

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

IN RE: ZETIA (EZETIMIBE) ANTITRUST  
LITIGATION

MDL No. 2836  
No. 2:18-md-2836- RBS-DEM

This Document Relates to: All End-Payor  
Actions

**PLAN OF ALLOCATION**

**I. Amount Payable to A Claimant**

1. If a person or entity ("Claimant") submitting a Claim Form is not a Class Member or requested exclusion from the Class, then that Claimant shall not be entitled to any distribution from the Settlement. If a Claimant is a member of the Class, then that Claimant's eligibility to participate in this Plan of Allocation and the amount of payment the Claimant shall receive (if any) is described below. The settlement funds shall be distributed to Eligible Claimants as follows.

**II. Definitions**

**Allocation Pool:** the Net Settlement Fund paid by the Defendants (defined in the Notice).

**Third-Party Payor Class:** All Third-Party Payor entities ("TPPs") within the Brand Subclass or the Generic Subclass defined herein that, for consumption by their members, employees, insureds, participants, or beneficiaries, and not for resale, indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Zetia or its AB-rated generic equivalents in any form, that was sold through a retail pharmacy, including mail-order pharmacies and long-term care pharmacies, in Alabama, Arizona, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin from November 15, 2014 (the "but-for generic entry date"), through November 18, 2019.

**Brand Subclass:** TPPs that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of brand Zetia purchased between the but-for generic entry date and December 11, 2016, inclusive. Excluded from the Brand Subclass are Optum Health Part D Plans, Silverscript Part D Plans, Emblem Health Part D, Humana Part D Plans, Optum Health Managed Care Plans, and any TPPs that used one of these plans or OptumRx as its pharmacy benefits manager (“PBM”) during this subclass period.

**Generic Subclass:** TPPs that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of generic ezetimibe purchased between the generic entry date (December 12, 2016) and November 18, 2019, inclusive.

### III. General Exclusions

The following entities are excluded from both subclasses:

- a. Defendants and their subsidiaries and affiliates;
- b. All federal and state governmental entities except for cities, towns, municipalities, or counties with self-funded prescription drug plans;
- c. All entities who purchased Zetia or generic Zetia for purposes of resale or directly from Defendants or their affiliates;
- d. Fully-insured health plans (*i.e.*, health plans that purchased insurance from another third-party payor covering 100 percent of the plan’s reimbursement obligations to its members); and
- e. Pharmacy benefit managers.

2. “Qualifying Claim” shall mean the amount purchased, paid, or provided reimbursement for Zetia or its AB-rated generic equivalents in any form, that was sold through a retail pharmacy, including mail-order pharmacies and long-term care pharmacies, in Alabama, Arizona, California, D.C., Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Puerto Rico, Rhode Island (for purchases after July 15, 2013), South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin from November 15, 2014 (the "but-for generic entry date") through November 18, 2019.

3. “Class States” shall mean: Alabama, Arizona, California, D.C., Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Puerto Rico, Rhode Island (for purchases after July 15, 2013), South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin from November 15, 2014 (the “but-for generic entry date”) through November 18, 2019.

4. “Eligible Claimant” shall mean any member of the Class that submits a timely and valid Claim Form for the Allocation Pool in which it is a member of the Class.

5. “Net Settlement Fund” shall mean the Settlement Fund, less Court-approved attorneys' fees, reimbursement of costs and expenses, incentive awards, and fees and costs associated with issuing notice and claims administration.

6. “Notice” shall mean the legal notice authorized by the Court in *In Re: Zetia (Ezetimibe) Antitrust Litigation*, MDL No. 2836, No. 2:18-md-2836- RBS-DEM, pending in the United States District Court Eastern District of Virginia, Norfolk Division, to be disseminated to the Class of End-Payers of Zetia or generic Zetia.

7. “Third-Party Payor Claim Form” shall mean the document titled “Third-Party Payor Claim Form,” which is available for download at [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com), or by calling 1-877-315-0588. The timeliness and validity of a Claimant's Third-Party Payor Claim Form shall be determined by the Settlement Administrator.

#### **IV. Distribution Among Eligible Claimants**

8. No Eligible Claimant shall be permitted to recover unless that Claimant submits a timely Claim Form.

9. The Net Settlement Fund shall be distributed to Eligible Claimants on a *pro rata* of Qualifying Claims not to exceed 100% of recoverable damages.

10. To determine each Eligible Claimant's *pro rata* share of the Net Settlement Fund, the Settlement Administrator shall multiply the total value of the applicable Allocation pool by a fraction for which: (a) the numerator is the applicable Qualifying Claim For that Eligible Claimant; and (b) the denominator is the sum total of all applicable Qualifying Claims by all Eligible Claimants for the applicable Allocation Pool.

11. Claimants who have opted out of the Class shall not receive any of the Settlement Funds.

#### **V. Administration**

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

13. If an Eligible Claimant's payment amount calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Eligible Claimant.

14. Any funds not distributed pursuant to the terms of this Plan of Allocation shall be paid to a *cy pres* beneficiary, *e.g.*, American Heart Association, if approved by the Court.

#### **VI. Amendments to the Plan of Allocation**

15. This Plan of Allocation may be amended. To obtain the most up-to-date information regarding the Plan of Allocation, please visit [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com), or by calling 1-877-315-0588.