

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: EQUIMED, INC.	:	MASTER FILE NO.
SECURITIES LITIGATION	:	98-cv-5374 (NS)
	:	
_____	:	
This Document Relates to:	:	
ALL ACTIONS	:	
_____	:	CLASS ACTION

MEMORANDUM AND ORDER

A Stipulation of Settlement dated April 12, 2002 (the “Stipulation”) having been filed with the court, the court having given preliminary approval to the proposed Settlement embodied in the Stipulation, the court having also directed that notice of the proposed Settlement, and of the rights of class members with respect to the Settlement, be provided by first class mail and publication, the court having conducted a hearing to consider any objections to the Settlement or to the requested award of attorneys’ fees, and reimbursement of expenses to class counsel, which hearing was held on September 10, 2002, at which all interested persons were given an opportunity to be heard, and the court having read and considered all submissions in connection with the proposed settlement, and having reviewed and considered the files and records herein, the court finds and concludes that:

The above-captioned action was commenced in November 1998 by the filing of a class action complaint which alleged that defendant EquiMed, Inc. (“EquiMed”) and certain present and former directors and officers of EquiMed violated the federal securities laws by issuing a series of materially false and misleading public statements regarding EquiMed’s financial condition and results of operations. Following the appointment of Herbard, Ltd., a New York City-based

investment company as the lead plaintiff pursuant to the Private Securities Litigation Reform Act of 1995 (Pretrial Order No. 5, ¶ 3), and the appointment of Stull, Stull & Brody as Lead Counsel for the Lead Plaintiff and the proposed class (Id.), a Consolidated Class Action Complaint (“Consolidated Complaint”) was filed on February 19, 1999. In view of certain bankruptcy proceedings relating to EquiMed,¹ the court issued an Order severing the claims of the Lead Plaintiff and the proposed class against EquiMed and staying such claims. Thereafter the other defendants named in the Consolidated Complaint, Douglas Colkitt, Jerome Derdel, Raymond J. Caravan, Jr., Larry W. Pearson, Daniel Beckett, Brian D. Smith and Gene Burlison (“Defendants”), moved to dismiss the Consolidated Complaint on various grounds, including an alleged failure to plead fraud with the particularity required by applicable law.

On May 2, 2000, the court issued an Order granting in part and denying in part defendants’ motion to dismiss the Consolidated Complaint. The court dismissed all claims alleging that defendants had violated the federal securities laws in allegedly failing to disclose violations of Medicare and CHAMPUS regulations governing health care providers such as EquiMed. The court sustained the legal sufficiency of those portions of the Consolidated Complaint alleging that certain defendants violated federal securities laws by failing to disclose either the absence of independent directors at EquiMed, the inadequacy of EquiMed’s internal accounting controls, or both.

¹ Initially, certain creditors of EquiMed filed a petition to force EquiMed into involuntary bankruptcy proceedings under Chapter 7 of the Bankruptcy Code, and EquiMed itself filed its own voluntary Chapter 11 petition. Later, both of these proceedings involving EquiMed were converted to a liquidation proceeding under Chapter 7 of the Bankruptcy Code. EquiMed’s Chapter 7 liquidation proceeding remains pending. It has been represented to the court by Lead Counsel for the class that the EquiMed Chapter 7 liquidation is not expected to result in any payment to EquiMed’s present or former equity holders or to the purchasers of EquiMed common stock.

Following the ruling on the motion to dismiss the Consolidated Complaint, Lead Plaintiff filed a Revised Consolidated Amended Class Action Complaint on May 30, 2000 (the “Complaint”). Defendants answered the Complaint denying all material allegations thereof and denying any liability to the Lead Plaintiff or the proposed class.

Following the ruling on the motion to dismiss the Lead Plaintiff filed a motion asking the court to certify this action as a class action on behalf of the class identified in the Complaint. After examining under oath certain witnesses, including two representatives of the Lead Plaintiff, defendant did not oppose the motion for class certification.

The court thereupon certified this action as a class action on behalf of the following class (the “Class”):

All persons who purchased common stock of EquiMed on the NASDAQ market during the period of June 10, 1997 through June 22, 1998 and who held shares on June 22, 1998 and were damaged thereby, except the defendants herein; members of the individual defendants' immediate families; any parent, subsidiary, affiliate, officer, or director of EquiMed; any entity in which any excluded person has a controlling interest; and the legal representatives, heirs, successors and assigns of any excluded person.

Prior to the court’s decision on the motion to dismiss, discovery on the merits of the action was stayed under applicable law. Following the decision on the motion to dismiss, Lead Plaintiff, by Lead Counsel, conducted extensive fact finding and document discovery from the parties, certain non-party witnesses, EquiMed, and EquiMed’s bankruptcy trustee. In addition, each of the defendants in the action was examined under oath, as were certain other persons believed to have relevant information concerning the allegations of the Complaint.

Following the conclusion of discovery, all defendants, moving for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, contended that the evidence gathered by Lead

Counsel was not sufficient to create a jury issue whether defendants violated the federal securities laws as alleged in the Complaint. Lead Counsel, opposing the summary judgment motions in papers and at oral argument on February 14, 2002, contended that the evidence marshaled by Lead Counsel was more than adequate to support a jury verdict and judgment in favor of the Lead Plaintiff and the Class against all defendants. At the time settlement was reached, defendants' motions for summary judgment had been fully briefed and argued and were awaiting decision by the court.

Following the close of discovery, Defendants also moved to disqualify Lead Plaintiff's proposed expert witness on causation, materiality and damages on the ground, among others, that the proposed testimony of the expert witness was not predicated on a methodology which was sufficiently reliable to constitute admissible evidence under certain recent rulings of the Supreme Court of the United States. Defendants' expert disqualification motion was opposed by Lead Counsel. Lead Counsel moved to preclude portions of the proposed expert testimony of Defendants' expert witnesses. Both sets of expert witness disqualification and preclusion motions had been fully briefed when the agreement in principle was reached to settle the action.

While the summary judgment and expert disqualification motions were pending, and with a trial date imminent, Lead Plaintiff and the Defendants agreed to participate in a private mediation. The parties agreed upon retired United States District Judge Nicholas H. Politan as mediator, and Judge Politan conducted a mediation which, on March 18, 2002, resulted in an agreement in principle to settle the action for \$1,800,000. The settlement is now embodied in the attached Stipulation (without exhibits, which were previously filed of record). The Stipulation between and among the Lead Plaintiff and the Class and Defendants provides for the settlement of the action subject to approval by this court of its terms and to the entry of Judgment.

On April 18, 2002, the court filed an Order scheduling a hearing to consider whether or not to give final judicial approval to the Settlement embodied in the Stipulation. In that same Order, the court directed that members of the Class should be notified by first class mail and published notice of the proposed Settlement and of Class members' rights and options with respect thereto.

Lead Plaintiff and Lead Counsel have applied to the court for approval of the terms of the Stipulation and for the entry of Judgment. Pursuant to the Notice and Summary Notice to the Class, and upon notice to all parties, a hearing was held before this court on September 10, 2002, to consider whether the settlement set forth in the Stipulation should be approved by this court as fair, reasonable, and adequate and to award attorneys' fees and reimbursement of expenses to Class Counsel and to consider the compensatory award to the Lead Plaintiff for services rendered on behalf of the Class.

The court finds the Stipulation and the Settlement are fair, reasonable and adequate to the Lead Plaintiff and the Class, and the Stipulation and the Settlement are hereby finally approved in all respects, and the parties to the Stipulation are directed to consummate and perform its terms.

Dated: _____, 2002

S O O R D E R E D :

Norma L. Shapiro
Senior United States District Judge