

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Agreement”) is made and entered into as of this 16th day of July 2019 (the “Execution Date”), by and between Celgene Corporation (“Celgene”) and plaintiff class representatives International Union of Bricklayers and Allied Craft Workers Local 1 Health Fund, the City of Providence, International Union of Operating Engineers Local 39 Health and Welfare Trust Fund, The Detectives’ Endowment Association, New England Carpenters Health Benefits Fund, and David Mitchell (collectively, “Plaintiffs”), both individually and on behalf of a class of persons and entities defined below.

WHEREAS, Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Settlement Class (as defined below);

WHEREAS, Plaintiffs allege that Celgene participated in an anticompetitive scheme to delay entry of generic thalidomide and lenalidomide in the United States, which caused members of the Settlement Class to pay supracompetitive prices for Thalomid and Revlimid;

WHEREAS, Celgene denies Plaintiffs’ allegations and has asserted a number of defenses;

WHEREAS, Plaintiffs and Celgene agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against Celgene or evidence of the truth of any of Plaintiffs' allegations;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for Celgene, and this Agreement has been reached as a result of those negotiations;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that a settlement with Celgene according to the terms set forth below is in the best interest of Plaintiffs and the Settlement Class; and

WHEREAS, Celgene, despite its belief that it committed no wrongdoing, has nevertheless agreed to enter into this Agreement to avoid the expense, inconvenience, and the distraction of potentially burdensome and protracted litigation;

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and releases set forth herein and for other good and valuable consideration, and incorporating the above recitals herein, it is agreed by and among the undersigned that the claims that have been asserted in the Action be settled, without costs as to Plaintiffs, the Settlement Class, or Celgene, subject to the approval of the Court (as defined below), on the following terms and conditions.

**A. Definitions**

The following terms, as used in this Agreement have the following meanings:

1. "Action" means the action captioned *In re Thalomid and Revlimid Antitrust Litigation*, 2:14-cv-06997 (MCA) (MAH), which is currently pending in the United States District Court for the District of New Jersey.

2. “Affiliates” means with regard to a particular party, all entities controlling, controlled by or under common control with such party.

3. “Celgene’s Counsel” shall refer to the law firm Williams & Connolly LLP, 725 12th Street NW, Washington, DC 20005.

4. “Claims Administrator” means a third party retained by the Plaintiffs to manage and administer the process by which Settlement Class Members are notified of and paid pursuant to this Agreement, all consistent with this Agreement and any order by the Court.

5. “Court” means the United States District Court for the District of New Jersey.

6. “Effective Date” means the date on which all of the following have occurred: (a) Celgene has not exercised its right to terminate this Settlement Agreement pursuant to Paragraph 36 below; (b) the Settlement Agreement is approved by the Court as required by Fed. R. Civ. P. 23(e); (c) the Court enters a final approval order, entering a final judgment of dismissal with prejudice against Plaintiffs and members of the Settlement Class who have not timely excluded themselves from the Settlement Class; and (d) the time for appeal or to seek permission to appeal from the Court’s approval of this Agreement and entry of a final judgment has expired or, if appealed, approval of this Agreement and the final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. Neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times so long as any filing or challenge made to any final judgment under these provisions is initiated after the dates set forth in (a)-(c) above.

7. “Escrow Account” is the account referenced in Paragraph 27 to maintain the Settlement Fund (as defined below) established pursuant to the terms and conditions set forth in

an escrow agreement to be entered into with Huntington Bank, as Escrow Agent (as defined below), subject to the approval of Plaintiffs and Celgene.

8. “Escrow Agent” means the third party responsible for managing and administering the Escrow Account in accordance with this Agreement, any agreement establishing the Escrow Account and any order by the Court.

9. “Preliminary Approval Date” means the date on which the Court enters an order granting preliminary approval of this Agreement.

10. “Released Claims” shall refer to the claims described in Paragraph 23 of this Agreement.

11. “Released Parties” shall refer jointly and severally, individually and collectively, to Celgene, its predecessors, successors, subsidiaries, parents, Affiliates, divisions, and departments (including but not limited to the Bristol-Myers Squibb Company), and each of their respective officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

12. “Releasing Parties” shall refer jointly and severally, and individually and collectively, to the Plaintiffs, the Settlement Class Members, their predecessors, successors, subsidiaries, parents, Affiliates, divisions, and departments, and each of their respective officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

13. “Settlement Amount” means \$55,000,000.00 (fifty-five million dollars) in United States currency.

14. “Settlement Class” means all persons or entities who purchased and/or paid for some or all of the purchase price of Thalomid or Revlimid in any form, before the Preliminary

Approval Date, in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, but excluding the following:

- a. Celgene and its officers, directors, management, employees, parents, subsidiaries, or Affiliates;
- b. All federal or state governmental entities, except cities, towns, or municipalities with self-funded prescription drug plans;
- c. All persons or entities who only purchased Revlimid or Thalomid for purposes of resale directly from Celgene or its Affiliates;
- d. Fully insured health plans;
- e. Stop-loss insurers; and
- f. The judges in this Action and any members of their immediate families.

15. “Settlement Class Counsel” shall refer to the law firms of Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Block & Leviton LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111; and Hach Rose Schirripa & Cheverie LLP, 112 Madison Ave, 10th Floor, New York, NY 10016.

16. “Settlement Class Member” means each member of the Settlement Class who does not timely and validly elect to be excluded from the Settlement Class.

17. “Settlement Fund” shall be the amount paid by Celgene in settlement of the Action pursuant to Paragraph 13 of this Agreement and any income earned on amounts in the fund.

**B. Stipulation to Settlement Class Certification**

18. The parties to this Agreement hereby stipulate for purposes of this settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are

satisfied, and, subject to Court approval, the following class shall be certified for settlement purposes as to Celgene:

All persons or entities who purchased and/or paid for some or all of the purchase price of Thalomid or Revlimid in any form, before the Preliminary Approval Date, in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, but excluding: Celgene and its officers, directors, management, employees, subsidiaries, parents, or Affiliates; all federal or state governmental entities, except cities, towns, or municipalities with self-funded prescription drug plans; all persons or entities who only purchased Revlimid or Thalomid for purposes of resale directly from Celgene or its Affiliates; fully insured health plans; stop-loss insurers; and the judges in this case and any members of their immediate families.

**C. Approval of this Agreement, Notice, and Dismissal of Claims**

19. Plaintiffs and Celgene shall use all reasonable efforts to effectuate this Agreement, including cooperating in Plaintiffs' effort to obtain the Court's approval of procedures (including the giving of class notice under Rules 23(c) and 23(e) of the Federal Rules of Civil Procedure) and to secure certification of the Settlement Class for settlement purposes and the prompt, complete, and final dismissal with prejudice of the Action as to the Released Parties.

20. Promptly after the Execution Date of this Agreement, Plaintiffs shall submit to the Court a motion for preliminary approval of the settlement. The motion shall

- i. seek certification of the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3);
- ii. request preliminary approval of the settlement set forth in this Settlement Agreement as fair, reasonable, and adequate;
- iii. seek the appointment of Plaintiffs as representatives of the Settlement Class, and Hausfeld LLP; Block & Leviton LLP, and Hach Rose Schirripa & Cheverie LLP as Settlement Class Counsel under Fed. R. Civ. P. 23(g);
- iv. seek approval, or explain that Plaintiffs will submit a separate application seeking approval of the form and method of dissemination of notice to the

Settlement Class, which the parties intend to be the best notice practicable under the circumstances and which shall be given in such manner and scope as is reasonable, and consistent with the requirements of Fed. R. Civ. P. 23;

- v. seek appointment of a qualified Settlement Administrator;
- vi. seek appointment of Huntington Bank as a qualified Escrow Agent;
- vii. stay all proceedings in the Action until the Court renders a final decision on approval of the settlement set forth in this Settlement Agreement; and
- viii. attach a proposed form of order, which includes such other provisions as are typical in such orders, including: (1) setting a date for a fairness hearing, and (2) a provision that, if final approval of the settlement is not obtained, the settlement is null and void, and the parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses.

21. If the Court preliminarily approves this Agreement, Plaintiffs shall seek entry of an order and a final judgment, the text of which shall be agreed upon by Plaintiffs and Celgene before submission to the Court:

- (a) approving this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation according to its terms;
- (b) reserving to the Court exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement;
- (c) attaching a record of potential members of the Settlement Class who timely and validly excluded themselves from the Settlement Class; and
- (d) dismissing the Action with prejudice as to the Released Parties.

22. This Agreement shall become final only upon occurrence of the Effective Date.

**D. Release and Discharge**

23. Upon the occurrence of the Effective Date and in consideration of the payment by Celgene of the Settlement Amount, the Releasing Parties shall be deemed to and do hereby completely, finally and forever release, acquit, and discharge the Released Parties from any and all claims, counterclaims, demands, actions, potential actions, suits, and causes of action, losses,

obligations, damages, matters and issues of any kind or nature whatsoever, and liabilities of any nature, including without limitation claims for costs, expenses, penalties, and attorneys' fees, whether class, individual, or otherwise, that the Releasing Parties, or any of them, ever had or now has directly, representatively, derivatively or in any other capacity against any of the Released Parties, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, accrued or unaccrued, matured or unmatured, disclosed or undisclosed, apparent or unapparent, liquidated or unliquidated, or claims that have been, could have been, or in the future might be asserted in law or equity, on account of or arising out of or resulting from or in any way related to any conduct regardless of where it occurred at any time prior to the Effective Date concerning the purchase, reimbursement for and/or payment for some or all of the purchase price for Thalomid or Revlimid in any form, including without limitation, claims based in whole or in part on the facts, occurrences, transactions, or other matters alleged in the Action, or otherwise the subject of the Action, which arise under any antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, unjust enrichment, civil conspiracy law, or any other law, code, rule, or regulation of any country or jurisdiction worldwide, including under federal or state law, and regardless of the type or amount of damages claimed, from the beginning of time through the Effective Date (the "Released Claims"). However, nothing herein shall release any claims for product liability, breach of warranty, breach of contract, or tort of any kind (other than a breach of contract, breach of warranty or tort based on any factual predicate in this Action), a claim arising out of violation of Uniform Commercial Code, or personal or bodily injury.



24. The Releasing Parties hereby covenant and agree that they shall not, hereafter, sue or otherwise seek to establish liability against any of the Released Parties based, in whole or in part, upon any of the Released Claims.

25. In addition, the Releasing Parties hereby expressly waive and release any and all provisions, rights, benefits conferred by § 1542 of the California Civil Code, which reads:

**Section 1542. General Release--Claims Extinguished. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Parties may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this Paragraph, but the Releasing Parties hereby expressly waive and fully, finally and forever settle and release any known or unknown, suspected or unsuspected, accrued or unaccrued, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of any such additional or different facts. The parties acknowledge that the foregoing waiver was separately bargained for and is a key and integral element of the Agreement of which the release is a part.

26. In addition, no Plaintiff shall, directly or indirectly, provide assistance, support, advice, or information to any person or entity asserting, considering asserting, or seeking to assert claims against Celgene based on or related to the Released Claims. No Plaintiff will cause or release any agent, employee, or contractor retained by any Plaintiff in connection with the Action to assist or cooperate with any person or entity asserting, considering asserting, or

seeking to assert claims against Celgene based on or related to the Released Claims or grant any waivers with respect to any such assistance or cooperation, and shall not release any attorney who represented any Plaintiff in the Action from maintaining the confidentiality of non-public information to which such attorney had access in connection with the Action or grant any waivers with respect to such maintenance unless so ordered by the Court or compelled by law. Nothing in this Paragraph shall be read to conflict with the provisions of New Jersey Rule of Professional Conduct 5.6.

**E. Payments**

27. Within thirty (30) calendar days of the Execution Date, Celgene shall pay or cause to be paid the Settlement Amount by wire transfer into an Escrow Account established pursuant to the terms and conditions set forth in an escrow agreement to be entered into with Huntington Bank as Escrow Agent, subject to the approval of Plaintiffs and Celgene. The Escrow Account shall be administered in accordance with the provisions of this Agreement.

28. Settlement Class Counsel may at an appropriate time submit a motion seeking approval of the payment of attorneys' fees and expenses, and incentive awards from the Settlement Fund. Celgene shall take no position on any motion by Settlement Class Counsel seeking approval of payment of attorneys' fees, expenses, or incentive awards, from the Settlement Fund. Celgene shall have no obligation to pay any amount of Settlement Class Counsel's attorneys' fees, expenses, or incentive awards.

**F. Settlement Fund**

29. The Settlement Fund is intended by the parties to this Agreement to be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1, and to that end the parties to this Agreement shall cooperate with each other and

shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of Celgene, a “relation back election” as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Settlement Fund to be treated as a qualified settlement fund from the earliest date possible, and the parties shall take all actions as may be necessary or appropriate to this end.

30. To the extent practicable, the Settlement Fund shall be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or any agency thereof, or money market funds invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds from these instruments as they mature in similar instruments at their then current rates. All interest and income earned on the Settlement Fund or any portion thereof shall become and remain part of the Settlement Fund.

31. Celgene shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution and administration, except as expressly otherwise provided in this Agreement.

32. All costs associated with the Settlement Class notification and claims administration process shall be paid out of the Settlement Fund.

33. Subject to Court approval, Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses and claims including, but not limited to, attorneys’ fees and past, current, or future litigation expenses. Attorneys’ fees and expenses awarded by the Court shall not be payable prior to the Rescission Deadline defined in Paragraph 36. After the Rescission Deadline, attorneys’ fees and expenses awarded by the Court

shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely-filed objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced or reversed. Celgene shall not be liable for any costs, fees, or expenses of any of Plaintiffs' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court may be paid out of the Settlement Fund.

**G. Rescission of the Agreement**

34. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 21 of this Agreement, or if the Court enters the final judgment and appellate review is sought and, on such review, such final judgment is not affirmed, then Celgene and the Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety with ten (10) calendar days of the action giving rise to such option.

35. Within ten (10) calendar days after the end of the opt-out period established by the Court and set forth in the Class Notice, Settlement Class Counsel shall provide Celgene's Counsel a written list of all potential Settlement Class Members who have exercised their right to request exclusion from the class (the "Opt-Out List").

36. In the event that certain Settlement Class Members timely and validly exercise their rights to opt out of the Settlement (as set forth in a separate letter agreement between Settlement Class Counsel and Celgene (the "Letter Agreement")), then Celgene shall have the right to elect, in its sole and absolute discretion, whether to proceed with this Agreement. If

Celgene furnishes written notice to Settlement Class Counsel that it is exercising its right to terminate this Agreement pursuant to this Paragraph within fourteen (14) calendar days of receiving the Opt-Out List (the “Rescission Deadline”), then this Agreement will be of no further force or effect and whatever portion of the Settlement Fund that remains after payment of settlement notice and administration costs (including payment of taxes) incurred up through the date of such election shall be returned immediately to Celgene. In the event that a dispute should arise between Plaintiffs and Celgene regarding whether the threshold set forth in the Letter Agreement has been reached, that dispute will be submitted promptly to arbitration for final, non-appealable resolution.

37. In the event of rescission, if final approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 21 of this Agreement, Plaintiffs and Celgene agree that this Agreement, including its exhibits, and any and all negotiations, documents, information and discussions associated with it shall be without prejudice to the rights of Celgene and shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth of any of the claims or allegations made in this Action in any pleading.

**H. Taxes**

38. Plaintiffs shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund or any portions thereof and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund or any portions thereof and shall be solely responsible for taking out of the Settlement Fund or any portions thereof, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund or any

portions thereof. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund or any portions thereof, and all expenses incurred in connection with filing tax returns, shall be paid from the Settlement Fund.

**J. Miscellaneous**

39. With the exception of matters expressly declared subject to arbitration in this Agreement, Celgene and its present and future directors, officers, and employees, Plaintiffs, and each Class Member hereby submit to the exclusive jurisdiction of the United States District Court for the District of New Jersey solely for the purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

40. This Agreement (and the Letter Agreement) contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the parties hereto with respect to the subject matter of this Agreement.

41. The parties shall maintain the fact and the terms of this Agreement as confidential until such time as Plaintiffs move for preliminary approval of the settlement.

42. This Agreement may be modified or amended only by a writing executed by Plaintiffs' counsel and Celgene or Celgene's Counsel and, after the Preliminary Approval Date, with approval by the Court.

43. Neither this Agreement nor any negotiations or proceedings connected with it shall be deemed or construed to be an admission by any party to this Agreement or any Released Party or evidence of any fact or matter in this Action or in any related actions or proceedings, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, except in a proceeding to interpret or enforce this Agreement.

44. Neither Celgene nor Plaintiffs shall be considered to be the drafter of this

Agreement or any of its provisions for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

45. This Agreement shall be construed and interpreted to effectuate the intent of the parties which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to the Released Parties.

46. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Settlement Class Members, Releasing Parties, and Released Parties any right or remedy under or by reason of this Agreement.

47. The undersigned counsel for Plaintiffs warrant that all of the named Plaintiffs in the Action are parties to this Settlement Agreement even if one or more of them is mistakenly identified in this Settlement Agreement by an incorrect name.

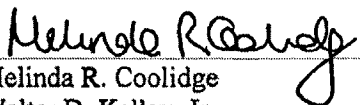
48. This Agreement shall be binding upon, and inure to the benefit of, the Releasing Parties and the Released Parties.

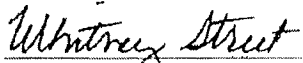
49. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, the remainder of this Agreement will not be affected, and, in lieu of each provision that is found illegal, invalid or unenforceable, a provision will be added as a part of this Agreement that is as similar to the illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

50. All terms of this Agreement shall be governed and interpreted according to the substantive laws of the State of New Jersey without regard to its choice of law or conflict of laws principles.

51. This Agreement may be executed in counterparts by counsel for Plaintiffs and Celgene, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

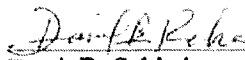
52. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of and to execute this Agreement, subject to Court approval.

  
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Walter D. Kelley, Jr.  
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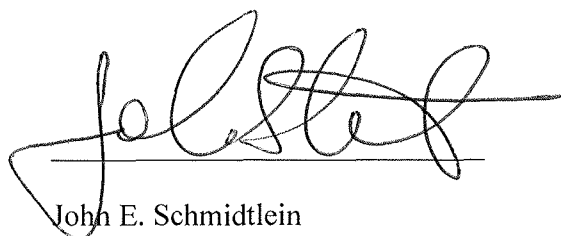
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*Settlement Class Counsel*



A handwritten signature in black ink, appearing to read "John E. Schmittlein", written over a horizontal line.

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*Counsel for Celgene Corporation*