

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

<i>IN RE ACCUTANE PRODUCTS LIABILITY</i>	)	MDL DOCKET NO. 1626
<i>LITIGATION.</i>	)	Case No. 8:04-md-2523-T-30TBM
_____	)	
	)	
This document relates to all actions.	)	
	)	
_____	)	

**PLAINTIFFS STEERING COMMITTEE’S**  
**MOTION FOR ENTRY OF CASE MANAGEMENT ORDER**  
**SETTING GUIDELINES FOR PLAINTIFFS’ COUNSEL**  
**COMMON BENEFIT TIME AND EXPENSE REPORTING**

COMES NOW THE PLAINTIFFS STEERING COMMITTEE, and moves this Court for the entry of a Case Management Order Setting Guidelines for Plaintiffs’ Counsel Common Benefit Time and Expense Reporting, showing this Court the following:

1.

All members of the Plaintiffs’ Steering Committee (“PSC”) have contributed or will contribute to a common benefit litigation fund through PSC-levied assessments. It is the stated intent and will be the practice of the Plaintiffs’ Steering Committee to use the common benefit litigation fund created by the capitalization assessment paid by members of the PSC to pay for third party common benefit expenses as they accrue.

2.

Expenses accrued by members of the PSC which serve the common benefit but do not fall within the following categories will be recorded by members of the PSC and submitted on a regular basis to be reimbursed from the common benefit fund upon approval to the Court. The PSC

common benefit expenses which are currently compensable include the following:

- (1) Office rental, equipment, and supply costs for the document depository established in Fort Lauderdale, Florida;
- (2) Generic causation and liability expert costs including expert fees and travel costs for the experts;
- (3) Document production costs including coding, storing, scanning, etc.;
- (4) Videography expenses;
- (5) Transcription expenses;
- (6) Translation expenses.

3.

Members of the PSC who perform MDL common benefit work will record the expenses they accrue on behalf of the PSC for common benefit work performed. Those expenses, as well as the initial capitalization assessments, will be subject to reimbursement at such time as the assessments on settlements, verdicts, and judgments, permit the PSC to petition the Court to approve such reimbursements from the PSC litigation fund, which shall be funded by assessments levied upon recoveries made in all federal cases and in all state court cases sharing the PSC work product. The prospective funding of the PSC litigation fund pursuant to assessments on individual cases will be the subject of a future motion for entry of a CMO.

4.

Consistent with the intention of 28 U.S.C. § 1407 to maximize federal litigation efficiency and expense, *see, e.g., In re Celotex "Technifoam" Prods. Liab. Litig.*, 424 F. Supp. 1077, 1079 (J.P.M.L. 1977), the PSC petitions the Court to approve and enter the attached Case Management

Order to govern these issues during the pendency of the Accutane MDL litigation. A proposed orders is submitted herewith.

**CERTIFICATE OF CONFERENCE**

I certify that I have contacted defense counsel, but said counsel has not indicated whether defendant opposes said Motion.

\* \* \*

**I HEREBY CERTIFY that on the 1<sup>st</sup> day of September, 2005, I electronically filed the foregoing Plaintiffs' Motion for Entry of Case Management Order Setting Guidelines for Plaintiffs' Counsel Common Benefit Time and Expense Reporting by using the CM/ECF system which will send a notice of electronic filing to counsel of record.**

**Respectfully Submitted,**

**s/Donald W. Buckler  
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**CASE MANAGEMENT ORDER NO. \_\_\_\_\_:  
GUIDELINES FOR PLAINTIFFS’ COUNSEL’S  
COMMON BENEFIT TIME AND EXPENSE REPORTING**

The Court recognizes that common benefit and expense items reported must be reasonable and necessary for the concerted litigation of this case and must apply to the benefit of the Plaintiffs’ Steering Committee (“PSC”) and plaintiffs in common rather than for specific individual plaintiffs. Accordingly, it is proper to establish guidelines which shall govern the recording and reimbursement of common benefit expenses and time. Accordingly, these Guidelines for Common Benefit Time and Expense Reporting set forth herein will be complied with by the PSC and all plaintiffs’ counsel in MDL 1407 requested by the PSC to perform common benefit work. The procedures set forth below will apply to PSC members and all plaintiffs’ counsel in MDL 1407 requested by the PSC to perform common benefit work. Reporting for time expenses will be submitted on a monthly basis by the members of the PSC and all plaintiffs’ counsel in MDL 1407 requested by the PSC to perform common benefit work.

The first time and expense report is due thirty days after the date of entry of this Order and will be cumulative for the hours expended and expenses incurred during this litigation up to that point in time. Thereafter, monthly time and expense reports will be filed on the fifteenth day of each

month until the close of this litigation. The filing shall be made with an independent accountant to be appointed by the PSC and shall not be filed with this Court until such time as the Court shall require.

### REPORTING GUIDELINES

A. TIME.

Common benefit time will be reported consistent with the forms attached hereto at Exhibit A and will be reported to the office designated by the Plaintiffs' Steering Committee on a monthly basis beginning as set forth in the immediately preceding paragraph.

B. EXPENSES.

Common benefit expenses will be reported according to the guidelines set forth below and submitted on the form attached hereto at Exhibit B. Common benefit expenses will be reported to the office designated by the Plaintiffs' Steering Committee on a monthly basis at the same time as the common benefit time reports are submitted. These expenses will not be reimbursed by the PSC on a rolling basis but will be the subject of reimbursement processing in the event the PSC litigation fund becomes adequately funded by assessment receipts.

1. RECEIPTS.

Each expense claimed must be properly documented by a receipt or some other form of proof of payment. Receipts do not need to be submitted on a monthly basis, but must be available for production upon request.

2. AIRFARE.

First class airfare will not be fully reimbursed. If first class travel is selected, the difference between the refundable coach rate and first class rate must be shown on the expense claim, and only the coach airfare shall be claimed.

3. HOTELS.

Luxury accommodations will not be fully reimbursed. Only reasonable rates for standard rooms will be subject to reimbursement. Charges for movies, laundry, liquor, etc., will not be reimbursed.

4. MEALS.

Only reasonable restaurant expenses will be considered for reimbursement. Charges for alcoholic beverages will not be reimbursed.

5. RENTAL AUTOMOBILES.

In the event that automobiles need to be rented, a maximum allowance of \$75.00 per day, not including taxes and concession fees, will be subject to reimbursement.

6. MILEAGE.

For those trips in which a personal automobile is used, mileage claims must be recorded by stating origination point, destination, purpose of trip, and total actual miles for the trip. The maximum allowable rate is \$.35/mile.

7. LONG DISTANCE.

Long distance telephone expenses must be documented and only the actual charges incurred are reimbursable.

8. EXPRESS MAIL OR FEDERAL EXPRESS SERVICE.

All claimed expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package.

9. POSTAGE CHARGES.

Postage charges are to be reported at actual cost.

10. TELEFAX CHARGES.

Contemporaneous records should be maintained and submitted showing faxes sent and received. The per-fax charges should not exceed \$.50 per page. Where possible, email delivery of PDF images, which costs nothing, is the preferred method of facsimile transmission.

11. IN-HOUSE PHOTOCOPY CHARGES.

A contemporaneous photocopy log or other documentation must be maintained and submitted regarding the in-house photocopy expenses incurred. The maximum copy charge is \$.15 per page.

12. LEXIS/WESTLAW.

Claims for expenses relating to computerized legal research should be in the exact amount charged to your firm for those research services and can only be billed for those items specifically performed on behalf and at the request of the PSC.

13. DEPOSITION COSTS, EXPERT WITNESS FEES, AND EXHIBIT COSTS.

Fees and costs associated with pretrial discovery that are authorized by the PSC will generally be paid directly and concurrently by the PSC. No individual attorney will be reimbursed for obtaining his or her own personal copy of a deposition transcript.

14. EQUIPMENT PURCHASES.

Purchases of equipment are not to be claimed, unless those purchases are specifically approved by the PSC.

C. IMPERMISSIBLE TIME AND EXPENSES.

Any item or expense which is not described in sufficient detail to determine the nature and common benefit purpose of the service or expense involved will be disallowed.

Any item of professional which is expended to “review” pleadings, correspondence and similar items will be disallowed, unless such “review time” is directly related to and reasonably necessary for the performance of other compensable services.

4. VERIFICATION OF STATEMENTS.

Each attorney submitting a time and expense statement shall be considered as representing to the Court, under oath, that the time and expenses submitted meet the criteria set forth herein.

\* \* \*

IT IS ORDERED that all PSC attorneys and plaintiffs’ counsel in MDL 1407 requested by the PSC to perform common benefit work must comply with the provisions set forth above in order to compensated for any and all time and expense submissions. The forms which are attached hereto at Exhibit A and Exhibit B must be used when submitting time and expense reports. Non-compliance with this Order will result in a denial of reimbursement.

SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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Hon. James S. Moody, Jr.  
United States District Judge



Presented by:

MORGAN & MORGAN

By:

Donald W. Buckler  
Plaintiffs' Liaison Counsel

# **EXHIBIT “A”**

ACCUTANE PRODUCTS LIABILITY LITIGATION, MDL NO. 1626  
COMMON BENEFIT TIME CATEGORY CODES

1. Preparation of pleadings, motions, and supporting briefs; legal research.
2. Preparing and responding to written discovery requests.
3. Taking and defending depositions, including preparation.
4. Inspection of liability documents.
5. Factual investigation.
6. Technical research and consultation with experts.
7. Preparation for court appearances, including trial or hearing preparation.
8. Court appearances and trial.
9. PSC meetings, conferences, and activities.
10. Settlement preparation and/or negotiation.
11. Settlement administration.
12. Travel time to/from PSC-designated common benefit work.

\* **TIME SHOULD BE REPORTED IN TENTHS OF AN HOUR.**

\* **REPORT ONLY TIME AND EXPENSES THAT ARE EXCLUSIVELY RELATED TO COMMON BENEFIT MDL WORK.**

MDL NO. 1626, ACCUTANE PRODUCTS LIABILITY LITIGATION  
COMMON BENEFIT TIME SUMMARY SHEET

REPORTING FIRM: \_\_\_\_\_

MONTHLY PERIOD: \_

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>1. Preparation of pleadings, motions, and supporting briefs;<br/>legal research.</li> <li>2. Preparing and responding to written discovery requests.</li> <li>3. Taking and defending depositions, including preparation.</li> <li>4. Inspection of liability documents.</li> <li>5. Factual investigation.</li> <li>6. Technical research and consultation with experts.</li> </ul> | <ul style="list-style-type: none"> <li>7. Preparation for court appearances, including trial or hearing preparation.</li> <li>8. Court appearances and trial.</li> <li>9. PSC meetings, conferences, and activities.</li> <li>10. Settlement preparation and/or negotiation.</li> <li>11. Settlement administration.</li> <li>12. Travel time to/from PSC-designated common benefit work.</li> </ul> |
|---|--|

ATTY	1	2	3	4	5	6	7	8	9	10	11	12	CURRE NT TOTAL HRS.	HOURL Y RATE	MONTHL Y LODESTA R	CUM. HOURS	CUM. LODESTA R

TOTALS																		

PLEASE ATTACH COPIES OF DAILY TIME RECORDS FOR ALL TIME REPORTED. THESE RECORDS MAY BE COMPUTER GENERATED OR TYPED COPIES OF DAILY RECORDS. PLEASE ORGANIZE THE RECORDS BY TIMEKEEPER. ONLY TIME EXCLUSIVELY RELATED TO COMMON BENEFIT MDL WORK SHOULD BE REPORTED.

*\*\*\*I BELIEVE THAT THESE HOURS WERE EXPENDED FOR THE COMMON BENEFIT WORK:.*

SIGNATURE

DATE

# **EXHIBIT “B”**

MDL NO. 1626, ACCUTANE PRODUCTS LIABILITY LITIGATION  
COMMON BENEFIT EXPENSE REPORT

REPORTING FIRM: \_\_\_\_\_

MONTHLY PERIOD: \_

<u>DESCRIPTION</u>	<u>AMOUNT</u>
FILING COSTS	
LONG DISTANCE	
TELEFAX	
PHOTOCOPYING	
FEDERAL EXPRESS/U.S. EXPRESS MAIL	
POSTAGE	
ON-LINE RESEARCH (WESTLAW, LEXIS)	
SERVICE OF PROCESS	
TRANSCRIPT OF PROCEEDINGS OR DEPOSITIONS	
VIDEOGRAPHY	
EXPERT WITNESS FEES	
TRAVEL	
LITIGATION FUND ASSESSMENTS	
OTHER (itemize)	
<b>TOTAL THIS MONTH:</b>	
<b>PRIOR EXPENSES REPORTED:</b>	
<b>CUMULATIVE EXPENSES TO DATE:</b>	

- PLEASE RETAIN DOCUMENTATION FOR EACH EXPENSE REPORTED. FAILURE TO MAINTAIN AND PRODUCE SUCH DOCUMENTATION UPON REQUEST SHALL RENDER THE EXPENSE NON-REIMBURSABLE.

*I BELIEVE THESE EXPENSES ARE PROPERLY DOCUMENTED AND WERE INCURRED FOR THE COMMON BENEFIT:*

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE