

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE SOLODYN ANTITRUST LITIGATION

MDL 2503

Civil Action No. 14-md-2503-DJC

This Document Relates to:

*United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund v. Medicis Pharmaceutical Corp., et al.*; No. 1:14-cv-10452 (D. Mass.);

*Local 274 Health & Welfare Fund v. Medicis Pharmaceutical Corp., et al.*; No. 1:14-cv-10439 (D. Mass.);

*Sheet Metal Workers Local No. 25 Health & Welfare Fund v. Medicis Pharmaceutical Corp., et al.*; No. 1:14-cv-10474 (D. Mass.);

*Fraternal Order of Police, Fort Lauderdale Lodge 31, Insurance Trust Fund v. Medicis Pharmaceutical Corp., et al.*; No. 1:14-cv-10440 (D. Mass.);

*Heather Morgan v. Medicis Pharmaceutical Corp., et al.*; No. 1:14-cv-10441 (D. Mass.);

*Plumbers & Pipefitters Local 178 Health & Welfare Trust Fund v. Medicis Pharmaceutical Corp., et al.*; No. 1:14-cv-10453 (D. Mass.);

*International Union of Operating Engineers Local 132 Health and Welfare Fund v. Medicis Pharmaceutical Corp., et al.*; No. 1:14-cv-10442 (D. Mass.);

*City of Providence, Rhode Island v. Medicis Pharmaceutical Corp., et al.*; No. 1:14-cv-10476 (D. Mass.);

**[PROPOSED] CASE MANAGEMENT  
ORDER NO. 3**

*International Union of Operating Engineers Stationary Engineers Local 39 Health & Welfare Trust Fund v. Medicis Pharmaceutical Corp., et al.*; No. 1:13-cv-12435 (D. Mass.);

*Painters District Council No. 30 Health and Welfare Fund v. Medicis Pharmaceutical Corp., et al.*; No. 1:13-cv-12517 (D. Mass.);

*Man-U Service Contract Trust Fund v. Medicis Pharmaceutical Corp., et al.*; No. 2:14-cv-10619 (D. Mass.);

*Allied Services Division Welfare Fund, v. Medicis Pharmaceutical Corp., et al.*; No. 1:14-cv-10786 (D. Mass.); and

*NECA-IBEW Welfare Trust Fund v. Medicis Pharmaceutical Corp., et al.*; No. 1:14-cv-11015 (D. Mass.).

THIS MATTER HAVING BEEN HEARD on **Plaintiffs'** Motion to Consolidate the End-Payor Class Actions, Appoint Interim Co-Lead Counsel, and Enter Case Management Order No. 1, the Court being fully advised, hereby finds and Orders as follows:

**WHEREAS**, certain antitrust actions have been initiated against defendants Medicis Pharmaceutical Corp., Valeant Pharmaceuticals International, Inc., Teva Pharmaceutical Industries, Ltd., Teva Pharmaceuticals USA, Inc., Barr Laboratories, Inc., Impax Laboratories, Inc., Mylan Laboratories, Inc., Matrix Laboratories Ltd., Lupin Limited, Lupin Pharmaceuticals Inc., Ranbaxy Pharmaceuticals, Inc., Ranbaxy Inc., Ranbaxy Laboratories, Ltd., and Sandoz Inc. in connection with an alleged anticompetitive scheme to delay and impair generic competition to extended release minocycline hydrochloride, an acne medication sold by Medicis under the brand name "Solodyn";

**WHEREAS**, on February 25, 2014, the United States Judicial Panel on Multidistrict Litigation (the “Panel”) centralized before this Court ten related end-payor and two related direct purchaser actions for coordinated or consolidated pretrial proceedings, which allege similar efforts to suppress generic competition to Solodyn. *See* Transfer Order, *In re: Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, MDL No. 2503 (J.P.M.L. Feb. 25, 2014), ECF No. 72;

**WHEREAS**, on February 26, 2014, the Panel issued Conditional Transfer Order (CTO-1), which transferred another related end-payor, filed by Man-U Service Contract Trust Fund, to this Court. *See* Conditional Transfer Order, *In re: Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, MDL No. 2503 (J.P.M.L. Feb. 26, 2014, ECF No. 73;

**WHEREAS**, two additional end-payor complaints have also been filed in this District. *See Allied Services Division Welfare Fund v. Medicis Pharm. Corp. et al.*, No. 1:14-cv-10786-DJC (D. Mass. filed Mar. 13, 2014); *NECA-IBEW Welfare Trust Fund v. Medicis Pharm. Corp. et al.*, No. 1:14-cv-11015-DJC (D. Mass. filed Mar. 19, 2014).

**WHEREAS**, the plaintiffs in the thirteen above-captioned actions are end-payors, meaning the last persons in the chain of distribution who pay all or a portion of the purchase price of Solodyn prescriptions not for resale, such as consumers and third-party payors;

**WHEREAS**, all of the end-payor class actions seek damages, pursuant to state antitrust and consumer protection laws, for a proposed class of end-payors of Solodyn;

**WHEREAS**, the two direct purchaser actions centralized before this Court seek to recover damages on behalf of a proposed class of direct purchaser plaintiffs. *See Rochester Drug Co-Operative, Inc. v. Medicis Pharmaceutical Corp., et al.*, 1:14-cv-10438-DCJ (D. Mass.); *Ahold USA, Inc. v. Medicis Pharmaceutical Corp., et al.*, 1:13-cv-12225-DCJ (D. Mass.);

**WHEREAS**, although the direct purchaser and the end-payor actions involve similar factual allegations and seek to hold the same defendants liable for their alleged anticompetitive conduct, the proposed classes of direct purchasers and end-payors have suffered different injuries due to defendants' alleged conduct, are subject to different standing analyses, and bring their respective claims under different statutes or theories;

**WHEREAS**, because of the differences between the direct purchaser and end-payor actions, separate organizational structures are necessary to ensure representation of the respective classes and facilitate the efficient conduct of the litigation;

**WHEREAS**, any subsequently-filed or transferred end-payor class action arising from the same questions of law and fact that alleges substantially the same wrongful conduct against the defendants and seeks certification of the same class for damages will likely entail substantially the same evidence and witnesses; and

**WHEREAS**, in the interests of efficiency, consistency, and judicial economy, all end-payor plaintiffs in the seven above-captioned actions have moved for entry of this Case Management Order;

Accordingly, **THE COURT HEREBY ORDERS:**

**A. Consolidation of All End-Payor Class Actions**

1. Pursuant to Federal Rule of Civil Procedure 42(a), the eleven above-captioned end-payor actions are hereby consolidated for pre-trial purposes.

2. Every pleading filed in the end-payor class actions shall bear the following caption:

|   |  |
|---|--|
| IN RE SOLODYN ANTITRUST<br>LITIGATION<br><br>THIS DOCUMENT RELATES TO:<br><br>All End-Payor Actions | MDL No. 2503<br><br>Master File No. 14-md-2503-DJC |
|---|--|

3. When a pleading or other filed court paper is intended to apply to all actions, the words "All Actions" shall appear immediately after the words "THIS DOCUMENT RELATES TO:" in the caption detailed above. When a pleading or other court paper is intended to apply only to one, or some, but not all, of such actions, the party filing the document shall indicate the action(s) to which the document is intended to be applicable. The parties may indicate, for example, "All End-Payor Class Actions."

4. Any new filings in, or transferred to, this Court that are related to the end-payor class actions within the meaning of Local Civil Rule 40.1(G)(1) shall be deemed consolidated unless an objection is filed within 14 days of notice to counsel for the plaintiff(s) in the newly-filed action, and the objection is sustained.

5. Any individual end-payor action shall be coordinated with the end-payor class actions for discovery and other pre-trial proceedings.

**B. Organization of End-Payor Plaintiffs' Counsel**

6. Pursuant to Federal Rule of Civil Procedure 23(g), the Court appoints the following interim counsel for the proposed class of end-payors:

a. Interim Co-Lead Counsel:

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| Steve D. Shadowen<br>HILLIARD & SHADOWEN LLC<br>39 West Main Street<br>Mechanicsburg, PA 17055<br>Telephone: (855) 344-3928 | Michael M. Buchman<br>MOTLEY RICE LLC<br>600 Third Avenue, 21 <sup>st</sup> Floor<br>New York, NY 10016<br>Telephone: (212) 577-0040 |
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b. Executive Committee for the putative end-payor class:

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| Daniel C. Girard<br>GIRARD GIBBS LLP<br>601 California Street<br>San Francisco, CA 94108<br>Telephone: (415) 981-4800        | Jayne A. Goldstein<br>POMERANTZ GROSSMAN HUFFORD<br>DAHLSTROM & GROSS LLP<br>1792 Bell Tower Lane, Suite 203<br>Weston, FL 33326<br>Telephone: (954) 315-3454 |
| J. Douglas Richards<br>COHEN MILSTEIN<br>88 Pine Street, 14th Floor<br>New York, New York 10005<br>Telephone: (212) 838-7797 | Marvin A. Miller<br>MILLER LAW LLC<br>115 S. LaSalle Street, Suite 2910<br>Chicago, IL 60603<br>Telephone: (312) 332-3400                                     |

c. Interim Liaison Counsel:

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| Glen DeValerio<br>BERMAN DEVALERIO<br>One Liberty Square<br>Boston, MA 02109<br>Telephone: (617) 542-8300 |
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7. Interim Co-Lead Counsel shall have sole authority over the following matters on behalf of plaintiffs in the end-payor class actions: (a) convening meetings of counsel; (b) the initiation, response, scheduling, briefing, and argument of all motions; (c) the scope, order, and conduct of all discovery proceedings; (d) assigning non-duplicative work to be performed by other end-payor plaintiffs' counsel as they may deem appropriate; (e) collecting on a periodic basis contemporaneously-kept time and expense reports from all plaintiffs' counsel; (f) retaining experts; (g) designating which attorneys shall appear at hearings and conferences with the Court; (h) the timing and substance of any settlement negotiations and/or settlement with defendants; (i) the allocation of fees among the various firms doing work in the case, if any are awarded by the Court; and (j) other matters concerning the prosecution of the case.

8. Interim Co-Lead Counsel shall have sole authority to communicate with defendants' counsel, counsel in the related actions, any third-parties, and the Court on behalf of all plaintiffs in the end-payor class actions. Defendants' counsel may rely on all agreements made with Interim Co-Lead Counsel and such agreements shall be binding on all counsel in the end-payor class actions.

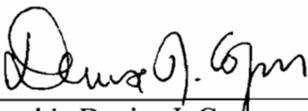
9. The members of the Executive Committee will have significant and meaningful participation in the prosecution of the end-payor class actions, and shall perform such work as may be requested by Interim Co-Lead Counsel. Such participation will include member firms being assigned to specific tasks or subcommittee responsibilities, as well as the commitment to fund the litigation pursuant to assessment by Interim Co-Lead Counsel as necessary for the successful and efficient prosecution of the litigation.

10. Interim Liaison Counsel shall have the administrative responsibilities of: (a) receiving orders, notices, correspondence and telephone calls from the Court on behalf of all end

payor plaintiffs, and shall be responsible for preparing and distributing the same to all end-payor class counsel upon direction from the Court; (b) maintaining and distributing a master service list of all end-payor parties and their respective counsel; and (c) performing other such duties and undertaking other responsibilities as necessary or desirable in connection with the prosecution of the litigation.

**IT IS SO ORDERED.**

Dated: ~~March~~ <sup>August</sup> 8, 2014

  
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Honorable Denise J. Casper