

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION  
(AT CINCINNATI)

IN RE ATRICURE, INC.  
SECURITIES LITIGATION

No. 1:08cv00867

Hon. Michael R. Barrett

**NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT,  
MOTION FOR ATTORNEYS' FEES AND SETTLEMENT HEARING**

To: All persons and entities who purchased shares of AtriCure, Inc. Common Stock between May 10, 2007 through October 31, 2008, inclusive.

**PLEASE READ THIS NOTICE CAREFULLY  
IT HAS BEEN SENT TO YOU TO ADVISE YOU ABOUT THE PROPOSED SETTLEMENT WITH ATRICURE, INC.  
AND YOUR RIGHTS WITH RESPECT TO THE PROPOSED SETTLEMENT**

This Notice provides a summary of the lawsuit, describes who is included, the effect of participating in the Settlement, and how to request exclusion from the Settlement **RELATING TO THE ATRICURE INC. SECURITIES CLASS ACTION LITIGATION**

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

- This Notice relates to a proposed settlement of claims asserted in the securities class action lawsuit described below (the "Action").
- The Class consists of all persons and entities who purchased the common stock of AtriCure, Inc. between May 10, 2007, and October 31, 2008, inclusive. Excluded from the class are Defendants, the directors and officers of AtriCure, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.
- The Settlement creates a \$2,750,000 settlement fund (the "Settlement Fund"). The description of the Settlement herein is only a summary; full details of the Settlement are set forth in the Stipulation and Agreement of Settlement ("Stipulation").
- The Settlement Fund, less the payment of costs approved by the Court, will be distributed on a *pro rata* basis solely to Authorized Claimants who submit acceptable and timely Proof of Claim and Release forms ("Proof of Claim").
- Lead Plaintiffs and Defendants disagree on the amount of damages, if any, that could have been recovered if the Class prevailed on each remaining claim asserted at trial. Lead Plaintiffs estimate that the maximum amount of recoverable damages to members of the Class who purchased AtriCure common stock were this case to go to trial would be approximately \$2.53 per share.
- Lead Plaintiff estimates that if all Class Members make a claim against the Settlement Fund, the average payment to Class Member will be \$0.75 per affected share, based upon an estimate of 3.65 million affected AtriCure shares purchased during the Class Period. Of this amount, fees and expenses requested by the attorneys, reimbursement of costs and expenses of Plaintiffs' Lead Counsel will not exceed \$.25 per share. Please note that these amounts are only estimates.
- In reaching the Settlement, Lead Plaintiffs and Defendants have avoided the cost and time of a trial.
- Further information regarding the Settlement and this Notice may be obtained by contacting the Garden City Group, [www.gardencitygroup.com](http://www.gardencitygroup.com), 1-800-231-1815.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b><u>OPTION</u></b>	<b><u>DEADLINE</u></b>	
<b>INCLUDE YOURSELF IN THE SETTLEMENT</b>	<b>POSTMARKED JANUARY 7, 2011</b>	Return the Completed Claim form by the Deadline
<b>EXCLUDE YOURSELF FROM THE CLASS</b>	<b>POSTMARKED SEPTEMBER 27, 2010</b>	Opt out of the Settlement Class by informing the Clerk of the Court. You will get no payment pursuant to this Settlement. This is the <i>only</i> option that allows you to be a part of any other lawsuit against the Defendants and their affiliates involving the claims released by this Settlement.
<b>OBJECT OR COMMENT</b>	<b>SEPTEMBER 27, 2010</b>	Write to the Court about why you do, or do not, like the settlement. You must remain in the Settlement Class and complete a Claim Form to comment in support of or in opposition to the Settlement.
<b>DO NOTHING</b>		Approve the Settlement and give up right to sue.
<b>ASK TO SPEAK AT FAIRNESS HEARING</b>		Ask to speak to the Court about the fairness of the settlement.

- These rights and options, and the deadlines to exercise them, are explained in this Notice.
- The Court still has to decide whether to approve the Settlement.
- All capitalized terms used herein shall have the same meaning assigned to them in the Stipulation.

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**1. Why Did I Receive This Notice?**

This Notice is being sent to you pursuant to an Order of the United States District Court for the Southern District of Ohio (the "Court"). The Court has directed this Notice to be sent to inform you about your rights and options before the Court rules on the proposed Stipulation and Agreement of Settlement (the "Settlement" or "Settlement Agreement") of this securities class action against AtriCure, Inc., David J. Drachman and Julie A. Piton (collectively the "Defendants" or "Settling Defendants"). The proposed Settlement, if approved by the Court, will settle claims of all persons and entities who purchased shares of AtriCure, Inc. common stock between May 10, 2007, and October 31, 2008 inclusive (the "Class Period"), and suffered damages as a result ("Class Members").

**2. What is a Class Action?**

A class action is a lawsuit in which one or more persons and /or entities sue on behalf of other persons and/or entities that have similar claims. Because the settlement of a class action determines the rights of all members of a settlement class, the Court in which the class action is pending – in this case the United States District Court for the Southern District of Ohio – must approve the settlement as fair, reasonable and adequate to the Class as a whole.

### 3. Description of this Class Action

This class action arises out of Defendants' alleged false and misleading statements to the investing public relating to the marketing and promotion of its products and the training of doctors in the off-label use of its products. When AtriCure revealed on October 31, 2008 that it had received a letter from the U.S. Department of Justice, Civil Division (the "DOJ") informing the Company that the DOJ was conducting an investigation into, among other things, the Company's marketing practices utilized in connection with AtriCure's surgical ablation system to treat AF, the Company's share price declined.

This case was filed on December 12, 2008 in the United States District Court for the Southern District of Ohio. An Amended Class Action Complaint (the "Amended Complaint" or "Complaint") was filed on May 8, 2009.

On July 29, 2009, Defendants moved to dismiss the Complaint. Lead Plaintiffs filed their opposition to the Motion to Dismiss on September 25, 2009, and on November 9, 2010 Defendants filed their reply papers.

United States District Judge Michael Barrett issued an Order on March 29, 2010: granting in part and denying in part Defendants' Motion to Dismiss.

Following the entry of the Order by the District Court Counsel for the Lead Plaintiff and Defendants have engaged in discussions and arm's-length negotiations, and with the assistance of a Mediator, have reached a settlement of this Action.

### 4. Why is there a Settlement?

After engaging in extensive briefing of Defendants' Motion to Dismiss and Lead Plaintiffs' Motion to Strike, reviewing the decision of the District Court on those Motions and in light of the uncertainty and the risk inherent in any litigation, and the difficulties and expense involved in complex litigation, the parties, with the assistance of a Mediator agreed to the Settlement.

### 5. Who is included in the Settlement?

The class covered by the Settlement is defined as follows: **All persons and entities who purchased shares of AtriCure, Inc. between and including May 10, 2007, and October 31, 2008, inclusive.** Excluded from the Class are Defendants, directors and officers of AtriCure, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

Also, excluded from the Class is any person or entity who files a timely and valid request for exclusion from the Class.

### 6. What does the Settlement provide?

Subject to Court approval, the Settling Defendants will pay Two Million Seven Hundred and Fifty Thousand Dollars (\$2,750,000) (the "Settlement Amount") in cash. The Net Settlement Fund (i.e. the Settlement Fund after the payment of attorneys' fees and costs approved by the Court) will be distributed to claimants who file a valid and timely proof claim and release form with the Claims Administrator.

### 7. How do I participate in the Settlement?

If you are a Class Member, you may either (i) accept the Settlement or (ii) request exclusion from the Settlement.

**To Accept and Participate in the Settlement:** To qualify for a settlement payment, you must send in a Proof of Claim and Release form. A claim form is enclosed with this Notice. You also may get a claim form on the Internet at [www.gardencitygroup.com](http://www.gardencitygroup.com) or by calling the Claims Administrator. Please note that all claim forms must be signed and returned to the Claims Administrator by January 7, 2011 in order to receive a payment from the Net Settlement Fund.

**To Object:** If you want to participate in the Settlement, but you object to any term of the Settlement, you must submit an objection to the Court.

If you are a Class Member and do not exclude yourself from the Settlement, you may object to the Settlement, any term of the Settlement Agreement, the Plan of Allocation or the applications of Plaintiffs' Lead Counsel for attorneys fees and expenses. Such objections must be in writing and contain your name and address. The written objection also

should state the specific reason(s) for the objection. A written objection (and any support for it) must be received by the Clerk of Court and the following Counsel by no later than September 27, 2010:

For Defendant AtriCure, Inc.:	For Class Plaintiffs:	Court
Stuart M. Gerson EPSTEIN BECKER & GREEN, P.C. 1227 25 <sup>th</sup> Street, N.W. Suite 700 Washington, DC 20037	Richard S. Wayne STRAUSS & TROY The Federal Reserve Building 150 East Fourth Street Cincinnati, OH 45202	Clerk of Court U.S. District Court For the Southern District of Ohio In Re. AtriCure Securities Litigation (08cv867) 100 E. Fifth Street, Rm. 103 Cincinnati, OH 45202

If you hire an attorney in connection with making an objection, that attorney must file with the Court and serve on the counsel identified above a notice of appearance. The notice of appearance must be received by the Court and the counsel identified above by no later than September 27, 2010.

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

If you are a Class Member, you may ask to be excluded from the Settlement. A request for exclusion must contain your name, address, telephone number, and signature, and be mailed to the Clerk of Court and all the Counsel listed in Section 7, and to The Garden City Group, Inc. at: AtriCure Inc. Securities Litigation, c/o The Garden City Group, Inc., PO Box 9349, Dublin, OH 43017-4249, and must be postmarked by no later than September 27, 2010.

#### **9. What happens if I do nothing?**

If you are a Class Member and do not file a timely written request for exclusion as provided by this paragraph, and the Settlement is approved, you will be bound by the Release in the Settlement Agreement and by all proceedings, orders and judgments relating to the Court's approval of the Settlement, even if you now have pending, or later file any litigation, arbitration or any other action regarding the claims that have been made or that could have been alleged in this Action, as set forth in greater detail below in answer to Section No. 10.

#### **10. What is the effect of final Settlement approval?**

If the Court grants final approval of the Settlement, all Class Members and the successors and assigns of any of them, who did not validly and timely request exclusion from the Class, will be permanently barred, enjoined and restrained from instituting, commencing or prosecuting all direct, indirect, individual, representative or class claims, rights or causes of action or liabilities whatsoever, including but not limited to claims for contribution, indemnification or reimbursement, whether known or unknown (including Unknown Claims), and whether arising under federal, state, local, statutory, common or any other law, rule, or regulation, against any of the Released Defendants, which have been, or could have been, asserted in the Action, or in any court or forum by the Class Members or any of them individually (or any of their heirs, executors, successors or assigns, in their capacities as such, or any person or entity whom the Class Member represents as the holder of shares of the AtriCure, Inc.), based upon, relating to or arising from the acts, facts, matters or occurrences, errors, representations or omissions, transactions and circumstances that were alleged in the Amended Complaint and which relate to or arise in any way, directly or indirectly, from any transactions relating to shares of the AtriCure, Inc. during the Class Period (the "Released Claims").

#### **11. What payment are the attorneys for the Class seeking?**

From the inception of this Action, Plaintiffs' Lead Counsel has not received payment for their services, nor have they been reimbursed for any out-of-pocket expenses. If the Court approves the proposed Settlement, Plaintiffs' Lead Counsel will not ask the Court for more than thirty percent (30%) of the Settlement Fund plus reimbursement of their expenses.

#### **12. When and where will the hearing on the fairness of the Settlement be held?**

A Hearing will be held before the Honorable Michael R. Barrett in the United States District Court for the Southern District of Ohio, United States Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202, Room 239 at 1:30 p.m., on October 7, 2010 to determine whether: (1) the proposed settlements should be approved by the Court as fair, reasonable and adequate; (2) the plan for allocating the settlement fund should be approved; and (3) the claims against the Defendants should be dismissed with prejudice and otherwise released. At the Hearing, the Court may also rule on such other matters as the Court deems appropriate.

You may choose to attend the hearing, either in person or through an attorney hired at your own expense, but attendance is not required. If you have made a written objection, either you (or your attorney) may appear at the hearing to present the objection, but you are not required to attend. If you choose to attend the hearing and intend to make a presentation to the Court, you must file a notice of your intention to appear. A notice of intention to appear must be received by the Court and the counsel identified in Section No. 7 by September 27, 2010.

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

Your share of the Net Settlement Fund will depend on the total number of valid proof of claim forms that Class Members submit, how many shares of AtriCure stock you bought, how much you paid for them, and when you bought and whether or when you sold them, and if so, at what price you sold them.

You can calculate your Recognized Loss using the formula described below in the Plan of Allocation. It is unlikely that you will get a payment for all of your Recognized Loss. After all Class Members send in their Proof of Claim forms, the payment you get will be part of the Net Settlement Fund equal to your Recognized Loss divided by the total Recognized Losses of all Class Members who timely submit valid proof of claim forms.

#### **Plan of Allocation:**

The \$2,750,000 Cash Settlement Amount and the interest earned thereon shall be the Gross Settlement Fund. The Gross Settlement Fund, less all taxes, approved costs, attorney fees and expenses (the "Net Settlement Fund") shall be distributed to members of the Class who submit acceptable Proofs of Claim ("Authorized Claimants").

The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Loss." The following proposed Plan of Allocation reflects Plaintiffs' allegations that the prices of AtriCure's publicly-traded securities were inflated during the Class Period by reason of the allegedly false and misleading statements made by the Defendants, and that part of that inflation was removed when AtriCure disclosed on October 31, 2008, that it had received a letter from the U.S. Department of Justice, Civil Division ("DOJ") informing the Company that the DOJ was conducting an investigation into the Company's marketing practices in connection with its surgical ablation system to treat AF. For purposes of the Settlement and allocating the proceeds of the Settlement among Class Members, Plaintiffs contend that \$2.53 of the decrease in the price of AtriCure's common stock that occurred on November 3, 2008, reflected the elimination of artificial inflation that Defendants' alleged misrepresentations caused.

#### **"Recognized Loss" will be calculated for purposes of the Settlement as follows:**

For shares of AtriCure's common stock purchased during the period May 10, 2007 through and including October 31, 2008, and

- (1) Sold between November 3, 2008 and January 31, 2009, inclusive, an Authorized Claimant's "Recognized Loss" shall mean the lesser of: (a) \$2.53 per share, or (b) the price paid less \$3.89, or (c) the price paid less the price received;
- (2) Held after January 31, 2009 an Authorized Claimant's "Recognized Loss" shall mean the lesser of: (a) \$2.53 per share, or (b) the price paid less \$3.89.

To the extent a Claimant had a gain from his, her or its overall transactions in AtriCure common stock during the Class Period, the value of the Recognized Loss will be zero. To the extent that a Claimant suffered an overall loss on his, her or its overall transactions in AtriCure common stock during the Class Period, but that loss was less than the Recognized Loss calculated above, then the Recognized Loss shall be limited to the amount of the actual loss.

For purposes of determining whether a Claimant had a gain from his, her or its overall transactions in AtriCure's common stock that will receive payment under this Plan of Allocation during the Class Period or suffered a loss, the Claims Administrator shall: (i) total the amount paid for all AtriCure common stock purchased during the Class Period by the claimant (the "Total Purchase Amount"); (ii) match any sales of AtriCure common stock purchased during the Class Period first against the Claimant's opening position in such common stock (the proceeds of those sales will not be considered for purposes of calculating gains or losses); (iii) total the amount received for sales of the remaining shares of AtriCure common stock sold during the Class Period (the "Sales Proceeds"); (iv) ascribe a \$3.89 per common share, holding value for the number of shares of AtriCure common stock purchased during the Class Period and still held at the end of the Class Period ("Holding Value"). The difference between (i) the Total Purchase Amount and the (ii) sum of the Sales Proceeds and Holding Value, will be deemed a Claimant's gain or loss on his, her or its overall transactions in AtriCure common stock during the Class Period.

Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Loss as compared to the total Recognized Loss of all Authorized Claimants.

Class Members who do not submit acceptable Proofs of Claim will not share in the settlement proceeds. Class Members who would receive a *de minimus* payment of less than \$5.00 will not receive a share of the settlement proceeds. Class Members who do not either submit a request for exclusion or submit an acceptable Proof of Claim will nevertheless be bound by the settlement and the Order and Final Judgment of the Court dismissing this Action.

Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the settlement. If any funds remain in the Net Settlement Fund by reason of un-cashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions, any balance remaining in the Net Settlement Fund one (1) year after the initial distribution of such funds shall be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Plaintiffs' Lead Counsel and approved by the Court.

#### **14. How do I get more information?**

You may obtain a copy of the Settlement Agreement, and information about the Settlement by visiting the website of the Claims Administrator of the Settlement at [www.gardencitygroup.com](http://www.gardencitygroup.com), calling 1-800-231-1815, or by sending an e-mail to [atricure@strausstroy.com](mailto:atricure@strausstroy.com).

If you wish to communicate directly with Plaintiffs Lead Counsel, you may do so by contacting the attorneys listed below:

Richard S. Wayne, Esq.  
Strauss & Troy  
The Federal Reserve Building  
150 East Fourth Street  
Cincinnati, Ohio, 45202  
(800) 669-9341  
[atricure@strausstroy.com](mailto:atricure@strausstroy.com)

You may also examine the AtriCure, Inc. Settlement Agreement, Court Orders, and the other papers filed in the Action at the Office of the Clerk, United States District Court for the Southern District of Ohio, United States Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202.

**PLEASE DO NOT CONTACT THE COURT  
OR THE CLERK'S OFFICE FOR INFORMATION**

#### **15. Special Notice to Securities Brokers and Other Nominees**

If you purchased common stock of AtriCure from May 10, 2007, through October 31, 2008, inclusive, for the beneficial interest of a person or organization other than yourself, the Court has directed that **WITHIN TEN DAYS OF YOUR RECEIPT OF THIS NOTICE**, you either: (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased AtriCure common stock during such time period; or (b) request additional copies of this Notice and the Claim Form, which will be provided to you free of charge, and within ten days mail the Notice and Claim Form directly to the beneficial owners of that AtriCure common stock. Those reasonable expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

In re AtriCure, Inc. Securities Litigation  
c/o The Garden City Group, Inc.  
PO Box 9349  
Dublin, OH 43017-4249

Dated: August 16, 2010

BY ORDER OF THE UNITED STATES COURT  
FOR THE SOUTHERN DISTRICT OF OHIO