

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is entered into by and between the State of West Virginia *ex rel.* Patrick Morrissey, Attorney General (“the State”), and Defendant Bristol-Myers Squibb Company (“BMS”) and Defendants Sanofi-Aventis U.S. LLC, Sanofi US Services Inc., and Sanofi-Synthelabo, Inc. (collectively, “Sanofi,” and together with BMS, “Defendants”), acting through their authorized representatives, hereinafter collectively referred to as “the Parties.”

### **Section I: Recitals**

A. The State has asserted various claims against Defendants concerning the pharmaceutical product Plavix (generic name clopidogrel), as set forth in the Complaint filed on December 28, 2012, and captioned *State of West Virginia ex rel. Darrell A. McGraw, Jr., Attorney General v. Bristol-Myers Squibb Co., et al.*, Civil Action No. 12-C-266H (Cir. Ct., Marshall Cty.) (the “Action”).

B. Defendants have answered and denied the State’s allegations and, specifically, have denied that they violated any applicable law or regulation or breached any legal duty to the State or its citizens in connection with the State’s claims.

C. The Parties wish to fully and finally resolve the Action and to enter into a settlement to fully resolve all claims that the State may have against Defendants related to the drug Plavix, on the terms and conditions set forth below. In order to avoid the delay, inconvenience, and expense of continuing the litigation of the Action, and as a result of a mutual desire to settle their disputes, the Parties have reached a full and final settlement as set forth in this Agreement.

## **Section II: Terms and Conditions**

The Parties, therefore, for good and valuable consideration (including the mutual promises, covenants, and obligations set forth in this Agreement), intending to be legally bound, agree as follows:

1. **INCORPORATION OF THE PREAMBLE.** The foregoing introductory paragraph to this Agreement and Recitals are incorporated herein.

2. **EFFECTIVE DATE.** The "Effective Date" of this Agreement shall be the date of the last signature of the last signatory to this Agreement.

3. **RELEASE AND DISCHARGE BY THE STATE.** In consideration of the Defendants' obligations in this Agreement and conditioned upon their full payment of the Settlement Amount (defined in Paragraph 4 below), the State (on behalf of itself and its agencies, departments, instrumentalities, officers, employees, servants, attorneys, and agents claiming through it) releases and forever discharges, to the fullest extent permitted by law, Defendants and their associated parties<sup>1</sup> (collectively, the "Released Parties") of and from the following: all civil or administrative claims, actions, suits, charges, causes of action, arbitrations; debts, demands, obligations, damages (including compensatory and punitive damages), disgorgement, restitution, liens, fines, penalties, interest, costs, expenses, and attorneys' fees, as may have been recoverable, whether arising from, in, or through law, equity, administrative procedures,

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<sup>1</sup> Defendants' "associated parties" include any corporation, partnership, limited liability company, or other entity or combination thereof that directly or indirectly owns or controls Defendants, is owned or controlled by Defendants, or is under common ownership or control with Defendants, as well as any of Defendants' present and former (whether direct or indirect) subsidiaries, divisions, partners, directors, officers, employees, sales representatives, attorneys, insurers, agents, contractors, shareholders, predecessors, successors, heirs, trustees, executors, assigns, transferees, or legal representatives. In the preceding sentence, the terms "control" and "controlled" mean ownership of 50% or more, including ownership by trusts with substantially the same beneficial interests of the voting and equity rights of such corporation, partnership, limited liability company or other entity or combination thereof, or the power to direct the management of such corporation, partnership, limited liability company, or other entity or combination thereof.

subrogation, or any other source that the State (or its agencies, departments, instrumentalities, officers, employees, servants, attorneys, or agents), to the extent permitted by law, asserted or may have or could have asserted against the Released Parties by reason of any conduct occurring through and including this Agreement's Effective Date, arising from or relating to the claims against Defendants concerning the pharmaceutical product Plavix (generic name clopidogrel) as set forth in the Complaint (hereinafter the "Released Claims"), whether such conduct was known or unknown, claimed or concealed, suspected or unsuspected, fixed or contingent, or matured or un-matured. The claims being released are those brought solely by the State and are wholly independent of any claims that individual users of Plavix may have against the Defendants.

The State (on behalf of itself and its agencies, departments, instrumentalities, officers, employees, servants, attorneys, and agents) further agrees to fully and finally release and refrain from instituting, recommending, directing, causing, or attempting to cause any administrative action or sanction, including debarment, by any State agency or other government agency based on the conduct covered by the Released Claims.

**4. PAYMENTS BY DEFENDANTS.** In consideration for the agreements, promises, and releases provided in this Agreement, BMS shall pay the State the total sum of One Million Six Hundred Thousand Dollars (\$1,600,000), and Sanofi shall pay the State the total sum of One Million Six Hundred Thousand Dollars (\$1,600,000). The total sum of the payments by BMS and Sanofi to the State shall be Three Million Two Hundred Thousand Dollars (\$3,200,000) ("Settlement Amount" or "Settlement Payment"). These payments by Defendants shall be made to the Fitzsimmons Law Firm PLLC in accordance with wiring or other instructions provided by Fitzsimmons Law Firm PLLC in writing. Defendants shall make these

payments within twenty (20) business days following the execution of this document by all Parties and entry of the Order that dismisses Civil Action 12-C-266H (Marshall County Circuit Court) with prejudice (as set forth in Paragraph 7 below). This Agreement is the product of a compromise between Defendants and the State, and the Settlement Amount is based on the Parties' arms-length negotiations and respective assessments of numerous factors and issues relating to the Action. The Agreement and Settlement Amount therefore cannot be cited by any non-party to the Agreement as evidence supporting any position.

The Settlement Payment may be used by the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers. In no event shall Defendants have any responsibility, financial obligation, or liability whatsoever with respect to the distribution or administration of the Settlement Payment including, but not limited to, the costs and expenses of such distribution and administration.

5. **PAYMENTS TO NON-PARTIES BY THE STATE.** To the extent a third party not a party to this agreement (including, without limitation, the State's outside counsel, the federal government or any federal agency, a *qui tam* relator, a private citizen, or a private insurer) claims entitlement to any portion of the Settlement Amount or to any other compensation in connection with the subject matter, investigation, or prosecution of the Action, the State shall be solely responsible for the proper allocation of those funds from the Settlement Amount and shall hold Defendants harmless against all claims related to any such entitlement.

6. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended to be solely for the benefit of the Parties and persons and entities released, and, except as stated herein,

the Parties do not by this Agreement release any claim against any other person or entity that purchases drugs or pharmaceutical products from Defendants. Except as stated herein, no word, term, phrase, or definition in this Agreement (including, without limitation, the Agreement itself or the Settlement Amount) is or may be used for the benefit of any person, private or governmental entity, or litigant who is not a signatory to, or released by, this Agreement.

7. **DISMISSAL OF ACTION.** Within three (3) business days following the execution of this document by all Parties, the Parties will file with the Court a Proposed Order of Dismissal with Prejudice in the Action, in the form attached hereto as Exhibit "A," seeking the dismissal with prejudice of the Action. Each Party to this Agreement will bear its own legal and other costs incurred in connection with the Action, including investigation and prosecution thereof, as well as the preparation and performance of this Agreement.

8. **NO ADMISSION OF LIABILITY.** Nothing in this Agreement is to be construed as an admission or evidence of fault or liability on the part of Defendants, all of which expressly deny fault and liability and deny that the State's claims are valid. Neither party will urge or seek to admit this Agreement as evidence of any fault or liability of the Released Parties. The Parties agree that the West Virginia Medicaid program suffered no actual harm or damages as a result of the conduct complained of by the State in the Action.

9. **EFFECT OF PAYMENT.** No part of the Settlement Payment represents payments for monies expended by the State of West Virginia's Medicaid Program, nor does it concern any payment made thereunder, nor does the Settlement Payment represent payments for any federal money or any state matching funds. Payment of the Settlement Amount by the Defendants will fulfill all obligations that this Agreement imposes on the Defendants. Payment

of the Settlement Amount also is intended to, and does, fully resolve all of the State's claims against the Defendants as provided in Paragraph 3.

10. **TAX CUTS AND JOBS ACT OF 2017.** Consistent with the State's obligations under 26 U.S.C. § 6050X as enacted by the federal Tax Cuts and Jobs Act of 2017, the State identifies the Settlement Amount as payment for the potential violation of the laws in dispute.

11. **CONFIDENTIAL DISCOVERY MATERIALS.** The return or destruction of Confidential Discovery Materials shall be governed by the procedures set forth in Paragraph 14 of the Stipulated Protective Order entered by the Court on July 19, 2016.

12. **WARRANTY OF CAPACITY TO EXECUTE AGREEMENT.** The individuals signing this Agreement on behalf of Defendants represent and warrant that they are authorized by Defendants to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their agency. The individuals signing this Agreement on behalf of the State represent and warrant that they are authorized by the State to execute this Agreement. There is no other understanding or agreement, verbal or otherwise, in relation thereto, between the Parties except those herein expressly set forth. The undersigned signatories represent that no interest in any claim herein released has been assigned to any third party. No oral representations, warranties or inducements have been made to any party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized herein. In addition, the Parties represent and warrant that they are not relying on any representations or warranties not contained in this Agreement.

13. **ASSISTANCE OF COUNSEL.** The Parties represent that they have had the assistance of counsel in negotiating, reviewing, and executing this Agreement and that they appreciate and understand the legal significance of this Agreement and the legal significance of stipulating to a dismissal with prejudice of the pending actions, all of which have been explained to them by their attorneys. The State understands the terms of this Agreement, understands its finality, and understands that it will never again, in any court anywhere, make any claim against Defendants for any declaratory or equitable relief, for any sums of money, or for any other form of compensation for the Released Claims. The Parties represent that they are not under duress or pressure from any source and they have executed this Agreement knowledgeably and freely by and with the advice of their attorneys. This Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that this Agreement is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Agreement.

14. **CAPTIONS.** The bold-faced paragraph captions in this Agreement are for convenience only and do not add to, detract from, or change the substantive language or terms of this Agreement.

15. **INVALIDITY.** The Parties agree that should any nonmaterial portion or portions of this Agreement be found void, unenforceable, or otherwise invalid by any court of competent jurisdiction after the exhaustion of all rights to appeal, this entire Agreement shall not be nullified, such invalid portion or portions shall be severed from this Agreement, and the remainder of the Agreement shall be enforced.

16. **WAIVER.** Waiver by any party of any breach of any provision of this Agreement shall not constitute a waiver of any other breach of that or any other provision of this Agreement.

17. **GOVERNING LAW AND CHOICE OF FORUM.** It is understood and agreed by the Parties that this document shall be governed and interpreted in accordance with the laws of the State of West Virginia. Any disputes concerning the meaning, interpretation, or enforcement of this Agreement shall be resolved by the Circuit Court of Marshall County, West Virginia, which shall be the exclusive trial court forum for all proceedings involving or arising out of this Agreement.

18. **ENTIRE AGREEMENT.** This document contains the entire agreement between the Parties with regard to the matters set forth herein, and shall be binding upon and inure to the benefit of all the successors, transferees, heirs, and assigns of the Parties. This Agreement is the exclusive, final, and complete agreement between the State and Defendants. In executing this Agreement, each party represents and warrants that he or it is not relying on any representation that is not explicitly set forth in this Agreement. This Agreement may not be amended except by a writing signed by the State and Defendants. It is expressly agreed, intended, and understood by the Parties that this Agreement is a complete accord and satisfaction of any and all claims the State has or may have had against the Released Parties.

19. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in counterparts, each of which constitutes an original, and all of which constitute one and the same Agreement. The Parties agree that facsimile or PDF signatures shall be deemed as effective as original signatures.



20. **ACTS NECESSARY TO EFFECTUATE AGREEMENT.** Each party agrees to perform such further acts and to execute and to deliver such further documents as may reasonably be necessary to carry out this Agreement.

21. **NOTICE TO PARTIES.** Unless otherwise stated in writing subsequent to this Agreement's Effective Date, all notifications and communications made pursuant to this Agreement shall be submitted to the entities listed below:

a. For the State for all purposes:

Paul Anthony Martin  
Chief Deputy Attorney General  
Office of the Attorney General  
Building 1, Room 26-E  
Capitol Complex  
Charleston, WV 25305  
Telephone: (304) 558-2021  
Email: anthony.p.martin@wvago.gov

Robert P. Fitzsimmons  
Fitzsimmons Law Firm PLLC  
1609 Warwood Avenue  
Wheeling, WV 26003  
Telephone: (304) 277-1700  
E-mail: bob@fitzsimmonsfirm.com

b. For Defendants for all purposes:

Anand Agneshwar  
Arnold & Porter Kaye Scholer LLP  
250 West 55th Street  
New York, NY 10019-9710  
Phone: (212) 836-8000  
E-mail: anand.agneshwar@arnoldporter.com

General Counsel  
Bristol-Myers Squibb Company  
345 Park Ave.  
New York, NY 10154  
Phone: (212) 546-4000

General Counsel, North America  
Sanofi US  
55 Corporate Drive  
Bridgewater, NJ 08807  
Phone: (908) 981-6600

Signed and Agreed to on the date below:

**PLAINTIFF: THE STATE OF WEST VIRGINIA**

*Paul Anthony Martin by RST*

Date: 1/8/19

Paul Anthony Martin

Chief Deputy Attorney General

On behalf of the State of West Virginia ex rel. Patrick Morrisey, Attorney General

**DEFENDANTS: Bristol-Myers Squibb Company, Sanofi-Aventis U.S. LLC, Sanofi US Services Inc., and Sanofi-Synthelabo, Inc.**

*Jonathan Wasserman*

Date: 1/24/19

Jonathan Wasserman

Vice President & Associate General Counsel - Bristol-Myers Squibb

On behalf of Bristol-Myers Squibb Company

*Chan Lee*

Date: 1/17/19

Chan Lee

General Counsel North America – Sanofi

On behalf of Sanofi-Aventis U.S. LLC, Sanofi US Services Inc., and Sanofi-Synthelabo, Inc.