

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

**BMS SETTLEMENT**

Judge Patti B. Saris

**[PROPOSED] ORDER DIRECTING NOTICE OF SETTLEMENT REVISION TO  
AFFECTED CLASS MEMBERS AND SCHEDULING FAIRNESS HEARING**

In an electronic entry dated May 5, 2011, the Court approved the proposed rebalancing of the BMS Settlement Allocation embodied in Dkt. No. 7530. This Order now approves the provision of Notice of the settlement revision to affected Class members and schedules a supplemental fairness hearing.

1. On or before May 26, 2011, and using the mailing addresses contained in its database, the Claims Administrator shall provide notice of the settlement revision in the forms attached hereto as Exhibits A and B (the "Supplemental Notices") as follows: (a) the form of notice attached at Exhibit A shall be sent by U.S. Mail to all TPP Class 2 and 3 members who timely filed claims; and (b) the form of notice attached at Exhibit B shall be sent by U.S. Mail to all Class 1 consumers who timely filed claims and who the Claims Administrator determines will receive less under the revised distribution formula than they would have under the original formula.

2. The Court finds that these Supplemental Notices and this supplemental notice plan meet the requirements of due process and Fed. R. Civ. P. 23(c) and (e), constitutes the best

notice practicable under the circumstances to all persons entitled to notice, and satisfies the Constitutional requirements of notice. One-half of the reasonable costs of preparing, printing, publishing, mailing and otherwise disseminating the notice, up to a maximum of \$1,000,000, shall be paid by BMS in accordance with the Settlement Agreement, with the other half and any other amounts over the BMS maximum being advanced and reimbursed from the settlement fund. Costs previously incurred in providing the original notice of the Proposed Settlement are to be included in determining the \$1,000,000 maximum.

3. The Court exercises its discretion under Fed. R. Civ. P. 23(e)(4) so as not to provide an additional opportunity for Class members to request exclusion.

4. A supplemental hearing on final settlement approval (the "Supplemental Fairness Hearing") will be held on July 7, 2011 at 11:30 AM before this Court, at the United States District Court for the District of Massachusetts, One Courthouse Way, Boston, Massachusetts 02210, to consider whether the Proposed Settlement, as revised, should be approved as fair, reasonable and adequate.

5. Any member of the Classes that was mailed a Supplemental Notice may appear at the Supplemental Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the revision to the Proposed Settlement; provided, however, that no person shall be heard in opposition to the revision to the Proposed Settlement, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless submitted to the Court and received by Counsel for the parties on or before July 1, 2011. Such person must (a) file with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition and any documentation in support of such opposition on or before July 1, 2011, and (b) serve copies of such notice,

statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon Counsel to the parties so that such papers are received on or before July 1, 2011. Class Members who fail to object in the manner and by the dates provided herein shall be deemed to have waived and shall forever be foreclosed from raising any such objections.

6. Counsel for the parties who must be served with all documentation described above in Paragraph 4 are as follows:

Counsel for the Class

Steve W. Berman  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1918 8th Avenue, Suite 3300  
Seattle, WA 98101

Counsel for Defendant BMS

Lyndon M. Tretter  
HOGAN LOVELLS US LLP  
875 Third Avenue  
New York, NY 10022

7. The date and time of the Supplemental Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the Classes other than that which may be posted at the Court, on the Court's website, and/or the Claims Administrator website.

8. The Court appoints KeyBank Trust Department, 1301 Fifth Avenue, Suite 2400, Seattle, Washington, to be the new Escrow Agent for the BMS Settlement.

Dated: May 24 2011

  
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Honorable Patti B. Saris  
United States District Judge