

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: ORAL SODIUM PHOSPHATE : **Case No. 1:09-SP-8000**
SOLUTION-BASED PRODUCTS : **(MDL Docket No. 2066)**
LIABILITY ACTION :

THIS DOCUMENT RELATES TO ALL : **JUDGE POLSTER**
ACTIONS :

: **ORDER REGARDING CLAIM**
 : **PROCESSING SCHEDULE.**
 :

C.B. Fleet Company, Inc. (“Fleet”) and the Plaintiffs’ Executive Committee (“PEC”), have entered into a Master Settlement Agreement dated July 9, 2010 (“MSA”) for resolving all claims asserted against Fleet for damages and injuries allegedly resulting from use of Fleet Phospho-Soda (“FPS”).¹ One of the provisions of the MSA contemplates the establishment of dates for the processing, reconciliation and payment of claims in an efficient, fair and expedient manner. This MDL Court now sets forth these dates, which have been agreed to by the parties and which will be incorporated into the MSA, as follows:

GENERAL DATES

On or before Friday, July 16, 2010	Each Claimant must comply with the MDL Court’s <i>Order Regarding Settlement Consideration Form</i> dated June 16, 2010 (Master Docket No. 91)
On or before Monday, Aug. 23, 2010	PEC must complete its due diligence as permitted under the MSA and declare whether or not the PEC is withdrawing from the MSA.

¹ Unless otherwise defined in this order, the capitalized terms are defined in the MSA, which definitions are incorporated herein by reference.

On or before Monday, Aug. 2, 2010	Claimants' lawyer must file with the MDL Court an MSA Participation Agreement identifying all clients and declaring which clients are Participating Claimants and which clients are Opt Out Claimants. <i>Pro se</i> Claimants must also declare their intentions to be either a Participating Claimant or an Opt Out Claimant. All Participating Claimants are deemed to have submitted to the jurisdiction of the MDL Court.
On or before Wednesday, Sept. 1, 2010	<p>A Claimant who was declared to be an Opt Out Claimant on or before August 2, 2010 may notify Fleet and the PEC of his/her intention to opt back into the settlement and become a Participating Claimant; however, such Claimant must submit all information and documents required herewith by September 1, 2010 and such claim shall be deemed to be a Track B Claim and subject to the terms regarding Track B Claims below.</p> <p>If the Claimant fails to provide the required information and documentation by September 1, 2010, the Claimant shall be deemed an Opt-out Claimant without further right to participate in the MSA.</p>
On or before Wednesday, Sept. 1, 2010	If less than 70 percent of the Participating Claimants fail to provide completed Settlement Construct Valuation Work Sheets showing the dollar value of their claims then all subsequent dates in this Order shall be suspended until such time that the 70 percent compliance level is reached. Thereafter, the MDL Court will issue an amended order resetting the dates consistent with the schedule set forth below.
On or before Wednesday, Sept. 15, 2010	Fleet must declare whether it will exercise its right to terminate the MSA pursuant to Section 4.7 of the MSA.
On or before Friday, Oct. 1, 2010	Fleet and the PEC will determine which, if any, policy periods are subject to policy year hold back provision in Section 4.3.2 of the MSA.
On or before Monday, Nov. 1, 2010	National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") and CAT Excess will identify up to twelve (12) claims for arbitration pursuant to Section 4.3.1 of the MSA.
On or before Friday, January 28, 2011	Arbitration of the first six (6) claims selected by National Union and CAT Excess should be completed.
On or before Monday, February 28,	Arbitration of the second six (6) claims selected by

2011	National Union and CAT Excess should be completed.
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TRACK “A” CLAIMS

On or before Monday Aug. 2, 2010	<p>Participating Claimants who timely submit to Fleet and the PEC the following documents shall be deemed “Track A Claims”: (1) completed Claimant Submission Form (attached to this Order as Exhibit A), with all required information and documents organized, highlighted, and identified in such a fashion as to expedite review of the claim submission and the completed Settlement Construct Valuation Worksheet²; and, (2) a complete copy of all medical records in electronic or paper form.</p> <p>Submissions to Fleet shall be by email to: fleet@pepperlaw.com and fleet@hpmb.com; or, if on disc, by overnight mail, to:</p> <p style="padding-left: 40px;">Mary Pat Walsh and Joshua Kessler Pepper Hamilton LLP 3000 Two Logan Square 18th and Arch Streets Philadelphia, PA 19103</p> <p>and to:</p> <p style="padding-left: 40px;">Denise A. Holzka Heidell, Pittoni, Murphy & Balch, LLP 99 Park Avenue New York, NY 10016</p> <p>Submission to the PEC shall be by email to: fleet@climacolaw.com; or, if on disc, to:</p> <p style="padding-left: 40px;">Dawn Marie Chielewski Climaco, Wilcox, Peca, Tarantino & Garofoli, L.P.A. 55 Public Square, Suite 1950 Cleveland, Ohio 44113</p>
On or before Friday, Nov. 19, 2010	With respect to Track A Claims, on a rolling basis, Fleet and/or the Applicable Insurer will inform the PEC and the Participating Claimant’s lawyer, whether they agree or

² Absent Special Master approval the information and documentation provided with the Claim Submission Form shall not exceed 50 pages and shall be highlighted to identify the relevant portions. However, if any report such as pathology, laboratory or operative etc., is provided a COMPLETE copy of such report, with relevant portions highlighted, must be attached without regard to the 50 page limit.

	<p>disagree with the Participating Claimant’s Settlement Construct Valuation (including whether such claim meets the threshold requirements and is not otherwise excluded).</p> <p>If Fleet asserts that there are deficiencies in the documentation of a claim submission (“Track A Deficiency Claims”), the Procedure for Deficiencies set forth below shall be followed.</p> <p>With respect to Track A Claims, where the parties agree to the Settlement Construct Valuation, the Applicable Insurer and/or the escrow agent for the SFEA, where appropriate, will make payment within thirty (30) days of receipt of a signed release in the form attached to the MSA and executed stipulation of dismissal or discontinuance by the Participating Claimant.</p> <p>If Fleet and/or the Applicable Insurer(s) disagree with the Participating Claimant’s Settlement Construct Valuation, the Procedure for Deficiencies set forth below shall be followed.</p>
<p>On or before Monday, Dec. 20, 2010</p>	<p>Track A Claims submitted with sufficient information by August 1, 2010, where the parties agree to the Settlement Construct Valuation or where the Settlement Construct Valuation has otherwise been determined on or before November 19, 2010 by the procedures outlined in the MSA, and where the signed release in the form attached to the MSA and executed stipulation of dismissal or discontinuance by the Participating Claimant was received, shall be paid.</p>

TRACK “B” CLAIMS

<p>On or before Wednesday, Sept. 1, 2010</p>	<p>Participating Claimants who timely submit the following documents to Fleet and the PEC shall be deemed “Track B Claims”: (1) the completed Claimant Submission Form (attached to this Order as Exhibit A), with all required information and documents organized, highlighted, and identified in such a fashion as to expedite review of the claim submission and the completed Settlement Construct Valuation Worksheet³; and, (2) a complete copy of all medical records in electronic or paper form.</p> <p>Submissions to Fleet shall be by email to: fleet@pepperlaw.com and fleet@hpmb.com; or, if on disc, by overnight mail, to:</p> <p style="padding-left: 40px;">Mary Pat Walsh and Joshua Kessler Pepper Hamilton LLP 3000 Two Logan Square 18th and Arch Streets Philadelphia, PA 19103</p> <p>and to:</p> <p style="padding-left: 40px;">Denise A. Holzka Heidell, Pittoni, Murphy & Balch, LLP 99 Park Avenue New York, NY 10016</p> <p>Submission to the PEC shall be by email to: fleet@climacolaw.com; or, if on disc, to:</p> <p style="padding-left: 40px;">Dawn Marie Chielewski Climaco, Wilcox, Peca, Tarantino & Garofoli, L.P.A. 55 Public Square, Suite 1950 Cleveland, Ohio 44113</p>
<p>On or before Wednesday, Dec. 15, 2010</p>	<p>With respect to Track B Claims, on a rolling basis, Fleet and/or the Applicable Insurer will inform the PEC and the Participating Claimant’s lawyer, whether they agree or disagree with the Participating Claimant’s Settlement Construct Valuation (including whether such claim meets the threshold requirements and is not otherwise excluded).</p> <p>If Fleet asserts that there are deficiencies in the</p>

³ See footnote 2.

	<p>documentation of a claim submission (“Track B Deficiency Claims”). The Procedure for Deficiencies set forth below shall be followed.</p> <p>With respect to Track B Claims, where the parties agree to the Settlement Construct Valuation, the Applicable Insurer and/or the escrow agent for the SFEA, where appropriate, will make payment within thirty (30) days of receipt of a signed release in the form attached to the MSA and executed stipulation of dismissal or discontinuance by the Participating Claimant.</p> <p>If Fleet and/or the Applicable Insurer disagree with the Participating Claimant’s Settlement Construct Valuation the Procedure for Deficiencies set forth below shall be followed.</p>
<p>On or before Monday, January 17, 2011</p>	<p>Track B Claims submitted with sufficient information by September 1, 2010, where the parties agree to the Settlement Construct Valuation or where the Settlement Construct Valuation has otherwise been determined on or before December 15, 2010 by the procedures outlined in the MSA, and where the signed release in the form attached to the MSA and executed stipulation of dismissal or discontinuance by the Participating Claimant was received, shall be paid.</p>

GENERAL PROVISIONS

(a) All Participating Claimants, Participating Lawyers, Participating Insurers, the PEC and Fleet will be bound by the Orders of the MDL Court establishing the dates for submission of Claim Submission Forms, with all required information and documents and complete copies of all medical records; the process and deadlines for evaluating such submissions and addressing any deficiencies in the information submitted; certifying valuations to Participating Claimants, Fleet, the Settlement Fund Escrow Agent, where applicable, and Orders regarding payments to Participating Claimants or any other insurer obligation under this MSA.

(b) With respect to submission of medical records, Participating Claimants may also rely by designation on information already submitted to Fleet, so long as the basis for passing Threshold under the Settlement Construct, and the specification of the Compensable Injuries by Category, are identified previously or in a supplemental submission. In all cases, however, each Participating Claimant shall provide a current Claim Submission Form and Claim Packet. The intent of this provision is to expedite and streamline the review process as to the claim so it may be efficiently evaluated with a minimum expenditure of time, resources, and expense.

(c) The payment specified in the foregoing paragraph shall be made by check, payable in trust, and payable to: “[Name of Participating Lawyer], as attorneys for [name of Participating Claimant]”.

PROCEDURES FOR DEFICIENCIES

1. PROCEDURE FOR ASSERTED DEFICIENCIES IN DOCUMENTATION OF A CLAIM SUBMISSION

- 1.1. All computations of time set forth shall be made in accordance with Rule 6 of the Federal Rules of Civil Procedure.
- 1.2. Fleet will notify the PEC and the Participating Claimant’s lawyer by email if Fleet believes there are deficiencies in the documentation provided pursuant to the submission of a claim, and the notice shall specify the exact nature of the asserted deficiency (“Notice of Deficiency”);
- 1.3. The Participating Claimant’s lawyer shall have seven (7) days to object to the Notice of Deficiency, and such objection shall provide the specific grounds for the objection;
- 1.4. If an objection is made, the Claims Committee shall meet and confer telephonically within seven (7) days of the objection, and if the objection is not resolved then the dispute shall be submitted to the Special Master within seven (7) days meet-and-confer. The Special Master shall make a final ruling on the objection without any right of appeal; or
- 1.5. If no objection is made, the Participating Claimant must cure the identified deficiencies within fifteen (15) days;
- 1.6. If the deficiency is not cured within the fifteen (15) day period or Participating Claimant’s lawyer does not notify Fleet and the PEC that there is a good faith

basis to extend the time to provide cure within that time, Fleet may file a Motion to Dismiss with the MDL Court, and serve the same on the Participating Claimant's lawyer and the PEC. The motion shall set forth the grounds for dismissal of the claim. Participating Claimant's lawyer must respond to the motion, copying Fleet and the PEC, within ten (10) days from date of receipt of the motion.

- 1.7. For good cause shown the Special Master may extend the time for the Participating Claimant's lawyer to respond to the motion. The Special Master shall hear and determine the motion and may make such order, including dismissal with prejudice, as he deems appropriate under the circumstances. The Special Master's decision is appealable to the MDL Court. Such appeal must be filed within ten (10) days of the Special Master's decision. The MDL Court's decision is final with no further right of appeal.

**2. PROCEDURE FOR RESOLUTION OF SETTLEMENT
CONSTRUCT VALUATION DISAGREEMENT:**

- 2.1. If Fleet, or the Applicable Insurer(s), disagree with a Participating Claimant's Settlement Construct Valuation, they must promptly inform the Participating Claimant's lawyer and the PEC as to the precise basis of the disagreement and simultaneously provide the Participating Claimant's lawyer with their Settlement Construct Valuation Work Sheet, together with all pertinent documents supporting their Settlement Construct Valuation. The notice shall be by email with copies to the PEC.
- 2.2. The Claims Committee shall meet and confer telephonically as soon as practicable, but not later than fifteen (15) days from the notice that there is a disagreement as to the valuation. If the meet and confer results in an agreed Settlement Construct Valuation, the claim shall be paid within thirty (30) days of Fleet's receipt of the executed stipulation of dismissal and/or discontinuance and a signed release in the form attached to the MSA by the Participating Claimant.
- 2.3. Should the meet and confer not resolve the dispute, both Fleet and the Participating Claimant's lawyer shall notify the Special Master by email, with copies to the PEC, of the impasse. The notification shall state the precise Settlement Construct factors or criteria in dispute, and each party shall provide a letter not to exceed four (4) pages supporting its position in the dispute. Each party shall also provide the Special Master with all documentation supporting its position. This notice shall be filed with the Special Master no later than seven (7) days from the last meet and confer by the Claims Committee. The Special Master will promptly issue a written decision and notice shall be provided to all parties including the PEC by email.
- 2.4. The Special Master shall make every effort to render a decision within fifteen (15) days from the date of receipt of all submissions pursuant to the preceding paragraph. The decision of the Special Master may be further appealed to the MDL Court, whose decision shall be final with no further right of appeal.

- 2.5. Payment, if any, shall be issued within thirty (30) days from the date of the expiration of any appeal period set forth above, or the Final Order of the Special Master and receipt the executed stipulation of dismissal and/or discontinuance and a signed release in the form attached to the MSA by the Participating Claimant.

IT IS SO ORDERED.

/s/ Dan Aaron Polster
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

DATED: July 19, 2010

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: ORAL SODIUM PHOSPHATE :
SOLUTION-BASED PRODUCTS :
LIABILITY ACTION : **Case No. 1:09-SP-8000**
: **(MDL Docket No. 2066)**
:
: **JUDGE POLSTER**

CLAIMANT SUBMISSION FORM

Claimant Full Name _____
Address _____

Date of Birth _____
Social Security Number _____
Home Telephone Number _____
Date of Ingestion of Fleet Product _____

The above-named Claimant submits his/her claim against C.B. Fleet, Inc. ("Fleet") to the settlement process pursuant to the Master Settlement Agreement dated July __, 2010 ("MSA") and acknowledges that he/she: (1) has reviewed the MSA (including Sections 18 and 19 related to the Claimant's representations and warranties) and the Settlement Construct and Settlement Construct Protocol, (2) has conferred with his/her attorney, (3) has authorized his/her attorney to identify him/her as a Participating Claimant under the MSA, (4) understands that the resolution under this MSA of his/her claim is his/her sole and exclusive remedy, and (5) may not under any circumstances withdraw his/her claim from this settlement process under this MSA.

Claimant's Signature: _____
Date: _____

REQUIRED CONTENTS OF CLAIMS SUBMISSION

THIS CLAIMS SUBMISSION FORM MUST INCLUDE AS ATTACHMENTS THE FOLLOWING DOCUMENTS AND INFORMATION. SUCH INFORMATION AND DOCUMENTS MUST BE ORGANIZED, HIGHLIGHTED, AND IDENTIFIED IN SUCH A FASHION AS TO EXPEDITE REVIEW OF THE CLAIM'S SUBMISSION AND THE COMPLETED SETTLEMENT CONSTRUCT VALUATION.

FAILURE TO ATTACH ALL REQUIRED DOCUMENTS AND INFORMATION MAY RESULT IN THE CLAIM BEING REJECTED AS DEFICIENT OR DELAY PAYMENT TO THE CLAIMANT.¹

REQUIRED RECORD CHECKLIST

- Completed Settlement Construct Valuation Worksheet with Claimant's Proposed Value.
- Completed Initial Fact Sheet or Summary Information Sheet together with required medical authorizations.
- Proof that Claimant used more than 45mL of Fleet Phospho-Soda (FPS) in a 24-hour period. Proof may include:
 - Proof of purchase of more than 45 ml of FPS.
 - Bowel preparation instructions.
 - Physician Affidavit.
 - Claimant Affidavit.
 - Medical Record indicating use of FPS.
- Record of colonoscopy or other medical procedure requiring use of bowel preparation, if such record exists and is in Claimant's possession.
- Baseline lab report or other medical evidence as per FPS Settlement Construct Protocol-demonstrating last serum creatinine level prior to use of FPS, if such records exists and are in Claimant's possession.
- First post-procedure lab report demonstrating serum creatinine/eGFR level.
- First post-procedure medical records diagnosing Claimant with a renal injury.
- In non-biopsy cases, record of first urinalysis after medical procedure requiring use of bowel preparation, if such record exists and is in possession of Claimant.
- Initial nephrology medical records/reports.
- Medical records or expert report upon which Claimant is relying to demonstrate the claimed renal injury is associated with the use of FPS bowel preparation.

¹ Participating Claimants are also required to submit any other documents and/or information required by the MSA, Settlement Construct, Settlement Construct Protocol, and any MDL Court orders. Other documents include, but are not limited to, complete sets of ALL medical records in the Participating Claimant's or Claimant's lawyer's possession, required by Section II A of FPS Settlement Construct Protocol which shall be submitted SEPARATELY from the documents to be attached to this form. Failure to separate these documents may result in the claim being rejected as deficient or delay payment to the Claimant.

- All COMPLETE renal biopsy reports, if any.
- Claimant's most current serum creatinine/eGFR level (must be the most recent lab report available and within 6 months of the date of claim submission).
- If related anemia treatment or hyperparathyroidism treatment is claimed, medical records substantiating that Claimant is currently receiving treatment for secondary anemia or secondary hyperparathyroidism at the time of claim submission.
- If temporary or ongoing dialysis treatment is claimed, medical records substantiating that Claimant received and/or is receiving dialysis treatment.
- If a renal transplant is claimed, medical records substantiating that Claimant received a renal transplant.
- If wrongful death is claimed: (i) the death certificate or autopsy report indicating that the claimed renal injury was the primary cause of Claimant's death, as set forth in Section IV.B.3 of the Settlement Construct Protocol; and (ii) Letters Testamentary or other legal documentation indicating that Claimant has legal authority to resolve the claim on behalf of decedent's estate.²
- Any and all affidavits and other records as may be required by the Settlement Construct and Settlement Construct Protocol to support the claim.
- If loss of consortium is claimed, marriage certificate or other proof of marriage.
- Complete set of all medical records in Claimant's or Claimant's Lawyer's possession at the time the settlement construct valuation Worksheet is submitted.

MEDICARE/MEDICAID INFORMATION

Are any of Claimant's medical expenses subject to Medicare or Medicaid reimbursement or payment?

Yes **No**

If Yes, has Claimant retained an approved³ qualified company to resolve any Medicare or Medicaid reimbursement claim?

Yes **No**

Please attach a copy proof of retention.

² In claims alleging wrongful death or where a Claimant has died, a proposed estate representative may apply to the MDL Court for an order of appointment as an estate representative for the deceased Claimant for all purposes related to this settlement.

³ The MSA provides that Medval and Garretson Firm Resolution Group are approved qualified companies, but the MSA does not limit a Claimant to retaining these entities. Claimants may retain an alternative provider or undertake the process themselves subject to approval of the PEC, Fleet, and the Applicable Insurer(s). Use of any alternative company or process may delay processing of Claimant's claim.