

**THIS IS AN IMPORTANT LEGAL NOTICE. THE MATTERS DISCUSSED HEREIN
MAY AFFECT SUBSTANTIAL LEGAL RIGHTS THAT YOU MAY HAVE.
READ THIS NOTICE CAREFULLY.**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: Buspirone Antitrust Litigation	X	
	:	MDL Docket No. 1413 (JGK)
Louisiana Wholesale Drug	X	This Document Relates To:
Company, Inc., on behalf of itself and	:	
all others similarly situated,	:	01-CV-7951 (JGK)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
Bristol-Myers Squibb Company, Watson	:	
Pharma, Inc., and Danbury Pharmacal, Inc.,	:	
	:	
Defendants.	:	
	X	

**NOTICE OF PROPOSED SETTLEMENT
OF CLASS ACTION AND HEARING REGARDING SETTLEMENT**

TO: All persons who have directly purchased BuSpar® from defendant Bristol-Myers Squibb Company any time during the period November 9, 1997 through January 28, 2003 (“Direct Purchaser Class” or the “Class”). Excluded from the Class are the defendants in this lawsuit, and their officers, directors, management and employees, subsidiaries and affiliates, and federal government entities. Also excluded from the Class are the claims brought by and/or assigned to entities which already independently sued BMS in the actions styled CVS Meridian, Inc. and Rite Aid Corp. v. Bristol-Myers Squibb Co., et. al., No. 01-CV-10223, and Walgreen Co., et. al. v. Bristol-Myers Squibb Co., et. al., No. 02-CV-2952, as well as claims asserted by certain States in the action styled State of Alabama et. al. v. Bristol-Myers Squibb Co., et. al., No. 01 CV 11401.

I. PURPOSE OF NOTICE

Your rights may be affected by a lawsuit, *In re Buspirone Antitrust Litigation*, No. 01-CV-7951 (JGK), MDL Docket No. 1413 (the “Class Action”), now pending before the United States District Court for the Southern District of New York (the “Court”), brought by Louisiana Wholesale Drug Company, Inc. (“Plaintiff”) on behalf of itself and certain other similarly situated direct purchasers of BuSpar® (the “Direct Purchaser Class” or the “Class”) against defendant Bristol-Myers Squibb Company (“BMS”), the manufacturer of BuSpar®, and also against Watson Pharma, Inc. (successor-in-interest to Schein Pharmaceutical, Inc.) and Danbury Pharmacal, Inc. (the “Schein Defendants”) (collectively “Defendants”), for violations of the federal antitrust laws.

This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Order of the United States District Court for the Southern District of New York for the purpose of informing you of your rights with regard to: (a) the Court’s ruling that this lawsuit may be maintained as a class action on behalf of a Class defined in section II(D) below,¹ and approving Plaintiff as Class representative; (b) a proposed settlement of the above-referenced litigation for a payment by BMS, on behalf of all Defendants, of \$220 million in cash (the “Settlement Fund”) into an escrow account; and (c) a hearing scheduled to be held on April 11, 2003, at 4:30 p.m. before the Honorable John G. Koeltl, Judge of the United States District Court for the Southern District of New York, at the United States District Courthouse at 500 Pearl Street, New York, New York (the “Fairness Hearing”).

¹ Other cases challenging similar conduct by BMS, and the Schein Defendants were filed on behalf of: (1) consumers and other entities who purchased BuSpar® indirectly from sources other than BMS; and/or (2) entities which paid for all or part of such indirect purchasers (including third-party payors such as insurance companies or health care plans). The proposed settlement described in this Notice relates only to the Direct Purchaser Class. **NEITHER CONSUMERS NOR THIRD-PARTY PAYORS ARE PART OF THE DIRECT PURCHASER CLASS with respect to any BuSpar® that may have been purchased or paid for indirectly, that is, from or to a source other than BMS.**

The purpose of the Fairness Hearing will be to determine whether: (1) the proposed settlement is fair, reasonable, adequate and in the best interests of the Direct Purchaser Class, and thus should be approved; (2) to approve a proposed plan to allocate the settlement proceeds among Direct Purchaser Class Members; and (3) to approve the application of Class Counsel for an award of attorneys' fees and costs, and the application for an incentive award for the Class representative. The Court may continue or reschedule the hearing without further notice.

Direct Purchaser Class members also are hereby advised of their right to object and/or appear at the Fairness Hearing, or to elect to exclude them from the Direct Purchaser Class, as explained below.

II. THE LITIGATION

A. Direct Purchaser Class Claims

Plaintiff in this Class Action alleges that the Defendants unlawfully entered into an agreement to restrain trade, and that BMS engaged in unlawful actions before the U.S. Food and Drug Administration ("FDA") and in the prosecution of sham litigation, all in restraint of trade. Specifically, Plaintiff alleges that: (1) the Defendants violated Section 1 of the Sherman Act by entering into an agreement on or about December 1994, pursuant to which BMS paid Watson and Danbury \$72.5 million in periodic installments over a four-year period in return for Watson and Danbury's agreement not to manufacture and sell their generic version of BuSpar® (the "Agreement"); (2) BMS violated Section 2 of the Sherman Act by monopolizing and attempting to monopolize the relevant market for buspirone through the unlawful listing of U.S. Patent No. 6,150,365 (the "'365 patent") in the FDA's Orange Book; and (3) BMS violated Section 2 of the Sherman Act by initiating and prosecuting sham patent litigation against the manufacturers of generic versions of BuSpar®. Plaintiff alleges that these antitrust violations delayed the market entry of less expensive generic versions of BuSpar®, thereby forcing direct purchasers to pay artificially inflated prices for BuSpar® and its generic equivalents.

B. Defendants' Denial of Liability

Defendants vigorously dispute Plaintiff's claims that the conduct alleged in Plaintiff's complaint was illegal. Defendants also deny Plaintiff's claims that this conduct caused Plaintiff and the Direct Purchaser Class any harm. For example, BMS asserts, among other defenses, that the listing of the '365 patent in the FDA's Orange Book was reasonable and appropriate under applicable regulations. Defendant Watson asserts that technical problems in manufacturing its generic BuSpar® product would have prevented it from promptly bringing its product to market at an earlier date.

C. Status of the Litigation

On November 30, 2001, BMS moved to dismiss the Class Action. On February 14, 2002, the Court denied in part and granted in part BMS's motion to dismiss. The Court held that BMS's alleged improper Orange Book listing and sham litigation are not immune from the antitrust laws. In addition, the Court held that Plaintiff may pursue its claim with respect to Defendants' allegedly unlawful Agreement, but, due to the applicable statute of limitations, only for damages accruing within four years of the filing of the First Amended Class Action Complaint on November 9, 2001.

In related cases, on February 14, 2002, the Court found that the '365 patent does not cover uses of buspirone.

At the time the parties reached agreement on the settlement, pre-trial discovery on the issues of liability, causation, and damages was nearing completion. Counsel for the Direct Purchaser Class have reviewed hundreds of thousands of pages of documents produced in discovery by Defendants and various other parties, and have taken numerous depositions. As a result of the intensive investigation and discovery undertaken by counsel for the Class, Plaintiff obtained significant knowledge regarding the strengths and weaknesses of the claims and defenses in this case before entering into settlement negotiations.

The Court has not ruled on the merits of any of the claims asserted by Plaintiff.

D. The Class Action Certification

The Court has ruled that this lawsuit may be maintained as a claim for damages, attorneys' fees, and costs under the federal antitrust laws not only by Plaintiff but also on behalf of a class consisting of:

All persons who have directly purchased BuSpar® from defendant Bristol-Myers Squibb Company at any time during the period beginning on November 9, 1997 and ending on January 28, 2003, (“Direct Purchaser Class” or the “Class”). Excluded from the Class are defendants in this lawsuit, and their officers, directors, management and employees, subsidiaries and affiliates, and federal governmental entities.

Also excluded from the Class are the claims brought by and/or assigned to entities which already independently sued BMS in the actions styled *CVS Meridian, Inc. and Rite Aid Corp. v. Bristol-Myers Squibb Co., et. al.*, No. 01-CV-10223, and *Walgreen Co., et. al. v. Bristol-Myers Squibb Co., et. al.*, No. 02-CV-2952, as well as claims asserted by certain States in the action styled *State of Alabama et. al. v. Bristol-Myers Squibb Co., et. al.*, No. 01 CV 11401.

The Class is limited to those persons and companies that have made at least one purchase of BuSpar® directly from BMS during the period November 9, 1997 to and through January 28, 2003. If you have bought BuSpar® during this period, but only from sources other than BMS (for example, only from wholesalers or retailers), you are not a member of the Class on whose behalf this suit will be maintained.

The Court has also named Louisiana Wholesale Drug Co., Inc. as Class representative and appointed the law firms of Garwin, Bronzaft, Gerstein & Fisher, L.L.P. and Boies, Schiller & Flexner, LLP as Co-Lead Counsel for the Class.

III. THE PROPOSED SETTLEMENT

Subject to the terms and conditions of the settlement agreement with BMS (the “Settlement Agreement”), dated January 28, 2003, (which is on file with the Court), BMS, on behalf of all Defendants, paid \$220 million in cash on January 21, 2003 into an escrow account for the benefit of the Direct Purchaser Class. The proposed settlement is a compromise of disputed claims and does not mean that BMS or any other defendant in this action has been found liable for the claims made by Plaintiff.

The Settlement Agreement also provides that if the Class members who validly exclude themselves from the Class pursuant to Section V, below, collectively have aggregate purchases of BuSpar® that exceed a confidential number agreed upon with BMS, then BMS may exercise its right to terminate (or modify) the settlement as provided by the Settlement Agreement.

In the event the proposed settlement is approved by the Court and becomes final, the Settlement Fund will be distributed in accordance with a plan of allocation approved by the Court. The plan of allocation will be based upon proofs of claim to be filed by Class members at a later time. You may be required as a condition of participation in the recovery to present evidence of your purchases of brand-name BuSpar® and generic buspirone hydrochloride during the period November 9, 1997 to the present. You should, therefore, preserve invoices and other records reflecting such purchases.

In summary, Plaintiff claims that its damages and those of the Class are measured by an "overcharge," i.e., the amount by which class members overpaid for buspirone hydrochloride ("buspirone") as a result of the Defendants' conduct, which allegedly caused a delay of the entry into the market of less expensive generic versions of buspirone, resulting, in turn, in an alleged delay in the price benefits resulting from competition between and among brand and generic buspirone manufacturers. According to Plaintiff, if generic entry had occurred earlier, direct purchasers would have realized significant cost savings by: (1) substituting purchases of the more expensive branded BuSpar® with less expensive generic versions of buspirone at an earlier point in time; (2) purchasing generic buspirone at lower prices at an earlier point in time; and/or (3) obtaining the benefit of discounts, rebates, and/or price reductions on purchases of the brand name BuSpar® at an earlier point in time.

The Settlement Fund will be allocated to class members based upon a pro rata share of actual damages each Class member allegedly incurred as a result of the alleged restraints of trade. Actual damages incurred by individual Class members will be calculated roughly by evaluating the following: (1)(a) the quantity of generic buspirone that each Class member purchased from any source from March 28, 2001 through January 28, 2003 as a substitute for buying brand name BuSpar® from BMS, (b) multiplied by the average differential in price between the brand and generic forms of buspirone; and/or (2) the combined savings from certain discounts, rebates, and/or other price reductions implemented by BMS subsequent to generic entry (March 28, 2001) that a Class member may have received relating to brand name BuSpar® purchased directly from BMS.

All costs, fees and expenses related to this litigation are to be paid out of the proceeds of the Settlement Fund. Direct Purchaser Class counsel intend to apply to the Court for attorneys' fees, costs and expenses up to 33 1/3% of the Settlement Fund, plus interest thereon. Moreover, an application will also be made to the Court for an incentive award of

\$25,000 for Plaintiff to compensate it for its participation in, and prosecution of, this case on behalf of the Direct Purchaser Class, which has included, among other things, production of documents, providing written discovery and being deposed. Class counsel will file their application for an award of attorneys' fees, reimbursement of costs and expenses, and for an incentive award to the Plaintiff with the Clerk of the Southern District of New York, at the United States District Courthouse, 500 Pearl Street, New York, New York on or before April 4, 2003. The application will be available for inspection during normal business hours at the office of the Clerk.

The above is only a summary of the settlement. A copy of the Settlement Agreement, including the release, is on public file with the United States District Court for the Southern District of New York at the address indicated in this Notice.

Certain individual direct purchasers who have brought their own lawsuits against defendants have simultaneously but separately settled their own claims against the Defendants. These individual plaintiffs will not share in the proposed settlement with the Direct Purchaser Class.

The Court preliminarily approved the proposed settlement after hearing held on January 31, 2003. The Court found the proposed settlement to be within the range of reasonableness. Accordingly, the Court has set a Fairness Hearing in order to determine whether the proposed settlement should finally be approved as described in Section VII, below.

IV. THE RELEASE

If the Settlement is approved by the Court, Defendants and their present and former parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, employees, agents, attorneys 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 all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiff or any member or members of the Class who have not timely excluded themselves from the Class Action (including any of their past, present or future officers, directors, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, subsidiaries, partners, heirs, executors, administrators, purchasers, predecessors, successors and assigns, acting in their capacity as such), whether or not they object to the settlement and whether or not they make a claim upon or participate in the Settlement Fund, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of any conduct alleged or which could have been alleged in the Class Action relating to the purchase of the drug BuSpar® or its generic equivalents, prior to the date hereof (the "Released Claims"). Each member of the Class hereby covenants and agrees that it shall not, hereafter, seek to establish liability against any Released Party based, in whole or in part, on any of the Released Claims.

In addition, if the Settlement is approved by the Court, each Class member will expressly waive and release, upon the Settlement Agreement becoming final, any and all provisions, rights, benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Class member may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this paragraph, but each Class member hereby expressly waives and fully, finally and forever settles and releases, upon this Settlement Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of this paragraph whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Class member also hereby expressly waives and fully, finally and forever settles and releases any and all claims it may have against Defendants under § 17200, *et seq.*, of the California Business and Professions Code, which claims are expressly incorporated into this paragraph.

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 New York.

V. ELECTION BY CLASS MEMBERS

If you fit the above description of a Class member, you have a choice whether or not to remain a member of the Class on whose behalf this suit is being maintained. This choice will have consequences, which you should understand before making your decision.

1. If you want to remain a member of the Class, you are not required to do anything at this time. By remaining a Class member, any claims against Defendants arising from Defendants' conduct as alleged by the Class representative will be determined in this case and cannot be presented in any other lawsuit.

2. If you want to be excluded from the Class, you must complete the attached Request for Exclusion form and send it to *In re Buspirone Antitrust Litigation*, P.O. Box 9000 #6077, Merrick, NY 11566-9000, by first-class mail, postmarked no later than March 28, 2003. By making this election to be excluded,

- (a) you will not share in any recovery to be paid to the Class as a result of settlement of this lawsuit;
- (b) you will not be entitled to appear at the Fairness Hearing;
- (c) you will not be bound by the release set forth in the Settlement Agreement and you may present any claim you may have against Defendants by filing your own lawsuit.

VI. RIGHTS AND OBLIGATIONS OF CLASS MEMBERS

If you remain a member of this Class:

1. You will be entitled to share in the proceeds of the settlement as described above and according to the terms of the Settlement Agreement if it is finally approved by the Court.

2. Plaintiff's counsel will represent the Class on your behalf. All fees, costs and expenses of counsel for the Class will be paid only out of the recovery by the Class as determined by the Court. You will not have to pay Class counsel any additional amounts, and, in no event will you have to pay any judgment, court costs, or attorney's fees for participating in this Class Action. Any Class member who does not request exclusion may, if the Class member desires, also enter an appearance through its own counsel at its own expense. You may also seek to intervene individually and may advise the Court if at any time you consider that you are not being fairly and adequately represented by the representative Plaintiff and counsel for the Class.

3. Your participation in any recovery, which may be obtained from Defendants through trial or settlement, will depend on the results of this lawsuit. If no recovery is obtained for the Class, you will be bound by that result also. If the settlement is finally approved, you will be bound by the final judgment and release against Defendants as entered by the Court.

4. You may be required as a condition to participating in any recovery through the proposed settlement or trial (if the settlement is not finally approved by the Court) to present evidence respecting your purchases of BuSpar®, your discounts for purchases of BuSpar® (if any), and your purchases of any generic versions of buspirone during the relevant time periods. (You should, therefore, preserve invoices and other records reflecting this information.)

5. You will be entitled to receive notice of any ruling reducing the size of the Class and also notice of, and an opportunity to be heard respecting, the proposed settlement or dismissal of the Class claims. (For this reason, as well as to participate in any recovery, you are requested to notify *In re Buspirone Antitrust Litigation*, P.O. Box 9000 #6077, Merrick, NY 11566-9000, of any corrections or changes in your name or address.)

VII. THE FAIRNESS HEARING

Pursuant to an Order of the Court, a hearing will be held on April 11, 2003, at 4:30 p.m. in the courtroom of the Honorable John G. Koeltl, Judge of the United States District Court for the Southern District of New York, at the United States District Courthouse, 500 Pearl Street, New York, New York for the purpose of determining whether to approve: (a) the proposed settlement as fair, reasonable, and adequate; (b) the proposed plan of allocation of the settlement proceeds among Direct Purchaser Class members; (c) Direct Purchaser Class Counsel's application for an award of attorneys' fees and disbursement of expenses; and (d) the application for an incentive award for the Class representative. You are entitled to appear and be heard at this hearing. The time and date of the hearing may be continued or rescheduled without further notice.

If you do not wish to object to the settlement, it is not necessary to appear at the hearing or to take any action at this time. Any member of the Class who does not exclude his or herself from the Class may appear at the Fairness Hearing in person or by duly authorized attorney and show cause why the settlement should not be approved as fair, reasonable and adequate, or to oppose or comment on any other subject of the Hearing, provided that no person shall be heard in opposition to the settlement, and no paper or brief submitted by any such person shall be received or considered by the Court, unless on or before March 28, 2003, the Court has received from you, by certified first-class mail, postage prepaid, to Office of the Clerk, Southern District of New York, at the United States District Courthouse, 500 Pearl Street, New York, New York a notice of intention to appear and a statement of the position to be asserted and the ground therefore, together with copies of any supporting papers or briefs. Your notice must include in a prominent location the name of the case, (*In re Buspirone Antitrust Litigation*), the MDL case number (MDL 1413), and the Judge's name (Hon. John G. Koeltl). You must also send a copy of your request to Co-Lead Counsel for the Class, whose addresses are as follows:

Bruce Gerstein, Esq.
Noah Silverman, Esq.
Adam Steinfeld, Esq.
**GARWIN, BRONZAFT, GERSTEIN &
FISHER, L.L.P.**
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New York, New York 10036
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**Co-Lead Counsel for the Direct
Purchaser Class**

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Kimberly Schultz, Esq.
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Hanover, New Hampshire 03755
E-Mail: rdrubel@bsflp.com

**Co-Lead Counsel for the Direct
Purchaser Class**

Except as provided herein, no person shall be entitled to contest the terms and conditions of the settlement, and persons who fail to object as provided herein shall be deemed to have waived and shall be foreclosed forever from raising any such objections. You need not appear at the hearing in order to object.

VII. ADDITIONAL INFORMATION

Any corrections or changes of name or address should not be directed to the Court, but should be directed in writing to:

In re Buspirone Antitrust Litigation
P.O. Box 9000 #6077
Merrick, NY 11566-9000

Any questions which you have concerning the matters contained in this notice may be directed in writing to:

Bruce Gerstein, Esq.
Noah Silverman, Esq.
Adam Steinfeld, Esq.
**GARWIN, BRONZAFT, GERSTEIN &
FISHER, L.L.P.**
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E-Mail: lawoffices@gbgf-law.com

**Co-Lead Counsel for the Direct
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**Co-Lead Counsel for the Direct
Purchaser Class**

The pleadings and other records in this litigation may be examined and copied at any time during regular office hours at Clerk of the Court, United States District Court, Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312. Certain settlement documentation is also available at www.gbgf-law.com and www.bsflp.com.

Dated: February 11, 2003

BY ORDER OF THE COURT
Hon. John G. Koeltl, U.S.D.J.
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312