

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE LOESTRIN 24 FE)	MDL No. 13-2472
ANTITRUST LITIGATION)	
)	Master File No. 1:13-md-2472-WES-PAS
)	
THIS DOCUMENT RELATES TO:)	
ALL END-PAYOR CLASS)	
ACTIONS)	

ORDER

WILLIAM E. SMITH, Chief Judge.

For reasons that will be fully explained in a forthcoming Opinion, the End-Payor Plaintiffs' ("EPPs") Motion for Class Certification, ECF No. 526, is GRANTED IN PART AND DENIED IN PART, insofar as the Court certifies a Third-Party Payor ("TPP") Class, as defined below, but does not certify an EPP class inclusive of consumers. In the forthcoming Opinion, the Court will rule on Defendants' Motion to Exclude the Opinion and Testimony of EPPs' Expert Gary L. French, ECF No. 575; EPPs' Motion to Exclude the Testimony and Opinions of James W. Hughes, Ph.D., ECF No. 634; Defendants' Motion to Exclude the Opinions and Testimony of Indirect Purchaser Plaintiffs' Experts Eric Miller, Laura Craft, and Myron Winkelman, ECF No. 698; EPPs' Motion to Exclude the Opinions and Testimony of Mr. Timothy Kosty and Dr. Bruce Strombom, ECF No. 733; and Defendants' Renewed Motion to Dismiss and Motion for Judgment on the Pleadings as to Claims in EPPs' Second Am.

Consolidated Class Action Compl., ECF No. 576.

The Court certifies the following "TPP Class":

All Third-Party Payor entities in the United States and its territories that indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price for Loestrin 24 Fe and/or its AB-rated generic equivalents in any form, and/or Minastrin 24 Fe and/or its AB-rated generic equivalents in any form, for consumption by their members, employees, insureds, participants, or beneficiaries, other than for resale, during the period September 1, 2009 through and until the anticompetitive effects of Defendants' unlawful conduct cease. For purposes of the Class definition, entities "purchased" Loestrin 24 Fe, Minastrin 24 Fe, or their generic equivalents if they indirectly purchased, paid and/or reimbursed for some or all of the purchase price.

Expressly excluded from the TPP Class are the following entities:

- a. Defendants and their subsidiaries, or affiliates;
- b. All federal or state governmental entities, excluding cities, towns or municipalities with self-funded prescription drug plans;
- c. All entities who purchased Loestrin 24 Fe or its AB-rated generic equivalent, and/or Minastrin 24 Fe or its AB-rated generic equivalent, for purposes of resale or directly from Defendants or their affiliates;
- d. Fully insured health plans (i.e., Plans that purchased insurance from another third-party payor covering 100% of the Plan's reimbursement obligations to its members); and
- e. Pharmacy Benefit Managers.

See EPPs' Reply Mem. of Law in Further Supp. of Their Mot. for Class Certification and Appointment of Class Counsel 6-7, ECF No. 636. The Court further designates the named TPPs (A.F. of L. - A.C.G. 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 Welfare Benefits Fund, United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund) as Class Representatives; appoints Motley Rice LLC, Miller Law LLC, Hilliard & Shadowen LLP, and Cohen Milstein Sellers & Toll PLLC as Co-Lead Class Counsel; and appoints Motley Rice LLC as Liaison Counsel.

Counsel for the TPP Class shall file with the Court, within three (3) business days, a chart indicating which causes of action in which states they continue to press at this juncture. The Court asks counsel, in formulating this chart, to be particularly mindful that they may be ineligible to bring certain state-law claims because they are not natural persons, and that facilitating the narrowing of claims where required by law will help ensure that this case may commence trial on January 6, 2020, as scheduled.

IT IS SO ORDERED.



William E. Smith
Chief Judge

Date: September 17, 2019