

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: Gadolinium Based Contrast Agents
Products Liability Litigation

This Document Applies to All Cases

Case No. 1:08 GD 50000

MDL No. 1909

Judge Dan Aaron Polster

CASE MANAGEMENT ORDER NO. 27

**(ORDER ESTABLISHING FEE COMMITTEE AND
PROCEDURE FOR DISTRIBUTION OF FUNDS)**

On February 20, 2009, the Court entered Pretrial Order No. 2, requiring two funds to be established: the "Gadolinium Based Contrast Agents (GBCA) Fee Fund" and the "GCBA Expense Fund" (the Funds). These Funds were established in recognition of the fact that, in this MDL, certain attorneys and firms have performed functions and generated work product which has benefited all plaintiffs in the litigation. In summary, the order required each plaintiff settling a case in this MDL to set aside 5% of the gross settlement amount for common benefit attorney fees and 1% of the gross settlement amount for the payment of common benefit expenses pursuant to this Court's PTO 2 of February 20, 2009. Pursuant to Amended PTO 3 entered on May 12, 2009, this Court appointed National City Bank, now a part of PNC, as the escrow agent over the Common Benefit Fee and Expense Funds. Pursuant to that same Order, Mr. Gregory L. Dantio, CPA, was designated as the accountant for the Common Benefit Fee and Expense Funds and has submitted monthly reports to this Court and to the

PEC regarding the balances in those accounts. Defendants have duly made deposits into these funds as settlements have occurred, pursuant to PTO 2.

Pretrial Order No. 2 stated that only Participating Counsel—those attorneys who signed the Participation Agreement attached to that order—could make subsequent claims for fees and expenses. In the Participation Agreement, attorneys agreed to submit their time and expense records to two attorneys on the Plaintiffs' Steering Committee on a monthly basis. (Agreement ¶¶ IV.D.4, III.C.) Accordingly, given that the bulk of the work has been completed, it appears this matter is ripe for determination.

Since the vast majority of this litigation is now resolved, the Court now finds it appropriate to establish procedures to resolve attorneys' claims to the Fee Fund and the Expense Fund. Thus, the Court now orders as follows:

1. The Court establishes a Fee Committee of the following lawyers: Troy Rafferty, Peter Burg, Peter Weinberger, Steve Skikos, Chris Seeger and Chris Tisi. The Court has appointed these individuals after consideration of their knowledge of the common benefit work that has been performed in this litigation and their experience in Fee Committee deliberations in other similar mass tort cases.
2. The appointment of the Fee Committee is of a personal nature. The appointees to this Committee cannot be substituted by other attorneys to perform the Fee Committee's functions, except by approval of the Court.
3. Members of the Fee Committee are now ordered to meet and confer amongst themselves and review all time and expenses which have been filed with the Plaintiffs' Steering Committee. The Fee Committee is ordered to devise a

preliminary plan for the distribution of the Fee Fund and Expense Fund, and to publish that plan by filing it on the docket of this MDL.

As to the distribution of the Expense Fund, the Court orders that the Fee Committee shall request and review Participating Counsels' requests for reimbursement of common benefit expenses of all Participating Counsel who incurred litigation expenses for the common benefit and shall vet the expenses to insure compliance with this Court's prior order and submit a proposed plan for reimbursement to the Court. Further, to the extent that funds remain in the Expense Fund, the Fee Committee will propose to the Court a plan for the equitable distribution (i.e. *pro rata*) of said funds to the plaintiffs whose funds were deposited into the Expense Fund.

As to the distribution of the Fee Fund, the Fee Committee is ordered to submit its recommendation of a fair distribution of the available amounts, based on quality and significance of the work performed, relative contribution, effort, and expenditure made on behalf of each attorney and his or her firm. The Fee Committee is ordered to collect appropriate documents to support its recommendation. The Fee Committee is ordered to file its preliminary plan within 60 days of the date of this order.

4. After the plan for distribution of the Expense Fund and the plan for the distribution of the Fee Fund are filed with the Court, any Participating Counsel will be permitted to file objections to the Fee Committee's proposed allocation. Such attorneys will have 30 days after the plans are filed to present their

objections. Objections must be in writing, be stated with particularity, and be based on competent evidence. Objections should be filed on the MDL docket.

5. The Court will permit a fair hearing on the plan before reaching a final decision. The Court will analyze all the submissions of counsel, including the Fee Committee's plan and any objections. The Court may, if it deems it necessary, hear testimony or admit additional evidence in order to reach a fair determination of the distribution of the funds. The Court will determine whether the plan fairly distributes the attorney fees in a manner that reflects each attorney or firm's contribution to the resolution of this litigation.
6. Thereafter, the Court intends to enter an order at the appropriate time allowing for distributions from the Fee Fund and Expense Fund.

IT IS SO ORDERED.

January 7, 2013
Dated: ~~December~~ _____, 2012



**Honorable Dan Aaron Polster
United States District Judge**