

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

IN RE: ABILIFY (ARIPIPRAZOLE)
PRODUCTS LIABILITY LITIGATION

Case No. 3:16md2734

Judge M. Casey Rodgers
Magistrate Judge Gary Jones

This Document Relates to All Cases

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**ORDER ESTABLISHING THE
MDL 2734 QUALIFIED SETTLEMENT FUND
AND APPOINTING CLAIMS ADMINISTRATORS**

On the motion and *in camera* attachments of Lead Plaintiffs' Counsel, the Court enters the following Order establishing a Qualified Settlement Fund for the resolution of the claims of the Plaintiffs who accept the Settlement (collectively the "Claimants") with Defendants Bristol-Myers Squibb Company, Otsuka America Pharmaceutical, Inc., and Otsuka Pharmaceutical Co., Ltd. (collectively, the "Defendants"), and approving (i) the Abilify Payment Grid, (ii) the Abilify Processed Claim Review Protocols, and (iii) the Claim Form, and appointing (i) a Claims Administrator to perform the review of Processed Claims, (ii) a Claims Administrator to perform the review of Extraordinary Damages claims, (iii) a Claims Review Committee to perform claims oversight and appeals services, and describing the Claims Administrator's powers and duties, and (iv) a Financial Administrator of the Qualified Settlement Fund.

1. Resolution of Claims. Lead Plaintiffs' Counsel and Defendants have entered into a Master Settlement Agreement ("the Settlement Agreement") to resolve the claims against the Defendants of the Plaintiffs who accept the Settlement, with 90% acceptance (as described in the Settlement Agreement) being required for the Settlement to be effective, unless this condition is waived by the Defendants (the "Effective Date"). The Settlement Fund is to be deposited into two accounts: (1) part will be deposited into a Qualified Settlement Fund for the benefit of the Claimants to be established by Claimants' Counsel through the Court, and (2) part will be deposited into the already established Abilify Common Fund, LLC (the "Common Fund").
2. Approval of the Qualified Settlement Fund. The Court approves the establishment of a Qualified Settlement Fund, to be called The MDL 2734 Qualified Settlement Fund (the "QSF"), pursuant to Internal Revenue Code § 468B and Treas. Reg. § 1.468B-1, to receive from the Defendants the Settlement Amount for the benefit of the Claimants under the Settlement Agreement, and to be held and administered in accordance with the terms of the Settlement Agreement. Until the Effective Date, (1) the QSF must be held in

trust and is not to be distributed, and (2) the deposit into the Common Fund will only be used for fair and reasonable administrative expenses. Should the Effective Date not occur, with the Defendants invoking their right to rescind the Settlement, the Claims Administrator must refund the balance of the QSF to the Defendants, and Lead Plaintiffs' Counsel must refund the balance of the amount deposited and any interest earned thereon, in the Common Fund, less incurred fair and reasonable administrative expenses, to the Defendants.

3. Approval of the Payment Grid, Processed Claim Review Protocols and Claim Form. The Court approves (i) the Abilify Payment Grid, as previously submitted to the Court *in camera*, (ii) the Abilify Processed Claim Review Protocols, as previously submitted to the Court *in camera*, and (iii) the Claim Form, as previously submitted to the Court *in camera*.
4. Appointment of Claims Administrator to Review Processed Claims. The Court hereby appoints BROWNGREER PLC, 250 Rocketts Way, Richmond, Virginia 23231, to serve as the Claims Administrator to review Processed Claims.

5. Appointment of Claims Administrator to Review Extraordinary Damages Claims. The Court hereby appoints Attorney Edgar C. Gentle, III of the law firm Gentle, Turner, Sexton & Harbison, LLC, 501 Riverchase Parkway East, Hoover, Alabama 35244, to serve as the Claims Administrator to review Extraordinary Damages claims.
6. Appointment of Claims Review Committee. The Court approves the engagement of a Claims Review Committee to perform claims oversight and appeals services in accordance with the protocol previously submitted to the Court *in camera*. The Court hereby appoints the following 5 committee members: (i) Gary Wilson, or a representative from his firm; (ii) Kristian Rasmussen, or a representative from his firm; (iii) Bryan Aylstock, or a representative from his firm; (iv) BROWNGREER PLC; and (v) Ed Gentle, or a representative from his firm.
7. Appointment of QSF Financial Administrator. The Court approves the engagement of ARX Management, LLC (“ARX”) to serve as the Financial Administrator of the QSF.
8. Powers and Obligations of Claims Administrator, BROWNGREER PLC, and ARX.
 - a. The Court hereby designates the Claims Administrator,

BROWNGREER PLC, as the "administrator" of the QSF (as such term is defined in Treas. Reg. § 1.468B-2(k)(3)) who must discharge the obligations of an administrator with respect to the QSF under Treas. Reg. §§ 1.468B-2(k)(3) and 1.468B-2(1).

- b. The Court hereby authorizes the Claims Administrators, jointly, to determine the timing of payments to eligible Claimants from the QSF.
- c. The Court authorizes the Claims Administrator, BROWNGREER PLC, to pay from the Common Fund reasonable fees and expenses associated with implementation of the Settlement, including but not limited to taxes (including expenses and costs incurred in connection with the accounting and taxation of the QSF (except that any taxes owed by the QSF shall be paid by the QSF)).
- d. The Court authorizes the Claims Administrator, BROWNGREER PLC, working with the Lien Administrator, to pay any entity, including but not limited to a Medicare Secondary Payer Recovery Contractor (MSPRC), Medicare Advantage plan (Part C), Medicare prescription drug plan (Part D), Medicaid, any applicable health insurer, any

applicable workers' compensation insurer, or any entity that has advanced monies to or on behalf of any of the Claimants, to satisfy any lien, subrogation claim, claim to reimbursement for conditional payments, or other claim to reimbursement that any such entity may have against or from that Claimant's share of the amounts in the QSF.

- e. The Court authorizes the Claims Administrator, BROWNGREER PLC, to distribute all attorney fees and litigation expenses to Plaintiffs' Counsel, consistent with their existing contingency fee contracts and the terms of the Confidential Settlement.
- f. The Court authorizes the Claims Administration, BROWNGREER PLC, to apportion and distribute the balance of the QSF after payment of legal fees and other expenses.
- g. The Court authorizes the QSF Financial Administrator, ARX, to hold, manage, invest, and reinvest the assets of the QSF in a manner designed to preserve the accrued income and principal of the QSF for the purpose of the QSF under the Settlement Agreement, with the QSF to be held in a custody account with U.S. Bank, a depository institution

headquartered in Minneapolis, Minnesota, and to be invested in instruments/securities comprised of (a) United States Agency, Government Sponsored Enterprises or Treasury securities or obligations (or a mutual fund invested solely in such instruments); (b) cash equivalent securities, including SEC registered money market funds and/or collateralized money market accounts; and/or (c) deposit and similar interest-bearing, or non-interest bearing accounts subject to Federal Depository Insurance Corporation protections as available; pay investment charges or fees associated with the QSF; and allocate payments of interest earned on the Fund.

- h. The Court authorizes the QSF Financial Administrator, ARX, to administer the QSF and effect qualified assignments of any resulting structured settlement liability within the meaning of Section 130(c) of the Internal Revenue Code to the qualified assignee and fund Special Needs Trusts.
- i. The Court directs the QSF Financial Administrator, ARX, on request by Plaintiffs' Counsel or the Court, to prepare and deliver QSF Statements to said Counsel or the Court, which must include a statement of receipts, investment earnings, and

disbursements, no later than twenty (20) business days following the request.

- j. The Court directs the Claims Administrator, BROWNGREER PLC, to obtain a Federal Taxpayer Identification Number for the QSF on the execution of an Order by this Court establishing the QSF.
- k. The Court authorizes the Claims Administrators, jointly, to be paid, from the Common Fund, reasonable fees and expenses of QSF administration.
- l. The Court authorizes the Claims Administrator, BROWNGREER PLC, once final distribution of all monies paid into the QSF has occurred, to take appropriate steps to wind down and dissolve the QSF, and thereafter discharges the Claims Administrators from any further responsibility with respect to the QSF.
- m. The Court authorizes the Claims Administrators, jointly, and in conjunction with the Lien Administrator, to share information with and obtain health, treatment, billing and payment information regarding Claimants from Governmental Entities (as defined in the Settlement

Agreement) and medical providers, in order to perform their duties under the Settlement.

- n. The Claims Administrator, BROWNGREER PLC, will perform any other acts it deems reasonably necessary to administer the QSF and effectuate the purposes of the QSF.
9. The QSF and both of the Claims Administrators are subject to the continuing jurisdiction of this Court.
10. Provided that both of the Claims Administrators, and their agents, partners, and employees, act in accordance with the Settlement Agreement and this Order, they are granted Judicial Immunity, with both of the Claims Administrators to be considered a Special Master under FRCP 53.
11. The Court retains jurisdiction to take all actions necessary to facilitate the proper administration of the QSF and to enforce the terms of the Master Settlement Agreement.

DONE and **ORDERED**, on this 21st day of February, 2019.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE