

INDEVUS PHARMACEUTICALS INC
Form SC 14D9/A
February 05, 2009

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

Solicitation/Recommendation Statement under Section 14(d)(4)

of the Securities Exchange Act of 1934

(Amendment No. 7)

INDEVUS PHARMACEUTICALS, INC.

(Name of Subject Company)

INDEVUS PHARMACEUTICALS, INC.

(Names of Persons Filing Statement)

Common Stock, par value \$0.001 per share

(Title of Class of Securities)

454072109

(CUSIP Number of Class of Securities)

Glenn L. Cooper, M.D.

Chief Executive Officer and Chairman

Indevus Pharmaceuticals, Inc.

33 Hayden Ave.

Lexington, Massachusetts 02421-7966

(781) 861-8444

**(Name, address and telephone numbers of person authorized to receive
notices and communications on behalf of the persons filing statement)**

With copies to:

Josef B. Volman, Esq.

Burns & Levinson LLP

Edgar Filing: INDEVUS PHARMACEUTICALS INC - Form SC 14D9/A

125 Summer Street

Boston, Massachusetts 02110

(617) 345-3000

.. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

This Amendment No. 7 amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 initially filed on January 7, 2009 with the Securities and Exchange Commission (the "SEC") by Indevus Pharmaceuticals, Inc., a Delaware corporation (the "Company"), as amended by Amendment No. 1 thereto filed on January 12, 2009, Amendment No. 2 thereto filed on January 13, 2009, Amendment No. 3 thereto filed on January 15, 2009, Amendment No. 4 thereto filed on January 21, 2009, Amendment No. 5 thereto filed on February 2, 2009 and Amendment No. 6 thereto filed on February 4, 2009 (as amended, the "Schedule 14D-9"). The Schedule 14D-9 relates to the offer by BTB Purchaser Inc. ("Purchaser"), a Delaware corporation and a direct wholly-owned subsidiary of Endo Pharmaceuticals Holdings Inc., a Delaware corporation ("Parent"), to purchase all of the issued and outstanding shares of common stock, par value \$0.001 per share, of the Company at a purchase price of \$4.50 per Share in cash (less any required withholding taxes and without interest), plus contractual rights to receive up to an additional \$3.00 per Share in contingent cash consideration payments (less any required withholding taxes) payable by Parent in the future upon achievement of certain milestones related to NEBIDO® (in development for hypogonadism) and octreotide (in development for acromegaly and carcinoid syndrome), two of the Company's primary product candidates, upon the terms and subject to the conditions set forth in the Offer to Purchase dated January 7, 2009, as amended or supplemented from time to time, and the related Letter of Transmittal.

Except as otherwise indicated, the information set forth in the Schedule 14D-9 remains unchanged. Capitalized terms used, but not defined, in this Amendment No. 7 have the meanings ascribed to them in the Schedule 14D-9.

Item 8. Additional Information.

The subsection (i) of Item 8 entitled *Certain Litigation* is hereby amended and supplemented by deleting the second to last paragraph thereof and replacing it with the following:

While the Defendants believe that each of the aforementioned lawsuits is entirely without merit and that they have valid defenses to all claims, in an effort to minimize the cost and expense of any litigation relating to such lawsuits, on February 4, 2009, the Defendants entered into a memorandum of understanding ("MOU") with the parties to such purported class action lawsuits, pursuant to which Defendants and such parties agreed to settle the stockholder lawsuits. Subject to court approval and further definitive documentation, the MOU resolves the allegations by the Plaintiffs against the Defendants in connection with the Offer and the Merger and provides a release and settlement by the purported class of the Company's stockholders of all claims against the Defendants and their affiliates and agents in connection with the Offer and the Merger. In exchange for such release and settlement, pursuant to the terms of the MOU, the parties agreed, after arm's length discussions between and among the parties, that the Company would provide additional supplemental disclosures to its Schedule 14D-9 (such disclosures being set forth in Amendment No. 6 to the Schedule 14D-9 filed on February 4, 2009), and that the Company Termination Fee, as defined in the Merger Agreement, will be reduced by 10% (from \$20,000,000 to \$18,000,000). The Defendants have also agreed not to oppose any fee application by Plaintiffs' counsel that does not exceed \$700,000 in the aggregate. The settlement, including the payment by the Company or Parent of any such fees, is also contingent upon, among other things, consummation of the Merger. In the event that the MOU is not approved and such conditions are not satisfied, the Defendants will continue to vigorously defend these actions. This summary of the MOU does not purport to be complete and is qualified in its entirety by reference to the MOU which is filed as an exhibit to the Schedule TO and which is incorporated herein by reference. The MOU does not include the plaintiff in the Hell Action which is described below.

Item 9. Exhibits.

Item 9 of the Schedule 14D-9 is hereby amended and supplemented by adding the following exhibits:

Exhibit No.	Description
(a)(16)	Memorandum of Understanding, dated February 4, 2009, by and among (i) Wolf Popper LLP, counsel for Plaintiff Arthur Gober, CBM IRA Beneficiary Custodian, Beneficiary of Jerome Gober, (ii) Skadden, Arps, Slate, Meagher & Flom LLP, counsel for Defendants Endo Pharmaceuticals Holdings Inc. and BTB Purchaser Inc., (iii) The Weiser Law Firm, P.C., counsel for Plaintiff Martin Wexler, (iv) Young Conaway Stargatt & Taylor, LLP, counsel for Defendants Indevus Pharmaceuticals, Inc., Glenn L. Cooper, Andrew Ferrara, James C. Gale, Michael E. Hanson, Stephen C. McCluski, Cheryl P. Morley and Malcolm Morville, (v) Levi & Korsinsky LLP, counsel for Plaintiff Malena C. Schroeder and (vi) Johnson Bottini LLP, counsel for Plaintiff H. Steven Mishket (incorporated by reference to the Form 8-K filed by the Company on February 5, 2009)

SIGNATURE

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this Statement is true, complete and correct.

INDEVUS PHARMACEUTICALS, INC.

By: /s/ Michael W. Rogers
Name: Michael W. Rogers
Title: Executive Vice President, Chief Financial
Officer and Treasurer

Dated: February 5, 2009