

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE: ACTOS® (PIOGLITAZONE))	
PRODUCTS LIABILITY LITIGATION)	MDL NO. 6:11-MD-2299
)	
THIS DOCUMENT APPLIES TO:)	JUDGE DOHERTY
<i>ALL CASES</i>)	MAGISTRATE JUDGE HANNA
)	
)	

AGREED MOTION TO ADMINISTER SETTLEMENTS
RESOLVING CASES & CLAIMS OF QUALIFYING PROGRAM CLAIMANTS

Takeda Pharmaceutical Company Limited and Takeda Pharmaceuticals U.S.A., Inc. (collectively, “Takeda”), and a committee of plaintiffs’ counsel (the “Plaintiffs’ Settlement Review Committee”, or the “PSRC”), following execution of, and pursuant to the terms of a Master Settlement Agreement, dated April 28, 2015, which established a settlement program called the “ACTOS Resolution Program”, (the “Agreement”)¹, now move this Court for an Order to: (i) establish a Qualified Settlement Fund, which shall be called the “Actos Settlement Fund” (the “Fund”); and (ii) **to appoint an administrator for the Fund.** In support of this Motion, Takeda and PSRC respectfully state as follows:

1. Pursuant to the terms of the Agreement, Claimants alleging a personal injury involving bladder cancer pending, as of April 28, 2015, in this MDL No. 2299, and in other

¹ Capitalized terms used without definition have the meanings ascribed to them in the Agreement.

federal and / or state courts identified in prior filings with this Court, and consistent with the terms of the Agreement and the ACTOS Resolution Program, whether such Claimants are Filed Claimants or Qualifying Unfiled Claimants as those terms are defined in the Agreement, are permitted to enroll in, and be bound by the terms of the Program.

2. For those Claimants who enroll and are determined to be eligible for compensation under the terms of the Program, Takeda and the PSRC have agreed that a settlement fund be established within the meaning of Internal Revenue Code Section 468B and its accompanying Treasury Regulations to hold and manage settlement funds for further distribution to such eligible Plaintiffs.

3. The PSRC has conferred with counsel for Takeda, and Takeda has agreed to this filing and to the relief sought herein.

4. **At this time, the exact distribution of settlement funds to the Claimants cannot be finalized.** Hence, in the best interest of all parties the Court should establish the Fund to resolve or satisfy these ACTOS® claims, while allowing for the final disbursement of settlement funds to those eligible Claimants under the terms of the Program.

5. **For those satisfying the requirements for payment under the Program as part of the Agreement, including the provision of a release, and pursuant to procedures to be established by the Claims Administrator** (as that term is defined in the Agreement), and subject to Agreement by Takeda and the PSRC, at a time agreed upon by Takeda and the PSRC, the Claims Administrator shall make an estimated determination of the dollar value that is expected to be assigned per Point in the Program after all final points have been determined for each Claimant who becomes a Qualifying Program Claimant. Thereafter, and consistent

with the terms of the Program, interim settlement payments are to be made to Qualifying Program Claimants from a qualified settlement fund in an amount to be determined and approved by the Claims Administrator, and by the Lien Resolution Administrator, following all conditions precedent to payment established and agreed to by the parties to the Agreement.

6. All settlement payment obligations of Takeda under the Agreement to all Qualifying Program Claimants will be satisfied through payment by the Administrator of the Fund to all Qualifying Program Claimants, by and through their counsel, provided however, that all such settlement payments, whether interim or final, are made pursuant to all the terms and conditions of the Program, as identified in the Agreement. Upon its distribution of settlement monies to the Fund, Takeda will have no responsibility for the administration, investments, and / or further distribution of settlement funds to be held in the Actos Settlement Fund pursuant to the Program and following all terms and conditions of the Agreement.

7. The Fund shall be a Qualified Settlement Fund as described in Treas. Reg. Section 1.468B-1, established by order of this Court, and the Fund shall remain subject to the continuing jurisdiction of this Court.

8. This Court has jurisdiction over this matter under Treas. Reg. Section 1.468B-1(c)(1), which states in relevant part that a Qualified Settlement Fund “is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law)...and is subject to the continuing jurisdiction of that governmental authority.”

9. The Actos Settlement Fund will qualify as a Qualified Settlement Fund under Internal Revenue Code Section 468B(d)(2) of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Section 1.468B-1(c), as: (1) the Fund is being established subject to approval of this Court, and will be operated pursuant to all the terms and conditions of the Agreement; (2) the Fund is being established to resolve or satisfy claims of alleged tort or violation of law arising out of the use of ACTOS® Products; and (3) the Fund will be an account, whose assets will be segregated from the general assets of Takeda and deposited by Takeda pursuant to the terms of the Agreement. Upon approval by this Court, the PSRC and the QSF Administrator will enter into a QSF Agreement consistent with the terms of this Motion, this Court's Orders, and the Agreement.

10. The PSRC requests that the Court approve the engagement of **Garretson Resolution Group, Inc.** as the "QSF Administrator" and "Trustee" (the "QSF Administrator"). The QSF Administrator's address is as follows: 6281 Tri-Ridge Blvd., Suite 300, Loveland, OH 45140. Garretson Resolution Group, Inc. submits personally to the jurisdiction of this Court. Upon the dissolution or bankruptcy of Garretson Resolution Group, Inc., its appointment as QSF Administrator shall terminate and the PSRC will seek Court approval of its nominated successor QSF Administrator.

11. Until such time that the distribution of the Settlement Funds can be identified, no settlement monies shall be set apart for a Qualifying Program Claimant, or otherwise made available so that he or she may draw upon or otherwise control said settlement monies.

12. The Fund, by and through its QSF Administrator, shall only make payments to: (i) Qualifying Program Claimants, by and through their counsel; and (ii) such other Persons identified in the Agreement as being authorized to receive payments from the Fund.

13. The Fund, by and through its QSF Administrator, may purchase and assign any structured settlements created under any release agreements. Any structured settlement annuity contract shall be issued by a life insurance company that is rated A+ or better by A.M. Best Company.²

14. The claims made against Takeda are made on account of physical bodily injury and arise out of alleged liability in tort or violation of law. The Qualifying Program Claimants shall agree in writing to discharge the Fund and its QSF Administrator's liabilities in the making of any structured settlement payments, also known as periodic payments, by executing, along with the QSF Administrator, any necessary documents required or related to the discharge of those liabilities.

15. The Settlement Funds, once distributed by Takeda into the Fund, will be the sole property of the Fund. Until such time as settlement monies are distributed, the Qualifying Program Claimants, and / or their counsel, shall not possess any rights to demand or receive any portion of the Settlement Funds, and shall not possess any rights to mortgage, pledge, or encumber the same in any manner. To the extent possible, this Motion shall be construed so

² Structured Settlement Payments are assigned to a qualified assignee by entering into qualified assignments of such structured settlement payments within the meaning of Section 130(c) of the Internal Revenue Code. The qualified assignee shall, respecting each person who is to receive periodic payments under a settlement agreement, purchase one or more qualified funding assets within the meaning of Section 130(d) of the Internal Revenue Code to fund any structured settlement payments assigned to the qualified assignee.

as to prevent the Qualifying Program Claimants from being in constructive receipt, as determined under federal income tax principles, of any amounts held by the Fund.

16. Pursuant to Section 10.02 of the Agreement, Takeda and the PSRC intend to have the Fund maintained in as secure a manner as possible such that the Settlement Funds will be available to pay out to those Qualifying Program Claimants who are to receive a settlement payment under the Program. The PSRC has selected each of the Deutsche Bank, and The Private Bank (the “Banks”), to hold the Settlement Funds, following the instructions of the Administrator. Takeda and the PSRC have consulted as the form of prudent investment vehicles to be used for investment of the Settlement Funds, and have tentatively decided that each of the Banks shall hold and / or invest the Settlement Funds, in such amounts as to be determined by the QSF Administrator, following consultation with the PSRC and Takeda. Accordingly, the PSRC and Takeda request that no bond be required. Further, the QSF Administrator and the PSRC will enter into a Fund Agreement following the terms of this Motion, and pursuant to the terms and conditions of the Agreement between and among the PSRC and Takeda.

17. All monies received by the Fund, which includes all principal and interest earned thereon, shall be deposited in investment accounts managed by, or in deposit accounts held in custody at Deutsche Bank, and / or the Private Bank, for the benefit of and titled in the legal name of the Fund; to be held, and / or invested in instruments/securities comprised of: (a) cash equivalent securities including SEC-registered money market funds and collateralized money market accounts; (b) United States Agency, Government Sponsored Enterprises or Treasury securities or obligations (or mutual funds invested primarily in such instruments), or

other investment vehicles recommend by the Administrator and approved by the PSRC, with consultation by Takeda; and/or (c) interest-bearing deposit accounts subject to appropriate Federal Depository Insurance Corporation protections as available. The Settlement Funds shall be held in the name of the Fund at each of the Banks, according to the above terms and conditions. The Banks shall be responsible for any and all investment related decisions, following the instructions of the QSF Administrator pursuant to these terms and conditions, such that a principal preservation driven investment policy is implemented. Notwithstanding the foregoing, neither of the Banks shall be allowed to distribute any income or principal from the Fund except upon instructions of the QSF Administrator, or, if requested, upon the order of this Court upon the joint motion of the PSRC and Takeda. The QSF Administrator retains the right to remove any or both of the Banks, with or without cause, in its sole and absolute discretion, following consultation with the PSRC and Takeda. The QSF Administrator may designate a replacement bank upon the written consent of the PSRC and Takeda. In the event of such replacement, the terms and conditions of paragraphs 18 and 19, including without limitation, those addressing bond requirements, investments, and distributions from the Fund, shall apply to any such replacement bank or banks.

18. The QSF Administrator shall also be authorized to distribute all attorneys' fees and litigation expenses to counsel for Qualifying Program Claimants, consistent with existing contingency fee contracts or, to the extent required by law, and, where required by law in an individual case, upon Court approval on Motion of a Qualifying Program Claimant's counsel, and / or the PSRC. Distributions of attorneys' fees may also be in lump sum or periodic

payment form, with any payments to be made for the convenience of such Qualifying Program Claimants.

19. Subject to Section 10.03(C) of the Agreement, all taxes on the income of the Fund and expenses and costs incurred in connection with the taxation of the Fund (including, without limitation, the expenses of tax attorneys and accountants) shall be paid out of the Fund, shall be considered to be a cost of administration of the settlement, and shall be paid as instructed by the QSF Administrator.

20. The QSF Administrator will prepare and deliver to the Court, monthly reports involving the administration of the Fund, with copies to the PSRC and Takeda, as requested. The reports will include a statement of receipts, investment earnings, and disbursements. The QSF Administrator shall provide the reports not later than twenty-five (25) calendar days following the end of the prior month.

21. The QSF Administrator shall have the right to rely upon any affidavit, certificate, letter, notice, electronic mail or other document believed by the QSF Administrator to be genuine and sufficient, and upon any other evidence believed by the QSF Administrator, in its reasonable judgment, to be genuine and sufficient, which may be provided to the QSF Administrator by the Claims Administrator, the Special Master (as that term is defined in the Agreement), the PSRC, Takeda, and / or any counsel for Qualifying Program Claimants.

22. Upon final distribution of all the Settlement Funds received into, and disbursed out of the Fund, the QSF Administrator shall take appropriate steps to wind down the Fund and thereafter be discharged from any further responsibility with respect to the Fund. The QSF Administrator may, but need not, seek a final order of discharge from this Court.

23. The QSF Administrator has obtained a Federal Taxpayer Identification Number for the Actos Settlement Fund, and will assign that number to the Fund upon the execution of an Order by this Court establishing the Fund.

WHEREFORE, the PSRC and Takeda respectfully request that the Court consent to take continuing jurisdiction over the Fund pursuant to Treas. Reg. Section 1.468B-1(c)(1), and issue an Order which:

1. Establishes the Fund as a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1;
2. Appoints the Garretson Resolution Group, Inc. as QSF Administrator and Trustee (the “QSF Administrator”) pursuant to the terms, conditions and restrictions of this Motion, thereby granting the QSF Administrator the authority to conduct any and all activities necessary to administer this Fund as described in this Motion, and consistent with the terms of the Agreement, including the negotiation and execution of a QSF Agreement pursuant to the Agreement;
3. Authorizes the QSF Administrator to 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.
4. Authorizes the QSF Administrator to distribute all attorneys’ fees and litigation expenses to counsel for Qualifying Program Claimants, consistent with their existing contingency fee contracts; with such distributions of attorneys’ fees in

lump sum or periodic payment form, as appropriate, and for the convenience of such Qualifying Program Claimants.

5. Authorizes the QSF Administrator, upon final distribution of all Settlement Fund received into, and disbursed out of the Fund, to take appropriate steps to wind down the fund and thereafter discharging the QSF Administrator from any further responsibility with respect to the Fund.
6. Such other relief as this Court may determine appropriate.

DATED this 30th day of July, 2015.

Respectfully submitted,

By: /s/ Richard J. Arsenault

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 30, 2015, a copy of foregoing **AGREED MOTION TO ADMINISTER SETTLEMENTS RESOLVING CASES & CLAIMS OF QUALIFYING PROGRAM CLAIMANTS** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

DATED this 30th day of July, 2015.

Respectfully submitted,

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