

**[J-52B 2014] [OAJC: Saylor, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA	:	No. 85 MAP 2011
	:	
	:	Appeal from the decision of the
v.	:	Commonwealth Court (Opinion re Post-
	:	Trial Motions of the Commonwealth and
	:	Bristol-Myers Squibb Company) dated 08-
	:	31-2011 at No. 212 MD 2004.
TAP PHARMACEUTICAL PRODUCTS,	:	
INC.; ABBOTT LABORATORIES;	:	
ASTRAZENECA PLC; ASTRAZENECA,	:	ARGUED: May 7, 2013
HOLDINGS, INC.; ASTRAZENECA	:	SUBMITTED: April 25, 2014
PHARMACEUTICALS LP;	:	
ASTRAZENECA LP; BAYER AG; BAYER	:	
CORPORATION; SMITHKLINE	:	
BEECHAM CORPORATION D/B/A	:	
GLAXOSMITHKLINE; PFIZER, INC.;	:	
PHARMACIA CORPORATION;	:	
JOHNSON & JOHNSON; ALZA	:	
CORPORATION; CENTROCOR, INC.;	:	
ETHICON, INC.; JANSSEN	:	
PHARMACEUTICAL PRODUCTS, L.P.;	:	
MCNEIL-PPC, INC.; ORTHO BIOTECH,	:	
INC.; ORTHO BIOTECH PRODUCTS;	:	
L.P.; ORTHO-MCNEIL	:	
PHARMACEUTICAL, INC; AMGEN, INC.;	:	
IMMUNEX CORPORATION; BRISTOL-	:	
MYERS SQUIBB COMPANY; BAXTER	:	
INTERNATIONAL INC.; BAXTER	:	
HEALTHCARE CORPORATION;	:	
IMMUNO-U.S., INC.; AVENTIS	:	
PHARMACEUTICALS, INC.; AVENTIS	:	
BEHRING, L.L.C.; HOECHST MARION	:	
ROUSSEL, INC., BOEHRINGER	:	
INGELHEIM CORPORATION;	:	
BOEHRINGER INGELHEIM	:	
PHARMACEUTICALS, INC.; BEN VENUE	:	
LABORATORIES; BEDFORD	:	
LABORATORIES; ROXANE	:	
LABORATORIES; SCHERING-PLOUGH	:	
CORPORATION; WARRICK	:	
PHARMACEUTICALS CORPORATION;	:	
SCHERING SALES CORPORATION;	:	

DEY, INC. :
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DONNA A. BOSWELL, ESQ., ANN M. :
VICKERY, ESQ., AND JOSEPH A. :
YOUNG, ESQ., :
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Intervenors :
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APPEAL OF: BRISTOL-MYERS SQUIBB :
COMPANY :

CONCURRING OPINION

MR. JUSTICE BAER

DECIDED: June 16, 2014

While I agree with the thoughtful analysis set forth in the Opinion Announcing the Judgment of the Court (OAJC) regarding the rebate issue in its entirety, I concur in the disposition of a remand and write to articulate my view as to why I believe a remand is appropriate. The OAJC, based upon its reasoning that the Commonwealth inappropriately disregarded the rebate issue and the lower court erred in addressing the question, would simply reverse the case for entry of judgment in favor of Bristol Myers Squibb Company (BMS), thus ending the case. I am not certain, however, that the errors articulated by the OAJC with regard to the rebate issue necessarily nullify the judgment upon liability or conclude this case entirely concerning alleged violations of consumer protection and trade practices in terms of damages, counsel fees or cost. For this reason, I believe a remand to the Commonwealth Court for further consideration of the case in light of the OAJC's analysis of the rebate issue would be appropriate so that the lower court, in the first instance, may decide if the rebate issue as discussed in the OAJC puts an end to the litigation. A remand will provide the parties and the court with

a full opportunity for hearing in order to consider how the rebate issue affects the verdict and all aspects of this complex litigation.

Accordingly, for the reasons set forth above, I believe a remand is warranted and, therefore, concur in the OAJC's disposition.

Madame Justice Todd and Mr. Justice McCaffery join this concurring opinion.