

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

IN RE: BAYER CORP. COMBINATION
ASPIRIN PRODUCTS MARKETING AND
SALES PRACTICES LITIGATION

THIS PLEADING RELATES TO:

ALL CASES

09-md-2023 (BMC)(JMA)

COGAN, District Judge

**DECLARATION OF DANIEL J. MOGIN IN SUPPORT OF ALLOCATION TO BAYER
WOMEN'S SUBCLASS**

I, Daniel J. Mogin, hereby declare as follows:

1. I have personal knowledge of the matters set forth in this declaration and, if sworn as a witness, I could and would testify competently thereto.

2. I am an attorney at law duly admitted and in good standing to practice law in the State of California. I am also admitted to practice in various district courts throughout the United States, the Ninth Circuit Court of Appeals and the Supreme Court of the United States.

3. I am the Managing Shareholder of The Mogin Law Firm, P.C., which specializes in representing plaintiffs in antitrust, unfair competition, consumer protection, securities/investment and complex business litigation. I have been involved in class actions since 1984 and have represented plaintiffs in some aspect of more than 500 class actions in state and federal courts throughout the United States. I have been selected as lead or liaison counsel in a number of matters and have frequently served on Steering and Executive Committees on some of the largest antitrust class actions in the United States. I have substantial experience in econometric analysis and damages issues and my firm has frequently been charged with expert witness responsibilities, including development and analysis of damages evidence.

4. In this case, our individual client is Anne McCabe, a representative of the Bayer Women's Low Dose Aspirin + Calcium ("Bayer Women's") sub-class.¹

5. On or about March 13, 2012, co-lead counsel requested that I serve as allocation counsel on behalf of the Bayer Women's sub-class. At or about the same time, I was informed that Melanie Muhlstock would serve as allocation counsel on behalf of the Bayer Aspirin with Heart Advantage ("Bayer Heart Advantage") sub-class.²

6. Prior to my appointment as allocation counsel for the Bayer Women's sub-class, my firm had been extensively involved in reviewing and analyzing documents produced by the defendants and other sources relevant to various to damage theories, revenues, overcharges, profits and other quantitative matters. Subsequently, I examined and re-analyzed my findings related to these quantitative matters and examined the Master Complaint, the Confidential Memorandum of Understanding (March 12, 2012), Plaintiffs' Motion for Class Certification and other pleadings.

7. Further, I re-examined the expert report and deposition submitted by Plaintiffs' expert, Dr. Jeffrey Harris, in support of the Motion for Class Certification. Dr. Harris' report included information regarding Bayer's revenues from Bayer Women's and Bayer Heart Advantage as well as an estimate of excess payments (overcharges) and profits for each of those products. *See* Harris report at pp. 7-19. The following is a summary of Dr. Harris' findings:

¹ Defined as "Class 2" in the Memorandum in Support of Plaintiffs' Motion for Preliminary Approval of Class Settlement, For Certification of Settlement Classes, and for Permission to Disseminate Class Notice ("Plaintiffs' Motion for Preliminary Approval of Settlement").

² Defined as "Class 1" in Plaintiffs' Motion for Preliminary Approval of Settlement.

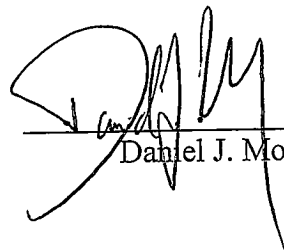
	<u>\$(M)</u>	<u>%</u>
a. REVENUES:		
Bayer Women's	57.311	63.3
Bayer Heart Advantage	33.241	36.7
TOTAL	\$90.552	100%
b. EXCESS PAYMENTS:		
Bayer Women's	32.113	57.29
Bayer Heart Advantage	23.934	42.71
TOTAL	\$56.047	100%
c. PROFITS:		
Bayer Women's	10.328	57.49
Bayer Heart Advantage	7.634	42.51
TOTAL	\$17.962	100%

8. After consideration of the evidence discussed above, over the course of approximately one month I conducted several telephonic negotiation sessions with Ms. Muhlstock. The negotiations were conducted at arm's length and without the participation of any other attorneys. Ultimately, we agreed to an allocation of sixty (60) percent of the net settlement proceeds for the Bayer Women's sub-class and forty (40) percent for the Bayer Heart Advantage sub-class and advised co-lead counsel of our conclusions.

9. On the basis of the foregoing, I believe that the allocation is fair, just and reasonable, is well supported by the evidence and is in the interest of the class.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 11th day of January, 2013, at San Diego, California.



 Daniel J. Mogin