

FILED
APR 20 2021
RACHEL L. HARZ
J.S.C.

IN RE: PELVIC MESH/GYNECARE :
LITIGATION :
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APPLIES TO ALL CASES :
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SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY, LAW DIVISION
CASE NO. 291
MASTER CASE NO. L-03-10-CT
CIVIL ACTION
CASE MANAGEMENT ORDER # 71

This matter having previously come before the Court at the December 2, 2015 status conference, and the Court having entered Case Management Order Number 26 on March 22, 2016, to establish guidelines to apply to assessments against settlements and verdicts obtained from March 22, 2016 going forward, and the Court having stated in said Order that the guidelines were not meant to be exhaustive, and that the Court in the future may issue additional procedures, limitations, and guidelines, if appropriate, and in recognition of the present need for a mechanism to assess cases and reimburse Plaintiffs' counsel, as appropriate, for common benefit time and expenses, and recognizing the need to amend the prior Order entered March 22, 2016, and for good cause shown;

IT IS on this 20th day of April 2021, **ORDERED:**

1. Appointment of Common Benefit Liaison Counsel

The Court hereby maintains the appointment of Adam M. Slater as common benefit liaison counsel, recognizing that Mr. Slater has guided this litigation from its inception, and has the most detailed knowledge of the work performed, expenses paid, interaction and involvement with related litigation around the country, including the MDL venued in the Southern District of West Virginia, and the value of that work in advancing the litigation on behalf of all plaintiffs. The Court recognizes that significant, valuable work has been performed and expenses advanced, by certain Participating Counsel, as defined herein, and that this work and these expenses have been advanced and paid for the common benefit of all claims in this litigation.

2. Administration

The recovery of common benefit time and cost reimbursements will be allowed and is essential. This will be for "participating counsel" as defined herein. Participating counsel shall only be eligible to receive common benefit attorneys' fees and cost reimbursement if the time expended, costs incurred, and activity in question were/are (a) for the common benefit, (b) appropriately authorized (as defined herein), and (c) approved by this Court.

"Participating Counsel" are counsel who desire to be considered for common benefit compensation and as a condition thereof agree by virtue of their submission of an application for payment of common benefit compensation, pursuant to the terms and conditions herein and acknowledge that the Court will render decisions and have final authority regarding the award of fees, and the allocation of those fees and awards for cost reimbursements in this matter. Participating Counsel have (or will have) agreed to and therefore will be bound by the Court's determination on common benefit attorney fee awards, attorney fee allocations, and expense awards, subject to the right of appeal. The Court recognizes that there are already common benefit orders filed in the MDL which apply to many of the law firms with cases in the New Jersey litigation. Although this Court has the authority to direct assessment against cases handled by law firms who are also involved in and subject to the common benefit orders entered in the MDL, the Plaintiffs only sought to have the initial Order assess cases handled by law firms who are not or do not become subject to the MDL common benefit orders (the "Assessed Law Firms"), and thus the assessments provided for in this Order shall continue to only apply to cases handled by law firms who are not, or do not become, subject to the MDL common benefit orders (hereafter the "Assessed Cases").¹ It is intended by this Order that there not be a "double

¹ The Court recognizes that there is an Agreement in place between the New Jersey litigation and the MDL, whereby law firms with no cases in the MDL are permitted to subject their New Jersey cases to the MDL common benefit orders, in order to seek reimbursement/payment for common benefit work and expenses. Any such law firm that elected to subject itself to the MDL common benefit orders or was otherwise subject to the MDL common benefit orders pursuant to their

assessment" on any case.

Common benefit liaison counsel is and will be expected to interact with the MDL leadership and fee compensation committee, regarding common benefit allocation and obligations, as necessary.

"Authorized Common Benefit Work" includes, for example, assignments made by common benefit liaison counsel, including through the Gynecare Work Group formed at the outset of this litigation, and the work up and trial of bellwether cases. No time spent on developing or processing purely individual issues in any case for a firm's own individual client (claimant) will be considered or should be submitted, nor will time spent on any unauthorized work or work not for the common benefit.

Within forty-five days (45) of entry of this Order, common benefit liaison counsel shall submit a proposed order detailing the guidelines and procedures for the submission and compensability of common benefit time and expenses by Participating Counsel which shall be the subject of a subsequent Order. The Court hereby appoints Adam M. Slater and Ted Oshman, who are knowledgeable with regard to the work performed and expenses advanced in this litigation, and who have been consistently involved in the New Jersey pelvic mesh litigation from the outset to the present, to review and evaluate submissions by participating counsel, and to assist in the submission of recommendations to the Court.

3. Assessments

A total assessment for payment of attorneys' fees and approved common-benefit expenses of five percent (5%) of the Gross Monetary Recovery shall apply to the Assessed Cases, resulting in a verdict and/or resolved from the date of CMO 26 (March 22, 2016), now or hereafter subject to the jurisdiction of this Court, or as to which the Assessed Law Firms had access to common benefit work product, regardless of the venue. This assessment shall be deducted from the Gross Monetary Recovery as an expense, with the Court to then allocate the payment of the assessed amounts to one

terms shall not be subject to assessment of its cases in New Jersey pursuant to this Order, for the reasons set forth herein.

or more Participating Counsel for expenses advanced for the common benefit and/or attorney time devoted to the litigation for the common benefit. The Gross Monetary Recovery shall include:

- a) all sums to be paid in settlement or judgment of the claim;
 - b) exclude court costs that are to be paid by any defendant;
 - c) exclude any payments made directly by any defendant on a formal intervention asserted directly against the defendant by third-parties, such as physicians, hospitals, and other health-care providers on Court recognized valid subrogation claims related to treatment of plaintiff; and
 - d) include the present value of any fixed and certain payments to be made in the future.
- Nothing in this Order is intended to increase the attorneys' fee paid by a client, nor to in any way impair the attorney/client relationship or any contingency fee contract.

4. Establishment of and Payments into the Fund

The Court appoints a Certified Public Accountant, Mary Lou Portney CPA, to open and manage an account and administer the fund, and to provide quarterly reports to the Court regarding the maintenance of the fund. The fees of Mary Lou Portney CPA shall be paid from the fund.

Defendants' counsel shall notify Mary Lou Portney CPA when a settlement is reached with a law firm which, by definition, is not subject to the MDL Common Benefit Orders, and make payment of the 5% assessment to the fund within a reasonable time thereafter.

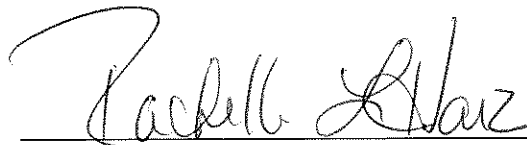
Information regarding the amount of an assessment to be paid into the fund pursuant to this Order will be provided only to the individual Assessed Law Firm holding the Assessed Claim(s), the court-appointed Certified Public Accountant charged with overseeing the fund, and the Court, and shall otherwise remain confidential and shall not be disclosed to any other counsel or persons unless ordered by the Court. On a quarterly basis, the Defendants shall provide to the Court and to the court-

appointed Certified Public Accountant charged with overseeing the fund a report identifying the settlements reached and assessments paid during each previous quarter. In connection with the allocation and distribution of common benefit payments at the conclusion of the litigation, Plaintiffs reserve the right to petition the Court for an order directing the disclosure of the individual amounts paid into the fund. Defendants reserve the right to oppose such relief, including on the grounds that such disclosure may violate the confidentiality provisions of any settlement agreement.

Upon payment of any assessment into the fund pursuant to this Order, Defendants shall be released from any and all responsibility to any person, attorney or claimant with respect to the assessment paid into the fund. Any person, attorney, or claimants allegedly aggrieved by an assessment paid pursuant to this Order shall seek recourse only as against the fund and not against the Defendants.

Defendants are directed to withhold the assessment from the amounts paid on an Assessed Case and to pay such assessment into the fund as a credit against the settlement or judgment. If an assessment is not withheld and paid pursuant to the terms of this order, the Defendants as well as the Assessed Law Firm and the plaintiff(s) represented by such Assessed Law Firm are jointly responsible for payment of the assessment into the fund; and

FURTHER ORDERED that a true copy of this Order be served on all plaintiffs' counsel by posting this Order on Lexis/Nexis, within ten (10) days hereof. In addition, a copy of this Order shall be posted on the Court's website.



HON. RACHELLE L. HARZ, J.S.C.