UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

END-PAYOR CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES

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I. INTRODUCTION

Following nearly seven years of hard-fought litigation, and on the last business day before the start of trial, End-Payor Class Plaintiffs obtained a proposed $62,500,000 all-cash settlement with the Warner Chilcott Defendants[1] ("Settlement Fund") to reimburse Third-Party Payor ("TPP") Class members for their purchases of branded and generic Loestrin 24 Fe and Minastrin 24 Fe at supra-competitive prices.[2]

This settlement represents a significant victory, achieving for the Class one of the largest recoveries in an End-Payor generic suppression case in over a decade. The result is remarkable given that there was considerable uncertainty throughout the case as to whether End-Payors would be able to obtain *any* recovery from the Warner Chilcott Defendants. Indeed, certain of the End-Payor Class's claims were dismissed and revived only after a successful appeal. Later, in spite of the threat that the First Circuit's decision in *In re Asacol Antitrust Litigation*, 907 F.3d 42 (1st Cir. 2018) posed to class certification, End-Payors obtained certification of a TPP Class that bore the substantial majority of End-Payor damages. In the face of these and other challenges, End-Payor Class Counsel relied on hard work and experience to investigate and file the first complaint challenging Defendants' conduct and to achieve favorable rulings at essentially every stage of the litigation, which benefited not only the End-Payor Class here, but also plaintiffs in other generic suppression suits.

In recognition of the results achieved, the extensive time and resources invested, and the

[1] The Warner Chilcott Settlement is with Warner Chilcott plc n/k/a Allergan WC Ireland Holdings Ltd.; Warner Chilcott Holdings Co. III, Ltd.; Warner Chilcott Corp.; Warner Chilcott Laboratories Ireland Limited; Warner Chilcott Limited; Allergan plc; Warner Chilcott Co., LLC f/k/a Warner Chilcott Co., Inc.; Warner Chilcott (US), LLC; Warner Chilcott Sales (US), LLC.; Watson Laboratories Inc.; and Watson Pharmaceuticals, Inc.

[2] The End-Payor Class previously settled with Lupin Limited and Lupin Pharmaceuticals, Inc. ("the Lupin Defendants") for $1,000,000 and valuable cooperation against the Warner Chilcott and Watson Defendants ("Lupin Settlement"). Class Counsel seek expenses, but not any attorneys' fees, in connection with the Lupin Settlement.

risk undertaken, Class Counsel respectfully request an attorneys' fee award of $20,833,333.33—one-third (33⅓%) of the Settlement Fund—to compensate Class Counsel for the work it performed for the Class's benefit. In addition, Class Counsel seek payment for their reasonable and necessary unreimbursed litigation expenses in the amount of $3,743,996.58, and up to $250,000 to complete the settlement distribution process. Finally, Class Counsel request that the Court award $10,000 to each of the TPP Class Representatives and $5,000 to each of the Consumer Class Representatives in recognition of, and as compensation for, the valuable services each provided to the Class throughout this litigation.

As discussed in greater detail below and in the supporting declarations of Class Counsel and Professor Charles M. Silver of the University of Texas Law School, Class Counsel's one-third fee request is justified under both the percentage-of-the-fund and lodestar approaches.[3] Due to the complexity of and substantial investment in time and resources required by indirect purchaser generic suppression cases, one-third fee awards have become the norm in such suits over the last fifteen years. To Class Counsel's knowledge, the only significant departures from this norm have been in cases that settled more than decade ago, at earlier stages of the litigation lifecycle, and usually on less favorable terms. The lodestar method provides further support for the requested fees. Based on historical billing rates, Class Counsel's fee request represents only 1.05 times the reported lodestar of $19,917,547.10. Another court in this circuit characterized a similar multiplier as "low" and "certainly within the reasonable range."[4]

The other factors that trial courts in this circuit typically consider in awarding fees in

[3] *See* Decl. of Prof. Charles Silver in Support of End-Payor Class Pls.' Mot. for an Award of Attorneys' Fees, Reimbursement of Litig. Expenses, & Service Awards to the Class Representations ("Silver Decl."), attached as Ex. L.

[4] *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 465 (D.P.R. 2011).

common fund cases favor a higher-than-typical attorneys' fee award. Class Counsel brought this case at great risk on an exclusively contingent basis. This case was complex, even for an antitrust suit. It involved multiple theories of liability that required extensive expertise in competition, patent, and pharmaceutical regulatory law. Although recovery was far from assured, Class Counsel vigorously litigated this case from inception through the eve of trial, investing considerable resources and more than 35,249.28 hours of attorney and professional staff time and $3,743,996.58 million in unreimbursed expenses to prepare this case for trial. Despite the unique challenges presented, Class Counsel obtained one of the largest comparable recoveries for the Class in recent history and furthered the important public interest of deterring anticompetitive conduct by pharmaceutical companies.

II. BACKGROUND

On February 14, 2014, the Court appointed Cohen Milstein Sellers & Toll PLLC, Hilliard & Shadowen LLC, Miller Law LLC, and Motley Rice LLC as Interim Co-Lead Counsel and Motley Rice LLC as Liaison Counsel.[5] Since then, Co-Lead Counsel have directed the overall conduct of the litigation and worked with Liaison Counsel, the Executive Committee, and other End-Payor counsel to prosecute the litigation through the eve of trial. A detailed description of the work performed by each firm seeking fees and reimbursement of expenses is set forth in Co-Lead Counsel's Joint Declaration and the individual declarations of Class Counsel submitted in support of this motion.[6] Below is a summary of the work performed by Class Counsel during the

[5] Case Management Order ("CMO") No. 2, ECF No. 85 at ¶¶ 6-7 (Feb. 14, 2014). The Court also appointed as members of the Executive Committee: Carl Beckwith, Esq., PC; Shepherd Finkelman Miller & Shah LLC; Doyle Lowther LLP; the Dugan Law Firm, LLC; Pomerantz Grossman Hufford Dahlstrom & Gross LLP; Law Offices Bernard M. Gross, PC; Spector Roseman Kodroff & Willis, P.C.; Schnader Harrison; Hach Rose Schirripa & Cheverie, LLP; Branstetter, Stranch & Jennings, PLLC; and Trenk, DiPasquale, Della Fera & Sodono, P.C. *Id.* at ¶ 9.

[6] *See* Joint Decl. of Steve D. Shadowen, Sharon K. Robertson, Michael M. Buchman, & Marvin A. Miller in Support of End-Payor Class Pls.' Mot. for an Award of Attorneys' Fees, Reimbursement of Litig. Expenses, & Service Awards to the Class Representations ("Joint Decl."); *see also* Exs. A-J (End-Payor Class Counsel individual firm

litigation.

A. End-Payor Class Counsel Investigate and File the First Complaint Challenging Anticompetitive Practices Relating to Loestrin 24 Fe.

End-Payor Class Counsel pioneered the investigation and filing of litigation challenging Defendants' anticompetitive practices relating to Loestrin 24 Fe. The first such complaint was filed on April 5, 2013 by Co-Lead Hilliard & Shadowen, and was quickly followed by complaints by other Co-Leads.[7] That complaint was the product of extensive independent investigation, spearheaded by counsel for the End-Payor Plaintiffs.[8] In contrast to many other antitrust suits, the complaints here were filed without the benefit of any prior government investigation, and the first end-payor suit was filed before any other plaintiff party or public disclosure of any related matter. On May 14, 2013, a similar case was subsequently filed by Direct Purchasers, and complaints from Retailer Plaintiffs followed.[9] All of these cases were consolidated before this Court.[10] Throughout the litigation, all three plaintiff groups collaborated, to decrease duplication of effort and increase efficiency.

End-Payors filed a Consolidated Amended Complaint on December 6, 2013.[11] Although the three Plaintiff groups pleaded similar claims, only the End-Payors alleged that the acceleration clause in the Watson settlement was an additional unlawful reverse payment, and only the End-

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declarations).

[7] Compl., *United Food & Commercial Workers Local 1776 & Participating Employers Health & Welfare Fund v. Warner Chilcott (US), LLC*, No. 2:13-cv-01807-CMR (E.D. Pa. Apr. 5, 2013), ECF No. 1; Compl. *N.Y. Hotel Trades Council & Hotel Assoc. of N.Y. City, Inc. v. Warner Chilcott Pub. Ltd. Co.*, 1:13-cv-02474-WES-PAS (D.R.I. Apr. 15, 2013); ECF No. 1; Compl., *City of Providence v. Warner Chilcott Pub. Ltd. Co.*, No. 1:13-cv-00307-WES-PAS (D.R.I. May 2, 2013), ECF No. 1.

[8] Joint Decl. ¶¶ 7-8.

[9] *See* Compl., *Am. Sales Co., LLC v. Warner Chilcott Pub. Ltd. Co.*, No. 1:13-cv-00347-WES-PAS (D.R.I. May 14, 2013), ECF No. 1; Compl., *Walgreen Co. v. Warner Chilcott Pub. Ltd*. Co., No. 1:14-cv-00102-WES-PAS (D.R.I. Feb. 25, 2014), ECF No. 1.

[10] Transfer Order, ECF No. 1 (Oct. 3, 2013).

[11] ECF No. 40.

Payors and Retailers asserted claims against the Lupin Defendants. Unlike the Direct Purchasers and Retailers, in addition to claims under the federal Sherman Act, End-Payors also pleaded state law antitrust, consumer protection, and unjust enrichment claims.

B. End-Payors Successfully Appeal the Dismissal of Their Sherman Act Claims.

On February 7, 2014, the Defendants moved to dismiss the End-Payor and Direct Purchaser complaints.[12] In addition to presenting arguments that were common to the End-Payors' and Direct Purchasers' claims, the Warner Chilcott and Lupin Defendants filed a separate 52-page brief directed at the particular claims and allegations plead in End-Payors' complaint, including those relating to the Lupin reverse payment, acceleration clauses, and various state law causes of action.[13] End-Payors opposed Defendants' dismissal motion in a detailed, 82-page brief.[14]

On September 4, 2014, the Court ruled against Plaintiffs, holding that only cash payments can be actionable as unlawful reverse payments.[15] The Court entered a partial final judgment as to End-Payors' federal antitrust claims and stayed the remaining claims.[16] End-Payors timely appealed the dismissal, filing their own appellate brief, which addressed the appropriate definition of a reverse payment, as well as unique issues relating to the End-Payors class.[17] End-Payors were also responsible, on behalf of all Plaintiff groups, for organizing the amicus curiae effort, garnering support from the nation's leading antitrust academics, the leading consumer-advocacy

[12] Defs.' Mot. to Dismiss DPPs' Consol. Am. Class Action Compl., ECF No. 74; Defs.' Mot. to Dismiss IPPs' Consol. Am. Class Action Compl., ECF No. 76.

[13] Defs.' Mem. of Law in Supp. of Mot. to Dismiss IPPs' Consol. Am. Class Action Compl., ECF No. 76 (Feb. 7, 2014).

[14] EPPs' Mem. of Law in Opposition to Defs.' Mot. to Dismiss, ECF No. 92-1 (Mar. 24, 2014).

[15] Op. & Order Granting Mot. to Dismiss, ECF No. 116.

[16] Judgment, ECF No. 142 (Feb. 17, 2015).

[17] Notice of Appeal, ECF No. 143 (Feb. 23, 2015); *See* No. 15-1250 (1st Cir. June 9, 2015).

organizations, 29 States, and the Federal Trade Commission. End-Payors also presented part of the oral argument to the First Circuit.[18]

On February 24, 2016, the First Circuit reversed the dismissal of End-Payors' Sherman Act claims, agreeing with Plaintiffs that the Supreme Court's *Actavis* decision did not limit reverse payments to cash.[19] The First Circuit also remanded "the question of whether the EPPs and DPPs adequately alleged that the individual provisions of the settlement agreements warranted antitrust scrutiny as unlawful reverse payments."[20]

On remand, End-Payors, in collaboration with Direct Purchasers and Retailers, began the process of substantially amending their complaints.[21] Plaintiffs' amended complaints added product hop or "switch" claims, which End-Payor counsel discovered and drafted. End-Payor counsel were also involved in the development of Plaintiffs' *Walker Process* fraud and sham litigation claims that were added to the amended complaints. Other additions to End-Payors' complaint included allegations regarding the size and nature of the reverse payments Warner Chilcott provided to Watson and Lupin and the anticompetitive effects associated with Watson's acceleration clause.

The Warner Chilcott Defendants and Lupin Defendants moved to dismiss End-Payors' amended complaint, advancing in hundreds of pages of briefing arguments relating to market power, reverse payments, patent fraud, product hopping, and End-Payors' state law claims.[22] The

[18] Joint Decl. ¶ 13.

[19] *In re Loestrin 24 Fe Antitrust Litig.*, 814 F.3d 538 (1st Cir. 2016).

[20] *Id.* at 552-53.

[21] End-Payor Pls.' Second Am. Consolidated Class Action Compl., ECF No. 165 (May 9, 2016); *see also* Joint Decl. ¶ 15.

[22] Lupin Defs.' Mot. to Dismiss, ECF No. 191 (June 13, 2016); Warner Chilcott & Watson Defs.' Mot. to Dismiss for Failure to State a Claim, ECF No. 192 (June 13, 2016); Decl. of A. Hanstead, ECF No. 193 (June 13, 2016).

Lupin Defendants filed a separate brief challenging End-Payors' reverse payment allegations.[23] Each of the three Plaintiff groups filed responses to Defendants' motions to dismiss. End-Payors' 85-page brief addressed arguments relating to the definition of a suspect payment, burdens of proof relating to saved litigation costs and fair value of services, the Watson Agreement's no-authorized-generic and acceleration clauses, the Lupin Agreement's reverse payments, and various state law issues.[24] End-Payors subsequently drafted on behalf of all Plaintiffs notices of supplemental authority regarding several relevant rulings in other generic suppression suits.[25] On January 13, 2017, Plaintiffs jointly argued the motions to dismiss, with End-Payor Counsel handling market power and the product hop claims for all Plaintiffs.[26]

C. The Parties Engage in Extensive Discovery.

While Defendants' second rounds of dismissal motions were pending, Plaintiffs commenced discovery. End-Payors actively engaged in the discovery process across three fronts: (1) offensive discovery common to all three Plaintiff groups; (2) offensive discovery pertaining only to End-Payors (or, with respect to the Lupin-related claims, to End-Payors and Retailers); and (3) defensive discovery pertaining to End-Payors.

Document discovery in this case was extensive. Defendants and third parties produced over 410,000 documents spanning over 3.5 million pages, which End-Payor Counsel invested considerable effort in reviewing and analyzing.[27] To avoid duplication of effort, and to take

[23] Mem. of Law in Supp. of Lupin Defs,' Mot. to Dismiss, ECF No. 191-1 (June 13, 2016).

[24] ECF No. 205.

[25] ECF Nos. 209, 223, 238, 254 (collectively addressing *In re Asacol Antitrust Litig.*, No. 15-cv-12730-DJC, 2016 WL 4083333 (D. Mass Jul. 20, 2016), *Mylan Pharms. Inc. v. Warner Chilcott Pub. Ltd. Co.*, 838 F.3d 421 (3d Cir. 2016), and *In re Nexium (Esomeprazole) Antitrust Litig.*, 842 F.3d 34 (1st Cir. 2016).

[26] EPPs' Mem. in Opp. to Defs.' Mots. To Dismiss, ECF No. 266 (July 15, 2016).

[27] Joint Decl. ¶ 33.

advantage of the subject-matter expertise of individual Plaintiffs' counsel, the Plaintiff groups collaborated to create joint teams based on subject matter. End-Payor Counsel chaired the product hop[28] and privilege teams and assigned individuals to actively participate in each of the other subject-matter groups. As leaders of the privilege team, End-Payors spearheaded privilege and related discovery challenges, including arguing the majority of privilege-related issues and motions in telephonic hearings before Magistrate Judge Sullivan.[29] These efforts resulted in the dislodging of thousands of withheld documents and redacted documents.

End-Payor Counsel also dedicated substantial efforts to ensure non-common aspects of the case were developed and litigated.[30] For example, End-Payors worked together with Retailers on the Lupin reverse-payment claims. End-Payors also developed the factual record to support their unique claim regarding Watson's acceleration clause.

In total, Plaintiffs took more than two dozen fact witness depositions.[31] End-Payors participated in virtually all of these depositions, including examining or assisting others in preparing for every witness that related to Plaintiffs' product hop liability theory, as well as other key witnesses including Watson CEO David Buchen and Watson Chief Legal Officer Paul Bisaro.[32]

Defendants also undertook significant third-party discovery, in an effort to defeat class certification and undermine Plaintiffs' relevant market arguments. Many of those efforts were directed at Pharmacy Benefit Managers and absent End-Payor Class members. End-Payors, in

[28] Joint Decl. ¶¶ 34-35.

[29] *Id*. ¶¶ 38-49.

[30] *Id*. ¶¶ 24, 36, 50-51.

[31] *Id*. ¶¶ 50-54.

[32] *Id*. ¶ 51.

collaboration with the other plaintiff groups, participated in virtually all of the third-party depositions.[33]

Defendants served over 100 requests for production of documents, and numerous interrogatories on the End-Payors.[34] End-Payors met and conferred with Defendants, briefed and argued motions to compel unique to the End-Payors, and worked with each of the named plaintiffs to collect and produce documents. Defendants also served Rule 30(b)(6) deposition notices on each named plaintiff. Co-Lead Counsel prepared for and defended 12 depositions of the named plaintiffs, in consultation with co-counsel.[35]

D. The Third-Party Payor Class Is Certified.

On July 30, 2018, End-Payors moved for class certification.[36] After End-Payors filed their opening brief, on October 15, 2018, the First Circuit issued an opinion in *In re Asacol Antitrust Litigation*.[37] In *Asacol*, the appeals court reversed the certification of an end-payor class in a delayed generic case on the ground that the plaintiffs there had not proved they had an administratively feasible method for identifying and excluding from the class uninjured persons. This substantially complicated End-Payors' effort to gain class certification. Shortly thereafter, the Warner Chilcott Defendants filed a 71-page opposition to End-Payors' class certification motion, relying extensively on *Asacol*.[38]

In response to the threat posed by *Asacol*, and with incredible rapidity, End-Payors

[33] *Id*. ¶ 53.

[34] *Id*. ¶¶ 24-28.

[35] *Id*. ¶¶ 54.

[36] Mem. of Law in Supp. of EPPs' Mot. for Class Cert. & Appointment of Class Counsel, ECF No. 528-1.

[37] 907 F.3d 42 (1st Cir. 2018).

[38] Defs.' Mem. of Law in Opp. to EPPs' Mot. for Class Cert & in Supp. of Defs.' Renewed Mot. to Dismiss & Mot. for J. on the Pleadings, ECF No. 574-2 (Oct. 19, 2018).

mounted an extensive and innovative effort to show they could satisfy the First Circuit's newly adopted standards. First, End-Payors proposed a novel class definition consisting of separate consumer and TPP subclasses, along with a series of exclusions designed to carve out from the class potentially uninjured persons and entities.[39] Second, in support of this strategy, in less than four months, End-Payors filed two additional briefs supporting class certification (comprising around 100 pages)[40]; retained three new pharmaceutical experts; worked with those experts to file four reports[41]; worked with their existing expert economist to file two additional expert reports supporting class certification[42]; successfully opposed Defendants' efforts to strike their reply brief and rebuttal expert reports[43]; prepared for and defended the depositions of all four experts retained by End-Payors; deposed three experts retained by Defendants within a week of receiving their reports; moved to exclude the opinions of Defendants' experts[44]; worked with third-party Pharmacy Benefit Managers to secure permission to file four declarations supporting the reports of Plaintiffs' experts[45]; and prepared for an extensive, two-day evidentiary hearing on class

[39] EPPs' Reply Mem. of Law in Further Supp. of their Mot. for Class Cert. & Appointment of Class Counsel, ECF No. 633-1 (Dec. 7, 2018); Decl. of M. Buchman in Further Supp. of EPPs' Mot. for Class Cert. & Appointment of Class Counsel, ECF No. 664 (Dec. 14, 2018).

[40] *Id*.

[41] Expert Report of Myron D. Winkleman (Nov. 30, 2018), ECF No. 633, Ex. 1; Decl. of Laura R. Craft (Nov. 30, 2018), ECF No. 633, Ex. 2; Decl. of Eric J. Miller (Nov. 30, 2018), Ex. 3; Sur-rebuttal Decl. of Laura R. Craft (Feb. 1, 2019), ECF Nos. 751, 762, Ex. C.

[42] Reply Report of Gary L. French, Ph.D. Regarding Impact & Damages to End-Payor Pls., ECF No. 632, Ex. 1 (Dec. 7, 2018); Sur-Reply Report of Gary L. French, Ph.D. Regarding Impact & Damages to End-Payor Pls., ECF Nos. 751, 762, Ex. A (Feb. 1, 2019).

[43] Response in Opp. to Defs.' Mot. to Strike, ECF No. 668 (Dec. 18, 2018).

[44] EPPs.' Mem. of Law. in Supp. of Mot. to Exclude Test. & Ops. of James W. Hughes, Ph.D., and in Opp. to Defs.' Mot. to Exclude Testimony & Opinions of Gary L. French, Ph.D., ECF No. 632-2 (Dec. 7, 2018).EPPs' Reply Mem. of Law in Support of Mot. to Exclude Test. & Ops. of James W. Hughes, Ph.D., ECF No. 691-1 (Dec. 28, 2018); EPPs' Supplement to Mot. to Exclude Test. & Ops. of James W. Hughes, Ph.D., ECF No. 732-1 (Feb. 1, 2019); EPPs' Mem. of Law in Supp. of Mot. to Exclude Ops. & Test. of Mr. Timothy E. Kosty & Dr. Bruce A. Strombom, ECF No. 739-1 (Feb. 1, 2019);

[45] Decl. of Steven Schaper, ECF No. 632, Ex. 10; Decl. of Non-Party Express Scripts, Inc., ECF No. 632, Ex. 11; Decl. of Robert Lahman, ECF No. 632, Ex. 12; Decl. of Non-Party Prime Therapeutics LLC, ECF No. 632, Ex. 13; Decl. of Non-Party Prime Therapeutics LLC, ECF No. 632, Ex. 14.

certification[46].

Aside from advancing *Asacol*-related arguments, Defendants also filed an extensive renewed motion to dismiss, across an extensive 132 pages of briefing, challenging the class representatives' Article III standing, the availability of various state law claims under *Illinois Brick*, the reliability of End-Payors' economic models, the proposed class's numerosity, the typicality of certain class representatives, and purported conflicts among the class representatives and members.[47] End-Payors responded to each of these arguments.

On October 17, 2019, this Court certified End-Payors' proposed TPP class (comprising approximately two-thirds of total End-Payor damages) and largely denied Defendants' motion to dismiss, though it concluded that *Asacol* precluded certification of a class including consumers.[48] Based on the extensive record compiled and submitted by End-Payors and their experts, the Court stated that it was "convinced that the data [necessary to identify and exclude uninjured TPPs] are available and accessible"; indeed, "from PBM and pharmacy data, the EPPs could compile a list of TPPs that purchased Loestrin 24, Minastrin, and their generic equivalents, that includes payment amounts, coverage, and plan characteristics."[49] The litigation strategy and factual record developed by End-Payors here are now being relied on by indirect classes in other end-payor, delayed generic suits.[50]

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[46] Tr. of Evidentiary Hr'g, ECF No. 807 (Feb. 13, 2019); Tr. of Evidentiary Hr'g, ECF No. 808 (Feb. 14, 2019).

[47] Defs.' Mem. of Law in Opp. to EPPs' Mot. for Class Cert. & in Supp. of Defs.' Renewed Mot. to Dismiss & Mot. for J. on the Pleadings, ECF No. 574-2 (Oct. 19, 2018); Defs.' Reply in Supp. of Renewed Mot. to Dismiss & Mot. for J. on the Pleadings, ECF No. 665-1 (Dec. 14, 2018)..

[48] Order, ECF No. 1226 (Sept. 17, 2019); Mem. of Decision on Class Cert & Order Regarding Mots. to Exclude Certain Expert Ops. & Defs.' Renewed Mot. to Dismiss, ECF No. 1274 (Oct. 17, 2019).

[49] Mem. of Decision on Class Cert & Order Regarding Mots. to Exclude Certain Expert Ops. & Defs.' Renewed Mot. to Dismiss, ECF No. 1274 at 81-82 (Oct. 17, 2019).

[50] *See*, *e.g.*, Op. & Order on End-Payor Pls.' Mot. for Class Certification, *In re Restasis (Cyclosporine Ophalmic Emulsion) Antitrust Litig.*, 18-md-2819 (E.D.N.Y. May 4, 2020), ECF No. 501 at 9-10, 39, 43, 45 (repeatedly citing this Court's *Loestrin* class certification decision and relying heavily on reports submitted by Laura

While the parties prepared for trial, Defendants filed a petition with the First Circuit seeking interlocutory review under Federal Rule of Civil Procedure 23(f), which End-Payors opposed and the First Circuit denied.[51] End-Payors worked with A.B. Data—the notice administrator approved by the Court—to develop and implement a robust notice program that reached virtually all class members.[52]

E. Plaintiffs Defeat Defendants' Summary Judgment Motions.

Summary judgment motions proceeded in two phases: motions relating to market power were filed first, followed by motions relating to the remainder of the case. Both phases involved extraordinary effort and cooperation among the plaintiff groups. End-Payor Counsel were responsible for drafting Plaintiffs' summary judgment briefs (offensive and defensive) regarding market power.[53] End-Payor Counsel were also closely involved, along with counsel for Direct Purchasers and Retailers, in preparing for and drafting Plaintiffs' statements of facts and responses to Defendants' statements.[54] Throughout the process, End-Payors worked together with Direct Purchaser Plaintiffs and Retailers to marshal evidence, coordinate with Plaintiffs' experts, and depose Defendants' experts.

Craft); End-Payor Pls.' Reply Mem. of Law in Further Support of Their Mot. for Class Cert., *In re Opana ER Antitrust Litig.*, No. 14-cv-10150 (N.D. Ill. Nov. 20, 2019), ECF No. 473 at 2, 4, 9-10, 12, 15, 20; Mem. of Law in Support of End-Payor Pls.' Mot. for Class Cert. & Appointment of Class Representatives & Class Counsel, *In re Zetia (Ezetimibe) Antitrust Litig.*, No. 2:18-md-2836 (E.D. Va. Nov. 18, 2019), ECF No. 730 at 3, 9-10, 12, 15-17, 20, 23, 25-27, 29; Reply Mem. of Law in Support of End-Payor Plaintiffs' Mot. for Class Certification, *In re Niaspan Antitrust Litig.*, No. 2:13-md-02460 (E.D. Pa. Mar. 25, 2019), ECF No. 628.

[51] Pet. Pursuant to Rule 23(f) of the Federal Rules of Civil Procedure for Permission to Appeal from Order Granting Class Cert., ECF No. 1254 (Oct. 2, 2019).

[52] Joint Decl. ¶ 72.

[53] *Id*. ¶¶ 73-74.(citing Mem. of Law in Supp. of Pls.' Mot. for Summ. J., & in Opp'n to Defs.' Mot. for Summ. J. on Market Power, ECF No. 595 (Oct. 26, 2018); Pls.' Reply Mem. of Law in Supp. of Mot. for Summ. J. on Market Power, ECF No. 707-1 (Jan. 25, 2019)).

[54] ECF Nos. 600, 601.

On March 14, 2019, the Court held a hearing on the market power summary judgment motions, during which End-Payor Counsel led arguments on behalf of the three Plaintiff groups.[55] In collaboration with Direct Purchasers and Retailers, End-Payor Counsel drafted answers to several follow-up questions posed by the Court, coordinated with Plaintiffs' experts, compiled demonstratives, and prepared the filing.[56] On October 3, 2019, End-Payor Counsel again argued on Plaintiffs' behalf at an additional hearing on these questions. The Court denied summary judgment on market power on December 17, 2019.[57]

On May 10, 2019, Defendants filed a separate omnibus summary judgment motion with respect to Plaintiffs' patent, reverse payment, and product hop claims, accompanied by a 57-page statement of facts and hundreds of exhibits.[58] Defendants' motion also pressed various arguments specific to End-Payors, including damages, statute of limitations, and particular state statutes.

On June 12, 2019, Plaintiffs collectively filed a responsive brief and statement of facts, as well as a statement of additional facts and hundreds of exhibits.[59] End-Payor Counsel drafted sections relating to the product hop, acceleration clauses, End-Payor damages, and state law issues, and were primarily responsible for drafting and marshaling evidence for the corresponding fact statements. On September 11, 2019, the Court held a hearing on Defendants' motion for summary

[55] Tr. of Hr'g on Mot. for Summ. J. (Market Power), ECF No. 823 (Mar. 14, 2019).

[56] Pls.' Answers to Court's Questions for Further Market Power Briefing, ECF No. 1247 (Sept. 30, 2019).

[57] *In re Loestrin 24 Fe Antitrust Litig.*, No. 1:13-MD-2472-WES-PAS, 2019 WL 7286764, at *19 (D.R.I. Dec. 17, 2019).

[58] Mot. for Summ. J., ECF No. 842 (July 10, 2019); Decl. of K. Dyson, ECF No. 843 (July 10, 2019); Exhibits in Supp. of Defs.' Statement of Undisputed Facts in Supp. of Defs.' Mot. for Summ. J., ECF Nos. 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856 (July 10, 2019); Defs.' Statement of Undisputed Facts, ECF No. 857-1 (July 10, 2019); Defs.' Mem. of Law in Supp. of Mot. for Summ. J., ECF No. 858-1 (July 10, 2019).

[59] Pls.' Mem. of Law. in Opp. to Defs.' Mot. for Summ. J., ECF No. 972-1 (June 12, 2019); Pls.' Statements of Facts in Opp. to Defs.' Mot. for Summ. J., ECF No. 973-1 (June 12, 2019); Pls.' Additional Statement of Material Undisputed Facts, ECF No. 973-2 (June 12, 2019); Exs. in Supp. of Pls.' Opp. to Defs.' Mot. for Summ. J., ECF Nos. 974, 975, 976 (June 12, 2019).

judgment, with End-Payor Counsel arguing on behalf of all Plaintiffs with respect to the product hop claim.[60] On December 17, 2019, the Court denied Defendants' motion.[61]

F. End-Payors Work on Expert Issues.

End-Payors agreed with Direct Purchasers and Retailers to share the cost of experts covering issues common to all three plaintiff groups, retaining twelve common experts. End-Payor Counsel worked with these experts on issues relating to product hop, market power, reverse payments, and causation. End-Payor Counsel also separately retained four End-Payor-only experts for issues relating to damages and class certification and, with Retailers, retained an expert in connection with the Lupin reverse payment claims.

The parties filed numerous *Daubert* challenges. For efficiency's sake and to avoid duplication of work, Plaintiffs agreed to coordinate on motions pertaining to common issues, with End-Payor Counsel actively participating and securing favorable results for all Plaintiffs. For example, End-Payor Counsel drafted Plaintiffs' motion to exclude Drs. Meyer, Robbins, and Schilling's opinions pertaining to the product hop,[62] which the Court granted insofar as those experts sought to testify as to certain policy and legal matters.[63] End-Payor Counsel were also responsible for drafting Plaintiffs' successful motion to exclude Drs. Meyer and Robbins from testifying that the no-authorized generic provision procompetitively protected from "ruinous competition."[64] In addition, End-Payors successfully defended against *Daubert* motions filed by

[60] Joint Decl. ¶ 80.

[61] *In re Loestrin 24 Fe Antitrust Litig.*, 2019 WL 7286764.

[62] Joint Decl. ¶ 81.

[63] Mem. of Law in Supp. of Mot. to Exclude Ops. & Test. of Drs. Christine S. Meyer, Mark S. Robbins, & Melissa A. Schilling Regarding Lack of Anticompetitive Effect from Product Hop, ECF No. 940 (June 3, 2019); Op. & Order on Summ. J. and Order Regarding Mots. to Exclude Certain Expert Ops., ECF No. 1380 (Dec. 17, 2019).

[64] *In re Loestrin 24 Fe Antitrust Litig.*, 2019 WL 7286764, at *19.

Defendants.

G. End-Payors Prepare Extensively for Trial.

End-Payors led all groups on several major pre-trial submissions. End-Payors took the lead role in shepherding drafting, editing, and submitting Plaintiffs' omnibus motion *in limine*, which raised 41 separate trial issues, as well as coordinating Plaintiffs' replies in support of those motions.[65] End-Payors also managed and contributed substantially to Plaintiffs' collective oppositions to Defendants' 9 motions *in limine*.[66]

In addition, End-Payors were primarily responsible for the parties' 231-page Joint Pretrial Memorandum, including spearheading and synthesizing the work of all three Plaintiff groups.[67] As part of this effort, End-Payors Counsel led negotiations and coordination with counsel for the Defendants. Given the scope and length of the Pretrial Memorandum, as well as the short time frame under which the parties were operating, this was a considerable undertaking.

End-Payors were also closely involved in other major pretrial activities.[68] For example, End-Payor Counsel participated in drafting and editing the Plaintiffs' proposed jury instructions and verdict form—including by creating several instructions and verdict questions tailored to the product hop claim and End-Payors' state law claims. Plaintiffs' proposed jury instructions, filed on November 25, 2019, included 131 separate instructions.[69] In addition, End-Payors co-led the process for vetting potential jurors, which required working with a jury consultant to organize and

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[65] Joint Decl. ¶¶ 84-87; *see also* Mem. in Supp. of Purchasers' Omnibus Mot. *in Limine*, ECF No. 1301; Reply Mem. in Supp. of Purchasers' Omnibus Mot. *in Limine*, ECF No. 1336-1.

[66] Pls.' Responses in Opp. to Defs.' Mots. *in Limine*, ECF Nos. 1303, 1304, 1305, 1306, 1307, 1308-1, 1309-1, 1310, 1311-1 (Nov. 12, 2019).

[67] Joint Decl. ¶¶ 88-89; *see also* Pretrial Mem., ECF No. 1364 (Dec. 8, 2019).

[68] Joint Decl. ¶¶ 90-96.

[69] Pls.' Proposed Jury Verdict, ECF No. 1350 (Nov. 25, 2019); Pls.' Proposed Jury Instructions, ECF No. 1351 (Nov. 25, 2019).

evaluate questionnaires submitted by hundreds of potential jurors.[70] During jury selection, held on December 16 and 18, counsel for the End-Payors questioned venire panel members and participated in the process of selecting each of the 10 jurors.

In anticipation of the fact that many witnesses would not be testifying live at trial, Plaintiffs designated 49 deposition transcripts, and Defendants designated 95 deposition transcripts. Additionally, Plaintiffs designated 1,609 exhibits for trial, while Defendants designated 7,192 exhibits. Subsequently, the parties exchanged counter-designations and objections. End-Payor Counsel were closely involved in this process, engaging in extensive negotiations with Defendants over the parties' deposition and exhibit designations and objections after the other Plaintiffs settled.[71]

By the time the parties settled on the eve of trial, End-Payors had expended hundreds of hours on their trial presentation, including drafting and refining their opening statement and examinations of various witnesses.[72] End-Payors also participated with the other Plaintiffs in a mock trial to help refine their strategy.[73]

H. End-Payors Settle on the Eve of Trial.

After months of settlement discussions, on the final business day before trial, End-Payors and the Warner Chilcott Defendants reached an agreement in principle and negotiated and executed a corresponding memorandum of understanding to settle End-Payors' claims for $62.5 million in cash.[74] After further negotiations, a formal settlement agreement was executed on

[70] *Cf.* Case Management Order No. 16, ECF No. 1277 at 2 (Oct. 23, 2019).

[71] Joint Decl. ¶ 93.

[72] Joint Decl. ¶¶ 94-96.

[73] *Id.*

[74] *Id.* ¶ 99.

January 30, 2020. That agreement was the product of lengthy, hard-fought, and arm's-length negotiations among experienced counsel, with assistance from two well-regarded mediators—Judge Layn Phillips and David Murphy of Phillips ADR. On March 6, 2020, End-Payors moved for preliminary approval of the Warner Chilcott Settlement,[75] which this Court granted on March 23, 2020.[76] On March 28, 2020, notice was sent to class members *via* First-Class mail, publication, email, and public media. The notice advised that Class Counsel would seek a fee of up to one-third of the fund created by the Warner Chilcott Settlement.[77]

III. END-PAYORS' ATTORNEYS' FEES REQUEST IS REASONABLE.

Federal Rule of Civil Procedure 23(h) provides that, "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement."

Under the common fund doctrine, an attorney who succeeds in creating a fund for the benefit of the class is entitled to "a reasonable attorney's fee from the fund as a whole."[78] Fee awards to class action plaintiffs' attorneys are essential to ensure access to the courts—"[d]ue to the expense, time and difficulty of pursuing complex litigation, it would likely not be economical for an individual Class Member to pursue such litigation on their own."[79] Fee awards in antitrust class actions promote compliance with, and the effective enforcement of, the antitrust laws.[80]

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[75] Joint Decl. ¶¶ 97-98; *see also* EPPs' Mem. in Supp. of Amended Mot. for Settlement, ECF No. 1421 (Mar. 6, 2020).

[76] Order, ECF No. 1427 (Mar. 23, 2020).

[77] *See* Notice of Class Action & Proposed End-Payor Settlements (Mar. 28, 2020), available at https://inreloestrin24feantitrustlitigation.com/Home/Notice.

[78] *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (citations omitted); *see also In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 n.6 (1st Cir. 1995) ("The common fund doctrine is founded on the equitable principle that those who have profited from litigation should share its costs.").

[79] *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d at 463.

[80] *Reiter v. Sonotone Corp.*, 442 U.S. 330, 344 (1979) (noting that private challenges to antitrust violations provide "a significant supplement to the limited resources available to the Department of Justice for enforcing the

The First Circuit recognizes two methods for awarding attorneys' fees in the class action context.[81] Under the "percentage of the fund" method, where the parties' settlement establishes a "common fund" of money for the benefit of class members, the court may "shape[] the counsel fee based on what it determines is a reasonable percentage of the fund recovered for those benefitted by the litigation."[82] In contrast, under the "lodestar" method, the court calculates the fee award by "determining the number of hours productively spent on the litigation and multiplying those hours by reasonable hourly rates."[83]

The First Circuit has not mandated either approach over the other—though it has observed that the percentage of the fund method "offers significant structural advantages in common fund cases, including ease of administration, efficiency, and a close approximation of the marketplace."[84] District courts in this circuit have discretion to rely on either (or both) methods, and often use one to "cross-check" the other.[85] Here, End-Payor Class Counsel's fee request is supported by both the percentage of the fund and lodestar approaches.

A. The Percentage of the Fund Method Supports End-Payors' Fee Request.

Previously, this Court has recognized three approaches for determining the appropriate fee percentage under the percentage-of-the-fund method.[86] The most common of these is the multi-

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antitrust laws and deterring violations"); *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 266 (1972) (noting that Congress created rights for private citizens to enforce the antitrust laws, and Rule 23 provides for class actions that may "enhance the efficacy of private actions by permitting citizens to combine their limited resources to achieve a more powerful litigation posture").

[81] *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 349 (D. Mass. 2015), *aff'd*, 809 F.3d 78 (1st Cir. 2015); *see also In re Thirteen Appeals*, 56 F.3d at 307..

[82] *In re Thirteen Appeals*, 56 F.3d at 305; *see also Boeing*, 444 U.S. at 478.

[83] *In re Thirteen Appeals*, 56 F.3d at 305.

[84] *Id*. at 308.

[85] *See, e.g.*, *Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d at 464; *In re Tyco Intern., Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007).

[86] *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 38 (D.N.H. 2006).

factor or "holistic" approach, which has been endorsed by the Second, Third, Fourth, Fifth, Sixth and Eleventh Circuits and by many district courts in this Circuit.[87] Other courts rely more narrowly on the "benchmark approach" and the "mimic-the-market approach."

In theory, these three approaches may lead to divergent results. In practice, however, in estimating the market rate for the services performed by class counsel, courts applying the mimic-the-market approach typically rely on many of the same considerations used by courts applying the holistic approach. This is largely due to the paucity of real-world competitive auctions among prospective lead counsel in class action cases.[88] For example, in *Taubenfeld v. AON Corporation*, the Seventh Circuit noted that the "type of evidence needed to mimic the market," includes information on "data on fees awarded in other class actions in the jurisdiction," "evidence of the quality of legal services rendered," and the "degree of risk of nonpayment with the case."[89] As is described in below and in the appended Declaration of Prof. Charles Silver, in this case, both the holistic and mimic-the-market approaches support the requested one-third fee award.[90]

Although the First Circuit has not endorsed a specified set of factors to be used in evaluating a fee request's reasonableness, district courts in this Circuit generally consider the following factors: (1) the fee awards in similar cases; (2) the risk of nonpayment; (3) the

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[87] *Id*.

[88] *Cf. Gottlieb v. Wiles*, 150 F.R.D. 174, 180 (D. Colo. 1993), *rev'd on other grounds*, 43 F.3d 474 (10th Cir. 1994) ("Not only is there no ready analogy in the contingency fee-paying market to a class action securities case, the court's ability to make even a principled guess at a hypothetical market transaction between the class and class counsel is severely limited.").

[89] 415 F.3d 597, 600 (7th Cir. 2005); *see also Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *8 (S.D. Ill. Dec. 16, 2018) (explaining that its mimic-the-market analysis was "informed by a number of factors, including: (1) the actual agreements between the parties as well as fee agreements reached by sophisticated entities in the market for legal services; (2) the risk of non-payment at the outset of the case; (3) the caliber of Class Counsel's performance; and (5) information from other cases, including fees awarded in comparable cases").

[90] *See* Silver Decl. ¶¶ 16-73; *see also*, *e.g.*, *Lauture v. A.C. Moore Arts & Crafts, Inc.*, No. 17-CV-10219, 2017 WL 5900058, at *1 (D. Mass. Nov. 28, 2017) ("A fee award of one-third is appropriate because it mimics the market.").

complexity and duration of the litigation; (4) the skill and efficiency of the attorneys involved; (5) the amount of time devoted to the case by plaintiffs' counsel; (6) public policy considerations; and (7) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel.[91]

When many of these factors are present, courts will often award a larger percentage of the fund (under the percentage-of-the-fund method) and/or a higher multiplier (under the lodestar method).[92] Here, all of these factors favor End-Payor Class Counsel's fee request.

1. One-Third Fee Awards Are Typical in Comparable Generic Suppression Suits.

End-Payors' one-third attorneys' fee request is firmly supported by fee awards in similar cases.[93] "[I]n this circuit, percentage fee awards range from 20% to 35% of the fund."[94] Among comparable end-payor generic suppression class actions—including in three such cases from this circuit[95]—one-third (33 1/3%) fee awards are far and away the most common.

End-payor generic suppression cases share certain characteristics, so the attorneys' fees awarded in such suits provide the most appropriate comparators for this case. First, these suits are among the most complex of any filed in federal court, requiring subject matter expertise in

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[91] *See, e.g.*, *Puerto Rican Cabotage*, 815 F. Supp. 2d at 457-58 *In re Lupron Mktg. & Sales Practices Litig.*, No. 01-cv-10861, 2005 WL 2006833, at *3 (D. Mass. Aug. 17, 2005) (same); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 79 (D. Mass. 2005).

[92] *Id*.

[93] *Taubenfeld*, 415 F.3d at 600 (holding that, under the mimic-the-market approach, "attorneys' fees from analogous class action settlements are indicative of a rational relationship between the record in this similar case and the fees awarded by the district court"); see also Silver Decl. ¶¶ 69-73.

[94] *Mazola v. May Dept. Stores Co.*, No. 97-cv-10872, 1999 WL 1261312, at *4 (D. Mass. Jan. 27, 1999).

[95] *See* Order Awarding Attorneys' Fees, Expenses & Approving Service Awards to the Class Representatives, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:16-cv-10238, (D. Mass. July 18, 2018), ECF No. 24; Order & Final J. Approving Settlement, Awarding Attorneys' Fees & Expenses, Awarding Representative Pls.' Incentive Awards, Approving Plan of Allocation, & Ordering Dismissal with Prejudice, *In re Prograf Antitrust Litig.*, No. 1:11-md-02242 (D. Mass. Nov. 2, 2016), ECF No. 712; Final Order & J. Granting Final Approval to Proposed Class Action Settlement, *In re Relafen Antitrust Litig.*, No. 1:01-cv-12239 (D. Mass. Oct. 13, 2005), ECF No. 459.

antitrust, patent, and regulatory law, as well as a basic understanding of the science and economics of pharmaceuticals. Second, generic suppression cases are extraordinarily expensive to litigate because they necessarily involve voluminous documentary discovery, complicated privilege issues, numerous depositions, and the retention of multiple experts able to opine on each of the subject areas at issue. Third, as courts have ratcheted up class certification standards, particularly in indirect purchaser suits, even otherwise meritorious cases impose considerable risks. Fourth, such suits typically require many years to litigate, resulting in counsel bearing for lengthy periods massive out-of-pocket expenses and forgoing payment of their fees. Fifth, generic suppression defendants often hire the country's most sophisticated firms and mount particularly aggressive defenses, requiring large investments of attorney hours by class counsel.

As reflected in the below table, Class Counsel are aware of attorneys' fee awards in eighteen end-payor generic suppression class actions over the past decade-and-a-half. Of these, fees of 33% or greater were awarded in twelve cases—including in *all* of the nine most recent; fees between 30% and 33% were awarded in two cases; and fees between 25% and 30% were awarded in three cases.[96] Moreover, reflecting the quality of the results obtained by Class Counsel, the $62.5 million recovery is among the largest settlements in recent end-payor cases (for which the median is $28.85 million and mean is around $37 million), but does not cross into "megafund" territory.[97]

[96] The separate third-party payor and consumer class settlements in the *Ovcon* litigation are not reflected in these categories, because they did not require a cash payment to class members. The settling defendants agreed to donate products at market value ($6 million for consumers and $3 million for third-party payors), pay attorneys' fees and costs ($2 million to consumers and $1.1 million to third-party payors), and pay settlement notice and administration expense ($300,000 to consumers and $100,000 to third-party payors). The portion of the fees and expense fund awarded to class counsel as fees ($1,880,293.13 for consumers and $874,650) was equivalent to 21.2% of the total combined $13 million market value of the settlement, inclusive of all fees and costs awarded. *See* Mem. Op., *Vista Healthplan, Inc v. Warner Chilcott Holdings Company III, Ltd. ("Ovcon")*, No. 05-cv-2327 (D.D.C. Nov. 16, 2007), ECF No. 105; *Cohen v. Warner Chilcott Pub. Ltd. Co.*, 1:06-cv-00401 (D.D.C. Nov. 16, 2007), ECF No. 101; Mem. Op., *Ovcon*, (D.D.C. Nov. 16, 2007), ECF No. 104.

[97] *Accord In re Neurontin Mktg. & Sales Practices Litig.*, 58 F. Supp. 3d 167, 170 (D. Mass. 2014) ("In so-

Attorneys' Fee Awards in End-Payor Generic Suppression Class Actions (2005-2020)

Settlement Year	Case	Settlement Amount	Fee Awarded	Fee %
2020	*Vista Healthplan, Inc v. Cephalon, Inc. ("Provigil")*, No. 2:06-cv-1833 (E.D. Pa.)	$65,877,600	$21,959,200	33.3%
2018	*In re Aggrenox Antitrust Litig.*, No. 3:14-md-2516 (D. Conn.)	$50,229,193	$16,743,064	33.3%
2018	*In re Lidoderm Antitrust Litig.*, No. 3:14-md-02521 (N.D. Cal.)	$104,750,000	$34,916,000	33.3%
2018	*In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-md-02503 (D. Mass.)	$43,000,000	$14,333,333	33.3%
2016	*In re Prograf Antitrust Litig.*, No. 1:11-md-02242 (D. Mass.)	$13,250,000	$4,416,667	33.3%
2015	*In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 1:12-md-2343 (E.D. Tenn.)	$9,000,000	$3,000,000	33.3%
2013	*In re Wellbutrin SR Antitrust Litig.*, No. 2:04-cv-05898 (E.D. Pa.)	$21,500,000	$7,095,000	33.3%
2013	*In re DDAVP Indirect Purchaser Antitrust Litig.*, No. 7:05-cv-2237 (S.D.N.Y.)	$4,750,000	$1,567,500	33.3%
2013	*In re Flonase Antitrust Litig.*, No. 08-3301 (E.D. Pa.)	$35,000,000	$11,655,000	33.3%
2012	*In re Metoprolol Succinate ("Tropol XL") End-Payor Antitrust Litig.*, No. 06-cv-71 (D. Del.)	$11,000,000	$3,500,000	31.8%
2013	*In re Wellbutrin XL Antitrust Litig.*, 2:08-cv-2433 (E.D. Pa.)	$11,750,000	$3,916,275	33.3%
2009	*In re Tricor Indirect Purchaser Antitrust Litig.*, No. 1:05-cv-00360 (D. Del.)	$65,700,000	$21,900,000	33.3%

called 'megafund' cases, defined as those which yield settlement funds of over $100 million, some courts have adopted a practice of lowering the fee award percentage as the size of the settlement increases to avoid giving attorneys a windfall at the plaintiffs' expense.").

2007	*Vista Healthplan, Inc. v. Warner Chilcott Holdings Company III, Ltd. ("Ovcon")*, No. 1:05-cv-2327 (D.D.C.)	$9 million in products at market value and $3.2 million in fees and costs	$2,754,943.13	*21.2%
2005	*In re Terazosin Hydrochloride Antitrust Litig.*, No. 1:99-md-1317 (S.D. Fla.)	$28,700,000	$8,610,000	30%
2005	*In re Relafen Antitrust Litig.*, No. 1:01-cv-12239 (D. Mass.)	$67,000,000	$22,311,000	33.3%
2005	*In re Remeron End-Payor Antirust Litig.*, No. 2:02-cv-2007 (D.N.J.)	$27,555,000	$7,800,000	28.3%[98]
2005	*Nichols v. Smithline Beecham Corp. ("Paxil")*, No. 2:00-cv-6222 (E.D. Pa.)	$65,000,000	$19,000,000	29.2%
2005	*Ryan-House v. GlaxoSmithKline PLC ("Augmentin")*, No. 2:02-cv-442 (E.D. Va.)	$29,000,000	$7,250,000.00	25%

In similar suits in which courts awarded fees below 30% of the common fund, the procedural posture and settlement quality (or both) differed in material respects from this case. The *Remeron* and *Augmentin* end-payor suits both settled for a fraction of what End-Payors obtained here, and those settlements were concluded at earlier stages of the litigation—before counsel were required to devote the time and resources that Class Counsel did here. In *Remeron*, for instance, at the time the case settled, the court had not yet issued its decision on class certification; nor had the parties briefed summary judgment or begun to prepare for trial.[99] And in

[98] In *Remeron*, the end-payor class and state attorneys' general negotiated a combined $36 million settlement fund consisting of a $33 million payment to class members and government purchasers, $2 million earmarked for class notice and settlement administration costs, and $1 million to the attorney generals' offices for their fees and expenses. *See In re Remeron End-Payor Antitrust Litig.*, No. 02-cv-2007, 2005 WL 2230314, at *5-6 (D.N.J. Sept. 13, 2005). Under the terms of the settlement, class members were to receive 83.5% of the $33 million fund ($27,555,000). *Id.* Accordingly, class counsel's $7.8 million fee award represents 28.3% of the portion of the settlement that was allocated to the class.

[99] *See Remeron*, 2005 WL 2230314, at *2-4.

Paxil, the end-payors' class certification motion was pending at the time of settlement, and the parties had not yet filed summary judgment motions.[100]

Here, Class Counsel's unreimbursed efforts over the course of seven years culminated in one of the largest settlements for the End-Payor Class in recent history and required considerable expenditure of skill, risk, time, and resources. Whether those efforts would result in any recovery was unknown up until the last business day before trial in this matter was set to begin. Under the circumstances, End-Payors' fee request is not only in-line with fee awards in similar cases, but also eminently reasonable.

2. Class Counsel Are Highly Skilled and Possess Extensive Expertise Litigating Pharmaceutical Class Actions.

Class Counsel are among the most experienced class action and antitrust firms in the country. The Co-Lead firms have served, and continue to serve, in lead and executive committee roles in many of the nation's largest and most significant pharmaceutical antitrust cases.[101]

Despite facing considerable obstacles, Class Counsel were able to employ their skill and experience here to obtain an excellent recovery for the Class. This suit was particularly complex, as it involved multiple liability theories (i.e., patent fraud, sham litigation, several reverse payments, and product hop) and required a deep understanding of patent, antitrust, and

[100] *See* Mem., *In re Paxil Antitrust Litig.*, No. 2:00-cv-06222 (E.D. Pa. April 22, 2005), ECF No. 212 at 11-17 (describing the litigation history).

[101] *See*, *e.g.*, *In re Lipitor Antitrust Litig.*, No. 3:12-cv-02389 (D.N.J.); *Mayor & City Council of Baltimore v. Actelion Pharm. Ltd. ("Tracleer")*, No. 1:18-cv-03560 (D. Md.); *In re Niaspan Antitrust Litig.*, No. 2:13-md-02460 (E.D. Pa.); *Staley v. Gilead Sciences*, No. 3:19-cv-02573 (N.D. Cal.); *In re Zetia Antitrust Litig.*, No. 2:18-md-2836 (E.D. Va.); *In re Actos End Payor Antitrust Litig.*, No. 1:13-cv-09244 (S.D.N.Y.); *In re Lidoderm Antitrust Litig.*, No. 3:14-md-02521 (N.D. Cal); *In re Aggrenox Antitrust Litig.*, No. 3:14-md-02516 (D. Conn.); *In re Suboxone Antirust Litig.*, No. 2:13-md-02445 (E.D. Pa.); *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-md-02503 (D. Mass.); *In re Nexium Antitrust Litig.*, No. 1:12-md-02409 (D. Mass.); *In re Cardizem CD Antitrust Litig.*, No. 2:99-md-01278 (E.D. Mich.); *In re Lorazepam & Clorazepate Antitrust Litig.*, No. 1:99-mc-00276-TFH (D.D.C.); *Ryan-House v. GlaxoSmithKline PLC*, No. 2:02-cv-00442 (E.D. Va.); *In re Warfarin Sodium Antitrust Litig.*, No. 1:98-md-01232 (D. Del.); *In re Relafen Antitrust Litig.*, No. 1:01-cv-12239 (D. Mass.); *In re K-Dur Antitrust Litig.*, No. 01-cv-1652 (D.N.J.).

pharmaceutical regulatory law, as well as the facts particular to this case. It was defended by deep-pocketed pharmaceutical companies that retained counsel who employed a scorched earth litigation strategy. Accordingly, the quality of representation provided by Class Counsel supports the fee request.

3. This Case Presented Substantial Risks at Essentially Every Stage.

"Many cases recognize that the risk [of non-payment] assumed by an attorney is perhaps the foremost factor in determining an appropriate fee award."[102] This case, which was litigated on a fully contingent basis, presented a substantial risk of non-payment. For the seven years this case wended its way to trial, End-Payor Counsel devoted thousands of hours of attorney time and millions of dollars in expenses, for which there was no guarantee counsel would ever be compensated. End-Payors' considerable investments were necessitated by the inherent complexity of delayed generic suits, as well as the vigorous defense advanced by Defendants.

Moreover, in contrast to many other successful private civil antitrust suits, there were no guilty pleas or parallel government proceedings on which End-Payors could rely. Instead, End-Payors pioneered this case, investigating the facts and developing the legal claims from scratch, filing the first complaint that provided the foundation for all subsequent complaints filed by Direct Purchaser Plaintiffs and Retailers. "Where, as here, lead counsel undertook this action on a contingency basis and faced a significant risk of non-payment, this factor weighs more heavily in favor of rewarding litigation counsel."[103]

Moreover, when the original End-Payor case was filed in 2013, the legal landscape for delayed-generic competition suits was uncertain. The Supreme Court had not decided *FTC v.*

[102] *Lupron Mktg. & Sales Practices Litig.*, 2005 WL 2006833, at *4 (internal quotation marks omitted).

[103] *Medoff v. CVS Caremark Corp.*, No. 09-cv-554-JNL, 2016 WL 632238, at *9 (D.R.I. Feb. 17, 2016).

Actavis, Inc.,[104] which provided some clarity on the legal standards for evaluating the legality of reverse-payment agreements under the antitrust laws. Even afterward, End-Payors' complaint was dismissed on the ground that the non-cash reverse payments at issue here did not fall within *Actavis*'s ambit. End-Payors were able to proceed with their reverse-payments claims only after obtaining a favorable decision on appeal to the First Circuit.[105] Additionally, End-Payors' complaint successfully pleaded novel "product hop" (or "switch") claims, which this Court recognized as "a relatively new theory under the Sherman Act" on which First Circuit courts had not yet ruled and for which there were no universally accepted legal standards.[106]

The risks borne by End-Payor Counsel, in seeking to litigate on behalf of a class of indirect purchasers, were unique among the three Plaintiff groups. For instance, in the midst of briefing class certification, the First Circuit issued its decision in *Asacol*, which erected significant hurdles to End-Payors' prosecution of the case on a class-wide basis. Despite these additional uncertainties, in order to obtain compensation for class members, End-Payor Counsel took the considerable risks of retaining, at their own expense, three new experts and investing hundreds of hours of attorney time, for which they might never have been compensated.

Trying this case would have presented considerable additional risks, as reflected in the mixed results of other recent antitrust trials.[107] In order to establish liability, End-Payors bore the burden of proving each of the following elements: (i) substantial market power over branded Loestrin 24, (ii) the existence of a reverse payment agreement or hard product switch, (iii)

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[104] 570 U.S. 136 (2013).

[105] *In re Loestrin 24 Fe Antitrust Litig.*, 814 F.3d 538 (1st Cir. 2016).

[106] *In re Loestrin 24 Fe Antitrust Litig.*, 261 F. Supp. 3d 307, 351 (D.R.I. 2017).

[107] *See*, *e.g.*, *In re Nexium Antitrust Litig.*, 842 F.3d 34 (1st Cir. 2016) (affirming verdict and entry of judgment for defendants following a six-week jury trial in another generic suppression suit); *In re Wholesale Grocery Prods. Antitrust Litig.*, 957 F.3d 879 (8th Cir. 2020) (affirming verdict and entry of judgment for defendants).

anticompetitive consequences of the reverse payment agreement or hard product switch that outweighed any legally recognized, procompetitive benefits; and (iv) delayed or impaired generic competition cause by the antitrust violation.[108] If even a single lay juror declined to find for End-Payors on any one of the required elements, End-Payors would have recovered nothing.

In addition, even if End-Payors were to succeed in establishing liability, the Class would have been required to prove damages before an entirely new panel of jurors.[109] Defendants made clear that they intended to vigorously assert several damages defenses that were unique to End-Payors, including challenging the pass-on of damages and ability to marshal data sufficient to satisfy *Asacol*'s requirements.[110] Nor would a favorable verdict have resolved the litigation. Defendants almost certainly would have appealed any verdict in favor of End-Payors, further jeopardizing and delaying any recovery by the Class.

4. This Case Was Extremely Complex.

"The complexity of federal antitrust law is well known."[111] "[A]ntitrust class actions are notoriously complex, protracted, and bitterly fought."[112] This case was no exception. On top of antitrust law and economics, the case required mastery in patent and drug law, and competency in

[108] Though contested by End-Payors, Defendants also asserted that End-Payors were required to prove numerous state-specific elements through a lengthy and byzantine set of verdict questions. At the point End-Payors disclosed their settlement in principle, the Court had not yet issued a final verdict slip.

[109] *In re Elec. Carbon Prods. Antitrust Litig.*, 447 F. Supp. 2d 389, 401 (D.N.J. 2006); *Lupron*, 2005 WL 2006833, at *4 ("History is replete with cases in which plaintiffs prevailed at trial on issues of liability, but recovered little or nothing by way of damages."); *Sutton v. Med. Serv. Ass'n of Pa.*, No. 92-cv-4787, 1994 WL 246166, at *7 (E.D. Pa. June 8, 1994) ("[E]ven assuming that plaintiffs ultimately would have prevailed on liability, they faced the risk that they could not establish damages . . . ."). Moreover, in contrast to federal Sherman Act claims, which provides for automatic trebling once damages are established, certain of the state laws under which End-Payors sued either required establishing additional elements (*e.g.*, willfulness) in order to obtain a damages enhancement or did not provide for such enhancements at all.

[110] Defs.' Mots. *in Limine*, ECF Nos. 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287 (Dec. 24, 2019).

[111] *Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d at 459 (internal citations omitted).

[112] *Id.*

the science and manufacturing processes behind pharmaceutical products. And the number and complexity of the legal claims was unusual even among generic suppression suits. Additionally, as discussed at greater length above, Class Counsel litigated several novel issues, including the application of *Actavis* to non-cash payments, the legality of product hopping, the competitive effect of the acceleration clause, and the quantum of evidence required under *Asacol* in order to obtain certification of a class. The aggressive "kitchen sink" strategy pursued by the Defendants added to this complexity.

5. Class Counsel Prosecuted End-Payors' Claims With Diligence and Efficiency.

The extensive time and effort expended by End-Payor Class Counsel in prosecuting this action favors Counsel's requested one-third fee award.[113] In total, Class Counsel devoted 35,249.28 hours to pursuing, and ultimately obtaining, a recovery on behalf of the Class.

The Court's February 14, 2014 order appointed leadership for the End-Payors and vested Co-Lead Counsel with authority for the overall conduct of the case.[114] In accordance with this directive, the four Co-Lead Counsel handled the vast majority of work in this matter, including preparing and responding to written discovery, taking depositions, working with experts, briefing, court appearances, and preparing for trial. Co-Lead Counsel also divided tasks among themselves to further avoid duplication.

Aside from Co-Lead Counsel, five firms participated in prosecuting End-Payor claims in this matter. Non-lead firms were tasked with carrying out certain discrete tasks, including document review and working with the named plaintiffs. Co-Lead counsel closely monitored these

[113] *Id.* at 461 (where counsel "spent significant, but not excessive, time prosecuting the instant action. . . . this factor points in favor of Lead Counsel's fee request").

[114] CMO No. 2, ECF No. 85 at ¶¶ 6-7 (Feb. 14, 2014).

efforts.

The amount of time invested by Class Counsel was necessary and appropriate in light of the length of the litigation, the complexity of the claims and defenses, and the prowess of the Defendants' attorneys. End-Payor Counsel actively litigated this case for seven years. During that period, among other tasks, Counsel engaged in extensive discovery—including the review of millions of pages of documents produced by Defendants and third parties and the deposition and defense of several dozen witnesses; briefing (and generally defeating) three rounds of motions to dismiss and for judgment on the pleadings; a successful appeal to the First Circuit; successfully obtaining certification of a class and defending against a Rule 23(f) petition; briefing two rounds of summary judgment motions; filing and defending against numerous *Daubert* challenges at both the class certification and merits stages (many of which resulted in favorable rulings); and preparing the case for trial.[115]

In performing these tasks for the benefit of the End-Payor Class, Co-Lead Counsel made every effort to be efficient, in terms of both time spent and ensuring these tasks were handled by counsel and staff with appropriate skill and experience. Consistent with this Court's Case Management Orders, Co-Lead Counsel implemented time and expense billing guidelines for End-Payor Class Counsel.[116] Included among these guidelines were requirements that travel time be billed at 50% of the time spent, and that only common benefit time be included.

In addition, each firm was required to submit monthly time and expense reports for review by Co-Lead counsel and A.B. Data, so that Co-Lead Counsel could monitor tasks and expenses. Class Counsel's billing records and expenses were reviewed by Magistrate Judge Sullivan on a

[115] *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 80 (D. Mass. 2005).

[116] CMO No. 2, ECF No. 85 at ¶¶ 11-17 (Feb. 14, 2014).

quarterly basis through the third quarter of 2019 and were adjusted, as appropriate, based on her instructions. Any billing records or expenses that were not timely included in these quarterly reports were excluded from Class Counsel's fee and expense requests. Moreover, in order to ensure that Counsel would seek compensation for only common benefit time, each firm was notified that billing spent in connection with the Judicial Panel on Multidistrict Litigation proceeding, leadership negotiations, certain administrative tasks, and this attorneys' fee and expense request would be disallowed.

In order to avoid duplication of effort, End-Payor Class Counsel worked together with counsel for the other Plaintiff groups to create "issue" teams—including patents, product hop, payments/agreement, causation, and privilege—each of which was staffed with attorneys with subject-matter expertise who focused on the pertinent legal questions and factual record. Counsel for the End-Payors led both the product hop and privilege teams for all Plaintiff groups. When appropriate, counsel for the various Plaintiff groups jointly retained experts, ensuring that the Plaintiffs spoke with a single voice on common issues and reducing the costs incurred by each group. In addition, End-Payors coordinated with the other Plaintiffs in scheduling and taking depositions.

6. The Recovery Obtained by Class Counsel Is Substantial.

End-Payors obtained a substantial recovery of $62,500,000 for the benefit of the Third-Party Payors. The Warner Chilcott Settlement is all cash, is not based on the claims received, and does not permit any reversion of funds to Defendants. The Settlement achieved by End-Payors represents an excellent recovery for End-Payor Class members, particularly in light of the substantial risks and obstacles posed in the action.

As reflected in the chart below, End-Payors' $62.5 million Warner Chilcott settlement is

among the largest in recent generic suppression end-payor cases, and more than twice as large as the typical such end-payor settlement. A comparison of direct purchaser and end-payor generic suppression settlements in recent years further attests to the Warner Chilcott Settlement's quality. The typical end-payor recovery is around one-third of the recovery in related direct purchaser suits. Here, however, the End-Payors' recovery is *more than half* that of the Direct Purchasers.[117]

Direct Purchaser vs. Indirect Purchaser Settlements in Generic Suppression Class Actions (2005-2020)

	End-Payor Class Settlement	Direct Purchaser Class Settlement	EPP/DPP %
***Loestrin* (D.R.I.)**	**$62,500,000**	**$120,000,000**	**52.1%**
Pre-*Loestrin* Average	**$28.9 million (median) $37.0 million (mean)**		**38.0%[118]**
Provigil (D. Pa.)	$65,877,600	$512,000,000	12.9%
Aggrenox (D. Conn.)	$50,229,193	$146,000,000	34.4%
Lidoderm (N.D. Cal.)	$104,750,000	$166,000,000	63.1%
Solodyn (D. Mass.)	$43,000,000	$72,500,000	59.3%
Prograf (D. Mass.)	$13,250,000	$98,000,000	13.5%
Skelaxin (E.D. Tenn.)	$9,000,000	$73,000,000	12.3%
Wellbutrin SR (E.D. Pa.)	$21,500,000	$49,000,000	43.9%
DDAVP (S.D.N.Y.)	$4,750,000	$20,250,000	23.5%
Flonase (E.D. Pa.)	$35,000,000	$150,000,000	23.3%
Toprol XL (D. Del.)	$11,000,000	$20,000,000	55.0%
Wellbutrin XL (E.D. Pa.)	$11,750,000	$37,500,000	31.3%
Tricor (D. Del.)	$65,700,000	$250,000,000	26.3%

[117] These numbers likely understate the quality of the End-Payors' recovery here because they do not account for generic suppression suits in which a direct purchaser class achieved a settlement, while the corresponding end-payors failed to get a class certified—thus obtaining *no* recovery. *See, e.g.*, *Asacol,* 907 F.3d 42 (vacating class certification).

[118] In order to avoid being skewed by unusually large or small settlements, this calculation is based on the mean of the percentages reflected in the "EPP/DPP %" column.

Ovcon (D.D.C.)	$13,000,000	$22,000,000	59.1%
Terazosin (S.D. Fla.)	$28,700,000	$74,000,000	38.8%
Relafen (D. Mass.)	$67,000,000	$175,000,000	38.3%
Remeron (D.N.J.)	$27,555,000	$75,000,000	36.7%
Paxil (E.D. Pa.)	$65,000,000	$100,000,000	65.0%
Augmentin (E.D. Va.)	$29,000,000	$62,500,000	46.4%

7. Class Counsel's Requested Fee Furthers the Public Interest in Incentivizing Suits by End-Payors Challenging Anticompetitive Practices by Pharmaceutical Companies.

End-Payor Counsel's attorneys' fees request is consistent with public policy objectives. Courts have recognized that attorneys' fee awards should reflect the important goal of "providing lawyers with sufficient incentive to bring common fund cases that serve the public interest."[119] Antitrust class actions advance the public interest both by deterring predatory behavior and compensating those who have been wronged.[120] "In the absence of adequate attorneys' fee awards, many antitrust actions would not be commenced, since the claims of individual litigants, when taken separately, often hardly justify the expense of litigation."[121]

The public interest in attracting experienced and sophisticated litigators is particularly salient in suits challenging anticompetitive practices in the health care industry. The rising cost of health care is among the most pressing issues facing our country, with nearly 80% of Americans stating that drug prices are out of control.[122] Defendant pharmaceutical companies have vast

[119] *Goldberger v. Integraed Resources, Inc.*, 209 F.3d 43, 51 (2d Cir. 2000).

[120] *Lupron Mktg. & Sales Practices Litig.*, 2005 WL 2006833, at *6 ("The public interest is also served by the defendants' disgorgement of the proceeds of predatory marketplace behavior.").

[121] *Alpine Pharmacy, Inc. v. Chas. Pfizer & Co., Inc.*, 481 F.2d 1045, 1050 (2d Cir. 1973).

[122] Ashley Kirzinger et al., *KFF Health Tracking Poll – February 2019: Prescription Drugs*, Kaiser Family Foundation (Mar. 1, 2019), https://www.kff.org/health-costs/poll-finding/kff-health-tracking-poll-february-2019-prescription-drugs/.

resources and retain top-tier defense firms that typically pursue aggressive litigation strategies. Reasonable attorneys' fees are necessary to ensure that such suits attract equally adept class counsel who are incentivized to invest the time and resources necessary to obtain recoveries for the class. And these investments bring cumulative benefits to class members and the public, as favorable rulings push the law forward for future cases.[123]

B. The Lodestar Method Further Supports End-Payors' Fee Request.

Class Counsel's lodestar confirms the reasonableness of their fee request. When lodestar is used as a cross-check, "the focus is not on the 'necessity and reasonableness of every hour' of the lodestar, but on the broader question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys."[124] The total reported lodestar in this case through April 30, 2020 is $19,917,547.10. This amount is calculated based on 35,249.28 hours of attorney and professional support time, billed at historical rates.[125]

Class Counsel worked to ensure that the reported lodestar is based only on the time spent for the common benefit of the End-Payor Class. As described above, each Class Counsel firm submitted monthly time reports for review by Co-Lead Counsel and A.B. Data and quarterly time reports (through the end of 2019) to Magistrate Judge Sullivan. Excluded from Class Counsel's reported lodestar is time billed in connection with the JPML proceeding, leadership negotiations,

[123] The acceleration-clause issue provides just one example of how Class Counsel's efforts here benefitted class members not only in this case but in other cases as well. In other pending litigation, end-payors assert that defendants used acceleration clauses, among other conduct, to monopolize the HIV class of drugs, causing tens of thousands of deaths and other serious injuries and billions of dollars in pecuniary damage. That district court's denial of the motion to dismiss the complaint relies substantially on this Court's decision on the acceleration-clause issue. *See Staley v. Gilead Sciences, Inc.*, 2020 WL 1032320, at *24 (N.D. Cal. March 3, 2020).

[124] *Tyco Intern., Ltd. Multidistrict Litig.*, 535 F. Supp. 2d at 270 (quoting *In re Thirteen Appeals*, 56 F.3d at 307).

[125] Billed at current rates, Class Counsels' total lodestar is $21,706,696.62, which results in a "negative" multiplier of 0.96. *See, e.g.*, *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 255 n.5 (7th Cir. 1988) ("Delay in payment may be compensated in either of two ways: (1) by using the attorneys' current rates (as the district court did here); or (2) by using historical rates plus a prime rate enhancement. The courts in this circuit generally use current rates.").

and the fee and expense request. In support of their fee request, Class Counsel have also submitted declarations from each firm providing additional detail on the work performed, as well as support for their hourly rates.[126]

Moreover, Class Counsel's billed rates are reasonable and, as reflected in their individual declarations, have been approved by numerous courts.[127] Indeed, when compared to the rates charged by the firms that commonly represent defendants in cases such as these, Class Counsel's billed rates are modest—particularly given that, unlike most defense counsel, Class Counsel's work was billed on a contingent basis with payment deferred for years.[128] For instance, White & Case LLP, the firm representing the Warner Chilcott Defendants here, recently billed $1,545 to $1,095 per hour for partners, $995/hour for counsel, and $950 to $550 per hour for associates in another matter.[129] By comparison, with only one exception, *no* End-Payor Class Counsel billed more than $1,000 per hour (with partners billing $995 to $375 per hour, counsel billing $875 to $460 per hour, and associates billing $700 to $225 per hour).[130]

The one-third fee request represents only a very small enhancement over Class Counsel's reported lodestar, and appropriately reflects the fact that counsel performed all work on a contingent basis, forgoing payment for several years. Indeed, courts have recognized that this enhancement (a 1.05 "multiplier") is at the "low" end of multipliers in comparable suits.[131]

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[126] *See* Exs. A-J (End-Payor Class Counsel individual firm declarations).

[127] *Id*.

[128] *See* Silver Decl. ¶¶ 77-84 (analyzing the billing rates of sophisticated defense and bankruptcy firms).

[129] First & Final Fee App. of White & Case LLP for Compensation for Services Rendered & Reimbursement of Expenses as Counsel to the Debtors for the Period of June 24, 2019 Through & Including July 23, 2019, *In re Joerns Woundco Holdings, Inc.*, No. 19-11401 (D. Del. Oct. 4, 2019), ECF No. 229.

[130] Exs. A-J. The lone attorney billing over $1,000/hour was involved in only a limited capacity and billed only 38.25 hours to the case. *See* Decl. of Michael M. Buchman in Support of End-Payor Class Pls.' Mot. for an Award of Attorneys' Fees, Reimbursement of Litig. Expenses, & Service Awards to the Class Representations, Ex. D.

[131] *See, e.g.*, *Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d at 465 (describing a 1.08 multiplier as

IV. THE REQUESTED EXPENSES ARE REASONABLE.

End-Payors seek reimbursement of $3,743,996.58 in litigation expenses that were reasonably incurred in prosecuting this action. The First Circuit has recognized that "lawyers whose efforts succeed in creating a common fund for the benefit of a class are entitled not only to reasonable fees, but also to recover from the fund, as a general matter, expenses, reasonable in amount, that were necessary to bring the action to a climax."[132]

The substantial majority of expenses (89%) were paid out of a common litigation fund, to which many End-Payor Counsel firms contributed. This fund was used to pay a variety of expenses that benefited the class, including the costs of testifying and consulting experts, the document review platform, trial support, translations, and mediation services. Litigation fund expenses amounted to $3,341,802.66. In addition to those expenses that were paid out of the litigation fund, individual firms separately incurred a total of $402,193.92 in expenses. A more detailed breakdown of expenses is reflected in the attached Joint Declaration of Co-Lead Counsel.[133] Lastly, the Court-appointed notice and claims administrator, A.B. Data, has advised Class Counsel that it estimates it will cost no more than $250,000 to complete the settlement distribution process.[134]

V. THE REQUESTED SERVICE AWARDS ARE REASONABLE.

End-Payors request service awards of $10,000 to each of the nine TPP Class

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"low" and "certainly within the reasonable range"); *see also Relafen Antitrust Litig.*, 231 F.R.D. at 81-82 (holding that a 2.02 multiplier was appropriate and citing authority that the vast majority of fee awards in cases with $50-200 million common funds had multipliers of between 1.0 and 4.0).

[132] *In re Fidelity/Micron Sec. Litig.*, 167 F.3d 735, 737 (1st Cir. 1999); *see also Latorraca v. Centennial Techs. Inc.*, 834 F. Supp. 2d 25, 28 (D. Mass. 2011) ("In addition to attorneys' fees, lawyers who recover a common fund for a class are entitled to reimbursement of out-of- pocket expenses incurred during litigation.").

[133] Joint Decl. ¶¶ 111-18.

[134] *Id.* ¶ 218.

Representatives in connection with the Warner Chilcott Settlement and of $5,000 to both of the Consumer Named Plaintiffs in connection with the Lupin Settlement.

Courts routinely approve service awards "to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation."[135] "[W]here, as here, the named plaintiffs participated actively in the litigation," such awards "serve an important function in promoting class action settlements."[136] "Because a named plaintiff is an essential ingredient of any class action, a [service] award can be appropriate to encourage or induce an individual to participate in the suit."[137]

The requested awards are consistent with those approved for class representatives in other end-payor delayed generic suits,[138] as well as those approved in other class suits in this circuit.[139] Moreover, because they represent only 0.016% of the total value of the Settlements in the aggregate, End-Payors' proposed service awards would have a negligible impact on other Class members' recoveries.

The substance of the Class Representatives' work on this litigation further supports the End-Payors' requested awards.[140] The Class Representatives all actively participated in the

[135] *Carlson v. Target Enter., Inc.*, No. 18-40139, 2020 WL 1332839, at *3 (D. Mass. Mar. 23, 2020) (citations omitted).

[136] *Lupron Mktg. & Sales Practices Litig.*, No2005 WL 2006833, at *7 (citations omitted).

[137] *Id.* (quoting *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 292 F. Supp. 2d 184, 189 (D. Me. 2003)).

[138] *Aggrenox*, No. 3:14-md-02516-SRU (D. Conn. July 19, 2018), ECF No. 821, at 10 (awarding $10,000 service awards); *Solodyn*, No. 1:14-md-02503-DJC (D. Mass. July 18, 2018), ECF No. 1176, at 4 (same); *Lidoderm*, No. 3:14-md-02521-WHO (N.D. Cal. Sept. 20, 2018), ECF No. 1055, at 7.

[139] *See, e.g.*, *Lauture*, 2017 WL 5900058, at *1 (D. Mass. Nov. 28, 2017) (reflecting service awards of $15,000 to each class representative; *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, No. 3:10-CV-30163, 2014 WL 6968424, at *7 (D. Mass. Dec. 9, 2014) (reflecting service awards of $10,000 to each of 10 class representatives).

[140] *See Carlson*, 2020 WL 1332839, at *3 (considering "(1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation").

litigation, stayed abreast of the progress of the case, collected and produced documents and responded to interrogatories, and prepared for and gave depositions. Additionally, because this case settled on the eve of trial, many of the Class Representatives expended considerable time and effort preparing to testify. The Class Representatives performed these services over many years despite the risk that there would be no recovery for the Class and, even if there were, the Class Representatives would not be guaranteed any compensation above that of class members who did not actively participate in the litigation.

VI. CONCLUSION

For these reasons, End-Payors respectfully request: (i) attorneys' fees in the amount of $20,833,333.33; (ii) expenses reimbursed in the amount of $3,743,996.58 and approval to expend up to $250,000 to complete the settlement distribution process; and (iii) service awards of $10,000 to each TPP Class Representative and $5,000 to each Consumer Class Representative.

Dated: June 8, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sharon K. Robertson, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's CM/ECF system. Those attorneys who are registered CM/ECF users may access these filings, and notice of these filings will be sent to those parties by operation of the CM/ECF system.

Dated: June 8, 2020

/s/Sharon K. Robertson
Sharon K. Robertson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

JOINT DECLARATION OF STEVE D. SHADOWEN, SHARON K. ROBERTSON, MICHAEL M. BUCHMAN, AND MARVIN A. MILLER IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES

Steve D. Shadowen, Sharon K. Robertson, Michael M. Buchman, and Marvin A. Miller jointly declare as follows:

1. We serve as Co-Lead Counsel for the End-Payor Class in this matter. This declaration is submitted in support of End-Payor Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to the Class Representatives.[1] We have personal knowledge of the facts below and, if called upon to do so, could and would testify competently thereto.

I. WORK PERFORMED BY END-PAYOR CLASS COUNSEL

2. The End-Payor Class consists of third-party payors—those who pay or reimburse their members for prescription drugs—and are represented here by nine union health and welfare funds.[2] End-Payors' claims arose from efforts to delay and suppress generic competition for

[1] End-Payor Counsel request reimbursement of expenses and service awards from both the Lupin Settlement and the Warner Chilcott Settlement, but request attorneys' fees be paid only from the Warner Chilcott Settlement.

[2] The End-Payor Class Representatives are A.F. of L – A.G.C. Building Trades Welfare Plan; Allied Services Division Welfare Fund; City of Providence, Rhode Island; Electrical Workers 242 and 294 Health & Welfare Fund; Fraternal Order of Police; Fort Lauderdale Lodge 31, Insurance Trust Fund; Laborers International Union of North America; Local 35 Health Care Fund; Painters District Council No. 30 Health & Welfare Fund; Teamsters Local 237

Loestrin 24, an oral contraceptive sold by Warner Chilcott, causing End-Payors and members of the class to pay overcharges.

3. End-Payors' antitrust case proved to be of extraordinary scope and complexity. End-Payors' operative complaint asserted three theories of liability, any one of which would have been a massive antitrust case in its own right: (i) fraudulent acquisition of a patent asserted in sham litigation; (ii) reverse-payment settlement agreements to delay the entry of generic Loestrin 24; and (iii) coercive product hopping from Loestrin 24 to Minastrin 24 months before generic Loestrin 24 entry. End-Payors sued three groups of defendants: Warner Chilcott, Watson (together the "Warner Chilcott[3] Defendants"), and Lupin (the "Lupin[4] Defendants"). End-Payors asserted a claim for injunctive and declaratory relief under the Clayton Act, 15 U.S.C. § 26 (claim 7) and state law claims for damages under: 28 state antitrust statutes for Warner Chilcott's monopolistic scheme (claim 1); 27 state antitrust statutes for Warner Chilcott's individual conspiracies with each of Watson (claim 2) and Lupin (claim 3) and Defendants' overall conspiracy (claim 4); 25 state statutes for Defendants' unfair trade practices and consumer fraud (claim 5); and every jurisdiction's common law (except Indiana and Ohio) for Defendants' unjust enrichment (claim 6).

4. Litigating this complex antitrust class action required End-Payors, and their counsel, to assume substantial and unique risks. End-Payors' reverse payment claims were pleaded before the Supreme Court's decision in *FTC v. Actavis*, 570 U.S. 136 (2013). Plaintiffs'

Welfare Benefits Fund; and United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund.

[3] The Warner Chilcott Settlement is with Warner Chilcott plc n/k/a Allergan WC Ireland Holdings Ltd.; Warner Chilcott Holdings Co. III, Ltd.; Warner Chilcott Corp.; Warner Chilcott Laboratories Ireland Limited; Warner Chilcott Limited; Allergan plc; Warner Chilcott Co., LLC f/k/a Warner Chilcott Co., Inc.; Warner Chilcott (US), LLC; Warner Chilcott Sales (US), LLC.; Watson Laboratories Inc.; and Watson Pharmaceuticals, Inc.

[4] The Lupin Settlement is with Lupin Limited and Lupin Pharmaceuticals, Inc.

product hopping claim, as the Court recognized, was a "relatively new theory"[5] and as such entailed considerable uncertainties over the standard of proof and damages. Plaintiffs' patent claims were subject to a heightened standard of proof and entailed inquiry into the state of mind of Warner Chilcott employees and third parties dating back decades. And End-Payors were required to demonstrate proof of class-wide injury, when the law on class certification was (and still is) in flux.

5. Notwithstanding these substantial risks and uncertainties, and against formidable defense firms, Class Counsel effectively and efficiently prosecuted their claims over the course of nearly seven years. After pioneering the case, End-Payors were joined by other plaintiff groups: Direct Purchaser Plaintiffs and CVS Pharmacy, Inc., Rite Aid Corp., Walgreen Co., The Kroger Co., Albertson's LLC, Safeway, Inc., and HEB Grace Company L.P. ("Retailers"). The three plaintiff groups agreed to closely collaborate on common issues and enjoyed an exceptionally cooperative relationship to the benefit of both classes and Retailers. End-Payor Counsel played prominent roles in all common aspects of the case, successfully litigating through motions to dismiss, appeals, discovery, *Daubert* motions, summary judgment motions, and motions *in limine*, while also securing certification of a class of third-party payors for purchases made in a majority of the pleaded states.

6. After the Direct Purchasers and Retailers settled, End-Payors continued to press forward, achieving a settlement of $62.5 million from the Warner Chilcott Defendants on the eve of trial—a great success on behalf of the class.[6]

[5] *In re Loestrin 24 Fe Antitrust Litig.*, 261 F. Supp. 3d 307, 351 (D.R.I. 2017).

[6] End-Payors previously achieved a $1,000,000 settlement with the Lupin Defendants.

A. Case Investigation, Pleadings, and Motions to Dismiss

7. The first End-Payor antitrust class action complaint was filed on April 5, 2013 by Co-Lead Hilliard & Shadowen.[7] That complaint was the result of extensive independent investigation by End-Payor Counsel, including by Co-Lead Cohen Milstein Sellers & Toll.

8. The first End-Payor complaint was filed before any other plaintiff party or public disclosure of any related matter. In addition, unlike many antitrust cases, the case was filed without the benefit of a prior government investigation. Complaints by the other Co-Leads quickly followed.[8]

9. On May 14, 2013, a similar case was filed by Direct Purchasers, and complaints from Retailers were filed soon after.[9] All cases were consolidated before this Court.[10]

10. End-Payors filed their first consolidated amended complaint on December 6, 2013.[11] Although the three plaintiff groups pleaded similar claims, only the End-Payors alleged that the acceleration clause in Warner Chilcott's settlement with Watson was an additional unlawful reverse payment, and only the End-Payors and Retailers asserted claims against the Lupin Defendants. Moreover, unlike the Direct Purchasers and Retailers, in addition to claims under the federal Sherman Act, End-Payors also pleaded state law antitrust, consumer protection, and unjust enrichment claims.

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[7] Compl., *United Food & Commercial Workers Local 1776 & Participating Employers Health & Welfare Fund v. Warner Chilcott (US), LLC*, No. 2:13-cv-01807-CMR (E.D. Pa. Apr. 5, 2013), ECF No. 1.

[8] Compl. *N.Y. Hotel Trades Council & Hotel Assoc. of N.Y. City, Inc. v. Warner Chilcott Pub. Ltd. Co.*, 1:13-cv-02474-WES-PAS (D.R.I. Apr. 15, 2013), ECF No. 1; Compl., *City of Providence v. Warner Chilcott Pub. Ltd. Co.*, No. 1:13-cv-00307-WES-PAS (D.R.I. May 2, 2013), ECF No. 1.

[9] *See* Compl., *Am. Sales Co., LLC v. Warner Chilcott Pub. Ltd. Co*., No. 1:13-cv-00347 (D.R.I. May 14, 2013), ECF No. 1; Compl., *Walgreen Co. v. Warner Chilcott Pub. Ltd*. Co., No. 1:14-cv-00102 (D.R.I. Feb. 25, 2014), ECF No. 1.

[10] JPML Transfer Order, *In re Loestrin 24 Fe Antitrust Litig.*, No. 1:13-md-02472 (D.R.I. Oct. 3, 2013), ECF No. 1.

[11] End-Payor Plaintiffs' Am. Consolidated Class Action Compl., ECF No. 40.

11. Defendants moved to dismiss the End-Payor and Direct Purchaser complaints on February 7, 2014.[12] In addition to presenting arguments that were common to the End-Payors' and Direct Purchasers' claims, the Warner Chilcott and Lupin Defendants filed a separate 52-page brief directed at the particular claims and allegations plead in End-Payors' consolidated complaint, including those relating to the Lupin reverse payment, acceleration clauses, and various state law causes of action.[13] End-Payors vigorously opposed Defendants' dismissal motion in a detailed, 82-page brief.[14]

12. On September 4, 2014, the Court partially granted Defendants' motion, holding that only cash payments can be actionable as unlawful reverse payments.[15] The Court entered a partial final judgment as to End-Payors' federal antitrust claims and stayed the remaining state law claims.[16]

13. End-Payors timely appealed the dismissal to the U.S. Court of Appeals for the First Circuit on February 23, 2015.[17] End-Payors filed their own appellate brief, which addressed unique issues relating to the End-Payor class, as well as the appropriate definition of a reverse payment and the adequacy of End-Payors' pleadings.[18] In addition, End-Payors were responsible, on behalf of all Plaintiffs, for organizing the amicus curiae effort, garnering support from the nation's leading antitrust academics, the leading consumer-advocacy organizations, 29 States, and

[12] Defs.' Mot. to Dismiss DPPs' Consol. Am. Class Action Compl., ECF No. 74; Defs.' Mot. to Dismiss IPPs' Consol. Am. Class Action Compl., ECF No. 76.

[13] Defs.' Mem. of Law in Supp. of Mot. to Dismiss IPPs' Consol. Am. Class Action Compl., ECF No. 76 (Feb. 7, 2014).

[14] EPPs' Mem. of Law in Opp'n to Defs.' Mot. to Dismiss, ECF No. 92-1 (Mar. 24, 2014).

[15] Op. & Order Granting Mot. to Dismiss, ECF No. 116.

[16] Judgment, ECF No. 142 (Feb. 17, 2015).

[17] Notice of Appeal, ECF No. 143 (Feb. 23, 2015); *See* No. 15-1250 (1st Cir. June 9, 2015).

[18] *Id.*

the Federal Trade Commission. End-Payors also presented part of the oral argument to the First Circuit.

14. The First Circuit reversed the dismissal of End-Payors' Sherman Act claims on February 22, 2016, agreeing with Plaintiffs that the Supreme Court's *Actavis* decision did not limit illegal reverse payments to cash.[19] The First Circuit also remanded "the question of whether the EPPs and DPPs adequately alleged that the individual provisions of the settlement agreements warranted antitrust scrutiny as unlawful reverse payments."[20]

15. On remand, End-Payors, in collaboration with Direct Purchasers and Retailers, worked to substantially amend our complaint. End-Payors' detailed amended complaint added product hopping claims—which End-Payor Counsel discovered, researched, and drafted. End-Payor Counsel also worked to develop Plaintiffs' *Walker Process* fraud and sham litigation claims that were added to the amended complaint. Other additions to End-Payors' complaint included allegations regarding the size and nature of the reverse payments Warner Chilcott provided to Watson and Lupin, and the anticompetitive effects associated with Watson's acceleration clause. End-Payors filed a second amended complaint on May 9, 2016.[21]

16. On June 13, 2016, the Warner Chilcott Defendants and Lupin Defendants moved to dismiss End-Payors' second amended complaint.[22] In hundreds of pages of briefing, the Warner Chilcott Defendants advanced arguments relating to market power, reverse payments, patent fraud,

[19] *In re Loestrin 24 Fe Antitrust Litig.*, 814 F.3d 538 (1st Cir. 2016).

[20] *Id.* at 552-53.

[21] End-Payor Pls.' Second Am. Consolidated Class Action Compl., ECF No. 165.

[22] Lupin Defs.' Mot. to Dismiss, ECF No. 191 (June 13, 2016); Warner Chilcott & Watson Defs.' Mot. to Dismiss for Failure to State a Claim, ECF No. 192 (June 13, 2016); Decl. of A. Hanstead, ECF No. 193 (June 13, 2016).

product hopping, and End-Payors' state law claims.[23] The Lupin Defendants filed a separate brief challenging End-Payors' reverse payment allegations.[24]

17. End-Payors filed responses to Defendants' motions to dismiss a month later, on July 15, 2016. End-Payors' 85-page brief addressed arguments relating to the definition of a suspect payment, burdens of proof relating to saved litigation costs and fair value of services, the Watson Agreement's no-authorized generic and acceleration clauses, the Lupin Agreement's reverse payments, and various state law issues.[25]

18. End-Payors subsequently drafted on behalf of all Plaintiffs notices of supplemental authority regarding several relevant rulings in other generic suppression suits.[26]

19. On January 13, 2017, the Court held argument on the motions to dismiss, with End-Payor Counsel addressing on behalf of all Plaintiffs complex issues relating to market power and the product hop.[27]

20. The Court issued a decision largely denying Defendants' motions to dismiss on August 8, 2017—permitting Plaintiffs' reverse payment, product hop, and patent theories of liability to move forward.[28] Agreeing with End-Payors, the Court rejected Defendants' argument that federal patent law preempted End-Payors' state law claims for fraud on the U.S. Patent and Trademark Office, sham litigation, improper "Orange Book" listing, and unlawful reverse

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[23] Lupin Defs.' Mot. to Dismiss, ECF No. 191 (June 13, 2016); Warner Chilcott & Watson Defs.' Mot. to Dismiss for Failure to State a Claim, ECF No. 192 (June 13, 2016); Decl. of A. Hanstead, ECF No. 193 (June 13, 2016).

[24] Mem. of Law in Supp. of Lupin Defs,' Mot. to Dismiss, ECF No. 191-1 (June 13, 2016).

[25] ECF No. 205.

[26] ECF Nos. 209 (Aug. 2, 2016), 223 (Nov. 3, 2016), 238 (Jan. 4, 2017), 254 (Jan. 25, 2017) (collectively addressing *In re Asacol Antitrust Litig.*, No. 15-cv-12730-DJC, 2016 WL 4083333 (D. Mass Jul. 20, 2016), *Mylan Pharma. Inc. v. Warner Chilcott Pub. Ltd. Co.*, 838 F.3d 421 (3d Cir. 2016), and *In re Nexium (Esomeprazole) Antitrust Litig.*, 842 F.3d 34 (1st Cir. 2016)).

[27] Mot. to Dismiss Hr'g Tr., ECF No. 266 (Jan. 13, 2017).

[28] *In re Loestrin 24 Fe Antitrust Litig.*, 261 F. Supp. 3d 307 (D.R.I. 2017).

payment. The Court also held that End-Payors adequately pled violations of state law. The Court further denied without prejudice Defendants' arguments that End-Payors lacked Article III standing to bring state law claims in twenty-five states and Puerto Rico in which the named End-Payor representatives did not reside or purchase Loestrin 24 Fe. Finally, the Court denied without prejudice Defendants' various arguments relating to End-Payors' state antitrust, consumer protection, and unjust enrichment claims.

B. Discovery

21. While Defendants' second round of motions to dismiss End-Payors' Second Amended Complaint were pending, Plaintiffs commenced discovery.

22. End-Payors actively engaged in the discovery process across three fronts: (1) offensive discovery common to all three Plaintiff groups; (2) offensive discovery pertaining only to End-Payors (or, with respect to the Lupin-related claims, to End-Payors and Retailers); and (3) defensive discovery pertaining to End-Payors.

23. For matters common to all groups (or to End-Payors and Retailers), Plaintiffs worked together to avoid duplication of effort, and to take advantage of the subject-matter expertise of individual Plaintiffs' counsel. Among the primary ways that Plaintiffs collaborated was through the creation of teams based on subject matter. For instance, End-Payor Counsel chaired teams covering the product hop claims and privilege issues. End-Payors also assigned attorneys to actively participate in the other subject-matter groups, including those covering the Watson reverse payments, the Lupin reverse payment, patents, economic and monopoly power issues, and causation. Each issue team typically conducted a weekly conference call to discuss document review progress, litigation strategy, and any issues that arose to the subject covered by that group.

Issue Team	End-Payor Members
Economics and Monopoly Power	Stacy Bond (Miller)
Watson Agreement	Matt Weiner (Hilliard & Shadowen) Michelle Zolnoski (Motley Rice)
Lupin Agreement	Lori Fanning (Miller) Donna Evans (Cohen Milstein)
Patents	Jana Maples (Branstetter Stranch)
Product Hop	Steve Shadowen (Hilliard & Shadowen) Matt Weiner (Hilliard & Shadowen)
Causation	Lori Fanning (Miller)
Privilege	Sharon Robertson (Cohen Milstein) Donna Evans (Cohen Milstein) Michael Buchman (Motley Rice) Michelle Clerkin (Motley Rice)
Client Handler/Defensive Discovery	Lori Fanning (Miller)

24. End-Payor Counsel dedicated substantial efforts to ensure non-common aspects of the case were developed and litigated efficiently. End-Payors developed the factual record to support their unique claim regarding Watson's acceleration clause. End-Payors also worked together with Retailers on the Lupin reverse-payment claims.

1. Requests for Production

25. End-Payors and Direct Purchasers jointly served requests for production ("RFPs") on Watson and Warner Chilcott on June 15, 2016 and October 5, 2016, respectively. End-Payor Counsel was involved in drafting requests relating to the product hop claim, as well as editing and fine-tuning other requests. In total, 100 RFPs were served on Warner Chilcott and 42 RFPs on

Watson. To cover End-Payor-focused issues, End-Payors separately drafted and served additional RFPs on the Warner Chilcott Defendants and Lupin Defendants, both on July 12, 2016. Additionally, End-Payors, together with Retailers, served a second set of RFPs on the Lupin Defendants on December 5, 2017.

26. Negotiations over the scope of written discovery proved lengthy and labor-intensive. All Plaintiff groups working collaboratively conferred with the Warner Chilcott Defendants for several months over custodians, search strings, and scope objections. Additionally, End-Payors and Retailers engaged in extensive negotiations with the Lupin Defendants on discovery issues.[29] Although Plaintiffs sought to reach reasonable compromises with Defendants (and were successful in doing so on many issues), the Court assisted in resolving certain discovery issues. End-Payor Counsel participated in numerous telephonic and in-person conferences with Magistrate Judge Sullivan, which resulted in substantial concessions by Defendants. Even once agreements or concessions were reached, Defense Counsel continually sought to revisit the scope of discovery.

27. End-Payor Counsel also substantially contributed to briefing Plaintiffs' joint motion to compel the production of documents through August 31, 2017.[30] Magistrate Judge Sullivan observed: "this motion is the culmination of a vibrant meet and confer process, facilitated by repeated conferences with the Court; the process was approached by all parties in good faith and was characterized by significant compromises, for which the parties should be commended.'"[31]

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[29] *See, e.g.*, Letter from Zachary Caplan to Magistrate Judge Sullivan Regarding Defs.' Search Terms, ECF No. 232 ("Over the last six months, the parties exchanged many letters on search strings and were able to reach agreement on 47 out of 67 proposed search strings.").

[30] ECF No. 328.

[31] Mem. & Order, ECF No. 360 at 2 (Nov. 29, 2017).

28. Defendants also served 183 detailed requests for production on the nine third-party payor representatives and two consumer representatives on June 20, 2016. Drafting End-Payors' 200-plus page objections and responses, which were the result of extensive communications and coordination with each named plaintiff, required considerable time and effort. There were substantial additional iterative communications and negotiations on the appropriate search terms and custodians for End-Payors and the appropriateness of Defendants' document requests. Defendants continually sought additional documents throughout the litigation, resulting in motion practice, even past the close of fact discovery.

2. Interrogatories

29. On October 19, 2017, Defendants served 25 interrogatories on End-Payors, to which End-Payors responded and objected on November 20, 2017. On January 17, 2018, End-Payors served interrogatories on the Warner Chilcott Defendants and Lupin Defendants and substantially contributed to interrogatories separately served by Retailers (on January 17, 2018) and Direct Purchasers (on November 1, 2016). On February 23, 2018, Defendants served responses and objections to End-Payors' and Retailers' interrogatories. On March 30, 2018, End-Payors served supplemental responses to Defendants' interrogatories. End-Payors and Retailers subsequently served an additional seven interrogatories on Lupin.

30. End-Payor Counsel were responsible for reviewing and collecting interrogatory responses and coordinating with the discovery teams to identify deficiencies. End-Payors identified 12 deficiencies in Defendants' responses to End-Payors' and Retailers' interrogatories, and negotiated extensively with both the Warner Chilcott Defendants and the Lupin Defendants. As a result of End-Payor Counsel's efforts, Defendants agreed to supplement many of their interrogatory responses, providing information useful to Plaintiffs' claims.

31. For those interrogatory responses that remained in dispute, End-Payor Counsel led the Plaintiffs' group in drafting and filing a motion to compel supplemental responses to each Plaintiff group's interrogatories.[32] On May 21, 2018, the Court largely granted Plaintiffs' motion.[33] These efforts resulted in Plaintiffs obtaining information about key witnesses and relevant facts in advance of depositions.

3. Requests for Admission

32. Defendants served hundreds of requests for admission on Plaintiffs. On June 14, 2018, End-Payors served responses and objections to Defendants' initial set of 18 requests for admission to End-Payor Plaintiffs. End-Payors subsequently worked with the other Plaintiffs to serve responses and objections to Defendants' 180 remaining requests for admission on March 14, 2019. On May 3, 2019, End-Payors served their responses and objections to additional set of requests for admission directed at End-Payors.

4. Document Productions and Review

33. Defendants and third-parties produced more than 410,000 documents spanning over 3.5 million pages. End-Payors conducted their review jointly with Direct Purchasers and Retailers in order to minimize duplication. Review tasks were divided up among the various cross-Plaintiff subject matter teams, each of which was staffed with one or more End-Payor attorneys who contributed to the team's document review effort.

34. For the product hop team—which End-Payors led—End-Payor Counsel created and implemented the team's review strategy, created and updated a comprehensive document

[32] Mot. to Compel Answers to Interrogatories, ECF Nos. 392, 393 (April 20, 2018).

[33] Order, ECF No. 446.

review outline, participated in the document review, conducted weekly conference calls to discuss progress, and coordinated with the other subject teams about facts uncovered during the review.

35. End-Payor Counsel were also primarily responsible for developing for all Plaintiffs the product hop claim case theory and strategy, including through drafting the team's "white paper," which identified and discussed supporting evidence, listed potential witnesses, and provided guidance on future discovery efforts. End-Payors' extensive work proved to be a valuable resource in preparing for and conducting depositions, expert discovery, summary judgment, and trial.

36. For the Watson agreements team, End-Payor Counsel reviewed documents and developed Plaintiffs' theory relating to the "side deal" reverse payment regarding Generess and the valuation of the no-authorized generic provision. In addition, End-Payor Counsel reviewed documents relevant to Lupin's reverse payment, drafted a "white paper" regarding Watson's acceleration clauses, and compiled and analyzed draft versions of the relevant settlement agreements.

37. End-Payor Plaintiffs also actively participated in the review and analysis of document productions and gathering evidence for depositions, motion practice, and experts in support of the Causation team. This included seeking additional productions from Defendants and third parties.

5. Privilege and Waiver Issues

38. End-Payor Counsel chaired the privilege team for all three plaintiff groups and led efforts by all Plaintiffs in assessing and addressing privilege and redaction concerns with Defendants' discovery. These efforts successfully dislodged thousands of withheld documents and resulted in Defendants unmasking portions of other documents that had been redacted.

39. The Warner Chilcott Defendants served their initial privilege log on October 26, 2017. Over the next year, Plaintiffs received fifteen privilege log iterations reflecting an astonishing 62,000-plus documents as privileged and/or work product protected. The Lupin Defendants separately served multiple privilege and redaction logs.

40. Pursuant to the Court's Interim Case Management Order Number 9,[34] beginning in November 2017, End-Payors analyzed thousands of privilege log entries to identify and challenge communications and other documents related to key issues in this case—*e.g.*, settlement negotiations, settlement drafting, potential forecasting, and generic entry planning—and the key categories of deficient entries across Defendants' logs.

41. In order to ensure that this process was conducted efficiently (despite the massive size of Defendants' privilege logs), End-Payors assigned certain key entries to be reviewed by senior attorneys, while delegating to more junior attorneys those entries relating to time periods less likely to present privilege concerns. Counsel avoided duplicative work and attended calls or reviewed communications jointly only when the participation of both was necessary. For document review, basic research, first-wave deposition preparation, and similar tasks, End-Payors delegated the work to a paralegal, contract attorney, or law student summer associate where consistent with the efficient management of the case.

42. End-Payors oversaw this process for nearly a year, including by evaluating other Plaintiffs' counsel's review of entries across all of Defendants' log iterations. As part of this process, End-Payors researched the vast caselaw on entry- and category-specific privilege issues and drafted omnibus category-by-category letters to Defendants' counsel detailing substantial

[34] ECF No. 349 (Nov. 6, 2017).

privilege challenges and identifying hundreds of exemplary log entries demonstrating and challenging privilege log deficiencies and improper privilege and document redactions.

43. End-Payors conducted telephonic conferences with Defendants' senior trial counsel to resolve or narrow privilege and related discovery issues. These negotiations resulted in the production of thousands of documents that Defendants initially withheld, including waived communications with third-parties, forecasts, and strategic manufacturing and patent-related communications. This was accomplished largely without burdening the Court with motion practice.

44. End-Payors also negotiated with senior counsel for Defendants the issue of waiver of attorney-client privilege by several Warner Chilcott witnesses, including with respect to Izumi Hara's deposition testimony. End-Payors drafted and negotiated over several additional months the terms of a significant stipulation applicable to Ms. Hara's testimony and the testimony of another defense fact witness, Paul Herendeen. These efforts struck certain deposition testimony and document excerpts from the record and were successful in precluding several arguments by Defendants in summary judgment and other briefing and at trial.[35]

45. For issues that Plaintiffs were not able to resolve through bilateral negotiation, pursuant to procedures outlined by Magistrate Judge Sullivan, End-Payors spearheaded drafting privilege-related letter briefs to Judge Sullivan on key privilege disputes.[36] End-Payors'

[35] Order Entering Stipulation Regarding Use of Izumi Hara & Paul Herendeen Dep. Test. & Other Live or Written Test., ECF No. 838 (April 29, 2019).

[36] *See, e.g.*, Letter from Donna Evans to Magistrate Judge Sullivan Regarding Privilege Related Discovery Deadlines, ECF No. 383 (April 6, 2018); Mot. to Compel Production of Certain Docs. Improperly Withheld or Redacted by the Warson & Warner Chilcott Defs., ECF Nos. 468, 490 (June 6, 2018).

submissions assisted Judge Sullivan in preparing for and conducting hearings at which she was able to facilitate several agreed resolutions without formal motion practice.[37]

46. End-Payor Counsel also argued privilege motions and issues at multiple telephonic hearings held by Magistrate Judge Sullivan. These included two multi-issue telephonic hearings on April 13 and 17, 2018 related to privilege-related issues remaining for determination before the pending April 20, 2018 close of motion discovery.[38] The Court and parties were able to successfully resolve some issues, determine a timeline for then-ripe motions, and agree to a brief extension for resolving or submitting issues that were not yet ripe without substantial delay to the progression of the case.

47. End-Payor Counsel heading the privilege team worked with other Plaintiffs' counsel in preparing for and taking depositions by identifying privilege issues that were likely to arise, assisting in resolving privilege objections that Defendants' counsel interposed, and addressing privilege issues requiring a post-deposition resolution.

48. The privilege team also served as a constant resource throughout the case to evaluate documents produced by Defendants and tagged by the various Plaintiffs' teams for analysis of redactions, withheld attachments, and other privilege-related issues. As leaders of this team, End-Payors attended weekly telephonic meetings and presented on behalf of the collaborative team on privilege issues and over-redactions, identified and recommended strategies, and prioritized privilege-related discovery needs.

49. These privilege-related tasks required significant time commitments, often of senior counsel with experience in the complexities of attorney-client privilege, work product, and

[37] Mem. & Order. Granting in Part & Denying in Part Mot. to Compel Production of Certain Docs. Improperly Withheld or Redacted by the Warson & Warner Chilcott Defs., ECF 493 (July 25, 2018).

[38] Telephone Conference (Apr. 13, 2018); Telephone Conference (Apr. 17, 2018); *see also* Hr'g (Jan. 12, 2018); Hr'g (May 24, 2018); (Telephone Conference (June 26, 2018); Telephone Conference (July 23, 2018).

third-party and at-issue waiver related specifically to subject matters critical to this case, as well as negotiating meet and confers with senior defense counsel. End-Payors' efforts ensured that Plaintiffs' Counsel's concerns and issues with Defendants' logs, witness depositions, and dispositive briefing were promptly and effectively addressed, significantly narrowed, successfully resolved where possible, and efficiently handled up to the threshold of trial.

6. Fact Witness Depositions

50. Plaintiffs were permitted to take up to 25 depositions of Warner Chilcott Defendants and up to 6 depositions of Lupin Defendants (but not to exceed 30 total depositions between the Warner Chilcott and Lupin Defendants), as well as 17 depositions of non-parties.

51. End-Payors actively participated in the identification, preparation, examination, or review of numerous Defendant fact witnesses. For example, End-Payor Counsel examined, or assisted in preparing Plaintiffs to examine, nearly every witness related to Plaintiffs' product hop liability claim, including: Tina DeVries, David Hooper, John Goll, Paul Herendeen, James P. Chirip, D. Andrew McClenaghan, April Mitchell, Molly Deiss, Carl Reichel, and Robert Lahman. End-Payor Counsel also deposed and/or assisted in deposing, among others, Watson CEO Paul Bisaro, Watson Chief Legal Officer David Buchen, Warner Chilcott General Counsel Izumi Hara, Lupin Marketing Director Jason Gensburger, and Lupin Regulatory Affairs Manager Debashis Mohanty.

52. To ensure that depositions proceeded efficiently, End-Payors coordinated deposition questioning responsibilities with the other Plaintiff groups and generally limited deposition attendance to a single End-Payor attorney.

53. In an effort to defeat class certification and undermine End-Payors' relevant market arguments, Defendants undertook significant third-party discovery—serving 49 document

subpoenas. Thirty-two of these subpoenas, including those directed at Pharmacy Benefit Managers and absent End-Payor Class members, were directly relevant to End-Payors' claims. Following service of third-party document subpoenas, Defendants served 9 deposition subpoenas on third-parties, 7 of which were related to End-Payors' claims. End-Payor Counsel participated in virtually all of the third-party depositions, questioning representatives of the following third-parties: Optum RX (Bob Lahman); Blue Cross Blue Shield of Rhode Island (Dan Curran); Blue Cross Blue Shield of Alabama (Dorina Cale); Envision RX (Conrad Hutton); Caremark (Joseph Anderson); and Wilson Elser – Electrical Workers TPA (Dana Hanson).

54. End-Payor Counsel also defended 12 separate depositions of End-Payor Class representatives. As reflected below, in order to minimize duplication of effort, End-Payor Counsel divided deposition preparation and defense responsibilities.

End-Payor Named Plaintiff Deponent	Defending End-Payor Counsel
A.F. of L – A.G.C. Building Trades Welfare Plan (Lauri Kennedy)	Michelle Clerkin (Motley Rice)
Allied Services Division Welfare Fund (Tami Chesler)	Matt Van Tine (Miller)
City of Providence, Rhode Island (Margaret Wingate)	Michael Buchman (Motley Rice)
Electrical Workers 242 and 294 Health & Welfare Fund (Don Smith)	Lori Fanning (Miller)
Electrical Workers 242 and 294 Health & Welfare Fund - Wilson McShane (TPA) (Dana Hanson)	Lori Fanning (Miller)
Fraternal Order of Police, Fort Lauderdale Lodge 31, Insurance Trust Fund (Joseph Mogavero)	Michael Buchman (Motley Rice)
Laborers International Union of North America, Local 35 Health Care Fund (Richard Poulaino)	Sharon Robertson (Cohen Milstein)
Painters District Council No. 30 Health & Welfare Fund (Aaron Anderson)	Lori Fanning (Miller)
Teamsters Local 237 Welfare Benefits Fund – (Mitchell Goldberg)	Michelle Clerkin (Motley Rice)
United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund (Regina Reardon)	Donna Evans (Cohen Milstein)
Mary Alexander	Lori Fanning (Miller)
Denise Loy	Michael Buchman (Motley Rice)

7. Experts

55. The complexity of Plaintiffs' several claims necessitated the retention of multiple experts addressing issues including: (i) market power; (ii) the patent review and issuance process; (iii) patent litigation; (iv) pharmaceutical manufacturing; (v) brand and generic pharmaceutical supply chains; (vi) valuation of reverse payment agreements; (vii) product interchangeability and patient switching; and (viii) classwide damages.

56. In order to limit the expert costs borne by the Class, End-Payors agreed with Direct Purchasers and Retailers to jointly retain experts addressing issues common to all three Plaintiff groups. Accordingly, Plaintiffs jointly retained 12 common experts: Dr. Richard Derman, Mr. John Doll, Ms. Deborah Jaskot, Mr. Nicholas Jewell, Mr. Edward Lentz, Ms. Susan Marchetti, Dr. Thomas McGuire, Dr. Meredith Rosenthal, Dr. Christopher Baum, Dr. Michael Thomas, Dr. Roger Williams, and Mr. John Tupman. Those experts collectively served 27 reports. In connection with the Lupin reverse payment claims, End-Payors and Retailers also jointly retained Mr. Michael F. Johnson.

57. End-Payor Counsel worked with experts relating to product hop, market power, reverse payments, and causation. In addition, End-Payor Counsel separately retained four End-Payor-only experts for issues relating to damages and class certification: Dr. Gary French, Mr. Eric Miller, Ms. Laura Craft, and Mr. Myron Winkelman.

C. Class Certification

58. Despite facing considerable obstacles and formidable defense counsel (who were emboldened by a mid-briefing decision from the First Circuit), End-Payors successfully moved for certification of a class of Third-Party Payors comprising more than two-thirds of all End-Payor damages.

59. On July 30, 2018, End-Payors filed their motion for class certification.[39] After End-Payors submitted their opening brief, on October 15, 2018, the First Circuit issued an opinion in *In re Asacol Antitrust Litigation*.[40] The *Asacol* decision reversed the certification of an end-payor class in another delayed generic suit on the ground that the plaintiffs there had not proved they had an administratively feasible method for identifying and excluding uninjured persons from their class. This significantly complicated End-Payors' efforts to get a class certified.

60. Shortly thereafter, Defendants filed a 71-page "kitchen sink" opposition to End-Payors' class certification motion, relying extensively on *Asacol*.[41] Defendants appended 33 exhibits to their brief.

61. End-Payors responded by mounting an extensive and innovative effort to demonstrate their ability to satisfy the First Circuit's newly adopted standards.

62. On December 7, 2018, End-Payors filed their reply brief in support of class certification. In that brief, End-Payors responded to the laundry list of arguments advanced by Defendants and proposed a novel class definition consisting of separate consumer and TPP subclasses, along with a series of exclusions designed to carve out from the class potentially uninjured persons and entities.[42]

63. Aside from advancing *Asacol*-related arguments, across 132 pages of briefing, Defendants also filed a renewed motion to dismiss, challenging the class representatives' Article III standing, the availability of various state law claims under *Illinois Brick*, the reliability of End-Payors' economic models, the proposed class's numerosity, the typicality of certain class

[39] ECF No. 528-1.

[40] 907 F.3d 42 (1st Cir. 2018).

[41] ECF No. 574-2 (Oct. 19, 2018).

[42] ECF No. 633-2.

representatives, and purported conflicts among the class representatives and members.[43] End-Payors responded to each of these arguments.[44]

64. In order to address and satisfy *Asacol*, End-Payors retained three new pharmaceutical experts and worked with those experts to submit four reports in support of End-Payors' class certification motion.[45] These were in addition to three reports—comprising more than 150 pages in total, in addition to extensive appendices and backup materials—submitted by Gary L. French, an expert economist who End-Payors retained to address damages and other issues pertaining to class certification.[46] End-Payor Counsel also worked with third-party Pharmacy Benefit Managers to secure permission to file four declarations supporting the reports of Plaintiffs' experts.[47]

65. End-Payors successfully opposed Defendants' motion to strike End-Payors' post-*Asacol* rebuttal experts, portions of the rebuttal expert report submitted by End-Payors' damages expert, Gary L. French, and portions of End-Payors reply brief in support of class certification.[48]

66. End-Payors also prepared for and defended the depositions of all four of their class certification experts and deposed the three experts retained by Defendants. Although the schedule

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[43] Defs.' Mem. of Law in Opp. to EPPs' Mot. for Class Cert. & in Supp. of Defs.' Renewed Mot. to Dismiss & Mot. for J. on the Pleadings, ECF No. 574-2 (Oct. 19, 2018), Defs.' Reply in Supp. of Renewed Mot. to Dismiss & Mot. for J. on the Pleadings, ECF No. 665-1 (Dec. 14, 2018).

[44] EPPs' Mem. in Supp. of EPPs' Mot. to Exclude Test. & Ops. of James W. Hughes, Ph.D., and in Opp. to Defs,' Mot. to Exclude Test. & Ops. of Gary L. French, Ph.D., ECF No. 632-2 (Dec. 7, 2018).

[45] Expert Report of Myron D. Winkleman (Nov. 30, 2018), ECF No. 633, Ex. 1; Decl. of Laura R. Craft (Nov. 30, 2018), ECF No. 633, Ex. 2; Decl. of Eric J. Miller (Nov. 30, 2018), Ex. 3; Sur-rebuttal Decl. of Laura R. Craft (Feb. 1, 2019), ECF Nos. 751, 762, Ex. C.

[46] Report of Gary L. French, Ph.D. Regarding Impact & Damages to End-Payor Pls., ECF No. 528, Ex. 4 (July 30, 2018); Reply Report of Gary L. French, Ph.D. Regarding Impact & Damages to End-Payor Pls., ECF No. 632, Ex. 1 (Dec. 7, 2018); Sur-Reply Report of Gary L. French, Ph.D. Regarding Impact & Damages to End-Payor Pls., ECF Nos. 751, 762, Ex. A (Feb. 1, 2019).

[47] Decl. of Steven Schaper, ECF No. 632, Ex. 10; Decl. of Non-Party Express Scripts, Inc., ECF No. 632, Ex. 11; Decl. of Robert Lahman, ECF No. 632, Ex. 12; Decl. of Non-Party Prime Therapeutics LLC, ECF No. 632, Ex. 13; Decl. of Non-Party Prime Therapeutics LLC, ECF No. 632, Ex. 14.

[48] Response in Opp. to Defs.' Mot. to Strike, ECF No. 668 (Dec. 18, 2018).

necessitated that End-Payor Counsel depose all three of Defendants' class certification experts within a week of receiving their highly technical rebuttal reports, End-Payor Counsel obtained several crucial deposition admissions on which the Court expressly relied in certifying an End-Payor Class. These include Dr. Bruce Strombom's concession that "he is not aware of any instance in which a PBM affirmatively deleted data," as well as Mr. Kosty's testimony concerning legal requirements for using "NCPDP Telecommunications Standards for adjudicating and tracking pharmacy prescriptions."[49]

67. In addition, End-Payors moved to exclude the opinions of Defendants' experts Dr. Hughes, Dr. Strombom, and Mr. Kosty and opposed Defendants' motions to exclude the experts retained by End-Payors.[50] The Court granted in part End-Payors' motion to exclude the opinions offered by Dr. Hughes, including with respect to: (i) free samples of branded Loestrin; (ii) the purported reduction in brand promotional efforts that would have resulted from earlier generic entry in the but-for world; and (iii) the supposed "pass-through" of rebates by TPPs.[51] The Court also largely denied Defendants' efforts to exclude the opinions offered by End-Payors' experts.[52]

68. Following class certification briefing and depositions, End-Payor Counsel prepared extensively for a two-day evidentiary hearing on class certification, which was held on February 13 and 14, 2019.[53] Steve Shadowen (Hilliard & Shadowen) handled opening and closing

[49] *In re Loestrin 24 FE Antitrust Litig.*, 410 F. Supp. 3d 352, 399, 400 (D.R.I. 2019).

[50] EPPs' Mem. in Supp. of EPPs' Mot. to Exclude Test. & Ops. of James W. Hughes, Ph.D., and in Opp. to Defs,' Mot. to Exclude Test. & Opinions of Gary L. French, Ph.D., ECF No. 632-2 (Dec. 7, 2018); EPPs' Supplement to Mot. to Exclude Test. & Ops. of James W. Hughes, Ph.D., ECF No. 732-1 (Feb. 1, 2019); EPPs' Mem. of Law in Supp. of Mot. to Exclude Ops. & Test. of Mr. Timothy E. Kosty & Dr. Bruce A. Strombom, ECF No. 739-1 (Feb. 1, 2019).

[51] *In re Loestrin 24 FE Antitrust Litig.*, 410 F. Supp. 3d 352, 392-93, 404-06 (D.R.I. 2019).

[52] *Id.* at 407.

[53] Tr. of Evidentiary Hr'g, ECF No. 807 (Feb. 13, 2019); Tr. of Evidentiary Hr'g, ECF No. 808 (Feb. 14, 2019).

statements; Matthew Van Tine (Miller) conducted the direct examination of Dr. French and cross-examined Dr. Hughes; and Sharon Robertson (Cohen Milstein) presented Ms. Craft on direct examination and cross-examined Dr. Strombom.

69. On September 17, 2019, this Court certified End-Payors' proposed TPP class, and largely denied Defendants' motion to dismiss.[54] Based on the extensive record compiled and submitted by End-Payors and their experts, the Court stated that it was "convinced that the data [necessary to identify and exclude uninjured TPPs] are available and accessible"; indeed, "from PBM and pharmacy data, the EPPs could compile a list of TPPs that purchased Loestrin 24, Minastrin, and their generic equivalents, that includes payment amounts, coverage, and plan characteristics."[55] Moreover, although ultimately unsuccessful, Class Counsel did not abandon their efforts to obtain certification of a broader class including consumers. Counsel are committed to seeking redress for consumers in this and other pharmaceutical antitrust cases, and we appropriately devoted resources, and argued strenuously, to push the law forward on this issue.

70. The litigation strategy and factual record developed by End-Payors in *Loestrin* are now being relied on by end-payor counsel in other delayed generic suits.[56]

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[54] Order, ECF No. 1226; Mem. of Decision on Class Cert & Order Regarding Motions to Exclude Certain Expert Ops. & Defs.' Renewed Mot. to Dismiss, ECF No. 1274 (Oct. 17, 2019).

[55] Mem. of Decision on Class Cert & Order Regarding Mots. to Exclude Certain Expert Ops. & Defs.' Renewed Mot. to Dismiss, ECF No. 1274 at 81-82 (Oct. 17, 2019).

[56] *See*, *e.g.*, Op. & Order on End-Payor Pls.' Mot. for Class Certification, *In re Restasis (Cyclosporine Ophalmic Emulsion) Antitrust Litig.*, 18-md-2819 (E.D.N.Y. May 4, 2020), ECF No. 501 at 9-10, 39, 43, 45 (repeatedly citing this Court's *Loestrin* class certification decision and relying heavily on reports submitted by Laura Craft); End-Payor Pls.' Reply Mem. of Law in Further Support of Their Mot. for Class Cert., *In re Opana ER Antitrust Litig.*, No. 14-cv-10150 (N.D. Ill. Nov. 20, 2019), ECF No. 473 at 2, 4, 9-10, 12, 15, 20; Mem. of Law in Support of End-Payor Pls.' Mot. for Class Cert. & Appointment of Class Representatives & Class Counsel, *In re Zetia (Ezetimibe) Antitrust Litig.*, No. 2:18-md-2836 (E.D. Va. Nov. 18, 2019), ECF No. 730 at 3, 9-10, 12, 15-17, 20, 23, 25-27, 29; Reply Mem. of Law in Support of End-Payor Plaintiffs' Mot. for Class Certification, *In re Niaspan Antitrust Litig.*, No. 2:13-md-02460 (E.D. Pa. Mar. 25, 2019), ECF No. 628.

71. Following this Court's class certification decision, Defendants petitioned the First Circuit for interlocutory review under Federal Rule of Civil Procedure 23(f).[57] End-Payors vigorously opposed Defendants' petition, which the First Circuit subsequently denied.[58]

72. End-Payors worked with A.B. Data, the Court-approved notice administrator, to develop and implement a robust notice program that reached virtually all third-party payor class members.[59]

D. Summary Judgment Motions

73. Summary judgment motions proceeded in two phases: motions relating to market power were filed first, followed by motions relating to the remainder of the case. Both phases involved extraordinary effort and cooperation among the Plaintiff groups, with End-Payor Counsel taking the lead in drafting the Plaintiffs' summary judgment briefs.[60] Throughout the process, End-Payors worked together with Direct Purchaser Plaintiffs and Retailers to marshal evidence, coordinate with Plaintiffs' experts, and depose Defendants' experts.

74. On July 30, 2018, Defendants moved for summary judgment on the ground that they lacked monopoly power over the relevant market, supporting their brief with a 106-page statement of facts and 692 exhibits.[61] On October 22, 2018, Plaintiffs opposed Defendants' summary judgment motion and filed a cross-motion for summary judgment on market power.[62] In

[57] Pet. Pursuant to Rule 23(f) of the Federal Rules of Civil Procedure for Permission to Appeal from Order Granting Class Cert., ECF No. 1254 (Oct. 2, 2019).

[58] Judgment, *City of Providence v. Warner Chilcott Holdings Co. III, Ltd.*, No. 19-8026 (1st Cir. Dec. 3, 2019)

[59] EPPs' Mem. of Law in Supp. of Mot. for Entry of an Order to Allow for Amendment of Class Definition, ECF No. 1234 (Sept. 21, 2019); Order, ECF No. 1245 (Sept. 27, 2019).

[60] Mem. of Law in Supp. of Pls.' Mot. for Summ. J., & in Opp'n to Defs.' Mot. for Summ. J. on Market Power, ECF No. 595 (Oct. 26, 2018); Pls.' Reply Mem. of Law in Supp. of Mot. for Summ. J. on Market Power, ECF No. 707-1 (Jan. 25, 2019).

[61] ECF Nos. 496, 497-512, 515-517, 519-525, 527, 529-1, 530-1.

[62] ECF No. 578-1.

support, Plaintiffs filed a 287-page response to Defendants' statement of facts, a 33-page additional statement of facts, and 199 exhibits.[63] On December 11, 2018, Defendants' submitted their reply in support of their summary judgment motion and opposition to Plaintiffs' motion, along with 59 additional exhibits and a 114-page response to Plaintiffs' statement of facts.[64] Plaintiffs filed their reply, along with an additional 17 exhibits, on January 25, 2019.[65] All told, Defendants filed 751 exhibits, including expert reports from Drs. Sumanth Addanki, Risa Kagan, Philip D. Darney, and James A. Simon, while Plaintiffs filed 216 exhibits, including expert reports from Drs. Meredith Rosenthal, Christopher F. Baum, Keith Leffler, Michael A. Thomas, Roger Lea Williams, Richard J. Derman, Thomas G. McGuire, and Jeffrey J. Leitzinger.

75. End-Payor Counsel were responsible for drafting Plaintiffs' market power summary judgment briefs.[66] End-Payor Counsel were also closely involved, along with counsel for DPPs and Retailers, in preparing and drafting Plaintiffs' statements of facts and in opposing Defendants' statements of facts.[67]

76. On March 14, 2019, the Court heard argument on the market power summary judgment motions, during which End-Payor Counsel provided Plaintiffs' principal arguments.[68]

77. Following the hearing, the Court ordered supplemental briefing, which Plaintiffs filed on October 3, 2019.[69] End-Payors worked with counsel for the other Plaintiffs in responding to the Court's questions, including coordinating with Plaintiffs' experts, compiling

[63] ECF Nos. 579-1, 580-1, 584.

[64] ECF Nos. 650-1, 649, 648-1.

[65] ECF Nos. 707-1, 708.

[66] ECF Nos. 595; 707-1.

[67] Pls.' Statement of Disputed Facts, ECF No. 596.

[68] Tr. of Hearing on Mot. for Summ. J. (Market Power), ECF No. 823.

[69] Pls.' Answers to Court's Questions for Further Market Power Briefing, ECF No. 1247 (Sept. 30, 2019). .

demonstratives, and preparing the filing. On October 3, 2019, the Court held a second hearing on these issues, at which End-Payor Counsel again argued on behalf of Plaintiffs.[70]

78. The Court apparently came very close to granting Plaintiffs' motion for summary judgment on market power, but ultimately denied summary judgment on market power to both parties on December 17, 2019.[71]

79. In addition to their market power summary judgment motion, on May 10, 2019, Defendants filed an omnibus motion for summary judgment with respect to Plaintiffs' patent, reverse payment, and product hop claims, accompanied by a 57-page statement of facts and hundreds of exhibits.[72] Defendants' motion also pressed several arguments specific to End-Payors, including those pertaining to damages, statutes of limitations, and particular state laws.

80. On June 12, 2019, Plaintiffs collectively filed a responsive brief and statement of facts, as well as a statement of additional facts and hundreds of exhibits.[73] End-Payor Counsel drafted sections relating to the product hop, acceleration clauses, End-Payor damages, and state law issues, and were primarily responsible for the drafting and marshaling of evidence for the corresponding fact statements. On September 11, 2019, the Court held a hearing on Defendants' motion for summary judgment, with End-Payor Counsel arguing on behalf of all Plaintiffs with respect to the product hop claim.[74] On December 17, 2019, the Court denied Defendants' motion.[75]

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[70] Tr., ECF No. 1263.

[71] *In re Loestrin 24 Fe Antitrust Litig.*, No. 1:13-MD-2472, 2019 WL 7286764, at *19 (D.R.I. Dec. 17, 2019).

[72] ECF Nos. 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858.

[73] ECF Nos. 972-1, 973-1, 973-2.

[74] Tr., ECF No. 1257.

[75] *In re Loestrin 24 Fe Antitrust Litig.*, No. 1:13-MD-2472-WES-PAS, 2019 WL 7286764 (D.R.I. Dec. 17, 2019).

E. *Daubert* Motions

81. The parties filed numerous *Daubert* challenges. To avoid duplication of work, Plaintiffs agreed to coordinate on motions pertaining to common issues, with End-Payor Counsel actively participating and securing favorable results for all Plaintiffs. End-Payor Counsel drafted Plaintiffs' motion to exclude Defendants' experts Drs. Meyer, Robbins, and Schilling's opinions' pertaining to the product hop,[76] which the Court granted insofar as those experts sought to testify as to certain policy and legal matters.[77] End-Payor Counsel were also responsible for drafting Plaintiffs' successful motion to exclude Drs. Meyer and Robbins from testifying that the no-authorized generic provision pro-competitively protected from "ruinous competition."[78]

82. In addition, End-Payors successfully defended against *Daubert* motions filed by Defendants, including those relating to Dr. McGuire's profit sacrifice analysis and Dr. French's damages calculations.[79]

F. Trial Preparation

83. End-Payors were actively engaged in every facet of the trial preparation process—including spearheading several major pre-trial submissions for all Plaintiffs (including motion *in limine* briefing and pre-trial memorandum), vetting jurors, and preparing the examinations of key fact and expert witnesses.

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[76] Mem. of Law in Supp. of Mot. to Exclude Ops. & Test. of Drs. Christine S. Meyer, Mark S. Robbins, and Melissa A. Schilling Regarding Lack of Anticompetitive Effect from Product Hop, ECF No. 940 (June 3, 2019).

[77] Op. & Order on Summ. J. and Order Regarding Motions to Exclude Certain Expert Ops., ECF No. 1380 (Dec. 17, 2019).

[78] *In re Loestrin 24 Fe Antitrust Litig.*, No. 1:13-MD-2472-WES-PAS, 2019 WL 7286764, at *19 (D.R.I. Dec. 17, 2019).

[79] EPPs' Mem. in Opp. To Defs.' Mot. to Exclude Ops. & Test. of EPPs' Expert Dr. Thomas McGuire, ECF No. 1005-1 (June 19, 2019); EPPs' Mem. in Opp. To Defs.' Mot. to Exclude Ops. & Test. of EPPs' Expert Dr. Gary L. French, ECF No. 997-1 (June 19, 2019).

84. End-Payors took the lead role in shepherding the assignment, drafting, editing, and submission of Plaintiffs' omnibus motion *in limine* (filed on November 12, 2019), which raised 41 separate trial issues, as well as Plaintiffs' replies in support of those motions (filed only a week later on November 19, 2019).[80] Due to the number and complexity of the issues addressed, and the short turnaround required for reply briefing, End-Payors' role in managing the motion *in limine* filings was a significant undertaking. In addition to managing the motion *in limine* efforts, End-Payor Counsel drafted each of the following individual motions:

- End-Payors' Motion Exclude Reference to Direct Purchaser Recoveries in the Separate End-Payor Damages Phase.
- Motion to Exclude Argument and Testimony Regarding the Purported Pass-on of Overcharges by End-Payors.
- Motion to Permit Use of the Term "Purchasers" to Refer to TPP Class Members.
- Motion to Preclude Defendants from Eliciting Testimony Regarding the Purpose For Which Any Consumer Purchased Drugs At-Issue.
- Motion to Exclude Any Evidence or Argument Disparaging Generic Drugs or Touting the Quality or Benefits of Brand Drugs.
- Motion to Require Defendants to Produce Witnesses for Purchasers' Case-in-Chief That They Themselves Will Bring to Trial.
- Motion to Preclude Defendants From Playing Deposition Clips During Purchasers' Case-in-Chief, Unless Testimony is Cross-Examination or Necessary for Completeness.
- Motion to Exclude Any Reference to the Adverse Impact That a Damages Award Would Have on Defendants or the Drug Industry.
- Motion to Preclude Argument or Evidence Regarding Past or Present Litigation Involving Purchasers or Their Counsel
- Motion to Exclude Dr. Meyer's Testimony on the Existence of Other Oral Contraceptives, Which Cannot Disprove Coercion.

[80] Mem. in Supp. of Purchasers' Omnibus Mot. *in Limine*, ECF No. 1301; Reply Mem. in Supp. of Purchasers' Omnibus Mot. *in Limine*, ECF No. 1336-1.

- Motion to Exclude Dr. Meyer's Testimony That Consumers Retained the Option to Stay on Brand Loestrin 24— Testimony That Has No Evidentiary Support.
- Motion to Exclude Evidence or Testimony That FDA Concluded Minastrin Was an Improvement Over Loestrin 24.
- Motion to Preclude Evidence Testimony that Absent a Violation, Warner Chilcott Would Have Marketed Minastrin—Evidence That Cannot Rebut Purchasers' Injury or Offset Purchasers' Damages.
- Motion to Exclude Cumulative and Duplicative Testimony From Drs. Meyer, Robbins, and Schilling Regarding Anticompetitive Effect or Procompetitive Justifications Relating to the Product Hop.
- Motion to Preclude Testimony or Evidence Warner Chilcott Executives were not Involved in '394 Patent Prosecution/Assignment.

85. The Court heard argument on several motions *in limine* on December 9, 2019. End-Payor Counsel represented all Plaintiffs in addressing several of the issues raised.

86. Plaintiffs achieved significant success in precluding Defendants from introducing at trial various arguments, testimony, and documentary evidence. In particular, End-Payor Counsel were responsible for drafting and arguing motions *in limine* that resulted in critical product hop rulings. For example, the Court ruled that: (i) Defendants' expert "Dr. Meyer may not opine that the existence of other oral contraceptives in the market disproves coercion resulting from the switch from Loestrin 24 to Minastrin 24"[81]; (ii) "neither Dr. Meyer nor any other expert may opine that the fact that Loestrin 24 was limitedly available means Defendants' conduct could not and did not coerce consumers";[82] and Defendants' experts "may not testify that the fact of generic entry disproves any anticompetitive effect."[83] End-Payors also succeeded in keeping out of the "Phase I" trial references to purported End-Payor pass-on of damages, and in precluding

[81] Text Order, Dec. 11, 2019.

[82] Text Order, Dec. 11, 2019.

[83] Order on Pending Mots. *in Limine*, ECF No. 1362 at 7 (Dec. 6, 2019).

evidence and argument relating to each of the following subjects: the reasons why patients purchased Loestrin 24 and Minastrin 24; pejorative terms for generic drugs; and the adverse impact that damages awards would have on Defendants and the pharmaceutical industry.

87. End-Payor Counsel also managed Plaintiffs' joint oppositions to Defendants' 9 motions *in limine*, with End-Payors drafting 4 of these.[84] End-Payors were largely successful in preserving their ability at trial to introduce key evidence and arguments. For instance, End-Payor Counsel were responsible for drafting the opposition to Defendants' motion *in limine* that sought to preclude evidence relating to other product hops. The Court denied Defendants' motion, holding that "[e]vidence of Warner Chilcott's practices with respect to other pharmaceuticals, such as those at issue in *Namenda*, may be introduced to show a pattern or business practice."[85] Likewise, consistent with the position advanced by End-Payors in their opposition to a separate motion *in limine*, the Court held that "[w]itnesses may discuss policies and issues regarding the structure of the pharmaceutical industry and the policy behind certain laws (e.g., the Hatch-Waxman Act or laws affording patent protection to inventors) in order to give context to the jury," and precluded only arguments that a Plaintiff verdict would advance a particular policy goal.[86]

88. End-Payors were also primarily responsible for Plaintiffs' contributions to the parties' 231-page Joint Pretrial Memorandum, including spearheading and synthesizing the work of all three Plaintiff groups.[87]

89. As specified by the Court, the Joint Pretrial Memorandum covered: (i) the elements of each claim; (ii) the evidence Plaintiffs and Defendants would put forth to prove or rebut that

[84] Pls.' Resps. in Opp. to Defs.' Mots. *in Limine*, ECF Nos. 1303, 1304, 1305, 1306, 1307, 1308-1, 1309-1, 1310, 1311-1 (Nov. 12, 2019).

[85] Order on Pending Mots. *in Limine*, ECF No. 1362 at 11 (Dec. 6, 2019).

[86] *Id.*

[87] Pretrial Mem., ECF No. 1364 (Dec. 8, 2019).

claim; (iii) "special issues" relating to the parties' claims and defenses; and (iv) which witnesses would testify, whether they would testify live or by deposition, how long they were expected to testify for, and any relevant *Daubert* or *limine* motions. As part of this effort, End-Payor Counsel took the lead in negotiating and working with counsel for Defendants. Given the scope and length of the Pretrial Memorandum, as well as the short time frame under which the parties were operating, this required considerable effort over a compressed time period.

90. End-Payors were also actively involved in other major pretrial activities. In October 2019, End-Payors participated with the other Plaintiffs in a mock trial to help refine their trial strategy, contributing especially to Plaintiffs' trial strategies for market power and their product hop claims.[88]

91. End-Payor Counsel also participated in drafting and editing Plaintiffs' proposed jury instructions and verdict form—including by creating several instructions and verdict questions tailored to the product hop claim and End-Payors' state law claims and drafting objections to Defendants' jury instructions and verdict form. Plaintiffs' proposed jury instructions, filed on November 25, 2019, included 131 separate instructions.[89]

92. In addition, End-Payors co-led the process for vetting potential jurors, which required working with a jury consultant to organize and evaluate questionnaires submitted by hundreds of potential jurors.[90] During jury selection, held on December 16 and 18, End-Payor Counsel questioned venire panel members and participated in the process of selecting each of the 10 jurors.[91]

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[88] *Id.*

[89] Pls.' Proposed Jury Verdict, ECF No. 1350; Pls.' Proposed Jury Instructions, ECF No. 1351.

[90] Interim Case Management Order No. 16, ECF No. 1277 at 2 (Oct. 23, 2019).

[91] Minute Entry (Dec. 16, 2019); Minute Entry (Dec. 18, 2019).

93. In anticipation of the reality that many witnesses would not be presenting live testimony at trial, Plaintiffs designated 49 deposition transcripts, and Defendants designated 95 deposition transcripts. Plaintiffs also designated 1,609 exhibits for trial, while Defendants designated 7,192 exhibits. Subsequently, the parties exchanged counter-designations and objections. End-Payor Counsel were closely involved in this process. Each Plaintiff firm, including End-Payors, was assigned roughly 720 exhibits to review and lodge objections. End-Payors also engaged in extensive negotiations with Defendants over the parties' deposition and exhibit designations and objections—leading this process after the other Plaintiffs settled.

94. By the time the parties settled on the eve of trial, End-Payors had expended hundreds of hours on their trial presentation, including drafting and refining their opening statement and examinations of various witnesses.

95. End-Payors' trial preparation was particularly arduous because, from the outset, we prepared not for one trial, but three: (1) a trial with all three Plaintiff groups participating; (2) a trial with End-Payors and Retailers participating; and (3) a trial with only End-Payors participating. That strategy, and the very difficult process of implementing it, were ultimately a key to successfully resolving End-Payors' claims. End-Payors, in fact, had to operate under each of those plans, as first Direct Purchasers and then Retailers settled. End-Payors were ready, willing, and able to try the case in each of the three configurations, including on our own.

96. Under all trial configurations, End-Payors had significant responsibility, including participating in the opening statement and closing argument, presenting Plaintiffs' principal economists, cross-examining defense economists, presenting key Plaintiff fact witnesses, and cross-examining key defense fact witnesses.

G. Mediation and Settlement

97. End-Payors participated in a tri-partite mediation session on December 3, 2018, with mediators Judge Layn R. Phillips and David Murphy of Phillips ADR. End-Payor Counsel played a substantial role in drafting portions of the joint mediation statement, as well as submitting a separate statement on behalf of End-Payors. Following a full-day mediation session, including lengthy discussions regarding class certification issues, despite Plaintiffs good faith efforts, the parties were unable to reach an agreement at that time.

98. In the months leading up to trial, End-Payors participated in numerous telephonic conferences and email exchanges with mediator David Murphy, detailing their positions on various issues and setting out the framework that would be required for the parties to reach a successful resolution.

99. Despite the ongoing discussions, it was not until January 3, 2020, the final business day before trial, that the End-Payors and the Warner Chilcott Defendants were able to reach an agreement in principle and negotiate and execute a corresponding memorandum of understanding to settle End-Payors' claims for $62.5 million in cash. After further negotiations, a formal settlement agreement was executed on January 30, 2020. That agreement was the product of lengthy, hard-fought, and arm's-length negotiations among experienced counsel, with assistance from the mediators.

100. On March 6, 2020, End-Payors moved for preliminary approval of the Warner Chilcott Settlement,[92] which this Court granted on March 23, 2020.[93] On March 28, 2020, notice was sent to all class members via First Class mail. The notice advised Class members of the key

[92] Mem. in Supp. of Unopposed Am. Mot. for Prelim. Approval of Proposed Settlement, ECF No. 1421.

[93] Order, ECF No. 1427.

elements of the settlement, as well as the fact that Class Counsel would seek a fee up to one-third of the fund created by the Warner Chilcott Settlement.[94]

II. TIME AND EXPENSE RECORDKEEPING PROCEDURES

101. Consistent with this Court's Case Management Orders, early in the case, Co-Lead Counsel implemented strict time and expense billing guidelines for End-Payor Class Counsel.[95] Included among these guidelines were requirements that travel time be billed at 50% of the time spent, and that only common benefit time be included. Co-Lead Counsel also retained AB Data to compile and audit End-Payors' billing records and expenses.

102. Each End-Payor firm was required to submit monthly time and expense reports for review by Co-Lead Counsel and AB Data, so that Co-Lead Counsel could monitor tasks and expenses. Co-Lead Counsel made every effort to ensure that End-Payors' claims were litigated effectively and efficiently, including by: (i) dividing up work among the various Plaintiff and End-Payor firms in order to minimize duplication, and (ii) ensuring that tasks were handled by counsel and staff with appropriate skill and experience. When feasible and cost-effective, tasks were delegated to support staff and junior attorneys. In other instances, senior attorneys retained tasks in which they had specialized experience and expertise that could be leveraged to perform work more efficiently.

103. AB Data reported Class Counsel's billing and expense records on a quarterly basis to Magistrate Judge Sullivan. Any billing records or expenses that were not timely included in these quarterly reports were excluded from Class Counsel's fee and expense requests. Through the third quarter of 2019, one of the Co-Lead firms (Miller Law), liaison counsel (Motley Rice)

[94] *See generally* Notice of Class Action & Proposed End-Payor Settlements (Mar. 28, 2020), available at https://inreloestrin24feantitrustlitigation.com/Home/Notice.

[95] Case Management Order No. 2, ECF No. 85 (Feb. 14, 2014).

and the auditor at AB Data participated in conferences with Magistrate Judge Sullivan to discuss and evaluate the quarterly reports. In accordance with any feedback and instructions that Magistrate Judge Sullivan provided, Class Counsel and AB Data conferred with the respective law firm and provided to Magistrate Judge Sullivan further explanation, if necessary, or made appropriate adjustments to their billing and expense records. After these quarterly conferences were suspended in anticipation of trial, End-Payor Counsel continued to submit billing and expenses records for AB Data's and Co-Lead Counsel's review.

104. In addition, in preparing for this fee and expense request, Co-Lead Counsel instructed each firm to review its fee and expense records. In order to ensure that End-Payor Counsel would seek compensation only for common benefit time, each firm was notified that time and expenses spent in connection with the Judicial Panel on Multidistrict Litigation proceeding; leadership negotiations; certain administrative tasks, and this attorneys' fee and expense request would be disallowed.

III. CLASS COUNSEL'S LODESTAR

105. End-Payor Counsel have prosecuted this litigation solely on a contingent-fee basis and have at all times been at substantial risk that they would not receive any compensation for prosecuting claims against Defendants. While Class Counsel devoted their time and resources to this matter, they have foregone the option of other opportunities for which they may have been compensated.

106. End-Payor Counsel spent 35,249.28 hours prosecuting this case on behalf of the End-Payor Class, with a resulting lodestar of $19,917,547.10, based on historical rates. Of the total hours spent, more than 95% was spent by Co-Lead Counsel and Liaison Counsel, with the remaining time billed by Executive Committee and other Class Counsel firms.

107. In accordance with the Court's directions in Case Management Order Number 2, Co-Lead Counsel generally limited attendance at court hearings and staffed meetings and hearings as leanly as possible but in accordance with the needs of the case and skill set of available attorneys. As reflected in this declaration, Co-Lead Counsel also divided tasks among themselves to avoid duplication.

108. Below is a summary of number of hours worked by each firm seeking attorneys' fees and that firm's total lodestar:

Firm	**Hours**	**Lodestar (Historical)**
Cohen Milstein Sellers & Toll, PLLC	6,662.25	4,097,171.25
Hilliard & Shadowen LLP	9,826.98	$5,610,397.00
Miller Law LLC	11,326.8	$6,210,985.00
Motley Rice LLC	5,716.2	$3,241,165.35
Branstetter, Stranch and Jennings, PLLC	1,292.60	503,455.00
Hach Rose Schirripa & Cheverie LLP	8.4	$5,257.50
Pomerantz LLP	81.8	$52,405.00
Shepherd, Finkelman, Miller & Shah, LLP	238.8	$136,322.50
Spector Roseman & Kodroff, P.C.	95.45	$60,388.50
TOTAL	35,249.28	$19,917,547.10

109. Declarations submitted by each firm (1) identify the attorneys and staff members who worked on the case and the tasks they performed, (2) describe the amount of time spent by each of the firm's attorneys and staff members, and the hourly rates for each of them, and (3) summarize the expenses incurred by the firm.

110. Not reflected in the above lodestar figures is time that End-Payor Counsel will expend going forward for the benefit of the Class, including in securing final approval of the Warner Chilcott Settlement and, once final approval has been obtained, working with AB Data to administer the settlement. These efforts often require a significant investment of time.

IV. CLASS COUNSEL'S EXPENSES

111. Class Counsel seek the reimbursement of $3,743,996.58 in out-of-pocket expenses. End-Payors' expenses fall into two categories: litigation fund payments and firm-specific costs.

112. Co-Lead Counsel, Liaison Counsel, firms on the Executive Committee, and other counsel contributed to a litigation fund that was used to pay costs common to the class. In total, End-Payors spent $3,341,802.66 from the litigation fund and seek reimbursement of that amount. Class Counsel's individual declarations set forth their respective litigation fund contributions.

113. The expenses paid from the litigation fund are summarized below:

Category	**Amount**
Database	$34,744.41
Delivery/Postage	$347.50
Escrow Agent	$121.56
Experts	$2,934,366.41
Mediation Services	$7,999.20
Translations	$16,000.94
Trial Support	$83,330.41
Trial Witness Fees	$2,962.56
Current Invoices for Court Reporter, Consultants, Trial Support	$261,929.67
TOTAL (PAID AND OBLIGATED)	**$3,341,802.66**

114. By far the largest portion of the costs (nearly 88%) incurred by the litigation fund were payments to experts retained by End-Payors either jointly with other Plaintiffs or separately.

115. Class Counsel also incurred $402,193.92 in out-of-pocket costs that the firms themselves advanced, as opposed to being paid out of the litigation fund.

116. A breakdown of these expenses is reflected below:

Category	**Amount**
Reproduction cost	$27,310.97
Fedex, Messenger, and Postage	$4,510.42
Travel and Meals	$245,481.56
Telephone, Teleconference, Internet, and Fax	$3,051.95
Service of Subpoenas and Process	$4,508.00

Computer Research	$85,726.51
Filing Fees and Other Court Costs	$4,542.70
Office Supplies	$1,127.25
Secretarial Overtime	$128.72
Document Database Vendor	$15,405.44
Court Transcripts	$1,594.99
Expert and Consulting Fees	$8,805.79
TOTAL EXPENSES	**$402,193.92**

117. The vast majority of End-Payor Class Counsel's expenses were paid out of the common litigation fund (more than 89%). Of Class Counsel's firm-specific expenses, the largest categories were travel and meal expenses (7% of total expenses) and computer research (2% of total expenses).

118. In addition to the expenses incurred by Class Counsel thus far, AB Data estimates that it will cost no more than $250,000 to complete the settlement distribution process.

V. EFFORTS OF THE CLASS REPRESENTATIVES

119. The work done by Class Representatives on this litigation supports the requested service awards of $10,000 to each of the 9 TPP Class Representatives in connection with the Warner Chilcott Settlement and of $5,000 to both of the Consumer Named Plaintiffs in connection with the Lupin Settlement.

120. The Class Representatives all actively participated in the litigation, stayed abreast of the progress of the case, collected and produced documents and responded to interrogatories, and prepared for and provided deposition testimony.

121. Additionally, because this case settled on the eve of trial, certain of the Class Representatives expended time and effort preparing to testify.

122. The Class Representatives performed these services over many years despite the risk that there would be no recovery for the Class and, even if there were, the Class Representatives

would not be guaranteed any compensation above that of ordinary class members who did not actively participate in the litigation.

The undersigned declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 8th day of June 2020.

/s/ Steve D. Shadowen
Steve D. Shadowen

/s/ Sharon K. Robertson
Sharon K. Robertson

/s/ Michael M. Buchman
Michael M. Buchman

/s/ Marvin A. Miller
Marvin A. Miller

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF SHARON K. ROBERTSON
IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION EXPENSES,
AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES
FILED ON BEHALF OF COHEN MILSTEIN SELLERS & TOLL, PLLC

I, Sharon K. Robertson, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at the law firm Cohen Milstein Sellers & Toll, PLLC, Co-Lead Counsel for the End-Payor Class Plaintiffs ("EPPs") in the above-captioned action (the "Action"). I submit this declaration in support of EPPs' application for an award of attorneys' fees, reimbursement of litigation expenses, and service awards to the class representatives. This declaration is based on my personal knowledge or discussions with counsel at my firm of the matters stated herein.

2. My firm has complied with the Court's billing and expense requirements, including as reflected in Case Management Order No. 2. ECF No. 85. Consistent with that order, all attorneys and legal professionals at my firm were instructed to keep contemporaneous time records reflecting their work on this case and expenses incurred.

3. During this litigation, as co-lead counsel, my firm performed the following activities for the benefit of the EPPs:

- Worked with Co-Lead Counsel Steve Shadowen to conduct the initial factual and legal investigation that led to the filing of the first complaints challenging defendants' practices related to Loestrin 24 Fe;

- Filed the second complaint, of any plaintiff group, in this Action;

- Co-drafted the opposition to Defendants' motion to dismiss, with primary responsibility for addressing EPPs' overarching conspiracy claim;

- Argued the first motion to dismiss on behalf of the EPPs;

- Co-drafted the opposition to Defendants' amended motion to dismiss, with primary responsibility for responding to the defendants' preemption arguments;

- Drafted responses and objections to the defendants' 183 detailed requests for production;

- Participated in negotiating with the defendants regarding numerous discovery-related issues, including an ESI protocol, search terms, and document custodians;

- Chaired the privilege team for all three sets of plaintiffs and spearheaded related discovery challenges for plaintiffs, including:

    - reviewing log entries for tens of thousands of withheld documents as well as certain redacted documents;

    - drafting numerous letters to defendants regarding log deficiencies and engaging in several meet and confers to narrow areas of dispute;

    - arguing the majority of privilege-related issues and motions in telephonic hearings before Magistrate Judge Sullivan;

    - successfully dislodging and unmasking hundreds of withheld or redacted documents; and

    - developing a strategy for addressing potential at-issue waiver in relation to the deposition testimony of Paul Herendeen and Izumi Hara and negotiating a stipulation with the defendants regarding the same.

- Prepared and defended depositions of named plaintiffs Local 35 and UFCW; and assisted in preparing other named plaintiffs to be deposed;

- Deposed and/or assisted in preparing the depositions of multiple defendant and expert witnesses, including at least the following: Carl Reichel, Paul Bisaro, David Buchen, and John Doll;

- Led EPPs' efforts to develop and implement a successful strategy for obtaining certification of a class following the First Circuit's *Asacol* decision, including:
    - retaining three pharmaceutical industry data experts, working with each to draft rebuttal expert reports, and defending the deposition of each;
    - deposing the defendants' two additional pharmaceutical industry and data experts;
    - drafting motions to exclude the defendants' experts and opposing the defendants' motions to exclude EPPs' experts;
    - reconfiguring EPPs' class definition post-*Asacol* and assisting with drafting key portions of EPPs' reply and sur-sur-reply in support of class certification and opposition to defendants' renewed motion to dismiss; and
    - leading the presentation of ascertainability-related issues at a two-day evidentiary hearing, including through examination of relevant EPP and defendant experts;
- Spearheaded for all three groups of plaintiffs:
    - the drafting, editing, and filing of the plaintiffs' opening and reply briefs in support of their omnibus motion *in limine*, directed at 41 discrete issues;
    - the drafting, editing, and filing of the plaintiffs' separate motion *in limine* seeking to exclude argument or evidence that Warner Chilcott executives were not involved in the '394 parent prosecution or assignment; and
    - the assignment, drafting and coordination of plaintiffs' oppositions to the defendants' nine motions i*n limine*.
- Spearheaded for all three groups of plaintiffs the drafting, editing, negotiation, and filing of the parties' 200-page joint pretrial motion;
- Co-led for all three plaintiffs' groups the juror vetting and selection process, including by questioning venire panel members;
- Prepared to examine at trial several witnesses, including Christopher Baum, Susan Marchetti, Deborah Jaskot and several additional fact and expert witnesses for defendants; and prepared to deliver part of EPPs' opening statements;
- Led extensive negotiations with the defendants over deposition and exhibit designations and objections; and

- Actively participated in efforts to mediate, first with Judge (ret.) Layne Phillips, and later with David Murphy, and defendants, and in negotiating, drafting and reviewing the settlement agreements.

4. My firm's total lodestar from inception through April 30, 2020, for work performed in connection with the prosecution of this Action is $4,097,171.25, calculated based on my firm's rates at the time the work was performed. Time expended in connection with the MDL proceeding, leadership negotiations, certain administrative tasks, and the application for attorneys' fees and reimbursement of litigation expenses has not been included, even in instances when such time was reported to AB Data and reviewed by Magistrate Judge Sullivan. The chart below summarizes the amount of time spent by attorneys and professional support staff of my firm who were involved in this Action, as well as the lodestar of each.

NAME	HOURS	HISTORICAL RATE	LODESTAR
Partners			
Sharon Robertson[1]	83.5	$575	$48,012.50
Sharon Robertson	91.75	$615	$56,426.25
Sharon Robertson	331.25	$645	$213,656.25
Sharon Robertson	713	$685	$488,405
Sharon Robertson	55.25	$720	$40,140
John D. Richards	69.25	$785	$54,361.25
John D. Richards	75.25	$835	$62,833.75
John D. Richards	60.5	$855	$51,727.50
John D. Richards	6	$885	$5,310.00
George Farah	121.5	$480	$58,320.00
Robert A. Braun	30.25	$605	$18,301.25
Gary Azorsky	3.75	$645	$2,418.75
Manuel Dominguez	1.5	$620	$930.00
Carol V. Gilden	1.75	$940	$1,645.00
Brent Johnson	.75	$755	$566.25
Brent Johnson	.75	$790	$592.50
Richard Koffman	2.25	$875	$1,968.75
Richard Koffman	.25	$910	$227.50
Steven Toll	1.25	$945	$1,181.25
Of Counsel			
Donna Evans	1	$710	$710.00
Donna Evans	128	$745	$95,360.00
Donna Evans	300	$775	$232,500.00
Donna Evans	1164.25	$805	$937,221.25
Donna Evans	748.25	$845	$632271.25
Donna Evans	21.5	$875	$18,812.50
Christopher Lometti	5	$760	$3,800.00
Casey M. Preston	2.25	$460	$1,035.00
Matthew W. Ruan	2.25	$695	$1,563.75
Raymond Sarola	0.25	$605	$151.25
Associates			
Sharon Robertson	12.25	$435	$5,328.75
Sharon Robertson	21.5	$455	$9,782.50
Sharon Robertson	131.25	$510	$66,937.50
Sharon Robertson	43.25	$540	$23,355.00
Robert A. Braun	62	$530	$32,860.00
Robert A. Braun	513	$570	$292,410.00
Courtney Elgart	100.25	$350	$35,087.50
Courtney Elgart	245.75	$420	$103,215.00
Sabira Khan	221	$400	$88,400.00
Sabira Khan	23.5	$435	$10,222.50
Royce Zeisler	0.5	$505	$252.50
Hiba Hafiz	0.75	$350	$262.50

Hiba Hafiz	18	$415	$7,470.00
Hiba Hafiz	0.75	$440	$330.00
Hiba Hafiz	1	$475	$475.00
Staff Attorneys			
Alicia Gutierrez	39.5	$420	$16,590.00
Alicia Gutierrez	23.25	$430	$9,997.50
John Bracken	1	$400	$400.00
John Bracken	50.75	$420	$21,315.00
Nada Sulaiman	38.25	$400	$15,300.00
Law Fellow			
Soohyun Choi	39.25	$375	$14,718.75
Contract Attorneys			
Jay Adkins	2.75	$280	$770.00
Hensleigh Crowell	136	$250	$34,000.00
Douglas Gleason	8	$490	$3,920.00
Collier Henry	60.5	$405	$24,502.50
Paralegals			
Jonathan Abetti	18.25	$260	$4,745.00
Jonathan Abetti	1.5	$280	$420.00
Jonathan Abetti	15.25	$290	$4,422.50
Jonathan Abetti	78	$300	$23,400.00
Carol Brotstein	2.5	$245	$612.50
Richard Burner	37.75	$290	$10,947.50
Maya Campbell	5.5	$290	$1,595.00
Camille Chill	11.5	$300	$3,450.00
Jay Clayton	7.5	$280	$2,100.00
Jay Clayton	19	$290	$5,510.00
Jay Clayton	40.5	$300	$12,150.00
William Cooke	17.5	$250	$4,375.00
Nathaniel Dickstein	15	$290	$4,350.00
Nathaniel Dickstein	110.75	$300	$33,225.00
Samuel Hainbach	37.25	$290	$10,802.50
Samuel Hainbach	75.5	$300	$22,650.00
Jihoon Lee	12.5	$255	$3,187.50
Jihoon Lee	13.5	$260	$3,510.00
Jihoon Lee	5.25	$270	$1,417.50
Alex Noronha	33	$290	$9,570.00
Alex Noronha	17.75	$300	$5,325.00
Katherine Papy	3	$200	$600.00
Brenda Peterson	2.5	$280	$700.00
Jordan Reynolds	139.5	$300	$41,850.00
Jordan Reynolds	29.75	$310	$9,222.50

[1] Time billed by Sharon Robertson and Robert A. Braun prior to when each was elected partner is reflected under the "Associates" heading.

Jeanette Sanchez	0.25	$270	$67.50
Andrew Twigg	8	$245	$1,960.00
Andrew Twigg	33	$250	$8,250.00
Marit Vike	36	$300	$10,800.00
Investigator			
Suzanne Clarke	18.25	$410	$7,482.50
Suzanne Clarke	0.25	$490	$122.50
TOTALS	**6662.25**		**$4,097,171.25**

5. I have also calculated my firm's total lodestar based on billing rates in effect at the time the case settled in January 2020. Based on my firm's billing rates in January 2020, my firm's total lodestar for work performed in connection with the prosecution of this Action is $4,483,895.00.

6. The hourly rates for the attorneys and professional support staff of my firm are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other complex or class action litigation, subject to reasonable subsequent annual increases.[2]

7. My firm's lodestar figures are based on the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately.

8. As detailed below, my firm is seeking reimbursement for a total of $838,159.97 in litigation expenses incurred from inception through April 30, 2020 in connection with the prosecution of this Action.

[2] Order, *In re Resistors Antitrust Litig.*, No. 3:15-cv-382, (N.D. Cal. Mar. 24, 2020), ECF No. 584 (Firm's "rates were reasonable"—partners: $945-$645; associates: $570-$525; staff: $300-$270); Mem. Op. & Order, *Reynolds v. Fidelity Inv. Inst'l Pts. Co., Inc.*, No. 1:18-cv-423 (M.D.N.C. Jan. 8, 2020), ECF No. 92 (Firm's rates were "in line with or less than the customary rates charged in this type of case"—partner: $820; associate: $475; paralegals: $290); Order, *In re: Lidoderm Antitrust Litig.*, No. 3:14-md-2521 (N.D. Cal. Sept. 20, 2018), ECF 1055 (Firm's "billing rates . . . are appropriate"—partners: $885-$540; of counsel: $805-$710; associates: $530-$415); Fairness Hearing Tr. at 21:12-20, *In re Dental Supplies Antitrust Litig.*, No. 16-cv-696 (E.D.N.Y. June 24, 2019) (Firm billed "reasonabl[e] hourly fee[s]"—partners: $885-$517; associates: $555-$465; paralegals: $280-$240).

CATEGORY	AMOUNT
Reproduction Cost	$3,434.19
Expert Costs	$5,578.75
Fedex, Messenger, and Postage	$1,088.99
Travel and Meals	$50,339.43
Telephone, Teleconference, Internet, and Fax	$2,269.08
Service of Subpoenas and Process	$1,270.00
Computer Research	$17,210.87
Filing Fees and Other Court Costs	$872.00
Office Supplies	$967.94
Secretarial Overtime	$128.72
Common Litigation Fund Contributions	$755,000.00
TOTAL EXPENSES:	$838,159.97

9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

10. I understand that my firm's time and expenses were provided to and reviewed by Magistrate Judge Sullivan on a quarterly basis from the inception of the case through September 30, 2019 (when Judge Sullivan suspended our quarterly calls in anticipation of trial), and reflect any adjustments made by Judge Sullivan. My firm's detailed time and expense records continued to be submitted to the Certified Public Accountant and auditor, Linda Opichka, for the period spanning October 1, 2019 through April 30, 2020, which reflect a total of $1,125,485.00 in lodestar and $251,015.55 in expenses (including litigation fund contributions).

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on June 5, 2020.

/s/ Sharon K. Robertson
Sharon K. Robertson

EXHIBIT B

1UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF STEVE D. SHADOWEN
IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES
FILED ON BEHALF OF HILLIARD & SHADOWEN LLP

I, Steve D. Shadowen, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at the law firm Hilliard & Shadowen LLP, counsel for the End-Payor Plaintiffs Class ("EPPs") in the above-captioned action (the "Action"). I submit this declaration in support of EPPs' application for an award of attorneys' fees, reimbursement of litigation expenses, and service awards to the class representatives. This declaration is based on my personal knowledge or discussions with counsel at my firm of the matters stated herein.

2. We were advised of this Court's billing and expense requirements and have complied with them. All attorneys and legal professionals at my firm were instructed to keep contemporaneous time records reflecting their work on this case and expenses incurred.

3. During this litigation, at the direction of Co-Lead Counsel, my firm performed the following activities for the benefit of the EPPs: We participated in the fact investigation that led to the filing of the first complaint, by any plaintiff of any type, alleging these claims against the defendants; conceived the legal theories and participated in drafting and filing the first complaint; briefed the original motion to dismiss the complaint and argued those issues in the

Court of Appeals; briefed and argued the second motion to dismiss the complaints; reviewed the defendants' documents; had primary responsibility on behalf of all plaintiffs in taking some of the key depositions of defense witnesses; briefed and argued the market-power issues on behalf of all plaintiffs; had primary responsibility on behalf of all plaintiffs to develop the product-hop claim; briefed and argued the product-hop issues on summary judgment on behalf of all plaintiffs; brief and argued the *Asacol* issues on class certification; participated substantially in the evidentiary hearing on class certification; were a lead trial counsel for the EPPs; prepared the case for trial, in coordination with other EPP counsel and the other plaintiff groups; and were fully prepared to try the case.

4. My firm's total lodestar from inception through April 30, 2020, for work performed in connection with the prosecution of this Action (net of a reduction of $43,125.00 described in Paragraph 60 below) is $5,610,397.00 calculated based on my firm's rates at the time the work was performed. Time expended in connection with the application for attorneys' fees and reimbursement of litigation expenses has not been included. The chart below summarizes the amount of time spent by attorneys and professional support staff of my firm who were involved in this Action, as well as the lodestar of each.

NAME	HOURS	HISTORICAL RATE	LODESTAR
Partners			
Steve Shadowen	238	$800	$190,400.00
Steve Shadowen	327.55	$850	$278,417.50
Steve Shadowen	111.5	$900	$100,350.00
Steve Shadowen	160.5	$950	$152,475.00
Steve Shadowen	889.5	$975	$867,262.50
Steve Shadowen	46	$995	$45,770.00
Rudy Gonzales	300.2	$950	$285,190.00
Rick Brunell	258.8	$900	$232,920.00
Associates			
Anne Fornecker	142.5	$500	$71,250.00
Bryce Duke	125.85	$350	$44,047.50
D. Sean Nation	94.6	$550	$52,030.00
D. Sean Nation	102.2	$650	$66,430.00
D. Sean Nation	93.7	$700	$65,590.00
Daniel Gonzales	4.25	$350	$1,487.50
Elizabeth Arthur	666.13	$650	$432,984.50
Frazar Thomas	72.7	$400	$29,080.00
Frazar Thomas	100.4	$450	$45,180.00
Frazar Thomas	630.4	$500	$315,200.00
Frazar Thomas	28.7	$550	$15,785.00
Marion Reilly	0.50	$350	$175.00
Matthew Weiner	217	$250	$54,250.00
Matthew Weiner	603.35	$350	$211,172.50
Matthew Weiner	509.7	$450	$229,365.00
Matthew Weiner	1206.6	$500	$603,300.00
Matthew Weiner	1555.7	$550	$855,635.00
Matthew Weiner	26.5	$650	$17,225.00
Nick Shadowen	3.7	$275	$1,017.50
Nick Shadowen	427.8	$325	$139,035.00
Nick Shadowen	39.8	$350	$13,930.00
Tina Miranda	3	$700	$2,100.00
Paralegals			
Chelsey Gandy	7.6	$200	$1,520.00
Daniela Ritchie	138.85	$200	$27,770.00
Jako Garos	542.3	$250	$135,575.00
Justin Vatter	9.5	$200	$1,900.00
Justin Vatter	15.5	$275	$4262.50
Patrick Smith	12	$100	$1,200.00

Litigation Support			
Deirdre Mulligan (law clerk)	74.1	$150	$11,115.00
Victor Glasper (law clerk)	40	$200	$8,000.00
TOTAL	**9826.98**		**$5,610,397.00**

5. I have also calculated my firm's total lodestar based on billing rates in effect at the time the case settled in January 2020. Based on my firm's billing rates in January 2020, my firm's total lodestar for work performed in connection with the prosecution of this Action is $6,522,268.92.

6. The hourly rates for the attorneys and professional support staff of my firm are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other complex or class action litigation, subject to reasonable subsequent annual increases.[1]

7. My firm's lodestar figures are based on the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately.

8. As detailed below, my firm is seeking reimbursement for a total of $835,862.72 in litigation expenses incurred from inception through April 30, 2020 in connection with the prosecution of this Action.

CATEGORY	AMOUNT
Reproduction cost	$6,124.54
Fedex/Messenger/Postage	$612.44
Travel	$115,867.90
Meals	$5,088.65
Telephone/Teleconference/Fax	$507.44
Computer research	$1,836.20

[1] *See, e.g.*, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.,* 1:14-md-2503-DJC (D. Mass.), order Awarding Attorneys' Fees, ECF No. 1159-2 (Ju.y 19, 2018); *In re Lidoderm Antitrust Litig.*, 3:14-md-02521-WHO (Sep. 20, 2018), ECF No. 1055.

Filing fees and other court costs	$100.00
Common Litigation Fund Contributions	$698,078.75
Other (supplies)	$159.31
TOTAL EXPENSES:	**$828,375.23**

9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

10. Following is a summary of the work performed by the various personnel in this law firm:

11. **Steve D. Shadowen (graduation year 1984).** I was actively and deeply involved in this litigation from beginning to end. I helped to lead the fact investigation that resulted in the filing of the first complaint—by EPPs or Direct-Purchaser Plaintiffs—asserting these claims against the Defendants. At the other end of the process, I was a lead trial lawyer for the EPPs, who were the last group of Plaintiffs to settle their claims.

12. Beginning in Spring 2012, I helped to direct the fact investigation into the reasons for the absence of the generic competition for Loestrin 24. That investigation led to the drafting of the first complaint alleging the antitrust claims against the Defendants. I helped to direct and oversee the drafting of that complaint.

13. After other complaints had been filed, I supervised the drafting of an amended complaint on behalf of the then-consolidated EPPs. I took a primary responsibility for drafting the EPPs' brief in opposition to the original motion to dismiss the complaint. Even at that early stage, this involved consulting with economic experts on various substantive issues.

14. I likewise took primary responsibility for drafting the EPP's appellate briefs (opening and reply) on the original appeal of the grant of the motion to dismiss the complaint. I

also coordinated the amicus curiae effort on behalf of all Plaintiffs and presented oral argument in the First Circuit for the EPPs.

15. On remand after appeal, I oversaw the drafting and filing of an amended complaint and then took primary responsibility for drafting the EPPs' brief in opposition to the renewed motion to dismiss the complaint and presented the oral argument on behalf of the EPPs (and on behalf of all Plaintiffs on the product-hop claims).

16. When discovery got underway in earnest, I kept abreast of the key factual developments and participated in managing the litigation at a high level. I took the depositions of two of the Defendants' key witnesses—the architect of Warner Chilcott's "life-cycle management" and a principal defense economist.

17. Throughout this time, I took a lead role in representing the EPPs in various court hearings and in the settlement mediation.

18. I was primarily responsible for drafting the various market-power briefs (both affirmative and defensive) on behalf of all Plaintiffs and presented the oral arguments on behalf of all Plaintiffs in the hearings on those motions. Those motions were a cornerstone of the Defendants' litigation strategy, and I and the firm devoted very substantial time and resources to presenting those issues to the Court.

19. After the First Circuit's decision in *Asacol*, I took primary responsibility for drafting the *Asacol* aspects of EPPs' various class-certification briefs. I presented oral arguments to the Court on those issues and took a lead role in the evidentiary hearing on class certification for the EPPs.

20. Throughout the litigation, my firm had primary responsibility for developing the product-hop claims on behalf of all Plaintiffs. I oversaw those efforts and was deeply involved in

drafting Plaintiffs' summary judgment and *Daubert* briefs on those issues. I presented oral argument at summary judgment on the product-hop claim on behalf of all Plaintiffs.

21. I was to be one of the EPPs' lead trial lawyers. In that capacity, I coordinated the EPPs' trial preparation and strategy with the Direct-Purchaser Plaintiffs and the retailers. My preparation for trial began in earnest in the beginning of October 2019, and I re-located to Providence full-time on December 26, 2019.

22. The trial preparation was particularly arduous because, from the outset, the EPPs prepared not for one trial, but three: (1) a trial with all three plaintiff groups participating; (2) a trial with just the EPPs and the retailers participating; and (3) a trial with just the EPPs participating. That strategy, and the very difficult work of implementing it, were a key to the settlement that the EPPs achieved. The EPPs were ready, willing, and able to try the case on our own, which resulted in the settlement.

23. Under all configurations of the trial, I had responsibility to present to the jury the Plaintiffs' principal economists. This included the economist who determined that the reverse payments and the product hop were anticompetitive (Dr. McGuire) and the economist who opined on market power (Dr. Rosenthal). I had corresponding responsibilities to cross-examine some of the defense economists. I also had very significant responsibilities to cross-examine key defense fact witnesses. And under all configurations of the trial, I shared responsibility for the opening statement and closing argument.

24. Post-settlement, I took primary responsibility for drafting the EPPs' briefs as to whether HCSC had properly opted its ASO clients out of the class.

25. **Rudy Gonzales (1981).** Mr. Gonzales is a partner at Hilliard Martinez Gonzales, a firm affiliated with Hilliard & Shadowen. Taking more than fifty trials to a jury verdict, Mr.

Gonzales is a seasoned trial lawyer who I brought into the case to help try it. Mr. Gonzales participated in jury selection and was deeply involved in preparing for the examination of some of Defendants' most important witnesses as well as Plaintiffs' expert relating to the valuation of the reverse payments.

26. **Richard Brunell (1984)**. Richard Brunell is a partner of the firm with extensive experience in appellate advocacy and antitrust, including drafting briefs and arguing cases in dozens of matters before the federal Courts of Appeals. Mr. Brunell became involved in this litigation in the summer of 2019 shortly after he joined the firm.

27. He took responsibility for the EPPs' response to Defendants' Rule 23(f) petition seeking to appeal the Court's class certification order and was the primary author of the EPPs' several opposition briefs, including the initial brief, the opposition to Defendant's motion to expedite the petition, the response to Defendants' motion to file a reply brief, and the Sur-Reply brief. Notwithstanding the Defendants' numerous claims of reversible error, which was supported by an amicus brief by the Chamber of Commerce, the First Circuit rejected Defendants' 23(f) petition, agreeing with the EPPs that Defendants had failed to satisfy the requirements for interlocutory review.

28. Mr. Brunell also assisted in the briefing on market power issues and Plaintiffs' *Daubert* motion to exclude Defendants' expert testimony on certain purported procompetitive benefits.

29. **Elizabeth Arthur (1992).** Ms. Arthur is a former senior attorney at Hilliard & Shadowen. During her time at the firm, Ms. Arthur actively participated in the management of the case after EPPs filed their first complaint. She was also involved in the research and drafting

of the amended complaint, the drafting of EPPs' opposition to Defendants' motion to dismiss, and legal research and drafting pertaining to Plaintiffs' appeal.

30. **Anne Fornecker (2002).** Ms. Fornecker is a former associate at Hilliard & Shadowen. During her time with the firm, Ms. Fornecker was heavily involved in the initial case investigation, including the drafting of the original complaint—filed before any other plaintiff—in this matter.

31. **Sean Nation (2005).** Mr. Nation is a former associate at Hilliard & Shadowen. During his tenure, Mr. Nation was involved in various activities, including drafting and filing of EPPs' May 9, 2016 amended complaint, drafting portions of EPPs' opposition to Defendants' corresponding motion to dismiss, document discovery concerning EPPs' claims against Lupin, drafting of EPPs' motion for class certification, and legal research relating to Plaintiffs' motion for summary judgment on the issue of market power.

32. **Daniel Gonzales (2010).** Mr. Gonzales is a former associate at Hilliard & Shadowen. He was involved in the original case investigation and drafting of the first complaint, focusing on factual and legal research regarding the relevant market.

33. **Bryce Duke (2011).** Mr. Duke is a former associate at Hilliard & Shadowen. While at the firm, Mr. Duke performed legal research and drafted portions of EPPs' response to Defendants' motion to dismiss, specifically focusing on issues of Article III standing and particular state laws.

34. **Matthew Weiner (2012)**: Mr. Weiner is an associate at Hilliard & Shadowen and was actively involved in this litigation from beginning to end.

35. Mr. Weiner's primary role involved the development and prosecution of Plaintiffs' product hop claim. He was responsible for discovering and investigating the cause of

action and then drafting Plaintiffs' amended complaint that added the product hop claim. He served as the leader of Plaintiffs' product hop team, overseeing essentially all discovery, filings, and pretrial preparation relating to that theory.

36. Mr. Weiner actively participated in the drafting and negotiation relating to Plaintiffs' requests for production of documents. Mr. Weiner drafted Plaintiffs' requests for production relating to Plaintiffs' product hop theory. Over the course of several months, he also participated in negotiations regarding search strings and scope objections. He participated in telephonic and in-person meetings with Magistrate Judge Sullivan, which resulted in substantial concessions by Defendants. He also substantially contributed to the drafting of Plaintiffs' brief and appendix with respect to Plaintiffs' motion to compel Defendants to collect and produce documents through August 31, 2017. ECF No. 328.

37. After receiving Defendants' production, Mr. Weiner oversaw the document review for Plaintiffs' product hop team. He created and implemented a document review strategy, created a comprehensive document review outline, participated in document review, oversaw review efforts to update the outline on a weekly basis, conducted weekly teleconference calls to discuss progress, and coordinated with co-counsel from other teams about facts uncovered during review. He then took primary responsibility for drafting the team's "white paper," which synthesized relevant documents, crystallized Plaintiffs' theory of the case, identified witnesses, discussed issues, and provided guidance for future discovery efforts. The white paper was used to brief lead counsel and co-counsel from other teams and proved to be a valuable resource for deposition preparation, expert discovery, summary judgment, and other subsequent case events.

38. Mr. Weiner took primary responsibility for drafting and then negotiating Plaintiffs' interrogatories. He coordinated with all plaintiff groups and subject matter teams, taking responsibility for drafting interrogatories served on Warner Chilcott, Watson, and Lupin. He then was responsible for reviewing interrogatory responses and coordinating with the discovery teams to identify deficiencies. He negotiated with both Warner Chilcott and Lupin through written correspondence and telephonic meet and confers, and, as a result, Defendants agreed to provide supplemental responses for many interrogatories. For those still in dispute, Mr. Weiner drafted and filed Plaintiffs' motion to compel responses to EPPs', Retailers', and DPPs' interrogatories. ECF Nos. 392, 393. On May 21, 2018, the Court largely granted the motion. ECF No. 446. These efforts resulted in Plaintiffs obtaining information about key witnesses and relevant facts before depositions.

39. Mr. Weiner also played an active role in depositions of Defendants' fact witnesses relating to the product hop. He was responsible for identifying key witnesses relating to the product hop, and he examined David Hooper, D. Andrew McClenaghan, April Mitchell, Molly Deiss, and Robert Lahman. He also took responsibility for preparing the examinations of several other witnesses insofar as they related to the product hop, including Tina DeVries, John Goll, Paul Herendeen, James P. Chirip, and Carl Reichel.

40. Mr. Weiner served as a point person for Plaintiffs' expert, Dr. McGuire, with respect to Dr. McGuire's product hop opinions. Mr. Weiner was responsible for coordinating with Dr. McGuire and his staff and providing documents used in Dr. McGuire's report and rebuttal report. In addition, Mr. Weiner was actively involved in obtaining expert reports from Plaintiffs' OB/GYN experts, Drs. Thomas and Derman, insofar as they opined about the lack of lack of consumer benefit in Minastrin. Mr. Weiner further assisted in defending Defendants'

deposition of Dr. McGuire. He also drafted the product hop portion of Plaintiffs' successful opposition to Defendants' *Daubert* motion that sought to preclude Dr. McGuire's profit sacrifice analysis.

41. Mr. Weiner was actively engaged with respect to Defendants' product hop experts. He aided in the preparation of Plaintiffs' deposition of Dr. Meyer—Warner Chilcott's expert who opined about lack of anticompetitive effect. He also drafted Plaintiffs' Motion to Exclude Opinions and Testimony of Drs. Christine S. Meyer, Mark S. Robbins, and Melissa A. Schilling Regarding Lack of Anticompetitive Effect from Product Hop. ECF No. 875. As a result of that motion, Defendants' experts were precluded from offering opinions contrary to law, such as Dr. Meyer's opinions that the non-existence of certain tactics (such as recalling the product) meant no hard switch occurred and that Warner Chilcott's conduct was not anticompetitive because Loestrin 24 generics profitably entered the market.

42. Regarding summary judgment, Mr. Weiner was responsible for overseeing the drafting and collection of evidence relating to Plaintiffs' product hop claim. He participated in the research and drafting of Plaintiffs' brief that successfully opposed summary judgment of the product hop claim. He also drafted Plaintiffs' additional statement of facts and oversaw drafting relating to Plaintiffs' response to Defendants' statement of undisputed facts.

43. Mr. Weiner was responsible for drafting Plaintiffs' eleven motions *in limine* relating to the product hop claim (ECF No. 1289-1) and Plaintiffs' Memorandum in Opposition to Defendants' Motion in Limine to Exclude Evidence and Argument Concerning Unrelated, Alleged Anticompetitive Acts (Mil No. 8) (ECF No. 1309-1). Mr. Weiner's motions and briefs led to several rulings that strengthened Plaintiffs' case. Specifically, the Court ruled that "Dr. Meyer may not opine that the existence of other oral contraceptives in the market disproves

coercion resulting from the switch from Loestrin 24 to Minastrin 24" (Text Order, Dec. 11, 2019); that "neither Dr. Meyer nor any other expert may opine that the fact that Loestrin 24 was limitedly available means Defendants' conduct could not and did not coerce consumers" (Text Order, Dec. 11, 2019); that Defendants' experts "may not testify that the fact of generic entry disproves any anticompetitive effect" (ECF No. 1362); and that "[e]vidence of Warner Chilcott's practices with respect to other pharmaceuticals, such as those at issue in *Namenda*, may be introduced to show a pattern or business practice" (ECF No. 1362).

44. Mr. Weiner played an active role with respect to preparing Plaintiffs' product hop claim for trial. These efforts included (1) participation in drafting Plaintiffs' proposed jury verdict and jury instructions; (2) drafting Plaintiffs' pretrial memorandum (3) designating deposition testimony for trial; (3) objecting to Defendants' deposition designations; (4) collecting and organizing Plaintiffs' evidence; (5) meeting and conferring with Defendants regarding Defendants' and Plaintiffs' objections to deposition designations and evidence; (6) preparing the direct examination of Drs. McGuire, Thomas, and Derman; and (7) preparing the cross examinations of Dr. Nakijima, Mr. Robbins, Ms. MacFarlane, Mr. Bisaro, Mr. Buchen, and Mr. McClenaghan.

45. In addition to his work in connection with Plaintiffs' product hop claim, Mr. Weiner was also actively involved in other aspects of the case. He was responsible for developing the acceleration clause theory, a claim asserted only by EPPs. In this regard, he played an active role in drafting EPPs' complaint, participating in EPPs' oppositions to Defendants' two motions to dismiss as well as EPPs' appellate briefing, overseeing EPPs' document review, drafting EPPs' white paper, coordinating with Dr. McGuire, and drafting Plaintiffs' successful summary judgment opposition.

46. Other crucial roles Mr. Weiner served during the case include: (1) developing EPPs' theories and drafting EPPs' complaints relating to Plaintiffs' reverse payment claims applicable to Watson and Lupin; (2) drafting EPPs' second amended complaint pertaining to Plaintiffs' sham litigation/*Walker Process* fraud theories; (3) researching and briefing in connection with the motions to dismiss and appeal relating to the definition of a suspect payment and Lupin's reverse payments; (4) researching and drafting in connection with Plaintiffs' summary judgment motion/opposition relating to market power, including Plaintiffs' additional statement of undisputed facts and the additional briefing requested by the Court; (5) drafting EPPs' Memorandum of Law in Opposition to Motion to Strike various Plaintiff expert reports; (6) drafting portions of EPPs' Sur-Sur-Reply in Support of Motion for Class Certification; (7) drafting Plaintiffs' Motion to Exclude Opinions and Testimony of Drs. Christine S. Meyer and Mark S. Robbins Regarding Procompetitive Justifications of Reverse Payments; and (8) preparing for oral arguments relating to Defendants' second motion to dismiss, the motions for summary judgment relating to market power and product hop, and Plaintiffs' motions *in limine*.

47. **Frazar Thomas (2015):** Frazar Thomas is an associate at Hillard & Shadowen. He began his participation in the case in earnest during summary judgment, where he worked closely with Matt Weiner in preparing the summary judgment briefing on the product switch allegations.

48. In the lead-up to trial, Mr. Thomas was responsible for designating video depositions for several witnesses, and he worked closely with Mr. Shadowen in preparing examination outlines for several witnesses.

49. Mr. Thomas participated heavily in the preparation for the examination of two key expert witnesses, Dr. Meredith Rosenthal and Dr. Tom McGuire, working closely with the

witnesses and Mr. Shadowen to prepare the witnesses for cross examination. This work included associated legal research and motion drafting.

50. Mr. Thomas also took an active role in drafting the Plaintiffs' proposed jury instructions, as well as preparing a presentation for a mock jury exercise.

51. **Nicholas Shadowen (2018):** Nicholas Shadowen is an associate at Hilliard & Shadowen. He assisted in the research, drafting, and editing the affirmative statement of facts on summary judgment, market power brief, summary judgment brief, class certification briefing, and mediation statement and was also involved in various aspects of the discovery process.

52. He was also actively involved in the firm's preparation for examining expert witnesses at trial and the various summary judgment hearings. He was a member of the firm's trial team in Rhode Island where he provided support for the firm's senior attorneys.

53. **Deirdre Mulligan.** Deirdre Mulligan is a law clerk at Hilliard & Shadowen. She assisted with research supporting Plaintiffs' *Daubert* motion and in preparing for cross-examination of a key defense expert witness. She reviewed depositions to highlight key information for use during witness testimony and compiled exhibit lists to ensure all necessary exhibits would be available for trial.

54. Ms. Mulligan also reviewed and edited the documents to be disseminated to the public concerning the settlement, including the long form notice, short form notice, third-party payor claim form, and consumer claim form. She is graduate of Cornell University and is currently a second-year law student at the Thomas R. Kline School of Law at Drexel University in Philadelphia.

55. **Jako Garos.** Mr. Garos is former litigation assistant at Hilliard & Shadowen. He participated in discrete document review and factual research projects that arose during

discovery. He also prepared a memorandum analyzing Defendants' answers and assumed various case management responsibilities and assisted in preparing EPP counsel for oral arguments relating to summary judgment. In preparation for trial, Mr. Garos actively participated in Plaintiffs' joint effort to identify, obtain, and organize exhibits.

56. **Justin Vatter.** Mr. Vatter is a former paralegal at Hilliard & Shadowen. While at the firm, Mr. Vatter participated in legal research relating to Plaintiffs' appeal and assisted in case management and activities relating to the filing of EPPs' appellate papers.

57. **Patrick Smith.** Mr. Smith is a former law clerk at Hilliard & Shadowen who participated in case management and research relating to EPPs' complaints.

58. **Daniela Ritchie.** Ms. Ritchie is a former paralegal at Hilliard & Shadowen. She assisted EPP counsel in various factual research tasks relating to EPPs' complaint. She was also heavily involved in assisting EPP counsel in the day-to-day management of the case and aided in preparing and filing of EPPs' motion to dismiss opposition papers.

59. **Chelsey Gandy.** Ms. Gandy is a former paralegal at Hilliard & Shadowen who assisted in preparing EPP counsel for oral argument relating to the motion to dismiss.

60. I understand that my firm's time and expenses were provided to and reviewed by Magistrate Judge Sullivan on a quarterly basis from the inception of the case through September 30, 2019, and reflect any adjustments made by Judge Sullivan. We have submitted to the Certified Public Accountant and auditor, Linda Opichka, additional time and expenses, for the period spanning October 1, 2019 through April 30, 2020. After my own review of the time records, I have reduced the firm's lodestar by $43,125.00 to account for time expended in MDL proceedings and negotiations regarding class leadership ($42,950.00) and other adjustments ($175.00).

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on June 5, 2020.

/s/ Steve D. Shadowen

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF MARVIN A. MILLER
IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES
FILED ON BEHALF OF MILLER LAW LLC

I, Marvin A. Miller, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of Miller Law LLC, counsel for the End-Payor Plaintiffs Class ("EPPs") in the above-captioned action (the "Action") and Co-Lead Counsel for the EPPs. Case Management Order No. 1, Nov. 8, 2013 (ECF No. 10) appointed Interim Co-Lead Counsel and on September 17, 2019, the Court certified the class of Third-Party Payors and appointed Co-Lead Counsel (ECF No. 1226). I submit this declaration in support of EPPs' application for an award of attorneys' fees, reimbursement of litigation expenses, and service awards to the class representatives. This declaration is based on my personal knowledge or discussions with counsel at my firm of the matters stated herein.

2. The Court ordered billing and expense requirements and my firm has complied with them. Case Management Order No. 2, February 14, 2014 (ECF No. 85). Pursuant to that Order, all attorneys and legal professionals at my firm were instructed to keep contemporaneous time records reflecting their work on this case and expenses incurred in compliance with the Order. They were then sent to the independent Certified Public Accountant for audit. The results were made part of the compilation by the CPA. At the end of each quarter I submitted the compilation

and other reports requested by Magistrate Judge Sullivan, who strictly enforced these billing and expense requirements by scrutinizing the monthly time and expense reports my firm submitted and then required quarterly hearings. *Id.*

3. During this litigation, as one of the Co-Lead Counsel[1], my firm performed the following activities for the benefit of the EPPs:

> My firm has devoted efforts and resources on behalf of members of the Classes in connection with litigating this action since the case was initiated through April 30, 2020, the date through which an award of attorneys' fees and reimbursement of expenses are being sought for my firm at this time. Work performed by this firm was necessary to be done through April 30, 2020 and includes, but is not limited to: Investigated the factual and legal basis for asserting claims in the various states and prepared and filed the second Indirect Purchaser cases in this District. My firm was appointed one of the Interim Co-Lead Counsel pursuant to this Court's CMO 1 (Doc # 10) and in that capacity my firm has been involved in every aspect of this case, including, among other matters: we formulated and implemented strategy along with the other Co-Lead Counsel; worked collaboratively and cooperatively with Direct Purchaser Plaintiffs' Counsel and Retailers' Counsel; prepared and coordinated all efforts with our Co-Lead Counsel to draft and file the End-Payor Plaintiffs' Consolidated Class Action Complaint, collaborated with the Co-Leads to research and draft the substantial opposition to the motions to dismiss, presented oral argument to this Court, and worked extensively to research and prepare appropriate pleadings and responses; participated and presented witnesses at the class certification hearing; participated in the drafting of jury instructions, prepared for and was on the trial team to present witnesses and evidence at the

[1] Case Management Order No. 2, February 14, 2014 (ECF No. 85).

trial which was scheduled to commence January 6, 2020.

In the discovery phase my firm coordinated on all aspects of written and oral discovery, including proposing ESI protocols and conducting extensive negotiations with Defendants regarding same and protective orders. My firm, in coordination with Co-Lead Counsel and counsel for DPPs and Retailers, drafted interrogatories and requests for production directed to Defendants, responded to Defendants' interrogatories and requests for production of documents, and drafted third-party discovery and monitored Defendants' voluminous third-party subpoenas, met and conferred with Defendants' counsel relating to written discovery, and exchanged extensive correspondence with Defendants on discovery. We gathered, analyzed, and pursued discovery and data and document production with the class representatives, prepared the class representatives for deposition and defended depositions of class representatives, and participated in depositions of Defendants' factual and expert witnesses and third parties.

My firm coordinated and participated in all work with economic and merits experts and consultants, worked extensively on various motions relating to market power, *Daubert* motions, summary judgment, class certification, and the opposition to the First Circuit Court of Appeals 23(f) petition.

My firm also actively participated in the *Daubert* motions which all three Plaintiff groups filed against Defendants' experts and defended those filed by Defendants. We also were active in drafting and defending the numerous *in limine* motions.

Finally, in connection with the trial, my firm participated in drafting the jury instructions and verdict forms, prepared expert trial witnesses and collaborated with our co-counsel to present evidence at the jury trial which was to begin January 6, 2020.

In connection with seeking resolution of this Action, we participated in the preparation of the mediation statement, attended mediation sessions, coordinated and participated in all pre-trial preparations, and participated on the trial team. We further led the negotiations and achieved the $1,000,000 settlement with the Lupin Defendants, and served as one of the primary negotiators who achieved the terms resulting in the $62,500,000 all-cash settlement, thereby attaining a total of $63,500,000 benefit for the Class. We participated in the drafting of the settlement agreements, worked with the Notice and Claims Administrator to develop the Plan of Allocation, Notice Plan, Notices, Plan of Allocation, and claim form, participated in drafting the motion for preliminary approval of the Settlement, and prepared the motion to have certain purported members of the Class requests for exclusion be denied.

In addition, my firm was primarily responsible for administrative functions which included, among other tasks, monitoring the time and expense reports from Participating Counsel and I was the liaison with the independent auditor responsible for monitoring and reviewing time and expense reports, and dealt with issues about the time and expense reports. Miller Law LLC maintained the litigation fund established for common expenses, interacted with and disbursed payments to vendors, experts, and consultants. When Magistrate Judge Sullivan saw that firms were including in their expense reports payments made to the litigation fund, she requested that an accounting of that fund also be provided to her. At no time were any issues or concerns raised about the expenditures from that fund, the largest expense being paid to experts. Importantly, Magistrate Judge Sullivan required me to participate in the quarterly *ex parte* conferences with the independent Certified Public Accountant and liaison counsel, Robert McConnell, when she reviewed the quarterly time and expense reports, discussed her findings, and sometimes questioned some entries based on her examination. I requested additional information from any reporting counsel, if required, and provided further explanation to Magistrate Judge Sullivan as needed.

4. All of my firm's detailed time and expense records and summary reports, from inception through April 30, 2020, were timely sent to the independent auditor and after final audit and deleting similar time which Co-Lead counsel agreed should not be included by all counsel, *e.g.*, work relating to MDL proceedings and organization, my firm's total lodestar for work performed in connection with the prosecution of this Action is $6,210,685.00, calculated based on my firm's rates at the time the work was performed. Time expended in connection with the application for attorneys' fees and reimbursement of litigation expenses has not been included. The chart below summarizes the amount of time spent by attorneys and professional support staff in my firm who were involved in this Action, and the lodestar of each.

NAME	HOURS	HISTORICAL RATE	LODESTAR
Attorneys			
Marvin A. Miller	95.3	$815	$77,669.5000
Marvin A. Miller	344.1	$875	$301,087.50
Matthew E. Van Tine	0.3	$685	$205.50
Matthew E. Van Tine	2,113.7	$750	$1,585,275.00
Lori A. Fanning	1,119.5	$600	$671,700.00
Lori A. Fanning	2,204.5	$650	$1,432,925.00
Kathleen Boychuck	95.4	$355	$33,867.00
Kathleen Boychuck	1,066.6	$475	$506,635.00
Stacy Bond	295.4	$375	$110,775.00
Stacy Bond	61.1	$450	$27,495.00
Stacy Bond	1,576.7	$475	$748,932.50
Andrew Kanter	75.5	$450	$33,975.00
Andrew Kanter	534.6	$475	$253,935.00
Andrew Szot	24.6	$650	$15,990.00
Paralegals			
Anne Jewell	123.9	$250	$30,975.00
Dena Robinson	948.2	$250	$237,050.00

Jorge Ramirez	634.40	$220	$139,568.00
Jamie Huston	13.0	$225	$2,925.00
TOTALS	**11,326.80**		**$6,210,985.00**

5. I have also calculated my firm's total lodestar based on billing rates in effect at the time the case settled in January 2020. Based on my firm's billing rates in January 2020, my firm's total lodestar for work performed in connection with the prosecution of this Action is $6,315,227.25.

6. The hourly rates for the attorneys and professional support staff of my firm are the same, or substantially similar to the regular rates charged for their services in non-contingent matters and/or which have been submitted to courts in connection with other complex or class action litigation subject to reasonable subsequent annual increases.[2]

7. My firm's lodestar figures are based on the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately.

[2] The more recent requests for an award of fees in complex class action, including cases like this: *In re: Liquid Aluminum Sulfate Antitrust Litigation*, Civil Action No. 16-md-2687 (JLL) (JAD); *In re: Aggrenox Antitrust Litigation*, Master Docket No. 3:14-cv-02516 (similar); *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503, 2017 WL 4621777 (D. Mass. Oct. 16, 2017)(similar); *In re Lidoderm Antitrust Litig.*, No. 14-md-02521, 2017 WL 679367 (N.D. Cal. Feb. 21, 2017) (SRU)(similar); *In re: Polyurethane Foam Antitrust Litigation*, Index No. 10-MD-2196 (JZ).

8. As shown below, in connection with the prosecution of this Action, my firm is seeking reimbursement for a total of $847,487.64 in litigation expenses incurred from inception through April 30, 2020.

CATEGORY	AMOUNT
Reproduction cost	$9,028.95
Fedex/Messenger/Postage	$1,088.18
Travel	$50,195.12
Telephone/Teleconference/Fax	$80.00
Computer research	$8,478.19
Filing fees and other court costs	$741.70
Document database vendor	$14,301.20
Court transcripts	$1,053.84
Deposition transcripts	
Consulting/Expert fees	
Common Litigation Fund Contributions	$760,078.75
Outside Copying	$2,441.71
TOTAL EXPENSES:	**$847,487.64**

9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

10. In compliance with CMO #2, my firm's time and expenses were provided to and reviewed by Magistrate Judge Sullivan on a quarterly basis from the inception of the case through September 30, 2019, (when Magistrate Judge Sullivan suspended the quarterly calls based on the presumption that we would be participating in the trial which was scheduled to commence January 6, 2020) and reflect any adjustments made by Magistrate Judge Sullivan. My firm's detailed time and expense records and summary reports continued to be reported to the CPA through Q1 2020 and included time and expenses through April 30, 2020.

11. Since this declaration is being filed before additional work which may be required and expenses incurred prior to the Fairness Hearing on August 27, 2020, I will supplement such items before the Fairness Hearing, if appropriate.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed at Chicago, Illinois on May 27, 2020.

/s/*Marvin A. Miller*
Marvin A. Miller

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: All End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF MICHAEL M. BUCHMAN IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES FILED ON BEHALF OF MOTLEY RICE LLC

I, Michael M. Buchman, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of Motley Rice LLC, ("Motley Rice") counsel for the End-Payor Plaintiffs ("EPPs") in the above-captioned action (the "Action"). Motley Rice also served as Liaison Counsel for the End-Payor Plaintiffs in the Action. I respectfully submit this declaration in support of EPPs' application for an award of attorneys' fees, reimbursement of litigation expenses, and service awards to the class representatives. This declaration is based on my personal knowledge or discussions with counsel at my firm of the matters stated herein.

2. We were advised of this Court's billing and expense requirements and have fully complied with them. All attorneys and legal professionals at my firm were instructed to keep contemporaneous, detailed time records reflecting their work on this case and expenses incurred.

3. My firm was deeply involved in every aspect of this case from inception through the final pretrial conference January 3, 2020.

4. My firm's total lodestar from inception through April 30, 2020, for work performed in connection with the prosecution of this Action based upon historical rates in effect at the time

the work was performed is $3,241,165.35. A significant amount of time spent by one Motley Rice member for work performed as Liaison Counsel is not included in this application. Time expended in connection with the application for attorneys' fees and reimbursement of litigation expenses has not been included. The chart below summarizes the amount of time spent by attorneys and professional support staff of my firm who were involved in this Action, as well as the lodestar of each individual.

NAME	HOURS	HISTORICAL RATE	LODESTAR
Partners			
Michael Buchman	549.3	950	$521,835.00
Michael Buchman	378.5	925	$350,112.50
Michael Buchman	151	900	$135,900
Michael Buchman	63.75	875	$55,781.25
Michael Buchman	72.8	825	$60,060
Michael Buchman	118.5	775	$91,837.50
Michael Buchman	2.5	650	$1,625
Michael Buchman	18	450	$8,100
Donald Migliori	43.10	900	$38,790.00
Vincent Greene	.30	675	$202.50
William Narwold	14.10	1100	$15,510.00
William Narwold	16.70	1050	$17,535.00
William Narwold	.50	1025	$512.50
William Narwold	1	975	$975.00
William Narwold	3.25	925	$3,006.25
William Narwold	2.8	675	$1,890.00
Bill Norton	1.25	575	$718.75
Lance Oliver	.30	825	$247.50
Associates			
Michelle Clerkin	372	600	$223,200
Michelle Clerkin	962	550	$529,100
Michelle Clerkin	276.1	525	$144,952.50
Erin Durba	28.9	700	$20,230.00
Erin Durba	2.1	675	$1417.50
Erin Durba	122.10	650	$79,365.00
Erin Durba	3.4	375	$1,275.00
Erin Durba	.1	225	$22.50
Max Gruetzmacher	6.25	450	$2,812.50
Matt Hamilton	5.25	475	$2,493.75
Badge Humphries	5	650	$3,250.00

NAME	HOURS	HISTORICAL RATE	LODESTAR
John Ioannou	21.7	675	$14,647.50
John Ioannou	188.8	625	$118,000.00
Christopher Moriarty	8.75	425	$3,718.75
Meghan Oliver	32.40	575	$18,630.00
Jacob Onile-Ere	69.7	425	$29,622.50
Jacob Onile-Ere	343.30	300	$102,990.00
Alex Straus	11.8	450	$5,310.00
Alex Straus	14.20	425	$6,035.00
Staff Attorneys			
Revia Cohen	46.5	375	$17,437.50
Scott DePhillips	740.70	375	$277,762.50
Carl Fuardo	12	375	$4,500.00
Sabrina Hassanali	53.9	395	$21,290.50
Julie Jackson-Bailey	61.1	365	$22,301.10
Margaret Schaufler	6.5	375	$2,437.50
Robert Young	242.50	460	$111,550.00
Paralegals			
Nydia Bordon	.5	225	$112.50
Nicole Dookie	.25	250	$62.50
Nicole Dookie	19.5	225	$4387.50
Daphne Greve	1.25	275	$343.75
Lotan Korenblit	3.75	225	$843.75
Jonathan Ng	40.90	275	$11,247.50
Johnny Shaw	71.80	300	$21,540.00
Johnny Shaw	392.8	275	$108,020.00
Johnny Shaw	43.45	250	$10,862.50
Johnny Shaw	27.55	225	$6,198.75
Litigation Support			
Daniel Isaacson	24.25	225	$5,456.25
Daniel Isaacson	15.5	200	$3100.00
TOTALS	**5716.2**		**$3,241,165.35**

5. My firm's total lodestar based upon current billing rates in effect at the time the case settled in January 2020 is $3,448,937.00

6. The hourly rates for the attorneys and professional support staff of my firm are the same as the regular rates charged for their services in non-contingent matters and/or which have

been accepted in other complex or class action litigation, subject to reasonable subsequent annual increases.[1]

7. My firm's lodestar figures are based on the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately.

8. As detailed below, my firm is seeking reimbursement for a total of $811,408.10 in litigation expenses incurred from inception through April 30, 2020 in connection with the prosecution of this Action.

CATEGORY	AMOUNT
Reproduction cost	$4,899.58
Fedex/Messenger/Postage	$943.08
Travel	$17,699.96
Meals	$327.88
Telephone/Teleconference/Fax	$188.74
Service of Subpoenas	$1135.00
Computer research	$51,736.43
Filing fees and other court costs	$1,605.00
Document database vendor	$1,104.24
Court transcripts	$541.15
Deposition transcripts	
Consulting/Expert fees	$3,227.04
Common Litigation Fund Contributions	$728,000.00
Other (describe)	
TOTAL EXPENSES:	**$811,408.10**

9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

10. I understand that my firm's time and expenses were provided to and reviewed by Magistrate Judge Sullivan on a quarterly basis from the inception of the case through September

[1] *See., e.g., In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503 (DJC) (D. Mass. July 18, 2018), ECF No. 1180; *In re Lidoderm Antitrust Litig.*, No. 14-md-2521-WHO (N.D. Cal. Sept. 20, 2018), ECF No. 1055.

30, 2019, and reflect any adjustments made by Judge Sullivan. In addition, we have submitted to the Certified Public Accountant and auditor, Linda Opichka, additional time and expenses, for the period spanning October 1, 2019 through April 30, 2020, which reflect a total of $553,650.00 in lodestar and $224,980.32 in expenses.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on June 3, 2020.

Michael M. Buchman

EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF JOE P. LENISKI, JR.
IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES
FILED ON BEHALF OF BRANSTETTER, STRANCH AND JENNINGS, PLLC

I, Joe P. Leniski, Jr., declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at the law firm of Branstetter, Stranch and Jennings, PLLC, counsel for the End-Payor Plaintiffs Class ("EPPs") in the above-captioned action (the "Action"). I submit this declaration in support of EPPs' application for an award of attorneys' fees, reimbursement of litigation expenses, and service awards to the class representatives. This declaration is based on my personal knowledge or discussions with counsel at my firm of the matters stated herein.

2. We were advised of this Court's billing and expense requirements and have complied with them. All attorneys and legal professionals at my firm were instructed to keep contemporaneous time records reflecting their work on this case and expenses incurred.

3. During this litigation, at the direction of Co-Lead Counsel, my firm performed the following activities for the benefit of the EPPs: attended, prepared witness, and defended deposition of Named Plaintiff Teamsters Local 237; document review of defendants' production documents assigned by Interim Co-Lead Counsel; gather, review and process documents from Named Plaintiff Teamsters Local 237 in response to defendants' discovery requests; work related

to expert reports including reports for Jewell, Thomas, and Thisted assigned by Interim Co-Lead Counsel; work related to motion practice involving experts and expert reports assigned by Interim Co-Lead Counsel.

4. My firm's total lodestar from inception through April 30, 2020, for work performed in connection with the prosecution of this Action is $503,455.00, calculated based on my firm's rates at the time the work was performed. Time expended in connection with the application for attorneys' fees and reimbursement of litigation expenses has not been included. The chart below summarizes the amount of time spent by attorneys and professional support staff of my firm who were involved in this Action, as well as the lodestar of each.

NAME	HOURS	HISTORICAL RATE	LODESTAR
Partners			
Joe P. Leniski, Jr.	71.30	$675.00	$48,127.50
Joe P. Leniski, Jr.	0.50	$625.00	$312.50
Joe P. Leniski, Jr.	7.40	$375.00	$2,775.00
Of Counsel			
Senior Counsel			
James G. Stranch, III	0.5	$725.00	$362.50
Associates			
Janna Maples	1198.10	$375.00	$449,287.50
Staff Attorneys			
Paralegals			
Caleb Batey	0.9	$175.00	$157.50
Mariah Young	1.9	$175.00	$332.50
Litigation Support			
Nick Gamble	12	$175.00	$2,100.00
TOTALS	**1,292.60**	n/a	**$503,455.00**

5. I have also calculated my firm's total lodestar based on billing rates in effect at the time the case settled in January 2020. Based on my firm's billing rates in January 2020, my firm's total lodestar for work performed in connection with the prosecution of this Action is $635,775.70.

6. The hourly rates for the attorneys and professional support staff of my firm are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other complex or class action litigation, subject to reasonable subsequent annual increases.[1]

7. My firm's lodestar figures are based on the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately.

8. As detailed below, my firm is seeking reimbursement for a total of $34,516.08 in litigation expenses incurred from inception through April 30, 2020 in connection with the prosecution of this Action.

CATEGORY	AMOUNT
Reproduction cost	
Fedex/Messenger/Postage	$31.32
Travel	$3,210.89
Meals	$174.43
Telephone/Teleconference/Fax	
Service of Subpoenas	
Computer research	$925.44
Filing fees and other court costs	$174.00
Document database vendor	
Court transcripts	
Deposition transcripts	
Consulting/Expert fees	
Common Litigation Fund Contributions	$30,000.00
Other (describe)	
TOTAL EXPENSES:	**$34,516.08**

[1] *See In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL 2672 in the Northern District of California, Order Granting Plaintiffs' Motion for Attorneys' fees and Costs Relating to 2.0 Liter Settlement (Dkt. No. 3053) entered March 17, 2017 (approving rates up to $1,600.00 for partners, $790.00 for associates, and $490.00 for paralegals); *Horton v. Molina Healthcare, Inc.*, Case No. 4:17-cv-0266-CVE-JFJ in the Northern District of Oklahoma, Final Approval Order and Judgment (Dkt. No. 126) entered August 28, 2019 (approving rates of up to $770.00 for partners, $660.00 for associates, and $190.00 for paralegals).

9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. I understand that my firm's time and expenses were provided to and reviewed by Magistrate Judge Sullivan on a quarterly basis from the inception of the case through September 30, 2019, and reflect any adjustments made by Judge Sullivan. Lead Co-Counsel determined that, after review, several hours and expenses were not recoverable because they were incurred prior to the establishment of leadership and were not, therefore, for the common benefit of the Class.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on May 14, 2020.

/s/ Joe P. Leniski, Jr.
JOE P. LENISKI, JR.

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF DIANNE M. NAST
IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION
FOR REIMBURSEMENT OF LITIGATION EXPENSES
FILED ON BEHALF OF NASTLAW LLC

I, Dianne M. Nast, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am founder of the firm NastLaw LLC, and counsel for the End-Payor Plaintiffs Class ("EPPs") in the above-captioned action (the "Action"). I submit this declaration in support of EPPs' application for reimbursement of litigation expenses. This declaration is based on my personal knowledge or discussions with counsel at my firm of the matters stated herein.

2. NastLaw LLC is not seeking any fee compensation in this matter.

3. NastLaw LLC was advised of this Court's expense requirements and has complied with them.

4. As detailed below, NastLaw LLC is seeking reimbursement for a total of $3,500 for a common contribution.

I understand that my firm's expenses were provided to and reviewed by Magistrate Judge Sullivan on a quarterly basis from the inception of the case through September 30, 2019, and reflect any adjustments made by Judge Sullivan.

I declare that the foregoing facts are true and correct.

Executed on May 8, 2020.

/s/ *Dianne M. Nast*
Dianne M. Nast

EXHIBIT G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF JEREMY A. LIEBERMAN
IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES
FILED ON BEHALF OF POMERANTZ LLP

I, Jeremy A. Lieberman, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at the law firm Pomerantz LLP, counsel for the End-Payor Plaintiffs Class ("EPPs") in the above-captioned action (the "Action"). I submit this declaration in support of EPPs' application for an award of attorneys' fees, reimbursement of litigation expenses, and service awards to the class representatives. This declaration is based on my personal knowledge or discussions with counsel at my firm of the matters stated herein.

2. We were advised of this Court's billing and expense requirements and have complied with them. All attorneys and legal professionals at my firm were instructed to keep contemporaneous time records reflecting their work on this case and expenses incurred.

3. During this litigation, at the direction of Co-Lead Counsel, my firm performed the following activities for the benefit of the EPPs: Drafting and filing of Complaint, and Amended Complaint; conferences with local counsel regarding stipulation staying service on foreign defendants; drafting and filing of motions and initial disclosures; Document review.

My firm's total lodestar from inception through April 30, 2020, for work performed in connection with the prosecution of this Action is $52,405.00, calculated based on my firm's rates at the time the work was performed. Time expended in connection with the application for attorneys' fees and reimbursement of litigation expenses has not been included.

The chart below summarizes the amount of time spent by attorneys and professional Support staff:

NAME	HOURS	HISTORICAL RATE	LODESTAR
Partners			
Buchman, Michael M.	32.8	775	25,420.00
Goldstein, Jayne A.	16	770	12,320.00
Goldstein, Jayne A.	1.4	820	1,148.00
Associates			
Iaonnou, John	3	480	1,440.00
Kurtz, Adam G	2.6	645	1,677.00
Staff Attorneys			
Hamilton, Matthew	26	400	10,400.00
TOTALS	**81.8**		**52,405.00**

4. I have also calculated my firm's total lodestar based on billing rates in effect at the time the case settled in January 2020. Based on my firm's billing rates in January 2020, my firm's total lodestar for work performed in connection with the prosecution of this Action is $56,187.00.

5. The hourly rates for the attorneys and professional support staff of my firm are the same rates or lower than the regular rates charged for their services in non-contingent matters and/or which have been accepted in other complex or class action litigation, subject to reasonable subsequent annual increases.

6. My firm's lodestar figures are based on the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately.

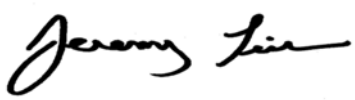
7. As detailed below, my firm is seeking reimbursement for a total of $1,325.85 in litigation expenses incurred from inception through April 30, 2020 in connection with the prosecution of this Action.

CATEGORY	AMOUNT
Reproduction cost	
Fedex/Messenger/Postage	125.01
Meals	
Telephone/Teleconference/Fax	
Service of Subpoenas	1,033.00
Computer research	17.84
Filing fees and other court costs	150.00
Document database vendor	
Court transcripts	
Deposition transcripts	
Consulting/Expert fees	
Common Litigation Fund Contributions	
Other (describe)	
TOTAL EXPENSES:	**1,325.85**

8. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

I understand that my firm's time and expenses were provided to and reviewed by Magistrate Judge Sullivan on a quarterly basis from the inception of the case through September 30, 2019, and reflect any adjustments made by Judge Sullivan. I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on May 8, 2020.



Jeremy A. Lieberman

EXHIBIT H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS FILED UNDER SEAL

DECLARATION OF FRANK R. SCHIRRIPA
IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES
FILED ON BEHALF OF HACH ROSE SCHIRRIPA & CHEVERIE LLP

I, Frank R. Schirripa, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at the law firm Hach Rose Schirripa & Cheverie LLP, counsel for the End-Payor Plaintiffs Class ("EPPs") in the above-captioned action (the "Action"). I submit this declaration in support of EPPs' application for an award of attorneys' fees, reimbursement of litigation expenses, and service awards to the class representatives. This declaration is based on my personal knowledge or discussions with counsel at my firm of the matters stated herein.

2. We were advised of this Court's billing and expense requirements and have complied with them. All attorneys and legal professionals at my firm were instructed to keep contemporaneous time records reflecting their work on this case and expenses incurred.

3. During this litigation, at the direction of Co-Lead Counsel, my firm performed the following activities for the benefit of the EPPs: in the following specific activities:

- Participating in discovery by searching for and reviewing documents;
- Providing a representative to sit for a deposition;
- Reviewing and drafting case filings, including the amended complaint, motion to dismiss and its responses and the motion for class certification and its responses; and

- Meetings and consultations with LIUNA Local 35 throughout the course of this litigation.

4. My firm's total lodestar from inception through April 30, 2020, for work performed in connection with the prosecution of this Action is $5,257.50, calculated based on my firm's rates at the time the work was performed. Time expended in connection with the application for attorneys' fees and reimbursement of litigation expenses has not been included. The chart below summarizes the amount of time spent by attorneys and professional support staff of my firm who were involved in this Action, as well as the lodestar of each.

NAME	HOURS	HISTORICAL RATE	LODESTAR
Partners			
Frank R. Schirripa	7.5	$650.00	$4875.00
David R. Cheverie	0.9	$425.00	$382.50
TOTALS	**8.4**		**$5,257.50**

5. I have also calculated my firm's total lodestar based on billing rates in effect at the time the case settled in January 2020. Based on my firm's billing rates in January 2020, my firm's total lodestar for work performed in connection with the prosecution of this Action is $6,562.50.

6. The hourly rates for the attorneys and professional support staff of my firm are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other complex or class action litigation, subject to reasonable subsequent annual increases.*

* *In re: The Bank of New York Mellon ADR FX Litgiation*, 16-cv-00212 (JPO) (S.D.N.Y.); I*n re: Lidoderm Antitrust Litigation*, 14-md-2521 (WHO) (N.D. Cal.); *In re: Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, 14-md-2503 (DJC) (D. Mass).

7. My firm's lodestar figures are based on the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately.

8. As detailed below, my firm is seeking reimbursement for a total of $50.00 in litigation expenses incurred from inception through April 30, 2020 in connection with the prosecution of this Action.

CATEGORY	AMOUNT
Other: Bar Fund Court Fee	$50.00
TOTAL EXPENSES:	**$50.00**

9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

10. I understand that my firm's time and expenses were provided to and reviewed by Magistrate Judge Sullivan on a quarterly basis from the inception of the case through September 30, 2019, and reflect any adjustments made by Judge Sullivan.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on May 12, 2020.

Frank R. Schirripa

EXHIBIT I

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF NATALIE FINKELMAN BENNETT IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES FILED ON BEHALF OF SHEPHERD, FINKELMAN, MILLER & SHAH, LLP

I, Natalie Finkelman Bennett, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at the law firm Shepherd, Finkelman, Miller & Shah ("SFMS" or the "Firm"), counsel for the End-Payor Plaintiffs Class ("EPPs") and Class Representative Plaintiffs United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund and Fraternal Order of Police, Fort Lauderdale Lodge 31 Insurance Trust Fund in the above-captioned action (the "Action"). I submit this declaration in support of EPPs' application for an award of attorneys' fees, reimbursement of litigation expenses, and service awards to the class representatives. This declaration is based on my personal knowledge or discussions with counsel at my Firm of the matters stated herein.

2. We were advised of this Court's billing and expense requirements and have complied with them. All attorneys and legal professionals at my firm were instructed to keep and have kept contemporaneous time records reflecting their work on this case and expenses incurred, which were submitted to Lead Counsel pursuant to Case Management Order No. 2 (ECF 85).

3. During this litigation, at the direction of Co-Lead Counsel, my firm performed the

following activities for the benefit of the EPPs: researching factual and patent history, citizen petitions, defendants' public filings, market research, legal research regarding state-related claims, drafting and filing initial class action complaint; participating in discovery including communicating with clients, searching for and reviewing documents and transactional data maintained by the clients, providing Rule 26 materials; responding to written discovery requests, and additional requests for information; reviewing, collecting and preparing client documents for production and preparing and providing client representatives for depositions; communications with lead counsel regarding status hearings; discovery and deposition and trial preparation; analyzing case filings and communications with clients regarding the progression of the litigation at all stages.

4. My firm's total lodestar from inception through April 30, 2020, for work performed in connection with the prosecution of this Action is $136,322.50, calculated based on my firm's rates at the time the work was performed. Time expended in connection with the application for attorneys' fees and reimbursement of litigation expenses has not been included. The chart below summarizes the amount of time spent by attorneys and professional support staff of my firm who were involved in this Action, as well as the lodestar of each. In the below chart, where an attorney billed at multiple rates over the course of the case, separate rows are included for each attorney/billed rate.

NAME	HOURS	HISTORICAL RATE	LODESTAR
Partners			
Finkelman Bennett, Natalie	32.20	$650.00	$20,930.00
Finkelman Bennett, Natalie	5.60	$700.00	$3,920.00
Finkelman Bennett, Natalie	8.70	$725.00	$6,307.50
Finkelman Bennett, Natalie	.70	$750.00	$525.00
Finkelman Bennett, Natalie	1.90	$850.00	$1,615.00
Goldstein, Jayne A.	2.70	$700.00	$1,890.00
Goldstein, Jayne A.	61.70	$775.00	$41,817.50
Goldstein, Jayne A.	.40	$875.00	$350.00
Zipperian, Nathan	3.40	$650.00	$2,210.00
Of Counsel			
Rettinger, Paul	6.70	$475.00	$3,182.50
Associates			
Johnson, Scott	48.80	$500.00	$24,400.00
Leser-Grenon, Karen	23.10	$475.00	$10,972.50
Luzon, Rose	35.40	$475.00	$16,815.00
Paralegals			
Ferling-Hitriz, Betsy	.50	$185.00	$92.50
Moss, Sue	7.0	$185.00	$1,295.00
TOTALS	**238.80**		**$136,322.50**

5. I have also calculated my firm's total lodestar based on billing rates in effect at the time the case settled in January 2020. Based on my firm's billing rates in January 2020, my firm's total lodestar for work performed in connection with the prosecution of this Action is $164,410.00.

6. The hourly rates for the attorneys and professional support staff of my firm are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other complex or class action litigation, subject to reasonable subsequent annual increases.[1] My firm's lodestar figures are based on the firm's billing rates, which rates do not

[1] Specifically, SFMS's hourly rates also have routinely been approved by courts throughout the United States. *See In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, No. CV 09-MD-2034, 2019 WL 4645331 (E.D. Pa. Sept. 24, 2019) (approving fee request with hourly rates up to $950 for experienced class counsel); *Heba v. Comcast Corp.*, Case No. 000471 (C.C.P. Phila.) (¶ 13 of Final Approval Order dated April 6, 2016) (finding in final approval order that Plaintiffs' Counsels' fees and then-current hourly rates of up to $750.00 for partners were reasonable). *See also In re: Caterpillar, Inc. C13 and C15Engine Products Liability Litig.*, MDL No. 2540 (D.N.J.) [Dkt. No. 54] (same); *Q+Food v. Mitsubishi Fuso Truck of America, Inc.,* 3:14-cv-06046 (D.N.J., March 27, 2017) [Dkt 70]; *See, e.g., Bowerman v. Field Asset Services, Inc.,* No. 13-cv-00057-WHO (N.D. Cal., Nov. 14, 2018) [ECF 464] (awarding hourly rate of $775 for partners and $300 for associates); *Q+Food v. Mitsubishi Fuso Truck of America, Inc*., 3:14-cv-06046 (D.N.J., March 27, 2017) [Dkt 70]; *Henderson v. Volvo Cars of North America, LLC*,

include charges for expense items. Expense items are billed separately.

7. As detailed below, my firm is seeking reimbursement for a total of $21,897.75 in litigation expenses incurred from inception through April 30, 2020 in connection with the prosecution of this Action.

CATEGORY	AMOUNT
Reproduction cost	$960.25
Fedex/Messenger/Postage	$75.63
Travel	$160.41
Meals	$87.84
Service of Subpoenas	$513.62
Filing fees and other court costs	$100.00
Common Litigation Fund Contributions	$20,000.00
TOTAL EXPENSES:	**$21,897.75**

8. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials, are available for review and are an accurate record of the expenses incurred.

I understand that my firm's time and expenses were provided to and reviewed by Magistrate Judge Sullivan on a quarterly basis from the inception of the case through September 30, 2019, and reflect any and all adjustments made by Judge Sullivan. In addition, we have voluntarily removed $25,355.50 in lodestar in connection with the Firm's work on the MDL proceedings, early litigation proceedings including filing *pro hac vice* motions, travel to and attendance at certain hearings, review of pleadings and emails that, although necessary for keeping counsel and our clients apprised of the litigation, do not appear to be common benefit time as

2013 WL 1192479 (D.N.J. March 22, 2013); *Trewin v. Church and Dwight, Inc*., Case No. 3:12-cv-01475-MAS-DEA (D.N.J. 2015) [Dkt. 68]; and *In re: Ford Motor Co. Spark Plug and 3-Valve Engine Products Liability Litigation*, Case No. 1:12-md-02316-BYP (N.D. Oh. 2016) [Dkt. 122]. Additional information about SFMS can be found at www.sfmslaw.com.

defined in Case Management Order No. 2 (ECF 85). I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on June 4, 2020.

/s/*Natalie Finkelman Bennett*
Natalie Finkelman Bennett

EXHIBIT J

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF JEFFREY L. KODROFF
IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES
FILED ON BEHALF OF SPECTOR ROSEMAN & KODROFF, P.C.

I, Jeffrey L. Kodroff, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at the law firm Spector Roseman & Kodroff, P.C., counsel for the End-Payor Plaintiffs Class ("EPPs") in the above-captioned action (the "Action"). I submit this declaration in support of EPPs' application for an award of attorneys' fees, reimbursement of litigation expenses, and service awards to the class representatives. This declaration is based on my personal knowledge or discussions with counsel at my firm of the matters stated herein.

2. We were advised of this Court's billing and expense requirements and have complied with them. All attorneys and legal professionals at my firm were instructed to keep contemporaneous time records reflecting their work on this case and expenses incurred.

3. During this litigation, at the direction of Co-Lead Counsel, my firm performed the following activities for the benefit of the EPPs: worked on the case investigation and factual and legal development of the claims asserted; coordinated document collection; assisted with document preservation and Rule 26 disclosures for named plaintiff, including client's supplemental

electronic transaction-level purchase, claims, and/or chargeback data showing purchases of Loestrin 24 Fe and Minastrin during the relevant time periods; and worked with client in preparation for deposition.

4. My firm's total lodestar from inception through April 30, 2020, for work performed in connection with the prosecution of this Action is $60,388.50, calculated based on my firm's rates at the time the work was performed. Time expended in connection with the application for attorneys' fees and reimbursement of litigation expenses has not been included. The chart below summarizes the amount of time spent by attorneys and professional support staff of my firm who were involved in this Action, as well as the lodestar of each.

NAME	HOURS	HISTORICAL RATE	LODESTAR
Partners			
J. Kodroff	6.25	710	$4,437.50
J. Macoretta	1.75	625	$1,093.75
J. Macoretta	2	645	$1,290.00
J. Macoretta	0.1	800	$80.00
W. Caldes	1	430	$430.00
W. Caldes	1.75	625	$1,093.75
W. Caldes	0.50	645	$322.50
W. Caldes	0.25	675	$168.75
W. Caldes	5.6	695	$3,892.00
W. Caldes	9	730	$6,570.00
W. Caldes	35.4	750	$26,550.00
W. Caldes	1.5	800	$1,200.00
Associates			
D. Zinser	1.2	410	$492.00
D. Zinser	8.65	430	$3,719.50
D. Zinser	18.25	445	$8,121.25
Of Counsel			
M. Geppert	1	425	$425.00
M. Geppert	1	440	$440.00
Paralegals			
G. DeMarshall	0.25	250	$62.50
TOTALS	**95.45**		**$60,388.50**

5. I have also calculated my firm's total lodestar based on billing rates in effect at the time the case settled in January 2020. Based on my firm's billing rates in January 2020, my firm's total lodestar for work performed in connection with the prosecution of this Action is 73,433.25.

6. The hourly rates for the attorneys and professional support staff of my firm are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other complex or class action litigation, subject to reasonable subsequent annual increases.

7. My firm's lodestar figures are based on the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately.

8. As detailed below, my firm is seeking reimbursement for a total of $35,130.80 in litigation expenses incurred from inception through April 30, 2020 in connection with the prosecution of this Action.

CATEGORY	AMOUNT
Reproduction cost	$421.75
Fedex/Messenger/Postage	$545.77
Travel	$2,214.17
Meals	$114.88
Telephone/Teleconference/Fax	$6.69
Service of Subpoenas	$556.00
Computer research	$5,521.54
Filing fees and other court costs	$750.00
Document database vendor	
Court transcripts	
Deposition transcripts	
Consulting/Expert fees	
Common Litigation Fund Contributions	$25,000.00
TOTAL EXPENSES:	**$35,130.80**

9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

10. I understand that my firm's time and expenses were provided to and reviewed by Magistrate Judge Sullivan on a quarterly basis from the inception of the case through September 30, 2019, and reflect any adjustments made by Judge Sullivan as well as certain additional downward adjustment requested by Co-Lead.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on May 17, 2020.

Jeffrey L. Kodroff

EXHIBIT K

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF LINDA OPICHKA

I, Linda Opichka, declare as follows:

1. I am a Quality Assurance Analyst with A.B. Data, Ltd.'s Class Action Administration Company ("A.B. Data") with its principal offices in Milwaukee, Wisconsin. I am over 21 years of age and am not a party to the above-captioned action (the "Action"). I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. I submit this Declaration at the request of End-Payor Plaintiffs' Counsel to provide the Court with information regarding my qualifications and role in this Action.

3. I have over a decade of experience as a broker-dealer auditor, trainer, and manager, and passed the examination for Certified Anti-Money Laundering Specialists in 2008. I also served for more than twelve years as an audit manager at the Chicago Board of Trade and passed the CPA exam in 1999. Since my present employment does not require me to audit and sign financial statements and I am not employed with a CPA firm, I have not been active as a CPA but retain my AICPA membership. I attained my Bachelor of Business Administration in Accounting from the University of Wisconsin-Milwaukee. A copy of my resume is attached hereto as Exhibit A.

4. As a Quality Assurance Analyst with A.B. Data, I am responsible for managing and performing financial analysis, reviewing plans of allocation, working with independent distribution consultants, and performing account reconciliations for fund distributions. A.B. Data was retained by Interim Class Counsel to review time and expenses submitted by each Participating Counsel's law firm in this Action as defined by the Court's Case Management Order Number 2 ("Order").

5. A.B. Data received separate time and expense reports from all Participating Counsel on a monthly basis provided in the format as required by the Court.

6. I audited each of the submissions from the Participating Counsel to verify time and expenses were reported in accordance with the conditions and limitations detailed in the Order. Upon completion of the review, I compiled the submissions from each firm and provided to Interim Class Counsel a report setting forth my results and findings.

7. In addition, I provided reports to Interim Class Counsel on a quarterly basis for submission to the Court.

8. From time-to-time, Magistrate Judge Sullivan requested that I formulate and provide additional forms of reports to present the data in a different format for her review, which I did.

9. Each quarter Magistrate Judge Sullivan conducted an *ex parte* conference with Marvin Miller, one of Interim Class Counsel, Robert McConnell, and me to discuss the reports. I participated in those conferences and responded to any questions and complied with Magistrate Judge Sullivan's requests for further clarification and information.

10. On a few occasions, Magistrate Judge Sullivan requested that adjustments be made to the reported billing entries or expenses. I made the required adjustments, which are reflected in

the data that I understand Participating Counsel has relied on in their request for attorneys' fees and expenses.

11. I understand that Plaintiffs' counsel planned to file a petition for an award of attorneys' fees, reimbursement of expenses and incentive payments to Class representatives. It was called to my attention that there might have been some inconsistencies between the timely reports I received from counsel and earlier submissions to the Court. I did a final audit to correct certain errors from reports which had been timely submitted but were inadvertently omitted from earlier reports and have adjusted for them in the most recent reports to Magistrate Judge Sullivan.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 26th day of May 2020.

Linda Opichka

Linda Opichka

EXHIBIT L

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: End-Payor Plaintiff Actions	MDL No. 2472 Master File No. 1:13-md-2472-WES-PAS

DECLARATION OF PROFESSOR CHARLES SILVER IN SUPPORT OF END-PAYOR CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES

CONTENTS

I, Charles Silver, declare as follows:

I. SUMMARY OF OPINIONS

1. This is an antitrust class action brought to challenge allegedly anticompetitive practices that delayed the entry into the pharmaceutical market of generic versions of Loestrin 24 Fe ("Loestrin 24") and, suppressed generic Loestrin 24, after it entered the market, through an alleged product switch or hop. Because the Court certified a litigation class , the issues had been fully briefed and argued on opposing motions for summary judgment, the parties were ready for trial, and the team of lawyers was highly experienced, Class Counsel[1] were in an excellent position to negotiate the best possible settlement for the Third-Party Payor (TTP) Class.

2. The proposed settlement, which was negotiated with the assistance of the office of retired Judge Layn Phillips, one of the country's leading mediators, requires the Warner Chilcott Defendants (Defendants) to pay $62.5 million to the TPP Class. This is an excellent recovery that justifies a fully compensatory fee for Class Counsel.

3. Class Counsel's request for one-third of the recovery (33⅓ percent) as fees is reasonable. It falls squarely within both the range of fees that clients pay lawyers who handle complex commercial lawsuits on contingency and the range of fees that judges tend to award in cases of this nature and of this size.

4. A lodestar cross-check also shows that the fee request is reasonable. Because the litigation was greatly advanced when the settlement was reached, Class Counsel have expended a large number of hours. Consequently, the requested lodestar multiplier barely exceeds 1, meaning

[1] Class Counsel are Motley Rice LLC, Hilliard & Shadowen LLP, Miller Law LLC, and Cohen Milstein Sellers & Toll, PLLC.

that Class Counsel will receive no or only a minimal premium above their hourly rates. In short, Class Counsel have fully earned the fee they request.

II. CREDENTIALS

5. I hold the Roy W. and Eugenia C. McDonald Endowed Chair in Civil Procedure at the University of Texas School of Law. I joined the Texas faculty in 1987, after receiving an M.A. in political science at the University of Chicago and a J.D. at the Yale Law School. I received tenure in 1991. Since then, I have been a Visiting Professor at University of Michigan School of Law (twice), the Vanderbilt University Law School, and the Harvard Law School.

6. I have taught, researched, written, consulted with lawyers, and testified about class actions, other large lawsuits, attorneys' fees, professional responsibility, and related subjects for 30 years. I have published over 100 major writings, many of which appeared in peer-reviewed publications and many of which focus on subjects relevant to this Declaration. My writings are cited and discussed in leading treatises and other authorities, including the MANUAL FOR COMPLEX LITIGATION, THIRD (1996), the MANUAL FOR COMPLEX LITIGATION, FOURTH (2004), the RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS, and the RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT.

7. My first publication after joining the Texas Law faculty, an analysis of the restitutionary basis for fee awards in class actions, appeared in 1991. Charles Silver, *A Restitutionary Theory of Attorneys' Fees in Class Actions*, 76 CORNELL L. REV. 656 (1991). My most recent publication in the field, an empirical study of fee awards in securities fraud class actions, appeared in the Columbia Law Review nearly twenty-five years later. Lynn A. Baker, Michael A. Perino, and Charles Silver, *Is the Price Right? An Empirical Study of Fee-Setting in Securities Class Actions*, 115 COLUM. L. REV. 1371 (2015) (*Is the Price Right?*). The CORPORATE PRACTICE COMMENTATOR chose this article as one of the ten best in the field of corporate and

securities law in 2016. The study of attorneys' fees has been a principal focus of my academic career.

8. From 2003 through 2010, I served as an Associate Reporter on the American Law Institute's PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION (2010). Many courts have cited the PRINCIPLES with approval, including the U.S. Supreme Court.

9. I have testified as an expert on attorneys' fees many times. Courts have cited or relied upon my opinions when awarding fees in many class actions, including *In re Enron Corp. Securities, Derivative & "ERISA" Litig.*, 586 F. Supp. 2d 732 (S.D. Tex. 2008), *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 2019 WL 6888488 (E.D.N.Y. 2019); and *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006), all of which settled for amounts exceeding $1 billion.

10. Finally, because awards of attorneys' fees may be thought to raise issues relating to the professional responsibilities of attorneys, I note that I have an extensive background, publication record, and experience as an expert witness testifying on matters relating to this field. I also served as the Invited Academic Member of the Task Force on the Contingent Fee created by the Tort Trial and Insurance Practice Section of the American Bar Association. In 2009, the Tort Trial and Insurance Practice Section of the American Bar Association gave me the Robert B. McKay Award in recognition of my scholarship in the areas of tort and insurance law.

11. I have attached a copy of my resume as Exhibit 1 to this declaration.

III. DOCUMENTS REVIEWED

12. In preparing this Report, I reviewed the items listed below. I also reviewed other items including, without limitation, cases, studies, and published scholarly works.

- End-Payor Class Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to the Class Representatives, *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472 (D.R.I.)

- Memorandum of Law in Support of Third-Party Payor Plaintiffs' Unopposed Amended Motion for Preliminary Approval of Proposed Warner Chilcott Settlement, Approval of the Form and Manner of Notice to the Class, and Schedule for a Fairness Hearing, *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472, ECF No. 1421 (D.R.I. March 6, 2020)
- Declaration of Michael M. Buchman in Support of End-Payor Plaintiffs' Unopposed Amended Motion for Modification of the Form and Manner of Notice to the Lupin Settlement Class and the Third-Party Payor Plaintiffs' Unopposed Amended Motion for Preliminary Approval of Proposed Warner Chilcott Settlement, Approval of the Form and Manner of Notice to the Class, and to Set a Schedule for a Fairness Hearing, *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472, ECF No. 1424 (D.R.I. March 6, 2020)
- Order Granting End-Payor Plaintiffs' Unopposed Motion for Modification of the Form and Manner of Notice to the Lupin Settlement Class and the Third-Party Payor Unopposed Motion for Preliminary Approval of Proposed Warner Chilcott Settlement, Approval of the Form and Manner of Notice to the Classes, and to Set a Schedule for a Fairness Hearing, *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472, ECF No. 1427 (D.R.I. March 23, 2020)
- Memorandum of Decision on Class Certification and Order Regarding Motions to Exclude Certain Expert Opinions and Defendants' Renewed Motion to Dismiss, *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472, ECF No. 1274 (D.R.I. Oct. 17, 2019)
- Opinion and Order on Summary Judgment and Order Regarding Motions to Exclude Certain Expert Opinions, *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472, ECF No. 1380 (D.R.I. Dec. 17, 2019)
- Memorandum of Law in Support of Direct Purchaser Class Plaintiffs' Unopposed Motion for An Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award for the Class Representative, *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472, ECF No. 1429 (D.R.I. April 20, 2020)
- Declaration of Co-Lead Counsel Peter R. Kohn In Support of Direct Purchaser Class Plaintiffs' Motion for An Award of Attorneys' Fees, Reimbursement of Expenses, and a Service Award to the Class Representative, *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472, ECF No. 1430 (D.R.I. April 20, 2020)
- Declaration of Brian T. Fitzpatrick, *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472, ECF No. 1431 (D.R.I. April 20, 2020)
- *In re Cabletron Systems Inc. Securities Litig.*, 239 F.R.D. 30 (2006)
- Memorandum and Order Granting Final Approval of Settlement and Plan of Allocation, *Rosen v. Textron, Inc.*, No. 1:02-cv-00190, ECF No. 166 (D.R.I. Oct. 20, 2006)
- Order and Final Judgment, *Scritchfield v. Paolo*, No. 1:01-cv-00550, ECF No. 53, (D.R.I. Aug. 12, 2004)

- Final Approval Order and Final Judgment, *Short v. Brown University*, No. 1:17-cv-00318, ECF No. 55 (D.R.I. Aug. 2, 2019)
- Order Granting Final Judgment and Order of Dismissal Approving IPP Class Settlement and Dismissing IPP Class Claims Against Boehringer and Teva, *In re Aggrenox Antitrust Litig.*, No. 3:14-md-02516, ECF No. 821 (D. Conn. July 19, 2018)
- Order and Final Judgment Approving Settlement Between IPP Class and Defendants, *In re DDAVP Indirect Purchaser Antitrust Litig.*, No. 7:05-cv-02398, ECF No. 27 (S.D.N.Y. Dec. 18, 2013)
- Memorandum, *In re Flonase Antitrust Litig.*, No. 2:12-cv-04212, ECF No. 33 (E.D. Pa. June 19, 2013)
- Order Re: Distribution of the Settlement Fund, *In re Flonase Antitrust Litig.*, No. 2:08-cv-03301, ECF No. 660 (E.D. Pa. Nov. 10, 2014)
- Order and Final Judgment Approving Settlement, Awarding Attorneys' Fees and Expenses, Awarding Representative Plaintiffs' Incentive Awards, Approving Plan of Allocation, and Ordering Dismissal as to All Defendants, *In re Metroprolol Antitrust Litig.*, No. 1:06-cv-00071, ECF No. 342 (D. Del. March 7, 2013)
- Final Order and Judgment Granting Final Approval to Proposed Class Action Settlement, *In re Relafen Antitrust Litig.*, No. 1:01-cv-12239, ECF No. 459 (D. Mass. Oct. 13, 2005)
- Final Judgment and Order Certifying Settlement Class, Approving Proposed Settlement and Dismissing Actions, *In re Remeron Antitrust Litig.*, No. 2:02-cv-02007, ECF No. 197 (D.N.J. Aug. 31, 2005)
- *In re Remeron End-Payor Antitrust Litig.*, No. 02-cv-2007, 2005 WL 2230314 (D.N.J. Sept. 13, 2005)
- Order Granting (1) IPP Classes' Motion for Award of Attorneys' Fees, Expenses and Incentive Fees and (2) the Plaintiff States' Motion for Approval of Allocation of Fees and Costs, *In re Terazosin Hydrochloride Antitrust Litig.*, No. 1:99-md-01317, ECF No. 1611 (S.D. Fla. July 13, 2005)
- Order and Final Judgment Approving Settlement, Awarding Attorneys' Fees and Expenses, Awarding Representative Plaintiff Incentive Awards, Approving Plan of Allocation, and Ordering Dismissal as to All Defendants, *In re Tricor Indirect Purchaser Antitrust Litig.*, No. 1:05-cv-00360, ECF No. 545 (D. Del. Oct. 28, 2009)
- Final Order and Judgment Approving Settlement and Awarding Incentive Payments, Fees, and Reimbursement of Expenses, *In re Wellbutrin XL Antitrust Litig.*, No. 2:08-cv-02433, ECF No. 473 (E.D. Pa. July 22, 2013)
- Order Granting EPP Class Counsel's Motion for an Award of Attorneys' Fees, Expenses, and Service Awards, *In re Lidoderm Antitrust Litig.*, No. 3:14-md-02521, ECF No. 1055 (N.D. Cal. Sept. 20, 2018)

- Order and Final Judgment, *Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd.*, No. 1:05-cv-02327, ECF No. 105 (D.D.C. Nov. 15, 2007)
- Memorandum Opinion, *Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd*., No. 1:05-cv-02327, ECF No. 104 (D.D.C. Nov. 16, 2007)
- Memorandum Opinion, *Cohen vs. Warner Chilcott Pub. Ltd. Co*., No. 06-cv-401, ECF No. 101 (Nov. 16, 2007).
- Order and Final Judgment Approving Settlement, Awarding Attorneys' Fees and Expenses, Awarding Representative Plaintiffs Incentive Awards, Approving Plan of Allocation, and Ordering Dismissal with Prejudice, *In re Prograf Antitrust Litig*., No. 1:11-md-02242, ECF No. 712 (D. Mass. Nov. 2, 2016)
- Order Granting Plaintiffs' Unopposed Motion for Preliminary Approval of TPP Class Settlement, *In re Wellbutrin Sr. Antitrust Litig*., No. 04-cv-5898, ECF No. 367 (E.D. Pa. Jan. 14, 2013)
- Final Order and Judgment Approving Settlement, *In re Wellbutrin Sr. Antitrust Litig*., No. 04-cv-5898, ECF No. 378 (E.D. Pa. Sept. 27, 2013)
- Memorandum *In re Paxil Antitrust Litig.*, No. 2:00-cv-06222, ECF No. 212 (E.D. Pa. April 22, 2005)
- Memorandum *In re Provigil Antitrust Litig.*, No. 2:06-cv-01833, ECF No. 614 (E.D. Pa. April 21, 2020)
- Final Approval Order and Final Judgment of Dismissal with Prejudice as to Defendant Mutual Pharmaceutical Company, Inc., *In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 1:12-cv-00163, ECF No. 125 (E.D. Tenn. Dec. 22, 2015)
- Order Awarding Attorneys' Fees, Expenses and Approving Service Awards to the Class Representatives, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:16-cv-10238, ECF No. 24 (D. Mass. July 18, 2018)

IV. FACTS

13. The litigation-related facts upon which my conclusions rest are set out in the documents listed above.

14. In brief, Class Counsel have negotiated a proposed settlement that will make $62.5 million (less attorneys' fees and other deductions) available for the benefit of the TPP Class, which is led by a number of union-related health and welfare funds, and the City of Providence. Because these are sophisticated entities, they have sufficient experience with the pharmaceutical drug industry to evaluate the proposed settlement competently.

15. Class Counsel have applied to the Court for a common fund fee award of 33⅓ percent of the gross recovery, approximately $20.8 million, plus cost reimbursements.

V. BACKGROUND ANALYSIS

16. Throughout my academic career, I have urged courts to base fee awards from common funds on rates prevailing in the private market for legal services. Although the view was not widely shared when I first expressed it, it is now. It is not unusual for courts to want to know what those rates are and to give them weight when deciding how much to award lawyers whose efforts create common funds, even when they are not legally bound to do so. In this Report, I will show that Class Counsel's request for a fee equal to 33⅓ percent of the recovery falls squarely within the range of percentages that prevails in the private market, which typically runs from 25 percent to 40 percent.

A. Fee-Setting Is A Positive-Sum Interaction

17. Many people think that fee-setting is a zero-sum game in which more for the lawyer means less for the client. Because the object of class litigation is to help the victims, they infer that lower fees are always better than higher ones.

18. This belief is mistaken. Fee-setting is a positive-sum interaction in which higher fees can help claimants. To see this, imagine how class members would fare if courts set common fund fee awards at 0 percent. When the fee is zero, the expected recovery is zero too because lawyers will not agree to represent class members (or signed clients) on these terms. From class members' perspective, any fee percentage greater than zero is better than zero because any positive recovery is better than no recovery.

19. When regulating fees, then, the object should not be to set them as close to zero as possible. It should be to maximize class members' net expected recoveries—the amounts they expect to take home after paying their attorneys. Because a claimant who nets $1 million after

paying a 40 percent fee is better off than one who nets $500,000 after paying a 20 percent fee, it is rational for clients to offer higher percentages when doing so is expected to leave them with more money after fees are paid.

20. Courts have known this for years. In 2002, a task force on fees commissioned by the Third Circuit stated that "The goal of appointment [of class counsel] should be to maximize the net recovery to the class and to provide fair compensation to the lawyer, *not to obtain the lowest attorney fee.* The lawyer who charges a higher fee may earn a proportionately higher recovery for the class than the lawyer who charges a lesser fee." *Third Circuit Task Force Report,* 208 F.R.D. 340, 373 (January 15, 2002) (emphasis added). The Seventh Circuit made a similar point in *In re Synthroid Marketing Litig.*, 264 F.3d 712 (7th Cir. 2001). It rejected the so-called "mega-fund rule," according to which fees must be capped at low percentages when recoveries are very large, noting that "[p]rivate parties would never contract for such an arrangement" because it would encourage cheap settlements. *Id*. at 718. Private clients want lawyers to maximize the value of their claims, not to settle them cheaply.

B. Courts Should Mimic The Market When Awarding Fees

21. In the market for legal services, claimants negotiate fees when litigation starts, not when it ends. Upfront, they see the risks that lie ahead and the virtue of paying fees that encourage lawyers to bear them. As the Seventh Circuit observed,

> The best time to determine [a contingent fee lawyer's] rate is the beginning of the case, not the end (when hindsight alters the perception of the suit's riskiness, and sunk costs make it impossible for the lawyers to walk away if the fee is too low). This is what happens in actual markets. Individual clients and their lawyers never wait until after recovery is secured to contract for fees. They strike their bargains before work begins.

In re Synthroid Marketing Litigation, 264 F.3d at 724.

22. Unfortunately, courts typically set fee terms when class actions end, not when they start. Consequently, the hindsight bias may cause them to set fees too low. To guard against this tendency, which can only harm class members in the long-run by weakening lawyers' incentives, I believe that courts should try to determine the percentage that class members would have agreed to pay had they bargained directly with their lawyers when litigation was about to commence.

23. The best evidence on which to base an answer is the market rate. A general insight from the economics of contracts is that parties tend to agree on terms that maximize the amount of wealth available for them to share. When markets are competitive, as the market for legal services plainly is, clients and lawyers should settle on the lowest percentages that maximize their joint expected return. This is the percentage that maximizes clients' net expected recoveries.

24. Although only the Seventh Circuit mandates the use of market rates, judges across the country, including several who sit in the First Circuit, recognize the superiority of this approach and use it often. Examples include *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-CV-07192-CM, 2019 WL 6889901, at *21 (S.D.N.Y. Dec. 18, 2019); *In re TRS Recovery Servs., Inc. & Telecheck Servs., Inc., Fair Debt Collection Practices Act (FDCPA) Litig.*, No. 2:13-MD-2426-DBH, 2016 WL 543137, at *9 (D. Me. Feb. 10, 2016); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 788 (N.D. Ill. 2015); *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, No. 3:10-CV-30163-MAP, 2014 WL 6968424, at *6 (D. Mass. Dec. 9, 2014); *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 842 F. Supp. 2d 346 (D. Me. 2012); *In re Trans Union Corp. Privacy Litig.*, No. 00 C 4729, 2009 WL 4799954, at *9 (N.D. Ill. Dec. 9, 2009), *order modified and remanded*, 629 F.3d 741 (7th Cir. 2011); and *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 40 (D.N.H. 2006).

25. Because the Court wrote the opinion in *In re Cabletron Sys. Inc. Sec. Litig*., I am, perhaps, preaching to the choir, the Court having already "concludes[d] that the best way to determine the reasonableness of a fee award [in a class action] is to assess what the fee arrangement would have been had it been determined by an open, competitive process at the outset of the case." *Cabletron*, 239 F.R.D. 30 at 40-41. Like me, the Court is also impressed by the reasons set out in the opinions of Judge D. Brock Hornby, who has taken the lead in advocating for the use of the market-based approach in the First Circuit. See *In re TRS Recovery Servs., Inc. & Telecheck Servs., Inc., Fair Debt Collection Practices Act (FDCPA) Litig*., No. 2:13-MD-2426-DBH, 2016 WL 543137, at *9 (D. Me. Feb. 10, 2016); *Scovil v. FedEx Ground Package Sys., Inc.*, No. 1:10-CV-515-DBH, 2014 WL 1057079, at *5 (D. Me. Mar. 14, 2014); *In re New Motor Vehicles Canadian Exp. Antitrust Litig*., 842 F. Supp. 2d 346 (D. Me. 2012); and *Nilsen v. York County*, 400 F.Supp.2d 266, 277-278 (D. Maine 2005).

26. In *Cabletron*, though, when the Court sought to determine "what a market rate fee arrangement would have been at the outset of a class action case," the Court had limited information to go on: data concerning fee awards in other class actions; and data from class action in which fees were set by auctions. *Id*., 239 F.R.D. at 41. Because both data sources are poor substitutes for actual market rates, I devote Part IV of this Declaration to a discussion of the fees that real clients, including sophisticated clients, pay lawyers when hiring them on a contingency basis.

C. Quality of Plaintiffs' Counsel

27. When considering how the market compensates attorneys, it is important to remember that the quality of counsel matters greatly. Studies of lawyers' charges show that they vary with experience, rank, accomplishment, firm size, and geographical location. For example, it is well known that a select group of attorneys with outstanding reputations command

exceedingly high rates, often more than $1,500 per hour, and that lawyers who practice in major metropolitan areas charge more than others.

28. In this case, the TPP Class is represented by outstanding law firms. Motley Rice LLC is a veteran of many MDLs involving antirust claims, pharmaceuticals, and medical devices. In 2020, ALM and The National Trial Lawyers chose firm co-founder Joe Rice for the Elite Trial Lawyers Lifetime Achievement Award and chose the firm itself as Law Firm of the Year in the pharmaceutical and insurance categories. I also know from personal experience that Motley Rice LLC was deeply involved in the states' lawsuits against the tobacco industry and provided services that were indispensable.

29. Cohen Milstein Sellers & Toll, PLLC is one of the nation's most distinguished firms that represents plaintiffs in antitrust cases. Over the period extending from 2013 through 2018, Cohen Milstein ranked 6th among all law firms in number of antitrust complaints filed, 13th in number of settlements, and 7th in aggregate settlement amount, with $2.1 billion recovered. University of San Francisco Law School and The Huntington National Bank, *2018 Antitrust Annual Report* (2019). In 2018 alone, the firm had two of the ten largest antitrust settlements: the Domestic Drywall Antitrust Litigation at $125 million and the Lidoderm Antitrust Litigation at $104.75 million. Cohen Milstein also handled the Urethanes Antitrust Litigation which, at $835 million, was the 5th largest antitrust settlement approved during the period. In the Urethanes case, Cohen Milstein obtained a favorable jury verdict for the class that exceeded $1 billion after trebling—one of the largest known antitrust jury verdicts to date.

30. Hilliard & Shadowen LLP is another MDL veteran. Steve Shadowen, who leads the firm's antitrust practice, has been a leader in the decade-long efforts against "pay for delay" settlements. He and his firm have also pioneered, in both academic studies and litigation, the

product-hop theory of antitrust liability in the pharmaceutical industry. The American Antitrust Institute recognized him with its award for Outstanding Antitrust Litigation Achievement in Private Law Practice.

31. Miller Law LLC has been recognized by courts and its peers for appointment to lead complex antitrust and pharmaceutical practices cases, and has an extensive history of involvement in antitrust cases, including large cases involving sales of pharmaceuticals. The pharmaceutical team at Miller Law LLC has a 20-year history of holding leadership positions in 18 similar cases of generic pharmaceuticals exclusion. It has also served as sole lead counsel for the indirect purchaser class in the Polyurethane Foam Antitrust Litigation, in which $151,250,000 was achieved for the class.

VI. FEES PREVAILING IN THE PRIVATE MARKET FOR LEGAL SERVICES

32. As mentioned, over the course of my career I have consistently urged courts to take guidance from the market for legal services when sizing fee awards, and the number of courts that do so has grown. For example, in *Goldberger v. Integrated Resources, Inc*., 209 F.3d 43 (2d Cir. 2000), the Second Circuit wrote that "market rates, where available, are the ideal proxy for [class action lawyers'] compensation." *Id*., p. 52. It is hard to do better than "ideal."

A. In Contingent Fee Litigation, Percentage-Based Compensation Predominates

33. Having established that market rates are "ideal" proxies, it remains to consider how the market compensates plaintiffs' attorneys. In this section and the next, I explain what I know about this issue.

34. I start by noting that when clients hire lawyers to handle lawsuits on straight contingency, the market sets lawyers' compensation as percentages of claimants' recoveries. Even sophisticated business clients with complex, high-dollar legal matters use the percentage approach.

> [T]he contingency fee model covers all sorts of plaintiffs' litigation, including cases where sophisticated individual clients have high-stakes, complex claims worth hundreds of millions of dollars. . . . [I]t is essentially unheard of for sophisticated lawyers to take on a case of this magnitude and type on any basis other than a contingency fee, expressed as a percentage of the relief obtained.

In re Payment Card Interchange Fee & Merchant Discount Litig., 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014).[2] *See also Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) (Easterbrook, J.) (noting the predominance of the percentage method in plaintiff representations and observing that "[w]hen the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee *is* the 'market rate'" (emphasis in the original)).

35. Abundant evidence supports this contention. When two coauthors and I studied hundreds of settled securities fraud class actions specifically looking for terms included in fee agreements between lawyers and investors seeking to serve as lead plaintiffs, all the agreements we found provided for contingent percentage fees. *Is the Price Right*, *supra*. No lead plaintiff agreed to pay its lawyers by the hour; nor did any retain counsel on a lodestar basis.

36. The finding just described was expected. Over the course of my academic career, I have studied or participated in hundreds of class actions, many of which were led by sophisticated business clients. To the best of my recollection, I have encountered only one in which a lead plaintiff paid class counsel out of pocket, and that case is more than 100 years old. Even wealthy clients that, in theory, might have paid lawyers by the hour used contingent, percentage-based compensation arrangements instead. Because percentage-based compensation arrangements dominate the market, courts should also use them when awarding fees from common funds.

37. The market also appears to favor fee percentages that are flat or that rise as recoveries increase. Scales with percentages that decline at the margin are rarely employed.

[2] This opinion became a nullity when the decision approving the settlement was reversed on appeal, but the observation quoted is correct.

Professor John C. Coffee, Jr., the country's leading authority on class actions, made this point in a report filed in the antitrust litigation relating to high fructose corn syrup.

> I am aware that "declining" percentage of the recovery fee formulas are used by some public pension funds, serving as lead plaintiffs in the securities class action context. However, I have never seen such a fee contract used in the antitrust context; nor, in any context, have I seen a large corporation negotiate such a contract (they have instead typically used straight percentage of the recovery formulas).

Declaration of John C. Coffee, Jr., submitted in *In re High Fructose Corn Syrup Antitrust Litigation*, M.D.L. 1087 (C.D. Ill. Oct. 7, 2004), ECF No. 1421, ¶ 22. My experience is similar to Professor Coffee's. I know of no instance in which a large corporation used a scale of declining percentages when hiring a lawyer or firm to represent only itself.

38. In view of the rarity with which declining scales are used, the 'mimic the market' approach suggests that flat percentages and scales with percentages that rise at the margin create better incentives. This is so because flat percentages and rising scales better incentivize plaintiffs' attorneys to extract higher dollars that are harder to obtain. Flat percentages or percentages that increase with the recovery encourage plaintiffs' attorneys to turn down inadequate settlements.

B. Clients Normally Pay Contingent Fees In The Range Of 25 Percent To 40 Percent

39. Countless plaintiffs have hired lawyers on contingency to handle cases of diverse types. Consequently, the market for legal services is a rich source of information about lawyers' fees. In this section, I survey this evidence.

40. Before doing so, I wish to note that there is broad agreement that fees ranging from 25 percent to 40 percent prevail in most types of plaintiff representations. For example, courts have often noted that fees in personal injury cases normally equal or exceed 33⅓ percent of plaintiffs' recoveries. *See, e.g.*, *George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) ("Plaintiffs request for approval of Class Counsel's 33% fee falls within the range

of the private marketplace, where contingency-fee arrangements are often between 30 and 40 percent of any recovery"); *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201 (N.D. Ill. 2018) ("a typical contingency agreement in this circuit might range from 33% to 40% of recovery"); *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 U.S. Dist. LEXIS 153786, 2012 WL 5290155, at *4 (S.D. Fla. Sept. 26, 2012) ("One-third of the recovery is considered standard in a contingency fee agreement."); *Burkholder v. City of Ft. Wayne*, 750 F. Supp. 2d 990, 997 (N.D. Ind. 2010) (observing that "a counsel fee of 33.3% of the common fund 'is comfortably within the range typically charged as a contingency fee by plaintiffs' lawyers' in an FLSA action").

41. Many courts have also observed that attorneys regularly contract for contingent fees between 30 percent and 40 percent in non-class, commercial cases. *See, e.g., Kapolka v. Anchor Drilling Fluids USA, LLC*, No. 2:18-CV-01007-NR, 2019 WL 5394751, at *10 (W.D. Pa. Oct. 22, 2019); *Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd's, London Members*, No. CV 08-00235 (CCC), 2019 WL 4877563, at *8 (D.N.J. Oct. 3, 2019); *Cook v. Rockwell Int'l Corp.*, No. 90-CV-00181-JLK, 2017 WL 5076498, at *2 (D. Colo. Apr. 28, 2017); and *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. CIV.A. 08-2177 DMC, 2013 WL 5505744, at *32 (D.N.J. Oct. 1, 2013).

42. The point of surveying the evidence, then, is not to establish something new. It is to show that what everyone already knows is correct. In cases of diverse types, the market rate for contingent fee lawyers ranges from 25 percent to 40 percent of clients' recoveries.

1. Personal Injury Cases

43. If courts chose to base fee awards in class actions on fees charged in personal injury cases, this Report could be quite short. The evidence clearly shows that contingent fees normally

range from 25 percent to 40 percent in these cases,[3] are often higher in mass tort contexts,[4] and are higher still in medical malpractice cases, which are exceptionally risky and costly.[5] Lower rates prevail in commercial airplane crash cases, where liability is usually conceded.[6] Fees vary across contexts because cases of different types require lawyers to bear different risks.

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[3] On fees in personal injury cases, *see* Deborah R. Hensler *et al*., COMPENSATION FOR ACCIDENTAL INJURIES IN THE UNITED STATES 135-36 & Table 5.11 (RAND 1991), available at http://www.rand.org/pubs/reports/2006/R3999.pdf (reporting that randomly selected accident victims who hired attorneys on contingency paid median fees of 33 percent and mean fees of 29 percent); Herbert M. Kritzer, *Investing in Contingency Fee Cases*, WISCONSIN LAWYER 11, 12 (August 1997) (reporting that in a sample of 989 plaintiff representations in Wisconsin, slightly more than half of the claimants agreed to pay a one-third contingent fee); Nora Freeman Engstrom, *Sunlight and Settlement Mills*, 86 N.Y.U. L. REV. 805, 846 (2011) (reporting that "every one of the twelve [high volume plaintiffs' firms she] studied charge[d] a tiered contingency fee," with most charging "at least 33%--and perhaps as high as 40%").

[4] On fees in mass tort cases, *see* James S. Kakalik, *et al*., COSTS OF ASBESTOS LITIGATION Table S.2 (RAND 1983) (finding that asbestos claimants whose cases closed before August, 1982, paid legal fees and other litigation expenses equal to about 42 percent of their recoveries); James S. Kakalik *et al*., VARIATION IN ASBESTOS LITIGATION COMPENSATION AND EXPENSES xviii Figure S.1 (RAND 1984) (finding that asbestos claimants paid legal fees and expenses equal to 39 percent of their recoveries). For anecdotal reports of fees in mass tort cases, *see In re A.H. Robins Co., Inc*., 182 B.R. 128, 131 (E.D. Va. 1995) (reporting that thousands of women injured by the Dalkon Shield signed contingent fee arrangements providing for fees between one-quarter and one-half of the recovery, with most charging one-third); Mireya Navarro, *Sept. 11 Workers Agree to Settle Health Lawsuits*, NEW YORK TIMES, November 19, 2010, available at http://www.nytimes.com/2010/11/20/nyregion/20zero.html (reporting that thousands of rescue and clean-up workers who were harmed as a result of the terrorist attacks on September 11, 2001, hired lawyers on terms requiring them to pay one-third of their recoveries); Martha Neil, *Frustration Over Uncontained Gulf Oil Spill – and Tort Claim Contingency Fees of Up to 50 Percent*, ABA JOURNAL (May 24, 2010), available at http://www.abajournal.com/news/article/frustration_over_uncontained_gulf_oil_spill--and_tort_legal_fees_of_up_to_5/ (reporting that thousands of clients with claims against BP arising out of the Deepwater Horizon catastrophe promised to pay contingent fees in the range of 40 percent to 50 percent).

[5] On factors affecting the size of contingent fees charged in medical malpractice cases, *see* ABA/TIPS Task Force on Contingent Fees, Report on Contingent Fees In Medical Malpractice Litigation (September 20, 2004), available at http://apps.americanbar.org/tips/contingent/MedMalReport092004DCW2.pdf.

[6] *See id*., at 27. *See also* ABA Formal Opinion 94-389, n. 13 (1994) (reporting that "[i]n cases where airline insurers voluntarily . . . [made] an early settlement offer and concede[d] all legal liability, average contingent fee rates dropped to 17% and were often only charged on a portion of

2. Large Commercial Lawsuits

44. We do not know as much about fees paid in large commercial lawsuits as we might.[7] No publicly available database collects information about this sector of the market, and businesses that sue as plaintiffs rarely reveal their fee agreements. Consequently, most of what is known is drawn from anecdotal reports.[8] That said, the evidence available on the use of contingent fees by sophisticated clients shows that marginal percentages tend to be high.

a) Patent Cases

45. Consider patent infringement representations. There are many anecdotal reports of high percentages in this area. The most famous one related to the dispute between NTP Inc. and Research In Motion Ltd., the company that manufactures the Blackberry. NTP, the plaintiff, promised its law firm, Wiley Rein & Fielding ("WRF"), a 33⅓ percent contingent fee. When the case settled for $612.5 million, WRF received more than $200 million in fees. Yuki Noguchi, *D.C. Law Firm's Big BlackBerry Payday: Case Fees of More Than $200 Million Are Said to Exceed Its 2004 Revenue*, WASHINGTON POST, March 18, 2006, D03.

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the recovery") (citing L. Kriendler, *The Letter: It Shouldn't be Sent*, 12 THE BRIEF 4, 38 (November 1982)).

[7] I have studied the costs insurance companies incur when *defending* liability suits. *See* Bernard Black, David A. Hyman, Charles Silver and William M. Sage, *Defense Costs and Insurer Reserves in Medical Malpractice and Other Personal Injury Cases: Evidence from Texas, 1988-2004*, 10 AM. L, & ECON, REV. 185 (2008). Unfortunately, this information sheds no light on the amounts that businesses pay when acting as plaintiffs.

[8] Businesses sometimes use hybrid arrangements that combine guaranteed payments with contingent bonuses. In a recent case against Bank of America, for example, a group of bankruptcy creditors with about $58 million at stake agreed to pay a law firm $1 million upfront and 5 percent of the net recovery. Petra Pasternak, *It's BIG, You're in Charge! Firm Picked for Pending Case Against BofA, Citi*, CORP. COUNS. (Online) April 9, 2010. Hybrid arrangements hold few lessons for class actions, however, because lawyers representing plaintiff classes must work on straight contingency.

46. The fee percentage that WRF received is typical, as Professor David L. Schwartz found when he interviewed 44 experienced patent lawyers and reviewed 42 contingent fee agreements.

> There are two main ways of setting the fees for the contingent fee lawyer [in patent cases]: a graduated rate and a flat rate. Of the agreements using a flat fee reviewed for this Article, the mean rate was 38.6% of the recovery. The graduated rates typically set milestones such as "through close of fact discovery," "through trial," and "through appeal," and tied rates to recovery dates. As the case continued, the lawyer's percentage increased. Of the agreements reviewed for this Article that used graduated rates, the average percentage upon filing was 28% and the average through appeal was 40.2%.

David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation,* 64 ALA. L. REV. 335, 360 (2012). In a case like this one that required the lawyers to bear significant litigation expenses with no guarantee of reimbursement a high fixed percentage would apply.[9]

47. Clearly, in the segment of the market where sophisticated business clients hire lawyers to litigate patent cases on contingency, successful lawyers earn enormous premiums over their normal hourly rates. The reason is obvious. When waging patent cases on contingency, lawyers must incur large risks and high costs, so clients must promise them hefty returns. Clients still prefer this arrangement to bearing the risks and costs of litigation themselves, so they willingly do.

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[9] Professor Schwartz's findings are consistent with reports found in patent blogs, one of which stated as follows:

> *Contingent Fee Arrangements*: In a contingent fee arrangement, the client does not pay any legal fees for the representation. Instead, the law firm only gets paid from damages obtained in a verdict or settlement. Typically, the law firm will receive between 33-50% of the recovered damages, depending on several factors – a strictly results-based system.

Matt Cutler, *Contingent Fee Patent Litigation, and Other Options*, PATENT LITIGATION, http://intellectualproperty-rights.com/?page_id=30 (reviewed March 13, 2012).

b) Other Large Commercial Cases

48. Turning from patent lawsuits to business representations more generally, many examples show that compensation tends to be a significant percentage of the recovery. A famous case from the 1980's involved the Texas law firm of Vinson & Elkins ("V&E"). ETSI Pipeline Project ("EPP") hired V&E to sue Burlington Northern Railroad and other defendants, alleging a conspiracy on their part to prevent EPP from constructing a $3 billion coal slurry pipeline. Harry Reasoner, then V&E's managing partner, described the financial relationship between EPP and V&E as follows:

> The terms of our retention were that our client would pay all out-of-pocket expenses as they were incurred, but all legal fees were contingent upon a successful outcome. We were paid 1/3 of all amounts received by way of settlement or judgment. We litigated the matter for 5 years. At the conclusion, we had settled with all defendants for a total of $634,900,000.00. As a result, a total of $211,633,333.00 was paid as contingent legal fees.

Declaration of Harry Reasoner, filed in *In re Washington Public Power Supply System Securities Litigation,* MDL No. 551 (D. Ariz., Nov. 30, 1990).

49. Several things about this example are noteworthy. First, the contingency fraction was one-third of the recovery in a massive case. Second, V&E bore no liability for out-of-pocket expenses. Third, the ETSI Pipeline case was enormous, ultimately generating a recovery greater than $600 million and a fee north of $200 million. Fourth, the client was a sophisticated business with access to the best lawyers in the country. No claim of pressure or undue influence by V&E could possibly be made.

50. The National Credit Union Administration's (NCUA) experience in litigation against securities underwriters provides a more recent example of contingent-fee terms that were used successfully in large, related litigations. After placing 5 corporate credit unions into liquidation in 2010, the NCUA filed 26 complaints in federal courts in New York, Kansas, and

California against 32 Wall Street securities firms and banks. To prosecute the complaints, which centered on sales of investments in faulty residential mortgage-backed securities, the NCUA retained two outside law firms, Korein Tillery LLP and Kellogg, Hansen, Todd, Figel, & Frederick PLLC, on a straight contingency basis. The original contract entitled the firms to 25 percent of the recovery, net of expenses. As of June 30, 2017, the lawsuits had generated more than $5.1 billion in recoveries on which the NCUA had paid $1,214,634,208 in fees.[10]

51. When it retained outside counsel on contingency, NCUA knew that billions of dollars were at stake. The failed corporate credit unions had sustained $16 billion in losses, and the NCUA's objective was to recover as much of that amount as possible. It also knew that dozens of defendants would be sued and that multiple settlements were possible. Even so, the NCUA agreed to pay a straight contingent percentage fee in the standard market range on all the recoveries. It neither reduced the fees that were payable in later settlements in light of fees earned in earlier ones, nor bargained for a percentage that declined as additional dollars flowed in, nor tied the lawyers' compensation to the number of hours they expended.

52. In *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327 (D. Md. 2000), the bankruptcy trustee wanted to assert claims against Ernst & Young. He looked for counsel willing to accept a declining scale of fee percentages, found no takers, and ultimately agreed to pay a law firm a straight 40 percent of the recovery. Ernst & Young subsequently settled for $185 million,

[10] The following documents provide information about NCUA's fee arrangement and the recoveries obtained in the litigations: Legal Services Agreement dated Sept. 1, 2009, https://www.ncua.gov/services/Pages/freedom-of-information-act/legal-services-agreement.pdf; National Credit Union Administration, Legal Recoveries from the Corporate Crisis, https://www.ncua.gov/regulation-supervision/Pages/corporate-system-resolution/legal-recoveries.aspx; Letter from the Office of the Inspector General, National Credit Union Administration to the Hon. Darrell E. Issa, Feb. 6, 2013, https://www.ncua.gov/About/leadership/CO/OIG/Documents/OIG20130206IssaResponse.pdf.

at which point the law firm applied for $71.2 million in fees, 21 times its lodestar. The bankruptcy judge granted the request, writing: "[v]iewed at the outset of this representation, with special counsel advancing expenses on a contingency basis and facing the uncertainties and risks posed by this representation, the 40% contingent fee was reasonable, necessary, and within a market range." *Id*. at 335.

53. Based on what lawyers who write about fee arrangements in business cases have said, contingent percentages of 33⅓ percent or more remain common. In 2011, THE ADVOCATE, a journal produced by the Litigation Section of the State Bar of Texas, published a symposium entitled "Commercial Law Developments and Doctrine." It included an article on alternative fee arrangements, which reported typical contingent fee rates of 33 percent to 40 percent.

> A pure contingency fee arrangement is the most traditional alternative fee arrangement. In this scenario, a firm receives a fixed or scaled percentage of any recoveries in a lawsuit brought on behalf of the client as a plaintiff. Typically, the contingency is approximately 33%, with the client covering litigation expenses; however, firms can also share part or all of the expense risk with clients. Pure contingency fees, which are usually negotiated at approximately 40%, can be useful structures in cases where the plaintiff is seeking monetary or monetizable damages. They are also often appropriate when the client is an individual, start up, or corporation with limited resources to finance its litigation. Even large clients, however, appreciate the budget certainty and risk-sharing inherent in a contingent fee arrangement.

Trey Cox, *Alternative Fee Arrangements: Partnering with Clients through Legal Risk Sharing*, 66 THE ADVOCATE (TEXAS) 20 (2011).

c) Sophisticated Named Plaintiffs in Class Actions

54. It is my understanding that the union funds acting as named plaintiffs support Class Counsel's fee request. By doing so, they join many other sophisticated businesses that have supported percentages of the same size. Here are a few examples of cases with sizeable settlements in which sophisticated business clients did the same.

- In *Payment Card,* 2019 WL 6888488, a multi-billion-dollar litigation, twelve business clients signed retainer agreements when litigation commenced which generally provided that class counsel would receive one-third of the class-wide recovery.[11]
- In *In re International Textile Group Merger Litigation*, C.A. No. 2009-CP-23-3346 (Court of Common Pleas, Greenville County, South Carolina), which settled in 2013 for relief valued at about $81 million, five sophisticated investors serving as named plaintiffs agreed to pay 35 percent of the gross class-wide recovery as fees, with expenses to be separately reimbursed. (The 35 percent fee was bargained down after initially being set at over 40 percent.)
- In *San Allen, Inc. v. Buehrer*, Case No. CV-07-644950 (Ohio – Court of Common Pleas), which settled for $420 million, seven businesses serving as named plaintiffs signed retainer contracts in which they agreed to pay 33.3 percent of the gross recovery obtained by settlement as fees, with a bump to 35 percent in the event of an appeal. Expenses were to be reimbursed separately.
- In *In re U.S. Foodservice, Inc. Pricing Litigation*, Case No. 3:07-md-1894 (AWT) (D. Ct.), a RICO class action that produced a $297 million settlement, both of the businesses that served as named plaintiffs were represented by counsel in their fee negotiations and both agreed that the fee award might be as high as 40 percent.

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[11] Typical language read as follows:

> (a) Fees As Class Counsel
>
> (1) Fees for the Firm's professional services in the Action as Class Counsel will be on a contingent basis and dependent upon the results obtained. In the event of a settlement or a favorable outcome at or after a trial, the Firm shall seek to recover legal fees equal to one-third of the Value of the Recovery attributable to our representation of the Class from one or more of the defendants. Any amount which is not recovered from the defendant(s) shall be payable on a contingent fee basis as described in paragraph (2) below. The Company agrees to support any request for attorney's fees, costs and disbursements to the court that is in an amount of one-third of the Value of the Recovery or less.
>
> (2) In the event that the court does not approve the fee requested by the Firm, the Company and the other named plaintiffs agree to pay the difference between the fee awarded by the court and an amount equal to one-third of the Value of the Recovery made on behalf of the named plaintiffs.
>
> (b) Fees Owed If Recovery Is Made Outside Of Class Action.
>
> In the event that The Company makes a recovery outside of the class action (as, for example, if a class is not certified or the Company withdraws as a class representative) the Company agrees to pay a contingent fee equal to one-third of the Value of the Recovery to the Company.

C. Sophisticated Clients' Support For A One-Third Fee In Prior Generic Delay Antitrust Class Actions

55. In prior reports, I have documented the tendency of sophisticated clients to support fee awards in the normal range by discussing a series of pay-for-delay pharmaceutical antitrust cases involving enormous companies that were direct purchasers. Three of the companies, Cardinal Health, and McKesson, submitted letters supporting fees equal to one-third of the recovery in 13 cases whose recoveries totaled $836.5 million. A third company, AmerisourceBergen, submitted letters of support in 12 of these cases. All three companies have annual revenues greatly in excess of $100 billion, meaning that they are highly sophisticated and could easily have objected to class counsel's fee requests had they found them excessive. Their support speaks volumes about the reasonableness of fee awards in class actions in general and in pharmaceutical antitrust class actions in particular.[12]

56. As stated, the cases discussed in the preceding paragraph involved direct purchasers of pharmaceuticals as plaintiffs. Because this case involves end-payors, Class Counsel provided me information about fee awards in prior pharmaceutical antitrust cases in which end-payers were plaintiffs. The difference should not bear on the point at hand, which is that sophisticated businesses serving as lead plaintiffs have endorsed fee awards in the normal range, but it seems best to examine end-payor class actions in case there are differences. The table below summarizes the settlements and fee awards in the cases Class Counsel identified.[13]

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[12] The cases supporting the statements in this paragraph are listed in Exhibit 2.

[13] Regarding the entry for *Remeron* in Table 1: the end-payor class and state attorneys' general negotiated a combined $36 million settlement fund consisting of $33 million payment to class members and government purchasers, $2 million earmarked for class notice and settlement administration costs, and $1 million to the attorney generals' offices for their fees and expenses. *See Remeron*, 2005 WL 2230314, at *5-6 (D.N.J. Sept. 13, 2005). Under the terms of the settlement, class members were to receive 83.5% of the $33 million fund ($27,555,000). *Id.*

Table 1. Attorneys' Fee Awards in End-Payor Generic Suppression Class Actions (2005-2020)				
Settlement Year	**Case**	**Settlement (millions)**	**Fee Award (millions)**	**Fee %**
2020	*Vista Healthplan, Inc v. Cephalon, Inc. ("Provigil")*, No. 2:06-cv-1833 (D. Pa.)	$65.9	$22.0	33.3%
2018	*In re Aggrenox Antitrust Litig.*, No. 3:14-md-2516 (D. Conn.)	$50,2	$16.7	33.3%
2018	*In re Lidoderm Antitrust Litig.*, No. 14-md-02521 (N.D. Cal.)	$104.8	$34.9	33.3%
2018	*In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-md-02503 (D. Mass.)	$43.0	$14.3	33.3%
2016	*In re Prograf Antitrust Litig.*, No. 1:11-md-02242 (D. Mass.)	$13.3	$4.4	33.3%
2015	*In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 1:12-md-2343 (E.D. Tenn.)	$9.0	$3.0	33.3%
2013	*In re Wellbutrin SR Antitrust Litig.*, No. 2:04-cv-05898 (E.D. Pa.)	$21.5	$7.1	33.0%
2013	*In re DDAVP Indirect Purchaser Antitrust Litig.*, No. 05-cv-2237 (S.D.N.Y.)	$4.8	$1.6	33.0%
2013	*In re Flonase Antitrust Litig.*, No. 08-3301 (E.D. Pa.)	$35.0	$11.7	33.3%
2012	*In re Metoprolol Succinate ("Tropol XL") End-Payor Antitrust Litig.*, No. 06-cv-71 (D. Del.)	$11.0	$3.5	31.8%
2011	*In re Wellbutrin XL Antitrust Litig.*, 2:08-cv-2433 (E.D. Pa.)	$11.8	$3.4	33.3%
2009	*In re Tricor Indirect Purchaser Antitrust Litig.*, No. 01-cv-12239 (D. Del.)	$65.7	$21.9	33.3%
2005	*In re Terazosin Hydrochloride Antitrust Litig.*, 99-mdl-1317 (S.D. Fla.)	$28.7	$8.6	30%
2005	*In re Relafen Antitrust Litig.*, No. 01-cv-12239 (D. Mass.)	$67.0	$22.3	33.3%
2005	*In re Remeron End-Payor Antirust Litig.*, No. 02-cv-2007 (D.N.J.)	$27.6	$7.8	28.3%
2005	*Nichols v. Smithline Beecham Corp. ("Paxil")*, No. 00-cv-6222 (E.D. Pa.)	$65.0	$19.0	29.2%
2005	*Ryan-House v. GlaxoSmithKline PLC ("Augmentin")*, No. 02-cv-442 (E.D. Va.)	$29.0	$7.3	25%

Accordingly, class counsel's $7.8 million fee award represents 28.3% of the portion of the settlement that was allocated to the class.

57. Judging from these cases, the named plaintiffs in end-payer class actions tend to be benefit plans maintained by unions representing public and private employees, medical centers, health insurers, purchasing agents/suppliers, self-insured employers, other businesses, and individuals or their estates. By way of example, the following end-payers served as named plaintiffs in *In re Metoprolol Succinate ("Tropol XL") End-Payor Antitrust Litig*.

> This group of plaintiffs [the end-payers] include the following parties: Meijer, Inc., Meijer Distribution, Inc., Mark S. Merado, District 1119P Health and Welfare Plan, Neil Lefton, Mary Anne Gross, International Association of Fire Fighters Local 22 Health & Welfare Fund, American Federation of State County and Municipal Employees District Council 47 Health and Welfare Fund, United Food and Commercial Workers Union Local 1776 and Participating Employers Health and Welfare Fund, AF of L AGC Building Trades Welfare Plan and Sheet Metal Workers Local 441 Health & Welfare Plan, United Union of Roofers Waterproofers and Allied Workers Local 74 Health and Pension Fund, United Union of Roofers Waterproofers and Allied Workers Local 203 Health and Pension Fund, Plumbers and Pipefitlers Local 572 Pension Fund, National Joint Powers Alliance, Dorothy Ferguson, and Thelma Clement.

Memorandum Opinion Approving Settlement, *In re Metoprolol Succinate ("Tropol XL") End-Payor Antitrust Litig*., No. 06-cv-71 (D. Del. Apr. 13, 2010).

58. Although the business and union entities that represent end-payer classes are smaller than the three companies discussed above, all of which are direct purchasers, they clearly are sophisticated clients.

- The Meijer entities are two of the 373 companies in the Meijer Companies, Ltd. corporate family, which collectively have 65,000 employees and generate over $10 billion in sales. Company Profile, Meijer Companies, LTD, Dun & Bradstreet, https://www.dnb.com/business-directory/company-profiles.meijer_companies_ltd.0c36043c4e7080896dc30dd32ffb4343.html (visited June 5, 2020).

- The National Joint Powers Alliance "is a public agency that creates national cooperative contract purchasing solutions on behalf of over 50,000 member entities including all government, education, and non-profit agencies nationwide and in Canada." National Joint Powers Alliance, https://www.gfoa.org/exhibitors/national-joint-powers-alliance (visited June 5, 2020).
- The union health and welfare funds collectively represent thousands of workers and, presumably, process millions of benefits claims involving (at least) hundreds of millions of dollars.

The support of entities like these for the fee awards shown in Table 1, most of which were for one-third of the recovery, is strong evidence that the awards were reasonable. They therefore support the reasonableness of Class Counsel's request for one-third of the recovery in this end-payer class action too.

VII. THE DIFFICULTY OF WINNING ANTITRUST CLASS ACTIONS

59. Antitrust class actions are notoriously hard to win. Many hurdles must be overcome, including the demonstration of antitrust damages, which require expert testimony based on complicated economic models to provide.

60. Many of the risks the Class faced are described in the *End-Payor Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to the Class Representatives*. Because Class Counsel know this terrain far better than I do, I can add little to the account this filing contains. However, I can say, first, that the Defendants' actions demonstrate clearly that this was a high-risk case. Had it been a "slam dunk" for the Class, the Defendants would have found it financially advantageous to have settled far sooner than they did. Why waste tens of millions of dollars defending a lawsuit until the eve of trial when it is obvious

that one will lose? Why spend millions of dollars on expert witnesses too? Why file multiple motions for summary judgment or resist class certification when it is obvious that both maneuvers will fail? The Defendants' willingness to mount an aggressive defense makes sense only if they thought they had a decent chance of winning the case.

61. And at one point, it seemed that the Defendants' would win. In 2014, the Court granted their motion to dismiss, entered a partial final judgment in their favor, and stayed the remaining claims. Two years later, the First Circuit revived the case and remanded it to the Court for further consideration of the sufficiency of the Class' pleading.

62. The lack of a prior governmental investigation of this generic delay settlement is also worth mentioning because it a sign of high risk. A government agency's involvement in a lawsuit may reduce the burden on class action lawyers, lend credence to the plaintiffs' allegations, and be a source of valuable information or other assistance. Many antitrust cases have been assisted substantially by criminal prosecutions and guilty pleas. *See, e.g., In re Vitamins Antitrust Litig.*, No. 99-197, 2001 WL 34312839 (D.D.C. July 16, 2001) ($365 million class recovery and 34.6% fee award in case supported by criminal prosecutions and guilty pleas); *In re TFT-LCD (Flat Panel) [Indirect Purchaser] Antitrust Litig.*, MDL No. 1827, 2013 WL 1365900 (N.D. Cal. Apr. 3, 2013) ($1.08 billion class recovery and approximately 30% fee to class counsel and state attorneys general in case supported by sweeping criminal prosecutions and guilty pleas).

63. If prior or parallel government proceedings make class actions less risky, then (other things being equal) fee awards should be higher in cases like this one, where Class Counsel undertook the litigation challenging a patent litigation settlement without help from a regulator.

64. The Class lawyers here not only litigated the case without help from a regulator; they investigated and developed the case without any such help. Without that investigation and the

enormous resources and risk that the End-Payor Class lawyers incurred (including the risk that the investigation would come up empty), the lawsuit may never have existed to begin with.

65. Finally, it bears emphasis that Class Counsel secured class certification for trial before negotiating the proposed settlement. Although settlement classes are common in antitrust cases and cases of other types, litigation classes are not, as other commentators have noted. The following paragraph appears in an empirical study published in 2017.

> Many class actions are resolved as settlement classes—meaning that the parties settle the class certification issue at the same time as they settle the merits, and present both agreements to the judge for approval at the fairness hearing. Settlement classes were common in our data, constituting approximately three-quarters of the cases: Of the 422 cases for which data were available, 318 were settlement classes and 104 were litigation classes.

Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 961 (2017). Eleven of the 16 antitrust cases in the authors' dataset were settlement classes. *Id*., Table 10.

66. Both the risk and the value of certifying a class for litigation are important. Winning a contested certification motion in an antitrust case is hard. During the era of the Roberts Court, federal courts have been increasingly hard on antitrust plaintiffs. *See, e.g.,* Mark S. Popofsky and Douglas H. Hallward-Driemeier, *Antitrust and the Roberts Court*, 28-SUM ANTITRUST 26, 26 (2014) (observing that "the Roberts Court has consistently raised the threshold for plaintiffs seeking to pursue class actions"). Plaintiffs who win in the trial courts also face a serious prospect of losing on appeal, as I pointed out almost two decades ago.

> Rule 23(f) is a one-way ratchet for defendants. Although early evidence was ambiguous, … a clear pattern of antiplaintiff decisions has emerged. See Jennifer K. Fardy, Disciplining the Class: Interlocutory Review of Class Action Certification Decisions Under Rule 23(f), 13 Class Actions & Derivative Suits 3, 9 (2003) (reporting that federal circuit courts have granted thirty-two petitions for interlocutory review, that "the vast majority of the decisions ... have resulted in elimination of class status," and that no federal circuit has used [a] 23(f) appeal to

reverse [a] denial of class certification), available at http://www.seyfarth.com/db30/cgi-bin/pubs/fardy.PDF.

Charles Silver, "*We're Scared to Death": Class Certification and Blackmail*, 78 N.Y.U. L. Rev. 1357, 1430 (2003).

67. Here, the First Circuit's decision in *In re Asacol Antitrust Litigation*, 907 F.3d 42 (1st Cir. 2018), saddled the Class with a sizeable risk of having certification denied. *Asacol*, which was decided after the plaintiffs submitted their initial certification briefs, required the Class to show that third-party payors who were not harmed could be excluded from the class. Class Counsel met the challenge in extraordinary fashion. They revamped the class definition, retained new experts to analyze data, had both the new experts and their original expert file new reports, defended the experts at depositions, took the depositions of three defense experts, filed extensive briefing, moved to exclude the defense experts and rebutted the Defendants' motions to exclude, and prepared for a two-day hearing on class certification—all in the space of four months. Having worked on class actions, I find the intensity of Class Counsel's effort—and the result they achieved under the circumstances—remarkable.

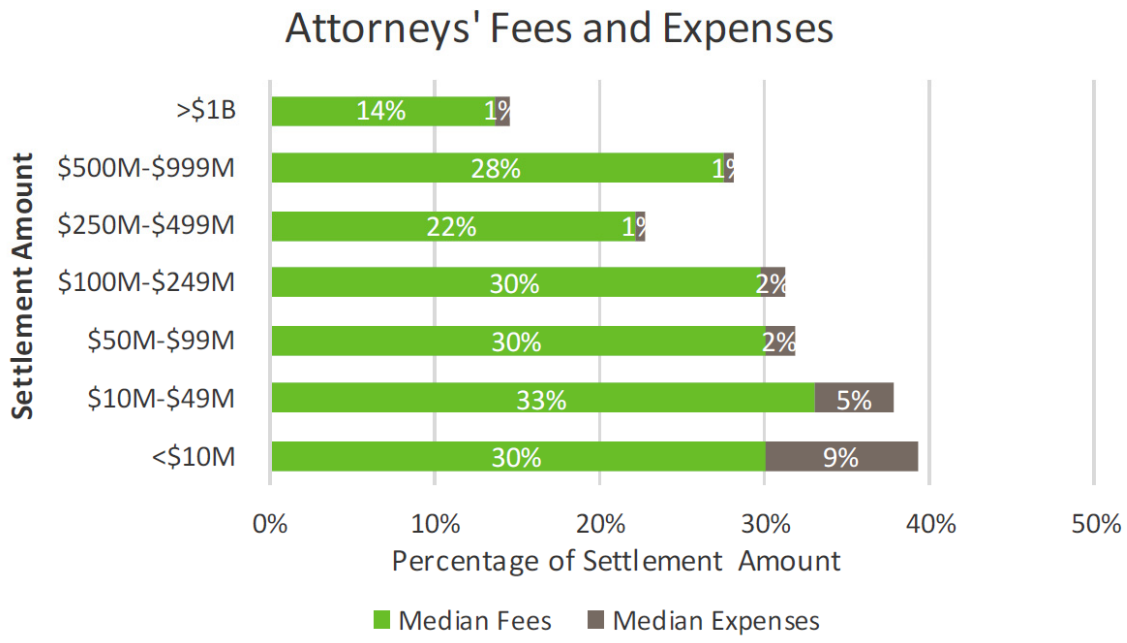
68. Although the odds of losing are great, the value of having a class certified for litigation is enormous. Certification cements counsel's control of the lawsuit and forces the defendant to confront the possibility of suffering a class-wide judgment at trial. The combination greatly enhances plaintiffs' leverage in settlement negotiations.

VIII. FEE AWARDS IN COMPARABLE CASES

69. In my experience, courts want to know how other courts have handled fees in similar cases. Being familiar with empirical studies of fee awards and having co-authored one such study myself, I can confidently report that Class Counsel's request for a fee of 33⅓ percent of the recovery falls in the range that courts typically award.

70. The *2018 Antitrust Annual Report, supra*, at p. 23, contains the most comprehensive information I have been able to find on fee awards in antitrust class actions. It reports that fees and expenses are most often calculated as a percentage of the overall settlement fund, and that lodestar cross checks are common too. The report then breaks out median fee awards and expenses in antitrust class action by size of recovery. As is visually apparent, at most recovery levels, the median award falls between 28 percent and 33 percent. Only when recoveries exceed $1 billion does the median fee award percentage substantially decline.

Figure 12: **Attorneys' Fees and Expenses**
2013 - 2018



Source: University of San Francisco Law School and The Huntington Bank, 2018 Antitrust Annual Report, Fig. 12 (2019).

71. In this case, Class Counsel request a fee award equal to 33⅓ percent of the $62.5 million recovery. The request falls just above the median award—30 percent—for cases in the

relevant size band. But, of course, half of the cases in the size range are above the median, so at 33⅓ the fee request has plenty of company.

72. In fact, there are many far larger settlements in which judges approved comparable fee percentages. Table 2 lists a number of mega-fund cases—cases with settlements exceeding $100 million—with fee awards of 30 percent or more. The table is not comprehensive, and the entries have not been adjusted for inflation. An inflation adjustment would increase the number of qualifying cases and make the older cases in the table seem larger. For example, the $359 million paid in the *Vitamins* antitrust case in 2001 equals $523 million in 2020.

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Table 2: Mega-Fund Settlements With Fee Awards Of 30 Percent Or More				
	Case	**Settlement Amount (in Millions)**	**Fee**	**Type**
1	In re Vitamins Antitrust Litig., No. MDL 1285, 2001 WL 34312839 (D.D.C. July 16, 2001)	359.00	34%	Antitrust
2	In re Urethane Antitrust Litig., 2016 WL 4060156, at *8 (D. Kan. July 29, 2016)	835.00	33%	Antitrust
3	In re Initial Pub. Offering Sec. Litig., 671 F. Supp. 2d 467 (S.D.N.Y. 2009)	586.00	33%	Securities
4	In re Tricor Direct Purchaser Antitrust Litig., No. 05-340-SLR, ECF No. 543 (D. Del. 2009)	250.00	33%	Antitrust
5	In re Buspirone Antitrust Litig., MDL No. 1413 (JGK), 2003 U.S. Dist. LEXIS 26538, at *11 (S.D.N.Y. Apr. 11, 2003)	220.00	33%	Antitrust
6	*In re Neurontin Antitrust Litig.,* No. 02-1830 (D.N.J. Aug. 6, 2014)	$191.00	33⅓%	Antitrust
7	In re Titanium Dioxide Antitrust Litig., No. 10-CV-00318 RDB, 2013 WL 6577029 (D. Md. Dec. 13, 2013)	163.50	33%	Antitrust
8	In re Se. Milk Antitrust Litig., No. 2:07-CV 208, 2013 WL 2155387, at *8 (E.D. Tenn. May 17, 2013)	158.60	33%	Antitrust
9	In re Flonase Antitrust Litig., 951 F. Supp. 2d 739 (E.D. Pa. 2013)	150.00	33%	Antitrust
10	In re Apollo Grp. Inc. Sec. Litig., No. CV 04-2147-PHX-JAT, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012)	145.00	33%	Securities
11	In re Plasma-Derivative Protein Therapies Antitrust Litig., No. 09-cv-07666, ECF Nos. 693, 697, 697-1 and 701 (N.D. Ill. 2014)	128.00	33%	Antitrust
12	Erica P. John Fund, Inc. v. Halliburton Co., No. 02-xc-01152, ECF No. 844 (N.D. Tex. Apr. 25, 2018)	100.00	33%	Securities
13	Dahl v. Bain Capital Partners, LLC, No. 07-CV-12388, ECF No. 1095 (D. Mass. Feb 2, 2015).	590.50	33%	Antitrust

Table 2: Mega-Fund Settlements With Fee Awards Of 30 Percent Or More				
	Case	**Settlement Amount (in Millions)**	**Fee**	**Type**
14	In re Relafen Antitrust Litig., No. 01-12239, ECF No. 297 (D. Mass. Apr. 9, 2004)	175.00	33%	Antitrust
15	Standard Iron Works v. Arcelormittal, et al., No. 08-cv-5214, ECF. No. 539 (N.D. Ill. 2014)	163.90	33%	Antitrust
16	In re Auto. Refinishing Paint Antitrust Litig., No. MDL NO 1426, 2008 WL 63269 (E.D. Pa. Jan. 3, 2008)	105.75	33%	Antitrust
17	Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1241 (S.D. Fla. 2006)	1075.00	31%	Securities
18	In re Checking Account Overdraft Litig., 830 F. Supp. 2d 1330, 1358 (S.D. Fla. 2011)	410.00	30%	Antitrust
19	Schuh v. HCA Holdings Inc., No. 3:11-cv-01033, ECF No. 563 at 1 (M.D. Tenn. Apr. 14, 2016)	215.00	30%	Securities
20	In re Linerboard Antitrust Litig., No. CIV.A. 98-5055, 2004 WL 1221350, at *19 (E.D. Pa. June 2, 2004), amended, No. CIV.A.98-5055, 2004 WL 1240775 (E.D. Pa. June 4, 2004)	203.00	30%	Antitrust
21	City of Pontiac General Employees' Retirement System v. Wal-Mart Stores, Inc. et al., No. 12-cv-05162, ECF No. 458 (W.D. Ark. 2019)	160.00	30%	Securities
22	In re Polyurethane Foam Antitrust Litig., No. 1:10 MD 2196, 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015), appeal dismissed (Dec. 4, 2015)	147.80	30%	Antitrust
23	In re: Informix Corp. Sec. Litig. No 97-CV-1289-CRB, ECF No. 471 (N.D. Cal., Nov 23, 1999)	142.00	30%	Securities
24	Anwar et al v. Fairfield Greenwich Limited et al, No. 09-cv-0118, ECF No. 1457 (S.D.N.Y. Nov. 20, 2015)	125.00	30%	Securities
25	Kurzweil v. Philip Morris Cos., 1999 U.S. Dist. LEXIS 18378, (S.D.N.Y. Nov 24, 1999)	123.80	30%	Securities
26	In re Ikon Office Sols., Inc., Sec. Litig., 194 F.R.D. 166 (E.D. Pa. 2000)	111.00	30%	Securities and Derivative

Table 2: Mega-Fund Settlements With Fee Awards Of 30 Percent Or More				
	Case	**Settlement Amount (in Millions)**	**Fee**	**Type**
27	In re Morgan Keegan Open-End Mutual Fund Litigation, No. 07-cv-02784, ECF No. 435 (W.D. Tenn. Aug 2, 2016)	110.00	30%	Securities
28	In re Prison Realty Sec. Litig., No. 3:99–0458, 2001 U.S. Dist. LEXIS 21942 (M.D. Tenn. Feb. 9, 2001).	104.00	30%	Securities

73. Table 2 shows what everyone knows: Judges award fees that they believe are appropriate in the circumstances. This typically means applying percentages in the normal range, and it often means doing so even when settlements are unusually large.

IX. LODESTAR CROSS-CHECK

74. When awarding fees, courts often gauge their reasonableness by performing lodestar cross-checks. These cross-checks employ two components: the lodestar basis, which combines hourly rates and time expended; and a multiplier, which is a factor that brings the basis into line with the fee request. I discuss both quantities here.

75. Before doing so, I wish to note that I oppose the use of cross-checks and have argued against them in print. By assigning weight to cross-checks, courts encourage lawyers to expend time rather than to conserve it. In other words, courts unintentionally penalize efficiency and reward inefficiency. To the best of my knowledge, claimants never use the lodestar method when hiring lawyers directly. I therefore see no reason for courts to rely on it when assessing the reasonableness of class counsel's fees.

76. Turning to the comparison itself, Class Counsel's compensation request reflects a lodestar basis of approximately $19.9 million in fees and a multiplier of 1.05. Class Counsel reports all but one lawyer at the partner level billing between $550 and $995 per hour, other counsel billing $475 to $845 per hour, and associates billing $300 to $700 per hour.

77. There are many sources of information that may help assess the reasonableness of the requested rates. For example, one can study the fee applications that lawyers submit in bankruptcy proceedings. Using this approach, one learns that many lawyers are compensated at rates far higher than those requested here. For example, in the Sears bankruptcy proceeding, the fee application submitted in 2019 by Weil, Gotshal & Manges LLP, the debtors' attorneys, includes dozens of lawyers whose hourly charges exceed $1,000, with nine lawyers charging $1,500 per hour or more. Unlike Class Counsel, these lawyers did not work on contingency. Even so, the bankruptcy judge approved the fee request in full.

78. Even higher hourly rates were sought in the Toys R' Us bankruptcy, where Kirkland & Ellis LLP serves as debtors' counsel. There, the highest hourly rate was $1,795, the blended rate for all partners, of which there were dozens, was $1,227, and the blended rate for all timekeepers, including paralegals and support staff, was $901. The blended rate for all timekeepers compared to the top rates being requested by partners here.

79. Because White & Case LLP is serving as defense counsel in this litigation, I reproduce below a chart showing the hourly rates its lawyers recently requested in the Joerns Woundco Holdings, Inc. bankruptcy proceeding. First and Final Fee Application of White & Case LLP for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Debtors for the Period of June 24, 2019 through and including July 25, 2019, *In re Joerns Woundco Holdings, Inc.*, U.S Bankruptcy Court for the District of Delaware, Case No. 19-11401 (JTD), (filed Oct. 4, 2019). As can be seen, the requested rates are similar to those mentioned above and are more than on par with those sought by Class Counsel. When one recalls that Class Counsel worked on contingency, its requested hourly rates can only seem fair.

COMPENSATION BY PROFESSIONAL PERSON
WHITE & CASE LLP
JUNE 24, 2019 TO JULY 25, 2019

Timekeeper	Year of Admission	Hourly Rate ($)	Total Hours	Total Compensation ($)
Partner				
David Turetsky*	2003	1,245	195.60	243,522.00
Elizabeth Feld*	2001	1,095	29.30	32,083.50
Gregory M. Owens	1983	1,245	20.00	24,900.00
John M. Reiss	1986	1,545	2.70	4,171.50
Kim Haviv*	2009	1,095	14.30	15,658.50
Luke Laumann	2010	1,095	32.10	35,149.50
Philip Abelson*	2000	1,245	141.80	176,541.00
Rupa Briggs	2006	1,095	3.10	3,394.50
Sang I. Ji	1996	1,245	3.30	4,108.50
	Total Partner		**442.20**	**526,216.50**[1]
Counsel				
Fan B. He	2007	995	11.40	11,343.00
Richard Graham	2000	995	24.80	24,676.00
Tal Marnin	1997	995	35.70	35,521.50
	Total Counsel		**71.70**	**71,341.50**
Associates				
Adriana Foreman*	2017	650	86.70	56,355.00
Amanda Parra Criste*	2015	840	177.80	149,352.00
Brett Bakemeyer*	2017	770	23.50	18,095.00
Brooks Barker	2018	650	5.40	3,510.00
Jennifer McWhaw	N/A	770	78.50	60,445.00
John Ramirez*	2009	950	171.20	162,640.00
Kathryn Sutherland-Smith	2019	770	54.00	41,580.00
Mitchell Li	2014	550	2.10	1,155.00
Morgan Somerset	2019	550	29.10	16,005.00
Rashida Adams	2015	870	4.70	4,089.00
Scott Schilson	2019	550	5.20	2,860.00
	Total Associates		**636.80**	**505,691.00**[2]
Paraprofessionals				
Aileen Venes	N/A	290	4.50	1,305.00
Carter Ballentine	N/A	290	4.60	1,334.00
Deanna Hirshorn	N/A	290	7.90	2,291.00
Hannah Kim	N/A	340	23.50	7,990.00
Katelynn Pan	N/A	290	25.40	7,366.00
	Total Paraprofessionals		**65.90**	**20,286.00**

* Nonworking travel time is billed at 50% of the applicable regular billing rate.

[1] This amount reflects a 50% reduction in fees for non-working travel time.

[2] This amount reflects a 50% reduction in fees for non-working travel time.

80. Looking at bankruptcy cases more broadly, a survey of almost 3,000 fee requests found that, "[i]n major markets, bankruptcy partners make $1,000 an hour or more." Katelyn Polantz, *In Bankruptcy, Flat is Fine; Median Rates at Large Firms Ran $595 Per Hour,* The National Law Journal, May 16, 2016.

81. Finally, one can consult surveys of law firms' billing rates, such as those taken by the NATIONAL LAW JOURNAL (NLJ). The number of firms participating in the NLJ surveys varies from year to year, but always exceeds 100. The NLJ surveys are often cited to courts as evidence supporting hourly rates in fee applications. *See, e.g.*, *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1172-73 (C.D. Cal. 2010) (admitting into evidence and relying upon expert report by Professor William Rubenstein which was based in part on NLJ surveys).

82. The NLJ surveys report that senior partners at large law firms often charge $1000 per hour or more. *See* Karen Sloan, *NLJ Billing Survey: $1,000 Per Hour Isn't Rare Anymore,* The National Law Journal (January 13, 2014). Reading the text of the article, one learns that "[n]early 20 percent of the firms included in The National Law Journal's annual survey of large law firm billing rates [in 2014] had at least one partner charging more than $1,000 an hour." Lawyers who practice in the Supreme Court routinely charge more than $1,000 per hour too. *Billing Rates*, The National Law Journal Supreme Court Brief (Online), Sept. 6, 2019.

83. The 2014 NLJ survey, which contained information for 159 of the largest law firms in the U.S., found a median rate (half above/half below) for the highest partner billing rate category of $775 and a median high hourly rate for associates of $510. Since then, rates at major law firms have risen, but even so the blended rate that Class Counsel requests falls with the identified range.

84. As explained, Class Counsel are excellent lawyers who should be paid at rates comparable to those charged by other lawyers in the top tier. Having considered a variety of sources, it is my opinion that the requested hourly rates are reasonable.

85. I turn now to the multiplier portion of the lodestar, which will equal 1.05 if the Court awards 33⅓ percent of the recovery as fees. This multiplier is far below average. A study published in 2017 reported a mean multiplier of 1.82 for all federal class actions. Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 966 (2017). There is no doubt that the requested multiplier is reasonable and falls within the range the Court has discretion to award.

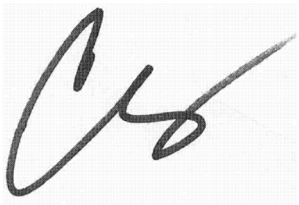
X. COMPENSATION

86. I received a flat fee of $30,000 for preparing this Report. I have no personal stake in the outcome of this matter or the attorneys' fees awarded.

XI. CONCLUSION

87. For the reasons set out above, I believe that Class Counsel's request for a fee award equal to 33⅓ percent of the gross recovery is reasonable and should be approved.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 5th day of June, 2020, at Empire, Michigan.



CHARLES SILVER

EXHIBIT 1: RESUME OF PROFESSOR CHARLES SILVER

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School of Law, University of Texas at Austin, 1987-2015
Roy W. and Eugenia C. McDonald Endowed Chair in Civil Procedure
W. James Kronzer Chair in Trial & Appellate Advocacy
Cecil D. Redford Professor
Robert W. Calvert Faculty Fellow
Graves, Dougherty, Hearon & Moody Centennial Faculty Fellow
Assistant Professor

University of Michigan Law School, Fall 2018
Visiting Professor

Harvard Law School, Fall 2011
Visiting Professor

Vanderbilt University Law School, Fall 2003
Visiting Professor

University of Michigan Law School, Fall 2018 & Fall 1994
Visiting Professor

University of Chicago, 1983-1984
Managing Editor, *Ethics: A Journal of Social, Political and Legal Philosophy*

EDUCATION

Yale Law School, JD (1987)
University of Chicago, MA (Political Science) (1981)
University of Florida BA (Political Science) 1979

PUBLICATIONS

Special Projects

PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION (with Samuel Issacharoff, Reporter, and Robert Klonoff and Richard Nagareda, Associate Reporters) (American Law Institute 2010).

Invited Academic Member, ABA/Tort Trial & Insurance Practice Section, Task Force on Contingent Fees, "Report on Contingent Fees In Class Action Litigation," 25 Rev. Litig. 459 (2006).

Invited Academic Member, ABA/Tort Trial & Insurance Practice Section, Task Force on Contingent Fees, "Report on Contingent Fees In Mass Tort Litigation," 42 Tort Trial & Insurance Practice Law Journal 105 (2006).

Invited Academic Member, ABA/Tort Trial & Insurance Practice Section, Task Force on Contingent Fees, "Report on Contingent Fees In Medical Malpractice Litigation," 25 Rev. Litig. 459 (2006).

PRACTICAL GUIDE FOR INSURANCE DEFENSE LAWYERS (2002) (with Ellen S. Pryor and Kent D. Syverud, Co-Reporters); published on the IADC website (2003); revised and distributed to all IADC members as a supplement to the Defense Counsel J. (2004).

Books

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OVERCHARGED: WHY AMERICANS PAY TOO MUCH FOR HEALTH CARE (with David A. Hyman) (Cato Institute, 2018).

HEALTH LAW AND ECONOMICS, Vols. I and II (coedited with Ronen Avraham and David A. Hyman) (Edward Elgar 2016).

LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION, (coedited with Richard Nagareda, Robert Bone, Elizabeth Burch and Patrick Woolley) (Foundation Press, 2nd Ed. 2012) (updated annually through 2018).

PROFESSIONAL RESPONSIBILITIES OF INSURANCE DEFENSE COUNSEL (with William T. Barker) (LexisNexis 2012) (updated annually through 2017).

Articles and Book Chapters by Subject Area (* indicates Peer Reviewed)

Health Care Law & Policy

1. "There is a Better Way: Give Medicaid Beneficiaries the Money," G'town J. Law & Pub. Pol'y, (forthcoming 2020) (with David A. Hyman)

2. "Regulating Pharmaceutical Companies' Financial Largesse," 7:25 Israeli J. Health Policy Res. (2018), https://doi.org/10.1186/s13584-018-0220-5 (with Ronen Avraham).*

3. "Medical Malpractice Litigation," (with David A. Hyman) OXFORD RESEARCH ENCYCLOPEDIA OF ECONOMICS AND FINANCE (2019), DOI: 10.1093/acrefore/9780190625979.013.365.*

4. "It Was on Fire When I Lay Down on It: Defensive Medicine, Tort Reform, and Healthcare Spending," (with David A. Hyman) OXFORD HANDBOOK OF AMERICAN HEALTH LAW, I. Glenn Cohen, Allison Hoffman, and William M. Sage, eds. (2017).*

5. "Compensating Persons Injured by Medical Malpractice and Other Tortious Behavior for Future Medical Expenses Under the Affordable Care Act," (with Maxwell J. Mehlman, Jay Angoff, Patrick A. Malone, and Peter H. Weinberger)25 Annals of Health Law 35 (2016).

6. **"**Double, Double, Toil and Trouble: Justice-Talk and the Future of Medical Malpractice Litigation," (with David A. Hyman) 63 DePaul L. Rev. 574 (2014) (invited symposium).

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8. "Health Care Quality, Patient Safety and the Culture of Medicine: 'Denial Ain't Just A River in Egypt,'" (with David A. Hyman), 46 New England L. Rev. 101 (2012) (invited symposium).

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12. "Medical Malpractice Reform Redux: Déjà Vu All Over Again?" XII Widener L. J. 121 (2005) (with David A. Hyman) (invited symposium).

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15. "Believing Six Improbable Things: Medical Malpractice and 'Legal Fear,'" 28 Harv. J. L. and Pub. Pol. 107 (2004) (with David A. Hyman) (invited symposium).

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18. "Fictions and Facts: Medical Malpractice Litigation, Physician Supply, and Health Care Spending in Texas Before and After HB 4," 51 Tex. Tech L. Rev. 627 (2019). (with David A. Hyman and Bernard Black) (invited symposium on the 15th anniversary of the enactment of HB4).

19. "Insurance Crisis or Liability Crisis? Medical Malpractice Claiming in Illinois, 1980-2010," 13 J. Empirical Legal Stud. 183 (2016) (with Bernard S. Black, David A. Hyman, and Mohammad H. Rahmati).

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24. "O'Connell Early Settlement Offers: Toward Realistic Numbers and Two-Sided Offers," 7 J. Empirical Legal Stud. 379 (2010) (with Bernard S. Black and David A. Hyman).*

25. "The Effects of 'Early Offers' on Settlement: Evidence From Texas Medical Malpractice Cases, 6 J. Empirical Legal Stud. 723 (2009) (with David A. Hyman and Bernard S. Black).*

26. "Estimating the Effect of Damage Caps in Medical Malpractice Cases: Evidence from Texas," 1 J. Legal Analysis 355 (2009) (with David A. Hyman, Bernard S. Black, and William M. Sage) (inaugural issue).*

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32. "Screening Plaintiffs and Selecting Defendants in Medical Malpractice Litigation: Evidence from Illinois and Indiana," 15 J. Empirical Legal Stud. 41-79 (2018) (with Mohammad Rahmati, David A. Hyman, Bernard S. Black, and Jing Liu)*

33. "Medical Malpractice Litigation and the Market for Plaintiff-Side Representation: Evidence from Illinois," 13 J. Empirical Legal Stud. 603-636 (2016) (with David A. Hyman, Mohammad Rahmati, Bernard S. Black).*

34. "The Economics of Plaintiff-Side Personal Injury Practice," U. Ill. L. Rev. 1563 (2015) (with Bernard S. Black and David A. Hyman).

35. "Access to Justice in a World without Lawyers: Evidence from Texas Bodily Injury Claims," 37 Fordham Urb. L. J. 357 (2010) (with David A. Hyman) (invited symposium).

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37. "The Mimic-the-Market Method of Regulating Common Fund Fee Awards: A Status Report on Securities Fraud Class Actions," RESEARCH HANDBOOK ON REPRESENTATIVE SHAREHOLDER LITIGATION, Sean Griffith, Jessica Erickson, David H. Webber, and Verity Winship, Eds. (forthcoming 2018).

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39. "Regulation of Fee Awards in the Fifth Circuit," 67 The Advocate (Texas) 36 (2014) (invited submission).

40. "Setting Attorneys' Fees In Securities Class Actions: An Empirical Assessment," 66 Vanderbilt L. Rev. 1677 (2013) (with Lynn A. Baker and Michael A. Perino).

41. "The Quasi-Class Action Method of Managing Multi-District Litigations: Problems and a Proposal," 63 Vanderbilt L. Rev. 107 (2010) (with Geoffrey P. Miller).

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49. "Liability Insurance and Patient Safety," 68 DePaul L. Rev. 209 (2019) (with Tom Baker) (symposium issue).

50. "The Treatment of Insurers' Defense-Related Responsibilities in the Principles of the Law of Liability Insurance: A Critique," 68 Rutgers U.L. Rev. 83 (2015) (with William T. Barker) (symposium issue).

51. "The Basic Economics of the Duty to Defend," in D. Schwarcz and P. Siegelman, eds., RESEARCH HANDBOOK IN THE LAW & ECONOMICS OF INSURANCE 438-460 (2015).*

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56. "When Should Government Regulate Lawyer-Client Relationships? The Campaign to Prevent Insurers from Managing Defense Costs," 44 Ariz. L. Rev. 787 (2002) (invited symposium).

57. "Defense Lawyers' Professional Responsibilities: Part II – Contested Coverage Cases," 15 G'town J. Legal Ethics 29 (2001) (with Ellen S. Pryor).

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59. "Flat Fees and Staff Attorneys: Unnecessary Casualties in the Battle over the Law Governing Insurance Defense Lawyers," 4 Conn. Ins. L. J. 205 (1998) (invited symposium).

60. "The Lost World: Of Politics and Getting the Law Right," 26 Hofstra L. Rev. 773 (1998) (invited symposium).

61. "Professional Liability Insurance as Insurance and as Lawyer Regulation: A Comment on Davis, Institutional Choices in the Regulation of Lawyers," 65 Fordham L. Rev. 233 (1996) (invited symposium).

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63. "Are Liability Carriers Second-Class Clients? No, But They May Be Soon-A Call to Arms against the Restatement of the Law Governing Lawyers," 6 Coverage 21 (1996) (with Michael Sean Quinn).

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66. "Introduction to the Symposium on Bad Faith in the Law of Contract and Insurance," 72 Tex. L. Rev. 1203 (1994) (with Ellen Smith Pryor).

67. "Does Insurance Defense Counsel Represent the Company or the Insured?" 72 Tex. L. Rev. 1583 (1994); reprinted in Practicing Law Institute, INSURANCE LAW: WHAT EVERY LAWYER AND BUSINESSPERSON NEEDS TO KNOW (1998).

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69. "What Can We Learn by Studying Lawyers' Involvement in Multidistrict Litigation? A Comment on *Williams, Lee, and Borden, Repeat Players in Federal Multidistrict Litigation*," 5 J. of Tort L. 181 (2014), DOI: 10.1515/jtl-2014-0010 (invited symposium).

70. "The Responsibilities of Lead Lawyers and Judges in Multi-District Litigations," 79 Fordham L. Rev. 1985 (2011) (invited symposium).

71. "The Allocation Problem in Multiple-Claimant Representations," 14 S. Ct. Econ. Rev. 95 (2006) (with Paul Edelman and Richard Nagareda).*

72. "A Rejoinder to *Lester Brickman, On the Theory Class's Theories of Asbestos Litigation,"* 32 Pepperdine L. Rev. 765 (2005).

73. "Merging Roles: Mass Tort Lawyers as Agents and Trustees," 31 Pepp. L. Rev. 301 (2004) (invited symposium).

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75. "The Aggregate Settlement Rule and Ideals of Client Service," 41 S. Tex. L. Rev. 227 (1999) (with Lynn A. Baker) (invited symposium).

76. "Representative Lawsuits & Class Actions," in B. Bouckaert & G. De Geest, eds., INT'L ENCY. OF L. & ECON. (1999).*

77. "I Cut, You Choose: The Role of Plaintiffs' Counsel in Allocating Settlement Proceeds," 84 Va. L. Rev. 1465 (1998) (with Lynn A. Baker) (invited symposium).

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79. "Comparing Class Actions and Consolidations," 10 Tex. Rev. of Litig. 496 (1991).

80. "Justice in Settlements," 4 Soc. Phil. & Pol. 102 (1986) (with Jules L. Coleman).*

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81. "A Private Law Defense of Zealous Representation" (in progress), available at http://ssrn.com/abstract=2728326.

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83. "Fiduciaries and Fees," 79 Fordham L. Rev. 1833 (2011) (with Lynn A. Baker) (invited symposium).

84. "Ethics and Innovation," 79 George Washington L. Rev. 754 (2011) (invited symposium).

85. "In Texas, Life is Cheap," 59 Vanderbilt L. Rev. 1875 (2006) (with Frank Cross) (invited symposium).

86. "Introduction: Civil Justice Fact and Fiction," 80 Tex. L. Rev. 1537 (2002) (with Lynn A. Baker).

87. "Does Civil Justice Cost Too Much?" 80 Tex. L. Rev. 2073 (2002).

88. "A Critique of *Burrow v. Arce*," 26 Wm. & Mary Envir. L. & Policy Rev. 323 (2001) (invited symposium).

89. "What's Not To Like About Being A Lawyer?" 109 Yale L. J. 1443 (2000) (with Frank B. Cross) (review essay).

90. "Preliminary Thoughts on the Economics of Witness Preparation," 30 Tex. Tech L. Rev. 1383 (1999) (invited symposium).

91. "And Such Small Portions: Limited Performance Agreements and the Cost-Quality/Access Trade-Off," 11 G'town J. Legal Ethics 959 (1998) (with David A. Hyman) (invited symposium).

92. "Bargaining Impediments and Settlement Behavior," in D.A. Anderson, ed., DISPUTE RESOLUTION: BRIDGING THE SETTLEMENT GAP (1996) (with Samuel Issacharoff and Kent D. Syverud).

93. "The Legal Establishment Meets the Republican Revolution," 37 S. Tex. L. Rev. 1247 (1996) (invited symposium).

94. "Do We Know Enough about Legal Norms?" in D. Braybrooke, ed., SOCIAL RULES: ORIGIN; CHARACTER; LOGIC: CHANGE (1996) (invited contribution).

95. "Integrating Theory and Practice into the Professional Responsibility Curriculum at the University of Texas," 58 Law and Contemporary Problems 213 (1995) (with Amon Burton, John S. Dzienkowski, and Sanford Levinson,).

96. "Thoughts on Procedural Issues in Insurance Litigation," VII INS. L. ANTHOL. (1994).

Legal and Moral Philosophy

97. "Elmer's Case: A Legal Positivist Replies to Dworkin," 6 L. & Phil. 381 (1987).*

98. "Negative Positivism and the Hard Facts of Life," 68 The Monist 347 (1985).*

99. "Utilitarian Participation," 23 Soc. Sci. Info. 701 (1984).*

Practice-Oriented Publications

100. "Your Role in a Law Firm: Responsibilities of Senior, Junior, and Supervisory Attorneys," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (3D) (Texas Center for Legal Ethics and Professionalism 1996).

101. "Getting and Keeping Clients," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (3D) (Texas Center for Legal Ethics and Professionalism 1996) (with James M. McCormack and Mitchel L. Winick).

102. "Advertising and Marketing Legal Services," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (Texas Center for Legal Ethics and Professionalism 1994).

103. "Responsibilities of Senior and Junior Attorneys," in F.W. Newton, ed., A GUIDE TO THE BASICS OF LAW PRACTICE (Texas Center for Legal Ethics and Professionalism 1994).

104. "A Model Retainer Agreement for Legal Services Programs: Mandatory Attorney's Fees Provisions," 28 Clearinghouse Rev. 114 (June 1994) (with Stephen Yelenosky).

Miscellaneous

105. "Public Opinion and the Federal Judiciary: Crime, Punishment, and Demographic Constraints," 3 Pop. Res. & Pol. Rev. 255 (1984) (with Robert Y. Shapiro).*

PERSONAL

Married to Cynthia Eppolito, PA; Daughter, Katherine; Step-son, Mabon.

Consults with attorneys and serves as an expert witness on subjects in his areas of expertise.

First generation of family to attend college.

EXHIBIT 2: TABLE OF FEE AWARDS IN DIRECT PURCHASER CLASS ACTIONS

Pay-For-Delay Pharmaceutical Antitrust Settlements Where Three Large Direct Purchasers Supported Fee Requests In The Customary Market Range					
Litigation	**Settlement (Millions)**	**Fee**	**AmerisourceBergen**	**Cardinal Health**	**McKesson**
In re Asacol Antitrust Litig., No. 15-12730 (D. Mass. Dec. 7, 2017)	$15.00	33⅓%	Y	Y	Y
In re K-Dur Antitrust Litig., No. 01-1652 (D.N.J. Oct. 5, 2017)	$60.00	33⅓%	Y	Y	Y
In re Prograf Antitrust Litig., No. 11-md-2242 (D. Mass. May 20, 2015)	$98.00	33⅓%	Y	Y	Y
In re Prandin Direct Purchaser Antitrust Litig., No. 10-12141 (E.D. Mich. Jan. 20, 2015)	$19.00	33⅓%	Y	Y	Y
In re Neurontin Antitrust Litig., No. 02-1830 (D.N.J. Aug. 6, 2014)	$191.00	33⅓%	Y	Y	Y
In re Flonase Antitrust Litig., No. 08-cv-3149 (E.D. Pa. June 14, 2013)	$150.00	33⅓%	N	Y	Y
In re Wellbutrin XL Antitrust Litig., No. 08-cv-2431 (E.D. Pa. Nov. 7, 2012)	$37.50	33⅓%	Y	Y	Y
In re Metoprolol Succinate Antitrust Litig., No. 06-52 (D. Del. Jan. 11, 2012)	$20.00	33⅓%	Y	Y	Y
In re Wellbutrin SR Antitrust Litig., No. 04-5525 (E.D. Pa. Nov. 21, 2011)	$49.00	33⅓%	Y	Y	Y
In re Nifedipine Antitrust Litig., No. 03-mc-223-RJL (D.D.C. Jan. 31, 2011)	$35.00	33⅓%	Y	Y	Y
In re Oxycontin Antitrust Litig., No. 04-md-1603-SHS (S.D.N.Y. Jan. 25, 2011)	$16.00	33⅓%	Y	Y	Y
In re Celebrex (Celecoxib) Antitrust Litig., No. 2:14-CV-00361, 2018 WL 2382091 (E.D. Va. Apr. 18, 2018)	$94.00	33⅓%	Y	Y	Y
Meijer, Inc. v. Abbot Labs., No. 07-5985 (N.D. Cal.) (August 11, 2011)	$52.00	33⅓%	Y	Y	Y
King Drug Company of Florence, Inc. v. Cephalon, Inc., No. 2:06-cv-1797-MSG (E.D. Pa. Oct. 8, 2015)	$512.00	27.5%	Y	Y	Y