

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE: VIOXX PRODUCTS** : **MDL NO. 1657**  
**LIABILITY LITIGATION** :  
: **SECTION: L**  
: **JUDGE FALLON**  
: **MAG. JUDGE KNOWLES**

\*\*\*\*\*

**THIS DOCUMENT RELATES TO: THIRD PARTY PAYOR COMMON BENEFIT FEES**

**REPORT AND RECOMMENDATION OF SPECIAL MASTER REGARDING  
THIRD PARTY PAYOR COMMON BENEFIT AWARDS**

By Order dated March 15, 2013, Judge Eldon Fallon appointed the undersigned as Special Master “to review the remaining objections.” After the appointment, the Special Master issued a Scheduling Protocol (Exhibit 1) which called for submission of documents, memorandum of positions by the parties, and a hearing on May 17, 2013.

Extensive documentation and memorandum from the parties were received and reviewed by the Special Master. After that review, the Special Master issued a Revised Scheduling Protocol (Exhibit 2) which called for the appearance of certain parties at a scheduled hearing for June 20, 2013.

On June 20, 2013, the following appearances were noted:

- a) Leonard Davis
- b) Chris Seeger
- c) David Buchanan
- d) Russ Herman
- e) Robert Arceneaux
- f) Eric Weinberg
- g) Robert Dassow
- h) James Dugan

At the hearing, the Special Master received testimony from Eric Weinberg, Robert Dassow, David Buchanan and Chris Seeger. The actual questioning was by the Special Master to address issues he had noted in the submissions and to more clearly define the positions that were taken by the parties.

With regard to the objection of Eric Weinberg, the testimony and submissions revealed that a significant portion of his time was expended in working with experts, participating at his election in litigation that was pending in Australia, preparation of an article on Alzheimer's disease and work related to bone density. Chris Seeger, who according to all accounts was the primary involved counsel in the third-party payor litigation, testified that all of this work by Mr. Weinberg was not done at the request of liaison counsel or counsel directing the litigation. (Transcript of Proceedings before Special Master, pp. 77-79). Additionally, Mr. Seeger testified that none of this work by Mr. Weinberg was of any benefit in the prosecution and ultimate resolution of the third-party payor litigation. (Transcript of Proceedings before Special Master, pp. 67-68, 76-78 and 85-87).

The Special Master has reviewed the time sheets Mr. Weinberg submitted for common benefit compensation in the third-party payor litigation. Since Mr. Weinberg often grouped many of his time entries, it was almost impossible to parse out the time he devoted to any particular task. In spite of this problem, the Special Master accepted his total time in these grouped instances. The noted group time entries are reflected in the attached Exhibit 3.

The Special Mater has gone through all entries of the Weinberg time sheet and has highlighted all of the entries that are found to be third-party payor related (Exhibit 4). If you total the hours of Mr. Weinberg's related to the third-party payor litigation, including grouped time entries, you end up with 166 hours. Applying an appropriate lodestar factor for the work performed and considering the limited fund and expenses, it is the finding and recommendation of the Special Master that an appropriate and just award for Mr. Weinberg would be \$135,292.00.

With regard to the Hovde Dassow and Deets (HDD) claim for the common benefit work, it should be noted that their work is not questioned by the Fee Allocation Committee (Transcript of Proceedings before Special Master, p. 66), but there is concern about the numbers of firms involved in the prosecution of the New Jersey litigation. The Special Master finds and reports that the number of firms involved is a factor that should and is considered in this Report. The fact that the Audit firm, who was jointly involved with HDD, received a revised allocation of \$240,000.00, it is the finding and recommendation of the Special Master that the HDD firm should receive an award on the same percentage of fees and expense requested as was awarded the Audit firm in the revised award. Accordingly, the award to the HDD firm is \$425,152.00.

The Lanier Firm is another member of the Central States Law Firm group that was involved in the prosecution of the New Jersey litigation. While The Lanier Firm submitted time sheets that reflected 238.6 hours for Richard D. Meadows and 154.6 hours for Evan Janush and there is apparently no contest by the Fee Allocation Committee that these hours were related to the third-party payor litigation, the Lanier Firm was engaged in a collective effort with several other firms and there is a limited fund from what all of the common benefit work can be paid. Accordingly, it is the finding and recommendation of the Special Master that an appropriate and just award to The Lanier Firm is \$75,000.00.

Lafayette, Louisiana, this 8<sup>th</sup> day of November, 2013.

/s/ PATRICK A. JUNEAU  
PATRICK A. JUNEAU  
Special Master  
1018 Harding Street, Suite 202  
Lafayette, LA 70503  
Telephone: (337) 269-0052  
Facsimile: (337) 269-0061  
Email: [paj@juneaudavid.com](mailto:paj@juneaudavid.com)

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 8, 2013, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all known counsel of record who are participants. I further certify that I emailed the foregoing document and the notice of electronic to the following:

Leonard Davis  
Herman, Herman, Katz & Cotlar  
820 O'Keefe Avenue  
New Orleans, LA 70113  
Email: [ldavis@hhklawfirm.com](mailto:ldavis@hhklawfirm.com)

Ms. Margaret E. Woodward  
Attorney at Law  
3701 Canal Street, Suite C  
New Orleans, LA 70119  
Email: [mewno@aol.com](mailto:mewno@aol.com)

Mr. Andy D. Birchfield, Jr.  
Beasley, Allen, Crow, Methvin,  
Portis & Miles, P.C.  
218 Commerce Street  
Montgomery, AL 36104  
Email: [andy.birchfield@beasleyallen.com](mailto:andy.birchfield@beasleyallen.com)

Mr. Robert T. Dassow  
Hovde, Dassow & Deets  
Meridian Tower  
201 W. 103<sup>rd</sup> Street, Suite 500  
Indianapolis, IN 46290  
Email: [rdassow@hovdelaw.com](mailto:rdassow@hovdelaw.com)

Mr. Christopher A. Seeger  
Seeger Weiss, LLP  
77 Water Street  
New York, NY 10005  
Email: [cseeger@seegerweiss.com](mailto:cseeger@seegerweiss.com)

Lafayette, Louisiana, this 8<sup>th</sup> day of November, 2013.

/s/ PATRICK A. JUNEAU  
PATRICK A. JUNEAU  
Special Master  
1018 Harding Street, Suite 202  
Lafayette, LA 70503  
Telephone: (337) 269-0052  
Facsimile: (337) 269-0061  
Email: [paj@juneaudavid.com](mailto:paj@juneaudavid.com)