

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

*In re LORAZEPAM & CLORAZEPATE  
ANTITRUST LITIGATION*

This Document Relates to:

ADVOCATE HEALTH CARE;  
ST. CHARLES HOSPITAL &  
REHABILITATION CENTER; DIK DRUG  
COMPANY and HARVARD PILGRIM  
HEALTH CARE, INC., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

MYLAN LABORATORIES, INC., *et al.*

Defendants.

MDL No. 1290 (TFH)  
Misc. No. 99ms276  
Judge Thomas F. Hogan

**FILED**

**AUG 28 2001**

MANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

Case No.: 1:99cv00790  
Consolidated with  
Case No.: 99 c 2228  
(U.S. District Court for the  
District of Illinois)

**JOINT STIPULATION AND ~~PROPOSED~~ ORDER  
FOR MODIFICATION OF  
NOTICE OF PENDENCY OF CLASS ACTION**

Class Plaintiffs and Defendants jointly submit this Stipulation and Order for Modification of Notice of Pendency of Class Action.

On August 16, 2001, the Court approved the parties' Stipulation and Order for Notices of Pendency of Class Action and SST Settlement ("Stipulation"). The Stipulation attached copies of, *inter alia*, the Notice of Pendency of Class Action ("Notice") in both long form and summary form. The parties submit this Stipulation in order to revise and clarify one aspect of the Notice.

The litigation class certified by the Court on July 2, 2001 includes direct purchasers of lorazepam and/or clorazepate "during the period January 12, 1998 through the present." Order, July 2, 2001. Thus, direct purchasers who purchased between January 12, 1998 and July 2, 2001

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(the date of the Order) are members of the certified class.

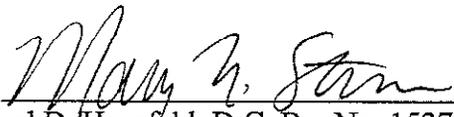
The parties stipulate and agree to set forth explicitly the July 2, 2001 closing date for class membership in the long form and short form Notice. For the Court's approval, the parties therefore submit, attached hereto, revised copies of the long form and short form Notice and the cover letter to class members. These papers are identical<sup>1</sup> to the papers approved by the Court on August 16, except that the phrase "January 12, 1998 through the present" is replaced with "January 12, 1998 through July 2, 2001" in the class definition and other places that it appears. For the Court's convenience these changes are denoted by underscoring.

So that the Plaintiffs can meet the submission deadlines for the various publications, the parties respectfully ask the Court to approve this Stipulation by Tuesday, August 28.

Dated: August 22, 2001

AGREED TO:

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

By:   
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West Tower, Suite 500  
Washington, DC 20005-3934  
Telephone: (202) 408-4600  
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Linda P. Nussbaum

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<sup>1</sup> Another very minor change is that the proposed cover letter to class members now includes all four plaintiff firms as signatories.

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CLASS PLAINTIFFS**

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**COUNSEL FOR MYLAN DEFENDANTS**

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WEIL, GOTSHAL & MANGES, LLP

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**COUNSEL FOR GYMA LABORATORIES OF AMERICA, INC.**

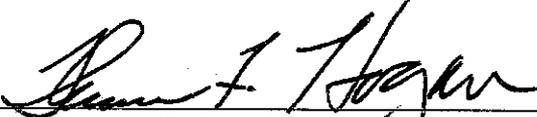
DEBEVOISE & PLIMPTON

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**COUNSEL FOR CAMBREX CORPORATION AND PROFARMACO S.r.l.**

SO ORDERED:

  
\_\_\_\_\_  
U.S. District Judge Thomas F. Hogan

DATED: Aug. 28, 2001



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

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

*In re LORAZEPAM & CLORAZEPATE  
ANTITRUST LITIGATION*

This Document Relates to:

ADVOCATE HEALTH CARE;  
ST. CHARLES HOSPITAL &  
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COMPANY and HARVARD PILGRIM  
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Defendants.

MDL No. 1290 (TFH)  
Misc. No. 99ms276  
Judge Thomas F. Hogan

Case No.: 1:99cv00790  
Consolidated with  
Case No.: 99 c 2228  
(U.S. District Court for the  
District of Illinois)

**NOTICE OF PENDENCY OF CLASS ACTION**

TO: All persons and entities in the United States who purchased generic lorazepam tablets and/or generic clorazepate tablets directly from Defendants Mylan Pharmaceuticals, Inc. and UDL Laboratories, Inc. during the period January 12, 1998 through July 2, 2001.

**I. PURPOSE OF NOTICE**

This notice is directed to you because your rights may be affected by a lawsuit referred to as *In re Lorazepam and Clorazepate Antitrust Litigation*, MDL No. 1290 (TFH) (the "Class Action"), now pending before the Court, brought by Advocate Health Care; St. Charles Hospital and Rehabilitation Center; Dik Drug Company and Harvard Pilgrim Health Care, Inc. (collectively "Plaintiffs") on behalf of themselves and others similarly situated against Mylan Laboratories, Inc.; Mylan Pharmaceuticals, Inc. (together "Mylan"); UDL Laboratories, Inc. ("UDL"); Cambrex Corporation; Profarmaco S.r.l.; Gyma Laboratories of America, Inc.; and SST Corporation ("SST") (collectively "Defendants").

On July 2, 2001, the Court determined that this lawsuit may proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and certified a class of direct purchasers of generic lorazepam tablets and/or generic clorazepate tablets. The court appointed Advocate Health Care, St. Charles Hospital & Rehabilitation Center, Dik Drug Company and Harvard Pilgrim Health Care, Inc. as class representatives. **You may be a member of this Class. The purpose of this notice is to advise you of your rights as a potential Class Member.**

**A. The Class**

The Class is defined as all persons and entities in the United States who purchased generic lorazepam tablets and/or generic clorazepate tablets directly from Defendants Mylan and UDL during the period January 12, 1998 through July 2, 2001, excluding Defendants, their respective parents, subsidiaries and affiliates, any co-conspirators of Defendants, and all government entities (the "Class").

**II. DESCRIPTION OF THE CLASS ACTION**

**A. Plaintiffs' Claims**

The Class Action asserts antitrust claims against Defendants on behalf of a class of entities in the United States who purchased lorazepam tablets and/or clorazepate tablets from Mylan or UDL between January 12, 1998 and July 2, 2001. The term "lorazepam" means the generic equivalent to Ativan, the branded drug manufactured and sold by Wyeth-Ayerst Laboratories, Inc. The term "clorazepate" means the generic equivalent to Tranxene, the branded drug manufactured and sold by Abbott Laboratories, Inc.

Plaintiffs allege that in 1997, Mylan entered into an exclusive license agreement with Defendants Profarmaco, Gyma and Cambrex to license Profarmaco's active pharmaceutical ingredients ("API") used in producing lorazepam and clorazepate tablets. Plaintiffs further allege that the agreement unreasonably restrained competition in the relevant markets for lorazepam and clorazepate tablets by preventing other generic manufacturers from obtaining needed supplies of raw materials. Plaintiffs allege that after entering into the exclusive license agreement for Profarmaco's APIs, Mylan increased the prices of its lorazepam and clorazepate tablets by thousands of percent, and shared the profits with Defendants Profarmaco, Gyma and Cambrex. Plaintiffs assert that SST aided Mylan by agreeing to raise and fix prices of SST's supplies of the lorazepam API in the marketplace.

Plaintiffs allege that the activities described above violated Sections 1 and 2 of the Sherman Act. As a result of the alleged conduct, Plaintiffs assert that the Class Members paid supra-competitive prices for lorazepam and clorazepate.

**B. Defendants' Denial of Liability**

Defendants deny any liability or wrongdoing for the claims alleged. Defendants have denied, and continue to deny that they have committed any violation of law or any wrongdoing, and further deny that they have any liability with respect to any and all claims asserted by Plaintiffs on behalf of themselves or on behalf of the Class.

**C. Status of the Litigation**

Several private plaintiffs filed class action lawsuits in different federal district courts throughout the country, making claims similar to those outlined in Section II.A. above. These separate lawsuits have been consolidated for pre-trial purposes by the Judicial Panel on Multidistrict Litigation in the Federal District Court for the District of Columbia before the Honorable Thomas F. Hogan. On December 23, 1999, the direct purchaser plaintiffs filed a Consolidated Amended Class Action Complaint in this Court setting forth the antitrust claims in this litigation.

Plaintiffs have reached a partial settlement in the case with one of the defendants, SST Corporation. The case will go forward against the other defendants. The SST Settlement is the subject of a separate notice entitled Notice of Proposed Class Settlement (Partial), which has been mailed to you with this notice. You are urged to also read the SST Settlement Notice and decide separately whether to respond to it.

The Court has ordered that fact discovery be completed by October 1, 2001. Expert discovery will occur during a period calculated from the end of fact discovery and will be completed by November 15, 2001. At this time, no trial date has been set by the Court.

**D. Lead and Liaison Counsel**

The following law firms are serving as Co-Lead Counsel on behalf of Plaintiffs and the certified class of direct purchasers in this litigation: Gardner, Carton & Douglas, 321 North Clark Street, Quaker Tower Suite 3400, Chicago, IL 60610-4795; Pomerantz, Haudek, Block, Grossman & Gross, L.L.P., 100 Park Avenue, 26<sup>th</sup> Floor, New York, NY 10017. The following firm is serving as Liaison Counsel in the litigation: Cohen, Milstein, Hausfeld & Toll, P.L.L.C., 1100 New York Ave., N.W., West Tower, Suite 500, Washington, DC 20005-3964. Co-Lead and Liaison Counsel were proposed to the Court by counsel for plaintiffs who had filed cases that were consolidated before Judge Hogan. After reviewing their respective experience and qualifications, those counsel were accepted as Co-Lead and Liaison Counsel by the Court.

**III. HOW TO PARTICIPATE IN THIS CLASS ACTION**

If you fall within the definition of the Class set forth in Section I.A. above, you may be a member of the Class. **If you wish to remain a member of the Class, you do not need to do anything at this time.** All members of the Class who do not timely request an exclusion,

as discussed below in Section IV, may be entitled to share in the proceeds of any settlement or judgment, if any, that is approved by the Court, and will be bound by any final judgment and release of claims entered by the Court, if any. Lead Counsel appointed by the Court will represent the Class on your behalf. All fees and expenses of Lead Counsel will be paid out of any recovery by the Class, if any, together with such other attorneys' fees and expenses as may be awarded by the Court to other lawyers who may have done work benefitting the Class. You will not have to pay Lead Counsel any additional amounts and in no event will you be obliged to pay any judgment, court costs, or lawyers' fees for participating in this Class Action. In addition, any Class Member who does not request exclusion from the Class may also enter an appearance through their own counsel at their own expense. However, by remaining in the Class, you will be bound by any final judgment that may result from the Class Action, including any judgment at trial. The pleadings and other public records in this litigation may be examined and copied at any time during regular business hours at the Office of the Clerk of Court, United States District Court for the District of Columbia, E. Barrett Prettyman United States Courthouse, 333 Constitution Ave., N.W., Washington, D.C. 20001-2802.

#### **IV. HOW TO BE EXCLUDED FROM THE CLASS**

If you wish to be excluded from the Class, you must send a written notice, by first-class mail, postage prepaid, postmarked no later than **November 1, 2001** to:

In re Lorazepam & Clorazepate Antitrust Litigation  
Settlement and Class Administrator  
P.O. Box 6515  
Portland, Oregon 97228-6515

The postmark shall determine the time of mailing. The written notice must request exclusion from the Class and must clearly state the name and address of the person or entity that wishes to be excluded from the Class, and identify a person who, if necessary, may be contacted in connection with the request for exclusion and such person's telephone number. You need not state your reason for requesting exclusion from the Class. A form is provided at the back of this notice that you may complete and mail to exclude yourself from the Class.

By electing to be excluded: (1) you will not be entitled to share in any recovery from any settlement or judgment, if any, that may be paid to members of the Class as a result of a trial or other settlement of this lawsuit; and (2) you will not be bound by any judgment or release entered in this lawsuit. If you timely exclude yourself from the Class, at your own expense, you may pursue any claims that you have by filing your own lawsuit or taking other action. If you do not timely exclude yourself from the Class, any claim you may have against the defendants for damages arising from defendants' conduct as alleged by the class representatives will be determined in this case and cannot be presented in any other lawsuit. Any release of the Class claims will be binding on you even if you choose not to make a claim and to receive any payment from any settlement or judgment fund. In addition, your decision whether or not to exclude yourself from the Class will be binding and final.

Your right to be excluded from the Class described in this notice is *separate* from your right to exclude yourself from the SST Settlement Class, which is the subject of a separate notice entitled Notice of Proposed Class Settlement (Partial). If you wish to exclude yourself from both the Class and the SST Settlement Class, you must send a separate written notice for each. The instructions to exclude yourself from the SST Settlement Class are contained in the Notice of Proposed Class Settlement (Partial).

**V. EXAMINATION OF PAPERS AND INQUIRIES**

This Notice contains only a summary of the litigation and your rights as a potential Class Member. For more detailed information regarding the matters involved in this litigation, please refer to the papers on file in this litigation, which may be inspected at the Office of the District Court Clerk, United States District Court for the District of Columbia, E. Barrett Prettyman United States Courthouse, 333 Constitution Ave., N.W., Washington, D.C. 20001-2802 during business hours of each business day. In addition, inquiries regarding this litigation may be addressed to:

Linda P. Nussbaum  
Cohen, Milstein, Hausfeld & Toll, P.L.L.C.  
825 Third Avenue, 30<sup>th</sup> Floor  
New York, NY 10022-7519  
Telephone: (212) 838-7797  
Fax: (212) 838-7745

**VI. REMINDER AS TO CERTAIN TIME LIMITS**

If you wish to exclude yourself from the Class, you must mail a written notice postmarked on or before **November 1, 2001**. If you wish to remain in the Class, you need not take any action in response to this notice.

**PLEASE DO NOT  
CALL THE COURT OR THE COURT CLERK'S OFFICE  
REGARDING THIS NOTICE**

Dated: September 15, 2001

BY ORDER OF THE COURT:  
Nancy Mayer-Whittington  
Clerk, United States District Court  
for the District of Columbia  
E. Barrett Prettyman United States Courthouse  
333 Constitution Ave., N.W.  
Washington, DC 20001-2802

**REQUEST FOR EXCLUSION**

**Read the enclosed legal notice carefully before filling out this form.**

I am the duly authorized representative of the entity identified below. After review of the Notice of Pendency of Class Action dated September 15, 2001, the entity identified below does not wish to remain a member of the Plaintiff Class certified in the case of *In re Lorazepam and Clorazepate Antitrust Litigation*, MDL No. 1290 (TFH) in the United States District Court for the District of Columbia. By filling out this form, the entity identified below elects to be excluded from the Class and: (1) will not share in any recovery, if any, to be paid to members of the Class as a result of trial or settlement of this lawsuit; (2) will not be bound by any judgment entered in this lawsuit; and (3) at the undersigned's own expense, may pursue any claims that he or she has by filing his or her own lawsuit or taking other action.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Entity Requesting Exclusion

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Printed Name of Authorized Individual

\_\_\_\_\_  
Title of Signer

\_\_\_\_\_  
Contact Person and Telephone Number (Print)

**IF YOUR WANT TO EXCLUDE YOURSELF FROM THE CLASS, YOU MUST COMPLETE AND RETURN THIS FORM BY MAILING THIS FORM POSTMARKED NO LATER THAN NOVEMBER 1, 2001 TO:**

In re Lorazepam & Clorazepate Antitrust Litigation  
Settlement and Class Notice Administrator  
P.O.Box 6515  
Portland, Oregon 97228-6515

A separate Request for Exclusion should be completed and timely mailed for each entity electing to be excluded from the Class.



## ATTENTION

**All persons and entities in the United States who purchased generic lorazepam tablets and/or generic clorazepate tablets directly from Defendants Mylan Pharmaceuticals, Inc. and UDL Laboratories, Inc. during the period January 12, 1998 through July 2, 2001.**

**Please Read This Notice Carefully**

Advocate Health Care; St. Charles Hospital and Rehabilitation Center; Dik Drug Company and Harvard Pilgrim Health Care, Inc. (collectively "Plaintiffs"), on behalf of themselves and others similarly situated, have brought an antitrust lawsuit known as *In re Lorazepam and Clorazepate Antitrust Litigation*, MDL No. 1290 (TFH), U.S. District Court for the District of Columbia (the "Class Action") against Mylan Laboratories, Inc.; Mylan Pharmaceuticals, Inc. (together "Mylan"); UDL Laboratories, Inc. ("UDL"); Cambrex Corporation; Profarmaco S.r.l.; Gyma Laboratories of America, Inc.; and SST Corporation (collectively "Defendants") claiming that as a result of Defendants' conduct, all persons and entities in the United States who purchased generic lorazepam and/or clorazepate tablets directly from Mylan or UDL were overcharged. Defendants deny any liability or wrongdoing for the claims alleged.

On July 2, 2001, the Court determined that this lawsuit proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and certified a class of direct purchasers of generic lorazepam and/or generic clorazepate tablets. The Court appointed Advocate Health Care, St. Charles Hospital & Rehabilitation Center, Dik Drug Company and Harvard Pilgrim Health Care, Inc. as class representatives.

Your Rights

If you purchased generic lorazepam tablets and/or generic clorazepate tablets from Mylan or UDL during the period January 12, 1998 through July 2, 2001, you may be a member of the Class.

If you wish to remain a member of the Class, you do not need to do anything at this time. You may be entitled to share in the proceeds of any settlement or judgment, if any, that is approved by the Court, and you will be bound by any final judgment and release of claims entered by the Court, if any.

If you do not wish to remain a member of the Class, you must mail a written notice identifying yourself as a class member by first-class mail, postage prepaid, postmarked no later than November 1, 2001 to:

*In re Lorazepam and Clorazepate Antitrust Litigation*, Settlement and Class Administrator, P.O. Box 6515, Portland, Oregon 97228-6515.

For complete information and a copy of the Notice of Pendency of Class Action, write to: *In re Lorazepam and Clorazepate Antitrust Litigation*, Settlement and Class Administrator, P.O. Box 6515, Portland, Oregon 97228-6515 or access [www.cmhht.com](http://www.cmhht.com).

Clerk of the Court, U.S. District Court, District of Columbia

**PLEASE DO NOT CONTACT THE COURT**



September 15, 2001

To: All Potential Class Members

Re: In re Lorazepam and Clorazepate Antitrust Litigation

Dear Potential Class Member:

In 1999, plaintiffs Advocate Health Care, St. Charles Hospital & Rehabilitation Center, Dik Drug Company, and Harvard Pilgrim Health Care, Inc. commenced a class action against Mylan Laboratories, Inc.; Mylan Pharmaceuticals, Inc.; UDL Laboratories, Inc.; Cambrex Corporation; Profarmaco S.r.l.; Gyma Laboratories of America, Inc.; and SST Corporation alleging monopolization and other violations of the antitrust laws with respect to the pricing of lorazepam and clorazepate by Mylan and UDL Laboratories.

You have received this mailing because you are or may be a class member in that litigation. Enclosed are two Notices approved by the Court for dissemination to class members. The Notice of Proposed Class Settlement (Partial) reflects a partial settlement with one of the defendants, SST Corporation. The Notice of Pendency of Class Action informs you of the decision by the Court appointing Advocate Health Care, St. Charles Hospital & Rehabilitation Center, Dik Drug Company, and Harvard Pilgrim Health Care, Inc. as class representatives and certifying a class of direct purchasers in the on-going litigation against the non-settling defendants. **Please read both notices carefully, as they contain different information.**

Very truly yours,

Thomas Campbell  
GARDNER, CARTON & DOUGLAS  
Quaker Tower  
321 North Clark Street  
Chicago, IL 60610-4795

Linda Nussbaum  
COHEN, MILSTEIN, HAUSFELD & TOLL,  
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825 Third Avenue, 30<sup>th</sup> Floor  
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Stanley Grossman  
POMERANTZ, HAUDEK, BLOCK,  
GROSSMAN & GROSS, LLP  
100 Park Avenue, 26<sup>th</sup> Floor  
New York, NY 10017-5516

Class Counsel

## CERTIFICATE OF SERVICE

I, Mary N. Strimel, certify that on August 22, 2001, I caused a true and correct copy of the foregoing Revised Stipulation and [Proposed] Order for Notices of Pendency of Class Action and SST Settlement, with attached exhibits, to be served by fax and first class mail, postage prepaid on the following counsel of record:

James B. Weidner  
James D. Miller  
Clifford Chance Rogers & Wells, LLP  
200 Park Avenue  
New York, NY 10166  
**Attorneys for the Mylan Defendants:**

and by first class mail, postage prepaid on the following counsel of record:

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**Attorneys for the Mylan Defendants:**

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**Attorneys for Cambrex Corp. and Profarmaco S.r.l.**

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**Attorneys for Gyma Laboratories of America, Inc.**

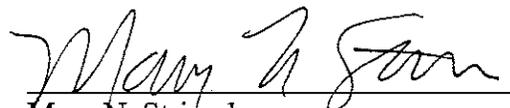
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**Co-Lead Counsel for Indirect Purchaser Plaintiffs**

  
Mary N. Strimel