

STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

)	Case No. 1:17-MD-2804
IN RE: NATIONAL PRESCRIPTION)	
OPIATE LITIGATION)	David R. Cohen
)	Randi S. Ellis
)	Hon. David R. Herndon
)	
THIS DOCUMENT RELATES TO:)	FEE PANEL ORDER NO. 24
)	REGARDING <i>NEW</i> AND
“All Cases”)	<u>SUPPLEMENTAL</u> APPLICATIONS
)	FOR FEE AND COST AWARDS

I. Introduction.

Earlier, after the “Big Three” Distributors and Janssen entered into global Settlement Agreements of opioid litigation with States and Subdivisions, the MDL Court entered an Order appointing a Fee Panel.¹ *See* docket no. 3828. The Court directed the Fee Panel to oversee the process of making awards from the Attorney Fee Fund (including both the Contingent Fee Fund and the Common Benefit Fee Fund) and the Litigating Subdivision Cost Fund (“collectively, the Funds”), which were created under these Settlement Agreements. Thereafter, the Fee Panel issued Fee Panel Order No. 1 (“FPO-1”) (docket no. 4360), which provided notice to Subdivisions and their counsel of how to apply for awards from the Funds. The Fee Panel also issued several follow-on Orders regarding this process. *See, e.g.*, FPO-8 (docket no. 4542) (answering frequently-asked questions); FPO-13 (docket no. 4762) (explaining requirements for reimbursement of the cost of contract attorneys).

¹ For simplicity, the Court uses the term “Fee Panel” to refer to both the Fee Panel and the Cost Fund Administrator.

Recently, five other defendants – Teva, Allergan, CVS, Walmart, and Walgreens – entered into similar global Settlement Agreements (collectively, the “New Five Settlements”); and the Court again entered Orders appointing the Fee Panel to oversee the process of making awards from analogous Fee and Cost Funds. *See* docket nos. 5079 & 5088. Accordingly, the Fee Panel now issues this FPO-24 to provide notice to all eligible Participating Litigating Subdivisions and Participating Tribal Governments (as defined in the New Five Settlement Agreements) and their counsel of how to apply for awards from the new Fee and Cost Funds.

The Fee Panel expects applications for awards from the Contingency Fee Funds, Common Benefit Funds, and Cost Funds under the New Five Settlement Agreements will be available in the next few weeks.² Submission of applications shall be through the Rubris Crosslink system at crosslink.rubris.com. The Fee Panel has also posted on the Fee Panel Website³ exemplars of certain required supporting documents, so that counsel may begin gathering application information now.

II. New applications for Awards from Contingency Fee Funds.

Each of the New Five Settlement Agreements provides for payment of contingent attorney fees from a Contingency Fee Fund. Eligible counsel can apply for awards from these five Contingency Fee Funds by submitting only two applications: (1) one for awards under the Teva and Allergan Settlement Agreements; and (2) one for awards under the CVS, Walgreens, and Walmart

² The application for awards from the Teva and Allergan Contingent Fee Funds is available now. The application for awards from the CVS, Walgreens, and Walmart Contingent Fee Funds will be made available as soon as possible. The supplemental application for awards from all of the Common Benefit Funds should be available on or before July 19, 2023. The application for awards from all of the Cost Funds should be available on or before August 1, 2023. Counsel should check the Fee Panel website frequently for updated information.

³ www.OpioidFeePanelDocuments.com.

Settlement Agreements (collectively, the “Pharmacy Settlement Agreements”). These two applications are each similar to the Contingency Fee Fund application under the Big Three/Janssen Settlement Agreement, and much of the application information will be pre-populated for ease of use by counsel. Counsel shall submit Contingency Fee Fund applications using the Rubris Crosslink system at crosslink.rubris.com.

III. New applications for Awards from Cost Funds.

Each of the New Five Settlement Agreements provides for payment of certain costs and expenses from a Subdivision Cost and Expense Fund. Eligible counsel can apply for awards from these five Cost Funds by submitting a single application. The application is similar to the Cost Fund application under the Big Three/Janssen Settlement Agreement. Cost Fund applications must be submitted with an Expense Report. An exemplar Expense Report is available at the Fee Panel Website.⁴

Two important notes: (1) counsel should *not* seek reimbursement of costs or expenses from these newer funds that were already reimbursed from any other source, including the Big Three/Janssen Cost Fund; and (2) conversely, certain costs and expenses that were not reimbursable from the Big Three/Janssen Cost Fund *may be* reimbursable from the newer funds (e.g., costs incurred after July 21, 2021, and costs incurred by counsel for Indian Tribes).

⁴ MDL Participating Counsel who have already submitted their monthly common benefit expenses to the Auditor pursuant to the Common Benefit Order (Doc. 358) shall not resubmit those expenses. Rather, these already-submitted expenses will be pre-populated within an Applicant’s Crosslink Application for the Applicant to review, edit, and resubmit on the template provided. Only Non-MDL Participating Counsel, and MDL Participating Counsel submitting non-MDL expenses, should use the blank Expense Report provided on the Fee Panel Website.

Counsel shall submit Expense Reports directly to the Time and Expense Billing Manager and Auditor at OpioidTimeReport@AmyLCollinsPC.com.

IV. *Mandatory Financial Information Spreadsheet for Common Benefit Fee Award Applicants.*

Every applicant for a Common Benefit Fee Award must now submit a Financial Information Spreadsheet. The Spreadsheet is designed to ensure maximum transparency regarding all costs and fees of every kind that the applicant has received or expects to receive related to any opioid litigation. An exemplar Financial Information Spreadsheet is available at the Fee Panel Website.

Counsel shall submit the Financial Information Spreadsheet using the Rubris Crosslink system at crosslink.rubris.com.

V. *Supplemental Applications for Common Benefit Awards.*

Most of the law firms that have pursued claims in this MDL have engaged in efforts that are not limited to a single defendant nor a single aspect of the litigation; rather, each firm's work usually involved multi-defendant approaches requiring overarching tactics. Accordingly, and given the nature of the common benefit doctrine, the Fee Panel concludes it is preferable and appropriate to issue to each deserving applicant a *single* common benefit fee award, combined from all of the existing Settlement Agreement Common Benefit Funds, rather than issue to each applicant several common benefit fee awards, seriatim.

The Fee Panel has already received (under a deadline that has already passed) Common Benefit Fee Applications and Time Reports for work done through June 30, 2021. Therefore, the Fee Panel directs that any attorney who seeks an award for common benefit work done between

June 30, 2021 and June 30, 2023 shall now submit a *Supplemental* Common Benefit Fee Application and *Supplemental* Time Report.⁵

To be clear, this means that:

- Counsel who applied for a common benefit fee award under the Big Three/Janssen Settlement Agreement may now submit a *Supplemental* Common Benefit Fee Application, to “update” their earlier application. Counsel’s discussion in the *Supplemental* Common Benefit Fee Application of work performed should **not** be repetitive of any discussion in the original application, nor address work done before June 30, 2021. As noted above, counsel must also submit a Financial Information Spreadsheet.
- If counsel who applied for a common benefit fee award under the Big Three/Janssen Settlement Agreement does **not** timely submit a *Supplemental* Common Benefit Fee Application, then the Fee Panel will rely only on counsel’s original application. As noted above, however, counsel must still submit a Financial Information Spreadsheet.
- If counsel did **not** apply for a common benefit fee award under the Big Three/Janssen Settlement Agreement, counsel may still submit a *Supplemental* Common Benefit Fee Application, but only for work done between June 30, 2021 and June 30, 2023. As noted above, counsel must also submit a Financial Information Spreadsheet.

Counsel shall submit Common Benefit Fee Fund applications and Financial Information Spreadsheets using the Rubris Crosslink system at crosslink.rubris.com. Exemplars of these documents are posted at the Fee Panel Website.

IT IS SO ORDERED.

/s/ **David R. Cohen**
Randi S. Ellis
David R. Herndon
FEE PANEL

Dated: July 10, 2023

⁵ MDL Participating Counsel who have already submitted their monthly common benefit time to the Auditor pursuant to the Common Benefit Order (Doc. 358) shall not resubmit that time. Only Non-MDL Participating Counsel, and MDL Participating Counsel submitting non-MDL time, should use the Time Report provided on the Fee Panel Website.