

Drugmakers Agree to \$300M Settlement in MDL Over Hypertension Medication Benicar

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- Drugmakers Daiichi Sankyo and Forest Laboratories have agreed to a [\\$300 million settlement](#) of multidistrict litigation by users of hypertension drug Benicar who linked their cases of severe diarrhea to use of the drug.
- Attorneys placed the settlement on the record before U.S. District Judge Robert Kugler in Camden on Tuesday. The agreement would apply to about 2,000 cases from across the nation that were consolidated before Kugler, as well as another 100 cases pending in state Superior Court in Atlantic County.
- Kugler appointed former state Superior Court Judge [Marina Corodemus](#), who served as a state mass tort judge, to oversee compliance with the agreement and dismissal of claims that fail to meet its conditions.
- Payouts to each plaintiff would depend on variables such as how many days of hospitalization they required and the extent to which they suffered intestinal damage. The settlement terms require a 95 percent participation rate, but to be compensated, plaintiffs must submit documentation of their treatment.
- The settlement was brought about because of an intense, early focus on general causation by Kugler and U.S. Magistrate Judge Joel Schneider, said Adam Slater of Mazie Slater Katz & Freeman in Roseland, co-lead counsel for the plaintiffs. Kugler told the parties he intended to have a hearing on

general causation first, and if the plaintiffs prevailed there, they would not need to present causation experts in subsequent trials, said Slater. That early focus on causation helped both sides to understand the strengths and weaknesses of their cases, said Slater.

- The agreement comes two years after the Judicial Panel on Multidistrict Litigation [consolidated the suits](#) in Kugler's court. The suits cited a July 2013 announcement by the U.S. Food and Drug Administration that Benicar could cause intestinal problems that lead to severe diarrhea and substantial weight loss. The FDA announcement said the intestinal problems might not develop for months or years after the patient begins taking Benicar, and those who stop taking it after developing such problems seen an improvement in symptoms.
- The suits claimed that defendants knew about the problem before the FDA announcement but advertised the drug in a misleading manner to minimize references to health risks.
- "This settlement happened because of Judge Kugler and Judge Schneider, who really masterfully managed this massive litigation. They really kept everyone's feet to the fire," Slater said.
- Attorney fees will be paid out of a common benefit fund that consists of 8 percent of the settlement, said Richard Golomb of Golomb & Honik, liaison counsel in the case. The case required the review of 12 million documents and entailed over 100 depositions, including 25 depositions of employees from Daiichi Sankyo's headquarters in Japan, which took two days each, instead of the more typical one day, because a translator was involved, said Golomb. Those depositions were held in Hawaii, at the order of Kugler, but lawyers' time there was no vacation, Golomb said.
- Daiichi Sankyo said in a statement that it did not admit liability, and believes that the claims in the litigation are without merit. The company's chairman and president, Glenn Gormley, said in the statement, "Daiichi Sankyo is committed to the health and safety of all patients taking our medications. We believe a settlement is in the best interest of all, and will allow us to continue our focus on bringing to market innovative medicines that help people live healthy and meaningful lives."
- The Daiichi Sankyo statement said the settlement would not harm the company's financial health because the \$300 million would come primarily from insurance companies.
- Daiichi, whose U.S. subsidiary is based in Parsippany, made the drug and Forest Laboratories marketed it. Forest, which was based in New York with offices in Jersey City, was acquired in 2014 by Actavis, now known as Allergan. An Allergan spokesman declined to comment on the settlement.
- Susan Sharko of Drinker Biddle & Reath in Florham Park, who represented Daiichi Sankyo and Forest, did not return a call about the settlement.