

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

If You Are A Person or Entity in the United States Who Purchased Branded Zymar or Zymaxid Directly From Senju Pharmaceutical Co. Ltd., Kyorin Pharmaceutical Co., Ltd., or Allergan, Inc. On or Between June 15, 2010 and December 31, 2017, You Could Be Affected by a Proposed Class Action Settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- A class action lawsuit is currently pending that includes direct purchasers of branded Zymar or Zymaxid on or between June 15, 2010 and December 31, 2017. A proposed Settlement has been reached between Plaintiff Hartig Drug Company Inc. (“Hartig”), on its own behalf and on behalf of members of the proposed Settlement Class, and the following Defendants: (1) Senju Pharmaceutical Co. Ltd. (“Senju”); (2) Kyorin Pharmaceutical Co., Ltd. (“Kyorin”); and (3) Allergan, Inc. (“Allergan”).
- Direct purchaser Plaintiff Hartig (“Plaintiff”) claims that Defendants engaged in an unlawful scheme to exclude or delay generic competition for gatifloxacin ophthalmic solution (generic versions of their branded drugs Zymar and Zymaxid), a drug approved to treat eye infections such as bacterial conjunctivitis, in violation of the Sherman Act. The Defendants deny any liability as to Plaintiff’s claims.
- A Settlement has now been reached with the Defendants. Approval of this Settlement by the Court will resolve this lawsuit as to the Defendants.

Your Legal Rights And Options		
YOU MAY:		DUE DATE
SUBMIT A CLAIM	If you wish to make a claim against the Settlement Fund, you will need to file a <u>Claim Form</u> in order to receive money from the Settlement Fund	October 5, 2018 (Postmarked)
OBJECT	Write to the Court about why you don’t like the proposed Settlement, the Plan of Allocation, or the request for attorneys’ fees, reimbursement of expenses, and incentive award.	October 5, 2018 (Received)
DO NOTHING	If you do nothing, you will get no payment and give up your rights to be part of a lawsuit against the Defendants about the legal claims in this case.	October 5, 2018
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to bring a lawsuit against Defendants about the legal claims in this case.	October 5, 2018 (Postmarked)

- Your rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- Your legal rights will be affected whether you act or not. This Notice includes information on the litigation and the proposed Settlement with Defendants.

Please read the entire Notice carefully.

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BASIC INFORMATION

1. Why did I get this Notice?

You or your company may have purchased branded Zymar or Zymaxid directly from one or more of the Defendants during the period of June 15, 2010 through December 31, 2017.

The Court approved sending you this Notice because, as a possible Settlement Class member, you have the right to know about the proposed Settlement in this class action lawsuit, and about all your options, before the Court decides whether to approve the proposed Settlement. This Notice explains the litigation, the proposed Settlement, and your legal rights.

The Court supervising the case is the United States District Court for the District of Delaware. The case is called *Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd, Kyorin Pharmaceutical Co., Ltd., and Allergan, Inc.*, 14-cv-719-JFB-SRF. The company that sued is the Plaintiff, and the companies it sued are called Defendants.

2. What is this lawsuit about?

The lawsuit alleges that Defendants engaged in an unlawful scheme to eliminate or delay generic competition for gatifloxacin ophthalmic solution (generic versions of their branded drugs Zymar and Zymaxid), a drug used to treat eye infections such as bacterial conjunctivitis, in violation of the Sherman Act. Defendants have denied any liability for these claims and have asserted various defenses to the claims.

3. Who are the Defendants?

The Defendants are Senju Pharmaceutical Co. Ltd. (“Senju”), Kyorin Pharmaceutical Co., Ltd. (“Kyorin”), and Allergan, Inc. (“Allergan”).

4. Why is this a class action?

In a class action, one or more individuals or companies, often called class representatives, sue on behalf of others who have similar claims. The class representative in this case is Hartig Drug Company Inc. (“Class Representative”). The Class Representative and the individuals or companies with similar claims are called the Settlement Class. One court resolves the settlement-related issues for all of the Settlement Class members, except for those who exclude themselves from the Class. U.S. District Judge Joseph F. Bataillon is in charge of this class action.

5. Why is there a proposed Settlement?

The Defendants have denied all liability in this case and have asserted various defenses to the Plaintiff’s claims. The Court did not decide in favor of the Plaintiff or the Defendants. Instead, both sides agreed to the proposed Settlement. That way, they avoid the cost and risk of a trial, and members of the Settlement Class will get compensation if they do not exclude themselves from the Class and satisfy certain requirements stated in this Notice. The Class Representative and Settlement Class Counsel think the proposed Settlement is best for all of the Settlement Class.

WHO IS AFFECTED BY THE PROPOSED SETTLEMENT?

To see if you are affected by this proposed Settlement, you first have to determine if you are part of the Settlement Class.

6. How do I know if I am part of the proposed Settlement?

Judge Joseph F. Bataillon decided that everyone who fits the below description is part of the Settlement Class:

All persons or entities in the United States who purchased branded Zymar or Zymaxid directly from any of the Defendants from and including June 15, 2010 through December 31, 2017. The Settlement Class does not include Defendants, government entities or any person or entity in which any Defendant holds a controlling interest, the officers, directors, employees, affiliates, subsidiaries, legal representatives, heirs, successors and assigns of any such person or entity, as well as any immediate family member of any officer, director or employees of any named Defendant that is not a natural person, and any judge or magistrate involved in this matter, as well as members of their immediate family.

7. I’m still not sure if I am included.

If you are still not sure if you are a Settlement Class member, you can find additional information on the Settlement Website www.ZymarZymaxidSettlement.com or ask for free help. You may call the Claims Administrator at the toll-free number 866-285-5811. You are not required to pay anyone to assist you in filing a claim.

THE PROPOSED SETTLEMENT BENEFITS

8. What does the proposed Settlement provide?

The proposed Settlement provides for a total cash payment of \$9 million (the “Settlement Proceeds”). Under the Settlement Agreement, the Defendants have collectively agreed to pay \$9 million in cash. Under certain circumstances, Defendants have the right to withdraw from the Settlement. This process is explained in paragraph 35 of the Settlement Agreement. The Settlement Agreement has been filed with the Court and may be viewed at www.ZymarZymaxidSettlement.com.

9. How do I get a payment?

If you are a Settlement Class member and did not exclude yourself from the Class, you are eligible to get a payment. If the Court approves the Settlement (see “The Court’s Fairness Hearing” below), the Court will also approve a distribution process and set a deadline for Settlement Class members to submit additional information.

To qualify for a payment, you must send in a Claim Form. A personalized Claim Form is enclosed with this Notice. Please read the instructions carefully. You must fill out the form, include all the information the form asks for, sign it, and mail it in the enclosed envelope postmarked no later than October 5, 2018.

Settlement Class Counsel has collected information from Defendants. The Claim Form enclosed with this Notice provides your unit purchase totals as they were in Defendants’ available data.

To receive a Settlement benefit for the unit purchase totals identified on the Claim Form, you will need to complete Part A of the Claim Form and sign the Sworn Statement at the end of the Claim Form. If you believe your unit purchase totals were different from that identified on the Claim Form, you will need to complete Part B of the Claim Form, **attach documentation to support your assertion** and sign the Sworn Statement at the end of the Claim Form.

All Claim Forms must be postmarked by October 5, 2018 and returned to the Settlement Administrator at the following address:

Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd. Settlement
c/o GCG
P.O. Box 9349
Dublin, OH 43017-4249

If you do not mail a timely, properly addressed, completed, and valid Claim Form, you will not receive any payment.

10. How much will my payment be?

Settlement Class Counsel has proposed a Plan of Allocation to distribute the Settlement Fund. Under the Plan of Allocation, the Settlement Proceeds will first be used to pay attorneys’ fees and expenses, and an incentive payment to the Class Representative, as approved by the Court. The remaining amount (the “Net Settlement Proceeds”) will be distributed to Settlement Class Members who submit valid and timely Claim Forms in proportion to each Settlement Class Member’s relevant unit purchase total of Zymar and Zymaxid.

If you wish to object to the Plan of Allocation, you must file your objection by October 5, 2018 as described in Question 18 below.

If you have excluded yourself from the Settlement, you will not be able to share in the Settlement.

11. When will I receive a payment?

The Net Settlement Proceeds will be distributed to the Settlement Class after Claim Forms are processed and the Court has authorized distribution.

12. What am I giving up to get a payment or stay in the Class?

If you are a Settlement Class member, unless you exclude yourself from the Settlement, you are staying in the Settlement Class. That means that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants regarding the legal issues in this case. It also means that all of the Court’s orders will apply to you and legally bind you.

In exchange for the consideration provided, the Settlement Agreement stipulates that there will be a release of claims against the Defendants and the Releasees (as defined in the Settlement Agreement). The Settlement Agreement provides the specific and full terms of the releases as to the Defendants, but, broadly, the Agreement completely releases, acquits, and forever discharges the Defendants and the Releasees from any and all other claims arising at any time prior to the execution date of the Settlement Agreement under antitrust, unfair competition, or similar statutes relating to the supply, pricing, marketing,

distribution, and sale of Zymar or Zymaxid by the Defendants and Releasees.

The Settlement Agreement, which is available at www.ZymarZymaxidSettlement.com, describes the exact legal claims that you give up if you stay in the Class.

EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

If you want to keep the right to sue or continue to sue one or more of the Defendants, on your own, regarding the legal issues in this case, then you must take steps to get out of the Settlement with those Defendants. This is called excluding yourself—or sometimes referenced as opting out of the Settlement Class. If you opt out of the Settlement Class, you will not get any payment from the Settlement.

13. How do I exclude myself from the proposed Settlement?

To exclude yourself from the proposed Settlement, you must send a letter saying that you want to be excluded from the Settlement Class. The letter must include the following information:

- A statement indicating that you want to be excluded from the Settlement Class.
- The case name: *Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd, Kyorin Pharmaceutical Co., Ltd., and Allergan, Inc.*
- Your name or company name, address and telephone number, and the name, title and signature of an authorized officer, director, or owner, if appropriate.
- All trade names or business names and addresses you or your business has used, as well as any subsidiaries or affiliates who are requesting to be excluded from the Settlement Class.

Your letter must be postmarked by October 5, 2018 and sent to:

Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd. Settlement
c/o GCG
P.O. Box 9349
Dublin, OH 43017-4249

If you ask to be excluded from the proposed Settlement, you will not get any payment from this Settlement, and you cannot object to the Settlement.

Unless you exclude yourself, you give up any right to sue the Defendants for the claims that the proposed Settlement resolves. If you have a pending lawsuit against the Defendants involving the same legal issues in this case, speak to your lawyer in that case immediately. (You must exclude yourself from *this* Settlement Class in order to continue your own lawsuit against the Defendants).

14. If I exclude myself, can I get money from the proposed Settlement?

No. If you exclude yourself from the proposed Settlement, you will not be able to get money from the proposed Settlement.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in this case?

Yes. The Court has appointed Hausfeld LLP, Frank LLP, and Prickett, Jones & Elliott, P.A. as Settlement Class Counsel, with Hausfeld LLP and Frank LLP as Co-Lead Class Counsel, and Prickett, Jones & Elliott, P.A. as Settlement Liaison Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer and have that lawyer appear in court for you in this case, you may hire one at your own expense.

16. How much of the settlement fund will be used to pay for attorney fees, attorney expenses and administrative costs?

You are not personally responsible for payment of attorneys' fees or expenses for Settlement Class Counsel. Instead, as compensation for their time and risk in litigating the case on a contingent basis, Settlement Class Counsel will ask the Court to approve from the Settlement Proceeds payment of attorneys' fees of up to 33-1/3% of the Settlement Proceeds, as well as reimbursement for costs and expenses incurred in the prosecution of the lawsuit not to exceed \$400,000. Additionally, Class Counsel anticipates fees and expenses of up to approximately \$40,000 for the Claims Administrator to handle administration of the Settlement.

17. Will the Class Representative be paid?

Settlement Class Counsel will ask the Court to allow an incentive award of \$10,000 for the Class Representative. If the Court grants this request, the incentive award will be paid from the Settlement Proceeds.

If you wish to object to the request for an incentive award for the Class Representative, your objection must be received by the Court by October 5, 2018 as described in Question 18 below.

OBJECTING TO THE PROPOSED SETTLEMENT, PLAN OF ALLOCATION, AND REQUEST FOR ATTORNEYS’ FEES, EXPENSES, AND INCENTIVE AWARD

18. How do I tell the Court I don’t like the proposed Settlement, Plan of Allocation, or the Request for Attorneys’ Fees, Expenses, or Incentive Award?

You can object to the proposed Settlement if you are a member of the Settlement Class and have not opted out of the Settlement Class. You can object if you don’t like any part of the proposed Settlement, or if you disagree with the Plan of Allocation, the request for attorneys’ fees, expenses, or incentive award. You can give reasons why you think the Court should not approve any or all of them. The Court will consider your views. To object, you must send a letter to the Court that includes the following:

- A statement indicating that you object to the proposed Settlement, or the Plan of Allocation or the Request for Attorneys’ Fees and Reimbursement of Expenses, in *Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd, Kyorin Pharmaceutical Co., Ltd., and Allergan, Inc.*
- Your name or company name, address and telephone number, and the name, title and signature of an authorized officer, director, or owner, if appropriate.
- The reasons you object.
- Proof of your membership in the Settlement Class, such as invoices showing that you satisfy the definition in Question 6.

You must file the objection with the Court at the following address, received by October 5, 2018:

Clerk of Court
United States District Court
for the District of Delaware
844 North King St Unit 18
Wilmington, Delaware 19801-3570

You must also mail copies of the objections to the following attorneys, postmarked by October 5, 2018:

Settlement Class Counsel	
<p>Melinda R. Coolidge HAUSFELD LLP 1700 K Street NW, Suite 650 Washington, DC 20006</p> <p>J. Clayton Athey Eric J. Juray PRICKETT, JONES & ELLIOTT, P.A. 1310 King Street Wilmington, DE 19899</p>	<p>Gregory A. Frank Marvin L. Frank FRANK LLP 275 Madison Ave. #705 New York, NY 10016</p>
Counsel for Defendants	
<p>Rosanna K. McCalips JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001 <i>Counsel for Kyorin Pharm. Co., Ltd.</i></p>	<p>William Sondericker Gerald W. Griffin CARTER LEDYARD & MILBURN LLP Two Wall Street New York, NY 10005 <i>Counsel for Senju Pharm. Co., Ltd.</i></p>

M. Sean Royall
Richard H. Cunningham
Jason C. McKenney
GIBSON, DUNN & CRUTCHER LLP
2100 McKinney Avenue
Dallas, TX 75201
Counsel for Allergan, Inc.

19. What is the difference between objecting and excluding?

Objecting is telling the Court that you don't like something about the proposed Settlement, Plan of Allocation, or the request for attorneys' fees, expenses, or incentive award. You can object to the proposed Settlement only if you stay in the Settlement Class. If you exclude yourself, you have no right to object because the proposed Settlement no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a fairness hearing to decide whether to approve the proposed Settlement, the Plan of Allocation, and the request for attorneys' fees, expenses, or incentive award. You may attend but need not attend. If you do attend you may ask the Court's permission to speak, but you don't have to participate in the hearing if you do attend. See Questions 20 through 22 for details.

20. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Fairness Hearing at 1:30 p.m. on November 9, 2018, at the United States District Court for the District of Delaware, 844 N. King Street, Courtroom 4B, Wilmington, Delaware 19801. The hearing may be moved to a different date or time without additional notice, so you should check the settlement website www.ZymarZymaxidSettlement.com before making any travel plans. At the Fairness Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate and whether to approve the Plan of Allocation, the request for attorneys' fees, expenses, and incentive award.

Judge Joseph F. Bataillon will listen to Settlement Class members who have asked to speak at the hearing. If there are objections or comments, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the proposed Settlement, the Plan of Allocation, and the request for attorneys' fees, expenses, and incentive award. We do not know how long this decision will take.

21. Do I have to come to the hearing?

No. Settlement Class Counsel will be prepared to answer any questions the Court may have at the hearing. However, you are welcome to attend the hearing at your own expense. If you send a comment or objection, you do not have to come to court to explain. As long as you mailed your written comment or objection on time as set out in this Notice, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

22. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. If you wish to do so, you are encouraged to send a letter stating the following:

- "Notice of Intention to Appear in *Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd, Kyorin Pharmaceutical Co., Ltd., and Allergan, Inc*, 14-cv-719-JFB-SRF"
- The position you will take and your reasons.
- Your name or company name, address and telephone number, and the name, title and signature of an authorized officer, director, or owner, if appropriate.
- Proof of your membership in the Settlement Class, such as invoices showing that you satisfied the definition in Question 6.

Your Notice of Intention to Appear must be filed with the Court at the following address, received by October 5, 2018:

Clerk of Court
United States District Court
for the District of Delaware
844 North King St Unit 18
Wilmington, Delaware 19801-3570

You must also mail copies of the Notice of Intention to Appear to the attorneys listed in Question 18 above, no later than October 5, 2018.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing and you are a Settlement Class member, you will remain in the Settlement Class for the proposed Settlement, but you will not receive a payment unless you submit a Claim Form. To get more information on how to submit a Claim Form, follow the instructions described in Question 9.

GETTING MORE INFORMATION

24. Are there more details about the proposed Settlement or Plan of Allocation?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting www.ZymarZymaxidSettlement.com.

Class Counsel will file a motion for final approval of the proposed Settlement, the Plan of Allocation, and the request for attorneys' fees, expenses, and incentive award, which will contain additional information. These papers are currently due to be filed by September 25, 2018, and will be available at www.ZymarZymaxidSettlement.com.

25. How do I get more information?

If you have questions or want more information, you can visit the official settlement website at www.ZymarZymaxidSettlement.com; contact the Claims Administrator toll-free at 866-285-5811; or write to the claims administrator at:

Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd. Settlement
c/o GCG
PO Box 9349
Dublin, OH 43017-4249

DATED: May 3, 2018

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF
DELAWARE