

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:08-MD-01928-MIDDLEBROOKS/JOHNSON**

IN RE TRASYLOL PRODUCTS LIABILITY
LITIGATION – MDL – 1928

This Document Relates to All Actions

/

ORDER

AND NOW, upon consideration of the Motion by the Plaintiffs’ Steering Committee To Reimburse Contributors To The Trasylol Plaintiffs Common Benefit Fund For “Held Costs” and make further distribution of Common Benefit Attorneys Fees Pursuant To Pretrial Order No. 8, it is hereby ORDERED and DECREED that:

(1) Alan B. Winikur shall reserve at least \$385,805.51 as a cash Balance in the Common Benefit Fund for the resolution of:

(a) “flagged” claims for “held” costs as described in the motion;

(b) for payment of attorneys fees, if any, to the fee claimants described in paragraph 26 of the motion; and

(c) for payment of the fees of the accountant for the remaining work in this case. as described in the motion, and (d) for payment of any outstanding invoices or unanticipated expenses.

(2) Review submissions from the effected firms and make a recommendation to co-lead counsel as to the amounts for flagged costs to be paid in accordance with CMO 8 and paragraphs 18 and 19 of the motion;

(3) Immediately reimburse the law firms listed in paragraph 16 for the remainder of their “held” costs in the total amount of \$634,210.27;

(4) On December 9, 2013, pay out any remaining balance on the Common benefit account as fees in accordance with paragraph 25 of the motion attached to this order and the

order of this Court dated November 2, 2012, and further make continuing payouts of fees in accordance with paragraph 25 for any additions funds received going forward on a monthly basis;

(5) The PSC may remove all the documents form the Lextranet platform, but maintain the original media and the common benefit work product until all cases are resolved.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this _____ day of _____, 2013.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:08-MD-01928-MIDDLEBROOKS/JOHNSON**

IN RE TRASYLOL PRODUCTS
LIABILITY LITIGATION – MDL – 1928

This Document Relates to All Actions

**MOTION TO REIMBURSE CONTRIBUTORS TO THE TRASYLOL PLAINTIFFS
COMMON BENEFIT FUND FOR “HELD COSTS” AND FOR FURTHER PAYMENT
OF ATTORNEYS FEES PURSUANT TO PRETRIAL ORDER NO. 8**

1. PreTrial Order No. 8 relating to Common Benefit Fund/Time and Expense Reimbursement, provides in subparagraph A that “a Common Benefit Fund for expenses will be established to receive and disburse funds as provided in this Order.” This Common Benefit Fund was originally established through contributions by members of the Plaintiffs’ Steering Committee amounting to \$2,670,000.00. Subsequently, through an assessment of settlements in this action pursuant to section A(1) of that order, 6% of settlement funds were set aside “ for the payment of attorneys’ fees and expenses as set forth in this order or any subsequent order of the court.” Pursuant to a subsequent order of this court dated December 10, 2010, the original contribution of the Plaintiff Steering Committee members was reimbursed.

2. The Common Benefit Fund has continued to accumulate funds which have been retained in an escrow account established by a certified public accountant, Alan Winikur, pursuant to an order of this court dated April, 16, 2010. As of August 7, 2013, the Common Benefit Fund had a balance of **\$1,682,007.68.**

3. On June 22, 2010, this Court entered an order allowing for the payment of certain expenses from the fund created by the Court appointed accountant and funded by the assessment. This order stated in relevant part:

PTO 8 is modified so that the Plaintiffs' Steering Committee through Co-Lead Counsel may request and the approved CPA may issue payment of common benefit "shared costs" as defined in PTO 8 and modified by this order, without further action by the Court.

4. Since that time, all "shared" Common Benefit expenses as defined above have been paid by the court appointed accountant from the Common Benefit Fund.

5. Currently, the Trasyol MDL is almost completely ended. At the most recent status conference, the parties described that there were less than 10 active cases in the MDL and at the present time we believe that there are only one or two active cases. Other than those cases, to the best of the information available to the PSC, all of the other cases on the MDL docket are resolved even if they remain on the docket because final payment has not been made. The Plaintiff's steering committee is not aware of any case that is currently preparing or intending to go to trial. There are non-MDL cases still active in state court in Philadelphia (1), Delaware (3), St. Claire County IL (6) and Los Angeles (4). A list of all known open cases and counsel representing plaintiffs is attached as Exhibit A. All such counsel are being notified of this motion.

6. As an important part of the work of the Plaintiff Steering Committee, a document platform was created and serviced to enable searches of over 23 million pages of documents. This was an invaluable resource to the litigation. The Plaintiffs' Steering committee has been informed by the document platform vendor Merrill Lextranet that the platform has been accessed fewer than 10 times over the past year. This is a clear indication that the litigation is not active. To that end, the Plaintiffs' Steering Committee has instructed the vendor to return all original media that the documents were sent on and that return has occurred. Further, the Plaintiffs' Steering Committee has instructed the vendor to download onto transportable media all of the PSC Common Benefit work product and return it to the PSC. That action is in process. Finally

the Plaintiffs' Steering Committee is negotiating with the Defendants for a method of deleting the privileged documents. The PSC will maintain the totality of the documents on the original media and maintain the "trial packages", deposition transcripts and exhibits, objective coding, expert reports and other common benefit assets until all cases are concluded.

7. As a result of the actions above, expenses chargeable to the Common Benefit Fund will be near \$0.00 per month. The Plaintiffs' Steering Committee will maintain the documents on their original media along with MDL Common Benefit Work Product if, in fact, the information is necessary for any case.

8. Because of the actions described above and the wind down of the MDL, the Common Benefit account has an excess of funds beyond what is needed to assure that common benefit shared costs can be paid as they are incurred. All of plaintiffs' generic experts have provided reports and have been deposed. No trials are scheduled. The documents and the Plaintiffs' Steering Committee work product will be maintained by the PSC at no cost.

9. Because the vast majority of generic costs have already been expended and because, as additional settlements are funded, additional substantial funds will be deposited in the common benefit account, there are clearly sufficient funds to reimburse those who contributed to the common benefit of all plaintiffs from the excess unneeded amount.

10. PTO 8 provides in paragraph 3(a):

Upon subsequent order of the Court, payments may be made from the Common Benefit Fund to attorneys who provide services or incur expenses for the joint and common benefit of plaintiffs in addition to their own client(s), including services provided and expenses incurred in preparation and trial of the bellwether cases. Attorneys eligible thereto are limited to Plaintiffs' Lead Counsel, members of the Plaintiffs' Executive Committee, members of the PSC, Plaintiffs' Federal Liaison Counsel, members of subcommittees established by the PSC who are called upon to assist in performing PSC

responsibilities (e.g., discovery and science committees), Plaintiffs' State Liaison Counsel, and other attorneys performing PSC-approved responsibilities in MDL or state court actions.

11. The members of the PSC and others have incurred other substantial costs for common benefit, such as travel to and from depositions including depositions abroad, copying documents, creation of a common benefit trial package etcetera. Expenses of this type are defined as "held costs" in PTO 8 and have been carried by each attorney in the MDL to reimbursed as and when determined by the PSC and approved by this Court.

12. In accordance with PTO 8, Plaintiffs' Counsel who expended costs for the common benefit of all plaintiffs have submitted detail on those expenses to plaintiffs' co-lead counsel, James Ronca, who has retained these and has sent a copy of the accumulated records to the court appointed accountant for the fund, Alan Winikur. Plaintiffs' Counsel incurred \$1,518,848.42 in "held costs". See spreadsheet attached as Exhibit B.

13. To date, the Common Benefit Fund has had total revenues of \$14,082,380.78 from the assessment.

14. The assessment amount represents settlements totaling at least \$234,706.350.00.

15. The Plaintiffs' Steering Committee has already been reimbursed \$2,670,000 for their original out of pocket contribution. Adding the "held" costs claimed to date, the total amount of costs expended for common benefit to date is \$4,188,848.42 which represents less than 2% of the total recovery; a highly efficient result considering that cases for over 2,200 plaintiffs were filed in the MDL and generic costs, as claimed to date, have been less than \$2,000 per cases.

16. This Court has already reviewed the "held" costs pursuant to a motion by the Plaintiffs' Steering Committee and issuing an order dated December 7, 2011. In that order the

Court allowed payment of 50% of all un-flagged costs. The total un-flagged costs at that time were \$1,170,544.53 so the amount paid at that time was \$585,272.27. The Plaintiffs' Steering Committee requests that the second half of that payment be made now in accordance with the following schedule:

a. Anapol Schwartz (James Ronca)	\$41,313.86
b. Babbit, Johnson, Osborne & LeClainche.....	\$40,076.75
c. Bailey & Glasser	\$64,430.34
d. Behnke, Martin & Schulte	\$945.91
e. Branstetter, Stranch & Jennings.....	\$48,557.21
f. Carey & Danis.....	\$16,423.71
g. Clark, Burnette, Love & Lee.....	\$12,403.95
h. Clark, Dean & Burnette	\$47,936.84
i. Cory, Watson, Crowder & Degaris.....	\$39,967.84
j. Finklestein Thompson.....	\$595.33
k. Fleming & Associates	\$44,828.73
l. Gallagher Law Firm.....	\$72,894.62
m. Levin Papantonio.....	\$4,893.60
n. Matthews & Associates.....	\$3,053.55
o. The Monsour Law Firm	\$13,573.00
p. Motley Rice.....	\$858.13
q. Napoli, Bern, Ripka & Associates	\$46.25
r. Simmons, Browder, Gianaris, Angelides & Barnerd	\$34,536.30
s. Ury & Moskow	\$52,910.16
t. Wagstaff & Cartmell.....	\$40,570.77
u. Whatley Drake	\$4,455.47

In addition to the above, payment of 50% of "held costs of Aylstock, Witkin, Kreis and Overholtz, or a total of \$48,938.00. The total to be paid therefore is \$634,210.27.

17. The amounts in the schedule above mirrors the amounts approved previously.

18. In the previous motion, it was reported that Plaintiffs' co-lead counsel had reviewed the costs and, in an abundance of caution, "flagged" certain claims which might require additional review before approval. Plaintiffs' lead counsel does not believe that these costs violate the terms of PTO 8 per se but, in order to be sure that the costs can be reimbursed under that order, "flagged" these costs, which were not be included in the 50% requested as partial reimbursement. "Flagged" costs total \$233,467.51. After the prior motion, the firms with

“flagged costs” submitted additional detail. In order to affirmatively unravel these costs and assure compliance with PTO 8, the PSC requests that the Court Appointed Accountant be tasked with reviewing these costs with the firms making claims and make recommendations to co-lead counsel and the Court on what is payable by December 1, 2013. Firms with flagged costs will have until November 10, 2013 to submit additional detail. The Court Appointed Accountant may also request additional detail and provide time limits for providing such detail. After the recommendations, co-lead counsel will seek agreement from the firms. By January 15, 2014, a motion will be made to confirm the agreement or if there are objections to the recommendations, allow the Court to make a final decision.

19. Through inadvertence, the “held” costs of one of the PSC law firms was not submitted for review previously. The PSC member Neil Overholtz has recently submitted a claim in the amount of \$97,876.00. Detail has been submitted. The consensus of the PSC is that Attorney Overholtz and his law firm made substantial contributions to the litigation and their efforts added substantive value to the ultimate resolution of these cases and they should not be penalized for late submission. Rather, the PSC moves that the “held” costs claimed be reviewed in the same manner as the “flagged” costs under paragraph 18 and the Court Appointed Accountant make a recommendation with respect to payment of these costs. Consistent with the payment to other PSC members, the PSC moves the Court to pay one half of these expenses immediately in the same manner as the payments under paragraph 16 of this motion.

20. For the following reasons, there is no chance that the Common Benefit Fund will overpay anyone who has made a claim for common benefit “held” costs:

a. This matter has already been reviewed by the Court, the PSC and any attorney with a claim. There were no objections the first time and the Court approve the first half of the payment;

- b. “Flagged” costs are being withheld in their entirety;
- c. Plaintiffs’ co-lead counsel and the members of the PSC believe that the claims have been made in good faith.
- d. The total claims of both “shared” and “held” costs are not excessive amounting to less than 2% of the assessment on settlements funded to date.

21. The court appointed accountant, Alan Winikur, has no objection to the proposed procedure and the payment of the remainder of the “unflagged” held costs.

22. All members of the PSC and all attorney and law firms with a claim for costs concur in this motion.

23. The defendants have no objection to this motion.

MOTION FOR FINAL DISTRIBUTION OF COMMON BENEFIT ATTORNEYS FEES

24. On November 2, 2012, This Court entered an order for the award of common benefit attorneys’ fees. The order states as follows:

THIS CAUSE comes before the Court upon the Plaintiffs' Motion for Payment of Common Benefit Attorney’s Fees from the Common Benefit Fund Pursuant to Pretrial Order No.8 [DE 13390]. The Court has reviewed the Motion and is otherwise fully informed of the premises. There have been no objections filed to the instant Motion, and the requested relief has been certified as appropriate by the Court-appointed accountant.

Accordingly, it is ORDERED and ADJUDGED that the Motion be, and is hereby GRANTED. The Court approves the payment of attorney's fees from the common benefit fund as described in paragraph 25 of the Motion to the extent that the fund exceeds \$1 million. The Court hereby authorizes C.P.A., Alan B. Winikur to keep a reserve of \$1 million for future common benefit expenses, the remaining claims for "held" costs and any further attorney fee claims by law firms not awarded common benefit fees under this order. The Court directs C.P.A., Alan B. Winikur to provide rolling distributions of counsel fees to the firms listed in paragraph 25, each time the amount of the Common Benefit Fund exceeds the \$1 million reserve by at least \$500,000. The Court further directs C.P.A., Alan B. Winikur to distribute fees to the firms listed in paragraph 25, only up to a total of \$13 million. Once that amount has been distributed, no other fee distributions should be made without further order of Court. DONE and ORDERED in Chambers, at West Palm Beach, Florida this 2nd day of November, 2012.

25. Common Benefit attorneys fees were distributed pursuant to that order, on one occasion, in December 2012.

26. The distribution as set forth in paragraph 25 of the motion is as follows:

a. Plaintiffs Steering Committee:

1.	Anapol Schwartz (Ronca) Co-Lead	9.5%
2.	Clark Dean and Burnett (Love) Co-lead	7% ¹
3.	Babbitt Johnson (Osborne) Liaison	7.5%
4.	Ury Moskow (Moskow) State Liaison	7.5%
5.	Doug Monsour.....	6.75%
6.	Alystock Kreis (Overholtz)	6.25%
7.	Carey and Danis (Carey)	6.5%
8.	Cory Watson (Turner)	4%
9.	Fleming and Associates (Fleming).....	7.5% ²
10.	Levin Papantonio (Barr).....	4%
11.	Matthews and Associates (Matthews)	6%
12.	Simmons Browder (Miceli).....	5.25%
13.	Napoli Bern (Bern).....	3%
14.	Motley Rice (Thompson)	1%
15.	Branstetter Stranch (Stranch)	5% ³
16.	Whatley Drake (Whatley)	1.5% ⁴

b. Firms not on Plaintiffs' Steering Committee who did substantial work (over 500 hours) at the direction of the PSC on document review, depositions, on *Daubert* motions and briefs and preparing bellwether cases for trial:

1.	Freese and Goss.....	5%
2.	Gallagher Law Firm	2%
3.	Wagstaff and Cartmell (T.J. Preuss)	1.5%
4.	Jerry Taylor	0.75%
5.	Finkelstein Thompson	0.25%
6.	Bailey and Glasser.....	2%

¹ When this litigation started, Scott Love was a partner at Fleming and Associates. In early 2009, Mr. Love moved to Clark Dean and Burnett. This percentage only reflects Mr. Love's time at Clark Dean and Burnett.

² When Scott Love left Fleming and Associates, George Fleming was appointed to the PSC. The percentage for Fleming and Associates reflects Scott Love's time while with that firm.

³ Branstetter Stranch was added to the PSC as class counsel but also provided valuable services related to document review and depositions especially in the German language.

⁴ By agreement, class counsel share was downgraded because the class actions did not financially contribute to the fund.

27. There are law firms with very small common benefit claims, who did not contribute in the same magnitude to the firms listed above. None of these firms claimed more than 138 hours total work. The total of all 7 claimants is 337.6 hours. At the highest average hourly fee, the total of these claims would only be \$54,000. In the original counsel fee motion 0.25% was not been awarded so that it could be used for these claimants should their claims prove valid. Co-lead counsel has questions about whether any of this work was common benefit and authorized by the PSC. The Plaintiffs' Steering Committee proposes that these claims also be reviewed by the court appointed accountant for compliance with PTO 8 and that the court appointed accountant be tasked with making a recommendation for payment of these claims to be forwarded to co-lead counsel by December 1, 2013. Co-Lead Counsel will attempt to resolve these claims by agreement. If agreement is reached a motion will be submitted to the court for approval. If there are objections, Co-lead counsel will propose a procedure for determining the claims.

28. PSC Co-Lead Counsel estimate that the following needs to be set aside to account for all outstanding claims and costs:

- a. Set aside which may be used for "Flagged" held costs, \$233,467.51;
- b. Set aside which may be used for small fee claims, \$54,000.00;
- c. Set aside to pay accounting fees to audit "flagged" claims and small fee claims, \$20,000;
- d. Set aside to pay accounting fees for final accounting, \$7000.00;
- e. Set aside to pay for preparation of 2013 tax returns, \$600.00;
- f. Outstanding Merrill Lextranet bill for document hosting, \$1800.00; and
- g. Additional set aside for unanticipated expenses, \$20,000.00;
- h. Outstanding 50% balance of Aylstock, Witkin, Krei and Overholtz "held" costs, \$48,938.00.

The total set aside is \$385,805.51.

29. The Plaintiffs' Steering Committee requests that, after payment of the "held costs described in paragraph 16 of \$634,210.27 and holding back \$385,805.51, the remaining balance available on November 30, 2013, including any additional deposits, be distributed as fees as set forth in paragraph 25.

WHEREFORE, the Plaintiffs' Steering Committee respectfully requests the Court to order reimbursement of contributors to the Trasylol Plaintiffs Common Benefit Fund for "Held Costs" and make further distribution of Common Benefit Attorneys Fees pursuant to Pretrial Order No. 8, and directing that:

(1) Alan B. Winikur shall reserve \$\$385,805.91 as a cash Balance in the Common Benefit Fund for the resolution of:

- (a) "flagged" claims for "held" costs as described in the motion;
- (b) for payment of attorneys fees, if any, to the fee claimants described in paragraph 26 of the motion; and
- (c) for payment of the fees of the accountant for the remaining work in this case as described in the motion, and (d) for payment of any outstanding invoices or unanticipated expenses;

(2) review submissions from the effected firms and make a recommendation to co-lead counsel as to the amounts for flagged costs to be paid in accordance with CMO8;

(3) immediately reimburse the law firms listed in paragraph 16 for the remainder of their "held" costs in the total amount of \$634,210.27; and

(4) on December 9, 2013 pay out any remaining balance on the Common benefit account as fees in accordance with paragraph 25 of the motion attached to this order and the order of this Court dated November 2, 2012, a copy of which is attached to the motion as Exhibit C, and further make continuing payouts of fees in accordance with paragraph 25 for any additions funds received going forward on a monthly basis.

Respectfully submitted,

ANAPOL SCHWARTZ

/s/ James R. Ronca

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Co-Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

AND NOW, this 25th day of October, 2013, I, Shawn T. Peterson, hereby certify that a true and correct copy of the foregoing document was served upon counsel of record by electronic mail through the U.S.D.C, Southern District of Florida Electronic Filing System; and via United States Mail, postage prepaid, addressed as follows:

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EXHIBIT “A”

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Good v. Bayer, C.A. No. 11C-06-047 CLS
Kumar v. Bayer, C.A. No. 11C-04-049 CLS

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Bankcroft v. Bayer, No. 09-L-497
Anderson v. Bayer, No. 09-L-594
Brown v. Bayer, No. 09-L-439

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City of Woodlake v. Bayer, No. 09-235561

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City of Woodlake v. Bayer, No. 09-235561

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Los Angeles Coordinated Cases, No. JCCP 4593
City of Woodlake v. Bayer, No. 09-235561

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Leveratto v. Bayer, Case No. 4:13-cv-01564-CW (*pro se*)

EXHIBIT “B”

	J	K	L	M	N	O	P
1	2010 Q2	2010 Q3	2010 Q4	2011 Q1	2011 Q2	2011 Q3	TOTAL
2	\$6,723.61	\$5,696.78	\$2,165.93	\$2,069.25	\$408.59	\$266.90	\$82,627.72
3							\$80,153.50
4		\$162,045.65					\$162,045.65
5							\$1,891.81
6							\$97,114.42
7							\$32,847.41
8	\$16,128.80	\$8,679.09					\$24,807.89
9							\$95,873.68
10							\$228,803.29
11		\$1,190.66					\$1,190.66
12							\$108,544.78
13							\$258,733.80
14							\$9,787.19
15							\$38,634.69
16							\$27,145.99
17							\$1,716.25
18							\$92.49
19							\$1,891.81
20							\$69,072.60
21	\$154.11						\$105,820.32
22							\$81,141.54
23							\$8,910.93
24							
25							\$1,518,848.42

EXHIBIT “C”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:08-MD-01928-MIDDLEBROOKS/JOHNSON IN

RE TRASYLOL PRODUCTS
LIABILITY LITIGATION- MDL 1928

THIS DOCUMENT RELATES TO ALL ACTIONS

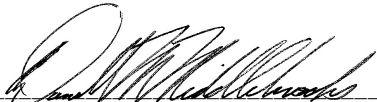
ORDER

THIS CAUSE comes before the Court upon the Plaintiffs' Motion for Payment of Common Benefit Attorneys' Fees from the Common Benefit Fund Pursuant to Pretrial Order No.8 [DE 13390]. The Court has reviewed the Motion and is otherwise fully informed of the premises. There have been no objections filed to the instant Motion, and the requested relief has been certified as appropriate by the Court-appointed accountant. Accordingly, it is

ORDERED and ADJUDGED that the Motion be, and is hereby GRANTED. The Court approves the payment of attorney's fees from the common benefit fund as described in paragraph 25 of the Motion to the extent that the fund exceeds \$1 million. The Court hereby authorizes C.P.A., Alan B. Winikur to keep a reserve of \$1 million for future common benefit expenses, the remaining claims for "held" costs and any further attorney fee claims by law firms not awarded common benefit fees under this order. The Court directs C.P.A., Alan B. Winikur to provide rolling distributions of counsel fees to the firms listed in paragraph 25, each time the amount of the Common Benefit Fund exceeds the \$1 million reserve by at least \$500,000. The Court further directs C.P.A., Alan B. Winikur to distribute fees to the firms

listed in paragraph 25, only up to a total of \$13 million. Once that amount has been distributed, no other fee distributions should be made without further order of Court.

DONE and ORDERED in Chambers, at West Palm Beach, Florida this 2nd day of November, 2012.


DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE
