

**THIS IS AN IMPORTANT NOTICE THAT MAY AFFECT YOUR LEGAL RIGHTS.
READ THIS NOTICE CAREFULLY.**

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
IN RE RELAFEN ANTITRUST)	MASTER FILE
LITIGATION)	NO. 01-12239-WGY
_____)	

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION,
CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES,
AND HEARING REGARDING SETTLEMENT**

I. INTRODUCTION

If you made at least one purchase of the brand-name drug Relafen® directly from its manufacturer at any time during the period of September 1, 1998 through December 31, 2002, your rights may be affected by a lawsuit, In re Relafen Antitrust Litigation, Master File No. 01-12239, which is now pending before the United States District Court for the District of Massachusetts. The lawsuit was brought on behalf of a class consisting of:

All persons or entities in the United States or its territories who purchased Relafen® directly from SmithKline Beecham Corporation d/b/a GlaxoSmithKline and/or GlaxoSmithKline, PLC (collectively the "defendants" or "SmithKline") at any time during the period of September 1, 1998 through December 31, 2002.¹

The class excludes governmental entities, and the defendants and their officers, directors, management, employees, subsidiaries, and affiliates. Also excluded from the Class are the claims brought by and/or assigned to entities which already independently sued GSK in the

¹ The defendants and SmithKline are also referred to herein as "GSK," and the class as the "Direct Purchaser Class" or the "Class."

actions styled CVS Meridian, Inc., and Rite Aid Corp., v. SmithKline Beecham Corp., et al., No. 03-10040-WGY and Walgreen Co., et al. v. SmithKline Beecham Corp., et al., No. 02-10588-WGY ("the CVS and Walgreen Actions"). It also excludes parties who purchased Relafen® during this period but only from sources other than the defendants, such as from wholesalers or retailers.

You have been identified as a potential member of the Class. 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 Massachusetts for the purpose of informing you of your rights with regard to: (a) a proposed settlement of the above-referenced litigation for a payment by GSK, on behalf of all defendants, of \$175 million in cash (the "Settlement Fund") into an escrow account; and (b) a hearing scheduled to be held on April 9, 2004, at 2:00 p.m., before the Honorable William G. Young, Chief Judge of the United States District Court for the District of Massachusetts, at the United States District Courthouse at 1 Courthouse Way, Boston, Massachusetts (the "Fairness Hearing").²

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

² Other cases challenging similar conduct by GSK were filed on behalf of: (1) consumers and other entities who purchased Relafen® from sources other than GSK; 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 Relafen® that may have been purchased or paid for indirectly, that is, from or to a source other than GSK.**

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 are also hereby advised of their right to object and/or appear at the Fairness Hearing as explained below. The purpose of this notice is to advise you of your rights.

II. THE NATURE OF THE LAWSUIT

The class action was brought by Louisiana Wholesale Drug Company, Inc. ("Louisiana Wholesale" or "Plaintiff"), on behalf of itself and other direct purchasers of Relafen®, against the manufacturer of Relafen®, SmithKline Beecham Corporation, which does business as GlaxoSmithKline, and GlaxoSmithKline, PLC (collectively "GSK"). Louisiana Wholesale claims that GSK violated federal antitrust law, specifically Section 2 of the Sherman Act, 15 U.S.C. § 2, by monopolizing the alleged market for nabumetone (the active ingredient in Relafen®). More specifically, Louisiana Wholesale alleges that GSK delayed the marketing of less expensive generic versions of Relafen® by making intentional misrepresentations to the U.S. Patent and Trademark Office when obtaining its patent for Relafen® (U.S. Patent No. 4,420,639), by improperly listing its patent for Relafen® in a publication of the U.S. Food and Drug Administration (Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the "Orange Book"), and by bringing allegedly sham lawsuits against companies that manufactured less expensive generic versions of Relafen®. Louisiana Wholesale argues that the delay in the marketing of generic versions of Relafen® forced purchasers of Relafen® to pay higher prices for nabumetone.

GSK denies these allegations and asserts several defenses. It argues that Louisiana Wholesale has failed to state a claim upon which the Court can grant relief, that GSK acted in good faith and in furtherance of its legitimate business interests and has caused no injury to

competition, the public, or plaintiffs, that GSK's conduct was protected by the First Amendment to the U.S. Constitution, and that GSK's conduct was otherwise lawful.

III. THE CLASS

On October 29, 2003, the Court ruled that this action may proceed as a class action. It defined the Class, as stated above, as:

All persons or entities in the United States or its territories who purchased Relafen® directly from SmithKline Beecham Corporation d/b/a GlaxoSmithKline and/or GlaxoSmithKline, PLC (collectively the "defendants" or "SmithKline") at any time during the period of September 1, 1998 through December 31, 2002.

The Class excludes governmental entities, and the defendants and their officers, directors, management, employees, subsidiaries, and affiliates. Also excluded from the Class are the claims brought by and/or assigned to entities which already independently sued GSK in the actions styled *CVS Meridian, Inc., and Rite Aid Corp., v. SmithKline Beecham Corp., et al.*, No. 03-10040-WGY and *Walgreen Co., et al., v. SmithKline Beecham Corp., et al.*, No. 02-10588-WGY ("the CVS and Walgreen Actions"). It also excludes parties who purchased Relafen® during this period but only from sources other than the defendants, such as from wholesalers or retailers.

The Court named Louisiana Wholesale the representative plaintiff for the Class. Appointed to serve as counsel for the class were the law firms of Garwin, Bronzaft, Gerstein & Fisher, L.L.P. and Cohen, Milstein, Hausfeld & Toll, P.L.L.C. as co-lead counsel, and the law firms of Kohn, Swift & Graf, P.C. (executive committee member); Goodkind, Labaton, Rudoff & Sucharow LLP (executive committee member); Finkelstein, Thompson & Loughran (executive committee member); Berger & Montague, P.C.; Odom & Des Roches, L.L.P.; and Percy, Smith & Foote, LLP as additional class counsel (collectively with co-lead counsel, "class counsel").

Pursuant to the October, 29, 2003 Order of the Court, a "Notice of Pending Class Action" was sent to putative Class members advising them of the pending class action and their right to remain a member of the Class or to seek to be excluded from the Class. Opt-out elections were required to be postmarked by December 18, 2003.

IV. THE PROPOSED SETTLEMENT

Subject to the terms and conditions of the settlement agreement with GSK (the "Settlement Agreement"), dated January 9, 2004 (which is on file with the Court), GSK, on behalf of all defendants, paid \$175 million in cash on January 12, 2004 into an escrow account for the benefit of the Direct Purchaser Class (the "Settlement Fund"). The proposed settlement is a compromise of disputed claims and does not mean that GSK or any other defendant in this action has been found liable for the claims made by Plaintiff or the Class.

In the event the proposed settlement is approved by the Court and becomes final, the Settlement Fund, net of attorneys' fees, costs and expenses as approved by the Court, 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 Relafen® and generic nabumetone during the period September 1, 1998 to December 31, 2002. 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 nabumetone as a result of the defendants' alleged conduct, which allegedly caused a delay of the entry into the market of less expensive generic versions of nabumetone, resulting, in turn, in an alleged delay in the price benefits resulting from generic competition. 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 Relafen® with less expensive generic versions of nabumetone at an earlier time; (2) purchasing generic nabumetone at lower prices at an earlier time; and/or (3) obtaining the benefit of discounts, rebates, and/or price reductions on purchases of the brand name Relafen® at an earlier time.

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 actual 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 nabumetone that each Class member purchased from any source from August 2001 through December 31, 2002 as a substitute for buying brand name Relafen® from GSK, (b) multiplied by the average differential in price between the brand and generic forms of nabumetone; and/or (2)(a) the quantity of generic nabumetone that each Class member purchased from any source from August 2001 through December 31, 2002, (b) multiplied by the price differential between the actual price paid for the generic and the price that would have been paid had there been no alleged delay in generic entry; and/or (3) the combined savings from certain discounts, rebates, and/or other price reductions implemented by GSK subsequent to generic entry (August 2001) that a Class member would have received relating to brand-name Relafen® purchased directly from GSK.

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 in an amount up to 33 $\frac{1}{3}$ % of the Settlement Fund (plus interest thereon), plus reimbursement of reasonable costs and expenses incurred in the prosecution of this action. Moreover, an application will also be made to the Court for an incentive award of \$25,000 for Louisiana Wholesale as Class Representative 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, being deposed, regular communications with counsel, and attendance and active involvement at a two-day mediation session in Boston, Massachusetts. Class counsel will file their application for an award of attorneys' fees, reimbursement of costs and expenses, and for an incentive award to the representative Plaintiff with the Clerk of the District of Massachusetts, at the United States District Courthouse, 1 Courthouse Way, Boston, Massachusetts on or before April 2, 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 proposed settlement. A copy of the Settlement Agreement, including the release, is on public file with the United States District Court for the District of Massachusetts at the address indicated in this Notice.

Certain individual direct purchasers of Relafen® (and/or assignees of direct purchasers) have brought their own lawsuits against defendants. These individual plaintiffs will not share in the proposed settlement with the Direct Purchaser Class.

The Court preliminarily approved the proposed settlement after a hearing held on February 13, 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.

V. THE RELEASE

If the proposed 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 (as used throughout this paragraph, references to the "Class," "members of the Class" or "Class Members" include 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 proposed 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, events or transactions, prior to the date hereof alleged or which could have been alleged in the Class Action relating to the marketing, sale, manufacture, pricing or purchase of, or the enforcement of intellectual property related to, the drug Relafen® or any form of nabumetone (the "Released Claims"). Each member of the Class will covenant and agree 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 proposed 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, or 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 will expressly waive and fully, finally and forever settle and release, 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 paragraph V, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Class member will also expressly waive and fully, finally and forever settle and release any and all claims it may have against defendants under § 17200, *et seq.*, of the California Business and Professions Code.

Notwithstanding the above, the Class members intend to settle with and release only the Released Parties that such Class members have released as described above, and the parties do not intend to release or otherwise affect in any way any rights a Class member has or may have against any other party or entity whatsoever other than the Released Parties with respect to the Released Claims. In addition, the releases shall not release any claims arising in the ordinary course of business between Class members and the Released Parties concerning product liability, breach of contract, breach of warranty, or personal injury.

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 District of Massachusetts.

VI. RIGHTS AND OBLIGATIONS OF CLASS MEMBERS

As a member of this Class:

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

2. Class 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 attorneys' fees for participating in this Class Action. As a Class member, you may enter an appearance through your own counsel at your 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/or counsel for the Class.

3. If the proposed 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 to present evidence respecting your purchases of Relafen®, your discounts for purchases of Relafen® (if any), and your purchases of any generic versions of nabumetone 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 or dismissing the Class claims. (For this reason, as well as to participate in any recovery, you are requested to notify *In re Relafen Antitrust Litigation*, c/o Berdon Claims Administration LLC P.O. Box 9014, Jericho, NY 11753-8914, of any corrections or changes in your name or address). You will also be afforded an opportunity to be heard respecting the proposed settlement and award of attorneys' fees, costs and an incentive award to the Class Representative.

VII. THE FAIRNESS HEARING

Pursuant to an Order of the Court, a hearing will be held on April 9, 2004, at 2:00 p.m., in the courtroom of the Honorable William G. Young, Chief Judge of the United States District Court for the District of Massachusetts at the United States District Courthouse, 1 Courthouse Way, Boston, Massachusetts 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 proposed settlement, it is not necessary to appear at the hearing or to take any action at this time. Any member of the Class may appear at the Fairness Hearing in person or by duly authorized attorney and show cause why the proposed 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 proposed settlement unless on or before March 24, 2004, the Court has received from you, by certified first-class mail, postage prepaid, to Office of the Clerk, District of Massachusetts, at the United States District Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210, a notice of intention to appear and a statement of the position to be asserted and the ground therefor, together with copies of any supporting papers or briefs. Your notice must include in a prominent location the name of the case, (*In re Relafen Antitrust Litigation*), the Master File number (No. 01-12239-WGY), and the Judge's name (Hon. William G. Young). You must also send a copy of your request to Co-Lead Counsel for the Class, whose addresses are as follows:

Bruce E. Gerstein, Esq.
GARWIN, BRONZAFT, GERSTEIN &
FISHER, L.L.P.
1501 Broadway, Suite 1416
New York, New York 10036
Tel: (212) 398-0055

*Co-Lead Counsel for the Direct
Purchaser Class*

Linda Nussbaum, Esq.
COHEN MILSTEIN HAUSFELD
& TOLL PLLC
150 East 52nd Street
New York, New York 10022
Tel: (212) 838-7797

*Co-Lead Counsel for the Direct
Purchaser Class*

and to counsel for GSK, addressed as follows:

Joseph Tate, Esq.
DECHERT, LLP
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103

Except as provided herein, no person shall be entitled to contest the terms and conditions of the proposed 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:

In re Relafen Antitrust Litigation
c/o Berdon Claims Administration LLC
P.O. Box 9014
Jericho, NY 11753-8914

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

Bruce E. Gerstein, Esq.
GARWIN, BRONZAFT,
GERSTEIN & FISHER, L.L.P.
1501 Broadway, Suite 1416
New York, New York 10036
Tel: (212) 398-005

*Co-Lead Counsel for the Direct
Purchaser Class*

Linda Nussbaum, Esq.
COHEN MILLSTEIN HAUSFELD
&TOLL PLLC
150 East 52nd Street
New York, NY 10022
Tel: (212) 838-7797

*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, District of Massachusetts, John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210. Certain settlement documentation is also available at www.gbgf-law.com and www.cmht.com.

Dated: February 13, 2004

BY ORDER OF THE COURT

Hon. William G. Young, U.S.D.J.
United States District Court
District of Massachusetts
John Joseph Moakley United States Courthouse
1 Courthouse Way
Boston, MA 02210