

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE CRYOLIFE, INC. SECURITIES LITIGATION	: : : : :	CIVIL ACTION NO. 1:02-CV-1868 BBM
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**ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, a putative class action is pending in this Court styled In re CryoLife, Inc. Securities Litigation, Civil Action No. 1:02-CV-1868-BBM (the “Litigation”); and

WHEREAS, the parties, having made application pursuant to Rule 23 of the Federal Rules of Civil Procedure for an order approving the settlement of this action, in accordance with a Stipulation of Settlement dated August 29, 2005 (the “Stipulation”), which, together with the Exhibits annexed thereto sets forth the terms and conditions for a proposed settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein;

WHEREAS, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and by Order dated December 16, 2003 (and as modified by the

Court's Order dated March 1, 2004), the Court has certified the Litigation to proceed as a class action on behalf of all persons who purchased or otherwise acquired the common stock of CryoLife, Inc. between April 2, 2001 and August 14, 2002, inclusive, and were allegedly damaged thereby. Excluded from the Class is anyone named as a Defendant in this action; members of the immediate family of any such Defendant; any entity in which any such Defendant or family member has or had a controlling interest; the officers and directors of CryoLife, Inc.; or the legal affiliates, representatives, controlling persons, predecessors in interest, heirs, assigns, or any other successors in interest of any such excluded party;

WHEREAS, the Court having read and considered the Stipulation and the Exhibits annexed thereto; and

WHEREAS, all defined terms contained herein shall have the same meanings as set forth in the Stipulation;

NOW THEREFORE, IT IS HEREBY ORDERED:

1. A hearing (the "Settlement Hearing") shall be held before this Court on November 9, 2005 at 10:00 a.m., at the United States District Court for the Northern District of Georgia, Atlanta Division, 75 Spring Street, Atlanta, Georgia 30303, to determine whether the proposed Settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, just, reasonable, and adequate

as to the Class and should be approved by the Court; whether an Order and Final Judgment as provided in the Stipulation should be entered herein; whether the proposed Plan of Allocation should be approved; and to determine the amount of fees and expenses that should be awarded to Plaintiffs' Counsel. The Court may adjourn the Settlement Hearing without further notice to Members of the Class.

2. The Court reserves the right to approve the Settlement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter its Judgment approving the Stipulation and dismissing the Litigation on the merits and with prejudice regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

3. The Court approves, as to form and content, the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing (the "Notice"), the Proof of Claim and Release form (the "Proof of Claim"), and Summary Notice annexed as Exhibits A-1, A-2 and A-3 hereto, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice substantially in the manner and form set forth in this Order meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

4. Plaintiffs' Co-Lead Counsel are hereby authorized to retain the firm of Heffler, Radetich & Saitta L.L.P. ("Claims Administrator") to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Not later than September 8, 2005 (the "Notice Date"), Plaintiffs' Co-Lead Counsel shall cause a copy of the Notice and the Proof of Claim, substantially in the forms annexed as Exhibits A-1 and A-2 hereto, to be mailed by first class mail to all Class Members who can be identified with reasonable effort;

(b) Not later than ten days from the Notice Date, Plaintiffs' Co-Lead Counsel shall cause the Summary Notice to be published once in the national edition of *Investor's Business Daily*; and

(c) Prior to the Settlement Hearing, Plaintiffs' Co-Lead Counsel shall serve on Defendants' counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

5. The Defendants shall cause CryoLife, Inc.'s transfer records to be made available to the Claims Administrator for the purpose of identifying and giving notice to the Class. The Claims Administrator shall use reasonable efforts to give notice to nominee owners such as brokerage firms and other persons or entities who purchased CryoLife, Inc. common stock during the Class Period as

record owners but not as beneficial owners. Nominees who purchased the common stock of CryoLife, Inc. for the benefit of another Person during the Class Period shall be requested to send the Notice and the Proof of Claim to all such beneficial owners within ten (10) days after receipt thereof, or to send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) days of receipt thereof in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim to such beneficial owners.

6. The form and content of the Notice, and the method set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

7. Any Person falling within the definition of the Class shall be bound by all determinations and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Class, unless such Persons request exclusion from the Class in a timely and proper manner, as hereinafter provided. A Class Member wishing to

make such request shall mail the request in written form by first class mail postmarked no later than October 31, 2005 to the address designated in the Notice. Such request for exclusion shall clearly indicate the name, address and telephone number of the person seeking exclusion, that the sender requests to be excluded from the Class in the In re CryoLife, Inc. Securities Litigation, and must be signed by such person. Such persons requesting exclusion are also directed to state: the date(s), price(s), and number(s) of shares of all purchases and sales of CryoLife, Inc. common stock during the Class Period. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Class Members requesting exclusion from the Class shall not be entitled to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

8. Class Members who wish to participate in the Settlement shall complete and submit Proof of Claim forms in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proof of Claim forms must be submitted no later than December 30, 2005 [one hundred twenty (120) days from the Preliminary Approval Hearing]. Any Class Member who does not timely submit a Proof of Claim within the time provided for shall be barred from

sharing in the distribution of the proceeds of the Settlement Fund, unless otherwise ordered by the Court.

9. Any Member of the Class may enter an appearance in the Litigation, at their own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Plaintiffs' Co-Lead Counsel.

10. All proceedings in the Litigation are stayed until further order of the Court, except as may be necessary to implement the Settlement or comply with the terms of the Stipulation. Pending final determination of whether the Settlement should be approved, neither the Lead Plaintiffs, nor any Class Member, either directly, representatively, or in any other capacity, shall commence or prosecute against any of the Defendants, any action or proceeding in any court or tribunal asserting any of the Released Claims.

11. Any Member of the Class may appear and show cause, if he, she, or it has any reason why the proposed Settlement of the Litigation should or should not be approved as fair, reasonable, and adequate, or why a judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, or why attorneys' fees and expenses should or should not be awarded to counsel for the Plaintiffs; provided, however, that no Class Member or any other

Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, or the attorneys' fees and expenses to be awarded to counsel for the Plaintiffs, unless written objections and copies of any papers and briefs are filed with the Clerk of the United States District Court for the Northern District of Georgia, Atlanta Division, on or before October 31, 2005; and copies of said objections, papers, and briefs are also served upon Martin D. Chitwood, Esq., Chitwood Harley Harnes LLP, 1230 Peachtree Street, 2300 Promenade Two, Atlanta, Georgia 30309; Sherrie R. Savett, Berger & Montague, P.C., 1622 Locust Street, Philadelphia, Pennsylvania 19103; and Michael R. Smith, King & Spalding LLP, 191 Peachtree Street, Atlanta, Georgia 30303. Any Member of the Class who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, justness, reasonableness, or adequacy of the proposed Settlement, to the Plan of Allocation, or to the award of attorneys' fees and expenses to counsel for the Plaintiffs, unless otherwise ordered by the Court.

12. The passage of title and ownership of the Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Stipulation is

approved. No Person that is not a Class Member or counsel to the Plaintiffs shall have any right to any portion of, or in the distribution of, the Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

13. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

14. All motions and papers in support of the settlement, the Plan of Allocation, and any application by counsel for the Plaintiffs for attorneys' fees or reimbursement of expenses shall be filed and served seven (7) calendar days prior to the Settlement Hearing.

15. Neither CryoLife, Inc. nor the Individual Defendants shall have any responsibility for the Plan of Allocation or any application for attorneys' fees or reimbursement of expenses submitted by Plaintiffs' Co-Lead Counsel, and such matters will be considered separately from the fairness, justness, reasonableness, and adequacy of the Settlement.

16. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel and any application for attorneys' fees or reimbursement of expenses shall be approved.

17. All reasonable costs incurred in identifying and notifying class members, as well as in administering the Settlement Fund, shall be paid as set forth in the Stipulation. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither the Plaintiffs nor any of their counsel shall have any obligation to repay to Defendants or their Insurer the reasonable and actual costs of class notice and of administration, provided that the foregoing costs and expenses shall not exceed \$200,000.

18. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Members of the Class and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

19. If: (a) the Settlement is terminated by Defendants pursuant to ¶ 7.4 of the Stipulation; or (b) any specified condition to the Settlement set forth in the Stipulation is not satisfied and Plaintiffs' Co-Lead Counsel or Counsel for the Defendants elects to terminate the Settlement as provided in ¶ 7.3 of the Stipulation, then, in any such event, the Stipulation, including any amendment(s) thereof, and this Order shall be null and void, of no further force or effect, and

without prejudice to any party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity, and each party shall be restored to his, her or its respective position as it existed prior to the execution of the Stipulation.

IT IS SO ORDERED.

DATED: September 01, 2005

s/Beverly B. Martin
THE HONORABLE BEVERLY B. MARTIN
UNITED STATES DISTRICT JUDGE