

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

**IN RE NATIONAL
PRESCRIPTION
OPIATE LITIGATION**

CASE NO. 1:17-MD-2804

**THIS DOCUMENT RELATES
TO:
“All Cases”**

**David R. Cohen
Randi S. Ellis
Hon. David R. Herndon**

**FEE PANEL ORDER NO. 36-G
REGARDING ADJUSTMENTS
TO COMMON BENEFIT AMOUNT
TO BE PAID BY WALGREENS**

I. Authority of the Fee Panel to Administer the Walgreens Common Benefit Fund

Pursuant to Exhibit R §II.B.3 of the *Walgreens Settlement Agreement*, “the Common Benefit Fund shall be administered by the Fee Panel appointed under MDL Docket No. 3828, which will be governed by the provisions of this Fee Agreement and shall design the process and procedures for the allocation of fees pursuant to this Fee Agreement and the MDL Court’s Order.” On June 27, 2023 (MDL Docket No. 3828), the MDL Court appointed the three signatories below to the Fee Panel to administer the Walgreens Attorney Fee Fund.

II. Walgreens Common Benefit Fee Fund Maximum Amount

Pursuant to Exhibit R §II.A.1 of the *Walgreens Settlement Agreement*, Walgreens is required to pay \$563,732,518 into the Walgreens Attorney Fee Fund. Exhibit R §II.B.2 states, “There shall be a split of the Attorney Fee Fund into the Contingency Fee Fund and the Common Benefit Fund. The split shall be 40% to the Contingency Fee Fund and 60% to the Common Benefit Fund.” Pursuant to Exhibit R §II.C.1, the maximum potential total Common Benefit Fund

payment to be made by Walgreens is \$338,239,510.80¹ and shall be made over a seven-year period.²

III. Reductions to Common Benefit Amount Walgreens is Required to Pay

Pursuant to §II.C.5, “the Fee Panel must ... determine how and whether to reduce the amounts to be paid by Walgreens under this Fee Agreement and to determine how to allocate funds among Applicants.”

Exhibit R §II.A.2 states, “If an Eligible State does not join the Agreement by the State Participation Date and is accordingly not a Settling State, the total attorneys’ fees and costs to be paid under this Fee Agreement by Walgreens shall be reduced by twelve point four percent (12.4%) times the Remediation Payment amount that would have been allocated to that Non-Settling State” Based on participation data provided to the Fee Panel by the Directing Administrator, there were three Non-Settling States for the Walgreens Settlement Agreement: Nevada, New Mexico, and West Virginia. The reductions for the three Non-Settling States are listed in the chart below. The Fee Panel apportioned the reduction pro rata between the Common Benefit Fund and the Contingency Fee Fund, with 60% of the reduction allocated to the Common Benefit Fund, and 40% of the reduction allocated to the Contingency Fee Fund.

¹ The sum of the annual payments in the chart in Walgreens Exhibit R §II.C.1 is \$338,239,504.80, although the chart states the “total” is \$338,239,510.80 (a six-dollar difference). The Fee Panel acknowledges this typo and will require Walgreens to pay the annual payment schedule for each Payment Year as agreed to by the parties in Exhibit R §II.C.1.

² Walgreens is not required to make an Attorney Fee Fund payment in Payment Year 1.

State	F-2 Allocation Percentage	Maximum Abatement Amount	Total Reduction to Attorney Fee Fund (12.4%)	Reduction to Common Benefit Fund (60%)	Reduction to Contingency Fee Fund (40%)
Nevada	1.2925813611%	\$4,788,165,456.00	\$7,674,475.84	\$4,604,685.51	\$3,069,790.34
New Mexico	0.8593125342%		\$5,102,017.93	\$3,061,210.76	\$2,040,807.17
West Virginia	1.1365980484%		\$6,748,352.20	\$4,049,011.32	\$2,699,340.88
TOTAL	3.2884919437%		\$19,524,845.97	\$11,714,907.58	\$7,809,938.39³

IV. Revised Amount Walgreens is Required to Pay to Common Benefit Fund

The Fee Panel concludes Walgreens is currently entitled to a reduction to the amount it is required to pay into the Common Benefit Fund of \$11,714,907.58. Pursuant to Exhibit R §II.C.5, which applies to the Common Benefit Fund, “Any reduction in payment obligation or credit to be given Walgreens in this Fee Agreement shall be applied against Payment Year 7 and then working backwards.”

The revised Walgreens Common Benefit Payment Obligation schedule is as follows:

Payment Year	Exhibit R Common Benefit Schedule	Revised Common Benefit Schedule ⁴
Payment Year 1	\$0.00	\$0.00
Payment Year 2	\$50,373,251.40	\$50,373,251.40
Payment Year 3	\$50,373,251.40	\$50,373,251.40
Payment Year 4	\$59,373,251.40	\$59,373,251.40
Payment Year 5	\$59,373,250.00	\$59,373,250.00
Payment Year 6	\$59,373,250.00	\$59,373,250.00
Payment Year 7	\$59,373,250.60	\$47,658,343.02
TOTAL	\$338,239,504.80	\$326,524,597.22⁵

³ The amount owed by Walgreens to the Contingency Fee Fund will also be reduced to reflect the non-joinder of Litigating Subdivisions in Settling States. The reductions for Non-Participating Litigating Subdivisions in Settling States will be detailed in a subsequent Fee Panel Order addressing the Walgreens Contingency Fee Fund.

⁴ Each of Walgreens’ Annual Fee Payments is subject to an Annual Maximum, which may result in lower Common Benefit Payments to be made in each Payment Year

⁵ Pursuant to Exhibit R §II.C.5, the Fee Panel may also, at their discretion, consider other factors. If the Fee Panel determines further reductions to the common benefit amount Walgreens is required to pay are warranted, such reductions will take place in Payment Year 7.

V. Opportunity to Dispute

The Fee Panel informed Walgreens and the MDL PEC of the adjustments to Walgreens' payment obligations to the Common Benefit Fund. The Fee Panel allowed Walgreens and the MDL PEC an opportunity to review and, if necessary, dispute the calculations. Neither Walgreens nor the MDL PEC disputed the adjustments to the Walgreens Common Benefit Fund. Therefore, the Fee Panel now declares the amounts listed above are no longer subject to objection.

IT IS SO ORDERED.

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

Dated: August 28, 2024