

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: PLAVIX® PRODUCT LIABILITY
AND MARKETING LITIGATION

Docket No. 13-cv-2418-FLW-TJB
ALL CASES

~~AMENDED PROPOSED~~ MDL CASE MANAGEMENT ORDER No. 5

Common Benefit, Time And Expense Rules, Holdback, Assessments and Related
Issues

I. **Governing Principles and the Common Benefit Doctrine**

The common benefit governing principles are derived from the United States Supreme Court's common benefit doctrine, as initially established in *Trustees v. Greenough*, 105 U.S. 527 (1881) and as refined throughout the last century in cases including *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980), *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970), and *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939). *See also Turner v. Murphy Oil USA, Inc.*, 422 F.Supp.2d 676, 680 (E.D. La.2006) ("Thus, to avoid the problem of free-riding, the U.S. Supreme Court over 125 years ago approved the common benefit doctrine, which provides that when the efforts of a litigant or attorney create, preserve, protect, increase, or discover a common fund, all who benefit from that fund must contribute proportionately to the costs of the litigation. 'The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense.'" (citations omitted)). *See also* Manual for Complex Litigation (Fourth) § 14.121 (2004) (discussing the American Rule and the common-benefit exception in complex cases). *See also In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, on April 20, 2010, MDL No. 2179, 2012 WL 161194, at *1, (Rec. Doc. 5064) (E.D. La. Jan.

18, 2012); Eldon E. Fallon, Common Benefit Fees in Multidistrict Litigation, 74 La. L. Rev. 371, 374 (2014) (“Because the work that the PSC performs inures to the common benefit of all plaintiffs and their primary counsel (the counsel that they employed), MDL transferee courts usually establish a procedure for creating a common benefit fee to compensate the members of the PSC and the members of any subcommittees who have done common benefit work.”); Manual for Complex Litigation, § 14.215 (4th ed. 2004) (noting that “Lead and liaison counsel may have been appointed by the court to perform functions necessary for the management of the case but not appropriately charged to their clients” and encouraging an order early in the litigation that “establish[es] the arrangements for their compensation, including setting up a fund to which designated parties should contribute in specified proportions.”).

The Court’s authority to establish a fund and to order contributions also derives from its equitable authority and its inherent managerial power over this consolidated and multidistrict litigation. *See, e.g., In re Vioxx Products Liab. Litig.*, 802 F.Supp.2d 740, 769-71 (E.D. La. 2011); *In re Diet Drugs*, 582 F.3d 524, 546-47 (3rd Cir. 2009); *In re Air Crash Disaster at Fla. Everglades*, 549 F.2d 1006, 1008 (5th Cir. 1977); Manual for Complex Litigation, § 20.312 (4th ed. 2004) (“MDL judges generally issue orders directing the defendants who settle MDL-related cases contribute a fixed percentage of the settlement to a general fund to pay national counsel.”); Fallon, *supra*, at 378 (the common benefit doctrine is justified “on principles of equity or quantum meruit or class action procedures or [a court’s] inherent authority”).

II. Scope of Order

This *Order* provides standards and procedures for the fair and equitable sharing

among plaintiffs, and their counsel, of the burden of services performed and expenses incurred by attorneys acting for the common benefit of all plaintiffs in MDL 2418; for the establishment of rules for compensable common benefit work and expenses; for the anticipated percentage of assessments determined as of this date collected to fund payment for common benefit fees and costs; for provisions governing a holdback on settlements or payments of judgments; for the procedures for reporting of time and expenses and review of those submissions; and other related issues.

This *Order* applies to (1) all cases now pending, as well as to any cases later filed in, transferred to, or removed to this Court and included as part of the MDL 2418 Proceeding, and any attorney with a fee interest in those cases; (2) each attorney with a case in the MDL who has a fee interest in a plaintiffs' case in state court or in any unfiled claims; and (3) all counsel who voluntarily sign the attached *Participation Agreement* (Exhibit A). Counsel with Plavix® cases pending only in the MDL are governed by this Order and are not obligated to sign the *Participation Agreement* as these counsel are deemed to have signed the *Participation Agreement*. Counsel with Plavix® cases outside MDL 2418 (even if counsel has cases in MDL 2418) must sign the *Participation Agreement*. All counsel who have signed or are deemed to have signed the *Participation Agreement* are classified as "*Participating Counsel*". State attorney general cases will only be deemed to be *Participating Counsel* if they have signed the *Participation Agreement*.

This *Order* is not intended to result in the payment of an assessment for a common benefit case in the MDL 2418 Proceeding and an additional assessment in any other coordinated action in another jurisdiction. In the event two assessments cover any case or claim, MDL 2418 Liaison Counsel and Participating Law Firm shall attempt a mutually

agreeable resolution, to avoid multiple or excessive assessments. If the MDL Liaison Counsel and any plaintiff's counsel or law firm are unable to reach a mutually agreeable resolution, the issue will be brought to the attention of the MDL 2418 Court, which shall have authority to decide the issue after consultation with the jurist in the other jurisdiction.

Participating Counsel are prohibited from sharing work product of MDL 2418 with counsel who are not *Participating Counsel*.

Should any counsel who are not *Participating Counsel* obtain access to or receive the work product of MDL 2418, that counsel shall be bound by the terms, conditions and obligations of this *Order*, and its *Exhibits*.

III. Common Benefit Work and Expenses – General Rules

The Court hereby adopts the following rules for the management of timekeeping, expense reimbursement, and related common benefit issues, and instructs Plaintiffs' Liaison Counsel to distribute additional guidelines from time to time as may be necessary to ensure the efficient prosecution of this litigation. The recovery of common benefit attorneys' fees and expenses will be limited to *Participating Counsel*, and only as provided herein.

Reimbursement for costs and payment of fees for services of all plaintiffs' counsel performing functions in accordance with this *Order* will be set by the Court at a time and in a manner established by the Court in a separate *Order* after due notice to all counsel and a hearing. The standards and procedures set forth in this *Order* and Exhibits A and B are to be utilized by every counsel seeking fees or expense reimbursement for the common benefit.

Work by attorneys who are hired as contract attorneys will not be compensable for the common benefit without the prior express authorization of the Plaintiffs' Liaison Counsel and ultimately determined by the Court.

Only *Participating Counsel* can do common benefit work or incur expenses for the common benefit, receive or have access to common benefit work product, and seek common benefit fees and reimbursement of common benefit expenses. Any attorney who is not *Participating Counsel* shall not be entitled to receive any common benefit work product or make a claim (or recovery) for any common benefit fees and expense reimbursements.

Participating Counsel shall only be eligible to claim common benefit attorneys' fees and cost reimbursement under the following conditions: if the time expended, costs incurred, and activity in question were (a) for the common benefit; (b) appropriately authorized by Plaintiffs' Liaison Counsel; (c) timely and properly submitted under the terms of this *Order*; and (d) ultimately approved by this Court.

Participating Counsel who seek to recover Court-awarded common benefit attorneys' fees and expenses in connection with this litigation shall keep a daily, contemporaneous record of their time and expenses, noting with specificity the amount of time in one tenth (.1) hour increments, location of work done (if relevant), a description of the particular common benefit activity, and authorization by Plaintiffs' Liaison Counsel for the activity in question. All *Participating Counsel* shall, by the 15th day of each month, submit their time and expenses for the prior month into a platform to be established by Plaintiffs' Liaison Counsel within 90 days of the entry of this *Order*. No other form of submission for time and expenses will be accepted. Counsel shall retain original copies of

all receipts¹ that are uploaded into a platform. Plaintiffs' Liaison Counsel shall provide all necessary forms for electronic time and expense reporting, provide online and webinar training, and provide user information for access into the platform 120 days after the entry of this *Order*. A Partner in each Participating Firm shall also email to Plaintiffs' Liaison Counsel, Shayna E. Sacks (SSacks@NapoliLaw.com), a signed affirmation sheet by the 15th of each month attesting to the accuracy of the data they have uploaded in the time and expense platform for the prior month.

The required data inputs for monthly time reporting into the platform shall include: date of task performed; name of attorney/paralegal performing the task; law firm name; assignor of task; professional level of attorney performing the task; task code; description of task performed; hourly rate for the attorney/paralegal; and hours spent on the task in one tenth (0.1) hour increments. The required data inputs for monthly expense reporting into the platform shall include: date expense incurred; name of attorney incurring the expense; law firm name; category of expense; description of the expense; amount of the expense; date that Plaintiffs' Liaison Counsel approved the expense, if approval is required; and a confirmation that the receipt has been attached to the expense line item inputted on the platform. Counsel shall retain original copies of all receipts that are uploaded into the platform. The specific task codes which must be utilized and inputted into the platform are set forth in Exhibit B attached hereto, but are subject to modification by Plaintiffs' Liaison Counsel as necessary, or by the Court.

¹ Receipts received electronically through services such as Egencia, Uber, or other online travel solutions are deemed to be original. Credit card statements may be used to supplement copies of receipts in cases where the original is no longer available, subject to the approval of Plaintiffs' Liaison Counsel.

By December 1, 2017, submissions shall be made for all common benefit time and “Held” expenses incurred from the date the first Motion for Transfer of Actions pursuant to 28 U.S.C. Section 1407 was filed with the Judicial Panel on Multi-District Litigation. The Court recognizes that there may be circumstances in which *Participating Counsel* may have done significant work for the common benefit and incurred significant expenses for the common benefit prior to the first Motion for Transfer of Actions, and in such event, this common benefit time and expense may be recommended by Plaintiffs’ Liaison Counsel to the Court to be included as compensable hours and reimbursable expenses. Counsel who believe that they have expended such extraordinary time or expense shall also submit these into the platform by December 1, 2017.

Any time or expense records submitted more than two (2) months in arrears may not be considered or included in any compilation of time or expense calculation for the submitting *Participating Counsel* and shall be disallowed, except for good cause shown, or by express permission from the *Plaintiffs’ Liaison Counsel*.

The failure to obtain authority to do common benefit work or incur common benefit expenses (if necessary), or maintain and timely provide such records in accord with this *Order* (or any *Order* supplementing or amending this *Order*) will be grounds for denial of common benefit attorneys’ fees or expenses, in whole or in part.

All monthly submission shall be certified by a Partner in each firm attesting to the accuracy and correctness of the submission, as well as compliance with this *Order*.

Plaintiffs’ Liaison Counsel shall disseminate this *Order* and any supplementing or amending *Order* to all counsel in MDL 2418.

IV. Common Benefit Expense Rules

Advanced costs will be deemed as either "Shared" or "Held." Both Shared and Held Costs are those incurred for the common benefit of the MDL as a whole. Costs exceeding \$1,000 require approval from Plaintiffs' Liaison Counsel, except for airfare. No individual client-related costs will be considered as Shared or Held Costs.

1. Shared Costs will be paid out of the Plavix® MDL Litigation Fund account to be established, which shall be funded by the periodic assessments/cash calls established by Plaintiffs' Liaison Counsel. The Plavix® MDL Litigation Fund account will be administered by Plaintiffs' Liaison Counsel and monitored by Plaintiffs' Liaison Counsel.
2. Held Costs are those that will be carried by each attorney and incurred in connection with common benefit work in MDL 2418. These shall be reimbursed as and when determined by the Court.
3. Plaintiffs' Liaison Counsel shall prepare and be responsible for distributing to *Participating Counsel* the reimbursement procedures for Shared Costs and the forms associated therewith.

A. Shared Costs

All costs for the common benefit of MDL 2418 which fall under the following categories shall be considered Shared Costs and qualify to be submitted and paid directly from the Plavix® MDL Litigation Fund account. Shared Costs include:

1. Court, filing and service costs;
2. Deposition and court reporter/videographer costs;

3. Document Depository: creation, operation, staffing, equipment and administration;
4. Plaintiffs' Liaison Counsel administrative matters, such as costs for meetings and conference calls;
5. Legal, accounting and vendor fees;
6. Expert witness and consultant fees and expenses;
7. Common expert witness expenses, including travel of witness;
8. Translation costs;
9. Bank or financial institution charges;
10. Investigative services;
11. Claims Administrator charges; and
12. Certified Public Accountant's ("CPA") charges.

Request for payments from the Plavix® MDL Litigation Fund account must be made on a Shared Expense Reimbursement Form to be provided by Plaintiffs' Liaison Counsel, with sufficient information to allow the Plaintiffs' Liaison Counsel to account properly for costs and to provide adequate detail to the Court.

B. Held Costs

Held costs are costs incurred by *Participating Counsel* that do not fall into the above Shared Costs categories but are incurred for the common benefit of all plaintiffs in MDL 2418. No specific client-related costs can be considered as Held Costs. Held Costs include the following which are governed by the Travel and Non-travel limitations set forth below:

1. Postage, shipping, courier, certified mail;
2. Printing and photocopying (in-house and out of office);
3. Computerized research - Lexis/Westlaw (actual charges only);
4. Telephone - long distance (actual charges only);
5. Travel - pursuant to Travel Limitations set forth below, including travel for counsel to attend depositions or court;
6. Airfare- pursuant to Travel Limitations set forth below;
7. Reasonable ground transportation- pursuant to Travel Limitations set forth below;
8. Hotel- pursuant to Travel Limitations set forth below;
9. Reasonable meals- pursuant to Travel Limitations set forth below; and
10. Other reasonable and necessary charges such as parking.

C. Travel Limitations

Only reasonable expenses for the common benefit submitted by *Participating Counsel* will be reimbursed. *Participating Counsel* shall keep receipts for all expenses. Credit card statements may be used to supplement copies of receipts in cases where the original is no longer available, subject to the approval of Plaintiffs' Liaison Counsel. Hotel costs must be proven with the full hotel invoice. The description of unclaimed expenses on any invoice may be redacted.

Except in extraordinary circumstances approved in advance by Plaintiffs' Liaison Counsel, all travel reimbursements are subject to the following limitations:

1. Airfare: Only the price of a full coach fare seat will be reimbursed for domestic flights where the one-way total flight time lasts 4.0 hours or less. In the event the seat is for a domestic flight where the one-way total flight time lasts longer than 4.0 hours or an international flight, Business/First Class airfare may be reimbursed with prior written approval by Plaintiffs' Liaison Counsel. In the event non-coach air travel is utilized on a flight which is less than 4.0 hours, the attorney shall be reimbursed only to the extent of the full coach fare, which counsel must contemporaneously document in the expense submission.
2. Hotel: Hotel room charges for the average available room rate of a business hotel, including but not limited to the Hyatt, Hilton, Sheraton, Westin, and Marriott hotels, in the city in which the stay occurred, will be reimbursed. Luxury hotels will not be fully reimbursed, but will be reimbursed at the average available rate of a business hotel. Suites or upgraded rooms will be reimbursed only to the extent of the average available room rate of a business hotel unless extraordinary circumstances and with prior written approval by Plaintiffs' Liaison Counsel.
3. Meals: Meal expenses must be reasonable and must contain a notation of who was present at the meal.
4. Cash Expenses: Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, etc.) will be reimbursed up to \$20.00 per trip, as long as the expenses are properly itemized.

5. Rental Automobiles/Car Service: Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles were available. Counsel must submit evidence of the unavailability of non-luxury vehicles. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form and only the non-luxury rate may be claimed, unless such larger sized vehicle is needed to accommodate exhibits and/or multiple counsel. Any claim for private car service will be reimbursed at the standard rate, unless such larger sized vehicle is needed to accommodate exhibits and/or multiple counsel.
6. Mileage: Mileage claims must be documented by the starting origination point, destination, and total actual miles for each trip, and the reimbursed rate will be the maximum rate allowed by the IRS.

D. Non-Travel Limitations

Only reasonable common benefit expenses submitted by *Participating Counsel* will be reimbursed. Submitting counsel shall keep receipts for all expenses.

Except in extraordinary circumstances approved in advance by Plaintiffs' Liaison Counsel, all non-travel reimbursements are subject to the following limitations:

1. Long Distance, Conference Call Charges: Common benefit long distance and conference call telephone charges must be documented as a line item on the bill in order to be compensable. Copies of the telephone bills must

be submitted with notations as to which charges relate to the Plavix® MDL 2418 Litigation. Such charges are to be reported at actual cost.

2. Shipping, Overnight, Courier, and Delivery Charges: All claimed common benefit shipping, overnight, courier, or delivery expenses must be documented with bills showing the sender, origin of the package, content of the package, recipient, and destination of the package. Such charges are to be reported at actual cost.
3. Postage Charges: A contemporaneous postage log or other supporting documentation must be maintained and submitted for common benefit postage charges. Such charges are to be reported at actual cost.
4. In-House Photocopy: A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is \$0.15 per page.
5. Out of Office Photocopy/Printing: All claimed common benefit printing or photocopy should be completed In-House. In the event such printing or photocopy can not be completed In-House, Plaintiffs' Liaison Counsel must give express permission for such printing or photocopy and such charges are to be reported at actual charge.
6. Computerized Research - Lexis/Westlaw: Claims for Lexis or Westlaw, and other computerized legal research expenses, should be in the exact amount charged to the firm for the common benefit work in this MDL,

specify the topic of the research, and must be reasonable under the circumstances.

V. Common Benefit Work Rules

Only previously authorized common benefit work is compensable. Authorized common benefit work is an assignment made by Plaintiffs' Liaison Counsel subject to the provisions of this Order. No time spent on developing or processing individual issues in any case for an individual client (claimant) will be considered or should be submitted. Time spent on unauthorized work shall not be submitted or compensated.

Only Participating Attorneys can submit time for common benefit work. Counsel who are not *Participating Counsel* are precluded from doing common benefit work and from receiving common benefit fees for work done. Only attorneys and paralegals may submit time, as allowed in this *Order*. No time for clerical or technical support shall be common benefit, unless pre-approved by Plaintiffs' Liaison Counsel.

Examples of authorized and unauthorized work include, but are not limited to:

1. Attendance at Depositions: Only the time and expenses for the individual(s) designated as first and second chair (and paralegal, if necessary) by Plaintiffs' Liaison Counsel, or individual(s) otherwise authorized as a questioner by Plaintiffs' Liaison Counsel, or individual(s) otherwise authorized to attend the deposition by Plaintiffs' Liaison Counsel shall be considered common benefit work. Attending or listening to monitor the proceeding shall not be compensable.

2. Periodic Plaintiffs' Conference Calls and Meetings: Plaintiffs' conference calls and meetings are common benefit. Only the Plaintiffs' Liaison Counsel, and that of those invited from time to time by Plaintiffs' Liaison Counsel to participate in calls and meetings, shall be considered common benefit; however, Plaintiffs' Liaison Counsel may submit as common benefit time that of a partner, associate, or paralegal to assist Plaintiffs' Liaison Counsel with their duties. During telephone calls, there is a presumption that only the Plaintiffs' Liaison Counsel, or her designee, will qualify for common benefit time.
3. Periodic MDL Status Conferences: Plaintiffs' Liaison Counsel is expected to attend the MDL status conferences and is working for the common benefit and only Plaintiffs' Liaison Counsel's time and those designated by Liaison Counsel as necessary to attend will be considered for common benefit for such attendance.
4. Attendance at Seminars: Attendance at seminars (i.e. AAJ Section Meetings, Mass Torts Made Perfect, Harris Martin and similar seminars and CLEs) does not qualify as common benefit work or a common benefit expense, unless authorized in advance by Plaintiffs' Liaison Counsel.
5. Document Review: Only document review specifically authorized by Plaintiffs' Liaison Counsel and assigned to an attorney (or paralegal previously approved by Plaintiffs' Liaison Counsel) will be considered common benefit work. Only licensed attorneys or paralegals previously

approved by Plaintiffs' Liaison Counsel may conduct common benefit document review. Descriptions associated with "document review" must contain sufficient detail to allow those reviewing the submitted time entry to generally ascertain what was reviewed. For example, indicating the custodian, search query or number of document folders reviewed will be required in the description to be considered common benefit work.

6. Review of Pleadings and Orders: Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients, and review of pleadings and orders is part of that obligation. However, Plaintiffs' Liaison Counsel is expected to review pleadings and orders as part of their work for the common benefit and Plaintiffs' Liaison Counsel's time will be considered as such. Additionally, those attorneys who are working on assignments made by Plaintiffs' Liaison Counsel which requires them to reasonably review, analyze, or summarize certain filings and substantive Orders of this Court in connection with their assignments are doing so for the common benefit.
7. Emails: Except for Plaintiffs' Liaison Counsel and attorneys working on pre-approved common benefit work, time recorded for reviewing emails is not compensable unless germane to a specific authorized and assigned (as provided herein) task being performed by the receiving or sending attorney that is directly related to that email. Thus, for example, review of an email sent to numerous attorneys to keep them informed on a matter on

which they are not specifically assigned to would not be compensable as common benefit work.

8. Review of Discovery: Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients, but they should review discovery only to the extent required by their individual assignments and responsibility. Those attorneys working on assignments made by Plaintiffs' Liaison Counsel which require them to reasonably review, analyze, or summarize certain filings and substantive *Orders* of this Court in connection with their assignments are doing so for the common benefit.
9. Work performed as set forth in items (1) through (8) above include and are related to state court actions in Delaware, New York and California as well as this Court.

VI. Procedures to be Established by Plaintiffs' Liaison Counsel

Plaintiffs' Liaison Counsel will establish forms and procedures to implement and carry out the time and expense submissions required by this *Order* and necessary to compile, review, and maintain the records. One of these forms listing the various task codes is attached as Exhibit B. As MDL 2418 progresses, there may be additional forms and procedures implemented by Plaintiffs' Liaison Counsel and distributed to all Participating Counsel.

Questions regarding the guidelines or procedures or the completion of any forms should be directed to Plaintiffs' Liaison Counsel: Shayna E. Sacks, Napoli Shkolnik

PLLC, 360 Lexington Ave., 11th floor, New York, New York 10017, Phone: (212) 397-1000, Fax: (646) 843-7603, E-mail: *SSacks@NapoliLaw.com*.

VII. Payments

Plaintiffs' Liaison Counsel is ultimately responsible for the costs related to all matters for the common benefit of the Plaintiffs during the course of MDL 2418. In order to fund these necessary activities, Plaintiffs' Participating Counsel's Firm must periodically contribute to the Plavix® MDL Litigation Fund account at times and in amounts sufficient to cover the administration of the MDL, as determined by Plaintiffs' Liaison Counsel. The amount assessed as a periodic payment must be paid within thirty (30) days from the date of the written notification of the assessment. Should any firm fail to contribute its assessment, in whole or in part, within thirty (30) days after the written notification of the assessment, Plaintiffs' Liaison Counsel has the authority to impose a prohibition on further work or other appropriate sanctions.

VIII. Assessments Withheld for Common Benefit Work and Costs

A. Establishing the Fee and Expense Funds

Plaintiffs' Liaison Counsel is directed to establish two interest-bearing accounts to receive and disburse holdback assessments to common benefit attorneys as approved by the Court. One fund shall be designated the "Plavix® Common Benefit Fee Fund" and the other fund shall be designated the "Plavix® Common Benefit Expense Fund." These two funds (collectively referred to herein as "Funds") will be held subject to the direction of this Court. At a later date Plaintiffs' Liaison Counsel shall retain a CPA who shall monitor the accounts subject to Settling Defendants' approval.

1. General Standards: All counsel and Plaintiffs who are subject to this *Order* who agree to settle, compromise, dismiss, or reduce the amount of a claim or, with or without trial, recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, with respect to Plavix® claims or a Plavix® case, are subject to an assessment on the Gross Monetary Recovery, as provided herein, the amount subject to Court approval.
2. Gross Monetary Recovery: Gross Monetary Recovery includes any and all amounts paid by Settling Defendants through settlement or pursuant to a judgment. In measuring the “Gross Monetary Recovery,” the parties are to (a) exclude any court costs that are to be paid by Settling Defendant(s), but include any attorneys’ fee awards under any fee-shifting statute or rule; (b) include any payments to be made by Settling Defendant(s) to a third party on behalf of the plaintiff; (c) include the present value of any fixed and certain payments to be made in the future; and (d) if applicable, subtract any recovery paid by the plaintiff to Settling Defendants through settlement or pursuant to a judgment for counterclaim(s) asserted in a Plavix® case by Settling Defendants.
3. Initial Assessment Amounts: The assessments in this *Order* represent a holdback (*see, e.g., In re Zyprexa Prods. Liab. Litig.*, 467 F. Supp. 2d 256 (E.D.N.Y. 2006)) and may be altered only upon further orders of the Court. The obligations in this Section shall follow the case to its final disposition, including a court having jurisdiction in bankruptcy.

Settling Defendants shall hold back² and set aside for placement into the Plavix® Common Benefit Fee Fund and the Plavix® Common Benefit Expense Fund the amounts in this section, unless otherwise amended by the Court. The Court is advised that Plaintiffs' Liaison Counsel currently believes that a total assessment of 8% of the Gross Monetary Recovery recovered by any plaintiff(s) who is/are subject to this *Order* for receipt of the common benefit work product and plaintiff(s) counsel's eventual compensation of common benefit fees and reimbursement of common benefit expenses is fair and reasonable under the current circumstances and the law. Of this 8% total assessment, 6 percentage points shall be set aside in the Plavix® Common Benefit Fee Fund for eventual payment of Court-approved common benefit attorneys' fees, and 2 percentage points will be set aside in the Plavix® Common Benefit Expense Fund for reimbursement of common benefit costs approved for reimbursement by the Court. The 8% assessment set forth herein is subject to revision, upward or downward, pursuant to subsequent *Orders* of this Court. Further, the 8% assessment shall not be a final determination of common benefit fees or expenses to ultimately be paid/reimbursed to plaintiffs' counsel performing functions in accordance with this *Order*; rather, such common benefit payments for fees and

² In the event any Settling Defendant fails to hold back the assessments required by this *Order*, Plaintiffs' counsel has an equal duty to pay the appropriate holdback amounts to the Plavix® Common Benefit Fee Fund. Under all scenarios (except to the extent the attorney is being paid an hourly rate), the fee assessment shall be paid from the attorney's portion of the recovery and shall not be borne by the client.

reimbursement for costs, if later supported by evidence of the outcome of the litigation, the extent of the work performed to achieve whatever the result, the caliber of counsel doing common benefit work, and the applicable jurisprudence, will later be awarded and set by the Court at a time and in a manner established by the Court in a separate *Order* after due notice to all counsel and a hearing.

Any case in the MDL 2418 proceeding that is subsequently resolved by settlement or trial as part of a class action pursuant to Federal Rule of Civil Procedure 23 will not be subject to this *Order*; rather in the event of a class action judgment or resolution, a separate order addressing class counsel fees and costs will be entered.

B. Settling Defendants' Obligations to Pay Common Benefit Assessments

Pursuant to this *Order*, Settling Defendants are directed to withhold the assessment amount set forth herein, unless otherwise amended by the Court from any amounts paid to plaintiffs and their counsel who are subject to this *Order*, and to pay the assessment directly into the Plavix® Common Benefit Fee Fund and the Plavix® Common Benefit Expense Fund as a credit against the settlement or judgment of a case or claim subject to this *Order*. If, for any reason, the assessment is not or has not been so withheld, the plaintiff and his or her counsel are jointly responsible for paying the assessment into the Funds promptly.

Plaintiffs' Liaison Counsel shall provide Defendants' Liaison Counsel and the Court (or its designee) with a list of cases and/or counsel who have signed or is deemed to

have signed the *Participation Agreement* (Exhibit A) or who are otherwise subject to this Order on a quarterly basis, beginning December 1, 2017. In the event there is a dispute as to whether a case or counsel are subject to this *Order*, Plaintiffs' Liaison Counsel shall seek to resolve the matter with the particular plaintiff's counsel informally, and if that is unsuccessful upon motion to the MDL Court.

Although the settlement amounts are confidential, Settling Defendant(s) must disclose the amounts to the CPA who shall provide Plaintiffs' Liaison Counsel at the appropriate time with written verification that Defendant(s) have made full and complete payments to the appropriate Funds in accordance with this *Order* and with all procedures established by the Court. The full and complete payments and the required verification from the CPA shall discharge Settling Defendants' and Settling Defendants' counsel's obligations and responsibilities with respect to the deposited funds, including any disputes between or among Plaintiffs and Plaintiffs' counsel as to the allocation of such funds. Whether case(s) have been settled and the specifics of any settlement(s), including but not limited to amount(s) deposited into the appropriate Fund, shall be confidential and shall not be disclosed by the CPA to Plaintiffs' Liaison Counsel, any other plaintiffs' lawyer, the Court, the Court's designee, or to anyone else. However, it may be provided to the Court or the Court's designee, and to the Court or its designee only, should the Court request that information. Monthly statements from the CPA shall, however, be provided to Plaintiffs' Liaison Counsel and the Court showing only the aggregate of the monthly deposits, disbursements, interest earned, financial institution charges, if any, and current balance.

CPA shall provide Plaintiffs' Liaison Counsel with written verification that Defendants have made full and complete payments to the appropriate Funds in accordance with this *Order* and with all procedures established by the Court; however, the CPA shall not disclose any settlement amounts to anyone, other than to the Court if requested by the Court.

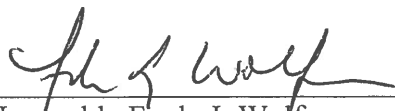
Upon payment of the Assessment into the Fund, Settling Defendants shall be released from any and all liability to any person, attorney, or claimant with respect to the Assessment placed into the Fund. Any person, attorney, or claimant allegedly aggrieved by an Assessment pursuant to this Order shall seek recourse as against the Fund.

IX. Notice to All Prospective Participating Counsel

In order to ensure that all prospective Participating Counsel have due notice of the instant *Order*, Plaintiffs' Liaison Counsel is ordered to provide immediate notice of the instant *Order*, and any other *Order* related to common benefit fees, expenses, or procedures, to all plaintiffs' counsel in Plavix® cases, without regard for whether the case is filed in federal or state court, so as to provide full notice as to the procedures which will govern this case.

IT IS SO ORDERED:

Dated: 9/18/17


Honorable Freda J. Wolfson