

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: BENICAR® (OLMESARTAN)
PRODUCTS LIABILITY LITIGATION

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Master Docket: 15-MDL-2606 (RBK)(JS)

CASE MANAGEMENT ORDER NO. 35
COMMON BENEFIT ASSESSMENTS TO COMPENSATE
PARTICIPATING COUNSEL FOR COMMON BENEFIT FEES AND RELATED COSTS

The Court previously entered Case Management Order No. 3, Time and Expense Reporting of Common Benefit Fees and Related Costs. Based on the Plaintiff Executive Committee’s Motion and Memorandum in Support of Motion to Approve Order Establishing a Benicar® Common Benefit Fund to Compensate and Reimburse Participating Counsel for Common Benefit Fees and Related Costs, this Order supplements Case Management Order No. 3.

Assessments and Payments into the Common Benefit Fund

a. A total assessment for payment of approved common benefit attorneys’ fees and expenses of eight percent (8%) of any Gross Monetary Recovery¹ (the “Assessment Amount”) shall apply to all cases and claims in this MDL, as well as any other case or claim as to which an MDL attorney or law firm has or had a financial interest, whether in federal or state court, and whether or not filed, including but not limited to any case or claim submitted in any future settlement entered into by the Plaintiffs’ Executive Committee or their designees and Defendants.

b. The assessment of eight percent (8%) shall be deducted from the Gross Monetary Recovery in each Participating Case or claim, with two (2%) deducted from the client’s recovery as costs, and six (6%) deducted from the attorney’s fee recovered.

c. In calculating the Gross Monetary Recovery, include all sums to be paid in settlement or pursuant to a judgment.

¹ Gross Monetary Recovery is referred to any and all amounts paid by Defendants named in this MDL as a settlement or judgment to any plaintiff and/or client represented by Participating Counsel, as well as pro se litigants.

d. In the event of any settlement or judgment encompassing claims concerning injuries alleged in this MDL, Defendants are directed to withhold the Assessment Amount from the amount paid in settlement or to satisfy a judgment, and to pay the Assessment Amount directly to the Plaintiffs' Steering Committee Fund, identifying the plaintiff, settlement amount, and calculation of the assessment payment, except that for claims settled through a global resolution program, the Claims Administrator shall withhold the Assessment Amount for distribution to the Plaintiff's Steering Committee Fund, unless otherwise specified in an Order. Upon payment of the Assessment Amount as set forth herein, Defendants shall be released from any and all responsibility to any person, attorney, or claimant with respect to the Assessment Amount.

e. The mechanisms for evaluation and determination of the fee and expense awards to Common Benefit Attorneys, in the event of a settlement, shall be addressed in a subsequent Order.

SO ORDERED this 15th day of August 2017.



HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE