

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: NEXIUM (ESOMEPRAZOLE)
ANTITRUST LITIGATION

MDL No. 2409

This Document Relates To:

Civil Action No.: 1:12-md-2409-WGY

ALL END-PAYOR ACTIONS

~~PROPOSED~~ ^{W/AY} ORDER PRELIMINARILY APPROVING END-PAYOR CLASS
PLAINTIFFS' SETTLEMENT WITH TEVA PHARMACEUTICAL
INDUSTRIES LTD. AND TEVA PHARMACEUTICALS USA, INC.
AND APPROVING NOTICE PLAN

WHEREAS, on April 1, 2015, plaintiffs United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund; Allied Services Division Welfare Fund; Fraternal Order of Police Miami Lodge 20. Insurance Trust Fund; New York Hotel Trades Council & Hotel Assoc. of New York City, Inc. Health Benefits Fund; Laborers International Union of North America Local 35 Health Care Fund; International Brotherhood of Electrical Workers Local 595 Health and Welfare Fund; Laborers International Union of North America Local 17 Health Care Fund; International Union of Machinists and Aerospace Workers District No. 15 Health Fund; Michigan Regional Council of Carpenters Employee Benefits Fund; and A.F. of L. – A.G.C. Building Trades Welfare Plan (collectively, “End-Payor Class Plaintiffs”), on behalf of themselves and the certified End-Payor Class (collectively, “End-Payor Class”), and defendants Teva Pharmaceutical Industries Ltd. and Teva Pharmaceuticals USA, Inc. (collectively, “Teva”), entered into a settlement agreement (“Settlement Agreement”), which sets forth the terms and conditions of the parties’ proposed settlement and the release and dismissal with prejudice of the

End-Payor Class's claims against Teva ("Settlement");

WHEREAS, on April 2, 2015, End-Payor Class Plaintiffs filed a Motion for Preliminary Approval of Proposed Class Action Settlement with Teva and Approval of Notice Plan for the Teva and DRL Settlements ("End-Payor Class Plaintiffs' Motion), requesting the entry of an order preliminarily approving the Settlement Agreement, staying End-Payor Class Plaintiffs' litigation against Teva, approving the proposed Notice Plan, and setting a schedule for final settlement approval. A copy of the Settlement Agreement is attached as Exhibit 1 to the Declaration of Kenneth A. Wexler in support of End-Payor Class Plaintiffs' Motion;

WHEREAS Teva does not oppose End-Payor Class Plaintiffs' request;

WHEREAS the Court certified an End-Payor Class on November 14, 2013, and the End-Payor Class Plaintiffs and Teva have agreed to settle the claims of that certified class, as documented in the Settlement Agreement. The End-Payor Class does not include those consumers and third-party payors that validly excluded themselves and are listed in Exhibit B to the Settlement Agreement; and

WHEREAS the Court is familiar with and has reviewed the record in this case and has reviewed the Settlement Agreement, including the attached exhibits, and has found good cause for entering the following Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Court has jurisdiction to enter this Order. The Court has jurisdiction over the subject matter of this action and over all parties to the action, including all members of the End-Payor Class.

APPROVAL OF SETTLEMENT

2. The terms of the Settlement Agreement dated April 1, 2015, including all exhibits

thereto, are hereby preliminarily approved. This Order incorporates the Settlement Agreement, and terms used in this Order that are defined in the Settlement Agreement have the same meanings. The Settlement Agreement was entered into after arm's-length negotiations by experienced counsel on behalf of the certified End-Payor Class. The Court finds that the Settlement is within the range of reasonableness and warrants preliminary approval.

3. Berdon Claims Administration LLC is hereby appointed as Escrow Agent pursuant to section 5(a) of the Settlement Agreement.

4. Pending further order of the Court, all litigation activity against Teva on behalf of End-Payor Class Plaintiffs is hereby stayed and all hearings, deadlines, and other proceedings related to End-Payor Class Plaintiffs' claims against Teva, other than those incident to the settlement process, are hereby taken off calendar. The stay shall remain in effect until such time that either (i) Teva or End-Payor Class Plaintiffs exercise their right to terminate the Settlement Agreement pursuant to its terms, (ii) Teva elects not to effectuate the Settlement Agreement pursuant to its terms because either Teva's settlement with the Direct Purchaser Class or Teva's settlement with the Individual Retailer Plaintiffs is not effectuated, or (iii) the Court renders a final decision regarding approval of the Settlement, and, if it approves the Settlement, enters final judgment and dismisses End-Payor Class Plaintiffs' claims against Teva with prejudice. Teva shall not be a party to the ongoing proceedings in this case, and Teva is neither bound nor estopped by any findings made hereafter.

5. In the event that the Settlement Agreement fails to become effective in accordance with its terms, or if an order granting final approval to the Settlement Agreement and dismissing End-Payor Class Plaintiffs' claims against Teva is not entered or is reversed, vacated, or materially modified on appeal, this Order shall be null and void.

6. In the event the Settlement Agreement is terminated, not approved by the Court, or the Settlement does not become final pursuant to the terms of the Settlement Agreement, litigation against Teva shall resume in a reasonable manner as approved by the Court upon joint application of End-Payor Class Plaintiffs and Teva.

7. The Court retains exclusive jurisdiction to consider all further matters arising out of or connected with the Settlement Agreement.

APPROVAL OF NOTICE PLAN

8. End-Payor Class Plaintiffs' proposed Notice Plan, as outlined in the Memorandum of Law in Support of End-Payor Class Plaintiffs' Motion and the accompanying declaration from Markham Sherwood of Kurtzman Carson Consultants ("KCC"), complies with Federal Rule of Civil Procedure 23(e) and due process and is otherwise fair and reasonable. End-Payor Class Plaintiffs' Notice Plan is hereby approved.

9. KCC is hereby appointed as Notice Administrator.

10. The forms of Notice, copies of which are attached as Exhibit C to the Settlement Agreement, are approved.

11. Members of the End-Payor Class have been previously afforded the opportunity to opt out of the class. A discretionary second opt-out period pursuant to Federal Rule of Civil Procedure 23(e)(4) is unnecessary.

APPROVAL OF SCHEDULE

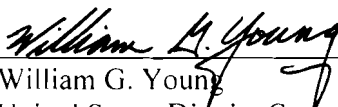
12. KCC and End-Payor Class Plaintiffs shall adhere to the following schedule:

- a. Within 14 days of the date of this Order, KCC shall begin direct mail notice of the Settlement to the End-Payor Class. Internet publication shall begin immediately thereafter.

- b. Within 76 days of this order, all publication notice shall be complete.
- c. Objections to the Settlement must be mailed to Co-Lead Counsel no later than 106 days after the date of this Order.
- d. End-Payor Class Plaintiffs shall file a motion for final approval of the Settlement no later than 127 days after the date of this Order.
- e. Oppositions to End-Payor Class Plaintiffs' final approval motion shall be filed no later than 141 days after the date of this Order.
- f. End-Payor Class Plaintiffs are granted leave to file a reply brief in support of their motion for final approval, which shall be filed no later than 148 days after the date of this Order.
- g. The hearing for final approval shall be set for September 29 2015.

SO ORDERED:

Dated: 8/12/2015, 2015



William G. Young
United States District Court Judge
U.S. District Court for the District of Massachusetts