

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

MYLAN PHARMACEUTICALS, INC., et al.	:	
	:	
	:	
Plaintiff,	:	Civ. No. 12-3824
v.	:	CONSOLIDATED
	:	
	:	Relates to: Indirect Purchaser Action
WARNER CHILCOTT PUBLIC LIMITED	:	
COMPANY, et al.,	:	
	:	
	:	
Defendants.	:	
	:	

PLAN OF ALLOCATION

THIS PLAN OF ALLOCATION is proposed by Indirect Purchaser Plaintiffs¹ in *Mylan Pharmaceuticals, Inc., et al. v. Warner Chilcott Public Limited Company, et al.*, for the distribution of the Settlement Fund.

1. **General Definitions.** As used in this Plan of Allocation, the following terms shall have the indicated meanings:

- (a) “Action” means the Indirect Purchaser Class Action as defined in the Settlement Agreement.
- (b) “Administration Expenses” means expenses associated with providing notice of the Settlement to the Class, expenses associated with administering the Settlement, and any payments and expenses incurred in connection with taxation matters relating to the Settlement and the Settlement Agreement.

¹ Unless otherwise specified herein, capitalized terms have the meanings provided in the Settlement Agreement between Indirect Purchaser Plaintiffs and Defendants dated July 11, 2014.

- (c) “Authorized Consumer Claimant” means a Consumer Class Member who submits a timely Proof of Claim that is accepted in whole or in part by the Claims Administrator.
- (d) “Authorized TPP Claimant” means a TPP Class Member who submits a timely Proof of Claim that is accepted in whole or in part by the Claims Administrator.
- (e) “Claim Documentation” means the materials required for submission of a Proof of Claim to the Claims Administrator pursuant to the Settlement Agreement, this Plan of Allocation, and/or by order of the Court.
- (f) “Claims Administrator” means The Garden City Group, Inc., or any other person or entity chosen by Class Counsel, subject to Court approval, as set forth in the Settlement Agreement and/or this Plan of Allocation.
- (g) “Class” (or “Indirect Purchaser Class”) means the Indirect Purchaser Class as defined in the Settlement Agreement.
- (h) “Class Counsel” (or “Indirect Purchaser Plaintiffs’ Counsel”) means Scott+Scott, Attorneys at Law, LLP.
- (i) “Class Member” means any natural person or entity falling within the definition of the Indirect Purchaser Class who is not a Class Opt-Out.
- (j) “Class Opt-Out” means any natural person or entity falling within the definition of the Indirect Purchaser Class who timely and validly submits a request for exclusion from the Indirect Purchaser Class in accordance with the procedures set forth in the Settlement Notice.
- (k) “Class Period” means the period from September 21, 2008, through May 30, 2014.
- (l) “Consumer” means any person falling within the definition of the Indirect Purchaser Class who is a natural person and not a TPP. “Consumer” includes living persons as

well as the executors, heirs, administrators, trustees, or other authorized representatives of deceased persons.

- (m) “Consumer Class Members” means Consumers falling within the definition of the Indirect Purchaser Class, excluding any Class Opt-Outs.
- (n) “Court” means the Honorable Paul S. Diamond of the United States District Court for the Eastern District of Pennsylvania, or if Judge Diamond is not available, another judge from the United States District Court for the Eastern District of Pennsylvania who will be designated by Judge Diamond or duly appointed to act in Judge Diamond’s absence.
- (o) “Defendants” means Warner Chilcott (US) LLC, Warner Chilcott Public Limited Company, Warner Chilcott Company LLC, Warner Chilcott Holdings Company III, Ltd., and Warner Chilcott Laboratories Ireland Limited (collectively, “Warner Chilcott”), and Mayne Pharma Group Limited and Mayne Pharma International Pty. Ltd. (collectively, “Mayne”) and any respective predecessor entities and past or present parents, subsidiaries, divisions, affiliates, successors, and assigns.
- (p) “Doryx” means the various strengths of delayed-release doxycycline hyclate marketed under the brand-name Doryx[®].
- (q) “Doryx Purchases” means payments or reimbursements for all or part of the cost of Doryx prescribed and dispensed in the United States. Doryx Purchases do not include purchases of Doryx directly from Defendants, purchases for resale purposes, or purchases for which a Class Member has been fully reimbursed.
- (r) “Fee and Expense Award” means attorneys’ fees, reasonable costs and expenses incurred in the prosecution of the Action, and service awards to the Named Plaintiffs.
- (s) “Named Plaintiffs” means: International Brotherhood of Electrical Workers 38, Health and Welfare Fund (“IBEW 38”), International Union of Operating Engineers Local 132,

Health and Welfare Fund (“Local 132”), and Laborers Health and Welfare Trust Fund for Northern California (“Laborers Trust”).

- (t) “Proof of Claim” means the form that will be submitted by Class Members to the Claims Administrator along with Claim Documentation establishing the dollar amount of the Class Members’ Doryx Purchases during the Class Period for which the Class Members have not been reimbursed.
- (u) “Settlement” means the settlement on the terms set forth in the Settlement Agreement.
- (v) “Settlement Agreement” means the Settlement Agreement between Indirect Purchaser Plaintiffs and Defendants dated July 11, 2014.
- (w) “Settlement Amount” means eight million dollars (\$8,000,000.00).
- (x) “Settlement Fund” means the designated account into which the Settlement Amount is paid.
- (y) “Settlement Notice” means the notice program prepared by the Claims Administrator or as otherwise ordered by the Court.
- (z) “Third-Party Payor” or “TPP” means any entity falling within the definition of the Indirect Purchaser Class which is not a natural person.
- (aa) “TPP Class Members” means TPPs falling within the definition of the Indirect Purchaser Class, excluding any Class Opt-Outs.
- (bb) “United States” means the United States of America, including its states, commonwealths, territories and possessions.

2. **Allocation Across Claimants.** The theory of injury consistently pursued throughout this litigation has been that Indirect Purchasers paid supra-competitive prices for branded Doryx throughout the Class Period by virtue of restraints imposed on generic competition. In the case of a cash-paying Consumer, the purchase price was paid in its entirety

by the Consumer which therefore experienced the full amount of any overcharge. In the case of insured transactions, the purchase price is divided between the TPP and the Consumer based upon Plan provisions which set co-pay, deductible, and/or co-insurance amounts. The most efficient and equitable way to allocate the recovery in this case is based upon the total-out-of-pocket, unreimbursed expenditure made by each Class member for Doryx Purchases falling within the Class Definition. This approach has several advantages. First, it does away with the need to address differences in Plan provisions by eliciting in the Claim Form the most important question. “What is the dollar amount of the Class Member’s unreimbursed expenditures for Doryx?” Second, this approach does away with the need to distinguish between Consumer payments and TPP payments, because they are represented in an equivalent manner (*i.e.*, through total unreimbursed expenditures). Third, it allows the funds available for distribution to Class Members to be allocated on a *pro rata* basis determined using unreimbursed expenditures, regardless of whether the Class Member is an uninsured Consumer, an insured Consumer, or a TPP. Fourth, by treating Authorized Consumer Claimants and Authorized TPP Claimants equivalently, and requiring that they share ratably in the same pool, the Plan of Allocation avoids the risk that one subclass or the other will attain a smaller ratable recovery due to higher rates of Claim filing. As a result, Class Counsel recommends that Claims be submitted based upon unreimbursed expenditures and that the funds available for distribution be allocated *pro rata* across all Authorized Consumer Claimants and Authorized TPP Claimants, as follows:

(a) Administration Expenses and the Fee and Expense Award shall be deducted from the Settlement Fund;

(b) After deduction of the Administration Expenses and the Fee and Expense Award, the remaining Settlement Fund will be allocated *pro rata* to each Authorized Consumer Claimant and Authorized TPP Claimant by multiplying the remaining Settlement Amount by the

amount of the Authorized Consumer Claimant's or Authorized TPP Claimant's timely and valid claim allowed by the Claims Administrator, and then dividing by the total amount of all timely and valid claims allowed by the Claims Administrator for Consumers and TPPs.

(c) Class Counsel recommends that a minimum threshold be established in order for a Claim to be allowed. As described above, the Claim amount will represent the total dollar amount of unreimbursed expenditures which embeds the alleged overcharge. To avoid the risk that payment of a given Claim will impose administrative costs approaching or exceeding the distributable sum, Class Counsel recommends that Claims only be allowed if the total unreimbursed expenditure reported by the Claimant is \$100 or more. The average price of a single 30-day prescription for Doryx during the Class Period has previously been reported, without dispute, to have been approximately \$466. Thus, a cash-paying Consumer would be eligible to participate in the Settlement Fund based on filling just one Doryx prescription. The average co-pay for branded drugs on Tier 3 (which was the typical formulary placement of Doryx) has previously been reported, without dispute, to have been approximately \$50. As a result, the average insured Consumer would be eligible to participate in the Settlement Fund if it had filled at least two Doryx prescriptions.