

**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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**MEMORANDUM IN SUPPORT OF  
THE COMMON BENEFIT FEE COMMITTEE’S MOTION  
FOR ORDER INSTRUCTING TRUSTEE TO RELEASE  
COMMON BENEFIT FUNDS FOR MASTER**

In several orders, the Court has indicated that the Common Benefit Fee Committee (“CBFC”) is to promptly pay bills submitted by the Honorable James M. Rosenbaum for his work as master evaluating issues under Practice & Procedure No. 5. The Court indicated that payment would come from the Common Benefit Fund.<sup>1</sup> The Common Benefit Fund consists of monies that defendants have deposited into a trust account at the Bank of the Ozarks in Little Rock maintained by Trustee, Rex Kyle based on the Court’s assessment of common benefit fees. Neither the CBFC nor the Plaintiff Steering Committee (“PSC”) has access to the Common Benefit Fund.

The PSC paid the expenses incurred in its work earlier in the litigation (e.g., expert fees and deposition costs) through an account called the Litigation Fund. The Litigation Fund was

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<sup>1</sup> The orders reserve the master’s ability to recommend and the Court’s ability to assess these costs against particular parties when fee allocation is made. The Common Benefit Fund may thus be reimbursed for all or a part of these expenditures.

made up of voluntary contributions from participating plaintiff law firms. Whereas the Common Benefit Fund is a trust account with restricted access, the Litigation Fund is more akin to an operating account from which the PSC regularly paid expenses. The Litigation Fund was depleted several years ago, and the PSC successfully moved the Court to order the Trustee to release money from the Common Benefit Fund to replenish the Litigation Fund. When the Litigation Fund was depleted again, the PSC filed a similar motion which was denied. The Litigation Fund now has less than \$50,000 remaining and must continue to pay ongoing expenses (e.g., computer storage services) given that certain cases remain active. The CBFC is concerned that the Litigation Fund may not have sufficient funds to pay for Judge Rosenbaum's services.

The CBFC has presented this Court's orders to the Trustee and asked if he would pay Judge Rosenbaum's bills as they are submitted by the CBFC from the Common Benefit Fund. The Trustee has indicated that he cannot do so because the orders do not specifically authorize him to release funds. The CBFC therefore seeks a single order from the Court, instructing the Trustee that he is to pay Judge Rosenbaum's bills from the Common Benefit Fund as they are submitted by the CBFC. The CBFC has contacted Judge Rosenbaum's office and it has agreed to submit the judge's bills to the Committee. The Committee will approve and submit those bills to the Trustee. The Court need not be involved in the individual payment of bills, so long as a single order is issued to the Trustee requiring him to make payments.

For these reasons, the CBFC respectfully requests the Court to order the Trustee of the Common Benefit Fund, Rex Kyle of the Bank of Ozarks in Little Rock, to pay from the Common Benefit Fund all bills from Judge James M. Rosenbaum as they are submitted to the Trustee by the CBFC. The CBFC further requests all other relief to which it is entitled.

Dated this 27<sup>th</sup> day of November, 2013.

Respectfully submitted,

HISSEY KIENTZ, L.L.P.

/s/ Erik Walker  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 27<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.

HISSEY KIENTZ, L.L.P.

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