

**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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**WETHERALL GROUP, LTD’S NOTICE OF OBJECTION**

Per this Court’s request for input, Wetherall Group, Ltd. (Wetherall Group)<sup>1</sup> hereby objects to its 1.26% common benefit fee allocation recommended by the Fee Committee.

Reasonable minds could differ regarding the appropriate allocation of common benefit fees in this fairly unique circumstance, and the undersigned counsel recognizes the difficult task of the Committee. The last thing Wetherall Group wanted was to get into a dispute on this front with the leadership of this litigation, but a couple of fundamental concerns compel the instant objection.

Wetherall Group disagrees with the Committee’s 1.26% allocation of common-benefit fees to Wetherall Group. Further objection is made to the Committee’s seeming resistance to complete transparency for this process, i.e., its failure to provide each applying firms’ audit reports until yesterday – long after the Committee made its initial allocation to Wetherall Group, then increased that allocation as a result of negotiations, then subsequently retreated back to its original (1.26%) allocation to Wetherall Group. Wetherall Group is only now – as of yesterday – in receipt of information which will enable it to meaningfully assess the fairness and consistency by which the Committee’s allocation determinations were made.

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<sup>1</sup> “Wetherall Group, Ltd.” was previously named “White & Meany, LLP”, White, Meany & Wetherall, LLP”, and “White & Wetherall, LLP”.

The Committee's audit of Wetherall Group concludes with the Auditor's sentiment that – other than Wetherall Group having the good fortune of being located in a decent venue for trials and appeals (i.e., Nevada State court) – he is “unaware of any significant contribution it made to the litigation in any other way”.

That's a disappointing and factually inaccurate assessment, inexplicable because the Auditor was in attendance and thus reminded at our Group's June meeting of Wetherall Group's contribution of both (Wyeth Sales Rep whistleblower) Brett Hendricks and (generic and case-specific causation expert) Dr. Paul Michaels to this litigation, both of whom were witnesses used repeatedly around the country in other successful trials and settlements. Wetherall Group didn't have to extend these witnesses to the group, and there were many occasions where their use by other firms conflicted with Wetherall Group's own needs or made them resistant to working for hormone therapy litigants at all, but Wetherall Group always facilitated their availability.

Perhaps Hendricks (and the internal Wyeth documents he provided) was a fungible commodity in the eyes of the Committee (although he probably testified at trial more times than any other Sales Rep whistleblower), but Dr. Michaels was certainly not. In fact, Dr. Michaels ended up being critical to the MDL fight against short-term use and Her2Neu challenges, and was consistently regarded as one of Plaintiffs' best – if not the best – witnesses on our side of these cases. There were many times where employees or attorneys at Wetherall Group had to talk Dr. Michaels off the ledge in response to his threats to quit the litigation due to what he was being put through, and as a result, he stood in there and was instrumental in enabling settlements on short-term use and Her2Neu MDL cases that may otherwise have gone uncompensated.

Another objectionable aspect of the Committee Auditor's review of Wetherall Group's hours is his implicit conclusion that Wetherall Group is undeserving of common benefit fees

because it has already been “richly rewarded” with fees on its Nevada cases. That sentiment would seem to suggest that if lesser results were achieved in Nevada, the Auditor would have recommended a larger fee allocation for Wetherall Group, which seems a dubious and ridiculous proposition on its face. Wetherall Group rejects the legitimacy of this “richly rewarded” consideration. It was not only inappropriately applied to Wetherall Group, but more importantly, it constitutes a criterion that was unlikely applied to any other firm, particularly other successful state court litigants in early trials. For this reason, the application of this criterion to Wetherall Group is unfair, arbitrary, and unjustified.

If Wetherall Group had been defended in the Rowatt trial rather than obtaining a \$134M verdict (later reduced but affirmed on appeal for a total \$87M recovery), or lost that case on appeal, or had a litany of unfavorable orders come out on its early trial-set cases, the Committee would (justifiably) be arguing for less common benefit fees on that basis, not more. To turn that on its head and suggest that less fees are warranted because Wetherall Group’s litigation succeeded resoundingly seems more like a strained rationalization for reducing Wetherall Group’s fees rather than a legitimate consideration.

Wetherall Group’s cases and the work thereon resulted in: 1) the first settlement against Wyeth (McCreary, 9/06), the first settlement against Pfizer (Rowatt, 9/07), the first or second plaintiffs’ verdict against Wyeth (Rowatt, 10/07), the first trial put on against Pfizer (Woods/Woodhouse, 6/08, resulting in settlement), and the first affirmed HRT verdict on appeal (Rowatt, 11/09, cert. denied, 6/10). It is the undersigned counsel’s belief that the Rowatt case was also the largest of any paid verdict in this litigation. Additionally, Wetherall Group settled 33 other cases in the years leading up to the settlement of its remaining inventory of cases last Summer. Wetherall Group’s settlements obtained on behalf of its clients were some of the

earliest trial-set cases, and largest (on average) of any settlements achieved in the entire litigation.

The contributions Wetherall Group has made to the common-benefit fund resulting from 3% assessments on the Rowatt verdict and each of the aforementioned settlements are substantial. Far from being undeserving of additional compensation for those outstanding results, it is precisely those outstanding results that has paid and continues to pay into the common benefit fund. In other words, Wetherall Group's settlement and (Rowatt) verdict assessments have been disproportionate contributors to the common benefit fund which is the subject of this dispute. Wetherall Group's outstanding results have elevated the valuations and aided the settlement of every other firms' cases in this litigation. There is no doubt that most if not all on the Fee Committee have each cited Nevada results in furtherance of their efforts to litigate and settle their own cases, they have all attached Nevada orders and decisions to briefs to the MDL and other courts, and they would all acknowledge that Wetherall Group's Nevada cases were at least – and arguably more – important than any other cases in this litigation.

Relative to the size of Wetherall Group (four attorneys at its largest), and the amount of cases it had, its outright financial contributions to this litigation were also significant. Wetherall Group answered every call for capital contributions, only to find out after the fact that many larger, better-off firms were simply disregarding that responsibility to varying degrees. Wetherall Group additionally answered the call to “sponsor” a Little Rock law clerk, which it understood would be a fairly short-term commitment for which it would be compensated dollar-for-dollar spent at the litigation's end – just like our capital contributions. That law clerk commitment ended up lasting approximately five years, at a cost to Wetherall Group of \$60,984.00. Inexplicably, the Committee Auditor's commentary questions the legitimacy of that

law clerk's work for the litigation – under circumstances where she was essentially foisted upon Wetherall Group by the Governing Committee, where her work was never overseen by Wetherall Group, and where Wetherall Group dutifully paid every bill that the law clerk submitted. Under these circumstances, the Committee Auditor's questioning of this sponsored law clerk's hours is entirely unjustified.

The Committee Auditor's other recommended reductions in Wetherall Group's time is also unjustified. As lead (pretrial) counsel on the McCreary, Rowatt, et al. and Woods/Woodhouse cases (all of which were some of the earliest trial settings in this litigation), Wetherall Group's success in Nevada state court prompted fairly consistent requests for guidance, copies of orders, and status updates on the progress of our Nevada cases from hormone therapy lawyers around the country. Wetherall Group couldn't very well assist others without vigilant review of the Governing Committee's e-mails, both as a means of knowing when such requests were being made, but also to have some context in which to respond. Wetherall Group did in fact respond whenever called upon, in similar fashion as Wetherall Group responded to requests to provide staffing for coding, and coverage for Governing Committee depositions, including but not limited to Dr. Parisian's first deposition in this litigation.

Wetherall Group was solicited for membership on the Governing Committee – not the other way around. That solicitation came with a request for money to fund the litigation, and a promise to be treated fairly in the fee allocation process at litigation's end. It was never explained to Wetherall Group that if it exceeded expectations by its results and precedents achieved in Nevada, that Wetherall Group's success would constitute a reason to diminish its fee allocation. Wetherall Group answered the call for money, assistance, and guidance every time it was asked. Wetherall Group attended functions, hearings, strategy sessions and even MDL trials

whenever warranted. Particularly relative to its small size, Wetherall Group contributed as significantly as any other firm in terms of money, time and effort, and perhaps most importantly, results which benefitted everyone, save and except a few other firms justifiably deserving of much larger fee percentages.

Objection is hereby lodged because the Fee Committee's Audit of Wetherall Group unjustifiably demeans Wetherall Group's contributions, diminishes its effort and the commitment it took to achieve those benefits (by suggesting that Wetherall Group's results were merely the results of being in a favorable jurisdiction), and is erroneous, arbitrary, and unfair in some very meaningful respects.

The fact that the Fee Committee saw fit to propose a substantially larger allocation to Wetherall Group upon receipt of Wetherall Group's initial objections lends some credence to the instant objections. The Fee Committee's subsequent decision to retreat to its initial 1.26% allocation for Wetherall Group in its recommendation to the Court seems overtly punitive, calculated to deter the instant objection, and is some evidence of hostility towards Wetherall Group which has no place in the effort to equitably allocate common benefit fees. The Fee Committee's much larger dispute with Littlepage Booth appears to be having some spillover effect to Wetherall Group, which had a close, co-counsel relationship with Littlepage Booth on numerous Nevada cases.

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Armed with the information provided to Wetherall Group only yesterday, Wetherall Group respectfully requests and/or reserves the right to supplement this Objection once it has had the opportunity to review the Committee's audits of other firms. Consequently, I ask the Fee Committee to reconsider Wetherall Group's allocation and elevate it to no less than 3.5% of the total. Thank you all in advance for your consideration of this request.

DATED: November 22, 2013

Respectfully submitted,

/s/ Peter C. Wetherall  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd 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 by e-mail to the following parties:

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MDL Fee Committee

/s/ Peter C. Wetherall  
Peter C. Wetherall