

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

In re: Vioxx	*	MDL Docket No. 1657
	*	
PRODUCTS LIABILITY	*	SECTION L
LITIGATION	*	
	*	JUDGE FALLON
This relates to all cases.	*	
	*	MAG. JUDGE
	*	KNOWLES
	*	
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**PRETRIAL ORDER NO. 57**  
**(Establishing Procedures and Deadlines for Private Third Party Payor  
Common Benefit Fees)**

Agreements dated September 14, 2009 between defendant Merck & Co., Inc. (“Merck”) and private third party payor (“TPP”) claimants provided for payments by Merck, respectively, of an aggregate settlement of \$65 million by Merck to identified settling plaintiffs (the “TPP Settlement Agreement”), and \$15 million as a Common Benefit Attorneys fee (the “TPP CBF Agreement”). The common benefit attorneys’ fees under the TPP CBF Agreement remain to be allocated and disbursed to qualified common benefit attorneys. To implement the process for the award and disbursement of fee and costs for services under the TPP CBF Agreement, IT IS HEREBY ORDERED:

**I. PRIVATE TPP FEE ALLOCATION COMMITTEE**

The Court designates and appoints the following counsel to comprise the Private TPP Fee Allocation Committee, to receive and consider applications and materials from all counsel seeking common benefit fees and costs under the terms of the TPP CBF Agreement for

protecting and advancing the common interests of private TPPs in this litigation, and to make award and disbursement allocation recommendations to the Court for its consideration:

Russ M. Herman (Bar No. 6819)  
HERMAN, HERMAN, KATZ  
& COTLAR, L.L.P.  
820 O'Keefe Avenue  
New Orleans, Louisiana 70113  
Telephone: (504) 581-4892  
Facsimile: (504) 561-6024

Elizabeth J. Cabraser  
LIEFF CABRASER HEIMANN  
& BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
Telephone: (415) 956-1000  
Facsimile: (415) 956-1008

Christopher Seeger  
SEEGER WEISS  
77 Water Street  
New York, NY 10005  
Telephone: (212) 584-0700  
Facsimile: (212) 584-0799

Thomas M. Sobol  
HAGENS BERMAN SOBOL SHAPIRO LLP  
55 Cambridge Parkway  
Suite 301  
Cambridge, MA 02142  
Phone: (617) 475-1950

Andy D. Birchfield, Jr.  
BEASLEY ALLEN  
218 Commerce Street  
Montgomery, AL 36104  
Telephone: (800) 898-2034  
Facsimile: (334) 954-7555

James R. Dugan II  
THE DUGAN LAW FIRM  
One Canal Place, Suite 1000  
365 Canal Street  
New Orleans, LA 70130  
Telephone: (504) 648-0180  
Facsimile: (504) 648-0181

## **II. PRIVATE TPP FEES AND COSTS APPLICATION PROCESS**

Within two (2) days of the Court's entering of this Order, the Private TPP Fee Allocation Committee shall: (i) post a filed signed copy of this Order to LexisNexis, (ii) provide a filed signed copy of this Order and the TPP Settlement and CBF Agreements to all counsel, known to them, who have served on a Court-appointed private TPP-related committee or subcommittee, or who have otherwise performed common benefit work at the request of plaintiffs' leadership in this MDL or related state proceedings, and (iii) provide a filed signed copy of this Order and the TPP Settlement and CBF Agreements to at least one counsel for each of the settling health plans under the TPP Settlement Agreement. This Order shall be accompanied by a letter notice from

the Private TPP Fee Allocation Committee that requests submission from any firm seeking to recover common benefit fees or costs under the TPP CBF Agreement, the following information:

a. Name(s) of any settling TPP clients represented by such applicant as counsel of record at or before the time of execution of the TPP CBF Agreement.

b. A description identifying the parties, the claims, and the common benefit work performed in any of the private TPP cases filed in this MDL or related state proceedings in which the applicant performed common benefit work, including an identification of all hours worked and expenses.

c. Lodestar information with supporting documentation on time and costs claimed to be expended for the common benefit of private TPP plaintiffs, along with an identification as to whether such time has previously been submitted in connection with any other applications for fees or costs, and if so a detailed statement sufficient to identify the nature and extent of the overlap.

d. A brief description of the applicant's significant contributions to the common benefit of private TPP efforts in this MDL and/or related state proceedings.

e. Description of leadership roles/committee appointments pertinent to the common benefit of private TPP plaintiffs.

f. A certification signed by a member of the firm seeking to recover common benefit fees and costs setting forth all sources and amounts of any other previous payments received from private TPP Vioxx claimants, or sources and amounts of any previous payment or award for other Vioxx common benefit work.

**III. DEADLINE FOR SUBMISSIONS TO PRIVATE TPP FEE ALLOCATION COMMITTEE**

Private TPP common benefit applicants shall have until September 16, 2011 to make the above-described submissions to the Private TPP Fee Allocation Committee, by sending an electronic copy of such information to Plaintiffs' Liaison Counsel, Russ M. Herman, Herman, Herman, Katz & Cotlar, LLP, 820 O'Keefe Avenue, New Orleans, Louisiana 70113, Ph: (504) 581-4892, Fax: (504) 561-6024, Email: rherman@hhkc.com.

**IV. DEADLINE SCHEDULE FOR PRIVATE TPP FEE ALLOCATION COMMITTEE RECOMMENDATIONS**

The Private TPP Fee Allocation Committee shall review and consider applications conforming to the above instructions, and shall submit its initial recommendations to the Court and circulate same to all applicants and TPP clients (through their respective counsel) by October 10, 2011. Applicants and TPP clients (through their respective counsel) shall have ten days therefrom, until October 20, 2011, to comment on or object to the Private TPP Fee Allocation Committee's initial recommendations. The Private TPP Fee Allocation Committee shall review any such comments or objections, and submit and circulate its final recommendations to the Court no later than November 7, 2011. The Court will consider the final recommendations of the Private TPP Fee Allocation Committee, and post the same on its website and invite comment or objections, institute any additional procedures it deems necessary, and issue an Order making an allocation and disbursement of fees and costs, and issue further instructions for payment by the escrow holder of the funds.

NEW ORLEANS, LOUISIANA, this 17th day of August, 2011.



ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE