

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WARREN GENERAL HOSPITAL, on
behalf of itself and all others similarly
situated,

Plaintiff,

v.

IMMUCOR, INC., ORTHO-CLINICAL
DIAGNOSTICS, INC., and JOHNSON &
JOHNSON HEALTH CARE SYSTEMS,
INC.

Defendants.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Warren General Hospital brings this action both individually and on behalf of a Class of plaintiffs consisting of all persons and entities in the United States, who purchased directly from defendants blood reagents and/or related medical equipment (“Blood Reagents”) at any time from January 1, 2000 through the present (the “Class Period”).

2. A reagent is a substance used in a chemical reaction to detect, measure, examine, or produce other substances.

3. Defendants are developers, manufacturers, and distributors of Blood Reagents used primarily by hospitals, clinical laboratories and blood banks in a number of tests performed to detect and identify certain properties of the cell and serum components of human blood prior to blood transfusion. Defendants collectively sell hundreds of millions of dollars worth of Blood Reagents every year in the United States.

4. Plaintiff alleges that during the Class Period, defendants conspired, combined and contracted to fix, raise, maintain and stabilize prices at which Blood Reagents would be sold.

As a result of defendants' unlawful conduct, plaintiff and the other members of the proposed Class paid artificially inflated prices that exceeded the amount they would have paid if a competitive market had determined prices for Blood Reagents.

JURISDICTION AND VENUE

5. Plaintiff brings this action under Sections 4 and 16 of the Clayton Act, (15 U.S.C. §§ 15 and 26), to recover treble damages and costs of suit, including reasonable attorneys' fees, against defendants for the injuries sustained by plaintiff and the members of the Class by reason of the violations of Section 1 of the Sherman Act (15 U.S.C. § 1).

6. This action is also instituted to secure injunctive relief against defendants to prevent them from further violations of Section 1 of the Sherman Act, as hereinafter alleged.

7. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337 and by Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a) and 26).

8. Venue is proper in this Judicial District pursuant to 15 U.S.C. §§ 15(a) and 22 and 28 U.S.C. § 1391(b), (c) and (d) because during the Class Period, defendants resided, transacted business, were found, or had agents in this District, and a substantial portion of the affected interstate trade and commerce described below has been carried out in this District.

9. This Court has personal jurisdiction over each defendant because, *inter alia*, each defendant: (a) transacted business throughout the United States, including in this District; (b) sold Blood Reagents throughout the United States, including in this District; (c) had substantial contacts with the United States, including in this District; and/or (d) was engaged in an illegal scheme and price-fixing conspiracy that was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business throughout the United States, including in this District.

PLAINTIFF

10. Plaintiff Warren General Hospital (“Warren General”) is a Pennsylvania not for profit corporation with its principal place of business located in Warren, Pennsylvania. Warren General Hospital is an acute care hospital servicing the community in and about Warren, Pennsylvania. During the Class Period, Warren General Hospital purchased Blood Reagents directly from one or more defendants. As a result of the alleged conspiracy, plaintiff was injured in its business or property by reason of the antitrust violations alleged herein.

DEFENDANTS

11. Defendant Immucor, Inc. (“Immucor”) is a Georgia Corporation that has its principal place of business in Norcross, Georgia. Immucor is a developer, manufacturer, and distributor of Blood Reagents. During the Class Period, Immucor sold Blood Reagents to customers in this district and other locations in the United States.

12. Defendant Ortho-Clinical Diagnostics, Inc. (“Ortho-Clinical”) is a New York corporation that has its principal place of business in Raritan, New Jersey. Ortho-Clinical is a subsidiary of Johnson & Johnson, a global conglomerate of companies involved in the design and manufacture of numerous products used in the health care industry. Ortho-Clinical is a developer, manufacturer, and distributor of Blood Reagents and bills itself as a world-wide leader in various segments of the market for transfusion medicine services and clinical diagnostics. During the Class Period, Ortho-Clinical sold Blood Reagents to customers in this district and other locations in the United States.

13. Johnson & Johnson Health Care Systems, Inc. (“JJHS”) is a New Jersey corporation with its principal place of business in Piscataway, New Jersey. JJHS is a subsidiary of Johnson & Johnson and is a sibling of Ortho-Clinical. JJHS provides account

management, contracting, supply chain and e-business services to key health care customers, including hospital systems and group purchasing organizations, leading health plans, pharmacy benefit managers, and government health care institutions. JJHS was instrumental in facilitating the sale and distribution of Blood Reagents manufactured by Ortho-Clinical during the class period.

14. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

15. All acts alleged in this Complaint to have been done by defendants were performed by their officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of defendants' business affairs.

CO-CONSPIRATORS

16. Various other persons, firms, corporations and entities have participated as unnamed co-conspirators with defendants in the violations and conspiracy alleged herein. In order to engage in the offenses charged and violations alleged herein, these co-conspirators have performed acts and made statements in furtherance of the antitrust violations and conspiracies alleged herein.

17. At all relevant times, each defendant was an agent of each of the remaining defendants, and in doing the acts alleged herein, was acting within the course and scope of such agency. Each defendant ratified and/or authorized the wrongful acts of each of the

defendants. Defendants, and each of them, are individually sued as participants and as aiders and abettors in the improper acts and transactions that are the subject of this action.

INTERSTATE TRADE AND COMMERCE

18. The business activities of defendants that are the subject of this action were within the flow of, and substantially affected, interstate trade and commerce.

19. During the Class Period, defendants sold substantial quantities of Blood Reagents in a continuous and uninterrupted flow of interstate commerce to customers throughout the United States.

FACTUAL ALLEGATIONS

THE INDUSTRY

20. Defendants are part of the immunohematology industry, which generally seeks to prevent or cure certain diseases or conditions through the transfusion of blood and blood components. In the U.S., the Food and Drug Administration (“FDA”) regulates human blood as a drug and as a biological product, and it regulates the transfusion of blood as the administration of a drug and of a biological product. The FDA regulates all phases of the immunohematology industry, including donor selection and the collection, classification, storage, handling and transfusion of blood and blood components. The FDA requires all facilities that manufacture products used for any of these purposes, and the products themselves, to be registered or licensed by the FDA.

21. The principal components of blood are plasma (the fluid portion) and cells. Blood also contains antibodies and antigens. Antibodies are proteins that are naturally produced by the human body in response to the introduction of foreign substances (antigens). Antigens are substances that stimulate the production of antibodies.

22. Red blood cells, which transport oxygen from the lungs to other parts of the body, and return carbon dioxide to the lungs, are categorized by four blood groups (A, B, AB and O) and two blood types (Rh positive and Rh negative), based on the presence or absence of certain antigens on the surface of the cells.

23. It is crucial that health care providers correctly identify the antibodies and antigens present in patient and donor blood before a blood transfusion takes place. For example, if a donor's red blood cells contain antigens that could react with the corresponding antibody in the patient's plasma, the transfusion of the red blood cells may result in the life threatening destruction of the patient's red blood cells.

24. Blood Reagents are products used in tests performed prior to blood transfusions to determine the blood group and type of patients' and donors' blood, in the detection and identification of blood group antibodies, in platelet antibody detection, in paternity testing and in prenatal care. The FDA requires the accurate testing of blood and blood components prior to transfusions using only FDA licensed Blood Reagents.

25. Because of the critical importance of matching patient and donor blood, compatibility testing procedures are generally performed by highly educated technologists in hospitals, blood banks and laboratories. Depending on the technical proficiency of the person performing the test, the process can take from 30 minutes to one hour, and if the test results are ambiguous the entire process may need to be repeated. Thus, a significant amount of expensive labor is involved in manual blood testing. Labor costs are the largest component of the total cost of operating a hospital blood bank.

26. Under current blood testing techniques, the technologist mixes serum with red blood cells in a test tube, performs several additional procedures, and then examines the mixture to determine whether there has been an agglutination reaction. A positive reaction will occur if the cells are drawn together in clumps by the presence of corresponding antibodies and antigens. However, when the mixture remains in a fluid state, it is sometimes difficult for the technologist to determine whether a positive reaction has occurred.

27. At present, these tests are primarily performed manually, however the industry is moving towards the use of automated testing systems in an effort to reduce costs.

28. In 2008, the worldwide market for traditional Blood Reagents was estimated to be approximately \$700-\$800 million. On information and belief, the United States Blood Reagents market is approximately \$250 million.

29. The market for Blood Reagents has been described as relatively mature given current technology and manufacturers claim to be competing on price, quality, and service.

FACTORS INCREASING THE MARKET'S SUSCEPTIBILITY TO CONSPIRACY

30. Publicly available data on the Blood Reagents industry demonstrates that it is susceptible to cartelization by the defendants. Factors that make a market susceptible to collusion include: 1) a high degree of industry concentration; 2) significant barriers to entry; 3) inelastic demand; 4) the lack of available substitutes for the goods involved; 5) a standardized product with a high degree of interchangeability between the goods of cartel participants; 6) absence of a competitive fringe of sellers; 7) inter-competitor contact and communication; and 8) a history of lax corporate oversight by the defendants.

Industry Concentration

31. A high degree of concentration facilitates the operation of a cartel because it makes it easier to coordinate behavior among co-conspirators. The Herfindahl-Hirshchman Index (“HHI”) is a measure of industry concentration that economists often use to quantify the degree of market concentration. The U.S. Department of Justice (“DOJ”) considers an HHI higher than 1800 to be a highly concentrated market.

32. During the Class Period, the defendants controlled virtually all of the sales of Blood Reagents in the U. S. With an HHI of approximately 5032, the Blood Reagents market is extremely concentrated and is therefore highly susceptible to collusion by the market suppliers.

Barriers to Entry

33. Supra-competitive pricing in a market normally attracts additional competitors who want to avail themselves of the high levels of profitability that are available. However, the presence of significant barriers to entry makes this more difficult and helps to facilitate the operation of a cartel.

34. Here, there are significant barriers to entry which have prevented potential competitors from effectively competing in the U.S. Blood Reagents market during the Class Period. As Immucor itself has noted, “[t]he FDA requires the accurate testing of blood and blood components prior to transfusions using only FDA licensed reagents.” As a result, the FDA licensing process takes years to complete and is exceedingly expensive. Only a determined competitor with the specialized knowledge needed to manufacture Blood Reagents and the capital and patience necessary to meet the FDA’s strict licensing requirements can

compete in this market. In light of these barriers to entry, the defendants have not had to face substantial new competition during the Class Period.

Demand Inelasticity

35. Price elasticity of demand is defined as the measure of responsiveness in the quantity demanded for a product as a result of change in price of the same product. It is a measure of how demand for a product reacts to a change in price. The basic necessities of life—food, water, and shelter—are examples of goods that experience nearly perfectly inelastic demand at or near the minimums necessary to sustain life. In other words, a person on the verge of dying of thirst will pay almost anything for drinking water. In order for a cartel to profit from raising prices above competitive levels, demand for the product must be sufficiently inelastic such that any loss in sales will be more than offset by increases in revenue on those sales that are made. Otherwise increased prices would result in declining revenues and profits.

36. The demand for Blood Reagents is highly inelastic. First, as Immucor has repeatedly noted during the Class Period, the cost of Blood Reagents is a small component of the overall cost of a health care provider's bill. It is well established that goods which form a small share of a larger consumer purchase exhibit inelastic demand. Consumers are less likely to change consumption patterns when the overall effect of price increases is small.

37. Moreover, Blood Reagents are critical to the safety of the nation's blood supply. Accordingly, Blood Reagents are considered medical necessities which must be purchased by hospitals and blood banks at whatever cost the defendants offer them for sale.

38. Thus, Blood Reagents are excellent candidates for cartelization because price increases will result in more revenue, rather than less.

Lack of Substitutes

39. The lack of available substitutes for a product also helps facilitate an effective price-fixing conspiracy. In the absence of substitutes, producers of the product in question are able to raise product prices without losing significant sales to closely competing products. For health care providers that use Blood Reagents, there are no available substitutes at any price. Only FDA approved Blood Reagents can be used to screen blood and, accordingly, these health care providers must purchase them no matter how expensive they become.

Standardized Product with High Degree of Interchangeability

40. A commodity-like product is one that is standardized across suppliers and allows for a high degree of substitutability among different suppliers in the market. When products offered by different suppliers are viewed as interchangeable by purchasers, it is easier for the suppliers to agree on prices for the good in question and it is easier to effectively monitor these prices. Here, although defendants have endeavored to create proprietary Blood Reagents and testing systems in recent years, during the Class Period the vast majority of Blood Reagent sales were of traditional (non-proprietary) Blood Reagents. Defendants' traditional Blood Reagents are functional equivalents.

Absence of a Competitive Fringe of Sellers

41. Companies that are not part of the conspiracy can eat away at conspirators' market shares by offering products at a lower, more competitive price. This reduces revenue and makes sustaining a conspiracy more difficult. In the market for Blood Reagents, there is no realistic threat that a fringe of competitive sellers will take market share from defendants. Immucor explained recently that "[i]n the United States, Ortho-Clinical Diagnostics ("Ortho"), a Johnson & Johnson company, is our main competitor with licenses to manufacture an

extensive line of blood banking reagents. A small line of reagent red blood cells manufactured in Europe by Medion Diagnostics GmbH is distributed by Olympus America, Inc.

("Olympus") in the U.S. market, but this product line lacks many traditional reagents required by the blood bank industry. We have been the North American market leader since 1999."

42. The defendants have a virtual monopoly on the market, which facilitates their ability to raise the prices for Blood Reagents without losing market share to non-conspirators.

Inter-competitor Contact and Communication

43. In order to be successful, collusive agreements require a level of trust among the conspirators. Collaboration fostered through industry associations facilitate relationships between individuals who would otherwise be predisposed to vigorously compete with each other. Here, the defendants are members of the Advanced Medical Technology Association ("ADVAMED") and regularly attend trade meetings together. Both defendants are also involved in supporting functions of the AABB (f/k/a American Association of Blood Banks), the California Blood Bank Society, Heart of America Association of Blood Banks, the Indiana State Association of Blood Banks, the Michigan Association of Blood Banks, the South-Central Association of Blood Banks, and other similar industry organizations.

44. Moreover, inter-competitor hiring provides additional communication bridges between companies that might not otherwise exist. The potential for these lines of communication to facilitate anticompetitive agreements is heightened when the employees involved are long-time, high-level executives responsible for the overall stewardship of the companies they represent.

45. Here, Gioacchino "Nino" De Chirico was employed by the predecessor of Ortho-Clinical in Italy and the United States from 1979-1994. While he was employed by Ortho-

Clinical, he was the company's worldwide General Manager of Immunocytometry. De Chirico was then hired by Immucor, and between February 1994 and 1998, De Chirico was the president of Immucor's Italian subsidiary, Immucor Italia, S.r.l. In May 1998 he was promoted to Director of Immucor's entire European operations. In July 2003 De Chirico was named Immucor's President and Chief Operating Officer. He was elevated to Chief Executive Officer in September 2006. De Chirico has been a member of Immucor's Board of Directors since joining the company in 1994.

46. In addition, Hiroshi Hoketsu has been a director of Immucor since April 2005. Prior to his employment by Immucor, Hoketsu was President of Ortho-Clinical Diagnostics, K.K. in Japan, a position he held from 1981 until his retirement in 2002.

47. The movement of these senior (and long-serving) executives from Ortho-Clinical to Immucor heightens the potential for an express or tacit meeting of the minds between them and their former colleagues at Ortho-Clinical.

History of Lax Corporate Oversight

48. A company's failure to effectively discipline breaches of ethical standards, especially those that occur publicly and by senior management, sends a message to employees that results are more important than the methods used to achieve them.

49. Here, Immucor has overlooked illegal and otherwise improper behavior by its current Chief Executive Officer, De Chirico, for years. In 2005, Immucor's audit committee concluded that De Chirico had violated a "technical" provision of the Foreign Corrupt Practices Act when he caused Immucor to make a cash payment to Dr. Federico Mercuriali, the former head of Immunohaematology at Niguarda Cà Grande Hospital in Milan, in order to induce the hospital to enter into valuable supply contracts with Immucor. As a result of the

incident, De Chirico was found guilty in an Italian court of bribery on or about April 17, 2008. Dr. Mercuriali committed suicide after being placed under house arrest for his participation in the bribery scheme. News reports indicate that Dr. Mercuriali had the bribe money deposited in Swiss bank accounts.

50. During its investigation, Immucor's audit committee found evidence of six additional instances where De Chirico had caused Immucor to make questionable payments to doctors with influence over purchasing decisions.

51. Despite De Chirico's criminal conviction and the other misconduct unearthed by Immucor's audit committee, Immucor did not discipline its CEO. To the contrary, following De Chirico's conviction last year, Immucor's Chairman of the Board, Joseph E. Rosen publicly stated that "[i]t has always been and continues to be the Board's strong desire that Nino should continue to lead Immucor and he remains the company's CEO with the full support of the Board." Rosen continued: "The reasons for supporting him are straightforward: the company has excelled under his leadership His results speak for themselves: in revenue, EPS and profitability, all have been phenomenal during his tenure as President and CEO"

52. Immucor's support of a CEO that has been determined to have engaged in repeated instances of illegal conduct by the Board's audit committee and by an Italian criminal court sends the message to all employees that revenues and profits are valued more than legal compliance. It also makes it substantially more plausible that Immucor participated in the collusion alleged herein.

53. In addition, Ortho-Clinical may also have been involved in the Italian bribery scheme. Ortho-Clinical's parent, Johnson & Johnson, has stated:

In February 2007, Johnson & Johnson voluntarily disclosed to the DOJ and the SEC that subsidiaries outside the United States are believed to have made

improper payments in connection with the sale of medical devices in two small-market countries, which payments may fall within the jurisdiction of the Foreign Corrupt Practices Act (FCPA). In the course of continuing dialogues with the agencies, other issues potentially rising to the level of FCPA violations in additional markets have been brought to the attention of the agencies by the Company.

FORMATION AND OPERATION OF THE CONSPIRACY

Pre-2000 Time Period

54. Shortly after De Chirico joined Immucor in 1994, the company embarked on an aggressive campaign to eliminate competition in the Blood Reagents industry. In 1996, Immucor bought Dominion Biologicals Ltd. It purchased Gamma Biologics, Inc. in 1998. Then in 1999 Immucor purchased Biopool International Inc.'s blood bank division.

55. Immucor has publicly acknowledged that the acquisitions it made of its competitors were designed to eliminate competition. Immucor's statements on this subject include the following: "During fiscal 1999 the Company implemented its strategic plans to consolidate the U.S. blood bank market, leaving Immucor and Ortho Clinical Diagnostics as the only two companies offering a complete line of blood banking reagents in the U.S."

56. Immucor's former CEO and Chairman of the Board, Edward Gallup, has previously admitted that the company's effort to eliminate its competitors was part of a concerted strategy to raise the prices of Blood Reagents products.

Post-2000 Time Period

57. Beginning in 2000 the defendants commenced an unrelenting series of price increases for the remainder of the Class Period. An analyst at Susquehanna Financial Group recalls that Immucor started raising prices in or about 2000 and that these price increases occurred in close proximity to price increases by Ortho-Clinical. The analyst explained that "while some of the tests cost only \$5 or \$6 each, some prices doubled in the course of a year."

58. The following chart shows how Immucor's profitability has exploded as a result of price increases of Blood Reagents during the Class Period.

Year	Profit Margin For Sales Of Traditional Reagents (as a % of sales)
2001	45% (estimated)
2002	56%
2003	59%
2004	59%
2005	63%
2006	72%
2007	76%
2008	78%
2009 (through Q3)	79% ¹

59. Immucor recently announced another list price increase effective June 1, 2009.

60. At the beginning of the class period, Immucor was able to retain approximately 45% of each dollar in Blood Reagents sales as profit. Today, the price of these products has increased so much that it is able to retain nearly 80% of each dollar in revenue as profit.

61. The defendants' ability to raise the prices of Blood Reagents year after year without losing market share to each other is not consistent with free competition. As profit margins increase, so does the opportunity for one competitor to undercut another's pricing in

¹ Margins on Immucor's proprietary reagents, named "Capture" are even higher. In FY 2008, margins for Capture were 85%.

order to gain market share. That has not occurred here. To the contrary, the defendants have refused to compete with each other on price for nearly a decade—something that did occur prior to the Class Period. As Edward Gallup, one of Immucor's founding partners, noted in 1999, "I've been in this business since 1964. It's the only business in the world in which the prices have gone down every year." The Atlanta Business Journal quotes Gallup as follows: "Prices go down because of all the competition, he said. But by buying up its competition and consolidating the marketplace into two key players, Immucor can raise its prices, he said."

62. On or about March 18, 2002, shortly after the defendants began increasing the prices of Blood Reagents, Ortho-Clinical undertook an additional effort to eliminate potential sources of competition in the United States Blood Reagents market by acquiring Micro Typing Systems, Inc. ("MTS"), a third-party manufacturer of Blood Reagents. Ortho-Clinical had previously acted as the exclusive distributor of Blood Reagents for MTS, but by acquiring the company it ensured that it—and not MTS—would reap the benefits of the price increases Ortho-Clinical and Immucor were determined to extract from the market.

63. In or about late September 2004, Ortho-Clinical and Immucor demanded that the two largest group purchasing organizations ("GPO's") in the United States, Premier and Novation, agree to average price increases of 105-110%. In October 2004, Premier and Novation refused to agree to the increases. Defendants promptly gave Premier and Novation 90 days' notice of contract termination, as required by the terms of the agreements.

64. Premier and Novation are large buyers of Blood Reagents and in a market free of collusion, these entities should have had the leverage necessary to avoid (or at least minimize)

defendants' non-negotiable price increases. A frustrated Premier spokeswoman stated at the time that "[i]t's a very difficult issue They will not offer any discounts to anyone."

65. In December 2004, Immucor stated that it was terminating the Premier and Novation contracts "for the purpose of increasing prices to the members of each group which will occur simultaneously with the cancellation."

66. Immucor confidently predicted that it would not lose any business because of the price increases. In a competitive market, however, there could be no assurance that one competitor's sudden and economically unjustified demand to more than double prices would not result in a substantial loss in market share due to the price competition of another competitor. That is particularly true where, as here, the demands are made to the largest and most sophisticated purchasers in the market—purchasers that have the means and motivation to avoid such increases by playing competitors off of each other.

67. Indeed, there was nothing usual about the nearly simultaneous demands by the defendants to substantially raise prices in late 2004 and then jointly terminate their relationships with the two largest customers in the market. As one industry publication noted, "it is rare for a health care supplier to invoke [a cancellation clause] just to raise prices, and even more unusual to announce the fact."

68. In or about 2008, plaintiff attempted to acquire Blood Reagents from Ortho-Clinical as an alternative source of supply to Immucor. Ortho-Clinical initially indicated that it might be willing to supply Blood Reagents to plaintiff, but only at substantial premiums over the then prevailing prices offered by Immucor. Thereafter, plaintiff sought to determine if Ortho-Clinical's pricing was negotiable and has repeatedly attempted to establish an alternate

supply relationship with Ortho-Clinical. However, Ortho-Clinical's field and supervisory staff simply do not respond to plaintiff's inquiries. Ortho-Clinical's conduct is not consistent with a "relatively mature" market and one in which competition is based on "price, quality, and service."

69. The timing and circumstances of the Blood Reagents' price increases, coupled with the other conduct alleged herein, plausibly demonstrate that the defendants tacitly or expressly reached understandings concerning the pricing of these products at supra-competitive levels.

GOVERNMENT ANTITRUST INVESTIGATIONS

70. On April 24, 2009, Immucor announced that the Antitrust Division of the Department of Justice ("DOJ") had opened a criminal investigation into its conduct in the Blood Reagents market. According to the company, "The Justice Department is looking into 'possible violations of the federal criminal antitrust laws in the blood reagents industry.'" Immucor further noted that documents dating back to September 2000 were subpoenaed by government investigators.

71. On May 5, 2009, Johnson & Johnson disclosed that in April 2009, Ortho-Clinical Diagnostics, Inc. had also "received a grand jury subpoena from the U.S. Department of Justice, Antitrust Division, requesting documents and information for the period beginning September 1, 2000 through the present, pertaining to an investigation of alleged violations of the antitrust laws in the blood reagents industry."

72. The DOJ's actions follow an investigation by the Federal Trade Commission ("FTC") that was commenced in or about October 2007. Immucor has disclosed that the FTC

investigation concerns whether the company “or others” have “violated federal antitrust laws or engaged in unfair methods of competition through three acquisitions made in the period from 1996 through 1999, and whether Immucor or others engaged in unfair methods of competition by restricting price competition.”

73. According to Immucor, government regulators initially “requested that the Company provide certain documents and information to the FTC concerning those acquisitions and concerning its product pricing activities since then.” The FTC’s initial investigation was upgraded to a formal investigation in July 2008. Indeed, Immucor acknowledges that “[i]n July 2008, the FTC formalized its document and information requests into a Civil Investigative Demand” and asked for additional information “within the same general scope of its previous requests.”

74. The FTC does not have the authority to pursue criminal penalties against antitrust violators and must refer cases involving criminal activity to the DOJ. *See* <http://www.ftc.gov/bc/antitrust/enforcers.shtm> (“The FTC also may refer evidence of criminal antitrust violations to the DOJ. Only the DOJ can obtain criminal sanctions.”).

75. It is significant that defendants’ anticompetitive behavior is now the subject of a criminal grand jury investigation by the DOJ. In order for the DOJ to institute a grand jury investigation, a DOJ Antitrust Division attorney must believe that a crime has been committed and prepare a detailed memo to that effect. *See Antitrust Grand Jury Practice Manual*, Vol. 1, Ch. I.B.1 (“[i]f a Division attorney believes that a criminal violation of the antitrust laws has occurred, he should prepare a memorandum requesting authority to conduct a grand jury investigation.”). Furthermore, following a review of the memorandum, the request for a grand

jury must be approved by the Assistant Attorney General for the Antitrust Division, based on the standard that a criminal violation may have occurred. *See id.* In addition, the fact that the DOJ Antitrust Division investigation is criminal, as opposed to civil, is significant as well. The Antitrust Division's "Standards for Determining Whether to Proceed by Civil or Criminal Investigation" state: "[i]n general, current Division policy is to proceed by criminal investigation and prosecution in cases involving horizontal, per se unlawful agreements such as price fixing, bid rigging and horizontal customer and territorial allocations." *See Antitrust Division Manual*, Chapter III.C.5.

DEFENDANTS' ANTITRUST VIOLATIONS

76. Beginning at least as early as January 1, 2000, and continuing until at least the date of the filing of this Complaint, the exact dates being unknown to plaintiff, defendants and their co-conspirators engaged in a continuing agreement, understanding, and conspiracy in restraint of trade to artificially raise, fix maintain or stabilize the price of Blood Reagents in the United States.

77. In formulating and effectuating the contract, combination or conspiracy, defendants and their co-conspirators engaged in anticompetitive activities, the purpose and effect of which were to artificially raise, fix, maintain, and/or stabilize the price of Blood Reagents sold in the United States. These activities included the following:

- a. Defendants participated in meetings and/or conversations to discuss the price of Blood Reagents in the United States;
- b. Defendants agreed during those meetings and conversations to charge prices at specified levels and otherwise to increase and/or maintain prices of Blood Reagents sold in the United States;

c. Defendants agreed during those meetings and conversations to fix the price of Blood Reagents;

d. Defendants issued price announcements and price quotations in accordance with their agreements; and

e. Defendants allocated customers in furtherance of their conspiracy.

78. Defendants and their co-conspirators engaged in the activities described above for the purpose of effectuating the unlawful agreements described in the Complaint.

79. During and throughout the period of the conspiracy alleged in this Complaint, plaintiff and members of the Class purchased Blood Reagents from defendants (or their subsidiaries or controlled affiliates) or their co-conspirators at inflated and supra-competitive prices.

80. Defendants' contract, combination or conspiracy constitutes an unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act.

81. As a result of defendants' unlawful conduct, plaintiff and the other members of the class have been injured in their business and property in that they have paid more for Blood Reagents than they would have paid in a competitive market.

82. The unlawful contract, combination or conspiracy has had the following effects, among others:

a. price competition in the market for Blood Reagents has been artificially restrained;

b. prices for Blood Reagents sold by the defendants have been raised, fixed, maintained, or stabilized at artificially high and non-competitive levels; and

c. purchasers of Blood Reagents from the defendants have been

deprived of the benefit of free and open competition in the market for Blood Reagents.

CLASS ACTION ALLEGATIONS

83. Plaintiff brings this action on behalf of itself and as a class action under the provisions of Rule 23(a) and (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

All persons and entities in the United States who purchased Blood Reagents directly from any defendant between January 1, 2000 and the present. This class excludes any judicial officer who is assigned to hear any aspect of this action, governmental entities, defendants, co-conspirators, and the present and former parents, predecessors, subsidiaries and affiliates of the foregoing.

84. Plaintiff believes that there are at least thousands of Class members as above described, the exact number and their identities being known by defendants, making the Class so numerous and geographically dispersed that joinder of all members is impracticable.

85. There are questions of law and fact common to the Class, which questions relate to the existence of the conspiracy alleged, and the type and common pattern of injury sustained as a result thereof, including, but not limited to:

a. Whether defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain and/or stabilize prices of Blood Reagents and/or engaged in market allocation for these products sold in the United States.

b. The identity of the participants in the conspiracy;

c. The duration of the conspiracy alleged in this Complaint and the nature and character of the acts performed by defendants and their co-conspirators in furtherance of the conspiracy;

d. Whether the alleged conspiracy violated Section 1 of the Sherman Act;

e. Whether the conduct of defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business and property of plaintiff and other members of the Class;

f. The effect of defendants' conspiracy on the prices of Blood Reagents sold in the United States during the Class Period; and

g. The appropriate measure of damages sustained by plaintiff and other members of the Class.

86. Plaintiff is a direct purchaser of Blood Reagents and its interests are coincident with and not antagonistic to those of the other members of the Class. Plaintiff is a member of the Class, has claims that are typical of the claims of the Class members, and will fairly and adequately protect the interests of the members of the Class. In addition, plaintiff is represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

87. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications.

88. Defendants have acted, and refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

89. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

90. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently and without duplication of effort and expense that numerous individual actions would engender. The Class is readily definable through the files of defendants and their co-conspirators, and prosecution as a class action will eliminate the possibility of repetitious litigation. Class treatment will also permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate an antitrust claim such as is asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

ACCRUAL OF PLAINTIFF'S CAUSE OF ACTION AND EQUITABLE TOLLING

91. Plaintiff alleges that it had no knowledge that it had been injured by the combination and conspiracy alleged herein, or of facts sufficient to constitute actual or constructive inquiry notice of an illegal agreement between defendants, until shortly before the filing of this Complaint.

92. In this regard, plaintiff avers that the announcement of the DOJ's criminal investigation on April 24, 2009, is significant because it constituted the first public notice that a horizontal conspiracy among competitors may have injured purchasers of Blood Reagents.

93. Accordingly, plaintiff avers that the applicable statute of limitations does not constitute a bar to the claims set forth herein or to damages for any portion of the Class Period asserted in this Complaint.

CAUSE OF ACTION

Violation of Section 1 of the Sherman Act – 15 U.S.C. § 1

94. Plaintiff incorporates and re-alleges each allegation set forth in the preceding paragraphs of this Complaint.

95. Beginning at least as early as January 1, 2000, and continuing thereafter, defendants and their co-conspirators, by and through their officers, directors, employees, agents, or other representatives, entered into a continuing agreement, understanding, and conspiracy in restraint of trade to artificially raise, fix, maintain, and/or stabilize prices for Blood Reagents in the United States, and its territories and possessions, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

96. Defendants' unlawful conduct resulted in artificially high prices charged by defendants and their co-conspirators to plaintiff and the members of the Class for Blood Reagents.

97. Plaintiff and members of the Class had to pay more for Blood Reagents than they would have paid in a competitive marketplace.

98. Plaintiff seeks to recover for these overcharge damages.

99. As a direct and proximate result of defendants' scheme, plaintiff and the members of the Class have been injured and financially damaged in their respective businesses and property, in amounts which are presently undetermined. Plaintiff's injuries consist of paying higher prices to purchase Blood Reagents than it would have paid absent defendants' conduct. Plaintiff's injuries are of the type the antitrust laws were designed to prevent and flow from that which makes defendants' conduct unlawful.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays as follows:

A. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

B. That the contract, combination or conspiracy, and the acts done in furtherance thereof by defendants and their co-conspirators, be adjudged to have been in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

C. That judgment be entered for plaintiff and members of the Class against defendants for three times the amount of damages sustained by plaintiff and the Class as allowed by law, together with the costs of this action, including reasonable attorneys' fees.

D. That defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from, in any manner continuing, maintaining or renewing the contract, combination or conspiracy alleged herein, or from engaging in any other contract, combination or conspiracy having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect.

E. That plaintiff and members of the Class have such other, further and different relief as the case may require and the Court may deem just and proper under the circumstances.

JURY DEMAND

Plaintiff demands a jury trial, pursuant to Federal Rule of Civil Procedure 38(b), of all triable issues.

Dated: May 18, 2009

Respectfully submitted,

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s/ Lisa J. Rodriguez

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