

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE LUPRON® MARKETING AND
SALES PRACTICES LITIGATION

M.D.L. No. 1430
Civil Action No. 01-10861

MEMORANDUM AND ORDER ON A. DAVID MAZZONE
RESEARCH AWARDS PROGRAM FIRST ANNUAL PROGRESS and
ACCOUNTING REPORT # 3

October 22, 2012

STEARNS, D.J.

On October 5, 2012, Dr. Philip Kantoff of the Dana-Farber/Harvard Cancer Center (DF/HCC), the principal investigator for the A. David Mazzone Research Awards Program,¹ and co-principal investigator, Dr. Jonathan Simon, President of the Prostate Cancer Foundation (PCF), submitted the First Annual Research Progress and Accounting Report #3 for the court's review. The 499-page Report details the progress

¹ The Research Awards Program is named in the memory of the Honorable A. David Mazzone, a much-admired United States District Court Judge who for nineteen years oversaw the federally-mandated clean up of the Boston Harbor and who died prematurely of prostate cancer. The Program is funded from a pool of unclaimed consumer class funds created as part of the settlement of a national class action lawsuit involving overpricing of the prostate cancer drug Lupron®. *See In re Lupron® Mktg. and Sales Practices Litig.*, 729 F. Supp. 2d 492 (D. Mass. 2010). The Program is administered jointly by the DF/HCC and the PCF under supervision of the court.

of the Research Program and its associated financial expenditures during the fiscal year August 1, 2011, through July 31, 2012. As required by the mandate of the Court of Appeals,² the financial statements are certified by Leslie Y. Cohen, the Manager of Accounting for DF/HCC. Expenditures relative to each grant have been independently reviewed and verified by the appropriate officials at each grantee's host institution.

As established by the court, the goals of the Program are as follows.

To direct leftover Settlement Pool funds from the Lupron[®] litigation to research initiatives of merit in prostate cancer and other Lupron[®]-treatable diseases.

To distribute Settlement Pool funds to researchers in prostate cancer and other Lupron[®]-treatable diseases at the national and local level, and to spur collaborative research into the treatment and cure of prostate cancer and Lupron[®]-treatable diseases.

To distribute Settlement Pool funds through existing organizational channels that have an established record of successful grant distributions (that is, those that have advanced the state of knowledge in the Program's stated areas of research).

To increase the power and breadth of research in prostate cancer and other Lupron[®]-related diseases, by (i) the strategic administration of new and existing funding mechanisms; (ii) expanding current avenues of investigation; (iii) recruiting new talent into the field; and (iv) ensuring that research is relevant to the primary goals of advancing diagnostic, treatment and quality of life options for patients with prostate cancer and other Lupron[®]-treatable diseases.

² See *In re Lupron[®] Mktg. and Sales Practices Litig.*, 677 F.3d 21 (1st Cir. 2012).

Grant applications are solicited annually by DF/HCC and the PCF from faculty, research clinicians, and students at university-affiliated hospitals and research institutions on a national and international level. Administrative oversight of the Program is vested in a Scientific Advisory Board (SAB) consisting of the principal investigators, and Dr. David Tindall, Director of Urologic Research at the Mayo Clinic, Dr. Howard Soule, Chief Science Officer of the PCF, Dr. Ken Pienta, Director of the University of Michigan SPORE, Dr. Peter Kendall, Director of the University of California-San Francisco SPORE, Dr. Peter Carroll, Director of the University of Washington SPORE, Dr. Peter Scardino, Director of the Memorial Sloan Kettering Cancer Center SPORE, Dr. William Nelson, Director of the Johns Hopkins University SPORE, and two court-appointed members, Dr. Jonathan Tilly of the Vincent Center for Research and Reproductive Biology at Massachusetts General Hospital and Circuit Executive Gary Wentz, the court's Patient Advocate.³ The members of the SAB serve on a volunteer, non-compensated basis and are personally ineligible to compete for grant awards.

The Mazzone Awards Program provides funding for High Impact research grants directed to the treatment and cure of prostate cancer and other Lupron[®]-treatable

³ Marsha Zierk, Chief Law Clerk to Judge Stearns, serves as the court's liaison to the SAB. The undersigned Judge participates as appropriate as an ex-officio non-voting member of the SAB.

diseases such as precocious puberty, as well as to issues of community outreach, student education and career development, and treatment-disparity studies. The PCF also supplements the funding of the Mazzone Program through annually awarded Challenge Grants of its own.

In the inaugural grant awards cycle, the SAB voted, after peer review, to grant five High Impact Awards in the amount of \$500,000 each; nine Project Development Awards each in the amount of \$100,000; five Disparities Research Awards in the amount of \$100,000 each; four Community Outreach Awards in the amount of \$100,000 each; six Career Development Awards in the amount of \$100,000 each; eight Student Training Awards each in the amount of \$20,000; three Lupron[®]-treatable disease awards in the amount of \$100,000 each; and five Challenge Grants, each in the amount of \$1,000,000. Grant awards are made on a two-year basis subject to the SAB's interim review. Awards are staggered over the five-year anticipated life of the Program.⁴

Successful grantees are required to submit quarterly invoices detailing actual expenditures. Full progress and financial reports are required at the anniversary of each grant. The second year funding installment is contingent upon satisfactory compliance

⁴ A final accounting and achievements report will be submitted to the court on September 30, 2017, the seventh anniversary of the Program's official start date on October 1, 2010.

with the Program's reporting requirements. No settlement award money may be used to pay overhead expenses at the institutions hosting the grantee research. Administrative and overhead expenses are assessed only once upon the receipt of the funds by the DF/HCC and the PCF administrators at a rate that may not exceed a court-mandated ten percent of the total of the settlement pool funds allocated.

And the end of the first awards cycle, the Program had made thirteen grant awards (selected from among 120 applications) supporting a total of thirty-nine investigators in twenty-one teaching and research institutions in the United States and abroad.⁵ The specific nature of each of these grant awards is detailed in the Progress Report.

The reports submitted by all thirteen of the initial grantees demonstrate solid progress towards achieving the goals set out in the grantee's initial proposals.⁶

⁵ Sixty-one applications were submitted through DF/HCC and fifty-nine through the PCF. A total of forty research and teaching institutions were represented, involving 161 researchers. DF/HCC funded eleven grants to ten institutions involving twenty-eight researchers. The PCF funded two grants to four institutions involving eleven researchers.

⁶ During the 2011-2012 Program year, all Mazzone Awards recipients were invited to participate in the 5th Annual Multi-institutional Prostate Cancer Program Retreat, co-sponsored by Memorial Sloan-Kettering Cancer Center, Dana-Farber/Harvard Cancer Center, Johns Hopkins Hospital, and the University of Michigan.

Highlights among the accomplishments to date include the following.

Freedman and Coetzee performed eQTL-based analyses on 662 tumor normal pairs and found that 4/12 known prostate cancer risk polymorphisms were strongly correlated with five transcripts (NUDT11, MSB, NCOA4, SLC22A3 and HNF1B). (Grecians et al., PANS 2012).

Brown et al. demonstrated that EZH2's oncogenic function in CRPC is independent of its role as a transcriptional repressor in Polycomb repressive complex 2 (PRC-2). Instead, it involves the ability of EZH2 to act as a co-activator for critical transcription factors including the AR. This functional switch is dependent on phosphorylation of EZH2, and requires an intact methyltransferase domain. These findings suggest that targeting the non-PRC2 function of EZH2 would have significant therapeutic efficacy to inhibit CRPC growth and avoid the toxicity of PRC2 inhibition.

Gray et al. developed the first potent selective Bmx kinase inhibitor (manuscript in preparation).

Based on Program experience and inquiries from potential grantees, the SAB decided to seek applications in 2013 for a new "High Impact Clinical Trial Award" designed by Dr. Kantoff to promote the use of novel drugs and therapies in prostate cancer treatment. The SAB also modified the Community Outreach RFA in response to the suggestions of applicants to make clear that both hypothesis-driven research proposals as well as community intervention proposals would be accepted. The Program funded one Community Outreach project in 2012 and received approval from the court to provide two additional seed funding grants in the amount of \$10,000 each.

As it entered the second grant awards cycle, the RFAs were widely advertised

through targeted emails to Cancer Center Directors and Administrators of NCI-designated Cancer Centers through the PCF website and research newsletter, the DF/HCC and institutional weekly and monthly newsletters, direct correspondence to the faculty in relevant DF/HCC programs, and to principal investigators of NCI Prostate Cancer SPOREs. The Program received nearly 150 applications for the second award cycle (peer review of which was completed in the spring and early summer of 2012). Awards are in the process of being announced.

Comments

The court is pleased with the ongoing progress of the Mazzone Awards Program and the commitment demonstrated by DF/HCC and the PCF to ensure that the Program fosters broad-based and innovative inter-institutional research. The court is also appreciative of the determination of the principal investigators and the SAB to ensure the transparency and the financial and scientific integrity of the Program. And finally, the court takes special note of the many hours devoted on a volunteer basis to the peer review process by the distinguished members of the medical and scientific community who share the Program's goals.

ORDER

After review of the First Annual Research Progress and Accounting Report # 3, the court directs the Court Registry Investment System, on November 12, 2012, to disburse

from the Lupron® Settlement Pool Account a check in the amount of \$4,000,000.00, payable to Dana Farber Cancer Institute d/b/a/ Dana-Farber/Harvard Cancer Center, to be deposited into the Lupron® Settlement Fund Account - DF/HCC's dedicated account for the Mazzone Awards Program. The principal investigator of the A. David Mazzone Research Awards Program, Dr. Kantoff, and the co-principal investigator, Dr. Simons, are requested to submit to the court the previously scheduled programmatic Report # 4 by March 30, 2013; and the research progress and accounting report for all grants (Annual Report # 5) on or before September 30, 2013.

SO ORDERED.

/s/ Hon. Richard G. Stearns

United States District Judge