

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

**IN RE: ALLEGED CONTAMINATED
HEPARIN**

) Hon. James E. Sullivan
)
)
) Case No.: **08 L 003592, et al.**
)
) This Order Pertains to:
) ALL CASES
)

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ORDER

THIS CAUSE coming to be heard on Motion of Plaintiffs' Executive Committee and Plaintiffs' Steering Committee to approve Common Benefit Attorney Costs and Fees and Defendant's contribution towards partial payment of Common Benefit Costs and Fees, David Zoll and Pamela Borgess of Plaintiffs' Executive Committee and Plaintiffs' Steering Committee giving oral argument and having previously provided the Court the above-mentioned Motion with multiple Exhibits attached thereto, and the Court now being fully advised in the premises;

IT IS HEREBY ORDERED that this Court finds pursuant to Pretrial Orders (State Court) No.'s 4 & 5, and MDL 4th Amended Pretrial Order No. 3 and 1st Amended Pretrial Order No. 6 (Federal Court) the Court was required to conduct a Review & Hearing concerning said Motion presented to the Court on May 1, 2013 by Attorneys Zoll and Borgess. The Court heard oral argument from above-mentioned Counsel and the Court has reviewed said underlying Motion along with all Exhibits attached thereto.

IT IS FURTHER ORDERED that Plaintiffs' Motion requesting a parallel Order of Judge James G. Carr's Order of September 10, 2012 is denied;

IT IS FURTHER ORDERED that Plaintiffs' Motion requesting a parallel Order of Judge James G. Carr's Order of November 9, 2012 is denied;

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IT IS FURTHER ORDERED that Plaintiffs' Motion requesting a parallel Order of Judge James

G. Carr's Order of February 6, 2013 is denied in part, granted in part and modified in part as follows:

- a. Defendant, Baxter is no longer ordered to withhold 3% for Common Costs and 3% for Attorneys' Fees for all future settlements approved by this Court of pending Cook County cases; this provision of this Order applies to all Plaintiffs represented by the Nolan Law Group, Arnold & Itkin, Audet & Partners and Kralovec, Jambois & Schwartz; further, all Court approved prior settlements of Plaintiffs represented by the Nolan Law Group will receive a 3% refund from Common Costs and a 3% refund for Attorneys' Fees which have been previously charged these Plaintiffs;
- b. The remaining contribution of \$3,000,000.00, plus any monies remaining after provisions of Paragraph "a" have been complied with and provisions of Paragraph "e" have been complied with, shall be paid on a pro-rata basis to those attorneys identified and described in the November 9, 2012 Order of Judge James G. Carr; payment of these fees are in addition to attorneys' fees previously paid, or to be paid, pursuant to the Contingency Contracts between said attorneys and their clients;
- c. Defendants shall have no further obligation to pay Common Benefit Attorneys' Fees or Costs (that have accrued or will accrue in the future) to Plaintiffs or Plaintiffs' Leadership other than those described in the Federal Court's 1st Amended Pretrial Order No. 6 or the Illinois Court's Pretrial Order No. 5; neither the Plaintiffs' Leadership nor any claimant to the Common Benefit Fund may bring an action to seek any such additional common benefit payments from Defendants;
- d. In consideration for the payments described in this Order, Defendants are released from any and all claims or disputes related to or arising from the Common Benefit Fund, distributions from the Fund or allocations of the Fund. However, any Claims related to a failure to comply with Federal Court's 1st Amended Pretrial Order No. 6 or the Illinois Court's Pretrial Order No. 5, including but not limited to, any failure by Defendants to withhold assessments from settlements

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or verdicts and/or provide information necessary to confirm that the amount deposited is the correct amount, are not waived or released by this agreement;

- e. Defendant Baxter is hereby ordered to make the following payment, instanter: \$250,000.00 payment to be deposited into a Court established Administrative Fund under direct supervision of the Court; said monies to be solely utilized for administrative costs associated with the dismissing of all pending cases in Cook County, Illinois; this Court has sole jurisdiction in determining all Disbursements of funds in said account; said account will be established by the Friend of the Court under the direct supervision of this Court;
- f. Any monies remaining in the Court established Administrative Fund after the dismissal of all Cook County cases shall be refunded to the Common Benefit Attorneys' Fees and Costs for further distribution; further, after all obligations have been performed pursuant to Paragraph "a" of this Order, any funds remaining shall be refunded to the Common Benefit Fund for further distribution.

IT IS FURTHER ORDERED that this Order modifies the Federal Court's Order 1st Amended Pretrial Order No. 6 and the Illinois Court's Pretrial Order No. 5 in the following manner:

- 1. The previously required payments of 3% for Attorney's Fee and 3% for Common Costs into the Common Benefit Fund is hereby waived and are not required for any future settlements and/or Verdicts of Cook County cases;
- 2. Copies of all disbursements made from the \$3,000,000.00, plus copies of all disbursements from any monies remaining after provisions of Paragraph "a" have been complied with and provisions of Paragraph "e" have been complied with shall be provided to Cook County Friend of the Court.

This Order shall be filed *Under Seal* consistent with prior Orders relating to Settlements and Common Benefit Fees and Expenses.

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The Court renders this ruling based on the principles established in In Re: Vioxx Products Liability Litigation, 760 F. Supp. 2d 640 (ED La. 2010). Pursuant to the parameters established in Vioxx this Court has utilized a “Blended” percentage method in awarding Common Benefit Attorneys’ Fees and Costs. The actual benchmarks used by this Court in its award of fees were established in the case of Johnson v. Ga. Highway Express, Inc., 488 F. 2d 714, 717-719 (5th Cir. 1974).

“These factors include:

- 1) time and labor required; 2) novelty and difficulty of the questions; 3) the skill required to perform the legal services properly; 4) the preclusion of other employment by the attorney due to acceptance of this case; 5) customary fee; 6) whether the fee is fixed or contingent; 7) time limitations imposed by client or circumstances; 8) the amount involved and results obtained ; 9) the experience, reputation and ability of the attorney; 10) the undesirability of the case; 11) the nature and length of the professional relationship with the client, and 12) awards in similar cases”

This Court in utilizing the “Blended” method to award fees determined the values and benefit to the client and applied a cap of 33-1/3% for Attorney’s Fees. The Court then awarded additional Attorneys’ Fees above the Contingent Fee in the amount of \$3,000,000.00, plus any monies remaining after provisions of Paragraph “a” have been complied with and provisions of Paragraph “e” have been complied with. This amount fairly compensates the PLC, factoring in all principle factors cited in the above-listed cases.

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It should be noted that additional Common Fund Attorneys' Fees in similar litigation originates from Attorneys' Fees collected by Plaintiffs' Attorneys and then assessing a percentage of these fees for the payment of Common Fund Attorney's Fees and Costs. Customarily these fees are not deducted from Plaintiffs' share of the settlement. In the underlying litigation Plaintiffs' Liaison Counsel sought a voluntarily contribution for Attorneys' Fees and Common costs directly from Defendants.

The Allocation of Defendant, Baxter's contribution ordered by this Court allows for additional fees to be paid to attorneys eligible for Common Fund Attorney's Fees, payment and satisfaction of all outstanding common costs and the establishment of an Administrative Fund to be used to facilitate and finalize the Cook County Settlements. This Fund shifts the burden of Plaintiffs individually paying Administrative fees from their individual settlements. The Court notes that of all cases settled, and to be settled in the Cook County litigation, over 300 Plaintiffs were allocated \$30,000 or less as their total settlement. The Court Orders that the administrative fees are to be paid from the Court ordered Administrative Fund and not from Plaintiffs' individual settlements. Significant services will need to be expended by the Cook County Court appointed Friend of the Court, including assistance in preparation, reviewing and processing of over 170 Wrongful Death Petitions still remaining, and reviewing and processing Settlement Statements for over 118 injury cases still remaining. Additionally, services will be expended to establish a Progress Call for unfound Plaintiffs and conferences with Plaintiffs who are

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rejecting Global Settlements in Cook County.

The Court's allocation of Defendant, Baxter's contribution is fair and reasonable to Plaintiffs' Counsel eligible for reimbursement of Common Costs, and likewise a fair and reasonable distribution of Common Fund Attorney's Fees. Most importantly this Court's allocation provides a benefit to all individual Plaintiffs.

By waiving the requirement that Baxter withhold 3% for Common Costs and 3% for additional Attorneys' Fees to be deposited into the Common Fund for Cook County Plaintiffs, the Plaintiffs are recovering a larger percentage of their total individual settlement amounts.

It is the Court's position as set forth in Paragraph "e" of this Order that allocating \$250,000.00 to be set aside for administrative costs, the Plaintiffs will not be burdened with costs expended for closing out their cases and effectuating distribution of their settlement monies.

Judge James E. Sullivan
ENTER: MAY 20 2013 

Circuit Court - 158

JUDGE