

**If You Are A Third-Party Payor And Made Reimbursements
For Certain Bristol-Myers Squibb Chemotherapy Drugs**

**You May Be Able To Receive A Substantial Payment
From A Proposed Class Action Settlement**

Summary of Proposed Settlement

- There is a Proposed Class Action Settlement with Bristol-Myers Squibb (“BMS”) concerning the drugs Blenoxane®, Cytosan®, 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-C V-12257-PBS, MDL No. 1456 (D. Mass.).
- The lawsuit claims that Third-Party Payors (“TPPs”) who reimbursed any portion of their insureds’ Medicare Part B co-payment or who reimbursed for these drugs outside of Medicare Part B based on the “average wholesale price” (“AWP”) paid more than they should have for these drugs.
- The lawsuit claims the AWP reported by BMS for the BMS drugs was false and inflated. AWPs were used to set the amount Medicare Part B, and most private insurers reimbursed for these drugs. BMS contends that it reported true and accurate list prices for its drugs and denies any wrongdoing and is settling to avoid the burden and expense of continued litigation.
- To avoid the burden and expense of continued litigation, BMS has agreed to pay \$19 million to settle claims of TPPs as well as consumers who made percentage co-payments based on AWP.
- Under the terms of Settlement, 77% will be used to satisfy the claims of TPPs who file claims. The remaining 23% of the total Settlement amount will be set aside exclusively to satisfy the claims of consumers.
- Generally speaking, you are a member of one of the Settlement Classes:

If you reimbursed any portion of an insured’s Medicare Part B co-payment for any of these drugs from January 1, 1991 through December 31, 2004; or

If you made reimbursements outside of Medicare Part B for any of these drugs from January 1, 1991 through December 31, 2004.

Your Legal Rights Are Affected Even If You Do Not Act.

Read This Notice Carefully.

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Basic Information

1. Why Did I Get This Notice?

You were mailed this Notice because records indicate you are a TPP who may provide pharmaceutical coverage for your insureds. Or, you may have requested this Notice after seeing the Summary Notice in a publication.

2. What Is The Lawsuit About?

The lawsuit claims that BMS reported false and inflated AWP's for the BMS drugs at issue in this case. The lawsuit claims that the reported AWP's were used to set reimbursement amounts that were paid by Medicare and its beneficiaries and to set the reimbursement by private health insurers and consumers making percentage co-payments under private health insurance plans. The lawsuit asks the Court to award money damages to TPPs who made reimbursements under Medicare Part B for the drugs at issue or who reimbursed outside of Medicare Part B based on AWP.

BMS contends that it reported true and accurate list prices for its drugs and denies any wrongdoing. The Proposed Settlement is not an admission of wrongdoing or an indication that any law was violated. BMS has entered into the Proposed Settlement to avoid further expense and inconvenience.

3. Why Is This A Class Action?

In a class action lawsuit, one or more people called "class representatives" sue on behalf of people who have similar claims. The people together are a "class" or "class members." A court must determine if a lawsuit should proceed as a class action. If it does, a trial then decides the lawsuit for everyone in the class. Sometimes, the parties may settle without a trial.

The Parties here have agreed to a Proposed Settlement that includes a national class of TPPs who reimbursed, or incurred obligations to reimburse, any portion of a Medicare Part B co-payment for the drugs at issue. The Proposed Settlement also includes a national class of TPPs who made reimbursements for these drugs outside of Medicare Part B based on AWP. The Court has preliminarily approved this Proposed Settlement but will hold a Hearing to decide whether it should be finally approved. (*See* Question 13.)

4. How Do I Know If I Am Included In The Proposed Settlement?

Generally speaking, you are a member of one of the Settlement Classes if you reimbursed (or incurred an obligation to reimburse) any portion of an insured's Medicare Part B co-payment for any of these drugs from January 1, 1991 through December 31, 2004; or you made (or incurred an obligation to make) reimbursements outside of Medicare Part B for any of these drugs from January 1, 1991 through December 31, 2004. You do not need to do anything to become part of one of these Settlement Classes, **but you must complete the Claim Form in order to be able to receive money.**

Excluded from the Proposed Settlement are (1) consumers who made flat co-payments, who were reimbursed fully for their payments, or who have the right to be fully reimbursed, and (2) BMS and certain related entities as defined in the Settlement Agreement. Also excluded from the Proposed Settlement are all federal, state, and local government entities in the United States, except any such governmental agencies or programs that made or incurred an obligation to make a reimbursement for a Class Drug as part of a health benefit plan for their employees, but only with respect to such payment.

Benefits Of The Proposed Settlement – What You Get

5. What Does The Proposed Settlement Provide?

BMS will pay \$19 million to settle the lawsuit. This amount is meant to satisfy the claims of both TPPs who meet the criteria for inclusion in one of the two Settlement Classes as well as claims by consumers who made percentage co-payments and full cash payments based on the published AWP. All costs associated with notice and administration, attorneys' fees and litigation costs, and compensation to the named class representatives for time spent providing documents and testimony in connection with this case will be paid from the \$19 million settlement amount, except that BMS will pay 50% of the costs of notice up to \$1 million. The Court must approve all aspects of this Proposed Settlement.

Under the Agreement, 77% of the net settlement amount will be designated to satisfy the claims of TPPs. The remaining 23% of the net settlement amount will be designated for the purpose of paying consumer claims. Consumers and TPPs are sharing the costs of notice and administration equally.

6. How Do I File A Claim?

Attached to this Notice is a Claim Form. *You must fill out the Claim Form and submit it to the Claims Administrator, received or postmarked no later than November 19, 2010*, and addressed to:

BMS AWP TPP Settlement Administrator
P.O. Box 24648
West Palm Beach, FL 33416

As part of your claim, you must provide the backup information and certifications requested on the Claim Form.

7. How Are Payments Determined?

How much you receive from this Proposed Settlement depends on the volume and amount of claims submitted by other TPP Settlement Class Members.

- TPP Settlement Class Members are required to provide the amount of reimbursements for certain drugs at issue from January 1, 2003 to December 31, 2003. This one-year period will be used to determine the portion of the Settlement Amount that will be paid to each TPP submitting valid claims.
- TPP Settlement Class Member's portion of the Settlement Amount will be based upon their reimbursements for the BMS Drugs.
- If total valid TPP Settlement Class Member claims exceed the total portion of the settlement set aside to satisfy the claims of TPPs, all TPP claims will be reduced proportionately.

Excluding Yourself from the Proposed Settlement

8. What If I Do Not Want to Be Included in the Proposed Settlement?

If you do not want to be in the Settlement Classes and you want to keep the right to sue BMS about the same claims on your own, you must take steps to get out of the Settlement Classes. This is called excluding yourself.

By excluding yourself, you keep the right to file your own lawsuit or join another lawsuit against BMS about the claims in this lawsuit. (If you do not exclude yourself, you will be releasing AWP pricing-related claims against BMS and other Released Parties. You will not be releasing unrelated claims, such as

product liability, breach of warranty, or personal injury claims. For further details, see “Getting More Information” below.)

If you exclude yourself from the Settlement Classes, however, you will not be able to file a claim for money and you will not be included in the Proposed Settlement.

9. How Do I Exclude Myself from the Proposed Settlement?

You can exclude yourself from the Proposed Settlement by sending a letter that includes all of the following:

- Your name, address, and telephone number;
- The name and number of the lawsuit: *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, Docket No. 01-CV-12257-PBS, MDL No. 1456;
- If you have hired your own lawyer, the name, address, and telephone number of your lawyer;
- A statement that you want to be excluded from the Settlement Classes *and*
- A signed certification containing the following language:

The undersigned individual hereby represents that he/she has the authority to sign and submit this notice of exclusion on behalf of the above-named class member. The undersigned also certifies that he/she has not received any advice from the parties to this litigation or their attorneys concerning his/her or the class member’s fiduciary obligations under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1100, *et seq.*, or other laws governing their obligations at any class member. The undersigned understands that by submitting this notice of exclusion, the class member identified above will not be entitled to receive any proceeds of the class Settlement Fund. By affixing my signature below, I certify under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

In addition, you are requested to provide the amount paid for each Class Drug at issue during January 1, 2003 to December 31, 2003. Your letter requesting exclusion must be mailed first class, **received no later than October 29, 2010**, to:

BMS AWP TPP Settlement Administrator
P.O. Box 24648
West Palm Beach, FL 33416

Please remember that you cannot exclude yourself by calling or by sending an email. Failure to exclude yourself pursuant to the above instructions will result in you being barred by the Settlement if it is approved.

Objecting to or Commenting on the Proposed Settlement

10. May I Object To, Or Comment On, the Proposed Settlement?

Yes. If you have comments about, or disagree with, any aspect of the Proposed Settlement, you may express your views to the Court through a written response to the Proposed Settlement. The written response should include your name, address, telephone number and a brief explanation of your reasons for objection. 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 **October 29, 2010**:

Clerk of Court
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2300
Boston, Massachusetts 02210

and served on Counsel for the Parties on or before **October 29, 2010** 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 following Civil Action Number: 01-CV-12257-PBS, MDL No. 1456. If you object to or comment on the Proposed Settlement, you will be subject to the jurisdiction of the Court.

The Lawyers Representing You

11. Do I Have A Lawyer Representing My Interests In This Case?

Yes. The Court has appointed the following law firms to represent you and other Class Members:

Hagens Berman Sobol Shapiro LLP
www.hbsslaw.com
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101

Spector Roseman Kodroff & Willis, PC
www.srk-law.com
1818 Market Street, Suite 2500
Philadelphia, PA 19103

and

55 Cambridge Parkway, Suite 301
Cambridge, MA 02142

Wexler Wallace LLP
www.wtwlaw.us
55 West Monroe Street, Suite 3300
Chicago, IL 60602

Edelson & Associates LLC
45 West Court Street
Doylestown, PA 18901

These lawyers are called Class Counsel. You will not be charged personally for these lawyers, but they will ask the Court to award them a fee of up to 33 1/3 % of the Settlement Amount, plus interest. In addition, Class Counsel will request reimbursement of the expenses and costs associated with litigation of this case. The fee will be paid out of the \$19 million Settlement Amount as will any reimbursement of litigation costs and expenses awarded by the Court. More information about Class Counsel and their experience is available at the websites listed above.

12. Should I Get My Own Lawyer?

You don't need to hire your own lawyer. However, if you want your own lawyer to speak for you or appear in Court, you must file a Notice of Appearance. (*See* Question 15.) If you hire a lawyer to appear for you in this case, that will be at your own expense.

The Court's Final Approval Hearing

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

The Court will hold a Final Approval Hearing on November 19, 2010 at 2:00 p.m. to consider whether the Proposed Settlement is fair, reasonable and adequate. At the Hearing, the Court will decide whether to approve the Proposed Settlement and the request for attorneys' fees and expenses. If comments or objections have been received, the Court will consider them at this time.

Note: The Hearings may be postponed to a different date without additional notice. Updated information will be posted on the BMS AWP Settlement website at www.BMSAWPSettlement.com.

14. Must I Attend The Final Approval Hearing?

No. Attendance is not required, even if you properly mailed a written response. Class Counsel is prepared to answer the Court's questions on your behalf. If you or your personal attorney still want to attend the Hearing, you are more than welcome at your expense. However, it is not necessary that either of you attend. As long as the objection was received on or before the deadline, the Court will consider it.

15. May I Speak At The Final Approval Hearing?

Yes. If you or your own lawyer want to speak, instead of Class Counsel, at the Final Approval Hearing, you must give the Court a paper that is called a "Notice of Appearance." The Notice of Appearance should include the name and number of the lawsuit, and state that you wish to enter an appearance at the Final Approval Hearing. It also must include your name, address, telephone number and signature.

Your "Notice of Appearance" **must** be filed with the Court on or before **October 29, 2010** and served on Counsel listed in Question 10 above on or before **October 29, 2010**. You cannot speak at the Hearing if you previously asked to be excluded from the Proposed Settlement Classes and are not submitting a claim form now. The Notice of Appearance must be filed with the Court and served on Counsel at the addresses set forth above in response to Question 10.

The Notice of Appearance must be filed using the following Civil Action Number: 01-CV-12257-PBS, MDL No. 1456.

Getting More Information

16. Where Do I Obtain More Information?

More details are in the Complaint filed by Class Counsel, the Answers filed by BMS, and the other legal documents that have been filed with the Court in this lawsuit. These documents include the BMS AWP Settlement Agreement and Release, which sets forth in great detail the Settlement's provisions. You can look at and copy these legal documents at any time during regular office hours at the Office of the Clerk of Court, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Boston, Massachusetts 02210, or via the internet at www.BMSAWPSettlement.com.

In addition, if you have any questions about the lawsuit or this Notice, you may:

- Visit the BMS Settlement website at www.BMSAWPSettlement.com;
- Call toll free 1-877-690-7097; or
- Write to: BMS AWP TPP Settlement Administrator
P.O. Box 24648
West Palm Beach, FL 33416

DATED: July 29, 2009

By Order of the United States District Court
District of Massachusetts
/s/ The Honorable Judge Patti B. Saris