS WHEREOF, Plaintiff States' Representative, BMS and the Escrow Agent have caused this Final Escrow Agreement to be signed as of the 24 day of April 2003.



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Candada J. Moore
Senior Vice President
The Huntington National Bank as Escrow Agent
7 Easton Oval - EA4E63
Columbus, Ohio 43219
042303 Taxol Final Escrow Agreement

EXHIBIT B

**JOINT WRITTEN NOTICE
EXAMPLE**

**STATE OF _____ ET AL V _____ ET AL
ESCROW # _____**

In accord with the Final Escrow Agreement, dated _____, 2003 and the Settlement Agreement referenced herein, the Plaintiff States' Representatives direct The Huntington National Bank, as the Escrow Agent, to take the following action with respect to the Escrow Funds and/or Escrow Account. The Escrow Agent shall

DATED: _____, 200__

BRISTOL-MYERS SQUIBB COMPANY PLAINTIFF STATES

By: _____ By: _____

By: _____ By: _____
Counsel for Bristol-Myers Squibb Company Plaintiff States' Representatives

EXHIBIT C

**WRITTEN DIRECTION
EXAMPLE**

**STATE OF _____ ET AL V _____ ET AL
ESCROW # _____**

In accord with the Escrow Agreement, dated _____, 2003 and the Settlement Agreement referenced in the Escrow Agreement, the Plaintiff States' Representatives direct The Huntington National Bank, as the Escrow Agent, to take the following action with respect to the Escrow Funds and/or Escrow Account. The Escrow Agent shall

DATED: _____, 200_

PLAINTIFF STATES

By: _____

By: _____
Plaintiff States' Representatives

Exhibit D

Schedule of Fees and Expenses

Fixed Fee Bid

Out of Pocket Expenses: _____ none _____
(list all expenses, including, but not limited to telephone tolls, stationery, postage and delivery expenses)

Investment Fees:
For Interest-Bearing or Money

Market Account: _____ none _____

For purchases of
Treasury Securities: _____ none _____

Other: _____ none _____

Fixed Total Taxol Escrow Fee _____ \$38,600.00 _____
Total Taxol Escrow fee includes any monies paid under the Interim Escrow