

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 99-MDL-1317-SEITZ/GARBER

In re TERAZOSIN HYDROCHLORIDE  
ANTITRUST LITIGATION

**This Document Relates to:**

*Louisiana Wholesale Drug Co., Inc.*

*v. Abbott Laboratories*

Case No. (S.D. Fla.) 98-3125

*Valley Drug Company v. Abbott*

*Laboratories, et al.*

Case No. (S.D. Fla.) 99-7143

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

**TO: ALL ENTITIES WHO PURCHASED HYTRIN, ALSO KNOWN BY THE CHEMICAL NAME TERAZOSIN HYDROCHLORIDE, DIRECTLY FROM ABBOTT AT ANY TIME DURING THE PERIOD COMMENCING MARCH 31, 1998, THROUGH AUGUST 13, 1999, EXCLUDING: (1) DEFENDANTS AND THEIR OFFICERS, DIRECTORS, MANAGEMENT, EMPLOYEES, SUBSIDIARIES AND AFFILIATES; (2) SPECIALTY DISTRIBUTORS OR REPACKAGERS THAT NEITHER PURCHASED GENERIC DRUGS NOR OBTAINED INCREASED DISCOUNTS ON HYTRIN AFTER THE INTRODUCTION OF GENERIC TERAZOSIN HYDROCHLORIDE; (3) ALL ENTITIES WHICH FILED TIMELY NOTICES OF EXCLUSION FROM THE CLASS OR INDIVIDUAL LAWSUITS ALLEGING ANTITRUST VIOLATIONS RELATING TO HYTRIN ON OR BEFORE NOVEMBER 19, 2001.**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. A SETTLEMENT HAS BEEN PROPOSED IN PENDING CLASS ACTION LITIGATION THAT MAY AFFECT YOUR RIGHTS. IF YOU ARE A MEMBER OF THE CLASS DESCRIBED BELOW, YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT FUND.**

**I. PURPOSE OF NOTICE**

Pending in this Court is a case brought by Louisiana Wholesale Drug Company ("Louisiana Wholesale") and Valley Drug Co. ("Valley Drug"), under the federal antitrust laws on behalf of themselves and a class of similarly situated entities, against Defendants Abbott Laboratories, Inc. ("Abbott"), Geneva Pharmaceuticals, Inc. ("Geneva"), and IVAX Pharmaceuticals, Inc. ("IVAX") (**formerly known as Zenith Goldline Pharmaceuticals, Inc.**) alleging a conspiracy to violate the federal antitrust laws.

This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and by Order of the United States District Court for the Southern District of Florida for the purpose of informing you of your rights with regard to:

a) a proposed partial settlement of the above-referenced litigation on behalf of the Sherman Act Class in exchange for a payment by defendant IVAX of \$2,072,327 ("Settlement Fund"), an additional amount up to \$25,000 for administration and notice expenses, and cooperation in the prosecution of this lawsuit against the remaining defendants, Abbott and Geneva, as described below; and

b) a hearing scheduled to be held on May 31, 2002 at 10:30 a.m. before The Honorable Patricia A. Seitz, United States District Judge for the Southern District of Florida, in the Fifth Floor Courtroom, United States Courthouse, 301 North Miami Avenue, Miami, Florida (the "Fairness Hearing").

The purpose of the Fairness Hearing will be to consider whether to approve the proposed settlement between the Sherman Act Class and defendant IVAX as fair, reasonable, adequate, and in the best interests of the Sherman Act Class. The Court may continue or reschedule the hearing without further notice. Whether or not the settlement with IVAX is approved, the litigation will continue against the non-settling defendants, Abbott and Geneva.

Sherman Act Class members also are hereby advised of their right to object or appear at the Fairness Hearing, as explained below.

**II. THE LITIGATION**

**A. Sherman Act Class Representatives' Claims**

The Sherman Act Class Plaintiffs' consolidated actions arise out of agreements Abbott entered into with IVAX and Geneva to restrain trade. The Sherman Act Class Plaintiffs allege that Abbott specifically 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.<sup>1</sup> On December 13, 2000, this Court held that this agreement, as well as a similar agreement entered into by Abbott and Geneva, were *per se* illegal under the Sherman Antitrust Act.<sup>2</sup> The named plaintiffs have alleged that these illegal agreements kept less expensive generic versions of Hytrin off the market, thereby forcing direct purchasers to pay artificially inflated prices for terazosin hydrochloride.

<sup>1</sup> IVAX vigorously disputes the Sherman Act Class Plaintiffs' characterization of the Abbott/IVAX agreement, as well as the claim that the agreement was illegal.

<sup>2</sup> *In re Terazosin Hydrochloride Antitrust Litigation*, 164 F. Supp. 2d 1340, 1354 (S.D. Fla. 2000).

On December 18, 1998, Plaintiff Louisiana Wholesale filed an action alleging violations of the federal antitrust laws, specifically the Sherman Act and the Clayton Act, against defendants Abbott, Geneva and IVAX.

Louisiana Wholesale alleged, among other things, that Abbott entered into an agreement with Geneva, pursuant to which Abbott agreed to pay Geneva millions of dollars in exchange for Geneva's agreement to refrain from marketing its generic version of Hytrin until Abbott's then-pending patent infringement suit against Geneva was resolved. Louisiana Wholesale alleged that the Abbott/Geneva Agreement, as well as a similar agreement between Abbott and IVAX (collectively "the Agreements"), were illegal under Section 1 of the Sherman Act, and caused direct purchasers of Hytrin to be overcharged for terazosin hydrochloride because the agreements kept less expensive generic versions of Hytrin off the market. On August 30, 1999, Plaintiff Valley Drug Co. ("Valley Drug") filed a similar complaint challenging the Abbott/Geneva Agreement, and alleged similar antitrust violations against Abbott and Geneva. The Louisiana Wholesale and Valley Drug cases were consolidated by the Court on October 22, 1999. Louisiana Wholesale and Valley Drug are hereafter referred to as the "Sherman Act Class Representatives."

### **B. Defendants' Denial of Liability**

Defendants vigorously dispute Class Plaintiffs' claims that the Agreements were illegal. Defendants also deny Class Plaintiffs' claims that the Agreements caused Class Plaintiffs and members of the Sherman Act Class any harm. For example, IVAX asserts, among other defenses, that the agreements were pro-competitive, perfectly legal, and that, in any event, the agreements did not cause any injury to direct purchasers because they did not delay cheaper generic terazosin hydrochloride from entering the market. Indeed, as to the latter point, IVAX maintains that it was subject to Geneva's statutory exclusivity; therefore, Abbott's agreement with IVAX did not constitute a restraint of trade and cause antitrust injury to the direct purchasers because it did not restrict IVAX from entering the market — IVAX would have to wait until the expiration of Geneva's exclusivity, mandated by federal law, to launch its generic terazosin hydrochloride product.

### **C. Status of the Litigation**

On February 11, 2000, the Court appointed the law firms of Boies, Schiller & Flexner LLP and Garwin, Bronzaft, Gerstein & Fisher, L.L.P. as Co-Lead Counsel for the Sherman Act Class cases. Since that time, Lead Counsel and lawyers working at their direction (collectively "Class Counsel") have prosecuted this lawsuit on behalf of the Sherman Act Class.

On November 30, 1999, the Class Counsel moved for certification of the Sherman Act Class. On September 10, 2001, the Court announced its ruling that it would certify the Sherman Act Class. Defendants have appealed the District Court's certification of the Class, and briefs by the parties on this issue are presently being filed in the United States Court of Appeals for the Eleventh Circuit.

In response to a motion for partial summary judgment by Class Counsel, on December 13, 2000, the Court found that the Abbott/Geneva and Abbott/IVAX Agreements were *per se* illegal under Section 1 of the Sherman Act. Defendants 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.

Fact discovery in this case ended on November 30, 2001. We have deposed over 24 witnesses in this case and have reviewed hundreds of thousands of documents produced by the defendants and third parties. We are currently preparing expert reports on causation and damage issues and are engaging in expert discovery.

Class Counsel have reviewed many thousands of documents produced in discovery by Defendants and various other parties, and have taken numerous depositions. Fact discovery ended on November 30, 2001. As a result of their 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 THE 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 SETTLEMENT**

Subject to the terms and conditions of the settlement agreement with IVAX (the "Settlement Agreement"), dated February 19, 2002 which is on file with the Court as Exhibit "A" to the Sherman Act Class Plaintiffs' March 5, 2002 Motion for Preliminary Approval, a copy of which is also available at [www.bsfillp.com](http://www.bsfillp.com) or [www.gbgf-law.com](http://www.gbgf-law.com), IVAX will pay, following the entry of Final Judgment of the Settlement Agreement, a cash payment of \$2,072,327 into an escrow account for the benefit of the Sherman Act Class. IVAX will also pay an additional amount up to \$25,000 for administration and notice expenses and has agreed to cooperate with the Sherman Act Class in their 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, including cases brought by consumers and third-party payors and other persons or entities who purchased Hytrin other than directly from Abbott. 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 Sherman Act Class Plaintiffs.

The date for opting out of the Sherman Act Class expired on November 19, 2001 and there should accordingly be no further opt outs. However, the Settlement Agreement also provides that upon any order or condition of final approval whereby members of the Sherman Act Class who collectively have aggregate purchases of Hytrin that exceed a

confidential number agreed upon with IVAX, are nevertheless permitted to exclude themselves from the Sherman Act Class, then IVAX may exercise its right to terminate the settlement as provided for under the Settlement Agreement. Additionally, if members of the Sherman Act Class who collectively have aggregate purchases of Hytrin that exceed a confidential number agreed upon with IVAX are not members of an amended, modified, or re-certified direct purchaser Class, following disposition of Abbott's 23(f) appeal, then IVAX may exercise its right to terminate the settlement as provided for under the Settlement Agreement.

If the Settlement is approved by the Court, IVAX and its present and former parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, employees, 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 Class Plaintiffs and members of the Sherman Act Class in this class action (the "Released Claims"). Each member of the Sherman Act 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.

The above is only a summary of the settlement with IVAX. A full copy of the Settlement Agreement, including the release, is attached as Exhibit "A" to Sherman Act Class Plaintiffs' March 5, 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.bsflp.com](http://www.bsflp.com) or [www.gbgf-law.com](http://www.gbgf-law.com).

Certain individual direct purchasers who have brought their own lawsuits against defendants have separately settled their own claims against IVAX. These individual plaintiffs will not share in the proposed settlement with the Sherman Act Class.

The Court preliminarily approved the proposed settlement with IVAX at a hearing on March 8, 2002. The Court found the proposed 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 settlement with IVAX should finally be approved as described in section V, below.

#### **IV. 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. Sherman Act Class Counsel intend to apply to the Court for reimbursement of any costs and expenses incurred in this litigation, of which some or all of the proceeds of this Settlement Fund may be applied toward the costs and expenses of prosecuting this litigation (excluding attorneys' fees). Given the relatively small size of the settlement, it is not anticipated that a distribution of the Settlement Fund will be made to the Class.

#### **V. THE FAIRNESS HEARING**

Pursuant to an Order of the Court, a hearing will be held at 10:30 a.m. on May 31, 2002, in the courtroom of the Honorable Patricia A. Seitz, Fifth Floor, United States Courthouse for the Southern District of Florida, 301 North Miami Avenue, Miami, Florida, for the purpose of determining whether the Court should approve: the proposed settlement between the Sherman Act Class and IVAX as fair, reasonable, adequate, and in the best interests of the Sherman Act Class. 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 with IVAX, it is not necessary to appear at the hearing or to take any action at this time.

#### **VI. OBJECTIONS TO THE PROPOSED SETTLEMENT**

Any member of the Sherman Act 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, 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 you have sent your paper or brief by first-class mail, postage prepaid, postmarked on or before May 14, 2002, to: (1) Office of the Clerk, Southern District of Florida, 301 North Miami Avenue, Miami, Florida, and (2) to Co-Lead Counsel for the Class, 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 therefore, 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, *In re Terazosin Hydrochloride Litigation*, the MDL case number (99-MDL-1317), and the Judge's name (Hon. Patricia A. Seitz).

Except as provided herein, no person shall be entitled to contest the terms and conditions of the proposed settlement or to appear in person at the hearing, and persons who fail to object or to file a notice of intent 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.

#### **VII. FURTHER PROCEEDINGS**

Whether or not the proposed settlement with IVAX is approved by the Court, the litigation will continue against Abbott and Geneva. A trial date of October 2002 has been set by the Court. 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.

**VIII. ADDITIONAL INFORMATION**

The pleadings and other records in this litigation may be examined and copied during regular hours at the Office of the Clerk, United States District Court for the Southern District of Florida, 301 North Miami Avenue, Miami, Florida. Copies of the Motion for Preliminary Approval of the Settlement, this Notice, and Motion for Final Approval will also be available at [www.bsfllp.com](http://www.bsfllp.com) or [www.gbgf-law.com](http://www.gbgf-law.com).

Any questions which you have concerning the matters contained in this notice may be directed in writing to the Co-Lead Counsel for Sherman Act Class:

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**PLEASE DO NOT ADDRESS ANY INQUIRIES TO THE COURT.**

Dated: March 13, 2002, in Miami, Florida

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

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