

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

VISTA HEALTHPLAN, INC., *et al.*,

Plaintiffs,

v.

CEPHALON, INC., *et al.*,

Defendants.

Case No. 2:06-cv-1833 (MSG)

Honorable Mitchell S. Goldberg

END-PAYORS' PLAN OF ALLOCATION

Pursuant to the three Class Settlement Agreements entered into by the End-Payor Plaintiffs and the Defendants in this litigation, a Class Settlement Fund has been established for the benefit of certain Consumers and Third-Party Payors.

The Class Settlement Fund will be distributed pursuant to this Plan of Allocation as outlined below.

I. DEFINITIONS

As used in this Plan of Allocation, these terms shall have the following meaning¹:

(a) “Authorized Claim” means Authorized Consumer Claims and Authorized TPP Claims, which are eligible for payment under this Plan of Allocation;

(b) “Authorized Consumer Claimant” means a Consumer Class Member who submits a claim form that is acceptable or authorized in whole or in part by the Settlement Administrator (“Authorized Consumer Claim”). An Authorized Consumer Claim cannot be greater than the total amount paid by the Consumer Class Member for Provigil and

¹ All other Capitalized Terms not otherwise defined herein shall have the meaning ascribed to them in the Settlement Agreements, True-Up Agreement for the Cephalon/Barr/Teva Settlement or Preliminary Approval Order.

Modafinil (per the requirements and conditions of the Consumer claim form and as approved by the Settlement Administrator);

(c) “Authorized TPP Claimant” means a TPP Class Member who submits a claim form that is approved in whole or in part by the Settlement Administrator (“Authorized TPP Claim”). An Authorized TPP Claim equals the total amount paid by the TPP Class Member for Provigil and Modafinil (per the requirements and conditions of the TPP claim form and as approved by the Settlement Administrator);

(d) “Cephalon Settlement Agreement” means the settlement agreement entered into by the Cephalon Defendants (i.e. Cephalon, Barr and Teva) and the End-Payor Plaintiffs in this case;

(e) “Cephalon Settlement Fund” means \$48,000,000, plus any interest, less any expenses;

(f) “Claimant” means anyone who has filed a claim in this case;

(g) “Class Attorneys’ Fees and Costs” means any attorneys’ fees, expenses and litigation costs awarded by the Court to plaintiffs’ counsel who participated in the fee petition submitted to the Court;

(h) “Class Member” means any person or entity falling within the definition of the Settlement Class and who is not a Class Opt-Out;

(i) “Class Opt-Out” means any person or entity falling within the definition of the Settlement Class who timely and validly submits a request for exclusion from the Settlement Class in accordance with the procedures set forth by the Court;

(j) “Class Settlement Agreements” mean the following Settlement Agreements executed by the Parties in this case: (1) Cephalon Settlement Agreement; (2) Mylan Settlement Agreement; and (3) Ranbaxy Settlement Agreement;

(k) “Class Settlement Fund” means the sum of all monies provided by Defendants pursuant to the Class Settlement Agreements to settle this case;

(l) “Consumer” means any natural person, including living persons as well as the executors, heirs, administrators, trustees, or other authorized representatives of deceased persons;

(m) “Consumer Class Member” means a Consumer who is a Class Member;

(n) “Effective Date” means the earliest date upon which all three settlements become “Final” as set forth in each Class Settlement Agreement;

(o) “Escrow Account” means any escrow account established pursuant to any Escrow Agreement entered into by the Parties;

(p) “Escrow Administration Costs” means the administrative costs associated with administering the Escrow Account(s);

(q) “Ineligible Claim” means any claim filed by a Claimant that is not eligible for payment under this Plan of Allocation;

(r) “Lead Counsel” means the law firms of: (i) Spector Roseman & Kodroff P.C.; (ii) Kessler Topaz Meltzer & Check LLP; and (iii) Criden & Love, P.A.;

(s) “Mylan Settlement Agreement” means the settlement agreement entered into by the Mylan Defendants and the End-Payor Plaintiffs in this case;

(t) “Mylan Settlement Fund” means \$14,377,600, plus any interest, less any expenses;

(u) “Net Consumer Settlement Pool” has the same meaning ascribed to it as in the Cephalon Plan of Allocation;

(v) “Net TPP Settlement Pool” has the same meaning ascribed to it as in the Cephalon Plan of Allocation;

(w) “Preliminary Approval Order” means an Order by the Court in this case preliminarily approving all of the Class Settlement Agreements;

(x) “Ranbaxy Settlement Agreement” means the settlement agreement entered into by the Ranbaxy Defendants and the End-Payor Plaintiffs in this case;

(y) “Ranbaxy Settlement Fund” means \$3,500,000, plus any interest, less any expenses;

(za) “Settlement Administrator” means A.B. Data, Ltd. or other company approved by the Court to send out notice to Class Members and administer the claims process in this case;

(aa) “Settlement Administration” means the administration of the settlement by the Settlement Administrator, including, *inter alia*, receiving, processing and auditing Consumer and TPP claims, and distributing checks to Authorized Consumer and TPP Claimants;

(bb) “Settlement Administration Costs” means the costs of conducting Settlement Administration;

(cc) “Settlement Class” means the Class(es) certified by the Court in the Preliminary Approval Order;

(dd) “Settlement Funds” means the Cephalon Settlement Fund, Mylan Settlement Fund, and Ranbaxy Settlement Fund;

(ee) “Settlement Notice” means the Notice Plan approved by the Court;

(ff) “Settlement Notice Costs” means the costs of implementing the Settlement Notice;

(gg) “SHP” means any TPP which is identified in Schedule A attached to the Settlement Agreement between End-Payors and Cephalon;

(hh) “State Attorney General Settlement” means a \$35 million settlement that 48 States and the District of Columbia reached with the Cephalon Defendants in the lawsuit styled *State of New York, et al. v. Cephalon, Inc. et al.*, Civil No. 2:16-CV 4234 (E.D. Pa.) regarding Provigil and Modafinil, as well as the claim process in which Consumers recovered monies from the settlement;

(ii) “Third-Party Payor” or “TPP” means any health insurance company, administrator, health maintenance organizations, self-funded health and welfare plans, and other health benefit providers and entities with self-funded plans that contract with a health insurer or administrator to administer their prescription drug benefits;

(jj) “TPP Class Member” means a TPP who is a Class Member;

(kk) “TPP Settlement Pool” has the same meaning ascribed to it as in the True-Up Agreement; and

(ll) “True-Up Agreement” means the “True-Up Agreement for the Cephalon/Barr/Teva Settlement” entered into by the SHP Group and End-Payor Plaintiffs in this case.

II. PROCESSING AND REVIEW OF CLAIM FORMS

The Settlement Administrator will review and process all submitted claims, under the supervision and guidance of Lead Counsel. The Claims Administrator will first determine whether a claim form is timely, properly completed, and signed. If the Settlement Administrator reasonably determines that it needs further information or documentation to properly process a claim, it will so notify the Claimant in writing. The notification will explain how the Claimant can cure the deficiency and will provide the Claimant a reasonable deadline (generally twenty-five (25) days from the mailing date of the deficiency notification) for submitting a response to the Settlement Administrator. If a Claimant fails to correct the deficiency within the time specified, the claim may be rejected in whole or in part by the Settlement Administrator.

After completing the claim process, the Settlement Administrator will classify all claims as either “Authorized” or “Ineligible.” It will further classify “Authorized Claims” as: (i) claims recommended for approval as filed; or (ii) claims recommended for approval but with modification. The Settlement Administrator will classify as “Ineligible Claims” those claims that it recommends for rejection and will identify the bases for such rejection.

No claim shall be paid if a Claimant’s recovery would be less than \$10.00.

III. DISBURSEMENTS FROM THE CLASS SETTLEMENT FUND

A. DISBURSEMENTS PRIOR TO FINAL APPROVAL

Prior to the Effective Date of the Class Settlement Agreements, the Settlement Administrator and Escrow Agent shall pay any and all allowed Settlement Notice Costs, Settlement Administration Costs, Escrow Administration Costs and taxes (including, but not limited to, estimated taxes, interest or penalties) from the Class Settlement Fund, as provided for in each Class Settlement Agreement and in accordance with the Preliminary Approval Order.

Specifically, all Escrow Administrative Costs and taxes related to a particular Settlement Fund shall be borne by that particular Settlement Fund. All other costs shall be paid *pro rata* from the three Settlement Funds in accordance with the amount of each Settlement Fund (*i.e.*, Cephalon – 73%, Mylan 22%; and Ranbaxy- 5%) (“*Pro Rata Basis*”).

B. DISBURSEMENTS AFTER FINAL APPROVAL

After the Effective Date of the Class Settlement Agreements, the Settlement Administrator shall distribute the Class Settlement Fund in the following order and in accordance with the following conditions (unless modified by the Court):

(1) The Settlement Administrator shall transfer the Cephalon, Mylan and Ranbaxy Settlement Funds from their escrow accounts into three separate accounts maintained by the Settlement Administrator, and shall keep the three Settlement Funds in separate accounts unless otherwise provided for below;

(2) The Settlement Administrator shall follow the True-Up Agreement for the Cephalon Settlement Fund, consistent with the terms in this Plan of Allocation;²

(3) Any and all allowed costs (including, but not limited to, additional Settlement Notice Costs, Settlement Administration Costs, Escrow Administration Costs, taxes (including, but not limited to, estimated taxes, interest or penalties)) shall be paid from the three Settlement Funds as provided for in each Class Settlement Agreement. Any additional Escrow Administrative Costs and taxes related to a particular Settlement Fund shall be borne by that particular Settlement Fund. All other costs shall be funded from the three Settlement Funds on the *Pro Rata Basis*;

² If the Settlement Administrator believes that a conflict exists between the Plan of Allocation and the True-Up Agreement, it shall raise the issue with Lead Counsel and SHP Group Counsel so that the issue can be resolved. If the issue cannot be resolved amongst counsel, then Lead Counsel will raise the issue with the Court for final resolution.

(4) Any Class Attorneys' Fees and Costs shall be paid to Lead Counsel from the three Settlement Funds on the *Pro Rata* Basis for distribution and allocation in Lead Counsel's sole discretion to all plaintiffs' counsel who participated in the fee petition submitted to the Court;

(5) Any Court-authorized incentive awards shall be paid from the three Settlement Funds on the *Pro Rata* Basis;

(6) The Settlement Administrator shall estimate any future Settlement Administration Costs, Escrow Administration Costs and taxes (including, but not limited to, estimated taxes, interest or penalties) likely to be incurred through completion of the claim process, and shall reserve those amounts from the three Settlement Funds for future payment. Any additional taxes or Escrow Administrative Costs related to a particular Settlement Fund shall be borne by that particular Settlement Fund. All other costs shall be funded from the three Settlement Funds on the *Pro Rata* Basis;

(7) Following the above disbursements, the Settlement Administrator shall combine the remaining funds in the Mylan Settlement Fund with the remaining funds in the Ranbaxy Settlement Fund into one settlement fund ("M/R Settlement Fund");

(8) The Settlement Administrator shall take 14% (fourteen percent) of the M/R Settlement Fund and add it to the Net Consumer Settlement Pool into one settlement fund ("Final Consumer Distribution Fund");

(9) The Settlement Administrator shall pay all Authorized Consumer Claims from the Final Consumer Distribution Fund as follows:

(i) If there are sufficient funds in the Final Consumer Distribution Fund, each Authorized Consumer Claimant shall receive 100% of their Authorized Consumer Claim
(Note: In calculating whether 100% of the Authorized Consumer Claim has been met, the

Settlement Administrator shall include any monies that the Claimant has already received, based on the Settlement Administrator's records, in connection with the State Attorney General Settlement);

(ii) The amount of each Authorized Consumer Claimant's Authorized Consumer Claim amount shall be reduced by the amount of money such Authorized Consumer Claimant has already received, based on the Settlement Administrator's records, in connection with the State Attorney General Settlement.

(iii) If there are insufficient funds to pay each Authorized Consumer Claimant 100% of their Authorized Consumer Claim, then each Authorized Consumer Claimant shall receive a *pro rata* share of the Final Consumer Distribution Fund;

(iv) If after all Authorized Consumer Claimants are paid 100% of their Authorized Consumer Claims from the Final Consumer Distribution Fund, funds remain in the Final Consumer Distribution Fund, these remaining funds shall be deemed the "Consumer Left Over Fund" and shall be allocated as provided below in Step 10; and

(v) Before any funds are disbursed to Authorized Consumer Claimants, the Settlement Administrator shall provide Lead Counsel with a chart of the proposed payments to be made to Authorized Consumer Claimants, and if approved by Lead Counsel, Lead Counsel shall file a motion with the Court seeking approval of the payments to Authorized Consumer Claimants. No payments to Authorized Consumer Claimants shall be made unless approved by the Court.

(10) If there are funds in the Consumer Left Over Fund, then the Settlement Administrator shall calculate the "SHP Consumer Percentage," which shall equal the Net

Consumer Settlement Pool divided by the Final Consumer Distribution Fund before any disbursements;

(11) If there are funds in the Consumer Left Over Fund, then the Settlement Administrator shall apply the SHP Consumer Percentage to the Consumer Left Over Fund (“Cephalon Spillover Consumer Fund”). Funds left in the Consumer Left Over Fund after the Cephalon Spillover Consumer Funds are withdrawn as described below shall be referred to as the “M/R Spillover Consumer Fund”;

(12) If there are funds in the Cephalon Spillover Consumer Fund, the Settlement Administrator shall add them to the TPP Settlement Pool (less any costs, expenses or fees) (hereinafter “TPP Settlement Pool Less Costs”);

(13) If there are no funds in the Consumer Left Over Fund, the Settlement Administrator shall skip Steps 10 through 12 above;

(14) The Settlement Administrator shall calculate and pay any SHP Group “True Up” Amount in accordance with the True-Up Agreement from the TPP Settlement Pool Less Costs. Alternately, if money is owed by the SHP Group, the Settlement Administrator shall secure the SHP Group’s payment and add it to the TPP Settlement Pool Less Costs;

(15) The Settlement Administrator shall: (i) take 86% (eighty-six percent) of the M/R Settlement Fund; and (ii) add it to any funds in the M/R Spillover Consumer Fund (“Final TPP M/R Distribution Fund”);

(16) The Settlement Administrator shall pay Authorized TPP Claimants from the Final TPP M/R Distribution Fund and the Net TPP Settlement Pool as follows:

(i) The Final TPP M/R Distribution Fund shall be distributed *pro rata* to all Authorized TPP Claimants as approved by the Settlement Administrator;

(ii) To determine each Authorized TPP Claimant's *pro rata* share of the Final TPP M/R Distribution Fund, the Settlement Administrator shall multiply the total value of the Final TPP M/R Distribution Fund by a fraction where: (a) the numerator is the total amount paid by the Authorized TPP Claimant for Provigil and Modafinil as approved by the Settlement Administrator; and (b) the denominator is the sum total paid by all Authorized TPP Claimants for Provigil and Modafinil as approved by the Settlement Administrator;

(iii) The Net TPP Settlement Pool shall be distributed *pro rata* to all Authorized TPP Claimants (**other than SHPs**) as approved by the Settlement Administrator;

(iv) To determine each Authorized TPP Claimant's *pro rata* share of the Net TPP Settlement Pool, the Settlement Administrator shall multiply the total value of the Net TPP Settlement Pool by a fraction where: (a) the numerator is the total amount paid by the Authorized TPP Claimant for Provigil and Modafinil as approved by the Settlement Administrator (**other than SHPs**); and (b) the denominator is the sum total paid by all Authorized TPP Claimants for Provigil and Modafinil (**other than SHPs**) as approved by the Settlement Administrator;

(v) The distributions of the Final TPP M/R Distribution Fund and the Net TPP Settlement Pool shall be implemented so that each TPP receives one check;

(vi) If any funds remain in the Final TPP Distribution Fund or the Net TPP Settlement Pool after the TPP distribution, and after all costs and other expenses are paid, then Lead Counsel shall petition the Court to disburse the remaining funds *cy pres*; and

(vii) Before any funds are disbursed to Authorized TPP Claimants, the Settlement Administrator shall provide Lead Counsel with a chart of the proposed

payments to be made to Authorized TPP Claimants, and if approved by Lead Counsel, Lead Counsel shall file a motion with the Court seeking approval of the payments to the Authorized TPP Claimants. No payments to Authorized TPP Claimants shall be made unless approved by the Court.

IV. ADMINISTRATION

All determinations under this Plan of Allocation shall be made by the Settlement Administrator, subject to review by Lead Counsel and approval by the Court.