

United States District Court for the District of New Jersey

If You Are a Third-Party Payor and Made Reimbursements for Vytorin® or Zetia®

You Could Get a Payment from a Class Action Settlement

*This Notice is being provided by Order of the U.S. District Court.
It is not a solicitation from a lawyer. You are not being sued.*

- A Settlement has been proposed in a Class Action lawsuit involving Vytorin® and Zetia®. The lawsuit, *In re Vytorin/Zetia Marketing, Sales Practices, and Products Liability Litigation*, Master Docket No. 08-0285(DMC), is pending in the U.S. District Court for the District of New Jersey.
- The lawsuit claims that Vytorin® and Zetia® were marketed as being more effective than other anti-cholesterol drugs and were sold at higher prices when they were no more effective than less expensive anti-cholesterol drugs. The Defendants deny any wrongdoing and are settling this lawsuit to avoid the costs and expenses of further litigation.
- The Settlement and related Agreements provide a total cash payment of \$41,500,000. Of this amount, \$14,525,000 has been set aside to pay the claims of Third-Party Payor Class Members who did not settle separately.

A Summary of Your Rights and Choices:

**Your Legal Rights Are Affected Even If You Do Not Act.
Read This Notice Carefully.**

You May:	Brief Explanation:	Due Date:
Do Nothing	You are automatically part of the Class Action if you fit the Class description below. However, if you do not file a claim postmarked no later than April 1, 2010, you will not receive any payment from the Settlement. See Question 10.	N/A
File a Claim	Submit a Claim Form This is the only way you will receive any payment from the Settlement. See Question 8.	Postmarked No Later Than April 1, 2010
Exclude Yourself	Get out of the Settlement You may exclude yourself from the Settlement and keep your right to sue at your own expense. You will not receive any payment from the Settlement. See Questions 12 and 13.	Postmarked No Later Than January 15, 2010
Object to the Settlement	Object to or comment on the Settlement If you do not exclude yourself, you may object to or comment on the Settlement at a hearing to determine whether the Court should approve the Settlement as fair to the Class. See Questions 14 and 15.	Filed/Served By January 15, 2010

**THESE RIGHTS AND OPTIONS
— AND THE DEADLINES TO EXERCISE THEM —
ARE EXPLAINED IN THIS NOTICE.**

1. What are Vytorin® and Zetia®?

Vytorin® and Zetia® are prescription medications used to treat high cholesterol. Attached as Table A is a list of the NDC Numbers for the different forms of Vytorin® and Zetia®.

2. What is this Notice about?

You received this Notice because you requested it or because records indicate that you are a Third-Party Payor (“TPP”) who provided pharmaceutical coverage for your insureds and may have paid for Vytorin® or Zetia® on or after November 1, 2002. You may be entitled to money as part of the Settlement proposed to resolve this Class Action. You are not being sued.

This Notice explains:

- What the Class Action and the Settlement are about.
- Who is affected by the Settlement.
- Who represents you and the Class in the Class Action.
- What your legal rights and choices are.
- How and by when you need to act.

3. Who are the Defendants?

The Defendants, the companies that the lawsuit is being brought against, are Merck & Co., Inc., Schering-Plough Corporation, Merck/Schering-Plough Pharmaceuticals, and certain other related entities.

4. What is the Class Action about?

The Class Action alleges that Defendants violated consumer protection and other laws in marketing Vytorin® and Zetia®. The Class Action alleges that this resulted in consumers and insurers paying too much for these prescription drug products.

Defendants deny any wrongdoing and liability. They agreed to the Settlement to resolve the controversy and to avoid the burden and expense of further litigation.

5. Who is a member of the Class?

As a TPP, you are a TPP Sub-Class Member if, for purposes other than resale, you paid some or all of the purchase price, or reimbursed an insured or health plan participant or beneficiary for some or all of the purchase price, for Vytorin® or Zetia® between November 1, 2002 and September 17, 2009.

A TPP is an entity that is:

- (a) A party to a contract, issuer of a policy, or sponsor of a plan; and
- (b) At risk, under such contract, policy, or plan, to pay or reimburse all or part of the cost of prescription drugs dispensed to covered natural persons. TPPs include insurance companies, union health and welfare benefit plans, and self-insured employers. Entities with self-funded plans that contract with a health insurance company or other entity to serve as a third-party claims administrator to administer their prescription drug benefits qualify as TPPs. Private plans that cover government employees and/or retirees are also included.

Excluded from the Class are:

- (a) Defendants and their affiliates, assignees, and successors-in-interest;
- (b) The United States and/or State governments and their agencies and departments;
- (c) Individuals and entities that own or operate Pharmacy Benefit Managers (“PBMs”) and third-party administrators (“TPAs”) and/or administrative service organizations (“ASOs”) to the extent that, as part of their business operations they contract with TPPs to perform administrative and/or management services in connection with a TPP’s purchase of prescription drugs;
- (d) Individuals and entities that opt out of the Settlement in accordance with the procedures approved by this Court; and
- (e) Certain health plans that separately settled with Defendants, called Independently Represented Health Plans (“IRHPs”). A list of such IRHPs is Exhibit B to the Settlement Agreement.

6. What does the proposed Settlement provide?

The Settlement and related Agreements provide that Defendants will pay \$41,500,000 into a Settlement Fund. The fund will be divided into three parts:

1. \$12,450,000 for consumers in the Class;
2. \$14,525,000 for TPPs in the Class; and

3. \$14,525,000 for the IRHPs who separately settled their claims.

The Settlement provides a release of all claims by members of the Class. This means that if you remain in the Class Action you cannot sue the Defendants in another lawsuit relating to the claims in this lawsuit. The full release language is found in the Claim Form at the end of this Notice package. Attorneys' fees, litigation costs and expenses, any incentive award to Class representatives, and cost of notice and administration will be paid from the Settlement Fund before distribution to Class Members.

Class Counsel conducted a thorough investigation of the law and facts in the Class Action. The Settlement is a result of arm's-length negotiations among the parties. Class Counsel compared the benefits of Settlement to the risks of going to trial and concluded that the Settlement is fair, reasonable, adequate, and in the best interests of the Class.

Complete details are found in the Settlement Agreement, which is available at www.VytorinZetiaSettlement.com. It is also on file with the Clerk of the Court, United States District Court for the District of New Jersey, Martin Luther King Federal Building, 50 Walnut Street, Newark, New Jersey 07102.

7. How do I know if I am included in the Settlement being proposed?

You are automatically included in the Settlement if, for purposes other than resale, you paid some or all of the purchase price, or reimbursed an insured or health plan participant or beneficiary for some or all of the purchase price, for Vytorin[®] or Zetia[®] between November 1, 2002 and September 17, 2009.

If you do not want to be included, you must exclude yourself. Details on how to exclude yourself are found in the answer to Question 13.

8. What do I need to do to get a payment?

To receive payment, you must submit a valid Claim Form, postmarked no later than **APRIL 1, 2010**, to the Claims Administrator at the following address:

**Vytorin/Zetia Settlement
c/o Rust Consulting, Inc.
P.O. Box 24785
West Palm Beach, FL 33416**

A Claim Form is included with this Notice. *The Claim Form provides complete instructions for submitting a valid claim.*

9. How are payments determined?

The Settlement Fund amount available for TPP Class Members is \$14,525,000 and is called the TPP Settlement Pool. A portion of the Court-approved deductions for attorneys' fees, litigation costs and expenses, and the cost of notice and administration will be deducted from this amount. The remaining amount will be paid to TPP Class Members based on the amount they paid for Vytorin[®] or Zetia[®] in proportion to what was paid by all TPPs who submit claims. The Settlement provides that there may be an adjustment of the TPP Settlement Pool and the portion of the Settlement Fund available for TPPs who settled separately from the Class (the "IRHP Settlement Pool"). The final TPP Settlement Pool and final IRHP Settlement Pool may be more or less than \$14,525,000, depending on the number and validity of the Claims submitted by TPPs. This adjustment procedure is intended to ensure that Class Member TPPs receive the same *pro rata* recovery as the IRHPs.

10. What happens if I do nothing?

If you do nothing, you will automatically be considered part of the Class and bound by the Settlement. But to receive any money from the Settlement you must submit a valid Claim Form, postmarked no later than **APRIL 1, 2010**, to the Claims Administrator. For details on how to exclude yourself ("opt out") from the Settlement, see Question 13.

11. If I remain in the Class, what claims am I settling?

If the Court approves the Settlement, the Class Action will be dismissed and you and all members of the Class may not sue the Defendants for the same claims. You and all members of the Class will release all claims concerning the conduct challenged in this lawsuit in exchange for participating in the Settlement. The full text of the release is included in the Claim Form at the end of this Notice.

12. What if I don't want to be in the Class?

If you decide to exclude yourself from the Settlement, you will be free to sue Defendants on your own for their conduct related to the marketing of Vytorin[®] and Zetia[®]. However, you will not receive any money from the Settlement, and you will no longer be represented by Class Counsel. If you want to receive money from the Settlement, do not exclude yourself.

13. How do I exclude myself from the Class?

You can exclude yourself from the Class by sending a written "Request to Opt Out" to the Claims Administrator so that it is postmarked no later than **JANUARY 15, 2010**. Your written request should include:

- Your name, address, telephone number, and the statement that you want to opt out of the Settlement;
- The case name and number: *In re Vytorin/Zetia Marketing, Sales Practices, and Products Liability Litigation*, Master Docket No. 08-0285(DMC). Requests to Opt Out must be sent to the following address:

Vytorin/Zetia Settlement
c/o Rust Consulting, Inc.
P.O. Box 24785
West Palm Beach, FL 33416

- A statement of the actual dollar amount that you paid to purchase or reimburse purchases of Vytorin[®] and Zetia[®] during the period November 1, 2002 to September 17, 2009; and
- Your total enrollment, stated in terms of covered lives in the United States.

14. May I object to the Settlement?

Yes. If you are a member of the Class and you have not requested to opt out of the Settlement, you may object to any aspect of the Settlement, including its fairness, reasonableness, or adequacy, or Class Counsel's requests for attorneys' fees and expenses.

15. How do I object to the Settlement?

To object to the Settlement, you (or your lawyer if you have one) must file a Notice of Intent to Object with the Clerk of the Court, United States District Court for the District of New Jersey, Martin Luther King Federal Building, 50 Walnut Street, Newark, New Jersey 07102. This must be filed by **JANUARY 15, 2010**. Your Notice of Intent to Object must contain the following information:

- The name, address and telephone number of the Class Member and, if applicable, the name, address and telephone number of the Class Member's attorney (who must file a Notice of Appearance);
- The objection, including any supporting papers;
- The name and address of any witnesses to be presented at the Fairness Hearing, together with a statement as to the matters on which they wish to testify and a summary of the proposed testimony; and
- The case name and number: *In re Vytorin/Zetia Marketing, Sales Practices, and Products Liability Litigation*, Master Docket No. 08-0285(DMC). Any documentation that you file with the Court must also be mailed on or before **JANUARY 15, 2010** to the following:

Class Counsel

James E. Cecchi
Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewart & Olstein
5 Becker Farm Road
Roseland, NJ 07068

TPP Sub-Class Counsel

Thomas M. Sobol
Hagens Berman Sobol Shapiro
55 Cambridge Parkway
Suite 301
Cambridge, MA 02142

Consumer Sub-Class Counsel

Adam J. Levitt
Wolf Haldenstein Adler Freeman
& Herz
55 West Monroe Street
Suite 1111
Chicago, IL 60603

Counsel for Defendants

Ezra D. Rosenberg
Dechert LLP
902 Carnegie Center
Suite 500
Princeton, NJ 08540

Stephen A. Weiss
Seeger Weiss
One William Street
New York, NY 10004

Stephen Neuwirth
Quinn Emanuel Urquhart Oliver
& Hedges
51 Madison Avenue
22nd Floor
New York, NY 10010

Theodore V.H. Mayer
Hughes, Hubbard & Reed
One Battery Park Plaza
New York, NY 10004

Objections filed with the Court *after January 15, 2010* will *not* be considered.

Any lawyer representing a Class Member for the purpose of making objections must also file a Notice of Appearance with the Clerk of the Court no later than **JANUARY 15, 2010**, and must also serve copies by mail to Counsel listed above.

16. What is the difference between objecting to the Settlement and excluding myself from the Class?

To object to the Settlement, you must remain a member of the Class. An objection allows your views on the Settlement to be heard in Court. You will be bound by the terms and conditions of the Settlement if the Settlement is approved, even if the Court rules against your objection.

When you exclude yourself, or opt out, you are no longer a member of the Class. You will not be subject to the terms and conditions of the Settlement, and you keep your right to sue the Defendants for the same claims in another lawsuit. However, you lose the right to object to the Settlement and you will not receive any payment from the Settlement.

17. Do I have a lawyer representing my interests in this Class Action?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. You will not be charged individually for these lawyers. They will ask the Court to approve an award for fees and expenses. The following law firms represent the Class:

Class Counsel

James E. Cecchi
Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewart & Olstein
5 Becker Farm Road
Roseland, NJ 07068

Stephen A. Weiss
Seeger Weiss
One William Street
New York, NY 10004

TPP Sub-Class Counsel

Thomas M. Sobol
Hagens Berman Sobol Shapiro
55 Cambridge Parkway
Suite 301
Cambridge, MA 02142

Consumer Sub-Class Counsel

Adam J. Levitt
Wolf Haldenstein Adler Freeman & Herz
55 West Monroe Street, Suite 1111
Chicago, IL 60603

Stephen Neuwirth
Quinn Emanuel Urquhart Oliver & Hedges
51 Madison Avenue, 22nd Floor
New York, NY 10010

18. How will the lawyers be compensated?

Class Counsel will request an award from the Court for attorneys' fees and expenses not to exceed one-third (*i.e.*, 33-1/3%) of the Settlement Fund. Class Counsel can make a further request for additional expenses incurred by the Claims Administrator as a result of administration of the Settlement. All awards for attorneys' fees and expenses shall be paid from the Settlement Fund after the Court approves them.

19. Should I get my own lawyer?

You do not need to hire your own attorney, but if you hire an attorney to speak for you or appear in Court, your lawyer must file a Notice of Appearance (*see* Question 15 above). If you hire your own lawyer, you will have to pay for that lawyer on your own.

20. When and where will the Court decide whether to grant final approval of the Settlement?

The Court will hold a hearing to consider the final approval of the Settlement, called a "Fairness Hearing," on **FEBRUARY 8, 2010**, at a time to be determined (consult the Settlement website, www.VytorinZetiaSettlement.com, or call the toll-free hotline, 800-760-4686, for updates), at the United States District Court for the District of New Jersey, Martin Luther King Federal Building, 50 Walnut Street, Newark, New Jersey 07102. The Court may reschedule the Fairness Hearing without further notice to the Class.

The purpose of the Fairness Hearing is to:

- Decide if the Settlement is fair, reasonable, and adequate and in the best interests of the Class, if it should be approved, and if a judgment should be entered;
- Decide if the Class has been fairly and adequately represented by the plaintiffs who brought the Class Action and by Class Counsel, who have represented the plaintiffs in the Class Action;
- Approve the plan of allocation of the Settlement Fund;
- Consider Class Counsel's requests for award of attorneys' fees and reimbursement of expenses;
- Consider any requests for incentive awards for the Class Action plaintiffs who represented the Class;
- Consider all comments or objections; and
- Consider any other issues the Court thinks are necessary.

21. Must I attend the Fairness Hearing?

No. Attendance is not required, even if you mailed a written objection. Class Counsel is prepared to answer questions on your behalf. Class Members who filed and served a written objection, however, may attend the Fairness Hearing, in person or through an attorney hired at their own expense.

22. Can I speak at the Fairness Hearing?

Yes, anyone can attend the Fairness Hearing and watch. If you want to appear at the Fairness Hearing and object, in person or through an attorney hired at your own expense, you need to file and serve a written Notice of Intent to Object with the Court no later than **JANUARY 15, 2010**. See Question 15.

23. Where do I get more information?

This Notice contains a summary of relevant Court papers. Complete copies of public pleadings, Court rulings and other filings are available for review and copying at the Clerk's office. The address is United States District Court for the District of New Jersey, Martin Luther King Federal Building, 50 Walnut Street, Newark, New Jersey 07102. Judge Dennis M. Cavanaugh of the United States District Court for the District of New Jersey is overseeing the Class Action. You can also review relevant Decisions and Orders on the Internet Settlement website specifically created to provide information about this Settlement, at www.VytorinZetiaSettlement.com.

Additional information about the Class Action is available by:

- Visiting the Vytorin/Zetia Settlement website at www.VytorinZetiaSettlement.com
- Calling the Claims Administrator, toll free: 1-800-760-4686
- Writing to:
Vytorin/Zetia Settlement
c/o Rust Consulting, Inc.
P.O. Box 24785
West Palm Beach, FL 33416
- Emailing: info@VytorinZetiaSettlement.com

Please do not contact the Court or the Judge.

DATED: September 17, 2009

BY ORDER OF THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LIST OF EZETIMIBE/SIMVASTATIN, VYOTRIN®, EZETIMIBE AND ZETIA® NDC NUMBERS

NDC Numbers	Tablet Description	Package Size
Ezetimibe / Simvastatin		
60312036300	Tablet 10mg-10mg	DRUM
60312036400	Tablet 10mg-20mg	DRUM
60312036500	Tablet 10mg-40mg	DRUM
60312036600	Tablet 10mg-80mg	DRUM
61258336901	Tablet 10mg-10mg	DRUM
61258337000	Tablet 10mg-20mg	DRUM
61258337100	Tablet 10mg-40mg	DRUM
67317337301	Tablet 10mg-10mg	DRUM
67317337401	Tablet 10mg-20mg	DRUM
67317337501	Tablet 10mg-40mg	DRUM
67317337601	Tablet 10mg-80mg	DRUM
Vytorin		
12280018130	Tablet 10mg-40mg	30
12280018190	Tablet 10mg-40mg	90
12280038530	Tablet 10mg-20mg	30
12280038590	Tablet 10mg-20mg	90
12280038630	Tablet 10mg-10mg	30
17856031102	Tablet 10mg-10mg	100
17856031202	Tablet 10mg-20mg	100
17856031302	Tablet 10mg-40mg	100
17856031502	Tablet 10mg-80mg	100
49999095730	Tablet 10mg-20mg	30
49999095830	Tablet 10mg-40mg	30
51129354201	Tablet 10mg-20mg	29
51129354202	Tablet 10mg-20mg	30
51129377001	Tablet 10mg-80mg	29
51129377002	Tablet 10mg-80mg	30
54569564800	Tablet 10mg-40mg	30
54569576600	Tablet 10mg-20mg	30
54569576800	Tablet 10mg-10mg	30
54868518700	Tablet 10mg-20mg	30
54868518701	Tablet 10mg-20mg	90
54868518702	Tablet 10mg-20mg	15
54868518900	Tablet 10mg-40mg	30
54868518901	Tablet 10mg-40mg	90
54868525000	Tablet 10mg-10mg	30
54868525900	Tablet 10mg-80mg	30
54868525901	Tablet 10mg-80mg	90
55289028030	Tablet 10mg-20mg	30
55289052030	Tablet 10mg-80mg	30
55289098021	Tablet 10mg-20mg	21
55887033330	Tablet 10mg-40mg	30
55887088230	Tablet 10mg-20mg	30
60312031131	Tablet 10mg-10mg	30
61258031101	Tablet 10mg-10mg	30
61258031201	Tablet 10mg-20mg	28

NDC Numbers	Tablet Description	Package Size
66582031101	Tablet 10mg-10mg	100
66582031128	Tablet 10mg-10mg	100
66582031131	Tablet 10mg-10mg	30
66582031154	Tablet 10mg-10mg	90
66582031182	Tablet 10mg-10mg	1000
66582031187	Tablet 10mg-10mg	10000
66582031201	Tablet 10mg-20mg	1
66582031227	Tablet 10mg-20mg	28
66582031228	Tablet 10mg-20mg	100
66582031230	Tablet 10mg-20mg	30
66582031231	Tablet 10mg-20mg	30
66582031254	Tablet 10mg-20mg	90
66582031282	Tablet 10mg-20mg	1000
66582031287	Tablet 10mg-20mg	10000
66582031301	Tablet 10mg-40mg	50
66582031327	Tablet 10mg-40mg	28
66582031331	Tablet 10mg-40mg	30
66582031352	Tablet 10mg-40mg	50
66582031354	Tablet 10mg-40mg	90
66582031374	Tablet 10mg-40mg	1000
66582031386	Tablet 10mg-40mg	5000
66582031501	Tablet 10mg-80mg	50
66582031531	Tablet 10mg-80mg	30
66582031552	Tablet 10mg-80mg	50
66582031554	Tablet 10mg-80mg	90
66582031566	Tablet 10mg-80mg	2500
66582031574	Tablet 10mg-80mg	500
67317031101	Tablet 10mg-10mg	100
67317031102	Tablet 10mg-10mg	30
67317031103	Tablet 10mg-10mg	90
67317031104	Tablet 10mg-10mg	100
67317031201	Tablet 10mg-20mg	100
67317031202	Tablet 10mg-20mg	30
67317031203	Tablet 10mg-20mg	90
67317031204	Tablet 10mg-20mg	28
67317031205	Tablet 10mg-20mg	30
67317031206	Tablet 10mg-20mg	1000
67317031301	Tablet 10mg-40mg	30
67317031302	Tablet 10mg-40mg	50
67317031303	Tablet 10mg-40mg	90
67317031304	Tablet 10mg-40mg	28
67317031305	Tablet 10mg-40mg	500
67317031306	Tablet 10mg-40mg	5000
67317031501	Tablet 10mg-80mg	30
67317031502	Tablet 10mg-80mg	50
67317031503	Tablet 10mg-80mg	90
67317031504	Tablet 10mg-80mg	500

NDC Numbers	Tablet Description	Package Size
67317031505	Tablet 10mg-80mg	2500
Ezetimibe		
23490764501	10mg Tablet	30
Zetia		
00006041415	10mg Tablet	7
00615654239	10mg Tablet	30
26053013801	10mg Tablet	1
49999048730	10mg Tablet	30
49999048790	10mg Tablet	90
49999078830	10mg Tablet	30
53922041401	10mg Tablet	30
53922041402	10mg Tablet	90
53922041403	10mg Tablet	500
53922041404	10mg Tablet	100
53922041405	10mg Tablet	7
53922041406	10mg Tablet	30
53922041409	10mg Tablet	1000
54569548900	10mg Tablet	30
54868471900	10mg Tablet	90
54868471901	10mg Tablet	30
55154503400	10mg Tablet	10
55289096615	10mg Tablet	15
55289096630	10mg Tablet	30
55887087830	10mg Tablet	30
58016057200	10mg Tablet	100
58016057230	10mg Tablet	30
58016057260	10mg Tablet	60
58016057290	10mg Tablet	90
58864088930	10mg Tablet	30
64176041401	10mg Tablet	30
64176041402	10mg Tablet	90
64176041403	10mg Tablet	500
66105097903	10mg Tablet	30
66582041415	10mg Tablet	7
66582041428	10mg Tablet	100
66582041429	10mg Tablet	1000
66582041430	10mg Tablet	30
66582041431	10mg Tablet	30
66582041454	10mg Tablet	90
66582041474	10mg Tablet	500
67544075715	10mg Tablet	15
67544075731	10mg Tablet	31
67544075760	10mg Tablet	90
68115082130	10mg Tablet	30
68258908401	10mg Tablet	100
66582-414-76	* Added April 2009	
TABLE A		