

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

<b>IN RE: ORAL SODIUM PHOSPHATE</b>	:	
<b>SOLUTION-BASED PRODUCTS</b>	:	
<b>LIABILITY ACTION</b>	:	<b>Case No. 1:09-SP-80000</b>
	:	<b>(MDL Docket No. 2066)</b>
	:	
<b>THIS DOCUMENT RELATES TO</b>	:	
<b>ALL ACTIONS</b>	:	<b>JUDGE POLSTER</b>
	:	
	:	<b><u>ORDER REGARDING</u></b>
	:	<b><u>SETTLEMENT</u></b>
	:	<b><u>CONSIDERATION FORM</u></b>

As this Court noted in its “*Order Regarding Contingent Fee Agreements*” (master docket no. 86), on June 14, 2010, the Plaintiffs’ Executive Committee (“PEC”), defendant Fleet, and certain Insurance Companies came to a “Common Agreement” regarding global settlement of all claims asserted against Fleet for damages and injuries allegedly resulting from the claimants’ use of Fleet Phospho-Soda® (“FPS”). The parties are now working together to draft a Master Settlement Agreement memorializing all of the terms of their Common Agreement.

One of the critical provisions of the parties’ Common Agreement provides for certain “withdrawal rights” that may be exercised if more than a certain percentage of claimants chooses to “opt out” – that is, to not participate in the global settlement and to instead pursue an independent lawsuit. In order to determine this opt-out percentage at the earliest reasonable point in time, this MDL Court now **ORDERS** as follows.

No claimant may obtain settlement benefits pursuant to the parties’ Common Agreement

and/or Master Settlement Agreement unless the claimant: (a) earlier submitted a Plaintiff's Fact Sheet ("PFS") (*see* master docket no. 49 (Nov. 24, 2009)); **OR** (2) timely submits a "Settlement Consideration Form," a copy of which is attached to this Order. A claimant's submission of a Settlement Consideration Form does **not** obligate the claimant to participate in the settlement or to apply for settlement benefits; however, a claimant **must** submit a Settlement Consideration Form if he or she chooses later to participate in the settlement or to apply for settlement benefits.<sup>1</sup>

Each claimant who has not earlier submitted a PFS must submit a Settlement Consideration Form **on or before Friday, July 16, 2010**, to be eligible for eventual payment of settlement benefits.

Submission may be made by email, fax, or regular mail, to Plaintiffs' Liaison Counsel,<sup>2</sup> as follows:

Fleet Settlement Consideration  
c/o Climaco Lefkowitz Peca Wilcox & Garofoli  
55 Public Square, Suite 1950  
Cleveland, OH 44113  
216-771-1632 fax  
[dxchmi@climacolaw.com](mailto:dxchmi@climacolaw.com)  
[jrclim@climacolaw.com](mailto:jrclim@climacolaw.com)

The Court will eventually use the information obtained from the Settlement Consideration Forms, together with earlier submitted PFSs, to determine the opt-out percentage. After the parties complete the Master Settlement Agreement, the Court will issue additional Orders setting out the administrative and procedural requirements and deadlines for claimants to obtain settlement benefits.

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<sup>1</sup> The same was true of a claimant's submission of a PFS: submission of a PFS did not obligate the claimant to participate in any settlement or to apply for settlement benefits; however, a claimant must submit a Settlement Consideration Form, or have earlier submitted a PFS, if he or she later chooses to participate in the settlement or to apply for settlement benefits.

<sup>2</sup> Plaintiffs' Liaison Counsel is directed to promptly provide to Fleet copies of all information it receives, and to make the information available to the Court and the Special Master upon request.

Finally, the Court directs Plaintiffs' Liaison Counsel and Defense Liaison Counsel each to forward copies of this Order (together with the Settlement Consideration Form) to all attorneys who represent OSPS claimants.

**IT IS SO ORDERED.**

*/s/ Dan Aaron Polster*

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**DAN AARON POLSTER**  
**UNITED STATES DISTRICT JUDGE**

**DATED:** June 18, 2010

