

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

| | | |
|----------------------------------|---|--------------------|
| IN RE: VIOXX | : | MDL NO. 1657 |
| PRODUCTS LIABILITY LITIGATION | : | SECTION: L |
| | : | JUDGE FALLON |
| | : | MAG. JUDGE KNOWLES |
| | : | |
| THIS DOCUMENT RELATES TO: | | ALL CASES |

ORDER

Nearly all of the litigants who qualified under the Vioxx Settlement Program have received their funds.¹ It is now appropriate to focus on common benefit fees for the attorneys who performed common benefit work in this MDL and in the coordinated state litigation. The common benefit fee has been set by the Court at 6.5%. This fee is to come out of the 32% attorney's fee which the Court has set and not as an additional fee for the claimants. It is now necessary to allocate this fee.

The Court has previously detailed the procedure it intends to follow with respect to allocating common benefit attorney's fees in Pretrial Order 6D as well as orally at the Monthly Status Conference held on January 6, 2011. To capsulize, the procedure is as follows:

From an early stage in this litigation, the Court indicated that any plaintiff attorney wishing to do common benefit work would have that opportunity whether or not they were on the Plaintiff's Steering Committee. They were required, however, to work under the direction of the PSC and to report their time and expenses to the Court-appointed CPA. Over 100 attorneys

¹There are approximately seven claimants whose funds have not been distributed due to estate issues and other matters.

report that they have done common benefit work and have filed a fee application. The Court appointed a Fee Allocation Committee ("FAC") to receive and analyze applications for common benefit fees. The Court set forth procedures for the FAC to take evidence from common benefit fee applicants regarding their efforts in the Vioxx litigation, and guidelines for assessing the relative contribution of each fee applicant.

Using these procedures and guidelines the FAC was directed to prepare a preliminary allocation of common benefit fees and present that allocation to each applicant for input. If the individual applicant was dissatisfied with a suggested allocation, he or she could present the reasons for that dissatisfaction to the FAC to consider and possibly amend before presenting the Court with a final recommended allocation. This was done and the FAC now submits its final recommendation.

In accordance with the Court's previous statements, the Court now publishes the recommendation and associated materials for all to see. Anyone having any objection to this proposed distribution shall file with the Court an objection setting forth the reasons for their objection and describing the amount they feel they should be entitled to and why. Anyone who did not object to the FAC's preliminary allocation may object now. Anyone who did object to the FAC's preliminary allocation may object again, and should file with the Court the materials they submitted to the FAC in connection with their prior objection, as well as any additional materials they may wish to provide. Objections shall be due on February 4, 2011.

After the time for objection has expired, the Court will convene a meeting of all objectors, if any. The Court will require the objectors to elect a lead and liaison counsel, and the FAC will elect a lead and liaison counsel. The Court will confer with those counsel to set a schedule for discovery, briefing, and if necessary a hearing, to be supervised by the Court's

Special Master, Patrick Juneau. At the conclusion of this process, the Special Master will prepare an independent recommended allocation based on all the materials provided by the objectors and the FAC. With the benefit of the FAC's recommendation, the Special Master's recommendation, and all materials submitted by the FAC and any objectors, the Court will then allocate the common benefit fund.

New Orleans, Louisiana, this 20th day of January, 2011.


UNITED STATES DISTRICT JUDGE

**HERMAN HERMAN
KATZ & COTLAR**

L.L.P.
ATTORNEYS AT LAW

Est. 1942

820 O'Keefe Avenue
New Orleans, Louisiana
70113-1116

p: 504.581.4892
f: 504.561.6024
e: info@hhkc.com

hhkc.com

Hary Herman (1914-1987)
Russ M. Herman*
Maury A. Herman*
Morlon H. Katz*
Sidney A. Cotlar*
Steven J. Lane
Leonard A. Davis*
James C. Klick*
Stephen J. Herrnan

Brian D. Katz
Soren E. Gisleason

Joseph E. Cain
Jennifer J. Greene*
John S. Creevy
Jeremy S. Epstein*
Edmond H. Knoll
Joseph A. Kott, M.D., J.D. (Of Counsel)

Offices in New Orleans
and Covington, Louisiana

This firm and its attorneys are also
partners in: Herman Gerof, LLP
Morphy Lujan as Women, Mathis
Gross, Kitchens & Gerof, LLP

* A Professional Law Corporation
! Also admitted in Texas

VIA HAND DELIVERY

January 19, 2011

Honorable Eldon E. Fallon
c/o United States District Court
Eastern District of Louisiana
500 Poydras Street
Room C456
New Orleans, LA 70130

RE: MDL No. 1657 - Section L
In Re: Vioxx Products Liability Litigation

Dear Judge Fallon:

In Compliance with the Court's Pre-Trial Orders 6D, 32 and your Honor's Statements on the Record at the January 6, 2011 Status Conference in Open Court, the Fee Allocation Committee attaches its Recommendation which includes Exhibits A, B & C.

Respectfully submitted,

By: Russ M. Herman, Chairman
By: Andy Birchfield, Secretary


RUSS M. HERMAN, ESQ.

RMH/jsr

Attachments

cc: Fee Allocation Committee

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

In re: VIOXX
PRODUCTS LIABILITY
LITIGATION

* MDL Docket No. 1657
*
* Section L
*
* Judge Fallon
* Mag. Judge Knowles
*

Recommendation of Fee Allocation Committee

The Fee Allocation Committee, pursuant to the Court's Pretrial Order No. 32, has undertaken an extensive review of the common benefit work done in this litigation and is now prepared to make its recommendation to the Court. In reaching this recommendation the Fee Allocation Committee reviewed the detailed affidavits submitted by common benefit fee applicants. Additionally, the Fee Allocation Committee conducted hearings in Atlantic City, New Jersey; New Orleans, Louisiana; Houston, Texas; and Los Angeles, California. At these hearings, common benefit fee applicants were given the opportunity to present additional testimony in support of their common benefits application. The Fee Allocation Committee reviewed the time and expense submissions of the applicant firms as well as reports provided by the Court-appointed CPA, Phil Garrett. In preparing this recommendation, the Fee Allocation Committee has rigorously applied the *Johnson* factors to each applicant, as well as the additional factors set forth in Pretrial Order No. 6D.

In determining the appropriate amount of common benefit compensation for each applicant, the Fee Allocation Committee has considered the type of work that was performed and the value the work contributed to the litigation, adopting the views expressed by the Court in *Turner v. Murphy Oil*, 582 F. Supp.2d 797 (E.D. La. 2008):

Hours spent taking depositions, participating in hearings, or trials, actively participating in developing the appropriate litigation strategies and tactics (through moot court presentations or similar practices), drafting briefs, actively participating in Court conferences, arguing motions, negotiating with opposing counsel to reach a settlement, and actively managing and organizing the administrative aspects of the case are some of the more significant types of work that a case of this sort requires and deserves the most recognition. This, of course, is not the only type of work that such a case requires. Documents must be reviewed, categorized, and analyzed: emails must be read and responded to; claimants must be kept advised; meetings must be attended and in general the litigation must be monitored. This work while necessary and often time consuming, does not deserve equal treatment when allotting fees.

Turner, 582 F.Supp.2d. at 810-811.

For most common benefit applicants, time was not recorded contemporaneously with the work that was done. Plaintiffs' lawyers do not traditionally record time. This is particularly true for work performed in connection with the state-consolidated litigations where Pretrial Order No. 6 was not in effect. Therefore, the Committee has given due consideration to the time submitted by each common benefit fee applicant, but the number of hours submitted was not the dominant factor. Instead, hours were used to cross-check the amount of the recommended allocation.

The members of the Fee Allocation Committee are well situated to evaluate the fee applications. The Fee Allocation Committee is comprised of individuals who:

- Pioneered the Vioxx litigation, having filed and litigated Vioxx cases for more than three years before the formation of the MDL;
- Served as Plaintiffs' Liaison Counsel, Co-Lead Counsel, and the Executive Committee of the MDL, and served in leadership positions in the coordinated litigations in California, Texas and New Jersey;
- Served as Lead or Co-Lead Counsel in five of the six MDL bellwether trials;
- Served as Lead or Co-Lead Counsel in 13 of the 19 total jury trials (state and federal);
- Represented 25% of the total participants enrolled in the Settlement Program;
- Served as Chairs or Co-Chairs of the Law and Briefing Committee, Trial Committee, Discovery Committee and Administrative Committee in the MDL;
- Comprised the entire Plaintiffs' Negotiating Committee that negotiated the Master Settlement Agreement over a period of eleven months; and
- Provided leadership in every aspect of the Vioxx litigation.

Using the *Johnson* factors, the members of the Fee Allocation Committee carefully weighed all testimony and evidence submitted by the applicants. The Fee Allocation Committee members also drew upon their own knowledge regarding the roles of each applicant.

In addition, the Fee Allocation Committee developed a point system to assist in an objective evaluation of the nature and value of each applicant firm's contribution to the overall litigation. After careful consideration, the Fee Allocation Committee made an initial determination as to the appropriate common benefit allocation for each applicant firm. This amount was then communicated to each firm on an individual basis. To ensure due process, each applicant was afforded 14 days to object to the preliminary recommendation and to set forth the basis for the objection in writing. The Fee Allocation Committee considered each objection, made appropriate adjustments and is now prepared to present the recommendation to the Court.

Exhibit A is a list of common benefit fee applicants and the Fee Allocation Committee's recommended common benefit award.

Exhibit B is a list of applicant firms that accepted the preliminary recommendation of the Fee Allocation Committee.

Exhibit C is a list of applicant firms that objected to the preliminary recommendation of the Fee Allocation Committee with the amount requested by each objector.

| Firm | Final Allocation |
|---|------------------|
| Alley, Clark, Greiwe & Fulmer | \$365,000 |
| Alvarez Law Firm | \$15,000 |
| Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C. | \$3,400,000 |
| Anastopoulos & Clore, LLC | \$15,000 |
| Andrews & Thornton | \$600,000 |
| Ashcraft & Gerel LLP | \$9,000,000 |
| Audet & Partners, LLP | \$1,165,000 |
| Aylstock, Witkin, Kreis & Overholtz, LLC | \$225,000 |
| Balkin & Eisbrouch | \$15,000 |
| Balser, Brian K., Co., LPA | \$130,000 |
| Barnow | \$15,000 |
| Barrios, Kingsdorf & Casteix, LLP | \$1,700,000 |
| Bartimus, Frickleton, Robertson & Gorny | \$15,000 |
| Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. | \$40,900,000 |
| Becnel Law Firm, LLC | \$455,000 |
| Bencomo | \$327,500 |
| Blizzard, McCarthy & Nabers, LLP | \$11,600,000 |
| Bossier & Associates, PLLC | \$20,000 |
| Branch Law Firm | \$0 |
| Brandi Law Firm | \$970,000 |
| Brown & Crouppen, PC | \$73,000 |
| Bruce C. Dean | \$0 |
| Burg, Simpson, Eldredge, Hersh & Jardine, PC | \$500,000 |
| Cafferty Faucher | \$30,000 |
| Capshaw Goss | \$0 |
| Carey & Danis, LLC | \$0 |
| Charfoos | \$0 |
| Childers, Buck & Schlueter | \$0 |
| Cohen Milstein | \$750,000 |
| Cohen, Placitella & Roth, PC | \$500,000 |
| Cunard Law Firm | \$100,000 |
| Cuneo, Gilbert & LaDuca LLP | \$0 |
| Dugan & Browne | \$0 |
| Engstrom, Lipscomb & Lack | \$390,000 |
| Escobedo Tippet | \$0 |
| Fayard & Honeycutt | \$15,000 |
| Fibich, Hampton & Leebron, LLP | \$610,000 |
| Freese & Goss, PLLC | \$0 |
| Friedman Law Offices | \$6,500 |
| Gainsburgh, Benjamin, Davis, Meunier & Warshauer, LLC | \$2,690,000 |
| Gallagher Law Firm (TX) | \$40,000 |
| Gancedo & Nieves LLP | \$600,000 |
| Gianni-Petoyan, Attorneys at Law | \$30,000 |
| Girardi & Keese | \$20,100,000 |
| Goldenberg Heller | \$0 |

| Firm | Final Allocation |
|--|------------------|
| Hagens Berman | \$0 |
| Heins Mills | \$4,000 |
| Heninger Garrison Davis, LLC | \$1,000,000 |
| Herman, Herman, Katz & Cotler, LLP | \$32,500,000 |
| Hovde Dassow & Deets, LLC | \$1,165,000 |
| Irpino | \$877,000 |
| Jacobs Burns | \$0 |
| John Hornbeck | \$300,000 |
| Johnson & Perkinson | \$15,000 |
| Jones Verras | \$30,000 |
| Kasowitz, Benson, Torres & Friedman LLP | \$1,100,000 |
| Keller Rohrback | \$0 |
| Kerpsack | \$10,000 |
| Kline & Specter, PC | \$4,000,000 |
| Labaton Sucharow | \$0 |
| Langston Law Firm | \$0 |
| Lanier Law Firm, PC | \$27,000,000 |
| Levin Fishbein Sedran & Berman | \$21,400,000 |
| Levin Simes Kaiser & Gornick, LLP | \$15,000 |
| Levin, Papantonio, Thomas, Mitchell, Eshner & Proctor P.A. | \$15,600,000 |
| Lewis & Roberts, PLLC | \$0 |
| Lieff, Cabraser, Heimann & Bernstein, LLP | \$6,000,000 |
| Lockridge, Grindal, Nauen PLLP | \$350,000 |
| Locks Law Firm, LLC | \$585,000 |
| Lopez, Hodes, Restaino, Milman & Skikos | \$1,500,000 |
| Lundy & Davis | \$100,000 |
| Martin & Jones | \$0 |
| Matthews & Associates | \$1,400,000 |
| Mithoff Law Firm | \$15,000 |
| Morelli Ratner PC | \$750,000 |
| Motley, Rice LLC | \$195,000 |
| Murray Law Firm 1 | \$162,000 |
| Neblett, Beard & Arsenault | \$1,450,000 |
| Panish & Shea | \$1,640,000 |
| Price Waicukauski & Riley, LLC | \$15,000 |
| Richardson, Patrick, Westbrook & Brickman | \$15,000 |
| Robert J. DeBry | \$15,000 |
| Robert M. Becnel | \$30,000 |
| Robins, Kaplan, Miller & Ciresi L.L.P. | \$850,000 |
| Robinson, Calcagnie & Robinson | \$6,000,000 |
| Roda Nast, P.C. | \$45,000 |
| Sanders Viener Grossman, LLP | \$15,000 |
| Sanford, Shelly A., PLLC | \$6,800,000 |
| Seeger Weiss LLP | \$40,900,000 |
| Sheller, P.C. | \$55,000 |

| Firm | Final Allocation |
|---|------------------|
| Silverman & Fodera | \$73,000 |
| Singleton Law Firm | \$180,000 |
| Snapka, Turman & Waterhouse, L.L.P | \$75,000 |
| Ted Kanner | \$1,350 |
| Texas Consortium (Ranier, Gayle & Elliot, L.L.C.; Williams Kherkher; Provost Umphrey; Watts Law Firm; Grant Kaiser) | \$20,095,000 |
| The Holman Law Firm | \$0 |
| Ury & Moskow LLC | \$0 |
| Weinberg, Eric H., Law Firm of | \$220,000 |
| Weitz & Luxenberg, P.C. | \$20,000,000 |
| White Meany & Wetherall | \$0 |
| Whitehead Law Firm | \$45,000 |
| Williamson & Williams | \$15,000 |
| Wold | \$580 |
| Zimmerman, Reed PLLP | \$0 |
| Zink, Diane K. | \$0 |

| Firm | Formal Response |
|--|-----------------|
| Alley, Clark, Greiwe & Fulmer | Accepted |
| Alvarez Law Firm | Accepted |
| Anastopoulos & Clore, LLC | Accepted |
| Andrews & Thornton | Accepted |
| Ashcraft & Gerel LLP | Accepted |
| Balsler, Brian K., Co., LPA | Accepted |
| Barnow | Accepted |
| Barrios, Kingsdorf & Casteix, LLP | Accepted |
| Bartimus, Frickleton, Robertson & Gorny | Accepted |
| Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. | Accepted |
| Bencomo | Accepted |
| Blizzard, McCarthy & Nabers, LLP | Accepted |
| Bossier & Associates, PLLC | Accepted |
| Brandi Law Firm | Accepted |
| Burg, Simpson, Eldredge, Hersh & Jardine, PC | Accepted |
| Cafferty Faucher | Accepted |
| Charfoos | Accepted |
| Cohen Milstein | Accepted |
| Engstrom, Lipscomb & Lack | Accepted |
| Fayard & Honeycutt | Accepted |
| Fibich, Hampton & Leebron, LLP | Accepted |
| Gainsburgh, Benjamin, Davis, Meunier & Warshauer, LLC | Accepted |
| Gianni-Petoyan, Attorneys at Law | Accepted |
| Girardi & Keese | Accepted |
| Goldenberg Heller | Accepted |
| Herman, Herman, Katz & Cotler, LLP | Accepted |
| Irpino | Accepted |
| Jacobs Burns | Accepted |
| Johnson & Perkinson | Accepted |
| Kasowitz, Benson, Torres & Friedman LLP | Accepted |
| Lanier Law Firm, PC | Accepted |
| Levin Fishbein Sedran & Berman | Accepted |
| Levin Simes Kaiser & Gornick, LLP | Accepted |
| Levin, Papantonio, Thomas, Mitchell, Eshner & Proctor P.A. | Accepted |
| Lieff, Cabraser, Heimann & Bernstein, LLP | Accepted |
| Lopez, Hodes, Restaino, Milman & Skikos | Accepted |
| Mithoff Law Firm | Accepted |
| Neblett, Beard & Arsenault | Accepted |
| Panish & Shea | Accepted |
| Price Waicukauski & Riley, LLC | Accepted |
| Richardson, Patrick, Westbrook & Brickman | Accepted |
| Robert J. DeBry | Accepted |
| Robert M. Becnel | Accepted |
| Robins, Kaplan, Miller & Ciresi L.L.P. | Accepted |
| Robinson, Calcagnie & Robinson | Accepted |
| Sanders Viener Grossman, LLP | Accepted |
| Sanford, Shelly A., PLLC | Accepted |
| Seeger Weiss LLP | Accepted |
| Silverman & Fodera | Accepted |
| Singleton Law Firm | Accepted |
| Ted Kanner | Accepted |
| Texas Consortium (Ranier, Gayle & Elliot, L.L.C.; Williams Kherkher; Provost Umphrey; Watts Law Firm; Grant Kaiser) | Accepted |
| Ury & Moskow LLC | Accepted |
| Weitz & Luxenberg, P.C. | Accepted |
| Whitehead Law Firm | Accepted |
| Williamson & Williams | Accepted |
| Wold | Accepted |

| Firm | Formal Response | Amount Requested |
|---|-----------------|------------------|
| Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C. | Objection | \$14,169,042.54 |
| Audet & Partners, LLP | Objection | \$2,697,960.00 |
| Aylstock, Witkin, Kreis & Overholtz, LLC | Objection | \$317,213.83 |
| Becnel Law Firm, LLC | Objection | \$4,041,875.00 |
| Branch Law Firm | Objection | \$3,688,425.00 |
| Carey & Danis, LLC | Objection | \$2,446,185.00 |
| Cohen, Placitella & Roth, PC | Objection | |
| Cunard Law Firm | Objection | \$476,981.00 |
| Escobedo Tippet | Objection | |
| Freese & Goss, PLLC | Objection | \$244,000.00 |
| Gancedo & Nieves LLP | Objection | \$1,750,090.00 |
| Heninger Garrison Davis, LLC | Objection | \$2,424,595.31 |
| Hovde Dassow & Deets, LLC | Objection | \$2,877,081.50 |
| Kline & Specter, PC | Objection | \$12,080,690.00 |
| Lewis & Roberts, PLLC | Objection | \$494,153.00 |
| Lackridge, Grindal, Nauen PLLP | Objection | \$1,211,250.00 |
| Locks Law Firm, LLC | Objection | \$6,518,226.50 |
| Martin & Jones | Objection | \$324,445.00 |
| Matthews & Associates | Objection | \$13,000,000.00 |
| Morelli Ratner PC | Objection | \$13,000,000.00 |
| Motley, Rice LLC | Objection | \$5,039,542.20 |
| Murray Law Firm 1 | Objection | \$1,622,460.00 |
| Roda Nast, P.C. | Objection | \$503,783.75 |
| Sheller, P.C. | Objection | \$566,142.50 |
| Snapka, Turman & Waterhouse, L.L.P | Objection | \$31,000,000.00 |
| Weinberg, Eric H., Law Firm of | Objection | |
| White Meany & Wetherall | Objection | \$414,325.00 |