

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: GENERIC PHARMACEUTICALS
PRICING ANTITRUST LITIGATION**

**MDL 2724
16-MD-2724
HON. CYNTHIA M. RUFÉ**

**THIS DOCUMENT RELATES TO:
*ALL ACTIONS***

ORDER

The End-Payer Plaintiffs (“EPPs”) and Direct Purchaser Plaintiffs (“DPPs”) have filed a motion for the entry of set-aside orders, seeking that 10 percent of any judgment or settlement arising out of the allegations in this litigation be deposited into escrow accounts for possible payment to counsel for the DPPs and EPPs for work done for the benefit of those proposed classes by any Plaintiffs who would otherwise be members of either class but instead opt out or file their own actions. Payments would require Court approval, and the motion also anticipates the appointment of administrators of these accounts. The Direct Action Plaintiffs oppose the motion. The State Plaintiffs, Indirect Reseller Plaintiffs, and Defendants are not directly affected and have not responded, although the EPPs and DPPs revised their proposed orders after consultation with Defendants.¹ For the following reasons, the Court will deny the motion at this time.

“Common benefit funds” such as those sought by the EPPs and DPPs are not unusual in mass-tort MDLs, where, for example, lead counsel who have actively litigated an MDL supply other counsel with extensive work product dubbed “trial in a box.”² However, the Court is not persuaded at this time that such funds are appropriate in this antitrust litigation where the cases

¹ MDL Doc. No. 999.

² See *In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.*, 289 F. Supp. 3d 646, 650 (E.D. Pa. 2018).

are moving forward as the result of the efforts of many different Plaintiff groups. Because no classes have yet been certified and the scope of the parties that would be affected by the orders has not been established, the traditional mechanisms of class actions may appropriately compensate any class counsel. Although EPPs and DPPs characterize the motion as a “preliminary, prophylactic step,” the proposed orders would create a significant administrative process with one or more appointed administrators. Additionally, in the context of this MDL, the Court does not share DPPs’ and EPPs’ concerns as to the difficulty of monitoring whether individual settlements of antitrust claims have been reached with the mostly publicly-traded corporate Defendants.

The motion will be denied without prejudice, as the Court recognizes the amount of work being performed by counsel for the DPPs and EPPs, among others, and does not foreclose the possibility that the proposed mechanism or a similar one may be appropriate at some later stage to ensure fair compensation.³

AND NOW, this 7th day of October 2019, upon consideration of the Motion of EPPs and DPPs for Entry of Set-Aside Orders [MDL Doc. No. 950] and the responses and replies thereto, it is hereby **ORDERED** that the Motion is **DENIED without prejudice**.⁴

It is so **ORDERED**.

BY THE COURT:
/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.

³ See, e.g., *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 644, 661–62 (E.D. Pa. 2003) (establishing framework for common benefit compensation in “the rare antitrust case in which major entities awaited the development of the case by designated counsel and only filed suit on the eve of the conclusion of discovery”).

⁴ A final note. Some of the briefs did not maintain the high standards of civility that the Court expects from all attorneys. Counsel may disagree strongly and in good faith without devolving into acrimony. There is a great deal of work to be done in this MDL and it should be undertaken in a spirit of collaboration and cooperation. Lead and Liaison Counsel for each Plaintiff and Defendant group were selected by the Court for that type of professionalism, in particular. The Court anticipates that all counsel will rise to and maintain the Court’s expectations.