

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**NORTH SHORE HEMATOLOGY AND
ONCOLOGY ASSOCIATES, P.C., on behalf
of itself and all others similarly situated,**

Plaintiff,

v.

BRISTOL-MYERS SQUIBB CO.,

Defendant.

Civil Action No. 1:04cv248 (EGS)

**NOTICE OF PLATINOL® DIRECT PURCHASER ANTITRUST LITIGATION
CLASS SETTLEMENT AND HEARING**

TO: All persons and entities in the United States who purchased Platinol® directly from Bristol-Myers Squibb Company or its wholly-owned subsidiary, Oncology Therapeutic Network, Inc., at any time from June 19, 1999 through September 8, 2004 (“Direct Purchaser Class” or the “Class”). Excluded from the Class are Defendant, its parents, employees, subsidiaries and affiliates, and government entities.

I. PURPOSE OF NOTICE

Your rights may be affected by a lawsuit, *North Shore Hematology and Oncology Associates, P.C. v. Bristol-Myers Squibb Company* (the “Platinol Direct Purchaser Antitrust Litigation”) Civil Action No. 1:04cv248 (EGS) (the “Class Action”), now pending before the United States District Court for the District of Columbia (the “Court”), brought by North Shore Hematology and Oncology Associates, P.C. (the “Plaintiff” or “Class Representative”), on behalf of itself and other similarly situated direct purchasers of Platinol® and/or Platinol-AQ® (the “Direct Purchaser Class”) against Defendant Bristol-Myers Squibb Company (“Bristol”), the manufacturer of Platinol® and Platinol-AQ®, alleging 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 District of Columbia 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, as defined in Section II(E) below, and approving Plaintiff as Class Representative; (b) a proposed Settlement of the above-referenced litigation for a payment by Bristol of \$50 million in cash into an escrow account (the “Settlement Fund”); and (c) a hearing scheduled to be held on November 30, 2004, at 11:00 a.m. before the Honorable Emmet G. Sullivan, District Court Judge of the United States District Court for the District of Columbia, at the United States Courthouse at 333 Constitution Avenue, N.W., Washington, D.C. 20001 (the “Fairness Hearing”).¹

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 Lead Counsel for an award of attorneys’ fees and costs and the application for an incentive award for the Class Representative.

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

II. THE LITIGATION

A. The Drug

Platinol® is Bristol’s brand name for a drug with the chemical name “cisplatin,” which is an injectable drug used for treating various types of tumors. Bristol sold Platinol® in two forms: Platinol®, a freeze-dried powder, and Platinol-AQ®, a ready-to-use aqueous solution. These two formulations are referred to collectively herein as “Platinol®.”

B. Direct Purchaser Class Claims

Plaintiff alleges in this Class Action that Bristol unlawfully maintained its monopoly in the market for Platinol®/cisplatin by: (i) fraudulently obtaining U.S. Patent No. 5,562,925 (the “’925 Patent”) from the U.S. Patent Office (“PTO”); (ii) wrongfully listing the ’925 Patent in the Food and Drug Administration’s (“FDA”) Orange Book; and (iii) commencing sham patent infringement litigation with respect to the ’925 Patent against manufacturers of generic cisplatin for the purpose of delaying entry into the market of cisplatin, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

As a result of Bristol’s alleged conduct, Plaintiff alleges that Plaintiff and the Direct Purchaser Class paid substantially more for Platinol® and/or cisplatin than they would have paid in the absence of the allegedly wrongful conduct.

C. Defendant’s Denial of Liability

Bristol vigorously disputes Plaintiff’s claims that the conduct alleged in Plaintiff’s complaint was illegal. Bristol also denies Plaintiff’s claims that this conduct caused Plaintiff and the Direct Purchaser Class any harm. For example, Bristol asserts, among other

¹ The Court may continue or reschedule this hearing without further notice.

defenses, that the '925 Patent was not obtained through fraud and that its listing in the FDA's Orange Book was reasonable and appropriate under applicable regulations.

D. Status of the Litigation

Plaintiff commenced this Class Action against Bristol on February 13, 2004. Bristol answered the complaint on April 15, 2004.

At the time the parties reached agreement on the Settlement, pre-trial discovery had begun. Counsel for the Direct Purchaser Class have reviewed thousands of pages of documents produced in discovery by Bristol and third parties. Counsel for the Direct Purchaser Class have also conducted extensive economic analyses with respect to damages sustained by the Direct Purchaser Class as a result of Bristol's alleged wrongful conduct. As a result of the intensive investigation and discovery undertaken by Counsel for the Direct Purchaser Class, Plaintiff had obtained significant knowledge regarding the strengths and weaknesses of the claims and defenses in this case before entering into substantial settlement negotiations.

The Court has not ruled on the merits of any of the claims or defenses asserted by the parties in this case.

E. 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 and entities in the United States who purchased Platinol® directly from Bristol-Myers Squibb Company or its wholly-owned subsidiary, Oncology Therapeutic Network, Inc., at any time from June 19, 1999 through September 8, 2004 ("Direct Purchaser Class" or the "Class"). Excluded from the Class are Defendant, its parents, employees, subsidiaries, and affiliates, and government entities.

The Class is limited to those persons and entities that have made at least one purchase of Platinol® directly from Bristol or its wholly-owned subsidiary, Oncology Therapeutic Network, Inc. ("OTN"), during the period June 19, 1999 to and through September 8, 2004. If you purchased Platinol® during this period, but only from sources other than Bristol or its wholly-owned subsidiary, OTN, (for example, only from wholesalers or retailers other than OTN), you are not a member of the Direct Purchaser Class on whose behalf this lawsuit will be maintained.

The Court has also named North Shore Hematology and Oncology Associates, P.C., as Class Representative and appointed the law firm of Cohen, Milstein, Hausfeld & Toll, P.L.L.C. as Lead Counsel for the Class ("Lead Counsel").

III. THE PROPOSED SETTLEMENT

Subject to the terms and conditions of the Settlement Agreement with Bristol (the "Settlement Agreement"), dated September 10, 2004 and amended on September 13, 2004, (which is on file with the Court), Bristol paid \$50 million in cash, on September 13, 2004, 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 Bristol has been found liable for the claims made by Plaintiff.

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 Direct Purchaser Class Members at a later time. Proofs of Claim will be mailed to Class Members upon final approval of the Settlement and the Plan of Allocation. You may be required, as a condition of participation in the recovery, to present evidence of your purchases of Platinol® during the period June 19, 1999 to September 8, 2004. You should, therefore, preserve invoices and other records, including electronic records, reflecting such purchases.

In summary, Plaintiff claims that its damages and those of the Class are measured by an "overcharge," which is the amount that Direct Purchaser Class Members allegedly overpaid for Platinol® and generic cisplatin as a result of Bristol's conduct, which allegedly delayed entry into the market of generic cisplatin, resulting, in turn, in an alleged delay in the benefits of lower prices resulting from competition between and among brand and generic cisplatin manufacturers. According to Plaintiff, if generic entry had occurred earlier, Class Members would have realized significant cost savings by: (1) substituting purchases of the more expensive Platinol® with less expensive cisplatin; (2) purchasing cisplatin at lower prices due to earlier competition among generic manufacturers; and/or (3) obtaining the benefit of discounts, rebates, and/or price reductions on purchases of Platinol®.

The Settlement Fund, net of attorneys' fees, costs and expenses as approved by the Court, will be allocated to Class Members based upon a Plan of Allocation that will generally provide a *pro rata* share of overcharges each Class Member allegedly incurred as a result of the alleged unlawful monopolization. The overcharges incurred by individual Class Members will be calculated roughly by evaluating the following: (1)(a) the quantity of generic cisplatin that each Class Member purchased from any source from July 1, 1998 through October 2003 as a substitute for buying brand name Platinol® from Bristol-Myers Squibb Company, (b) multiplied by the average differential in price between the brand and generic forms of cisplatin; and/or (2)(a) the quantity of generic cisplatin that each Class Member purchased from any source from November 1999 through October 2003, (b) multiplied by the differential between the average price paid for the generic and the average price that would have been paid had there been no delay in generic entry; and/or (3) the combined savings from certain alleged discounts, rebates and/or other price reductions implemented by Bristol-Myers Squibb Company subsequent to generic entry (November 1999) that a Class Member would have received earlier relating to brand-name Platinol® purchased directly from Bristol-Myers Squibb Company.

All costs, fees, and expenses related to this litigation are to be paid solely out of the proceeds of the Settlement Fund. Lead Counsel intend to apply to the Court for attorneys' fees, costs, and expenses up to a total of 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 and assistance to Lead Counsel. Lead Counsel will file their application for an award of attorneys' fees, reimbursement of costs and expenses, and for an incentive award to Plaintiff with the Clerk of the District of Columbia, at the United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001 on or before November 22, 2004. 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 District of Columbia at the address indicated in this Notice.

The Court preliminarily approved the proposed Settlement after a hearing held on September 10, 2004. 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, Bristol, Research Corporation Technologies, 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 Platinol® 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 the event that such Class members commence or continue any such action the Released Parties shall be entitled to seek an order from the Court enjoining continuation of such action, and such Class members agree that they will not oppose entry of such an order. In the event a party breaches the covenant not to sue as set forth in this paragraph, the breaching party shall be liable for all damages incurred by the other party, including without limitation compensatory damages as well as attorneys' fees and costs.

In addition, each Class member hereby expressly waives and releases, 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 release, but each Class member hereby expressly waives and fully, finally and forever settles and releases, upon the 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 release 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 Defendant under § 17200, *et seq.*, of the California Business and Professions Code, which claims are expressly incorporated into this release.

V. ELECTION BY DIRECT PURCHASER CLASS MEMBERS

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

1. If you want to remain a member of the Direct Purchaser Class, you are not required to do anything at this time. By remaining a Direct Purchaser Class Member, any claims against Bristol arising from its 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 Direct Purchaser Class, you must complete the attached Request for Exclusion form and send it to *Platinol® Direct Purchaser Settlement Administrator, c/o Complete Claim Solutions, Inc., P.O. Box 24775, West Palm Beach, FL 33416*, by first-class mail, ***postmarked no later than November 15, 2004***. By making this election to be excluded:

- (a) you will not share in any recovery to be paid to the Direct Purchaser 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
- (d) you may present any claim you may have against Bristol by filing your own lawsuit.

VI. RIGHTS AND OBLIGATIONS OF DIRECT PURCHASER CLASS MEMBERS

If you remain a member of this Direct Purchaser 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. Lead Counsel will represent the Direct Purchaser Class on your behalf. All fees, costs, and expenses of Lead Counsel for the Direct Purchaser Class will be paid only out of the recovery by the Direct Purchaser Class as determined by the Court. You will not have to pay directly any amount to Lead Counsel, and you will not have to pay any judgment, court costs, or attorneys' fees for participating in this Class Action. Any Direct Purchaser 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 the Lead Counsel.

3. Your participation in any recovery that may be obtained from Bristol 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 Bristol as entered by the Court.

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

5. You will be entitled to receive notice of any ruling reducing the size of the Direct Purchaser Class and also notice of, and an opportunity to be heard, respecting the proposed Settlement or dismissal of the Direct Purchaser Class claims. (For this reason, as well as to participate in any recovery, you are requested to notify *Platinol® Direct Purchaser Settlement Administrator, c/o Complete Claim Solutions, Inc., P. O. Box 24775, West Palm Beach, FL 33416*, 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 November 30, 2004, at 11:00 a.m. in the courtroom of the Honorable Emmet G. Sullivan, District Court Judge of the United States District Court for the District of Columbia, at the United States District Courthouse at 333 Constitution Avenue, N.W., Washington, D.C. 20001 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) Lead 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 Direct Purchaser Class who does not exclude his or herself from the Class may appear at the Fairness Hearing in person or by a duly authorized attorney to 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. However, no person shall be heard in opposition to the Settlement, and no paper or brief submitted by any such person shall be considered by the Court, unless on or before November 15, 2004, the Court has received from that person, by certified first-class mail, postage prepaid, to Office of the Clerk, United States District Court, District of Columbia, United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001, a Notice of Intention to Appear and a statement of the position to be asserted and its basis, together with copies of any supporting papers or briefs. Your Notice must include in a prominent location the name of the case, (*North Shore Hematology and Oncology Associates, P.C. v. Bristol-Myers Squibb Company*), the case number (Civil Action No. 1:04cv248 (EGS)), and the Judge's name (Hon. Emmet G. Sullivan). You must also send a copy of your request to Lead Counsel for the Direct Purchaser Class and to Bristol's Counsel, whose addresses are as follows:

Lead Counsel for the Direct Purchaser Class

Linda P. Nussbaum
Jacqueline E. Bryks
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Bristol's Counsel

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CRAVATH, SWAINE & MOORE
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

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.

VIII. ADDITIONAL INFORMATION

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

*Platinol® Direct Purchaser Settlement Administrator
c/o Complete Claim Solutions, Inc.
P.O. Box 24775
West Palm Beach, FL 33416
Toll-Free Number: (800) 930-0057*

Any questions which you have concerning the matters contained in this Notice may be directed to the Settlement Administrator as indicated above or in writing to Lead Counsel for the Direct Purchaser Class as indicated in Section VII above.

The pleadings and other records in this litigation may be examined and copied at any time during regular office hours at the Office of the Clerk of the Court, United States District Court, District of Columbia, United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001.

Dated: September 21, 2004

BY ORDER OF THE COURT
Hon. Emmet G. Sullivan, District Court Judge
United States District Court for the District of Columbia