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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

TONY R. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

IN RE ACTOS (PIOGLITAZONE)
PRODUCTS LIABILITY
LITIGATION

This Document Relates to All Cases

§
§ MDL Docket No.
§
§ 6:11-MD-2299
§
§
§

CASE MANAGEMENT ORDER:
PSC'S MANAGEMENT OF TIMEKEEPING, COST REIMBURSEMENT
AND RELATED COMMON BENEFIT ISSUES

The PSC has adopted guidelines regarding the submission and compensability of common benefit time and expenses. Considering the PSC's adopted guidelines,

THIS COURT HEREBY ADOPTS the following guidelines for the management of timekeeping, cost reimbursement, and related common benefit issues.¹ These guidelines will be strongly considered by this Court in approving the award of common benefit attorney fees and costs:

The recovery of common benefit attorneys' fees and cost reimbursements will be limited to "Participating Counsel." "Participating Counsel" shall be defined as the Court-appointed Plaintiffs Steering Committee (along with members of their firm and staff), any other counsel authorized by the Executive Committee or Co-Lead Counsel who desire to be considered for common benefit compensation, or counsel who have been specifically approved by this Court as Participating Counsel prior to incurring any such cost or expense.²

¹ The instant order will be supplemented by, and enforced together with, this Court's order entitled Case Management Order: Claims for Common Benefit Fees and Expenses.

² Counsel should be warned that no application for approval to incur common benefit fees or expenses will be considered by this Court unless counsel have first applied to the Plaintiffs' Steering Committee for such approval.

Participating Counsel shall only be eligible to receive common benefit attorneys' fees and cost reimbursement if the time expended, costs incurred, and activity in question were (a) for the common benefit; (b) appropriately authorized; (c) timely submitted; and (d) approved by this Court. Participating Counsel who seek to recover Court-awarded common benefit attorneys' fees and expenses in connection with this litigation shall keep a daily, contemporaneous record of their time and expenses, noting with specificity the amount of time, location (if relevant), and particular activity, along with brief note indicating the source of authorization for the activity in question. Participating Counsel shall, by the last day of each month, submit to submission@mdl2299time.com a report of their time and expense records as noted above for the preceding month in the attached format (See Exhibit A). By August 15, 2012, submissions shall be made for all time incurred through June 30, 2012. The failure to secure authority to incur common benefit time and expenses and/or maintain and timely provide such records or to provide a sufficient description of the activity will be grounds for denying the recovery of attorneys' fees or expenses in whole or in part.

The Court has been advised that Participating Counsel, as defined above, agree to the terms and conditions herein, including agreeing that this Court has final, non-appealable authority regarding the award and allocation of common benefit attorney fees and awards for cost reimbursements in this matter. Participating Counsel knowingly and expressly waive any right to appeal those decisions, assert the lack of enforceability of this Order, or to otherwise challenge its adequacy. The agreement will be confirmed in writing with each month's time and expense submission.

COMMON BENEFIT EXPENSES

A. Expense Limitations

1. Travel Limitations

Only reasonable expenses will be reimbursed. Except in extraordinary circumstances approved by the Executive Committee or Co-Lead Counsel, all travel reimbursements are subject to the following limitations:

i. Airfare: Ordinarily, only the price of a full coach fare seat will be reimbursed. Business/First Class Airfare will *not* be fully reimbursed, except for international flights, which requires prior written approval by the Executive Committee or Co-Lead Counsel. In the event non-coach air travel is utilized, the attorney shall be reimbursed only to the extent of the full coach fare, if the full coach fare for that flight is contemporaneously documented. If non-coach, private or charter travel is elected, the applicant is required to submit what the full coach fare in effect at that time was, and that is all that can be reimbursed.

ii. Hotel: Hotel room charges for the average available room rate of a business hotel, including the Hyatt, Hilton, Sheraton, Westin, and Marriott hotels, in the city in which the stay occurred, will be reimbursed. Luxury hotels will not be fully reimbursed, but will be reimbursed at the average available rate of a business hotel.

iii. Meals: Meal expenses must be reasonable.

iv. Cash Expenses: Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, etc.) will be reimbursed up to \$30.00 per trip, as long as the expenses are properly itemized.

v. Rental Automobiles: Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles were available. Counsel must submit evidence of the unavailability of non-luxury vehicles. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form and only the non-luxury rate may be claimed, unless such larger sized vehicle is needed to accommodate several counsel.

vi. Mileage: Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, and the rate will be the maximum rate allowed by the IRS.

2. Non-Travel Limitations

i. Long Distance, Conference Call and Cellular Telephone Charges: Common benefit long distance, conference call and cellular telephone charges must be documented as individual call expenses in order to be compensable. Copies of the telephone bills must be submitted with notations as to which charges relate to the Actos (Pioglitazone) MDL litigation. Such charges are to be reported at actual cost.

ii. Shipping, Overnight, Courier, and Delivery Charges: All claimed common benefit shipping, overnight, courier or delivery expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package. Such charges are to be reported at actual cost.

iii. Postage Charges: A contemporaneous postage log or other supporting documentation must be maintained and submitted for common benefit postage charges. Such charges are to be reported at actual cost.

iv. Telefax: Telefax should not be used and generally will not be reimbursed.

v. In-House Photocopy: A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is \$0.15 per page.

vi. Computerized Research – Lexis/Westlaw: Claims for Lexis or Westlaw, and other computerized legal research expenses should be in the exact amount charged to the firm and appropriately allocated for these research services.

B. Verification

The forms detailing expenses shall be certified by an attorney with authority in each firm attesting to the accuracy of the submissions. Attorneys shall keep receipts for all expenses. Credit card receipts (not the monthly statements) are an appropriate form of verification so long as accompanied by a declaration from counsel that the charge was incurred for the common benefit. Hotel costs must be proven with the full hotel invoice. The description of unclaimed expenses on the invoice may be redacted.

COMMON BENEFIT WORK

A. Authorization for Compensable Common Benefit Work

Authorized Common Benefit Work includes assignments made by majority vote of the Executive Committee³ or by Co-Lead Counsel. Unless specifically and explicitly authorized in writing, no time spent on developing or processing individual issues in any case for an individual client (claimant) will be considered or should be submitted, nor will time spent on any unauthorized work.

1. Examples of authorized and unauthorized work include, but are not limited to:

- a. Depositions: Time and expenses for Participating Counsel not designated as one of the authorized questioners or otherwise authorized to attend the deposition by the Executive Committee or Co-Lead Counsel shall not be considered common benefit work, but rather considered as attending on behalf of such counsel's individual clients.
- b. Periodic MDL Conference Calls and PSC meetings: Calls are held so that individual attorneys are kept up-to-date on the status of the litigation, and participation by listening to such calls is not common benefit work. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients, and that is a reason to listen in on those calls. The attorneys designated by the Executive Committee or Co-Lead Counsel to run or participate in those calls are working for the common benefit by keeping other lawyers informed and educated about the case and their time will be considered for common benefit. During phone calls there is a

³ In this Order, all references to "by the Executive Committee" mean by a majority vote of the Executive Committee.

presumption that no more than two participants per firm will qualify for common benefit time, unless otherwise authorized by the Executive Committee or Co-Lead Counsel. As to PSC meetings, there is a presumption that only the PSC member's time will qualify for common benefit time, unless non-PSC member participation is requested by the PSC member and expressly authorized for each meeting, by either the Executive Committee or Co-Lead Counsel.

- c. Periodic M D L Status Conferences: Regular status conferences are held so that the litigation continues to move forward and legal issues are resolved with the Court. Individual attorneys are free to attend any status conference held in open court in order to keep up-to-date on the status of the litigation but attending and listening to such conferences is not common benefit work. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients. Mere attendance at a status conference will not be considered a common benefit expense or common benefit time. The attorneys designated by the Executive Committee or Co-Lead Counsel to address issues that will be raised at a given status conference or requested by the Executive Committee or Co-Lead Counsel to be present at a status conference are working for the common benefit and their time will be considered for common benefit. Similarly, any attorney whose attendance at a status conference is specifically requested by the Judge(s) and/or a Special Master to address a common issue may submit their time for evaluation as common benefit time.

- d. Identification and Work Up of Experts: If a Participating Counsel retains an expert without the knowledge and approval of the Executive Committee or Co-Lead Counsel, that time and expenses may not be approved for common benefit expenses/work.
- e. Attendance at Seminars: Attendance at seminars (i.e. AAJ Section Meetings, Mass Torts Made Perfect, Harris Martin and similar seminars and CLE) does not qualify as common benefit work or a common benefit expense.
- f. Document Review: Only document review specifically authorized by the Executive Committee or Co-Lead Counsel and assigned to an attorney will be considered common benefit work. If an attorney elects to review documents that have not been assigned to that attorney by the Executive Committee or Co-Lead Counsel, that review is not considered common benefit. Unless approved in writing by the Executive Committee or Co-Lead Counsel, only licensed attorneys may conduct common benefit document review. Descriptions associated with “document review” must contain sufficient detail to allow those reviewing the time entry to generally ascertain what was reviewed. For example, indicating the custodian, search query or number of document folders reviewed is the kind of description needed.
- g. Review of Pleadings and Orders: Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients, and review of pleadings and orders is part of that obligation. Only those attorneys designated by the Executive Committee or Co-Lead Counsel to review or summarize those pleadings or Orders for the MDL are working for

the common benefit and their time will be considered for common benefit. All other counsel are reviewing those pleadings and orders for their own benefit and the benefit of their own clients, and said review is not considered common benefit.

- h. Emails: Except for PSC members and reasonable time by their attorneys and staff working on Actos, time recorded for reviewing emails is not compensable unless germane to a specific task being performed by the receiving or sending attorney or party that is directly related to that email. Thus, for example, review of an email sent to dozens of attorneys to keep them informed on a matter on which they are not specifically working would not be compensable. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients and that is a reason to review emails to a larger group, which involves a matter on which the recipient is not directly and immediately working.
- i. Review of Discovery : Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients and that is a reason to review discovery served in this litigation. Except for PSC members working on Actos, only those attorneys designated by the Executive Committee or Co-Lead Counsel to review discovery are working for the common benefit and their time will be considered for common benefit. All other counsel are reviewing those discovery responses for their own benefit and the benefit of their own clients, and said review is not considered common benefit.

In the event Participating Counsel are unsure if the action they are about to undertake is considered common benefit action, counsel shall ask the Co-Lead Counsel in advance as to whether such time may be compensable.

B. Time Keeping and Submission of Time Records

All time must be accurately and contemporaneously maintained. Time shall be kept according to the guidelines noted herein using the forms circulated by Co-Lead Counsel, clearly indicating their position in the firm (Partner, Associate, Paralegal). Time submission is limited to attorneys and paralegals; no submission of clerical or technical support without prior approval by Co-Lead Counsel. Participating Counsel shall keep a daily record of the time spent in connection with common benefit work on this litigation, indicating with specificity the hours, location (if relevant), along with brief note indicating the source of authorization for the activity in question and particular activity (such as “conducted deposition of John Doe”). Time entries that are not sufficiently detailed may not be considered for common benefit payments. All common benefit work time for each firm shall be maintained in a tenth-of-an-hour increment.

IT IS SO ADOPTED.

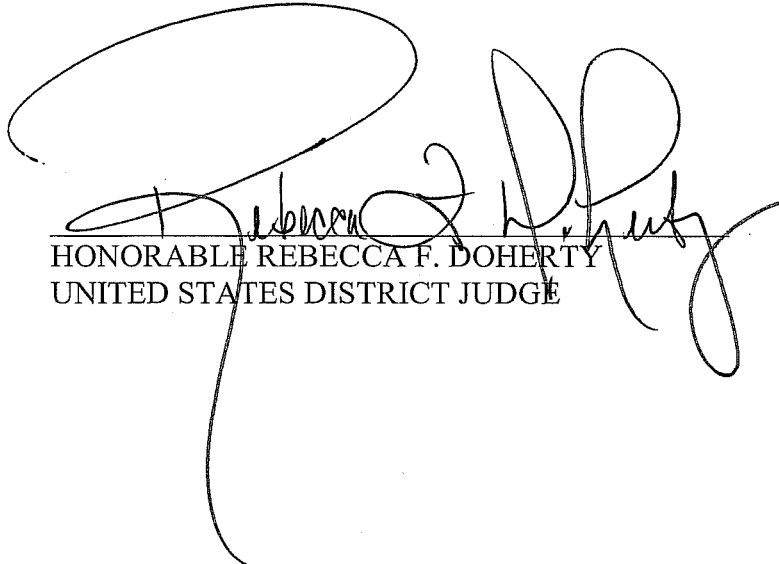
NOTICE TO ALL PROSPECTIVE PARTICIPATING COUNSEL

In order to ensure that all prospective Participating Counsel have due notice of the instant order, Lead Defense Counsel, Ms. Gourley, is **ORDERED** to provide weekly notice to Plaintiffs’ Liaison Counsel of all new cases (whether filed in federal or state court), of which she has received notice. Plaintiffs’ Liaison Counsel is **ORDERED** to provide immediate notice of the instant order, together with the Case Management Order: Claims for Common Benefit Fees

and Expenses, to all plaintiffs' counsel in new cases, without regard for whether the new case is filed in federal or state court so as to provide full notice as to the procedures which will govern this case.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 10 day of

July, 2012.



HONORABLE REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

