

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL	)	CASE NO. 1:17-MD-2804
PRESCRIPTION	)	
OPIATE LITIGATION	)	David R. Cohen
	)	Randi S. Ellis
THIS DOCUMENT RELATES	)	Hon. David R. Herndon
TO:	)	
<i>"All Cases"</i>	)	<u>FEE PANEL ORDER NO. 34</u>
	)	<u>REGARDING CREDITS AND</u>
	)	<u>REBATES TO TEVA,</u>
	)	<u>ESTABLISHMENT OF AN</u>
	)	<u>ADMINISTRATIVE EXPENSE</u>
	)	<u>ACCOUNT, AND A PRUDENT</u>
	)	<u>RESERVES HOLDBACK</u>

I. Adjustments to Teva's Payment Obligations to the Contingency Fee Fund ("CFF")

Exhibit R §III.H.7 of the Teva Global Opioid Settlement Agreement states as follows:

With respect to the Contingency Fee Fund, the Fee Panel shall:

- a. Review the applications of all Attorneys seeking compensation from the Litigating Subdivision Fee Fund, including determining eligibility for each Attorney as set for in Section III.G.
- b. Apply the Mathematical Model in Exhibit A.
- c. Use such allocations to reduce on an annual basis the payment obligations of Teva ... to the Attorney Fee Fund as set forth in paragraph III.F.4, and distributions therefrom, and inform Teva ... and the MDL PEC of all such adjustments.

The Fee Panel completed the requirements of Exhibit R §III.H.7 and informed Teva and the MDL PEC of the adjustments to Teva's payment obligations to the Contingency Fee Fund. The Fee Panel allowed Teva and the MDL PEC an opportunity to review and, if necessary, dispute the calculations related to the amounts Teva is required to pay. Neither Teva nor the MDL PEC

disputed the amounts of the credits or rebates. Therefore, the Fee Panel now declares the credits and rebates listed below to be final and no longer subject to objection.

II. Non-Participating States

Pursuant to Exhibit R §III.F.3, “Teva shall... be entitled to a pro-rata reduction to their own portion of the Contingency Fee Fund payment(s) in accordance with subsection III.F.4., unless, by the Payment Date for the Initial Year Payment, (i)... 41 states are Settling States for Teva.” In February of 2024, the Directing Administrator notified the Fee Panel that there were 50 Settling States for the Teva Global Opioid Settlement Agreement. Therefore, the Fee Panel made no reductions to the amounts Teva is required to pay into the Contingency Fee Fund based on Non-Settling States.

III. Prior Settling States

Several states previously settled with Teva before the Teva Global Opioid Settlement Agreement. Therefore, counsel for Litigating Subdivisions in the following States are not eligible to participate in the national Teva Contingency Fee Fund: Florida, Louisiana, Texas, and West Virginia. Two other States, Oklahoma and Rhode Island,¹ also settled with Teva; however, pursuant to the terms and conditions of these States’ settlement agreements, counsel for Litigating Subdivisions in Oklahoma and Rhode Island are eligible to participate in the Teva National Contingency Fee Fund.

¹ See Fee Panel Order No. 33. Available at <https://opioidfeepaneldocuments.com/home-2/fee-panel-orders/>

IV. Non-Participating Litigating Subdivisions in Settling States

Exhibit R §III.F.4.b of the Teva Global Opioid Settlement Agreement further provides: “Following the calculation in subparagraph III.F.4.a, the Contingency Fee Fund payments shall be reduced to reflect the non-joinder of Litigating Subdivisions in Settling States by subtracting the amounts identified by the Fee Panel, pursuant to paragraph III.H.7, that would have been owed to counsel for Non-Participating Litigating Subdivisions in Settling States had such Litigating Subdivisions been Participating Subdivisions.”

According to Settlement Participation Form data provided to the Fee Panel by the Directing Administrator, the following Litigating Subdivisions are Non-Participating Litigating Subdivisions in Settling States whose Attorneys would have been eligible to receive awards in the Teva Contingency Fee Fund, had the Litigating Subdivisions been Participating Subdivisions:

1. City of Baltimore, MD; and
2. District Attorney of Allegheny County, PA.

As required by the Teva Global Opioid Settlement Agreement, the Fee Panel calculated the credits owed to Teva for the Non-Settling States and Non-Participating Litigating Subdivisions in the Settling States. The Total Contingency Fee Fund Credits to Teva from the gross amount of **\$125,318,011.02** are **\$597,520.50**. Therefore, due to credits owed to Teva, the total amount that Teva is required to contribute to the Contingency Fee Fund over the distribution period is **\$124,720,490.52**. The revised Contingency Fee Fund payment obligations of Teva are as follows:

Teva Revised CFF Obligation		
Payment Year	Exhibit R CFF Obligation	Revised CFF Obligation
Payment Year 1	\$18,486,335.17	\$18,398,191.70
Payment Year 2	\$18,486,335.17	\$18,398,191.70
Payment Year 3	\$22,086,335.17	\$21,981,026.78
Payment Year 4	\$22,086,335.17	\$21,981,026.78
Payment Year 5	\$22,086,335.17	\$21,981,026.78
Payment Year 6	\$22,086,335.17	\$21,981,026.78
	\$125,318,011.02	\$124,720,490.52

V. Prior Settling Subdivisions

In addition to the States that previously settled with Teva, several subdivisions settled with Teva before the Teva Global Opioid Settlement Agreement. Therefore, counsel for these Litigating Subdivisions are not eligible to participate in the national Teva Contingency Fee Fund:

1. City and County of San Francisco, CA;
2. Cuyahoga County, OH;
3. Summit County, OH;
4. Nassau County, NY; and
5. Suffolk County, NY.

VI. Administrative Expense Account

Exhibit R §III.I.1 of the Teva Global Opioid Settlement Agreement provides that the cost of the Fee Panel Post-Effective Date shall be charged against the applicable Fee Fund, based on allocation by the Fee Panel, and shall not be otherwise funded by Teva. The Fee Panel hereby deems it necessary and appropriate to withhold 1.5% of the total contributions made by Teva into the Contingency Fee Fund for administrative expenses incurred by the Fee Panel and its agents

and representatives. The full amount of the 1.5% contribution will be effectuated in Payment Year 1 to establish the Administrative Expense Account.² The Fee Panel will draw on the Administrative Expense Account as expenses are incurred. Any unused funds from the Administrative Expense Account remaining at the end of the six-year distribution period will be awarded pro rata to Fund participants in Payment Year 6, prior to the closure of the Fund.

Settlement	Total Amount Contributed to CFF by Defendant	Administrative Expense Percentage	Total Administrative Expense Account
Teva Settlement Agreement	\$124,720,490.52	1.50%	\$1,870,807.36

After applying credits to Teva for Non-Settling States and Non-Participating Litigating Subdivisions in Settling States, and accounting for the 1.5% contribution to the Administrative Expense Account, the remaining funds are available to pay eligible Fund participants.

VII. Prudent Reserves Holdback

Due to the complexity and uncertainty involved in administering a Fund with hundreds of Applicants and thousands of Applications, 1% of funds available each year to pay eligible Fund participants will be held in reserve to address potential claims on the Fund and/or objections to the calculated Contingency Fee Fund Award amounts.³ Unused funds from the Prudent Reserves remaining at the end of the six-year distribution period will be awarded pro rata to Fund participants in Payment Year 6, prior to the closure of the Fund.

² The Fee Panel reserves the right to adjust (upwards or downwards) the percentage allocated to the Administrative Expense Account if it determines, in its discretion, that such adjustments are prudent and in the best interests of the Fund.

³ The Fee Panel reserves the right to adjust (upwards or downwards) the Prudent Reserves Holdback percentage if it determines, in its discretion, that such adjustments are prudent and in the best interests of the Fund.

Description	Teva Settlement
Gross Amount of Fund	\$125,318,011.02
Credits to Defendants	\$597,520.50
Administrative Expense Account (1.5%)	\$1,870,807.36
Prudent Reserves Holdback (1.0%)	\$1,228,496.83
Net Funds Available for CFF Awards	\$121,621,186.33

VIII. Appeals and Disputes

Pursuant to Exhibit R §III.D.4 of the Teva Global Opioid Settlement Agreement, “as to awards from the Contingency Fee Fund, there shall be no right of appeal.” However, the Fee Panel is empowered to hear disputes concerning the accuracy of mathematical calculations used in the model.⁴ Therefore, Contact Counsel has 28 days from the date of this Order to provide a written statement to dispute the accuracy of a mathematical calculation. The written statement may be provided to the Fee Panel by sending an email with an attachment to the following email address: contingentfeefund@opioideefpaneldocuments.com. The email attachment must be in .PDF format and limited to 3 pages, double-spaced, with standard margins, and 12-point font.

/s/ **David R. Cohen**
Randi S. Ellis
David R. Herndon
FEE PANEL

Dated: July 26, 2024

⁴ In the interests of efficient fund administration, the Fee Panel will not hear disputes concerning the accuracy of mathematical calculations involving an amount in controversy that is less than one hundred dollars. The Fee Panel reserves the right to assess costs and expenses associated with defending a meritless and/or frivolous challenge directly to the Contact Counsel who initiates the challenge.