

Notice of Revision to Proposed Class Action Settlement Involving Certain Chemotherapy Drugs Sold by BMS

1. What Is This Notice About?

There is a Proposed Settlement of a class action lawsuit involving Bristol-Myers Squibb (“BMS”) drugs Blenoxane®, Cytoxan®, Etopophos®, Paraplatin®, Rubex®, Taxol® and Vepesid® (referred to as the “BMS Drugs”). The name of the lawsuit is *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, Docket No. 01-CV-12257-PBS, MDL No. 1456.

You were mailed this Notice because you previously returned a Claim Card in response to an earlier Notice that was sent to you. On the Claim Card, you indicated that you made a percentage co-payment from January 1, 1991 through December 31, 2004 for a BMS Drug under Medicare Part B.

This revised Notice informs you of changes in the terms of the Proposed Settlement. In sum, the amount of money allocated to Consumers has been increased, and the proposed distribution has been altered to more closely track estimated damages for each individual BMS Drug. You are receiving this Notice because our records indicate that your total compensation across all settled BMS Drugs will be reduced under the Proposed Settlement as revised.

2. What Are The Changes In The Terms Of The Proposed Settlement?

The Court considered the Proposed Settlement at a hearing held March 28, 2011. The Court requested that the Proposed Settlement be modified to provide more money to Consumers and to base the distribution among the various Consumers more closely on estimated damages for each individual BMS Drug. Plaintiffs subsequently presented a revision to the Court, which the Court approved on a preliminary basis.

The total amount of money available to pay Consumer claims, including those Consumers who participated in Medicare Part B and those who made a percentage co-payment or cash payment for BMS Drugs outside of the Medicare Part B program, has been **increased** from \$4,370,000 to \$5,370,000.

And the manner in which your payment will be calculated has changed. Under the previous formula, the Claims Administrator would calculate your “Total Recognized Claim” by adding two amounts:

- Payment obligations for Cytoxan®, Taxol® and Vepesid® from January 1, 1991 through December 31, 2004 multiplied by a factor of three (3x); and
- Payment obligations for Blenoxane®, Etopophos®, Paraplatin®, Rubex® inside this time period (with no multiplication factor).

Your Total Recognized Claim will now be calculated differently. It will be based on the Court’s findings from a prior trial against BMS in this same litigation and Plaintiffs’ expert’s calculation of estimated overcharges associated with the alleged price inflation for the BMS Drugs.

Your Total Recognized Claim will now be determined according to a three step process:

1. For the drugs Cytoxan®, Taxol® and Vepesid®, the Claims Administrator will apply the expert’s estimated overcharge percentage for all administrations during the following years (years not indicated receive \$0):
Cytoxan®: 1991-2004 Taxol®: 2002-2003 Vepesid®: 1993-1999, 2001-2004
2. The amounts determined in Step 1 will be doubled for the following drugs and years for which the Court found liability in the prior trial: Cytoxan®, 1998-2002; Taxol®, 2002; and Vepesid®, 1998-1999, 2001-2002.
3. In Step 3, a \$50 payment will be allocated for all administrations of each of the following drugs: Blenoxane®, Etopophos®, Paraplatin®, Rubex®. In addition, all Taxol® administrations during the years 1991-2001 will also be allocated \$50. The foregoing payments are a flat \$50 per drug, without regard to how many administrations you received of the particular drug. For the foregoing drugs (and the time period indicated for Taxol®), either the Court found no liability at the prior trial, or Plaintiffs’ expert determined that there were no or very minimal alleged overcharges.

The sum of these figures will be your Total Recognized Claim. For those claimants whose Total Recognized Claim sums to less than \$50, the distribution formula steps them up to \$50, so that \$50 becomes the minimum Total Recognized Claim for eligible claimants.

*Your legal rights are affected even if you do not act.
Read this Notice carefully.*

If there is enough money based on the number of claims received, your payment will be 100% of your Total Recognized Claim. If there is not enough money to pay all Consumers 100% of their Total Recognized Claims, each consumer's claim will be reduced proportionately.

If you are eligible to receive a payment, the net result of these changes to the Proposed Settlement is that your payment will be lower than under the initial distribution formula.

The remaining terms of the Proposed Settlement remain unchanged. The Court has determined that the above revision does not warrant a second "opt out" period in which class members who declined to exclude themselves before should now be offered another chance to do so. Accordingly, if the Proposed Settlement is finally approved as revised, you will be bound by its terms.

3. May I Object To, Or Comment On, The Revision To The Proposed Settlement?

Yes. If you have comments about, or disagree with, any aspect of the revision to the Proposed Settlement, you may express your views to the Court. You must do this in writing. Your written response must include:

- Your name, address, telephone number, a brief explanation of your reasons for objection, and
- The case number (Civil Action Number: 01-CV-12257-PBS, MDL No. 1456).

The document **must** be signed to ensure the Court's review. The response must be filed with the Court at the following address on or before **July 1, 2011**: Clerk of Court, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Boston, Massachusetts 02210 and served on Counsel for the Parties so that the objection is **received** on or before **July 1, 2011** at the following addresses:

Counsel for the Class

Steve W. Berman
Hagens Berman Sobol Shapiro LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101

Counsel for BMS

Lyndon M. Tretter
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

In addition, your document must clearly state that it relates to the "BMS Settlement." If you file or present an objection, you will be subject to the jurisdiction of the Court.

4. When And Where Will The Court Decide On Whether To Grant Final Approval Of The Proposed Settlement?

The Court will hold a Hearing on July 7, 2011 at 9:30 a.m., to consider whether it is fair, reasonable and adequate. At the Hearing, the Court will also consider whether to approve the Proposed Settlement; the request for attorneys' fees and expenses; and any comments or objections. You are not required to attend, but may do so at your own expense.

If you want your own lawyer instead of Class Counsel to speak at the Final Approval Hearing, you must give the Court a paper that is called a "Notice of Appearance." The Notice of Appearance must include:

- Your name, address, telephone number, signature;
- The name, and number of the lawsuit (Civil Action Number: 01-CV-12257-PBS, MDL No. 1456);
- State that you wish to enter an appearance at the Final Approval Hearing; and
- Any documentation in support of such opposition.

Your Notice of Appearance **must** be filed with the Court on or before **July 1, 2011** and served on Counsel so that it is **received** on or before **July 1, 2011**. You cannot speak at the Hearing if you previously asked to be excluded from the Proposed Settlement Class. The Notice of Appearance must be filed with the Court and served on Counsel at the addresses set forth above in response to Question 3.

5. Where Do I Obtain More Information?

You may obtain more information, including a copy of the original Notice that was previously mailed to you, by visiting the BMS AWP Settlement web site at www.BMSAWPSettlement.com, by calling 1-877-690-7097, or by writing to:

BMS AWP Class1 Settlement Administrator
P.O. Box 2364
Faribault, MN 55021-9064

DATED: May 26, 2011

BY ORDER OF THE COURT