

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| IN RE: AVANDIA MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION | : : : | MDL NO. 1871 07-MD-01871 |
| THIS DOCUMENT APPLIES TO: ALL ACTIONS | : : | HON. CYNTHIA M. RUFÉ |

ORDER

The Court-appointed Plaintiffs' Advisory Committee has filed a Motion for Order to Show Cause [Doc. No. 4410] and an Emergency Motion for an Injunction under the All Writs Act [Doc. No. 4411]. The former motion asks the Court to require counsel in an Illinois state court case *Gabel v. GlaxoSmithKline*, Case No. 09-L-621 (20th Jud. Cir. St. Clair Co.) ("*Gabel*")¹ to appear and show cause why the Court should not enter an Order subjecting them and their clients to the Common Benefit Assessment of this MDL pursuant to Pretrial Orders 10 and 70.² The latter motion asks the Court to enjoin the Twentieth Judicial Circuit in St. Clair County, Illinois from taking any further action with regard to whether a Common Benefits Assessment to the MDL is due and payable from any client or counsel in *Gabel*, and from ordering disbursement of any Common Benefit Assessments currently being held.

¹ According to the Motion, the case involves multiple plaintiffs and several law firms, including: Baum Hedlund Aristel & Goldman; The Rosemond Law Firm; The Jones Law Firm; The Law Offices of David R. Jones; and the Law Offices of Steven M. Johnson, P.C. The Motion indicates that first two listed firms were awarded common benefit fees in this MDL, and the Baum firm had cases filed (and settled) in the MDL. Thus, the PAC argues, it is likely that all counsel in the *Gabel* case had access to common benefit work product.

² PTO 70 authorizes an Avandia Common Benefit Fund to compensate and reimburse attorneys for services performed and expenses incurred for the benefit of Avandia claimants. Pursuant to PTO 70, attorneys who signed a voluntary Attorney Participation Agreement would be eligible to receive MDL work product from the Plaintiff's Steering Committee and other participating attorneys. In return, participating counsel agree to pay a 7% assessment on all "filed and unfiled cases or claims in state or federal court in which they share a fee interest."

The Court of Appeals for the Third Circuit has recognized that “[u]nder an appropriate set of facts, a federal court entertaining complex litigation, especially when it involves a substantial class of persons from multiple states, or represents a consolidation of cases from multiple districts, may appropriately enjoin state court proceedings in order to protect its jurisdiction.” *In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 235 (3d Cir. 2002) (citing *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189, 202–04 (3d Cir. 1993)). The Court will hold a hearing on the Emergency Motion for an Injunction under the All Writs Act on **March 3, 2015 at 10:00 a.m.** in Courtroom 12A, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania to determine whether enjoining state court proceedings is permissible and necessary in this instance. The firms of Baum Hedlund Aristel & Goldman, The Rosemond Law Firm, The Jones Law Firm, The Law Offices of David R. Jones, and the Law Offices of Steven M. Johnson, P.C. are expected to appear. Counsel should be prepared to address the Court’s jurisdiction, as well as the substance of the motion and any opposition. Until a ruling on the Emergency Motion for an Injunction is issued, the MDL Court temporarily **ENJOINS** counsel in the *Gabel* case from pursuing state court litigation as to whether a Common Benefit Assessment is due and payable from any claimant or counsel in *Gabel*, and from disbursement of any Common Benefit Assessment currently being held.³

It is further **ORDERED** that the Motion for Order to Show Cause is **GRANTED**. The firms of Baum Hedlund Aristel & Goldman, The Rosemond Law Firm, The Jones Law Firm, The Law Offices of David R. Jones, and the Law Offices of Steven M. Johnson, P.C. shall appear and show cause why this Court should not enter an order requiring that they and their clients must contribute to the Common Benefit Assessment of this MDL, on **March 30, 2015 at 3:30 p.m.** in

³ The Court understands that no proceeding to address the applicability of PTO 70 to settled claims in *Gabel* is currently scheduled in state court.

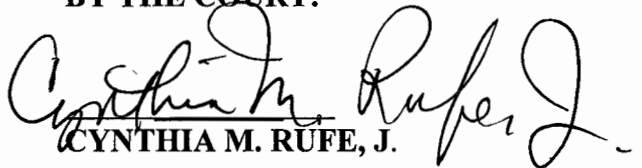
Courtroom 12A, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania.

Counsel should be prepared to create a factual record, as well as to present argument.

The Plaintiff's Advisory Committee is **ORDERED** to provide notice of the March 3, 2015 hearing and a copy of this Order to the firms of Baum Hedlund Aristel & Goldman, The Rosemond Law Firm, The Jones Law Firm, The Law Offices of David R. Jones, and the Law Offices of Steven M. Johnson, P.C by 4:00 p.m. on March 26, 2015.

It is so **ORDERED** on this 26th day of February 2015.

BY THE COURT:


CYNTHIA M. RUFÉ, J.