

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE: FOSAMAX PRODUCTS LIABILITY
LITIGATION**

Master File 06 MD 1789 (JFK) (JCF)

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**PLAINTIFFS' STEERING COMMITTEE AMENDED CONSENT MOTION TO
APPOINT: GENERAL SPECIAL MASTER; ALLOCATION SPECIAL MASTER;
MASS TORT SETTLEMENT ETHICS ADVISOR;
SETTLEMENT FUND ESCROW AGENT;
AND LIEN RESOLUTION ADMINISTRATOR**

COMES NOW THE PLAINTIFFS STEERING COMMITTEE, by and through its undersigned Lead Counsel, with the consent of Defendant Merck Sharpe & Dohme Corp., and pursuant to the terms of the Fosamax Jaw Master Settlement Agreement (hereinafter, the "MSA") executed by the parties on March 31, 2014, hereby moves this Court to appoint the following individuals in aid of execution of the settlement:

**I. GENERAL SPECIAL MASTER: MAGISTRATE JUDGE JAMES C.
FRANCIS, IV.**

Pursuant to, *inter alia*, paragraphs 22 and 26 of the MSA, the General Special Master is the final arbiter charged with hearing appeals relating to the MSA Eligibility Committee's determination relating to a Claimant's status as either a Qualifying Program Claimant or Non-Qualifying Program Claimant. Pursuant to paragraph 35 of the MSA, the General Special Master also serves as the final arbiter on Claimants' appeals of settlement allocation categorization. Pursuant to paragraph 59 of the MSA, the General Special Master also handles

any disputes which arise under the MSA, except as otherwise specifically provided for in the MSA.

Magistrate Judge James C. Francis, IV has served as the Magistrate Judge for MDL No. 1789 since the inception of the MDL and its assignment to the Judge John Keenan in the Southern District of New York. In paragraph 60 of the MSA, Merck and the PSC have agreed upon the appointment of Magistrate Judge James C. Francis, IV as the General Special Master for the MSA. The PSC, therefore and with the consent of Merck, moves this Court to appoint Magistrate Judge James C. Francis, IV as the MSA General Special Master.

II. ALLOCATION SPECIAL MASTER: DEAN JOHN FEERICK.

Pursuant to paragraph 31 of the MSA, the Allocation Special Master oversees the work of the PSC subcommittee responsible for initial determinations of allocation categorization under the MSA. In the event of any disagreement between the PSC and the Allocation Special Master, the allocation determination of the Allocation Special Master controls. The PSC and the Allocation Special Master jointly issue the determinations of allocation categorization to the Claimants through their counsel and any appeal therefrom is then heard by the General Special Master, pursuant to paragraph 35 of the MSA.

Pursuant to paragraph 12 of the MSA, the Allocation Special Master also serves as the final arbiter to resolve on appeal any dispute arising among the PSC and Merck relating to the appropriate clawback allocation amount for any Non-Participating Claimant.

Dean John Feerick has served as the Settlement Special Master since the Court's appointment of him on November 22, 2011. Dean Feerick's work was instrumental in bringing about the settlement resolution which resulted in the MSA and is intimately familiar with the complex medical and dental issues involved in the Fosamax jaw cases. In paragraph 60 of the

MSA, Merck and the PSC have agreed upon the appointment of Dean Feerick as the Allocation Special Master for the MSA. The PSC, therefore and with the consent of Merck, moves this Court to appoint Dean Feerick as the MSA Allocation Special Master.

III. MASS TORT SETTLEMENT ETHICS ADVISOR: PROF. LYNN BAKER.

Paragraph 65 of the MSA requires the PSC to appoint an ethics advisor to render advice and oversight relating to the ethical issues unique to mass tort settlements.

The PSC has nominated Professor Lynn A. Baker to serve as the MSA Ethics Advisor. “Professor Baker has served as an ethics expert in multiple large-dollar, large group settlements.” *Wallace v. Powell*, 288 F.R.D. 347, 371 (M.D. Pa. 2012).

Professor. Baker holds the Frederick M. Baron Chair in Law and is Co-Director of the Center on Lawyers, Civil Justice, and the Media at the University of Texas School of Law in Austin, Texas. One of the nation’s leading experts on the professional responsibilities of lawyers in “aggregate” litigation and mass tort settlements, she has served as an expert and consultant to lawyers throughout the country on dozens of large-dollar, mass tort settlements, including the nationwide Vioxx settlement in 2007. She has frequently appeared as an invited speaker on these issues at symposia, conferences, and continuing legal education programs across the country.

At the University of Texas, Baker regularly teaches a survey course on Professional Responsibility and a seminar on “Mega-settlements.” Her recent publications on these issues include: *Alienability of Mass Tort Claims*, 63 DEPAUL LAW REVIEW __ (forthcoming 2014); *Models of Closure in Mass Torts: A Comment on “The Mass Tort Bankruptcy: A Pre-History,”* 5 JOURNAL OF TORT LAW __ (forthcoming 2014); *Setting Attorneys’ Fees in Securities Class Actions: An Empirical Assessment*, 66 VANDERBILT LAW REVIEW 1677 (2013) (with Michael A.

Perino & Charles Silver); “*The Politics of Legal Ethics: Case Study of a Rule Change*,” 53 ARIZONA LAW REVIEW 425 (2011), and “*Fiduciaries and Fees: Preliminary Thoughts*,” 79 FORDHAM LAW REVIEW 1833 (2011) (with Charles Silver).

In order to ensure compliance with the aggregate settlement rule, the PSC has worked very closely with Professor Baker throughout the process of converting the Settlement Term Sheet into the Master Settlement Agreement, and with Merck, has incorporated her revisions and corrections into the final MSA which was executed on MSA. The PSC, therefore and without any opposition from Merck, moves this Court to appoint Professor Baker as the MSA Ethics Advisor.

IV. ESCROW AGENT: KCC CLASS ACTION SERVICES, LLC

Under the MSA, once the preconditions to the funding of the Settlement Fund have occurred, Merck transmits the settlement funding to the Escrow Agent who then holds the money and disburses as directed by the PSC pursuant to the detailed disbursement terms of the MSA set forth in, *inter alia*, MSA paragraphs 14, 37-39, 42, 45-49. The Settlement Fund Escrow Agent serves a different role than Hancock Bank, which pursuant to CMO 17A serves as the court-appointed escrow agent for the Common Benefit Fund. Pursuant to MSA paragraph 14, the PSC proposed and Merck agreed to appoint KCC Class Action Services, LLC (hereinafter “KCC”), as the Settlement Fund Escrow Agent.

KCC serves as a settlement administrator and escrow agent for class action litigation and mass tort matters. As an escrow agent, KCC has extensive experience in holding and distributing funds on behalf of clients. KCC distributes over \$500 billion in cash annually and manages more than \$4 billion in daily deposits. KCC has acted as the escrow agent for numerous litigation settlements and related matters, including the following recent settlements:

1) In re Blood Reagents Antitrust Litig. (EDPA); 2) In re Chinese Manufactured Drywall Prods. Liab. Litig.(EDLA); 3) In re Medical Capital Sec. Litig. (CDCA); 4) Ormond v. Anthem, Inc. (SDIN); 4) In re LandAmerica 1031 Exch. Servs., Inc. (EDVA); 5) Internal Revenue Serv. § 1031 Tax Deferred Exch. Litig.(DNV); 6) In re Potash Antitrust Litig.(NDIL); and 7) Shames v. The Hertz Corp.(SDCA) KCC partners with highly rated financial institutions that have a Tier 1 capital of more than \$1 billion. KCC's exclusive banking partnerships and the synergies created by being a full-service escrow agent and class action and mass tort settlement administrator affords clients financial security as well as a cost-efficient solution for their settlements.

KCC will hold the Settlement Fund in escrow until the client, cost, and lien disbursement are issued by the PSC pursuant to and consistent with the terms of the MSA. Additionally, KCC will establish an on-line claims portal through which Claimants Counsel will be able to submit their clients'

The PSC, therefore and with the consent of Merck, moves this Court to appoint KCC Class Action Services, LLC, as the Settlement Fund Escrow Agent.

V. LIEN RESOLUTION ADMINISTRATOR: MULTI CLAIMANT SOLUTIONS, LLC.

The PSC has negotiated a bulk rate government lien resolution program with Multi Claimant Solutions, LLC ("MCS"). MCS is a joint venture between two leading national settlement service groups, Franco Signor, LLC, and Synergy Settlement Services, Inc. The partners of MCS have more than a decade of providing services to law firms in compliance with Medicare Secondary Payer ("MSP) laws and regulations. MCS already has actively handled Medicare and Medicaid lien resolution in the companion bisphosphonate ONJ litigation concerning Actonel. After an extensive review process, the PSC determined that MCS had the best pricing combined with the most adequate staffing to address the lien resolution demands of the Fosamax jaw

settlement claimants and, therefore, the PSC has determined that MCS should be appointed the claimants' individual lien resolution administrator. Under the terms of paragraph 14 of the MSA, the hiring of MCS for any claimant's lien resolution will be that individual claimant's (or counsel's) decision and financial responsibility but any Fosamax jaw claimant who hires MCS will enjoy the benefit of the bulk lien resolution rate negotiated by the PSC.

The PSC, therefore, and with the consent of Merck, moves this Court to appoint Multi Claimant Solutions, LLC, as the Lien Resolution Administrator for the Fosamax jaw settlement program.

CONCLUSION

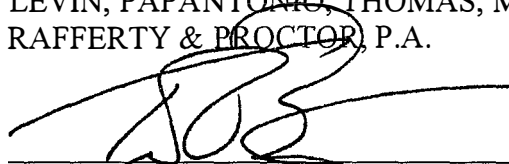
For the foregoing reasons, the PSC respectfully requests this Court to appoint the following to aid the execution of the Master Settlement Agreement:

1. General Special Master: Magistrate Judge James C. Francis, IV
2. Allocation Special Master: Dean John Feerick
3. Mass Torts Settlement Ethics Advisor: Prof. Lynn A. Baker
4. Escrow Agent: KCC Class Action Services, LLC
5. Lien Resolution Administrator: Multi Claimant Solutions, LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2014, I caused to be served by electronic means via the Court's CM/ECF System a copy of Plaintiffs' Steering Committee Consent Motion To Appoint General Special Master; Allocation Special Master; Mass Tort Settlement Ethics Advisor; Settlement Fund Escrow Agent; And Lien Resolution Administrator on all counsel registered to receive electronic notices.

LEVIN, PAPANTONIO, THOMAS, MITCHELL,
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