

**UNITED STATES COURT
EASTERN DISTRICT OF LOUISIANA**

In re: VIOXX	*	MDL Docket No. 1657
	*	
PRODUCTS LIABILITY LITIGATION	*	SECTION L
	*	
	*	JUDGE FALLON
	*	
This Document relates to All Cases	*	MAGISTRATE JUDGE KNOWLES

**COMMON BENEFIT CONSUMER CLASS FEE AND COST COMMITTEE’S
FINAL RECOMMENDATION PURSUANT TO ORDER
ISSUED OCTOBER 1, 2018 [REC. DOC. 65587]**

I. INTRODUCTION

On September 23, 2015, this Court entered Pre-Trial Order No. 59, regarding Appointment of Common Benefit Fee and Cost Committee in Connection with the Vioxx MDL Consumer class Settlement Agreement and Guidelines for Common Benefit Attorneys’ Fees and Costs Reimbursement [Rec. Doc. 65267] (“PTO 59”). Due to the influx of submissions in accordance with Step One of PTO 59, it was necessary for the Court to extend certain deadlines contained in PTO 59, and on December 7, 2015, the Court entered Pre-Trial Order No. 59(A) (Appointment of Common Benefit Fee and Cost Committee in Connection with the Vioxx MDL Consumer Settlement Agreement and Guidelines for Common Benefit Attorneys’ Fees and Costs Reimbursement) (“PTO 59(A)”) [Rec. Doc. 65311].

PTO 59 and PTO 59(A) have been complied with and the Fee Committee submits to the Court it’s recommended allocation of the common benefit fee at issue.

II. PROCEDURAL ANALYSIS

“Step One” of the PTO 59 process obliged all common benefit counsel to review and audit their time and expenses submitted to the Court-appointed CPA’s case management system pursuant to PTO 6. The guidelines for review specified in the Order sought to assure both the accuracy of this information and the ability of counsel to verify their submissions as needed. The Court has continually reviewed this information since the inception of the litigation; and, in some cases, counsel have been encouraged to review and revise their firm’s common benefit time and expense submissions.

Pursuant to “Step Two” of the process, the Fee Committee reviewed not only these time and expense submissions of all common benefit fee applicants, but also “Fee Affidavits” (in the form attached as Exhibit A to PTO 59) from all counsel seeking common benefit fees and/or the reimbursement of costs.

On January 20, 2017, the Common Benefit Fee and Cost Committee (“Fee Committee”) filed an Aggregate Fee Petition Pursuant to Pre-Trial Order 59(A) [Rec. Doc. 65491] (“Fee Petition”). Objections to the Fee Petition were filed, and the Fee Committee filed a Reply [Rec. Doc. 65507]. On August 29, 2017, the Court entered Order & Reasons [Rec. Doc. 65537], and then on November 17, 2017 entered a Minute Entry vacating the August 29, 2017 Order and Reasons and directing “all interested parties (including all counsel who previously submitted hours) to file any timesheets with Mr. Phil Garrett in which they feel is attributable to work on the consumer portion of this litigation within 30 days of this Minute entry...” [Rec. Doc. 65545].

After additional briefing and argument, on September 26, 2018, the Court issued Order & Reasons [Rec. Doc. 65586], awarding attorneys’ fees of \$4,255,000 or 18.5% of the \$23,000,000 settlement fund.

On October 1, 2018, the Court issued an Order [Rec. Doc. 65587], directing that the Fee Allocation Committee meet and confer and provide the Court with a recommendation as to an appropriate and fair allocation of the attorneys' fee among the attorneys who rendered common benefit services to the consumer class. Members of the Fee Committee were provided all materials submitted by applicants pursuant to Pre-Trial Orders 59 and 59A, and in making its final allocation recommendation to the Court, exercised its discretion as ordered by the Court and evaluated the common benefit work performed by the applicants in the litigation. The Fee Committee utilized the guidelines established by the Court in Pre-Trial Orders 59 and 59A and reviewed reports provided by Philip Garrett, CPA, Affidavits and/or Sworn Statements of applicants and participated in several meetings where the members of the Fee Committee undertook deliberations and prepared a proposed final allocation recommendation to the Court, as set forth in Step Five of Pre-Trial Order No. 59. The Fee Committee provides its recommendation to the Court as follows, considering the Order & Reasons entered September 26, 2018:

Common Benefit Applicant	Fee Committee % Recommendation	Dollar Amount of Recommendation
Barrios, Kingsdorf & Casteix.	18.875	\$ 803,131.25
Bingham Greenebaum Doll	3.5	\$ 148,925.00
Getty Law Group	18.875	\$ 803,131.25
Harke, Clasby & Bushman	3	\$ 127,650.00
Herman, Herman & Katz	19.625	\$ 835,043.75
Johnson & Perkinson	4	\$ 170,200.00
Keller Rohrback	3.5	\$ 148,925.00
Law Offices of James P. Lyle	3.5	\$ 148,925.00
Lieff Cabraser Heimann & Bernstein	19.125	\$ 813,768.75
Oldfather Law Firm	0	\$ 0.00
Sanford Heisler Kimpel	3	\$ 127,650.00
Whitfield Bryson & Mason	3	\$ 127,650.00
TOTAL	100%	\$4,255,000.00

Respectfully submitted,

Dated: October 18, 2018

/s/ Leonard A. Davis
 Russ M. Herman, Esquire
 Leonard A. Davis, Esquire
 HERMAN, HERMAN & KATZ, L.L.C.
 820 O'Keefe Avenue
 New Orleans, Louisiana 70113
 Phone: (504) 581-4892
 Fax: (504) 561-6024
ldavis@hhklawfirm.com
Plaintiffs' Liaison Counsel
MDL 165, Co-Lead Class Settlement Counsel
Fee Committee Chair

COMMON BENEFIT FEE AND
COST COMMITTEE:

/s/ Richard A. Getty
RICHARD A. GETTY
Fee Committee Member

/s/ James P. Lyle
JAMES P. LYLE
Fee Committee Member

/s/ Dawn M. Barrios
DAWN M. BARRIOS
Fee Committee Member

/s/ Elizabeth J. Cabraser
ELIZABETH J. CABRASER
Fee Committee Member

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been served on Liaison Counsel, Ann B. Oldfather, and Phillip Wittman, by U.S. mail and e-mail or by hand delivery and e-mail, and upon all parties by electronically uploading the same to LexisNexis File & Serve Advanced in accordance with Pretrial Order No. 8(B), and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF system which will send a Notice of Electronic Filing in accord with the procedures established in MDL 1657 on this 18th day of October, 2018.

/s/ Leonard A. Davis
Leonard A. Davis