

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

<b>In re:</b>	§	<b>MDL Docket No. 4:03CV1507BRW</b>
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<b>PREMPRO PRODUCTS LIABILITY LITIGATION</b>	§	<b>ALL CASES</b>
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**COMMON BENEFIT FEE COMMITTEE'S  
SUBMISSION RE: APPOINTMENT OF MASTER**

The Court invited the Common Benefit Fee Committee (“CBFC” or “Committee”) to raise issues appropriate to the Court’s decision to appoint the Honorable James Rosenbaum as master to assist the Court in resolving the allocation of money from the common benefit fund, including attorney’s fees and expenses. The CBFC has no objection to Judge Rosenbaum’s appointment and does not find any conflict of interest in the facts the Court stated regarding Judge Rosenbaum’s wife’s involvement with Minnesota state court Prempro cases.<sup>1</sup> The Court’s appointment, however, raises several logistical issues about which the committee has questions.

First, the CBFC seeks clarification on the existing deadlines in this matter, particularly in light of the unsolicited proposal for division of fees filed by Zoe Littlepage.<sup>2</sup> The deadline for

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<sup>1</sup> The CBFC is unaware of the particular cases to which Judge Rosenbaum referred in his letter to the Court. However, very few hormone therapy cases ultimately wound up in Minnesota state court.

<sup>2</sup> Based on this Court’s schedule, the CBFC was required to file its proposed allocation of the common benefit fund on November 6, 2013. The CBFC allocation for the distribution of funds to 35 firms was near unanimous, decided by a 6-1 vote. As set forth in PPO 5, “decisions of the CBFC shall be determined by majority vote as necessary.” Ms. Littlepage is a member of

filing objections to the CBFC's recommended fee allocation is November 22, 2013. The CBFC has until December 6, 2013 to respond to any objections. The Court is to hear the matter some time after December 6th.

Given that she was privy to the CBFC's recommendation before it was filed, Ms. Littlepage filed an extensive opposition brief the same afternoon the CBFC filed its recommendation. Presumably, that opposition constitutes Ms. Littlepage's objection and the CBFC has until December 6th to respond. If the Court desires an earlier response, the CBFC requests notification of that deadline. If the Court intends to issue new deadlines in light of Judge Rosenbaum's appointment, the CBFC will await notification.<sup>3</sup> If the parties are to seek a schedule from Judge Rosenbaum, the CBFC seeks the Court's input in the process of securing that schedule.

The CBFC also asks whether the schedule will be conducive to Your Honor being the ultimate arbiter in this matter. As the Committee noted in prior filings, it is important that this Court be the final judge of this dispute given the Court's intimate familiarity with counsel's work after presiding over the litigation for more than a decade. The CBFC thus asks for a schedule establishing when Judge Rosenbaum's work is to be completed and the Court's ultimate order is to be issued.<sup>4</sup> If possible, the Committee urges that the Court maintain involvement in these MDL proceedings at least on this issue.

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the CBFC. Unsatisfied that her view of the allocation was not the majority view, she filed her own allocation, without approval from the rest of the CBFC, request from this Court, or authorization from PPO5.

<sup>3</sup> The CBFC asks for at least one week's notice of any deadline for a CBFC filing.

<sup>4</sup> See Fed. R. Civ. P. 53(b)(2)(D) (court order appointing master should identify "time limits" for master's actions).

Second, the CBFC seeks clarification of filing procedures in light of Judge Rosenbaum's appointment.<sup>5</sup> One difficulty for filings is that much of the relevant information is protected by the attorney-client and work product privileges and confidential to the submitting firms for other reasons. Our fee records contain privileged information. And no firm wants its billing records broadcast to its adversaries in this litigation. Moreover, CBFC writings that assess or criticize those records necessarily incorporate confidential and privileged information. This has constrained the types of information the Committee has included in prior filings. The CBFC therefore asks the Court to order the parties to file all documents solely with Judge Rosenbaum until he has made a recommendation to the Court. At that time, the parties can determine which documents involve material they contend should be filed under seal, and the appropriate motion will be filed.

A court order is necessary to ensure that no party files confidential or privileged information of other firms, intentionally or inadvertently. While the CBFC has been constrained by concerns of privilege and confidentiality, several of Ms. Littlepage's filings have included analyses of other firms' time records, without the issuing firms' knowledge or consent. The CBFC has fielded complaints in this regard.

Finally, the CBFC reiterates that it may ask the Court to assess costs against the objectors. Should the objections prove non-meritorious, and certainly if they are found frivolous, the offending party should bear the costs of a master. The remaining law firms seeking common benefit fees should not have to bear costs under such circumstances.

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<sup>5</sup> *Id.* (Court order appointing master should identify "the method of filing the record").

Dated this 14th day of November, 2013.

Respectfully submitted,

HISSEY KIENTZ, L.L.P.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of November 2013, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which forwarded a true and correct copy to all counsel of record.

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