

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**IN RE: RESTASIS (CYCLOSPORINE
OPHTHALMIC EMULSION)
ANTITRUST LITIGATION**

Civil Action No. 18-MD-2819 (NG)(LB)

**ORDER CONSOLIDATING THE END-
PAYOR CLASS ACTIONS;
APPOINTING LIAISON/LEAD
COUNSEL AND AN EXECUTIVE
COMMITTEE; AND APPOINTING
INTERIM CLASS COUNSEL
PURSUANT TO RULE 23(G)(3)**

This Document Relates to:

All End-Payor Plaintiff Cases

The Court, having held a conference with the parties on March 22, 2018 and having reviewed the submissions of the parties, hereby Orders as follows:

I. CONSOLIDATION AND COORDINATION FOR PRETRIAL PURPOSES

1. Federal Rule of Civil Procedure 42(a) states that if “actions before the court involve a common question of law or fact, the court may . . . consolidate the actions.”

2. All end-payor plaintiff actions presently before this Court¹ are consolidated for pretrial purposes.

3. The end-payor class actions and the direct purchaser class actions before the Court will not themselves be consolidated. Discovery and other pretrial proceedings in the two consolidated actions will, however, be coordinated to the extent reasonably practicable.

¹ *American Federation of State County and Municipal Employees DC 37 Health & Security Plan v. Allergan* (No. 17-cv-6684, EDNY); *1199SEIU National Benefit Fund v. Allergan* (No. 17-cv-6755, EDNY); *Sergeants Benevolent Assoc. Health & Welfare Fund v. Allergan* (No. 17-cv-7300, EDNY); *Philadelphia Federation of Teachers Health & Welfare Fund v. Allergan* (No. 17-cv-7377, EDNY); *Self-Insured Schools of California v. Allergan* (No. 18-cv-17, CD Cal); *St. Paul Electrical Workers’ Health Plan v. Allergan* (No. 18-cv-41, EDNY); *International Union of Operating Engineers Local 501 Security Trust Fund v. Allergan, Inc.* (No. 18-cv-00749, EDNY); *Fraternal Order of Police v. Allergan* (No. 17-cv-755, ED Tex); *Plumbers & Pipefitters v Allergan* (No. 18-cv-11, ED Tex); and *United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund and Ironworkers Local 383 Health Care Plan v. Allergan, Inc.* (No. 18-cv-00816, EDNY).

4. In addition to the guidance set forth in Case Management Order No. 1, the Court orders as follows:

a. All filings relating to the end-payor plaintiff class actions shall bear the caption above, note that they are related to “All End-Payor Plaintiff Class Actions,” and be filed in the Master Docket, No. 18-MD-2819.

b. Any new filings in, or transferred to, this Court that purport to be brought on behalf of a class of end-payors of Restasis shall be deemed consolidated unless an objection is filed within 14 days and the objection is sustained.

5. Any *non-class* end-payor actions shall be coordinated with, but not consolidated with, the end-payor class actions. The Court may issue additional orders regarding coordination if non-class cases are filed in or transferred to this Court.

II. ORGANIZATION OF END-PAYOR PLAINTIFFS’ COUNSEL

6. Pursuant to Federal Rule of Civil Procedure 23(g), the Court appoints the following as interim lead counsel and liaison counsel for the proposed End-Payor Plaintiff class:

a. **End-Payor Interim Co-Lead Counsel:** Eric B. Fastiff, Lieff, Cabraser, Heimann & Bernstein, LLP; Dena C. Sharp, Girard Gibbs LLP; and Joseph R. Saveri, Joseph Saveri Law Firm, Inc. Responsibilities of End-Payor Interim Co-Lead Counsel include the following:

- i. Conduct the litigation, including developing litigation strategy, conducting and responding to discovery, retaining experts, coordinating and directing the briefing and argument of motions, appearing at Court hearings and conferences, preparing the case for trial, conducting the trial, directing appellate practice, and conducting settlement negotiations;

- ii. Make assignments to Liaison Counsel and Executive Committee members or other end-payor plaintiffs' counsel in connection with the conduct of the litigation;
- iii. Conduct any and all settlement negotiations with the Defendant;
- iv. Bind the End-Payor Plaintiffs in scheduling discovery, setting agendas, entering into stipulations, settlement discussions and in other necessary interactions with defense counsel;
- v. Review time expended and expenses advanced by End-Payor Counsel;
- vi. Take steps to ensure that there is no duplication of effort or unnecessary expense incurred among End-Payor Plaintiffs' counsel; and
- vii. Coordinate and direct any other matters concerning the prosecution or resolution of this litigation.

b. **End-Payor Interim Liaison Counsel:** Dan Drachler of Zwering, Schachter & Zwering, LLP. Responsibilities of End-Payor Interim Liaison Counsel include the following:

- i. Schedule meetings for End-Payor Interim Co-Lead Counsel and the Executive Committee at the direction of Co-Lead Counsel and attend and keep minutes of these meetings;
- ii. Establish and maintain communications with all End-Payor Plaintiff Counsel regarding the litigation and End-Payor Interim Co-Lead Counsel approved assignments, and to distribute or otherwise make

available all orders, pleadings, hearing transcripts, and documents served upon plaintiffs' counsel and not otherwise available on the Court's ECF system;

- iii. Collect and review records of time spent and disbursements advanced by End-Payor Plaintiff Counsel and submit time and expense reports for review or other action;
- iv. Assist in the conduct of the litigation at the direction of End-Payor Interim Co-Lead Counsel; and
- v. Serve as a conduit for communications with the Court, the Defendant and the Direct Purchaser Plaintiffs' Liaison Counsel on matters relating to the End-Payor actions.

c. **End-Payor Executive Committee:** Renae D. Steiner, Heins Mills & Olson, P.L.C. and Ellen Meriwether, Cafferty Clobes Meriwether & Sprengel LLP. End-Payor Plaintiffs' Executive Committee shall have the following responsibilities at the direction of Interim Co-Lead Counsel:

- i. Assist in the conduct of the litigation;
- ii. Create and/or serve on subcommittees for the End-Payor Plaintiffs' common benefit; and
- iii. Perform such other duties as End-Payor Interim Co-Lead Counsel deems necessary and appropriate in the prosecution of this litigation.

7. End-Payor Interim Co-Lead Counsel shall work together and coordinate with Interim Counsel for the proposed Direct Purchaser class to ensure that all work necessary to

prosecute this case is allocated based on the abilities and professional resources of counsel, with the objective of prosecuting the case in an efficient, non-duplicative manner.

8. All of the foregoing appointments are personal to the individual attorney appointed. While the Court expects the members to draw upon their firms and co-counsel to assist them with their duties, each member is personally responsible for his or her duties. The Court may add or replace members upon request from counsel, or on its own motion, if and as circumstances warrant.

9. All timekeepers carrying out work for the common benefit of the proposed End-Payor Class who may look to any common fund or agreement for reimbursement or compensation shall maintain detailed contemporaneous time and expense records that identify the name of the timekeeper, the time spent on each discrete activity, and the nature of the work performed. *See* Manual for Complex Litigation, Fourth § 14.213. Each firm that wishes to seek an award of attorneys' fees must provide to End-Payor Interim Liaison Counsel on a monthly basis a report detailing the time spent and expenses incurred during the preceding month, as well as the accumulated total of the firm's time, hourly rates, and expenses to date.

10. All firms representing End-Payor Plaintiffs in this action are self-funding this litigation. Any change in this status by any End-Payor Plaintiff firm must be communicated to End-Payor Interim Co-Lead Counsel, who will so inform the Court.

11. Depending on the volume of documents produced in this case, it is possible that a large number of document reviewers will be needed. Where appropriate, Co-Lead Counsel may allow contract attorneys to perform efficient and focused document review.

Dated: April 4, 2018
Brooklyn, New York

SO ORDERED.

/s/ Nina Gershon
NINA GERSHON
United States District Judge