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2017 Decisions

Opinions of the United  
States Court of Appeals  
for the Third Circuit

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4-19-2017

## In re: Lipitor Antitrust Lit

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PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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Nos. 14-4202, 14-4203, 14-4204, 14-4205, 14-4206, 14-4602  
& 14-4632

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IN RE: LIPITOR ANTITRUST LITIGATION

Rite Aid Corporation; Rite Aid Hdqtrs. Corporation; JC (PJC)  
USA, LLC; Maxi Drug, Inc. d/b/a Brooks Pharmacy; Eckerd  
Corporation,  
Appellants in No. 14-4202

Walgreen Company; The Kroger Co.; Safeway, Inc.;  
Supervalu, Inc.; HEB Grocery Company L.P.,  
Appellants in No. 14-4203

Giant Eagle, Inc.,  
Appellant in No. 14-4204

Meijer, Inc.; Meijer Distribution, Inc.,  
Appellants in No. 14-4205

Rochester Drug Co-Operative, Inc.; Stephen L. LaFrance  
Pharmacy, Inc. d/b/a SAJ Distributors; Burlington Drug  
Company, Inc.; Value Drug Company; Professional Drug  
Company, Inc.; American Sales Company LLC,  
Appellants in No. 14-4206

A.F.L.-A.G.C. Building Trades Welfare Plan; Mayor and City Council of Baltimore, Maryland; New Mexico United Food and Commercial Workers Union's and Employers' Health and Welfare Trust Fund; Louisiana Health Service Indemnity Company, d/b/a Blue Cross/Blue Shield of Louisiana; Bakers Local 433 Health Fund; Twin Cities Bakery Workers Health and Welfare Fund; Fraternal Order of Police, Fort Lauderdale Lodge 31, Insurance Trust Fund; International Brotherhood of Electrical Workers Local 98; New York Hotel Trades Counsel & Hotel Association of New York City, Inc., Health Benefits Fund; Edward Czarnecki; Emilie Heinle; Frank Palter; Andrew Livezey; Edward Ellenson; Jean Ellyne Dougan; Nancy Billington, on behalf of themselves and all others similarly situated,

Appellants in No. 14-4602

RP Healthcare, Inc.; Chimes Pharmacy, Inc.; James Clayworth, R.Ph., d/b/a Clayworth Pharmacy; Marin Apothecaries, Inc., d/b/a Ross Valley Pharmacy; Golden Gate Pharmacy Services, Inc., d/b/a Golden Gate Pharmacy; Pediatric Care Pharmacy, Inc.; Meyers Pharmacy, Inc.; Tony Mavrantonis R. Ph., d/b/a Jack's Drugs; Tilley Apothecaries Inc., d/b/a Zweber's Apothecary,

Appellants in No. 14-4632

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Nos. 15-1184, 15-1185, 15-1186, 15-1187, 15-1274, 15-1323  
& 15-1342

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IN RE: EFFEXOR XR ANTITRUST LITIGATION

Walgreen, Co.; The Kroger, Co.; Safeway, Inc.; Supervalu,  
Inc.; HEB Grocery Company LP; American Sales Company,  
Inc.,  
Appellants in No. 15-1184

Rite Aid Corporation; Rite Aid Hdqtrs., Corporation; JCG  
(PJC) USA, LLC; Maxi Drug, Inc. d/b/a Brooks Pharmacy;  
Eckerd Corporation; CVS Caremark Corporation,  
Appellants in No. 15-1185

Giant Eagle, Inc.,  
Appellant in No. 15-1186

Meijer, Inc.; Meijer Distribution, Inc.,  
Appellants in No. 15-1187

Professional Drug Company, Inc.; Rochester Drug Co-  
Operative, Inc.; Stephen L. LaFrance Holdings, Inc.; Stephen  
L. LaFrance Pharmacy, Inc. d/b/a SAJ Distributors;  
Uniondale Chemist, Inc.,  
Appellants in No. 15-1274

Painters District Council No. 30 Health & Welfare Fund;  
Medical Mutual of Ohio,  
Appellants in No. 15-1323

A.F.L.-A.G.C. Building Trades Welfare Plan; Daryl Deino;  
IBEW-NECA Local 505 Health & Welfare Plan; Louisiana  
Health Service Indemnity Company d/b/a Blue Cross/Blue  
Shield of Louisiana; Man-U Service Contract Trust Fund;  
MC-UA Local 119 Health & Welfare Plan; New Mexico  
United Food and Commercial Workers Union's and  
Employers' Health and Welfare Trust Fund; Plumbers and  
Pipefitters Local 572 Health and Welfare Fund; Sergeants  
Benevolent Association Health and Welfare Fund; Patricia  
Sutter (together "End-Payor Class Plaintiffs") on behalf of  
themselves and all others similarly situated,  
Appellants in No. 15-1342

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On Appeal from the United States District Court  
for the District of New Jersey

(MDL 2332) / (D.N.J. No. 3-12-cv-02389) / (D.N.J. No. 3-  
12-cv-02478) / (D.N.J. No. 3-12-cv-02519) / (D.N.J. No. 3-  
12-cv-04115) / (D.N.J. No. 3-12-cv-04537) / (D.N.J. No. 3-  
12-cv-05129) / (D.N.J. No. 3-12-cv-06774) / (D.N.J. No. 3-  
12-cv-07561)  
(D.N.J. No. 3-11-cv-05479) / (D.N.J. No. 3-11-cv-05590) /  
(D.N.J. No. 3-11-cv-05661) / (D.N.J. No. 3-11-cv-06985) /  
(D.N.J. No. 3-11-cv-07504) / (D.N.J. No. 3-12-cv-03116) /  
(D.N.J. No. 3-12-cv-03523)

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ORDER AMENDING OPINION

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At the direction of the Court, the opinion filed on April 13, 2017 is amended as follows:

Page 21, first full paragraph, third line: <four individual-retailers asserting direct-purchaser claims> is changed to <several individual-retailers asserting direct-purchaser claims>.

Page 21, first full paragraph, ninth line: delete <several> before <California-based pharmacists>.

Page 25, only full paragraph, second line: <'983 Patent> is changed to <'893 Patent>.

Page 28, fourth paragraph, fourth line: <four individual-retailers asserting direct-purchaser claims> is changed to <several individual-retailers asserting direct-purchaser claims>.

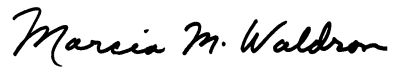
Page 31, second paragraph, fourth line: <four individual-retailers filed complaints> is changed to <several individual-retailers filed complaints>.

Page 43, first full paragraph, first line: <Our jurisdictional holding is consistent, we think, with two of the Second Circuit's pre-Actavis reverse-payment cases.> is changed to <Our jurisdictional holding is consistent, we think, with two of the Second Circuit's pre-Actavis cases.>.

Page 43, first full paragraph, tenth line: <(per curiam)> is added after <Arkansas Carpenters Health & Welfare v. Bayer AG, 604 F.3d 98, 103 n.10 (2d Cir. 2010)>.

Page 44, first full paragraph, first line: <And in DDAVP, 585 F.3d 677, the Second Circuit retained jurisdiction over a reverse-payment case.> is changed to <And in DDAVP, 585 F.3d 677, the Second Circuit retained jurisdiction over an antitrust case presenting patent-law issues.>.

For the Court,



Marcia M. Waldron, Clerk

Date: April 19, 2017

mlr/cc: all counsel