

**If You Purchased Endosurgical Products From  
Johnson & Johnson or Ethicon,  
You Could Get A Payment From A Proposed  
Class Action Settlement.**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

- There is a Proposed Settlement in a class action lawsuit about endosurgical products sold by Johnson & Johnson and Ethicon. The lawsuit is called *In re: Endosurgical Products Direct Purchaser Antitrust Litigation*. The lawsuit is pending in the United States District Court for the Central District of California.
- The Proposed Settlement will provide \$13 million to hospitals, distributors, and other entities that purchased endosurgical products. It also will result in changes to contracts for these products.
- To qualify, you must have purchased endosurgical trocars, clip applicators, specimen retrieval bags, endocutters, insufflation needles and tubing, surgical scissors, graspers, dissectors, surgical staplers, surgical procedure trays or kits containing these products, as well as related accessories, directly or indirectly from Johnson & Johnson, Johnson & Johnson Health Care Systems, Inc., Ethicon, Inc., or Ethicon Endo-Surgery, Inc. during the period from December 19, 2001 through October 20, 2008.
- Your legal rights are affected whether you act or don't act. Read this Notice carefully.

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS PROPOSED SETTLEMENT:</b> |  |  |
|---|--|--|
| <b>YOU MAY:</b>   |  | <b>DUE DATE:</b>                                 |
| <b>STAY IN THE CLASS</b>  |  |  |
| <b>SUBMIT A CLAIM FORM</b>  | The only way to get a payment.   | Postmarked or submitted online by April 20, 2009 |
| <b>OBJECT</b>   | Write to the Court about why you don't like the Proposed Settlement.   | Received by April 20, 2009                       |
| <b>GO TO A HEARING</b>  | Ask to speak to the Court about the fairness of the Proposed Settlement.   | Received by April 20, 2009                       |
| <b>DO NOTHING</b>   | Get no payment. Give up rights.  |  |
| <b>EXCLUDE YOURSELF</b>   | Get no payment. This is the only option that allows you to ever be part of any other lawsuit against the Defendants about the legal claims in this case. | Postmarked by April 20, 2009                     |

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Proposed Settlement. Payments will be made if the Court approves the Proposed Settlement and after appeals are resolved.

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## BASIC INFORMATION

### 1. Why did I get this notice package?

You or your company may have purchased endosurgical products during the period from December 19, 2001 through October 20, 2008.

The Court sent you this Notice because you have a right to know about a Proposed Settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the Proposed Settlement. If the Court approves it and after objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Proposed Settlement allows. You will be informed of the progress of the Proposed Settlement.

This package explains the lawsuit, the Proposed Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Central District of California, and the case is known as *In re: Endosurgical Products Direct Purchaser Antitrust Litigation*, Case No. 05-cv-8809-JVS-MLG. The people who sued are called the Plaintiffs, and the companies they sued are called the Defendants.

### 2. What is this lawsuit about?

The lawsuit claims that the Defendants violated antitrust laws by bundling endosurgical products with other products and by including anticompetitive provisions in their contracts with hospitals and group purchasing organizations. The lawsuit claimed that as a result, purchasers paid more for endosurgical products than they otherwise would have paid. The Defendants deny that they did anything wrong or that prices were too high.

### 3. Why is this a class action?

In a class action, one or more people called class representatives (in this case Niagara Falls Memorial Medical Center and Bamberg County Memorial Hospital and Nursing Center) sue on behalf of people who have similar claims. All these people are a class or class members. One court resolves the issues for all class members, except for those who exclude themselves from the class. U.S. District Judge James V. Selna is in charge of this class action.

### 4. Why is there a Proposed Settlement?

The Court did not decide in favor of the Plaintiffs or the Defendants. Instead, both sides agreed to a Proposed Settlement. That way, they avoid the cost of a trial, and the Class Members affected will get compensation. The Class Representatives and the attorneys think the Proposed Settlement is best for all Class Members.

## WHO IS IN THE PROPOSED SETTLEMENT?

To see if you will get money from this Proposed Settlement, you first have to decide if you are a Class Member.

### 5. How do I know if I am part of the Proposed Settlement?

Judge Selna decided that everyone who fits one of these two descriptions is a Class Member:

You are a member of the **Direct Purchaser Settlement Class** if you fit this description: *All persons and entities who made purchases of Defendants' Relevant Endosurgical Products in the United States directly from Defendants at any time during the Class Period.*

You are a member of the **Indirect Purchaser Settlement Class** if you fit this description: *All persons and entities who made purchases of Defendants' Relevant Endosurgical Products in the United States other than directly from Defendants at any time during the Class Period.*

The Defendants are Johnson & Johnson, Johnson & Johnson Health Care Systems, Inc., Ethicon, Inc., and Ethicon Endo-Surgery, Inc.

The Relevant Endosurgical Products are endosurgical trocars, clip appliers, specimen retrieval bags, endocutters, insufflation needles and tubing, surgical scissors, graspers, dissectors, surgical staplers, surgical procedure trays or kits containing these products, as well as related accessories. The Class Period is from December 19, 2001 through October 20, 2008.

It is possible to be a member of both Classes if you made both direct and indirect purchases.

## 6. Are there exceptions to being included?

The Defendants, their parents, subsidiaries, and affiliates, and the federal government are not Class Members.

## 7. I'm still not sure if I am included.

If you are still not sure whether you are included, you can ask for free help. You can call 1-866-722-3520 or visit [www.EndoSettlement.com](http://www.EndoSettlement.com) for more information.

## THE PROPOSED SETTLEMENT BENEFITS—WHAT YOU GET

### 8. What does the Proposed Settlement provide?

The Defendants have agreed to create a \$13 million Settlement Fund for Class Members who send in a valid Claim Form.

The Defendants have also agreed to comply with the following requirements with respect to bundled contracts with hospitals and group purchasing organizations that cover products of both Ethicon, Inc. and Ethicon Endo-Surgery, Inc. for a period of five years:

- Such contracts will include the existing “Carve-out” provision for all Non-full line suppliers. The Carve-out excludes purchases of certain products purchased from Defendants’ competitors from the determination of market share discount tiers.
- Such contracts will be terminable at will by customers on 30 days’ notice.
- Such contracts will not prohibit competitive evaluations.

In addition, the Defendants have agreed to pay the costs of notice and administration of this Proposed Settlement, up to \$500,000. This amount is in addition to the Settlement Fund.

### 9. How much will my payment be?

Your share of the Settlement Fund will depend on (a) the number of valid Claim Forms received, (b) the amount of your purchases of Relevant Endosurgical Products during the Class Period, (c) whether those purchases were direct or indirect, and (d) the state in which you made those purchases. The cash amount of the Settlement Fund will be divided among direct purchasers from all states and indirect purchasers from the twenty-six states listed below, in proportion to their total purchases of Relevant Endosurgical Products during the Class Period.

Indirect purchasers in the following twenty-six states may receive a payment: Alabama, Arizona, California, the District of Columbia, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin. If you made only indirect purchases in states not listed above, you will not receive a payment.

For example, a Class Member from Connecticut that made at least some direct purchases can receive a cash payment, but a Class Member from Connecticut that made only indirect purchases cannot receive a cash payment. However, a Class Member from California that made only indirect purchases can receive a cash payment and will be treated the same as a direct purchaser.

## HOW YOU GET A PAYMENT—SUBMITTING A CLAIM FORM

### 10. How can I get a payment?

To qualify for a payment, you must submit a Claim Form by mail or online. A Claim Form is attached to this Notice. You may also complete a Claim Form on the Internet at [www.EndoSettlement.com](http://www.EndoSettlement.com). Read the instructions carefully. If you mail the Claim Form, it must be postmarked by **April 20, 2009**. If you submit the Claim Form online, it must be submitted by **April 20, 2009**.

### 11. Do I need to pay someone to file my claim?

You can file your own Claim Form for free. If you need help, assistance is available from the Claims Administrator at no cost to you.

There are companies that may contact you when they learn about this Proposed Settlement and offer to help you file your Claim Form in exchange for a share of your payment or other compensation. You do not need to pay someone to file your claim for you.

If you do choose to have someone else file your Claim Form for you, then you must complete Part 4 of the Claim Form.

### **12. When would I get a payment?**

The Court will hold a hearing on May 11, 2009 (see Question 21), to decide whether to approve the Proposed Settlement. If Judge Selna approves the Proposed Settlement after that, there may be appeals. It's always uncertain how appeals will be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a valid Claim Form will be informed of the progress of the Proposed Settlement. Please be patient.

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

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against the Defendants about the legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you. The Settlement Agreement describes exactly the legal claims that you give up if you stay in the Class.

## **EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT**

If you don't want a payment from this Proposed Settlement, but you want to keep the right to sue or continue to sue the Defendants, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself—or sometimes referred to as opting out of the Class.

### **14. How do I get out of the Proposed Settlement?**

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

- A statement indicating you want to be excluded from the Class,
- The case name: *In re: Endosurgical Products Direct Purchaser Antitrust Litigation*, and
- Your name, address, telephone number, and your signature.

Your letter must be postmarked by **April 20, 2009** and sent to:

Endosurgical Settlement  
c/o Complete Claim Solutions, LLC  
P.O. Box 24678  
West Palm Beach, FL 33416

If you ask to be excluded, you will not get any payment from the Settlement Fund, and you cannot object to the Proposed Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the Defendants in the future.

### **15. If I don't exclude myself, can I sue the Defendants for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue the Defendants for the claims that this Proposed Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit.

### **16. If I exclude myself, can I get money from this Proposed Settlement?**

No. If you decide to exclude yourself, do not send in a Claim Form to ask for any money. But, you may sue, continue to sue, or be part of a different lawsuit against the Defendants.

## **THE LAWYERS REPRESENTING YOU**

### **17. Do I have a lawyer in this case?**

The Court asked the law firms of Hausfeld LLP and Cohen, Milstein, Sellers & Toll, P.L.L.C. to represent the Direct Purchaser Settlement Class, and the law firm of Ball and Scott to represent the Indirect Purchaser Settlement Class. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **18. How will the lawyers be paid?**

Class Counsel will ask the Court to approve payment of up to \$3.5 million for attorneys' fees, as well as reimbursement of reasonably incurred expenses. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the Proposed Settlement. The Court may award less than these amounts. Any fees and expenses will be paid out of the Settlement Fund.

Class Counsel will also ask the Court to award payment of \$10,000 each to Niagara Falls Memorial Medical Center and Bamberg County Memorial Hospital and Nursing Center for their services as Class Representatives. Any award will be paid out of the Settlement Fund.

## **OBJECTING TO THE PROPOSED SETTLEMENT**

You can tell the Court that you don't agree with the Proposed Settlement or some part of it.

### **19. How do I tell the Court that I don't like the Proposed Settlement?**

If you're a Class Member, you can object to the Proposed Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter that includes the following:

- A statement saying that you object to *In re: Endosurgical Products Direct Purchaser Antitrust Litigation*,
- Your name, address, telephone number, and your signature,
- Proof of your membership in the Class, such as invoices showing that you satisfy one of the class definitions in Question 5, and
- The reasons you object to the Proposed Settlement.

You must file the objection with the Court at the following address, **received by April 20, 2009**:

Clerk of Court  
United States District Court  
Central District of California  
411 West Fourth Street  
Santa Ana, CA 92701-4516

You must also mail copies of the objection to the following attorneys, **postmarked by April 20, 2009**:

|                      |                            |                     |                            |
|----------------------|----------------------------|---------------------|----------------------------|
| Michael D. Hausfeld  | Richard A. Koffman         | W. Gordon Ball      | Scott Martin               |
| Hausfeld LLP         | Cohen, Milstein, Sellers   | Ball and Scott      | Weil, Gotshal & Manges LLP |
| 1700 K Street, NW    | & Toll, P.L.L.C.           | 550 Main Avenue     | 767 Fifth Avenue           |
| Suite 650            | 1100 New York Avenue, N.W. | Suite 750           | New York, NY 10153         |
| Washington, DC 20006 | Suite 500, West Tower      | Knoxville, TN 37902 |                            |
|                      | Washington, DC 20005       |                     |                            |

### **20. What's the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the Proposed Settlement. You can object only if you stay in the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

## **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the Proposed Settlement. You may attend and you may ask to speak, but you don't have to.

### **21. 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 May 11, 2009, at the United States District Court for the Central District of California, 411 West Fourth Street, Santa Ana, California 92701. At this hearing the Court will consider whether the Proposed Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Selna will listen to people who have asked to speak at the hearing (see Question 23). The Court will also hear the attorneys' motion for fees and expenses. At the hearing, the Court will decide whether to approve the Proposed Settlement.

**22. Do I have to come to the hearing?**

No. Class Counsel will answer questions Judge Selna may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

**23. May I speak at the hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter stating the following:

- "Notice of Intention to Appear in *In re: Endosurgical Products Direct Purchaser Antitrust Litigation*",
- The position you will take on the Proposed Settlement,
- Your name, address, telephone number, and your signature, and
- Proof of your membership in the Class, such as invoices showing that you satisfy one of the class definitions in Question 5.

Your Notice of Intention to Appear must be filed with the Court at the following address, **received by April 20, 2009**:

Clerk of Court  
United States District Court  
Central District of California  
411 West Fourth Street  
Santa Ana, CA 92701-4516

You must also mail copies of the Notice of Intention to Appear to the following attorneys, **postmarked by April 20, 2009**:

|   |   |   |  |
|---|---|---|--|
| Michael D. Hausfeld<br>Hausfeld LLP<br>1700 K Street, NW<br>Suite 650<br>Washington, DC 20006 | Richard A. Koffman<br>Cohen, Milstein, Sellers<br>& Toll, P.L.L.C.<br>1100 New York Avenue, N.W.<br>Suite 500, West Tower<br>Washington, DC 20005 | W. Gordon Ball<br>Ball and Scott<br>550 Main Avenue<br>Suite 750<br>Knoxville, TN 37902 | Scott Martin<br>Weil, Gotshal & Manges LLP<br>767 Fifth Avenue<br>New York, NY 10153 |
|---|---|---|--|

As a reminder, you cannot speak at the hearing if you excluded yourself.

**IF YOU DO NOTHING**

**24. What happens if I do nothing at all?**

If you do nothing, you'll get no money from the Proposed Settlement. You won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants about the legal issues in this case, ever again.

**GETTING MORE INFORMATION**

**25. Are there more details about the Proposed Settlement?**

This Notice summarizes the Proposed Settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by visiting [www.EndoSettlement.com](http://www.EndoSettlement.com), calling 1-866-722-3520 or by writing to the address below.

**26. How do I get more information?**

You can call 1-866-722-3520; write to the address below; or visit the website at [www.EndoSettlement.com](http://www.EndoSettlement.com), where you will find answers to common questions about the Proposed Settlement, a Claim Form, plus other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

DATED: December 31, 2008

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA