

Multiple Documents

Part	Description
1	15 pages
2	Text of Proposed Order

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:08-MD-01928-MIDDLEBROOKS/JOHNSON

IN RE TRASYLOL PRODUCTS LIABILITY
LITIGATION – MDL – 1928

This Document Relates to All Actions

**UNOPPOSED MOTION TO ALLOW PLAINTIFFS' STEERING COMMITTEE
TO PAY BASIC COMMON BENEFIT EXPENSES WITHOUT
SEPARATE COURT ORDER FOR EACH EXPENSE**

1. In Pre-Trial Order No. 8, the Court created a fund from which common benefit expenses could be paid.
2. Up until this time, the common benefit fund has been established with contributions by the members of the Plaintiffs' Steering Committee (PSC) and has been held in an escrow account at Anapol Schwartz.
3. PTO 8 also provides for an assessment against settlements or verdicts to be paid into the common benefit fund. The assessment is six percent and is set forth in detail in PTO 8.
4. Up until May 2010, no such funds had been paid.
5. In anticipation of the receipt of funds in May 2010 and in accordance with PTO 8, an accountant, Alan Winikur, was appointed by this Court on April 16, 2010. Pursuant to paragraph (a) of PTO 8, the court-appointed accountant has established an escrow account known as the "Common Benefit Fund".
6. On May 28, 2010, A deposit from assessments was made in the amount of \$568,574.76. A copy of the bank statement reflecting this payment and deposit is attached as exhibit A.

7. PTO 8 provides with respect to money deposited in the Common Benefit Fund:

No attorney or party has any individual right to any of these funds, except to the extent of amounts directed to be disbursed to such person by order of the court. These funds do not constitute separate property of any party or attorney and are not subject to garnishment or attachments for the debts of any party or attorney, except when and as directed to be disbursed to a specific person as provided by court order.

8. Paragraph 3, entitled Disbursements from the Common Benefit Fund, subparagraph (d), states: No amounts will be disbursed without review and approval of the Court or such other mechanism as the Court may deem just and proper under the circumstances.

9. The procedure for paying the common benefit expenses established by PTO 8 requires an individual order of court for each expense. This procedure is cumbersome, will flood the court with requests and will interfere with the ability of the PSC to prepare cases for trial.

10. Under section B2(a) of PTO 8, the Court defines “shared costs”. Pursuant to that section, shared costs have been paid throughout this litigation from the PSC fund administered by the Plaintiffs’ lead counsel. Under section B2(a)(2), “shared costs” are limited to costs incurred for the common benefit of the MDL. Paragraph B2(a)(3) defines and limits which costs are “shared costs”, including (1) deposition costs for generic experts and other common benefit depositions (e.g. depositions of Bayer employees), (2) creation, operation, staffing, equipment and administration of a document depository currently holding over 23 million pages of documents with search capability and subjective coding by the PSC available to all plaintiff’s counsel over the internet, (3) expert witness and consultant fees and expenses and (4) preparation of exhibits for common use in MDL trials. Throughout this litigation, Plaintiffs’ lead

counsel have kept close control over the costs that have been paid for through the Common Benefit Fund. The only costs that have been paid for are true generic expenses for depositions of Defendants' employees and common third party witnesses, expert reports, expert depositions, document storage, and other such expenses. To date, the PSC and Plaintiffs' lead counsel have not paid any costs from the Common Benefit Fund for travel expenses for PSC members to attend such depositions or meet with and prepare experts or any other such expenses designated "held costs" under PTO 8. . All such costs, even though they are common benefit, have been paid for by the individual lawyers and are considered held costs under section B2(b) of the Order.

11. Plaintiffs' lead counsel and the PSC would respectfully request the Court to modify PTO 8 to allow Plaintiffs' lead counsel to approve the payment of common benefit "shared costs" through the accountant appointed by the Court and limited to the categories listed below, with the accountant providing the Court with a report monthly regarding the expenditures. These costs include, **and shall be limited to**, costs incurred for the common benefit of the MDL as a whole, limited to the following categories:

- (a) court filing, service and transcription costs;
- (b) Deposition and court reporter costs for depositions (excluding those that are client specific);
- (c) Document depository creation, operation, staffing, equipment and administration;
- (d) Photocopying documents for use as exhibits in generic depositions or for the initial MDL trials;
- (e) PSC administration matters, such as meetings and conference calls;
- (f) Accountant's fees;
- (g) Expert witness and consultant fees and expenses;
- (h) Research by outside third-party consultants;

- (i) Common witness expenses, including travel;
- (j) Translation costs;
- (k) Bank or financial institution charges; and,
- (l) Investigative services.

12. Allowing the PSC to make such expenditures, with the approval of the court-appointed certified public accountant, will enable the Plaintiffs' counsel to prepare the cases more efficiently, make payments on time, and operate in a reasonable and appropriate manner. The Court will have assurance through the independent court-appointed CPA that any expenses from the Common Benefit Fund will only be related to the items listed above.

13. Defendants have no objection to this Order.

WHEREFORE, Plaintiffs respectfully request the Court modify the Order as requested.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 17th 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on the following counsel of record in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or by mailing the same to the offices of said counsel by United States Mail, postage prepaid and Plaintiff's by United States Mail Certified Return Receipt Requested and Federal Express

/s/

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:08-MD-01928-MIDDLEBROOKS/JOHNSON

IN RE TRASYLOL PRODUCTS LIABILITY
LITIGATION – MDL – 1928

This Document Relates to All Actions

ORDER

AND NOW, this ____ day of _____, 2010, it is hereby ORDERED and DECREED that PTO 8 is modified so that the Plaintiffs' Steering Committee through Co-Lead Counsel may request and the approved CPA may issue payment of common benefit "shared costs" as defined in PTO 8 and modified by this order, without further action by the Court. These costs include, and shall be limited to, costs incurred for the common benefit of the MDL as a whole, in the following categories:

- (a) Court filing, service and transcription costs;
- (b) Deposition and court reporter costs for depositions (excluding those that are client specific);
- (c) Document depository creation, operation, staffing, equipment and administration;
- (d) Photocopying documents for use as exhibits in generic depositions or for the initial MDL trials;
- (e) PSC administration matters, such as meetings and conference calls;
- (f) Accountant's fees;
- (g) Expert witness and consultant fees and expenses;

- (h) Research by outside third-party consultants;
- (i) Common witness expenses, including travel;
- (j) Translation costs;
- (k) Bank or financial institution charges; and,
- (l) Investigative services.

West Palm Beach, this ____ day of _____, 2010.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE