
IN RE: PENNSYLVANIA BAYCOL
THIRD-PARTY PAYOR LITIGATION

:
:
: COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY

:
: SEPTEMBER TERM, 2001
: NO. 001874

:
: CLASS ACTION
:

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING

THIS NOTICE MAY AFFECT YOUR RIGHTS.

PLEASE READ IT CAREFULLY.

To: All Third-Party Payors, throughout Pennsylvania and the United States (excluding all governmental entities, Defendants and Defendants' respective subsidiaries and affiliates) who have purchased Baycol, or reimbursed their beneficiaries/insureds for their purchases of Baycol, that is unusable and/or have incurred additional expenses associated with Baycol's withdrawal.

This Notice is being given pursuant to Rule 1712 and 1714 of the Pennsylvania Rules of Civil Procedure and an Order by the Honorable Mark I. Bernstein, Judge for the Pennsylvania Court of Common Pleas of Philadelphia County, to notify you of a proposed settlement of this class action litigation. **Plaintiffs and Defendants have reached a proposed settlement.** The Court has preliminarily approved this settlement as possibly fair, reasonable and adequate.

You may be entitled to a share of this settlement if it receives final approval from the Court. **To be entitled to a share of the settlement, you must return a completed, properly prepared and signed Proof of Claim Form with supporting documentation to the Settlement Administrator at the proper address, via certified first-class mail, return receipt service, so that it is received no later than September 16, 2006.**

If you previously executed a release of Bayer and/or GlaxoSmithKline in connection with a Baycol-related settlement, or such a release was executed on your behalf by an authorized agent, you are not entitled to a share of the settlement, and therefore you need not take any action in connection with this Notice.

If you wish to object to the proposed settlement, you must do so as provided below, in Paragraph 14, by May 17, 2006. A final hearing will be held at 9:30 a.m. on June 9, 2006, before the Honorable Mark I. Bernstein, Courtroom 246, City Hall, Philadelphia, Pennsylvania, for the purpose of determining whether the settlement should be approved by the Court as fair, reasonable and adequate to the Class, and to consider Class Counsel's request for attorneys' fees and reimbursement of expenses.

DESCRIPTION OF THE LAWSUIT

1. Plaintiffs in this lawsuit are trustees of the Philadelphia Firefighters Union Local 22 Health and Welfare Fund, trustees of the American Federation of State, County and Municipal Employees, District Council 47, and trustees of the National Conference of Firemen and Oilers Local 1201 Health and Welfare Fund. Plaintiffs brought claims on behalf of a nationwide class of all Third-Party Payors – *i.e.*, entities whose business includes providing health insurance, health benefits, pharmacy benefits and/or similar health care coverage benefits (whether pursuant to insurance, self-insured plans, or other plans) to their Insureds or Beneficiaries – who

purchased or paid for units of the pharmaceutical Baycol, an anti-cholesterol drug that was withdrawn from the market on August 8, 2001.

2. The Court previously certified the lawsuit as a class action on behalf of the following class:

All Third-Party Payors, throughout Pennsylvania and the United States (excluding all governmental entities, Defendants and Defendants' respective subsidiaries and affiliates) who have purchased Baycol, or reimbursed their beneficiaries/insureds for their purchases of Baycol, that is unusable and/or have incurred additional expenses associated with Baycol's withdrawal.

The Court also certified the Plaintiffs as representatives of this Class.

3. If you did not exclude yourself from the certified Class, and you did not previously release Bayer and/or GlaxoSmithKline pursuant to any Baycol-related settlement agreement, you may be entitled to participate in this proposed settlement.

4. Plaintiffs claim that Defendants are liable for breach of implied warranty pursuant to section 2-314(3) of the Uniform Commercial Code and common law principles of unjust enrichment.

5. Defendants deny that they are liable to Plaintiffs or Class Members.

6. The Court has not made a final determination on the merits of this case.

7. Without conceding the validity of each other's contentions, and subject to approval of the Court, the Parties have agreed to a settlement.

SUMMARY OF THE PROPOSED SETTLEMENT

8. On January 6, 2006, the Plaintiffs and Defendants entered into a Stipulation of Settlement which, if finally approved by the Court, will result in the dismissal of all present and future claims that Plaintiffs and Class Members may have against Defendants in connection with the purchase of or reimbursement for purchases of Baycol for use by Insureds/Beneficiaries, the withdrawal of Baycol from the market and any other claims Plaintiffs and Class Members may have against Defendants arising out of their Insureds'/Beneficiaries' use of Baycol. A copy of the Stipulation of Settlement is available from the Settlement Administrator at www.pennsylvaniabaycolthirdpartypayorlitigation.com, and posted on Class Counsel's website www.chimicles.com.

9. If the settlement is approved by the Court, each Class Member who submits an Approved Claim shall be paid an amount determined by application of one of the following Formulas, at the Class Member's election: **Formula A:** one hundred fifty percent (150%) of the amount that the Class Member demonstrates was its Actual Net Cost for Baycol that was unused by its Insureds/Beneficiaries ("unused Baycol") as of August 8, 2001; or **Formula B:** eighty-two and one half percent (82.5%) of the amount the Class Member demonstrates was its Actual Net Cost for Baycol prescriptions filled by its Insureds/Beneficiaries during the period from July 1, 2001 to August 8, 2001. **Class Counsel believes that Formula A will generally provide Class Members with a greater recovery than Formula B.**

10. To be eligible for a settlement payment: (a) the Class Member must timely submit a completed, properly prepared and signed Proof of Claim Form ("Claim Form"), complete with reasonably detailed supporting business records in paper copy or electronic format and a written report ("Baycol Purchase Report") summarizing the Class Member's prescription payment or reimbursement information; (b) a settlement payment must be authorized by the Settlement Administrator based upon such Class Member's Claim Form; and (c) the Claim Form must not be subject to Appeal or Dispute.

11. As part of the settlement, the parties have agreed to attempt in good faith to resolve any disputes through informal means, and that any disputes about Baycol Purchase Reports or duplication of claims that cannot be resolved shall be decided by a Philadelphia-based arbitrator mutually agreed upon by Class Counsel and Defendants. Any other disputes that cannot be resolved shall be decided by the Philadelphia Court of Common Pleas.

12. Pursuant to the Stipulation of Settlement, Defendants have agreed to pay the costs of Notice to the Class Members and administration of the settlement. Defendants also have agreed to pay reasonable attorneys' fees to Class Counsel as may be approved by the Court, the amount of fees not to exceed \$1,500,000 ("Attorneys' Fees Cap") unless Approved Claims exceed \$5 million in the aggregate. If Approved Claims exceed

\$5,000,000, the Attorneys' Fees Cap shall be increased by twenty percent (20%) of the amount by which Approved Claims exceed \$5,000,000, but in no event shall Defendants be required to pay more than \$3,000,000 to Class Counsel. **Class Members will have no responsibility for the payment of attorneys' fees.**

13. Class Counsel have made a thorough investigation of the law and facts relating to the allegations in this Action and the denials thereof, and have concluded that the settlement is fair, reasonable, adequate and in the best interests of the Class. The Court will not approve this settlement unless it also finds that it is fair, reasonable and adequate to the Class.

COURT HEARING

14. The Court has ordered that a hearing ("Hearing") be held before the Honorable Mark I. Bernstein in Courtroom 246, City Hall, Philadelphia, Pennsylvania, on June 9, 2006, commencing at 9:30 a.m., to determine whether the proposed settlement is fair, reasonable and adequate, to rule on the application of Class Counsel for an award of attorneys' fees and reimbursement of expenses, and to address any other matters that may properly be brought before the Court at that time. Any Class Member may appear at the Hearing in person or by counsel (if an appearance is filed and served as hereinafter provided) and be heard to the extent allowed by the Court in support of, or in opposition to, the terms of the Stipulation of Settlement, including the proposed attorneys' fees, **provided, however, that no person shall be heard in opposition thereto and no papers or briefs submitted by any such person shall be accepted or considered by the Court unless, on or before May 17, 2006, such person: (a) has filed with the Prothonotary of the Court a notice of such person's intention to appear together with a statement that indicates the basis for such opposition along with any supporting documentation including evidence that such person is a member of the Class; and (b) has served copies of such notice, statement and documentation together with copies of any other papers or briefs which such persons file with the Court, either in person or by mail as follows:**

CHIMICLES & TIKELLIS LLP
Steven A. Schwartz
361 W. Lancaster Avenue
Haverford, PA 19041

COHEN, PLACITELLA & ROTH, P.C.
Stewart L. Cohen
1705 Two Penn Center
Philadelphia, PA 19102

Attorneys for Representative Plaintiffs and the Certified Class

SIDLEY AUSTIN LLP
Eugene A. Schoon
One S. Dearborn
Chicago, IL 60603

ECKERT SEAMANS CHERIN
& MELLOTT, LLC
Carol L. Press
1515 Market Street
Philadelphia, PA 19102

DECHERT LLP
Fred T. Magaziner
Cira Centre
2929 Arch Street
Philadelphia, PA 19104

Attorneys for Defendants

15. Any person who fails to object in the manner provided above shall be deemed to have waived such objection and shall be forever barred from raising such objection in this or any other proceeding.

SCOPE OF RELEASE AND DISMISSAL

16. If the settlement is approved by the Court, this Action will be dismissed with prejudice and all of the Defendants and other Released Parties shall be released, except for their obligations under the settlement. This means, among other things, that the Plaintiffs and Class Members will be barred by the settlement from bringing lawsuits or claims, whether known or unknown, whether for subrogation or otherwise, that the Plaintiffs and Class Members have now or may have in the future, related to or arising from Baycol use by their Insureds/Beneficiaries, their purchases of Baycol for such Insureds/Beneficiaries (or reimbursement for such purchases) and any costs or expenses incurred as a result of or associated with the withdrawal of Baycol from the market. This is a summary of the Release. For the full language of the Release, please see a copy of the Stipulation of Settlement, which is available from the Settlement Administrator at www.pennsylvaniabaycolthirdpartypayorlitigation.com and on Class Counsel's website, www.chimicles.com.

ADDITIONAL INFORMATION

17. Any questions that you have concerning the matters contained in this Notice should not be directed to the Court or Defense Counsel but should be directed in writing to Class Counsel as follows:

CHIMICLES & TIKELLIS LLP
Steven A. Schwartz
361 W. Lancaster Avenue
Haverford, PA 19041
(610) 642-8500
steveschwartz@chimicles.com

or

COHEN, PLACITELLA & ROTH, P.C.
Stewart L. Cohen
1705 Two Penn Center
Philadelphia, PA 19102
(215) 567-3500
scohen@cprlaw.com

18. This Notice is intended solely as a summary. For a more detailed statement of the matters involved in the lawsuit, you may refer to the pleadings and other papers which are on file with the Court and which may be inspected during regular business hours at Room 269, City Hall, Philadelphia, PA 19107.

Dated: March 16, 2006

BY THE COURT:

/s/ _____
MARK I. BERNSTEIN, J.

Baycol TPP Settlement Administrator
c/o The Garden City Group, Inc.
P.O. Box 9000 #6386
Merrick, NY 11566-9000

IMPORTANT COURT DOCUMENTS