

DELAWARE COUNTY, PENNSYLVANIA,	:	
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Plaintiff,	:	COURT OF COMMON PLEAS
	:	DELAWARE COUNTY, PA
v.	:	CIVIL ACTION – LAW
	:	
PURDUE PHARMA L.P., et al.,	:	No. 2017-008095
	:	
Defendants.	:	244 MD 2022
	:	
	:	

AND NOW, this 2nd day of August 2022, after review of the Motion to Establish a Pennsylvania Opioid Fee Fund and Appoint a Special Master to Determine and Disburse Fees and Establish a Procedure for Reimbursing Counsel for Documented Expenses and Costs filed by Track 1 Plaintiffs Delaware County and Carbon County, Pennsylvania, it is hereby **ORDERED** and **DECREED** as follows:

This Attorney Fee and Cost Order is entered into as an adjunct to the Pennsylvania Opioids Trust and Allocation Order entered by the Commonwealth Court of Pennsylvania in *Commonwealth ex rel. Josh Shapiro v. AmerisourceBergen Corp., et al.* (the “Trust”) to which this is Exhibit 4. Attached as exhibits to this Order are the National Janssen Settlement Agreement (Exhibit A), and the National Distributor Settlement Agreement (Exhibit B) referred to as “Settlement Agreements” hereafter. Unless otherwise set forth herein, defined terms in this Order shall have the same meanings in the National J&J and Distributor Settlement Agreements and the Trust.

I. Establishment of Pennsylvania Opioid Fee Fund

Consistent with the terms of the Trust and pursuant to 42 P.S. § 2503(8), an attorney fee fund shall be established and held in a separate account subject to the jurisdiction of this Court, to be held and disbursed in a manner consistent with the terms of this Order (the “Pennsylvania Opioid Fee Fund”).

A. Amount and Timing of Payments to Establish the Fund

The amount of the Pennsylvania Opioid Fee Fund shall not exceed 6.6% of all base and incentive payments governmental entities will receive in the Commonwealth of Pennsylvania over the course of all payment years under the J&J and Distributor Settlement Agreements.

With respect to the timing, although the payment terms from the Settling Defendants extend over an eighteen year period, if the Commonwealth of Pennsylvania is eligible for “Incentive A” under the J&J and Distributor Settlements, the Pennsylvania Opioid Fee Fund shall be funded in its entirety in the first three years, less any amounts required for suspensions, offsets or reductions pursuant to Sections IV, VII and XII of the Settlement Agreements. Under the following payment schedule: 50% paid in 2022; 25% paid in 2023; and 25% in paid in 2024.¹ Alternatively, if the Commonwealth of Pennsylvania is not eligible for Incentive A, the Pennsylvania Opioid Fee Fund shall be funded in its entirety in the first five years, less any amount required for suspension, offsets and reductions provided for in the Settlement Agreements, with equal payments made in each settlement payment year, understanding that if Incentive A is not achieved, participation levels in the Commonwealth may increase in subsequent years, which may result in an increase in the overall funds to the Commonwealth and a corresponding increase of the Pennsylvania Opioid Fee Fund, causing some

¹ For illustrative purposes only, if the Commonwealth will receive \$1,000,000,000 in payments from the settlements, with Incentive A, the Pennsylvania Opioid Fee Fund will receive \$66,000,000 total, with \$33,000,000 paid in payment year one, \$16,500,000 paid in payment year two, and \$16,500,000 paid in payment year three.

fluctuation in the amount of the payment each year such that each payment is not equal.²

Attorneys' fees and expenses awarded by the Special Master under Sections III, IV, and V of this Order shall be payable from the Pennsylvania Opioid Fee Fund upon award, notwithstanding the existence of any objections thereto, or potential for appeal therefrom, or collateral attack on the Trust or the Settlements or any part thereof. Any counsel who pursues an objection, appeal, or collateral attack on the Trust or the Settlements or any part thereof shall be ineligible for any attorneys' fees or expenses awarded by the Special Master until Sections III, IV, or V of this Order until such objection, appeal, or collateral attack is resolved. Counsel shall only have standing to object to its own fee or cost award, and shall not have standing to object to a fee or cost award of any other counsel.

In addition, in the event an objection, appeal, or collateral attack is unsuccessful, any such counsel:

² For illustrative purposes only, if the Commonwealth will receive \$900,000,000 in payments from the settlements, without Incentive A, the Pennsylvania Opioid Fee Fund will receive \$59,400,000 total, with \$11,880,000 paid in payment year one, \$11,880,000 paid in payment year two, \$11,880,000 paid in payment year three, \$11,880,000 paid in payment year four, and \$11,880,000 paid in payment year five, but if participation levels increase, the payment amounts in payment years three to five may increase and not be equal.

a) Must reimburse all fees and costs of the Special Master incurred in defending any award made under this Order;

b) Pay to Pennsylvania Opioid Fee Fund interest on the amount objected to at the rate of 5%;

c) Pay the fees of the Trust and the Pennsylvania Office of Attorney General incurred during the objection, appeal or collateral attack.

To ensure that payments to counsel do not exceed 6.6% of all base and incentive payments governmental entities will receive in the Commonwealth of Pennsylvania over the course of all payment years under the J&J and Distributor Settlement Agreements, in the event that any counsel appeals its own award of attorneys' fees or costs, the funds in dispute only shall be held in the Pennsylvania Opioid Fee Fund pending the appeal. If the appeal is resolved in favor of counsel who filed the appeal, those funds, together with any interest, shall be payable immediately upon decision by the highest court to which the award was appealed, and the time to appeal or seek further review has expired. If the appeal is resolved against counsel who filed the appeal, the reserved funds, together with any interest, shall be distributed *pro rata* consistent with the Mathematical Formula for contingency fees described in Section IV.

As discussed in detail below, in order to be eligible to participate in the Pennsylvania Opioid Fee Fund, counsel must agree to waive enforcement of their

fee contracts with respect to the Pennsylvania client(s) for whom they are seeking to recover fees. If the total population of the clients whose counsel do not agree to waive their fee agreements is between 10.01% to 25% of the total population of Participating Subdivisions (with the population of District Attorneys measured by half the population of the counties they serve), the amount of the Pennsylvania Opioid Fee Fund shall be reduced on a pro-rata basis, based on the percentage of the population of Participating Subdivisions represented by counsel who do not agree to waive their fee contracts.³ If counsel for 10% or fewer of Litigating Subdivisions (measured by population of the clients for whom counsel is not participating) do not agree to waive their fee, the amount of the Pennsylvania Opioid Fee Fund shall not be reduced. If counsel for greater than 25% of Litigating Subdivisions (measured by participation of the clients for whom counsel is not participating) do not agree to waive their fee, there will be no further reductions to the amount of the fund beyond those that occur for greater than 10% up to 25%.

B. The Pennsylvania Opioid Fee Fund Shall Be a Qualified Settlement Fund

³ For illustrative purposes only, if the Pennsylvania Opioid Fee Fund is to be funded at \$66,000,000, but 15% of the eligible clients, by population, do not agree to waive their contracts and participate in the fund, then the amount of the fund shall be reduced by \$9,900,000, for a total of \$56,100,000.

The Pennsylvania Opioid Fee Fund shall constitute a single qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Sections 1.468B-1, *et seq.* and will be disbursed consistent with the terms of this order, and will remain subject to the continuing and exclusive jurisdiction of this Court. The Fund will be an account where assets will be segregated from the general assets of the Defendant(s) and related persons or entities.

This Court has jurisdiction over this matter under Treas. Reg. § 1.468B-1(c)(1), which states in relevant part that a Qualified Settlement Fund “is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority.”

No bond shall be required and all amounts deposited in the Pennsylvania Opioid Fee Fund shall be invested conservatively in a manner designed to assure timely availability of funds, protection of principal and avoidance of concentration risk. All payments into the Pennsylvania Opioid Fee Fund, and any interest thereon, will be held until disbursed in a manner consistent with this Order. No distributions shall be made from the Pennsylvania Opioid Fee Fund except through

the process established by this Order. No parties or their counsel shall be considered to be in constructive receipt, as determined under federal income tax principles, of any amounts held by the Pennsylvania Opioid Fee Fund.

II. Appointment of Special Master and Administrator

The Court hereby appoints, retired Magistrate Judge Joel Schneider as Special Master, to oversee and allocate the Pennsylvania Opioid Fee Fund, and ARCHER Systems, LLC as Administrator to oversee administration and administrative costs of the Fund.

A. Special Master

Judge Schneider served as United States Magistrate Judge in the District of New Jersey for 14 years. During his tenure, he managed, settled, and decided thousands of cases in all aspects of civil litigation, including employment, civil rights, intellectual property, class/collective actions, products liability, contract, data breach, pharmaceutical, and other disputes. While on the bench, Judge Schneider developed a well-deserved reputation for effectively managing and settling complex and multi-party individual and class action cases, including three multidistrict litigations: Caterpillar Engine, Benicar and Valsartan. Specifically, Judge Schneider was recently appointed by the court to mediate the multi-billion dollar LTL/J&J bankruptcy litigation involving J&J's baby powder. He was largely responsible for resolving the fairly recent \$350 million Benicar settlement

(approximately 8000 claimants) and finalizing the attorneys' fee allocation. Judge Schneider also presently acts as the Special Master in the Johnson & Johnson MDL talc litigation (38,000 cases) and the coordinated talc (mesothelioma) cases pending in New Jersey state court. Judge Schneider is currently Of Counsel in the Alternative Dispute Resolution Practice Group at the law firm of Montgomery McCracken Walker & Rhoads LLP. Prior to his judicial appointment, he practiced in the tristate area for 26 years, where he specialized in complex civil litigation.

Judge Schneider was provided with a list of all Plaintiffs' counsel in these Coordinated Proceedings, and has advised he has no conflicts of interest with any of those counsel.

The Special Master shall be responsible for designing and implementing processes and procedures for the allocation of fees, costs, and expenses, consistent with the criteria set forth in this Order. To carry out these responsibilities, the Special Master may set deadlines for any submissions and hold hearings with all or any group of counsel without further consultation with the Court. The Special Master may also employ the services of assistants to act under his direction to accomplish the objectives set forth in this Order. Subject to review by this Court under an abuse of discretion standard, the Special Master shall have the sole authority for making decisions regarding allocations, disbursements, and payments from the Pennsylvania Opioid Fee Fund.

The Special Master may communicate *ex parte* with counsel when such communication is necessary: (a) to maintain confidentiality or a privilege related to specific information; (b) to ensure the efficient administration and management and oversight of his responsibilities, including scheduling meetings, conferences, calls, or hearings; or (c) for other procedural, routine, or general non-substantive matters. Counsel shall not engage in *ex parte* communications with the Special Master regarding substantive matters.

The Special Master, and any assistant to whom he delegates any aspect of his responsibilities in this Order, including any third parties hired at the Special Master's direction, shall be immune from any liability resulting from any award made under this Order, or any action conducted pursuant to this Order as part of making any award. *See Binder v. Triangle Publications, Inc.*, 442 Pa. 319, 323, 275 A.2d 53, 56 (1971) ("All communications pertinent to any stage of a judicial proceeding are accorded an absolute privilege which cannot be destroyed by abuse.").

The services of the Special Master and any assistants to whom he delegates any part of his duties under this Order, the Administrator, and any vendors and services they determine to be necessary and appropriate to conduct and complete their work, shall be paid or reimbursed from the Pennsylvania Opioid Fee Fund. The Court has been advised that the Special Master will bill his time at \$800/hour.

As a threshold step in the fee allocation process, the Special Master shall allocate fifty percent (50%) of the Pennsylvania Opioid Fee Fund to be used exclusively for the payment of Agreed Litigation Conduct Fees, and the remaining fifty percent (50%) to be used for contingency fee awards.

B. Administrator

The Administrator shall assist the Special Master and shall be responsible for making any necessary tax filings and payments of taxes, estimated taxes, and associated interest and penalties, if any, by the Pennsylvania Opioid Fee Fund. The Administrator shall be responsible for responding to any questions from, or audits regarding such taxes by, the Internal Revenue Service or any state or local tax authority, as well as questions from the Department of Labor. The Administrator shall also be responsible for complying with all tax information reporting and withholding requirements with respect to payments made by the Pennsylvania Opioid Fee Fund, as well as paying any associated interest and penalties. All such tax, interest, and penalty payments and all expenses and costs incurred in connection with taxation of the Pennsylvania Opioid Fee Fund (including, without limitation, expenses of tax attorneys and accountants) shall be paid from the Pennsylvania Opioid Fee Fund and shall be considered administrative costs. The Administrator will obtain a Federal Taxpayer Identification Number for the Fund upon entry of an order by this Court

establishing the Fund. The Administrator shall be authorized, upon final distribution of all monies paid into the Fund to take appropriate steps to wind down the Fund and thereafter be discharged from any further responsibility with respect to the Fund.

The Administrator and/or its attorneys shall be indemnified and held harmless against reasonable expenses, costs and fees (including attorney fees), judgment, awards, and liabilities of all kinds incurred by the Administrator from any and all claims made by any person or entity that attempts to assert a right of payment, reimbursement or garnishment against the Fund, except to the extent that it is finally determined by this Court that the Administrator and/or its attorneys was/were negligent or acted with willful misconduct in connection with the administration of this Fund.

The Administrator shall have the right to rely upon any affidavit, certificate, letter, notice, electronic mail or other document provided to the Administrator and in the Administrator's reasonable judgment believed to be genuine and sufficient. By way of example, this may include but is not limited to, wire instructions, IRS Form W-9, Plaintiffs' Counsel communications, payment instructions, fee deferment instructions, and the like.

The Court further appoints Huntington Bank as the custodian of the Fund who shall be responsible for any and all investment-related decisions, pursuant to the terms and conditions described in this Order.

III. Awards for Agreed Litigation Conduct Fees

With respect to the Agreed Litigation Conduct portion of the Pennsylvania Opioid Fee Fund, the Court hereby directs the Special Master to: (1) set up a process to receive requests for Agreed Litigation Conduct fees and set forth the required materials to be provided to the Special Master in connection with fee requests; (2) make a preliminary recommendation on the distribution of Agreed Litigation Conduct fees; and (3) address any requests to be heard regarding that preliminary recommendation by attorneys that sought common-benefit fees and then, make a final determination regarding the distribution of Agreed Litigation Conduct fees to qualifying counsel. This Court may review the final determination of an approved distribution of any Agreed Litigation Conduct funds. Any review by this Court of an award made by the Special Master concerning the Agreed Litigation Conduct funds shall be under an abuse of discretion standard.

Counsel shall only be eligible to apply for Agreed Litigation Conduct fees concerning work incurred in connection with the representation of Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania and whose clients executed Participation Agreements to participate in the J&J and Distributor

Settlements. If counsel represents clients whose cases are pending in federal court in MDL 2804 or who do not participate in the J&J and Distributor Settlements, counsel may not be awarded Agreed Litigation Conduct fees for work incurred in connection with representation of those clients.

In making determinations for payments for Agreed Litigation Conduct fees, the Special Master shall give consideration to the factors set forth in *In re Baby Prod. Antitrust Litig.*, 708 F.3d 163, 176–77 (3d Cir. 2013) and *Maldonado v. Houstoun*, 256 F.3d 181, 187–88 (3d Cir. 2001).

As these have been applied and interpreted by courts with reference to Agreed Litigation Conduct and other court-awarded fees, as well as the following factors, which may be applied and given relative weight in the Special Master’s discretion:

- the applicant’s contemporaneously recorded time and labor dedicated to Pennsylvania Participating Subdivisions. Claimed “time” shall not be automatically accepted by the Special Master but shall be critically reviewed. Time and labor incurred by contract lawyers for document review shall not be included in connection with any applicant’s request for Agreed Litigation Conduct fees, but rather such time shall be submitted as an expense, for the actual cost of those services;

- the novelty, time, and complexity of the work performed for Pennsylvania Participating Subdivisions;
- the preclusion of other employment by the applicant due to time dedicated to Pennsylvania Participating Subdivisions;
- the “common benefit,” if any alleged to have been conferred by the applicant with respect to the coordinated proceedings pending before this Court;
- the amount of the expenditures paid by the applicant which were necessary to prosecute the applicant’s case(s);
- the experience, reputation, and ability of the applicant;
- the status of discovery in the cases primarily handled by the applicant in the coordinated proceedings pending before this Court;
- the nature of any work by the applicant on “bellwether” cases or cases that were similarly active in the coordinated proceedings pending before this Court;
- any pressure points successfully exerted by the applicant in cases against the Settling Defendants or any risk for Settling Defendants

created by the applicant in cases against them in the coordinated proceedings pending before this Court;

- any risk for defendants created by applicants in cases against the Settling Defendants in the coordinated proceedings pending before this Court;
- successful and unsuccessful motion practice in cases worked on by the applicant in the coordinated proceedings pending before this Court;
- the date of filing of any cases filed by the applicant in the coordinated proceedings pending before this Court;
- the number and population of entities represented by the applicant and the fees that would have been awarded under the extinguished contingent fee agreements with respect to the applicant's Pennsylvania Participating Subdivisions;
- whether the applicants' Pennsylvania Participating Subdivision clients brought claims against the Settling Defendants;
- whether the applicant has had a leadership role in the coordinated proceedings pending before this Court;

- whether the applicant has had a leadership role in any negotiations aimed at resolving the litigation in the coordinated proceedings pending before this Court; and
- any other factors that the Special Master finds to be appropriate to consider.

IV. Fee Awards Based on Contingent Fee Contracts

With respect to the contingent fee portion of the Pennsylvania Opioid Fee Fund, the Special Master is directed to establish and implement procedures for the distribution fees to compensate eligible counsel for work on behalf of Pennsylvania Participating Litigating Subdivisions, in lieu of enforcement of contingency fee contracts. As part of that process, counsel submitting fee petitions for each Participating Litigating Subdivision shall represent they waive enforcement rights against the subdivision clients of all contracts entered into in conjunction with the representation of Pennsylvania clients for whom they are seeking to recover contingency fees, prior to applying for contingency fees from the Pennsylvania Opioid Fee Fund. With respect to contingency fee awards from the Pennsylvania Opioid Fee Fund, any counsel who represents Pennsylvania clients who executed Participation Agreements to participate in the J&J and Distributor Settlements shall be eligible to apply for contingency fees, regardless of the jurisdiction where they

filed their cases, provided they comply with the other requirements in this Attorney Fee and Expense Order.

Awards of contingency fees shall be made by applying a mathematical model identical or substantially similar to the Mathematical Model attached as part of Exhibit R to the National Settlement Agreements (see Distributor Settlement Agreement at pp. R-22 to R-25 (the “Mathematical Model”) to the Pennsylvania Participating Subdivisions that are part of the coordinated proceedings pending before this Court. Awards of contingency fees made by the Special Master shall be based exclusively on (1) the settlement amount that will be received by each participating Pennsylvania Litigating Subdivision, the terms of each participating Pennsylvania Litigating Subdivision’s contingency fee contract, and the filing date for each participating Pennsylvania Litigating Subdivision. No other factors or subjective criteria may be used by the Special Master in calculating contingency fee awards. The Special Master is encouraged to work with counsel who developed the above referenced the Mathematical Model. The Special Master shall oversee the application of the Mathematical Model and resolve any questions or disputes concerning eligibility. The Special Master is empowered to hear disputes concerning and ensure the accuracy of the mathematical calculation. As to awards from the Contingency Fee Fund, there shall be no right of appeal.

V. Reimbursement of Costs and Expenses

Consistent with the terms of the Trust, counsel shall be reimbursed for documented costs and expenses incurred in connection with the representation of Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania and executed Participation Agreements to participate in the J&J and Distributor Settlements.

Requests for costs and expenses from the Pennsylvania Opioid Fee Fund shall be submitted in two parts, which counsel must segregate in their applications. The first part shall be for all costs and expenses incurred in connection with the representation of Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania and executed Participation Agreements to participate in the J&J and Distributor Settlements, except for costs for document review by contract attorneys. Before submitting requests for costs and for these type of costs, counsel must first apply to the cost fund established in connection with the Distributor and J&J Settlements in the MDL. However, because the MDL cost fund may not make awards in time for the Special Master to take into account those awards in these proceedings, counsel may elect to submit a request for cost and expenses from the Pennsylvania Opioid Fee Fund while a request to the MDL cost fund remains pending. If counsel make this election, counsel shall certify that they will (1) report all amounts subsequently received from the MDL cost fund

incurred in their representation of Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania; and (2) immediately reimburse the Pennsylvania Opioid Fee Fund in any amount awarded by the MDL cost fund for expenses incurred in the representation of Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania, plus accrued interest at the same net rate as is earned by the Pennsylvania Opioid Fee Fund. Counsel shall be reimbursed for these costs within a reasonably prompt time following the receipt of a request from counsel that complies with this Order.

The second part of counsel's request shall be for costs for document review by contract attorneys incurred in connection with the representation of Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania and executed Participation Agreements to participate in the J&J and Distributor Settlements. Counsel are not required to apply to the cost fund established in connection with the Distributor and J&J Settlements in the MDL before submitting requests for these types of costs. Once counsel submits a request that complies with this Order, these costs shall be reimbursed in 2022.

To the extent that counsel are not fully reimbursed by the MDL Cost Fund for costs and expenses incurred the representation of Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania and executed Participation Agreements to participate in the J&J and Distributor Settlements,

counsel shall be reimbursed for such costs and expenses from the Pennsylvania Opioid Fee Fund.

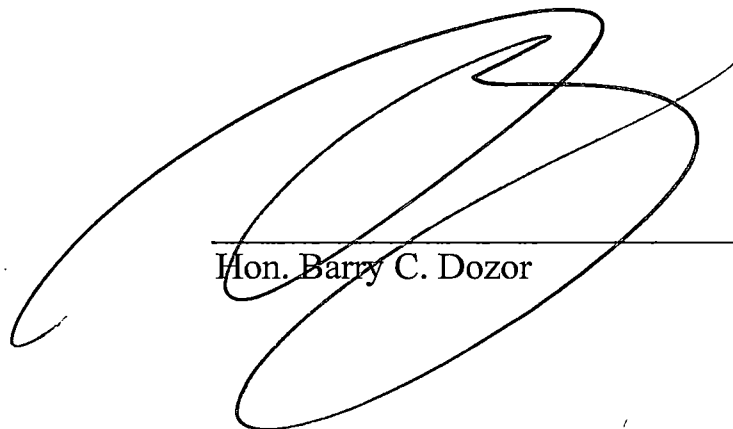
To the extent the Special Master requires assistance to further the purpose of this Order, the Special Master is authorized to retain and utilize, under his supervision, accountants and/or other professionals and vendors, as necessary and appropriate, to assist in the administration and distribution of expenses.

VI. Miscellaneous

To prevent insolvency of the Pennsylvania Opioid Fee Fund, no award shall be made until all applications have been received and award amounts for each applicant are finalized.

SO ORDERED, this 2 day of August, 2022.

BY THE COURT:



Hon. Barry C. Dozor