

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 99-MDL-1317-SEITZ/BANDSTRA

IN RE: TERAZOSIN HYDROCHLORIDE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

United Wisconsin Services, Inc., et al. v. Abbott Laboratories, N.D. Ill. C.A. No. 99-C-7410(JBZ)
Grosskrueger v. Abbott Laboratories, et al., N.D. Ill. C.A. No. 99-C-7883(JBZ)
Reid v. Abbott Laboratories, et al., D.D.C. C.A. No. 00-323
Scafani v. Abbott Laboratories, et al., N.D. Cal. C.A. No. 00-00508-SBA
Mednick v. Abbott Laboratories, et al., No. 2:00-3468
O'Keefe v. Abbott Laboratories, S.D. Fla. C.A. No. _____
O'Neal v. Abbott Laboratories, et al., No. 00-J-1504-S
Grund v. Abbott Laboratories, et al., No. _____
Blue Cross and Blue Shield of Alabama, Inc. v. Abbott Laboratories, et al., No. 00-1303-Civ.-Lenard
Bernstein v. Abbott Laboratories, E.D. Mich. C.A. No. 2:00-CV-72974
Blue Cross and Blue Shield of Michigan v. Abbott Laboratories, et al., No. 5:01-CV-95
Hopper v. Abbott Laboratories, et al., E.D.N.C. 4:01-CV-160-H(3)

**NOTICE OF PROPOSED PARTIAL SETTLEMENT
AND HEARING REGARDING SETTLEMENT**

TO: ALL PERSONS AND ENTITIES WHO OR WHICH HAVE AT ANY TIME FROM MARCH 31, 1998 THROUGH MAY 30, 2002 (THE "CLASS PERIOD") PAID ALL OR PART OF THE PURCHASE PRICE OF HYTRIN OR ITS AB-RATED GENERIC BIOEQUIVALENTS INCLUDING ALL FORMS OF TERAZOSIN HYDROCHLORIDE OTHER THAN FOR RESALE, IN ALABAMA, CALIFORNIA, THE DISTRICT OF COLUMBIA, FLORIDA, ILLINOIS, KANSAS, MAINE, MICHIGAN, MINNESOTA, MISSISSIPPI, NEVADA, NEW MEXICO, NEW JERSEY, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, SOUTH DAKOTA, WEST VIRGINIA OR WISCONSIN, OR VIA MAIL ORDER FOR RESIDENTS OF SUCH STATES ("19-STATE SUB-CLASS") AND ALL PERSONS AND ENTITIES IN THE UNITED STATES OF AMERICA WHO OR WHICH DURING THE CLASS PERIOD PAID ALL OR PART OF THE PURCHASE PRICE OF HYTRIN OR ITS AB-RATED GENERIC BIOEQUIVALENTS INCLUDING ALL FORMS OF TERAZOSIN HYDROCHLORIDE OTHER THAN FOR RESALE ("NATIONWIDE SUB-CLASS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. A PARTIAL SETTLEMENT HAS BEEN PROPOSED IN PENDING CLASS ACTION LITIGATION THAT MAY AFFECT YOUR RIGHTS.

NOTICE IS PROVIDED FOR THE PURPOSE OF INFORMING YOU OF THE PROPOSED PARTIAL SETTLEMENT AND THE ALTERNATIVE COURSES OF ACTION THAT YOU MAY TAKE.

I. PURPOSE OF THIS NOTICE

This Notice is provided to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and pursuant to an Order of the United States District Court for the Southern District of Florida (the "Court") to inform members of the 19-State Sub-Class and the Nationwide Sub-Class (collectively the "Settlement Class" more fully described below) of a partial settlement, described in more detail below in Section IV, between Indirect Purchaser Plaintiffs and defendant IVAX Pharmaceuticals, Inc. ("IVAX"), formerly known as Zenith Goldline Pharmaceuticals, Inc. The partial settlement is subject to approval by the Court.

II. THE LITIGATION

A. Indirect Purchaser Plaintiffs' Claims

A number of consumers and Third Party Payers¹ ("Indirect Purchaser Plaintiffs") have filed class action lawsuits in federal and state courts against Abbott Laboratories, Inc. ("Abbott"), Geneva Pharmaceuticals, Inc. ("Geneva"), and IVAX alleging, among other things, that Abbott entered into agreements with Geneva and IVAX, pursuant to which Abbott agreed to pay Geneva and IVAX millions of dollars in exchange for Geneva's and IVAX's agreement to refrain from marketing their generic versions of Hytrin. Specifically, Indirect Purchaser Plaintiffs allege that Abbott entered into an agreement with IVAX on or about March 30, 1998, settling patent litigation filed by IVAX against Abbott in the United States District Court for the District of New Jersey, pursuant to which Abbott paid IVAX \$6 million per quarter in return for IVAX's agreement not to manufacture and sell its generic version of Hytrin.²

Indirect Purchaser Plaintiffs alleged the agreements were illegal under various states' antitrust and/or consumer protection statutes, that defendants had been unjustly enriched as a result of their actions, and that the Agreements caused consumers and Third Party Payers to be overcharged for terazosin hydrochloride because the Agreements kept less expensive generic versions of Hytrin off the market.

Indirect Purchaser Plaintiffs also alleged that Abbott delayed generic competition for Hytrin prior to the Agreements through the unlawful submission of false patent information to the FDA and through the initiation and continued prosecution of baseless, sham patent infringement actions.

B. IVAX's Denial of Liability

IVAX vigorously disputes Indirect Purchaser Plaintiffs' claims that the Agreements were illegal. IVAX also denies Indirect Purchaser Plaintiffs' claims that the Agreements caused Indirect Purchaser Plaintiffs and members of the Settlement Class any harm. For example, IVAX asserts, among other defenses, that the Agreements were pro-competitive and perfectly legal, and that, in any event, they did not cause any injury to indirect purchasers because they did not delay cheaper generic terazosin hydrochloride from entering the market. Indeed, as to the latter point, IVAX maintains that it could not begin to sell generic terazosin hydrochloride until the expiration of Geneva's 180 day statutory exclusivity; therefore, Abbott's Agreement with IVAX did not cause any delay of the availability of generic terazosin hydrochloride, did not constitute a restraint of trade and did not cause injury to the Indirect Purchaser Plaintiffs and the Settlement Class because it did not restrict IVAX from entering the market – IVAX would have had to wait until the expiration of Geneva's exclusivity, mandated by federal law, to begin selling its generic terazosin hydrochloride product.

C. Status of the Litigation

On June 5 and August 25, 2000, the Court appointed the law firms of Lowey Dannenberg Bemporad & Selinger, P.C.; Cohen Milstein Hausfeld & Toll P.L.L.C.; and Gauthier, Downing, LaBarre, Beiser & Dean as Co-Lead Counsel for the Indirect Purchaser Plaintiff cases ("Indirect Purchaser Lead Counsel"). Since that time, Indirect Purchaser Lead Counsel and lawyers working at their direction (collectively, "Class Counsel") have prosecuted this lawsuit on behalf of the Settlement Class.

In response to a motion for partial summary judgment by Sherman Act Class Counsel, on December 13, 2000, the Court found that the Agreements were *per se* illegal under Section 1 of the Sherman Act.³ Defendants, including IVAX, vigorously dispute the Court's decision, and sought leave to make a special appeal of the decision to the United States Court of Appeals for the Eleventh Circuit before the conclusion of the litigation. Defendants' request for permission to appeal was denied on August 14, 2001. Defendants renewed this motion earlier this year and the Court entered an Order on February 26, 2002, granting defendants permission to appeal the Court's *per se* ruling. The United States Court of Appeals for the Eleventh Circuit has agreed to hear the appeal. There has not been a trial in the litigation.

Fact discovery in this case ended on November 30, 2001. Over 25 witnesses have been deposed in this case and hundreds of thousands of documents produced by the defendants and third parties have been reviewed. The parties are currently preparing expert reports on causation and damage issues and are engaging in expert discovery relating to class certification issues.

As a result of an intensive investigation, Class Counsel obtained significant knowledge regarding the strengths and weaknesses of the claims and defenses in this case before entering into settlement negotiations with IVAX.

OTHER THAN AS SPECIFICALLY INDICATED ABOVE REGARDING THE *PER SE* ILLEGALITY OF THE AGREEMENTS AT ISSUE IN THIS CASE, THE COURT HAS NOT RULED ON THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY THE PARTIES. THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION BY THIS COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY EITHER SIDE.

III. SUMMARY OF THE PROPOSED PARTIAL SETTLEMENT

Subject to the terms and conditions of the Settlement Agreement with IVAX dated May 30, 2002 (the "Settlement Agreement"), which is on file with the Court as Exhibit A to the Indirect Purchaser Plaintiffs' July 3, 2002 Motion for Preliminary Approval, a copy of which is also available at www.completeclaimssolutions.com and upon final approval of the Settlement Agreement, IVAX will pay \$600,000 in cash into an escrow account for the benefit of the Settlement Class, and will also pay an additional amount up to \$100,000 into a Notice Fund for administration and notice expenses. IVAX has also agreed to cooperate with Class Counsel in its continuing litigation against the non-settling defendants, Abbott and Geneva, to the extent that such cooperation will not prejudice IVAX's defense in other cases pending against it. IVAX does not admit any wrongdoing or liability on its part. The proposed settlement with IVAX is a compromise of disputed claims and does not mean that it or any other defendant in this action has been found liable for the claims made by the Indirect Purchaser Plaintiffs.

IV. THE SETTLEMENT CLASS

On August 23, 2002, for purposes of settlement only, the Court conditionally certified a Settlement Class for the purposes of the partial settlement. The Settlement Class consists of all persons and entities who or which have at any time from March 31, 1998 through May 30, 2002 (the "Class Period") paid

¹ "Third Party Payer" means any non-governmental entity that is (i) a party to a contract, issuer of a policy, or sponsor of a plan, which contract, policy, or plan provides prescription drug coverage to natural persons, and is also (ii) at risk, pursuant to such contract, policy, or plan, to pay or reimburse the amount associated with the cost of prescription drugs to natural persons covered by such contract, policy, or plan (subject to such natural persons satisfying any obligation to pay a deductible and/or co-payment). Third Party Payers include, but are not limited to: health insurance companies; health maintenance organizations; union health and welfare funds; and employers or other entities providing self-insured health benefit programs.

² IVAX vigorously disputes the Indirect Purchaser Plaintiffs' characterization of the Abbott/IVAX agreement, as well as the claim that the agreement was illegal.

³ *In re Terazosin Hydrochloride Antitrust Litigation*, 2000 U.S. Dist. LEXIS 20477 (S.D. Fla. December 13, 2000).

all or part of the purchase price of Hytrin or its AB-rated generic bioequivalents including all forms of terazosin hydrochloride other than for resale, in Alabama, California, the District of Columbia, Florida, Illinois, Kansas, Maine, Michigan, Minnesota, Mississippi, Nevada, New Mexico, New Jersey, New York, North Carolina, North Dakota, South Dakota, West Virginia or Wisconsin, or via mail order for residents of such states (the "19-State Sub-Class") and all persons and entities in the United States of America who or which during the class period paid all or part of the purchase price of Hytrin or its AB-rated generic bioequivalents including all forms of terazosin hydrochloride other than for resale (the "Nationwide Sub-Class"), but only to the extent of the Nationwide Sub-Class members' actual or potential claims of unjust enrichment against IVAX Pharmaceuticals, Inc. (formerly known as Zenith Goldline Pharmaceuticals, Inc.) relating to their payments for terazosin hydrochloride. The Settlement Class also includes the named Indirect Purchaser Plaintiffs (including Plaintiff Alabama Medicaid Agency), and all other persons or entities defined above who do not validly and timely elect to be excluded from the Settlement Class (See Section V below for more information on how to be excluded from the Settlement Class).

Excluded from the Settlement Class are Defendants; their officers and directors; their direct and indirect parent and subsidiary corporations and their officers and directors; government entities, other than Plaintiff Alabama Medicaid Agency; and direct purchasers of Hytrin and its generic bioequivalents from Defendants, to the extent of such direct purchases.

The conditional certification of the Settlement Class (and any decision granting final approval to the proposed Partial Settlement with IVAX) will not affect whether the Indirect Purchaser Plaintiffs' claims against Abbott and Geneva will be granted class action certification. To date, none of Indirect Purchaser Plaintiffs' claims has been granted class certification.

V. RIGHTS AND OPTIONS

If you are a member of the Settlement Class, you have a choice as to whether or not to remain a member of the Settlement Class. If certain members of the Settlement Class who opt out of the partial settlement collectively have aggregate purchases of terazosin hydrochloride that exceed a confidential number agreed upon with IVAX, then IVAX or Indirect Purchaser Plaintiffs may exercise their rights to terminate the settlement as provided for under the Settlement Agreement.

If you want to exclude yourself from the Settlement Class and not be included as a Class member, the Court will exclude you from the Class and the partial settlement only if you mail by first-class mail, postage prepaid, a Notice of Exclusion to the Settlement Administrator received no later than December 2, 2002. The Notice of Exclusion must include your name, address, and telephone number, and the amount paid for Hytrin and generic terazosin hydrochloride during the Class Period. If the Notice of Exclusion is provided by a representative of a settlement Class member, the representative must indicate the capacity in which he or she is acting. The Notice of Exclusion must be sent by first-class mail to:

Terazosin Hydrochloride Antitrust Litigation
c/o Complete Claim Solutions, Inc.
P. O. Box 24607
West Palm Beach, FL 33416
1-877-886-0283

If you timely exclude yourself from the Class, you will not be bound by the partial settlement.

VI. SCOPE OF RELEASE

If the partial settlement is approved by the Court, IVAX and its present and former parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, employees, and agents, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") shall be released and forever discharged from liability for all claims that were or could have been brought by Indirect Purchaser Plaintiffs and members of the Settlement Class in this class action, and any and all claims arising out of their purchase or payments for terazosin hydrochloride during the Class Period, and for any claim of fraudulent inducement to enter into this Settlement Agreement (the "Release Claims"). Each member of the Settlement Class covenants and agrees that it shall not seek to establish liability against any Released Party based, in whole or in part, upon any of the Released Claims.

Any disputes arising under or relating to the Settlement Agreement, including, but not limited to, the releases in the Settlement Agreement, will be resolved in the United States District Court for the Southern District of Florida.

Neither Abbott nor Geneva will be released under this Settlement Agreement.

VII. FURTHER INFORMATION

The above is only a summary of the Settlement. A full copy of the Settlement Agreement, including the release, is attached as Exhibit A to the Indirect Purchaser Plaintiffs' July 3, 2002 Motion for Preliminary Approval on public file with the United States District Court for the Southern District of Florida, 301 North Miami Avenue, Miami, Florida, and is also available at www.completeclaimssolutions.com.

Certain Class and individual direct purchasers who have brought their own lawsuits against defendants have separately settled their own claims against IVAX. These individual plaintiffs will not participate in the proposed partial settlement with the Settlement Class.

The Court preliminarily approved the proposed partial settlement with IVAX. The Court found the proposed partial settlement, upon preliminary review, to be within the range of reasonableness.

Accordingly, the Court has set a Fairness Hearing in order to determine whether the proposed partial settlement should finally be approved as described in Section IX below.

VIII. COSTS AND EXPENSES

All costs and expenses related to this litigation will be paid out of the proceeds of the Settlement Fund and any future recovery from Abbott or Geneva, as the Court may order. Class Counsel intend to apply to the Court for reimbursement of reasonable costs and expenses incurred in the prosecution of this action. Class Counsel may also apply to the Court for the creation of a fund to pay future costs and expenses incurred in prosecuting this action against the non-settling defendants. Class Counsel do not intend to apply for any attorneys' fees from the Settlement Fund. There will be no distribution to the Class from the proceeds of this partial settlement.

IX. THE FAIRNESS HEARING

Pursuant to an Order of the Court, a hearing will be held, on December 17, 2002 at 9:30 a.m. in the courtroom of the Honorable Patricia A. Seitz, United States Courthouse for the Southern District of Florida, 301 North Miami Avenue, Courtroom 5, Miami, Florida, for the purpose of determining whether the Court should approve the proposed partial settlement between the Settlement Class and IVAX as fair, reasonable, adequate, and in the best interests of the Settlement Class. The time and date of the hearing may be continued or rescheduled without further notice. If you do not wish to object to the partial settlement, it is not necessary to appear at the hearing or to take any action at this time.

X. OBJECTIONS TO THE PROPOSED PARTIAL SETTLEMENT

Any member of the Settlement Class may appear at the Fairness Hearing in person or by duly authorized attorney and show cause why the partial settlement should not be approved as fair, reasonable, and adequate, *provided* that no person shall be heard at the Fairness Hearing, and no paper or brief submitted by any such person shall be received or considered by the Court, unless that person has sent his paper or brief by first-class mail, postage prepaid, received on or before December 2, 2002, to: (1) Office of the Clerk, Southern District of Florida, 301 North Miami Avenue, Miami, Florida, and (2) to Indirect Purchaser Lead Counsel, whose addresses are listed below, a *Notice of Intention to Appear* and a *Summary Statement* outlining the position(s) to be asserted and the grounds therefor, together with copies of any supporting papers or briefs. You need not appear at the hearing in order to object. Your notice and any accompanying papers or briefs must include in a prominent location the name of the case, the MDL case number, and the Judge's name: *In re Terazosin Hydrochloride Antitrust Litigation*, 99-MDL-1317 (Honorable Patricia A. Seitz).

Except as provided herein, no person shall be entitled to contest the terms and conditions of the proposed partial settlement or to appear in person at the hearing, and persons who fail to object or to file a Notice of Intention to Appear as provided herein shall be deemed to have waived, and shall be foreclosed forever from raising, any such objections, and will not be heard in person at the hearing.

XI. FURTHER PROCEEDINGS

Whether or not the proposed partial settlement is approved by the Court, the litigation will continue against Abbott and Geneva. The Court has indicated there will be a trial no later than November 2003. Abbott and Geneva deny the allegations made against them, and other than as indicated above, the Court has not determined the merits of these claims or any defenses thereto.

XII. ADDITIONAL INFORMATION

The pleadings and other records in this litigation may be examined and copied during regular hours at the Office of the Clerk, Southern District of Florida, 301 North Miami Avenue, Miami, Florida. Copies of the Motion for Preliminary Approval of the Settlement, this Notice, the Settlement Agreement and the Motion for Final Approval will also be available on www.completeclaimsolutions.com. Any questions which you have concerning the matters contained in this Notice may be directed in writing to Indirect Purchaser Lead Counsel.

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PLEASE DO NOT ADDRESS ANY INQUIRIES TO THE COURT.

Dated: August 23, 2002 in Miami, Florida

Clarence Maddox, Clerk of the Court
United States District Court, Southern District of Florida

Terazosin Hydrochloride Antitrust Litigation
c/o Complete Claim Solutions, Inc.
P.O. Box 24607
West Palm Beach, FL 33416

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IMPORTANT COURT DOCUMENTS