

# Class action: Walgreens charges insured, Medicare customers too much for prescription drugs (/stories/511098464-class-action-walgreens-charges-insured-medicare-customers-too-much-for-prescription-drugs)

by Scott Holland (/author/scott-holland) | Mar. 29, 2017, 12:30am



A multi-state class action complaint filed March 23 in federal court in Chicago accuses Walgreens of fraud, negligent misrepresentation and unjust enrichment in relation with the way it prices prescription drugs.

Named plaintiffs Dorothy Forth, Troy Termine, Cynthia Russo and the International Brotherhood of Electrical Workers Local 38 Health and Welfare Fund accused Walgreens of a “fraudulent and deceptive price scheme to artificially inflate the ‘usual and customary’ prices reported and used to charge” themselves and putative class members for generic drugs. The lawsuit doesn’t specify how much the plaintiffs believe Walgreens has allegedly overcharged, saying only that the amount in controversy exceeds the procedural threshold of \$5 million.

According to the complaint, likely millions of individual customers who use health insurance to buy generic prescription drugs from Walgreens are paying more for certain drugs than cash-paying Walgreens customers enrolled in the company’s Prescription Savings Club, which is not a form of

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health insurance.

The complaint cites a Generic Pharmaceutical Association report indicating 89 percent of all prescriptions dispensed in the U.S. now are generic drugs. The plaintiffs also maintain pharmacies are not allowed to charge customers or third-party payors more for prescription drugs than its usual price.

Under the PSC, customers without insurance can buy prescription

generics in tiers — \$5, \$10 and \$15 for 30-day supplies and \$10, \$20 and \$30 for 90-day supplies. The pricing package, per the complaint, “includes some of the most commonly used generics for cardiovascular, diabetes, pain, psychiatric illnesses, gastrointestinal disorders and other common ailments.

The complaint alleges Walgreens breaks the law by artificially inflating prices for generics on reimbursement claims submitted to third-party payors, such as Medicare, Medicaid and private insurers. The practice allegedly dates to 2007, and the action seeks either nationwide class certification or for action to be brought under fraud laws of Arizona, California, Colorado, Florida, Georgia, Iowa, Illinois, Louisiana, Minnesota, Missouri, Nevada, North Carolina, Ohio, Texas and Wisconsin.

Forth, of Texas, said she bought more than 20 generic medicines at Walgreens since 2012 using Medicare Part D coverage. She said she’s overpaid at least \$285 compared to what she believes she would have paid if she’d used cash and participated in the PSC. Russo, of Florida, also uses Medicare Part D and said she overpaid by \$130 since 2012. Termine, of Louisiana, had a Humana policy and said he overpaid by \$8 — \$7.15 for one 30-day prescription and \$10.89 for another, both \$5 tier one drugs under the PSC. IBEW Local 38 has beneficiaries in the 15 states named in the action.

The complaint incorporated a table showing drug prices in Suffolk County, N.Y., Orlando, Fla., and Philadelphia, at Walmart, Target, Shoprite and Winn-Dixie, contrasted with the usual and customary prices Walgreens submits to third-party payors, and the PSC cash price it charges. It argues against any tolling of statute of limitations, noting that “because Walgreens affirmatively concealed its pricing scheme, plaintiffs and the

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class had no knowledge until recently of the alleged fraudulent activities or information which would have caused a reasonably diligent person to investigate whether Walgreens committed the actionable activities detailed herein.”

In addition to class certification and a jury trial, the plaintiffs seek monetary, compensatory, consequential, statutory treble, punitive or exemplary and general damages and injunctive relief. They say all class members “are owed at least the difference between the amount they paid and the (usual and customary) offered to the general public. “

The plaintiffs sent a copy of their complaint to attorneys general in Illinois, Louisiana and Missouri.

Representing the plaintiffs in the action are Halunen Law, of Minneapolis; Scott+Scott, Attorneys at Law, LLP, of Colchester, Conn., and New York; Lemmon Law Firm LLC, of Hahnville, La.; Whitfield, Bryson & Mason, LLP, of Raleigh, N.C.; Brandner Law Firm, LLC, of New Orleans; and Tusa P.C., of Southold N.Y.

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200 Wilmot Rd  
Deerfield, IL 60015

Halunen Law (/organizations/645066259-halunen-law/stories)  
80 South 8th Street  
Minneapolis, MN 55402

Lemmon Law Firm LLC (/organizations/645069658-lemmon-law-firm-llc/stories)  
15058 River Road  
Hahnville, LA 70057

Whitfield Bryson & Mason (/organizations/645058645-whitfield-bryson-mason/stories)  
900 West Morgan Street  
Raleigh, NC 27603

U.S. District Court for the Northern District of Illinois (/organizations/645092762-u-s-district-court-for-the-northern-district-of-illinois/stories)  
219 S Dearborn St  
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