

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**IN RE HEMISPHERX  
BIOPHARMA, INC. LITIGATION**

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**CIVIL ACTION NO. 09-CV-5262-PSD**

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT, SETTLEMENT FAIRNESS HEARING,  
AND MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

**If you purchased or otherwise acquired Hemispherx Biopharma, Inc. ("Hemispherx") common stock from February 18, 2009 through and including December 1, 2009, then you could receive a payment from the proposed Settlement of a securities class action lawsuit pending in this Court.**

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

Please be advised that the Court-appointed Lead Plaintiff, the Hemispherx Investor Group ("Lead Plaintiff"), has reached a Settlement of this Action that will resolve all claims of Lead Plaintiff and the Settlement Class (as defined below) against all defendants (the "Settlement"), as described below. This Notice explains important rights you may have, including your possible receipt of a cash distribution from the Settlement. Your legal rights are affected whether or not you act. Also enclosed is a Proof of Claim and Release Form ("Proof of Claim Form") that you must complete and submit postmarked no later than February 19, 2011 to participate in the Settlement.

**Please read this Notice carefully.**

**Settlement Fund and Lead Plaintiff's Statement of Recovery:** The Settlement will provide a settlement fund of \$3.6 million in cash, plus interest (the "Settlement Fund"), to settle claims of investors who suffered damages from buying or otherwise acquiring Hemispherx common stock from February 18, 2009 through and including December 1, 2009. The Settlement represents an estimated average recovery of \$0.027 per share. This recovery per share figure is an estimate and is before deduction of administrative expenses, including the cost of notice, attorneys' fees and out-of-pocket expenses, and reimbursement of costs and expenses to Lead Plaintiff for representation of the Settlement Class. Your actual recovery, if any, may vary depending on your purchase price and sales price, the dates of your purchase and/or sale and the number of shareholders that file Proof of Claim Form. See Question 8 below for a more detailed explanation.

**Reasons for the Settlement:** The Settlement resolves a lawsuit concerning allegations that certain investors purchased or otherwise acquired Hemispherx common stock at artificially inflated prices as a result of the Defendants' allegedly materially false and misleading statements. Lead Plaintiff alleged that, as a result of these alleged misrepresentations, the value of Hemispherx common stock was artificially inflated. By entering into the Settlement, Defendants have not admitted the allegations in the lawsuit and Lead Plaintiff has not admitted that any of its claims are without merit. The parties disagree on the liability and damage issues. Co-Lead Counsel for Lead Plaintiff believe this Settlement is in the best interests of the Settlement Class considering the risks posed by further litigation. See Question 4 below for further explanation.

**Statement of Attorneys' Fees and Expenses Sought:** Co-Lead Counsel intend to ask the Court to award them attorneys' fees not to exceed twenty nine (29%) percent of the Settlement Fund, plus reimbursement of out-of-pocket expenses incurred in the prosecution of the action not to exceed \$36,000. If the Court awards 29% of the Settlement Fund as attorneys' fees, together with reimbursement of out-of-pocket expenses, the impact will affect the per damaged share recovery by an estimated amount of \$0.008 per share. Co-Lead Counsel have expended considerable time and effort in the prosecution of this litigation on a contingent fee basis, and have advanced the expenses of the litigation in the expectation that if they were successful in obtaining a recovery for the Settlement Class they would be paid from such recovery. In this type of litigation, it is customary for plaintiffs' counsel to be awarded a percentage of the Settlement Fund as their attorneys' fees. Please note that this amount is only an estimate.

**Deadlines:** The following is a list of deadlines by which you must take any action you wish to take with respect to the Settlement:

- Submit Claim: February 19, 2011
- Request Exclusion: December 29, 2010
- File Objection: January 6, 2011
- Court Hearing on Fairness of Settlement: January 20, 2011

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<b>SUBMIT A CLAIM FORM</b>	The only way to receive a payment.
<b>EXCLUDE YOURSELF</b>	Receive no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendants about the legal claims in this case.
<b>OBJECT BUT REMAIN IN THE SETTLEMENT</b>	Write to the Court about why you don't like the Settlement, the Plan of Allocation or Co-Lead Counsel's request for attorneys' fees and reimbursement of expenses.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement. A hearing will be held on January 20, 2011 and is open to the public. To speak to the Court, you need to give advance written notice to the Court and the parties.
<b>DO NOTHING</b>	Receive no payment from the Settlement Fund. Give up your rights with regard to the claims in this lawsuit.

### LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

- 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 Settlement. Payments will be made if the Court approves the Settlement and after appeals are resolved and claims are processed. Please be patient.

#### **More Information:**

You can obtain additional information about the Action and this Notice by contacting the Claims Administrator: Heffler, Radetich & Saitta LLP, P.O. Box 58578, Philadelphia, PA 19102-8578, or by contacting Lead Plaintiff's Co-Lead Counsel: Sherrie R. Savett, Esquire, Berger & Montague, P.C., 1622 Locust Street, Phila., PA, 19103-6365, Telephone: 800-424-6690; or David A.P. Brower, Esquire, Brower Piven, 488 Madison Ave., Eighth Floor, New York, NY 10022, Telephone: 212-501-9000.

### WHAT THIS NOTICE CONTAINS

	PAGE
<b>BASIC INFORMATION</b> .....	<b>3</b>
1. Why did you get this Notice package? .....	3
2. What is this lawsuit about? .....	3
3. Why is this a class action? .....	3
4. Why is there a Settlement? .....	3
<b>WHO IS IN THE SETTLEMENT</b> .....	<b>4</b>
5. How do I know if I am part of the Settlement? .....	4
6. Are there exceptions to being included in the Settlement Class? .....	4
7. I'm still not sure if I am included. ....	4
<b>THE SETTLEMENT BENEFITS — WHAT YOU GET</b> .....	<b>4</b>
8. a. What does the Settlement provide? .....	4
b. How much will my payment be? .....	4
<b>HOW YOU GET A PAYMENT — SUBMITTING A CLAIM FORM</b> .....	<b>5</b>
9. How can I get a payment? .....	5
10. When would I receive my payment? .....	5
11. What am I giving up to get a payment or stay in the Settlement Class? .....	5
<b>EXCLUDING YOURSELF FROM THE SETTLEMENT</b> .....	<b>6</b>
12. How do I exclude myself from the Settlement? .....	6
13. If I do not exclude myself, can I sue Defendants for the same thing later? .....	6
14. If I exclude myself, can I receive money from this Settlement? .....	6

QUESTIONS? CALL 1-800-528-7199 TOLL FREE, OR VISIT [WWW.HEB.HRSCLAIMS.COM](http://WWW.HEB.HRSCLAIMS.COM)

<b>THE LAWYERS REPRESENTING YOU</b> .....	<b>7</b>
15. Do I have a lawyer in this case? .....	7
16. How will the lawyers be paid? .....	7
17. How do I tell the Court that I do not like the Settlement? .....	7
18. What is the difference between objecting and requesting exclusion? .....	7
<b>THE COURT'S FAIRNESS HEARING</b> .....	<b>7</b>
19. When and where will the Court decide whether to approve the Settlement? .....	7
20. Do I have to come to the hearing? .....	8
21. May I speak at the hearing? .....	8
<b>IF YOU DO NOTHING</b> .....	<b>8</b>
22. What happens if I do nothing at all? .....	8
<b>UNDERSTANDING YOUR PAYMENT — THE PLAN OF ALLOCATION.</b> .....	<b>8</b>
<b>GETTING MORE INFORMATION.</b> .....	<b>10</b>
23. How do I obtain more information about the Settlement? .....	10
<b>SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES.</b> .....	<b>10</b>
<b>INQUIRIES</b> .....	<b>10</b>

**BASIC INFORMATION**

**1. Why did you get this Notice package?**

You or someone in your family may have purchased the common stock of Hemispherx Biopharma, Inc. during the period February 18, 2009 through and including December 1, 2009.

The Court ordered that you be sent this notice because you have a right to know about the proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement (and there are no objections or appeals), the Claims Administrator appointed by the Court will make the payments that the Settlement allows. You may track the progress of the settlement by visiting: [www.heb.hrsclaims.com](http://www.heb.hrsclaims.com).

**This package explains the lawsuit, the Settlement, your legal rights, the benefits that are available, who is eligible for them, and how to obtain them.**

The Court in charge of the case is the United States District Court for the Eastern District of Pennsylvania and the case is known as *In re Hemispherx Biopharma, Inc. Litigation*, No. 09-CV-05262-PSD. Lead Plaintiff has brought this Action against the following Defendants: Hemispherx Biopharma, Inc., William A. Carter, M.D., and David R. Strayer, M.D.

**2. What is this lawsuit about?**

The lawsuit claims that Defendants misled investors by issuing press releases and other statements that contained false and misleading information about the timing and status of FDA approval of Hemispherx's drug Ampligen®. The lawsuit claims that, as a result of these alleged false and misleading statements, the value of Hemispherx's common stock was inflated, and that investors who purchased Hemispherx common stock at these inflated prices were damaged. All Defendants deny they did anything wrong.

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

In a class action, one or more persons and/or entities called Class Representatives sue on behalf of all persons and/or entities who have similar claims. All of these persons and/or entities are referred to as a Class, or individually, as Class Members. One court resolves all of the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

**4. Why is there a Settlement?**

The Settlement allows both sides to avoid the risks and costs of lengthy and uncertain litigation and the uncertainty of a trial and appeals, and permits Class Members to be compensated without further delay.

Co-Lead Counsel have agreed to settle the lawsuit based on the facts they have discovered during the litigation, the risks that will be involved in a trial, and their conclusions that the proposed Settlement is fair, reasonable and

adequate, and serves the best interests of the Settlement Class Members. Lead Plaintiff has determined that by settling, it avoids the cost and risks of a trial, while at the same time providing substantial compensation to the Settlement Class. Lead Plaintiff and Plaintiffs' Co-Lead Counsel believe that the Settlement is best for all Settlement Class Members.

Lead Plaintiff and Defendants do not agree regarding the merits of Lead Plaintiff's allegations with respect to liability or the amount of damages that would be recoverable if Lead Plaintiff were to prevail on each claim asserted. The issues on which the parties disagree include: (1) whether Defendants made any false and misleading statements; (2) whether the statements were material or otherwise actionable under the federal securities laws; (3) whether Defendants made the statements with the requisite intent; and (4) whether Lead Plaintiff and the Settlement Class suffered damages.

### **WHO IS IN THE SETTLEMENT**

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

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

The Settlement Class includes all persons and entities who purchased or otherwise acquired Hemispherx common stock during the period February 18, 2009 through and including December 1, 2009 and were damaged thereby.

#### **6. Are there exceptions to being included in the Settlement Class?**

Yes. Excluded from the Settlement Class are Hemispherx and the Individual Defendants, any entity in which any of the foregoing have or had a controlling interest, the legal representatives, heirs, successors, or assigns of any of them, and all officers and directors of Hemispherx. Also excluded from the Settlement Class are those persons who timely and validly request exclusion from the Settlement Class.

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

If you still are not sure whether you are included in the Settlement Class, you can ask for free help by calling the Claims Administrator at 1-800-528-7199 or visiting [www.heb.hrsclaims.com](http://www.heb.hrsclaims.com) for more information. Or you can fill out and return the Proof of Claim form described in Question 9 to see if you qualify.

### **THE SETTLEMENT BENEFITS – WHAT YOU GET**

#### **8. a. What does the Settlement provide?**

Defendants have agreed to pay or cause to be paid \$3,600,000 in cash in settlement of this case. The Net Settlement Fund shall be distributed to members of the Settlement Class who timely send in Proof of Claim Forms deemed valid by the Claims Administrator ("Authorized Claimants"), after payment of Court-approved legal fees and expenses and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing newspaper notices.

#### **b. How much will my payment be?**

Your share of the Net Settlement Fund will be determined in accordance with the proposed Plan of Allocation set forth below and will depend on the total number of shares represented by all valid Proof of Claim Forms that members of the Settlement Class submit, how many shares of Hemispherx common stock you purchased and/or acquired, when you purchased and/or acquired those shares, and if and when you sold those shares.

**The Basis for the Calculation of Your Recognized Claim and the Proposed Plan of Allocation Can Be Found on Pages 8-10.**

The proposed Plan of Allocation reflects the proposition that the price of Hemispherx common stock was artificially inflated by reason of the allegedly false and misleading statements from the beginning of the Class Period on February 18, 2009 through the end of the Class Period on December 1, 2009. The Plan of Allocation provides that you will be eligible to participate in the pro rata distribution of the Net Settlement Fund only if you purchased or otherwise acquired shares of Hemispherx common stock during the Class Period and held those shares through the end of the Class Period ("Eligible Shares").

The Claims Administrator will determine each Authorized Claimant's pro rata share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Claim." A Recognized Claim is not intended to be an estimate of what you might have been able to recover after a trial; nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Claim formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants.

Because the amount of your recovery will depend on the total number of Eligible Shares held by all members of the Settlement Class who submit valid claims, we cannot tell you what your recovery will be until the claims administration process has been completed.

The Plan of Allocation is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Plan of Allocation may be modified in connection with, among other things, a ruling by the Court, or an objection filed by a Settlement Class Member, without further notice to the Settlement Class.

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

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

To qualify for payment, you must send in a Proof of Claim Form. A claim form is attached to this Notice. You may also obtain a claim form on the Internet at [www.heb.hrsclaims.com](http://www.heb.hrsclaims.com). Please read the instructions carefully, fill out the form, sign it in the two locations indicated, include all the documents the form asks for, and mail the claim form and documentation postmarked no later than February 19, 2011 to:

Claims Administrator  
*In re Hemispherx Biopharma, Inc. Litigation*  
P.O Box 58578  
Philadelphia, PA 19102-8578  
Telephone: 1-800-528-7199

The Claims Administrator will process your claim and advise you if you are an “Authorized Claimant” — meaning that your claim satisfies the requirements approved by the Court.

### 10. When would I receive my payment?

The Court will hold a hearing on January 20, 2011, to decide whether to approve the Settlement. If the Court approves the Settlement, one or more Settlement Class Members could file an appeal. If there is an appeal, it is always uncertain when or if such appeals will be resolved favorably for the Settlement. Resolving them can take time, perhaps more than a year. It also takes time for all the claim forms to be processed. If there are no appeals, and depending on the number of claims submitted, the Claims Administrator could distribute the Net Settlement Fund as early as one year after the Settlement Hearing. You may track the progress of the Settlement by visiting [www.heb.hrsclaims.com](http://www.heb.hrsclaims.com). Please be patient.

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

Unless you exclude yourself, you are staying in the Settlement Class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants about the transactions at issue and the claims that were or could have been raised in the Action. To receive the payment under the Settlement, if the Settlement is approved, you must release all “Released Claims,” including “Unknown Claims,” against the “Released Persons.” “Released Claims” means any and all manner of actions, causes of actions, suits, obligations, claims, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees whatsoever, whether in law or in equity and whether based on any federal law, state law, common law or foreign law, local law, statutory law or any other law, rule or regulation, right of action or of any other type or form, foreseen or unforeseen, actual or potential, matured or unmatured, known or unknown, accrued or not accrued, liquidated or unliquidated, fixed or contingent, whether class or individual in nature, which Lead Plaintiff and each Settlement Class Member, or any of them, ever had, now have, or can have, or shall or may hereafter have, either individually, or as a member of a Class, against any and all Released Persons for, based on, by reason of, or arising from or relating to the conduct alleged in the Action, including but not limited to: (i) claims that could have been asserted in any forum that directly or indirectly arise out of any of the facts, transactions, events, occurrences, acts or omissions mentioned or referred to in the Consolidated Complaint or other matters that are or could have been set forth, alleged, embraced or otherwise referred to in the Consolidated Complaint or that could have been brought against Defendants relating to a Settlement Class Member’s purchase or other acquisition of Hemispherx common stock during the Class Period, including all matters encompassed within the releases and covenants not to sue set forth in the Stipulation, and (ii) claims arising out of the prosecution or defense of the Action, or either of them, including, but not limited to, claims for fraud in the inducement, negligent misrepresentation, or fraud; except that nothing in the Stipulation releases any claim arising out of the violation or breach of the terms of such Stipulation.

“Released Persons” means any and all of the Defendants, and with respect to each of the Defendants, their past and present directors, officers, employees, partners, principals, agents, underwriters, issuers, insurers, coinsurers, reinsurers, shareholders, attorneys, accountants, auditors, banks or investment bankers, advisors,

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divisions, segments, consultants, assigns, personal and legal representatives, predecessors, successors, indemnitors, indemnitees, parents, subsidiaries, joint ventures, spouses, heirs, estates, related or affiliated entities, any entity in which any of them has a controlling interest, any members of any Individual Defendant's immediate family, any trust of which any Defendant is the settlor or that is for the benefit of any individual Defendant and/or member(s) of any individual Defendant's families, and anyone claiming by, through or under any of the foregoing, whether by statute, rule, contract or otherwise.

**"Unknown Claims"** means any and all Released Claims that Lead Plaintiff or any Settlement Class Member do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons, and any Settled Defendants' Claims which Defendants do not know or suspect to exist in their favor, which if known, might have affected their decision(s) with respect to the Settlement. With respect to any and all Released Claims, the parties stipulate and agree that upon the Effective Date, Lead Plaintiff and Defendants shall expressly, and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code Section 1542, which provides:

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.

Lead Plaintiff and the Settlement Class Members may hereafter discover facts in addition to or different from those which he, she, or it knows or believes to be true with respect to the subject matter of the Released Claims, but Lead Plaintiff shall expressly and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Released Persons and Lead Plaintiff acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement of which the release is a part.

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

#### **12. How do I exclude myself from the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from *In Re Hemispherx Biopharma, Inc. Litigation*, No. 09-CV-05262-PSD. Be sure to include your name, address, telephone number, and your signature. You must also include information concerning your purchase(s), acquisition(s) and sale(s) of Hemispherx common stock during the Class Period, including the number of shares and the dates of each purchase, acquisition, and sale. You must mail your exclusion request so that it is **postmarked** no later than December 29, 2010 to:

Claims Administrator  
In re Hemispherx Biopharma, Inc. Litigation Exclusions  
P.O. Box 58578  
Philadelphia, PA 19102-8578  
Telephone: 1-800-528-7199

You cannot exclude yourself on the phone or by e-mail. If you do not send your request for exclusion on time, you will be legally bound by all the proceedings in this lawsuit, including all court orders and judgments in the lawsuit, even if you have a lawsuit pending against the Released Persons that covers Released Claims, or if you subsequently start a lawsuit or an arbitration or any other proceeding against any of the Released Persons that are covered by the Released Claims.

#### **13. If I do not exclude myself, can I sue Defendants for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims that this 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. Remember, the exclusion deadline is December 29, 2010.

#### **14. If I exclude myself, can I receive money from this Settlement?**

No. If you exclude yourself, do not send in a Proof of Claim Form to ask for any money. Once you exclude yourself, you will receive no cash payment even if you also submit a claim form, unless you withdraw your notice of exclusion before the deadline.

QUESTIONS? CALL 1-800-528-7199 TOLL FREE, OR VISIT [WWW.HEB.HRSCLAIMS.COM](http://WWW.HEB.HRSCLAIMS.COM)

## THE LAWYERS REPRESENTING YOU

### 15. Do I have a lawyer in this case?

The Court approved Lead Plaintiff's selection of Berger & Montague, P.C. and Brower Piven, P.C. to serve as Co-Lead Counsel for Lead Plaintiff and the other Settlement Class Members, including you. You will not be charged for these lawyers' work. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 16. How will the lawyers be paid?

Co-Lead Counsel have expended considerable time and effort in the prosecution of this litigation on a contingent fee basis, and have advanced the expenses of the litigation, in the expectation that if they were successful in obtaining a recovery for the Settlement Class, they would be paid from such recovery. In this type of litigation, it is customary for counsel to be awarded a percentage of a settlement fund as their attorneys' fees and reimbursement of their out-of-pocket expenses. Defendants have agreed not to oppose these fees and expenses. Co-Lead Counsel will ask the Court for attorneys' fees of not more than twenty nine percent (29%) of the Settlement Fund, plus out-of-pocket expenses incurred in the prosecution of the action in an amount not to exceed \$36,000. The Court may award less than these amounts.

### 17. How do I tell the Court that I do not like the Settlement?

If you are a member of the Settlement Class (and you have not excluded yourself), you can object to the proposed Settlement if you do not like any part of it or the request for attorneys' fees and reimbursement of expenses. You may state why you think the Court should not approve the Settlement. The Court will consider your views. To object, you must send a written objection stating that you object to the Settlement in *In re Hemispherx Biopharma, Inc. Litigation*, No. 09-CV-05262-PSD. Be sure to include your name, address, telephone number, and your original signature (no copies). You must also include proof of the number of shares you purchased and sold during the Class Period, including the number of shares and dates of each purchase, acquisition, and sale, and the reasons you object to the Settlement or any part of it. Your objection must be filed with the Clerk of Court at the address set forth below and received by Co-Lead Counsel and Defendants' Counsel **no later than January 6, 2011**.

COURT	CO-LEAD COUNSEL	DEFENDANTS' COUNSEL
Clerk of the Court United States District Court Eastern District of Pennsylvania 601 Market Street, Room 2609 Philadelphia, PA 19106	Sherrie R. Savett, Berger & Montague, P.C. 1622 Locust Street Philadelphia, PA 19103 Telephone: 800-424-6690 or David A.P. Brower Brower Piven A Professional Corporation 488 Madison Ave. Eighth Floor New York, NY 10022 Telephone: 212-501-9000	Robert L. Hickok Pepper Hamilton LLP 3000 Two Logan Square Eighteenth & Arch Streets Philadelphia, PA 19103 Telephone: 215-981-4000

You may object either on your own or through an attorney that you hire at your own expense. If you do hire an attorney to represent you, your attorney must file a notice of appearance with the Clerk of the Court and deliver a copy of that notice to Co-Lead Counsel and Defendants' counsel **no later than January 6, 2011**.

### 18. What is the difference between objecting and requesting exclusion?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer applies to you.

### THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak.

### 19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at 10:00 a.m. on January 20, 2011, at the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Courtroom 6B, Philadelphia, PA 19106. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the

Court will consider them. Judge Diamond will listen to Settlement Class Members (or their counsel) who have submitted written objections and written indication(s) of their intention to speak at the hearing, as long as they are filed with the Court and served on Co-Lead Counsel and Defendants' Counsel and are **postmarked no later than January 6, 2011**. The Court may also decide whether to approve the payment of fees, costs and expenses to Co-Lead Counsel. We do not know how long the hearing will take or whether the Court will make its decision about the Settlement on that day or sometime later.

## **20. Do I have to come to the hearing?**

No. Co-Lead Counsel will answer questions the Court may have about the Settlement. If you would like to attend the hearing, you are welcome to do so, at your own expense. If you send an objection, you do not have to come to Court to talk about it. The Court will consider your written objection, as long as you mailed your objection in on time (*see* response to Question 17). You may also pay your own lawyer to attend, but it is not necessary.

## **21. May I speak at the hearing?**

If you object to the Settlement, you may ask the Court for permission to speak at the hearing. To do so, you must include with your objection (*see* response to Question 17) a statement saying that it is your "Notice of Intention to Appear in *In re Hemispherx Biopharma, Inc. Litigation*, No. 09-CV-05262-PSD. Persons who intend to object to any part of the Settlement and wish to present evidence at the hearing must also include in their written objection the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

***You cannot speak at the hearing if you exclude yourself.***

### **IF YOU DO NOTHING**

## **22. What happens if I do nothing at all?**

If you do nothing, you will not receive any payments from this Settlement. *However*, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Released Persons about the Released Claims in this case ever again.

### **UNDERSTANDING YOUR PAYMENT — THE PLAN OF ALLOCATION**

**(You do not need to make any of these calculations yourself.**

**The Claims Administrator will make all of these calculations for you.)**

The Net Settlement Fund will be allocated among the Authorized Claimants in accordance with this "Plan of Allocation." This Plan of Allocation is based upon Co-Lead Counsel's assessment of the merits and the relative strengths and weaknesses, including recoverable damages, of the claims of the members of the Settlement Class. In developing this Plan of Allocation, Co-Lead Counsel have considered that:

(a) The Class Period includes a period of volatility in both the market in general and the price of Hemispherx stock in particular, which was a low price stock that traded at or below \$4.54 throughout the Class Period and frequently traded below \$1.00.

(b) Under certain Supreme Court and other precedents, persons who purchased Hemispherx stock may only recover for losses proximately caused by defendants' prior misleading statements and may not recover for any price declines caused by general market factors. Similarly, persons who both purchased and sold Hemispherx stock prior to a corrective disclosure or between corrective disclosures may have a more difficult burden in proving recoverable damages.

1. An Authorized Claimant's recognized loss ("Recognized Claim") is determined by the date(s) the Authorized Claimant purchased or sold any shares of Hemispherx stock during the February 18, 2009 through December 1, 2009 Class Period, as set forth below.

**(a) Shares of Hemispherx Stock Purchased Between February 18, 2009 and November 1, 2009, Inclusive:**

(i) For shares sold either at a profit or at a loss prior to November 2, 2009 (that is before any alleged corrective disclosure), the Recognized Loss is zero;

(ii) For shares sold at a loss during the period from November 2, 2009 through December 1, 2009, inclusive, the Recognized Loss per share is the smaller of either: (1) \$0.12, or (2) the purchase price less the sales price, provided that if the purchase price is below the \$1.33 closing price on November 2, 2009, then the Recognized Loss is zero; and

(iii) For shares retained after the close of trading on December 1, 2009, the Recognized Loss per share is the smaller of either: (1) \$0.61, or (2) the purchase price less \$0.71, the closing price on December 2, 2009, provided that if the purchase price is below the \$0.71, then the Recognized Loss is zero.

**(b) Shares of Hemispherx Stock Purchased Between November 2, 2009 and December 1, 2009, Inclusive:**

(i) For shares sold either at a profit or at a loss during the same period from November 2, 2009 through December 1, 2009, inclusive, the Recognized Loss is zero;

(ii) For shares retained after the close of trading on December 1, 2009, the Recognized Loss per share is the smaller of either: (1) \$0.49, or (2) the purchase price less \$0.71, the closing price on December 2, 2009, provided that if the purchase price is below the \$0.71, then the Recognized Loss is zero.

For purposes of determining which shares of Hemispherx stock purchased during the Class Period either were sold at any time during the Class Period or were retained past November 2, 2009 or December 1, 2009, purchases and sales of Hemispherx stock will be matched, on a “first-in, first-out” (“FIFO”) basis, by matching the first shares sold against any closing position of shares held as of February 17, 2009 (prior to the start of the Class Period) and then on a FIFO basis against any additional shares of Hemispherx stock purchased during the Class Period on the basis of the assumption that the first share purchased was the first share sold.

The date of purchase or sale is the “contract” or “trade” date as distinguished from the “settlement date.”

The terms “purchase price” and “sales price,” as used herein, is the price per share excluding commissions and transaction fees.

The restrictions on computing Recognized Losses set out in the 4 bullet points below apply to all claims. As a practical matter, however, they apply primarily to certain transactions engaged in by sophisticated traders or certain corporate or institutional Claimants:

- “Short” sales will not be recognized for any amount of loss on the cover or purchase transaction, and no Recognized Loss will be computed for any such covering purchase transaction.
- No Recognized Loss will be computed for any transactions in shares of Hemispherx stock engaged in by market makers or specialists.
- No Recognized Loss will be computed for any option premium paid or received, where the shares of Hemispherx stock were purchased or sold by reason of having exercised or been assigned an option.
- The purchase price of any “restricted” shares of Hemispherx stock will be discounted by 20% in computing the Recognized Losses as described above.

An Authorized Claimant’s “Payable Claim” is determined by dividing the Net Settlement Fund by the total Recognized Loss sustained by all Authorized Claimants. The resulting fraction, or payout percentage, is then multiplied by each Authorized Claimant’s Recognized Loss to determine the amount of each Claimant’s Payable Claim, subject to the further limitations below.

In the interest of economy, no payment will be made to any Authorized Claimant whose Payable Claim would be less than \$10.00 based on the initial allocation of the Net Settlement Fund to the Authorized Claimants.

If you inherited or received a gift of Hemispherx stock during the Class Period, that inheritance or gift is not considered a purchase of Hemispherx stock unless your ancestor or donor was the actual purchaser of Hemispherx stock during the Class Period. You, as a recipient of a gift or inheritance, and the original purchaser may not both file a claim with regard to the same shares of Hemispherx stock. If both you and the donor (or you and your ancestor’s estate) make such a claim, only the claim filed by the recipient (or heir) will be honored.

Shares “transferred into”, “delivered into” or “received into” the Claimant’s account, will not be considered as a purchase of shares unless the Claimant submits documentation demonstrating that the original purchase of these shares occurred during the Class Period. Also, shares purchased and subsequently “transferred out” or “delivered out” of Claimant’s account will not be considered part of Claimant’s claim.

Nothing in this Plan of Allocation represents an admission by any of the Defendants that there is liability or damage of any kind as a result of the allegations in the Complaint or that the dollar amounts set forth in this Plan of Allocation reflect actual or potential damages to the Class.

Payment in the manner set forth above will be deemed conclusive compliance with the Stipulation as to all Authorized Claimants. All Class Members who fail to submit valid and timely Proofs of Claim will be barred from participating in the distribution of the Net Settlement Fund but otherwise will be bound by all of the terms of the Stipulation, including the terms of any final orders or judgments entered and the releases given to Defendants and others.

NO AUTHORIZED CLAIMANT WILL HAVE ANY CLAIM AGAINST LEAD PLAINTIFF, CO-LEAD COUNSEL, OR THE CLAIMS ADMINISTRATOR, OR ANY OTHER AGENT DESIGNATED BY CO-LEAD COUNSEL BASED ON THE DISTRIBUTIONS MADE SUBSTANTIALLY IN ACCORDANCE WITH THE STIPULATION, THE PLAN OF ALLOCATION, AND FURTHER ORDERS OF COURT. IN ADDITION, IN THE INTEREST OF ACHIEVING SUBSTANTIAL JUSTICE, CO-LEAD COUNSEL WILL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO WAIVE WHAT THEY DEEM TO BE FORMAL OR TECHNICAL DEFECTS IN ANY PROOFS OF CLAIM FILED.

### GETTING MORE INFORMATION

#### 23. How do I obtain more information about the Settlement?

This Notice summarizes the proposed Settlement. More details are in a Stipulation and Agreement of Settlement, which has been filed with the Court. You can inspect a copy of the Stipulation at the office of the Clerk of the Court, United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, PA 19106 during regular business hours or at [www.heb.hrsclaims.com](http://www.heb.hrsclaims.com).

For additional, detailed information concerning the matters involved in this lawsuit, you may inspect the pleadings, the orders of the Court, and other papers filed in this lawsuit at the office of the Clerk of the Court, United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, PA 19106, during regular business hours. You can also contact the Claims Administrator (see responses to Questions 9 and 12) or Co-Lead Counsel (see response to Questions 15 and 17). Please do not call the Court or the Clerk of the Court for additional information about the Settlement.

#### SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you purchased Hemispherx common stock during the Class Period as nominee for a beneficial owner, then the Court has ordered that within ten (10) days after you receive this Notice, you must either: (a) send a copy of this Notice by first-class mail to all such beneficial owners; or (b) provide a list, electronically if possible, of the names and addresses of such beneficial owners to the Claims Administrator:

Claims Administrator  
*In re Hemispherx Biopharma, Inc. Litigation*  
Heffler, Radetich & Saitta LLP  
P.O. Box 58578  
Philadelphia, PA 19102-8578  
Telephone: 1-800-528-7199

If you chose option (a) above, you may obtain from the Claims Administrator (at no charge) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for reasonable administrative costs actually incurred in connection with forwarding the Notice and which would have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

#### INQUIRIES

All inquiries concerning this Notice, the Proof of Claim form, or any other questions by Class Members should be directed to:

Claims Administrator  
*In re Hemispherx Biopharma, Inc. Litigation*  
Heffler, Radetich & Saitta LLP  
P.O. Box 58578  
Philadelphia, PA 19102-8578  
Telephone: 1-800-528-7199  
[www.heb.hrsclaims.com](http://www.heb.hrsclaims.com)

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE**

DATED: NOVEMBER 9, 2010

BY ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN  
DISTRICT OF PENNSYLVANIA