

**IN THE COURT OF COMMON
PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA CIVIL DIVISION**

DELAWARE COUNTY,
PENNSYLVANIA,

Plaintiff

v.

PURDUE PHARMA L.P., et al.,

Defendants.

COURT OF COMMON PLEAS
DELAWARE COUNTY, PA
CIVIL ACTION – LAW

No. 2017-008095

**SPECIAL MASTER’S REPORT AND RECOMMENDATION
ON THE ALLOCATION OF AGREED
LITIGATION CONDUCT (A/K/A COMMON BENEFIT) FEES**

This shall serve as the Special Master’s Report and Recommendations (“R&R”) regarding his recommendations for the payment of Agreed Litigation Conduct (a/k/a Common Benefit) Fees from the Pennsylvania Opioid Fee Fund (“Fee Fund”). As will be discussed, the Special Master recommends the Court approve the recommended Final Common Benefit Awards to the listed fourteen (14) lawyers and law firms in Attachment A. The recommended Final Awards are identical to the earlier issued Preliminary Awards to which there were no objections. The recommended Awards are listed in Attachment A. Pursuant to the applicable Order, all objections to this R&R shall be served within ten (10) days of service.

I. EXECUTIVE SUMMARY

On August 2, 2022, this Court appointed the undersigned, the Hon. Joel Schneider (Ret.), as the “Special Master” to oversee and allocate the Fee Fund¹ and, *inter alia*, to design and

¹ See Order Granting Plaintiffs’ Motion to Establish a Pennsylvania Opioid Fee Fund and Appoint a Special Master to Determine and Disburse Attorneys’ Fees and Establish a Procedure for Reimbursing Counsel for Documented Expenses (the “Aug. 2, 2022 Order”) at 8.

implement processes and procedures for allocating Common Benefit Fees. *Aug. 2, 2022 Order* at 8-11. The Special Master has thoroughly evaluated and considered all relevant submissions made by all Fee Applicants in view of the governing Orders and eligibility requirements. The Special Master has also assured that all eligibility and procedural requirements in the applicable Orders have been met and that all Fee Applicants have had the required notice and opportunity to comment upon and object to their recommended Awards. For the reasons discussed in detail *infra*, the Special Master recommends that the law firms listed in this R&R be reimbursed the total amount of \$28,325,412.08 for their common benefit work. The final recommended Awards are as follows:

	Firm	Final Award	Annual Payment (Over 5 Years)
1.	Baron & Budd, P.C.	\$10,887,534.30	\$2,177,506.86
2.	Boni, Zack & Snyder, LLC	\$1,303,915.19	\$260,783.04
3.	David Kairys	\$446,048.55	\$89,209.71
4.	Dilworth Paxson, LLP	\$4,176,196.02	\$835,239.20
5.	Levin, Sedran & Berman	\$568,912.97	\$113,782.59
6.	Marc J. Bern & Partners, LLP	\$772,377.30	\$154,475.46
7.	McLaughlin & Lauricella, P.C.	\$1,850,406.63	\$370,081.33
8.	Motley Rice, LLC	\$640,109.78	\$128,021.96
9.	Napoli Shkolnik, PLLC	\$30,602.39	\$6,120.48
10.	Sacks Weston, LLC	\$132,596.71	\$26,519.34
11.	Saltz Mongeluzzi & Bendesky, P.C.	\$2,845,333.99	\$569,066.80
12.	Scott & Scott Attorneys at Law, LLP	\$185,888.72	\$37,177.74
13.	Sheller, P.C.	\$0.00	\$0.00
14.	Simmons Hanly Conroy, LLC	\$4,485,489.53	\$897,097.91
	Total	\$28,325,412.08	\$5,665,082.42

These final recommended Awards are identical to the previously issued Preliminary Awards to which there were no objections. The Special Master does not anticipate any objections to these recommended Final Awards. The applicable Orders provide that if no objections are

served to the Preliminary Awards, the Fee Applicant waives any objection to the recommended Final Awards.

A detailed discussion of the process that led to these final recommended Awards follows. In short order, the Special Master will file a formal application for approval of these Awards with a proposed Order.

II. BACKGROUND

A. Overview of the Litigation

Delaware County filed the first opioid case in the Commonwealth of Pennsylvania on September 21, 2017. Delaware County jointly moved with defendants for pretrial coordination in early 2018 and became the nexus of coordination for the Pennsylvania Consolidated Proceedings pending in the Court of Common Pleas of Delaware County, Pennsylvania Civil Division, Civil Action – Law No. 2017-008095 (the “Coordinated Proceedings”). The Honorable Barry C. Dozor managed the Coordinated Proceedings. The Coordinated Proceedings progressed between 2019 and 2021. However, because of the novel issues presented, there was uncertainty about whether the plaintiffs could obtain any financial recovery. Ultimately, a settlement agreement was reached with the Settling Defendants in 2021, and the Court entered orders establishing the Fee Fund.

B. Amount Available for Common Benefit Fees

Consistent with the terms of the August 2, 2022, 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”), and pursuant to 42 P.S. § 2503(8), an attorney fee fund was established. The Fund is held in an account subject to the jurisdiction of this Court to be disbursed in a manner consistent with the Order. *Aug 2, 2022*

Order at 2. Attorney's fees and expenses awarded by the Special Master are payable from the Fee Fund, with 50 percent of the Fee Fund to be used to pay Common Benefit Fees and the remaining 50 percent to reimburse contingency fees.² *Id.* at 11. The Fee Fund represents 6.6% of all base and incentive payments Pennsylvania governmental entities received under the Johnson & Johnson and Distributors settlements. *Id.* at 2.

It is presently estimated that a total of \$57,578,536.12 will be available to pay contingent fees, common benefit fees, and associated administrative expenses. After deducting administrative expenses, 50 percent of the available sum will be available to pay common benefit fees. Although the payment terms of the settling parties extend over eighteen (18) years, the Fee Fund is entirely funded over five (5) years. *Id.* at 3. Thus, the recommended Awards are expected to be paid out over five years in equal installments.

C. Relevant Orders

Two Orders are most germane to this R&R:

- August 2, 2022, Order Granting Plaintiffs' Motion to Establish a Pennsylvania Opioid Fee Fund and Appoint a Special Master to Determine and Disburse Attorneys' Fees and Establish a Procedure for Reimbursing Counsel for Documented Expenses and Costs.
- February 17, 2023, Order Establishing Application Protocols for Allocation and Payment of Contingency and Agreed Litigation Conduct (A/K/A Common Benefit) Fees Under the Pennsylvania Opioids Trust and Allocation Order.

1. August 2, 2022 Order

The August 2, 2022 Order was an adjunct to the Trust. The Order established an attorney fee fund consistent with the terms of the Trust and according to 42 P.S. § 2503(8), which

² In December 2022, The Special Master recommended, and the Court approved, reimbursement of \$28,357,429.02 for eligible costs and expenses law firms incurred in connection with their representation of Pennsylvania clients in the Coordinated Proceedings. On December 14, 2023, the Court entered the *Order Approving Final Contingency Fee Awards*.

constituted a single qualified settlement fund as defined by § 4468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Sections 1.468B-1, *et seq.* *Aug. 2, 2022 Order* at 2, 6-7. The Order further specified that counsel (collectively, the “Fee Applicants,” each a “Fee Applicant”) were only eligible to apply for Common Benefit 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 Settlements. *Id.* at 13-14.

2. February 17, 2023 Order

The February 17, 2023 Order reaffirmed that only Fee Applicants who represented Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania and whose clients executed Participation Agreements to participate in the Settlements were eligible to apply for a Common Benefit Fee award by submitting a Common Benefit Fee Application. *Feb. 17, 2023 Order* at 2. Common benefit work performed through July 21, 2021, as well as common benefit work performed through August 2, 2022, in connection with the implementation of the settlements, is eligible for consideration by the Special Master in allocating Common Benefit Fees. *Id.* at 8. To recover fees from the Pennsylvania Opioid Fee Fund (the “Fee Fund”), the Fee Applicants were required to waive the enforcement of their fee contracts for the Pennsylvania Participating Subdivisions for whom they seek an award of fees. *Id.* at 2. The Special Master has assured that all Fee Applicants satisfied the eligibility requirements to receive a Common Benefit Award.

D. Special Master and Auditor

As noted in the August 2, 2022 Order, the undersigned was appointed as Special Master to “oversee and allocate the Pennsylvania Opioid Fee Fund[.]” *Aug. 2, 2022 Order* at 8. Pursuant

to the Order, the Special Master is responsible for “designing and implementing the processes and procedures for the allocation of fees, costs, and expenses, consistent with the criteria set forth” in the August 2, 2022 Order. *Id.* at 9. The Special Master was authorized to employ the services of assistants, professionals, and vendors to act under his direction to accomplish the objectives and work outlined in the August 2, 2022 Order. *Id.* The Special Master has the “sole authority for making decisions regarding allocations, disbursements, and payments from the Pennsylvania Opioid Fee Fund.” *Id.*

The Special Master retained Amy L. Collins, P.C., to serve as the Pennsylvania Opioid Common Benefit Fee Fund Auditor (the “Auditor”). *Feb. 17, 2023 Order* at 10. Ms. Collins has extensive experience and expertise in auditing common benefit time submissions and was retained to advise on processes to establish audits and audit the time entries. Ms. Collins performs the same role in connection with the Opioid MDL, and her vast experience and expertise have been an invaluable asset to the Special Master. The Special Master directed Ms. Collins to independently evaluate each time entry to verify eligibility for compensation from the Fee Fund and make Fee Applicant-specific recommendations. Ms. Collins analyzed the applicable Orders, attended Fee Applicant interviews, and corresponded with Fee Applicants when necessary to ensure comprehensive and relevant information was provided in making her underlying recommendations. At all relevant times, the Special Master and Ms. Collins closely coordinated their efforts.

The February 17, 2023 Order provides that the Auditor’s review and determinations are not binding. *Feb. 17, 2023 Order* at 12. In November 2023, Ms. Collins submitted her confidential final Auditor’s Report and Recommendations to the Special Master. The Special Master’s review of the Auditor’s findings regarding Common Benefit Fees was *de novo*. *Id.*

Consistent with the applicable Order, the Special Master independently evaluated all Fee Applications and the Auditor's Report and Recommendations. After an independent analysis and review, the Special Master issued Preliminary Common Benefit Awards to which all Fee Applicants had an opportunity to comment upon and object. No objections were served.

This R&R is issued pursuant to the Orders discussed *supra*. All Final Objections must be filed with the Court and served on Judge Dozer within ten (10) days of service. *Feb. 17, 2023 Order* at 17. In the unlikely event objections are served to this R&R, all Final Objections are reviewed by Judge Dozor under an abuse of discretion standard. *Id.* at 18; *see also Aug. 2, 2022 Order* at 9. (“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.”).

III. DISCUSSION

Before determining an appropriate Common Benefit Fee award for each Fee Applicant, it was necessary to determine the total available funds for all Fee Applicants. Based on best present estimates, \$28,789,268.06 will be available from the Fee Fund to compensate Fee Applicants for their common benefit work. This total represents 50 percent of the Fee Fund to be used to pay Common Benefit Fees.³ *Aug. 2, 2022 Order* at 11.

As noted, the Auditor did an independent review and analysis of all applications for Common Benefit Fees for compliance with the relevant Orders, prepared a confidential report to the Special Master regarding her findings, and submitted her Report and Recommendation to the Special Master about what should be allowed, disallowed, or further investigated. The

³ The remaining 50 percent was allocated for contingency fee awards. *See Aug. 2, 2022 Order* at 11.

Auditor's final report was issued after allowing Fee Applicants to object or comment upon the Auditor's preliminary findings. The Auditor's process is discussed in full below.

A. The Auditor's Review Process

Fee Applicants who submitted requests for Common Benefit Fees underwent a three-step process to facilitate the time review, ensure accuracy and fairness for the levels of work performed, and comply with the Orders and guidelines implemented by the Court for all work performed in the Coordinated Proceedings.

1. Step 1: The Application Process

Fee Applicants seeking compensation for Common Benefit Fees were required to apply through the Rubris Crosslink System ("Crosslink"). The application process required each Fee Applicant to certify (1) they carefully read the applicable orders, (2) they submitted only time for work for the common benefit of all Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania and executed Participation Agreements to participate in the Settlements, (3) their work was not compensated from any other source, (4) they agreed to waive enforcement of their fee contracts for the Pennsylvania Participating Subdivisions for whom they requested Common Benefit Fees, (5) Co-Lead Counsel authorized the work, and (6) they acknowledged that the final Common Benefit Fee allocation is subject to the Aug. 2, 2022 Order at § I.A and is binding. Each Fee Applicant was required⁴ to submit the following documentation to support their application:

1. Preliminary Intent to Participate Form
2. Fee Applicant Information
3. Common Benefit Time Report

⁴ Unless marked "optional."

4. Common Benefit Fee Affidavit
5. Client Information, *i.e.*, Pennsylvania Litigating Subdivisions represented by the Fee Applicant.
6. Fee Applicant Statement (optional)
7. Fee Split Designation
8. IRS Form W-9
9. References (optional)

Before submission, Fee Applicants were provided with the *Pennsylvania Opioid Fee Fund Agreed Litigation Conduct (Common Benefit) Time Billing Guide* (the “Billing Guide”) for guidance in preparing their submissions. Pursuant to the Billing Guide, Fee Applicants were required to provide detailed information in support of each submitted time entry, including the name and level of the Firm Member performing the task, the date of service, the category code encompassing the task, a detailed description of the work performed, the Co-Lead Counsel assigning or approving the work, the Firm Member’s billing rate, the time spent in tenth-of-an-hour increments, the fee total sought for the work performed, *i.e.*, time spent x billing rate, and the name of the Pennsylvania Participating Client for which the work was performed, or whether the work was performed for all Pennsylvania Participating Clients, *i.e.*, “PA General.”

After submitting the Preliminary Intent to Participate Form, several Fee Applicants withdrew their intent to participate. In total, fourteen (14) law firms proceeded through the common benefit application, review, and audit process, submitting a total of 65,735.5 hours at a combined lodestar of \$34,076,904.80.

2. Step 2: The Review Process

Upon receipt of each application, the Auditor reviewed and analyzed the application and submitted time for compliance with the applicable Orders. Non-compliant time entries were

flagged with an Audit Code, as defined in the Billing Guide. Such Audit Codes are described below:

- Administrative: Non-substantive administrative or clerical time for scheduling meetings, making travel arrangements, general file organization, and general printing and copying unless for a specific common benefit task, *e.g.*, expert reports.
- Duplicate: The same time entry was submitted more than once.
- Entry Error: Failure to properly enter all required information, *i.e.*, failure to indicate the time in a tenth-of-an-hour increment, failure to provide the billing rate, failure to provide the task code category, or failure to submit time in the proper format.
- Excessive Time: Submission of time in which the amount of “review” time is excessive, individually, or, when judged in reference to the role of the timekeeper, excessive hours billed in a day by one firm member, unreasonable time considering the task or the firm member’s duties, or time that did not substantially benefit the Pennsylvania Participating Subdivisions.
- Excessive/Unnecessary Review: Submission of time to “review” pleadings, emails, correspondence, or similar documents unrelated to the performance of a timekeeper’s responsibilities, *i.e.*, monitoring or reviewing the work of a timekeeper for internal purposes, “monitoring” or reviewing Electronic Court Filings, discovery or expert materials, or time for more than one timekeeper within a firm to review a single document, email, deposition, or pleading without an independent reason why review by more than one timekeeper was necessary and beneficial.
- Inadequate Detail: Any time entry that is not described in sufficient detail for the Auditor to determine the nature and purpose of the work involved, including failure to provide the name of the case for case-specific work, failure to provide the name of the defendant(s) for defendant-specific work, failure to provide the name of the witness for work preparing for or attending a deposition, failure to indicate the purpose of the task or its relation to a common benefit task.
- Internal: Excessive or unnecessary internal firm meetings or communications.
- Multiple Timekeepers: Multiple firm members unnecessarily performing the same tasks.
- Non-Common Benefit: Submission of time that does not meet the definition of common benefit work, time not reasonably necessary, or time not part of a bona fide effort to advance the interests of the Pennsylvania Participating Subdivisions.
- Non-Common Benefit Case-Specific: Work performed on an individual case or group of cases providing no common benefit, *i.e.*, time spent meeting with potential clients,

completing Plaintiff Fact Sheets, or case-specific work on a bellwether or common benefit case that occurred before the case was so designated.

- Not Authorized: Work not authorized by Co-Lead Counsel, arising from representation of a subdivision that is not a Pennsylvania Participating Litigating Subdivision,⁵ or related to representation of Pennsylvania Participating Subdivisions in matters other than those claims against the settling entities.⁶
- Unnecessary/Unauthorized: Excessive and/or unnecessary time entries for “monitoring” the proceedings by attending hearings, status conferences, meetings, or unnecessary attendance at depositions or trials.

In furtherance of their review, the Special Master and Auditor conducted interviews with Fee Applicants in September 2023 to invite input from Applicants into the quantity and quality of their work claimed in the Fee Applications, including the common benefit time submissions of the Fee Applicant and others in the Coordinated Proceedings. Interviews were held before the Audit Process to answer questions about the reasons, grounds, and explanations for a Fee Applicant’s entitlement to Common Benefit Fees.

After each interview, the Special Master informed the Auditor of his preliminary determinations as to which time entries to allow or disallow and the reasons for disallowance. Determinations for allowable common benefit time were finalized for all time entries, including those initially flagged as non-compliant by the Auditor, in preparation for the Audit Process.

3. Step 3: The Audit Process

Fee Applicants that submitted time entries identified as potentially ineligible, needing more detail, duplicative, excessive, case-specific, or non-common benefit were provided an

⁵ For example, private hospitals, third-party payors, NAS claimants, personal injury/wrongful death claimants, or other entities, unless the time was incurred for the common benefit of the Pennsylvania Participating Subdivisions.

⁶ However, submitted time may include an appropriate share of time worked to pursue claims against multiple defendants including the settling defendants.

Audit Notice containing an Audit Spreadsheet via Crosslink. Fee Applicants were allowed twenty (20) days to provide an Audit Response, in which they could:

1. Amend the time entry.
2. Challenge the Audit Code.
3. Partially withdraw the entry by reducing the time and amend the detailed description to remove the non-compliant portion of the time.
4. Voluntarily withdraw the entry.

Fee Applicants could provide comments regarding the disputed entries. Fee Applicants who failed to provide Applicant Comments for any entry for which “Challenge” was selected in the Applicant Response were deemed to have waived any right to object to the Special Master’s determination regarding reimbursement approval or denial for the entry. *Billing Guide* at 9. Fee Applicants were also allowed to provide additional documentation in support of their position that the time entry was compliant, which included:

1. Documents that evidenced authorization from Co-Lead Counsel to perform the work in question.
2. Relevant portions of transcripts that supported attendance at a hearing, meeting, deposition, or other event.
3. Relevant portions of pleadings, motions, briefs, memos, or other documents that demonstrated the time and complexity involved in the task in question.
4. Other documents that supported the Fee Applicant’s position that the time entry was compliant.

Following the Audit Process, the Auditor was instructed to conduct an additional review of the deficient entries and the responses of the Fee Applicants and make recommendations regarding the allowance or disallowance of all submissions, employing the methodology and criteria outlined herein. The Auditor submitted her Report and Recommendations in November 2023, which was reviewed by the Special Master to prepare for the Preliminary Common Benefit

Awards. As discussed *supra*, the Auditor’s non-compliance determinations were not binding, nor did the Auditor have the authority to disallow, in whole or in part, any time submission of any Fee Applicant.

B. Allocation Methodology and Criteria

The Fee Applicants submitted more than 65,000 hours of claimed common benefit work for consideration. All Firm Applicants’ time entries were provided to the Auditor and Special Master for review and sampling. The Auditor’s Report and Recommendations adjusted the total claimed fees by a lodestar calculation.

The overarching guideline the Special Master used to allocate fees was the relevant common benefit contribution of each Fee Applicant to the outcome of the litigation. *See Feb. 17, 2023 Order* at 14. (“The over-arching guideline that the Special Master is to consider is the relative common benefit contribution of each Fee Applicant to the outcome of the Coordinated Proceedings[.]”). This is consistent with the general principle that fees are to be allocated in a manner that reflects the relative contribution of the attorneys and firms to the overall outcome of the litigation. *In re: Diet Drugs*, 2023 WL 21641958, at *6 (E.D.Pa. 2003).

Common benefit work product includes all work performed for the benefit of all plaintiffs, including pre-trial matters, discovery, settlement efforts, and all other work that advanced this litigation to a successful conclusion and settlement. Nevertheless, although common benefit work is well-defined, the Special Master’s task of allocating common benefit fees is not an exact science. *In Re C.R. Bard, Inc. v. Pelvic Repair System Products Liability Litigation*, 2019 WL 4458579, at *15 (W.D.Va. March 12, 2019) (“The allocation of fees is not an exact science, and the methodology used may vary, so long as it is designed to produce results that are both fair and reasonable.”). The Special Master’s allocation necessarily involved

subjective factors such as the nature and importance of the work performed, the skill and experience of the counsel doing it, and the acclaimed results. With the substantial assistance of the Auditor and input from the Fee Applicants, the Special Master is confident the recommended allocation and Awards are fair and equitable and fully consistent with the relevant factors to consider as set forth in the Court's Orders. This is evidenced by the fact that there are no objections to the recommended Awards.

The Special Master's review of all time submissions was conducted *de novo*. In addition to reviewing the Auditor's recommendations, the Special Master conducted an independent analysis considering the factors outlined 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). *See Feb. 17, 2023 Order* at 12. To determine the appropriateness of Awards, the Special Master considered these factors, along with reasonable and necessary billing practices, general fee jurisprudence, and the factors generally recognized in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), including (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal services properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. Each relevant factor that the Special Master considered is discussed in detail below.

1. Time and labor required. Fee Applicants submitted 65,735.5 hours for consideration, of which 52,860.8 hours were determined to be for the common benefit.

2. The novelty and difficulty of the questions. Cases of first impression generally require more time and effort on the attorneys' part. While other coordinated opioid cases were being prosecuted nationwide and in a handful of state court jurisdictions, several issues were distinct to the Commonwealth, the bellwethers, and the application of law that made the Coordinated Proceedings unique.
3. The skill requisite to perform legal services properly. The Coordinated Proceedings involved numerous complex legal issues, including how to keep the cases in state court, survive preliminary objections on novel causes of action, and collect, review, and produce volumes of documents to survive through discovery and ultimately proceed to settlement.
4. The preclusion of other employment by the attorney due to acceptance of the case. Some Fee Applicants were from small firms. Spending even a few hundred hours per year on common benefit work significantly impacted their ability to take on additional cases.
5. The customary fee. Fee Applicants submitted hourly rates with their contemporaneously recorded time. Based on the Enhanced Lodestar of \$28,325,412.08 and the Allowed 52,860.8 hours, the Average Hourly Rate for all Fee Applicants was \$536.00 per hour. This rate aligns with hourly rates used by courts supervising national MDLs. *See, e.g., In re Vioxx*, 760 F. Supp. 2d 640, 660 (E.D. La. 2010) (average billing rate of \$443.29 for all partner, associate, and other professional common benefit time is reasonable); *In re Guidant Corp. Implantable Defibrillators Products Liability Litigation*, 2008 WL 682174, at *15 (D. Minn. Mar. 7, 2008), *amended in part*, 2008 WL 3896006 (D. Minn. Aug. 21, 2008) (average attorney rate of \$379.40 per hour and paralegal rate of \$127.49 per hour).
6. Whether the fee is fixed or contingent. Fee Applicants performing common benefit work do so at a significant risk when the fee, as is in this litigation, is contingent. Notably, the amount of funds available to compensate the Fee Applicants was contingent upon the success of the litigation, measured in the amount of settlements. If the litigation was unsuccessful, the Fee Applicants could have been left without compensation or been under-compensated for the many hours incurred in performing common benefit work in furtherance of all Pennsylvania Participating Subdivisions.
7. Time limitations imposed by the client or the circumstances. Priority work, such as responding to dispositive motions, can delay a Fee Applicant's work on other matters.
8. The amount involved and the results obtained. Some Fee Applicants worked directly with the Pennsylvania Attorney General's Office and the County Commissioners Association of Pennsylvania to ensure the Pennsylvania Participating Subdivisions received the most significant possible recovery from the settlements. This work culminated in a substantial settlement of more than \$1 billion to the Commonwealth of Pennsylvania.
9. The experience, reputation, and ability of the attorneys. Fee Applicants in this litigation included many experienced trial attorneys with a history of multimillion-dollar verdicts and settlements.

10. The “undesirability” of the case. The opioid litigation was a novel and complex undertaking with no guarantee of a successful outcome. The Coordinated Proceedings created a risk to those firms who chose to pursue these claims on behalf of their clients and for the benefit of all Pennsylvania Participating Subdivisions.

11. Awards in similar cases. In this case, the average hourly rate of common benefit fees awarded is consistent with those in other MDLs. Further, based on the Special Master’s experience with other MDLs, the total amount and percentage of common benefit fees awarded are reasonable compared to those awarded in MDLs and consolidated proceedings.

After verifying the appropriateness of the total fee award for all Fee Applicants, attention was given to the individual Fee Applicant awards. Notably, although fourteen (14) firms submitted over 28,000 individual entries, each time entry was reviewed by the Auditor and audited in substantial detail. In addition to reviewing each time entry for compliance with the applicable Orders and generally accepted billing principles, each entry was categorized based on the task performed, the related witness (where applicable), and the case for which the task was completed, *i.e.*, case-specific, or generally for the Pennsylvania Participating Subdivisions. These comparisons by categories of work provided an understanding of the type, quantity, and value of the work performed by the Fee Applicants and how the work contributed to the successful advancement of the Coordinated Proceedings.

The review methodology also took into consideration all logged hours by timekeeper, years of practice, type of work, the significance of the work, authorization of the work, staffing as it pertained to the project, bellwether work, attendance at hearings and status conferences, briefs and submissions, arguments, and presentations to the Court, and other relevant information pertaining to advancing the litigation. This methodology allowed for the evaluation and appropriate judgments as to the work performed by each firm.

The work of firms was compared against one another. The amount of “heavy lifting” or critical work performed by certain Fee Applicants was reflected in upward lodestar adjustments.

Conversely, although important and a valuable contribution to a successful settlement, where a Fee Applicant's time consisted primarily of document review or passively participating in meetings or hearings, the lodestar was not reduced but was not enhanced. The allowed hours for each Fee Applicant were then determined, and the submitted and allowed lodestar per Fee Applicant was calculated. Adjustments were made based on the factors discussed *infra* and the specific factors discussed below to arrive at the recommended fee allocations for each Fee Applicant. The additional factors considered included the factors listed in the February 17, 2023 Order:

1. The Feb. 17, 2023 Order. The factors listed are: (1) a Fee Applicant's contemporaneously recorded time and labor dedicated to the Pennsylvania Participating Subdivision; (2) the novelty, time, and complexity of the work performed for Pennsylvania Participating Subdivisions; (3) the preclusion of other employment by the Fee Applicant due to time dedicated to Pennsylvania Participating Subdivisions; (4) the "common benefit" alleged to have been conferred by the Fee Applicant with respect to the Coordinated Proceedings; (5) expenditures paid by the Fee Applicant necessary to prosecute the Fee Applicant's case(s); (6) the experience, reputation, and ability of the Fee Applicant; (7) the status of discovery in the cases primarily handled by the Fee Applicant in the Coordinated Proceedings; (8) the nature of any work by the Fee Applicant on "bellwether" cases or similarly-active cases in the Coordinated Proceedings; (9) pressure points successfully exerted by the Fee Applicant in cases against the Settling Defendants or any risk for Settling Defendants created by the Fee Applicant in the Coordinated Proceedings; (10) risks for defendants created by the Fee Applicant in cases against the Settling Defendants in the Coordinated Proceedings; (11) successful and unsuccessful motion practice in cases worked on by the Fee Applicant in the Coordinated Proceedings; (12) the filing date of any cases filed by the Fee Applicant in the Coordinated Proceedings; (13) the number and population of entities represented by the Fee Applicant in the Coordinated Proceedings and the fees that would have been awarded under the extinguished contingent agreements concerning the Fee Applicant's Pennsylvania Participating Subdivisions; (14) whether the Fee Applicant's Pennsylvania Participating Subdivisions brought claims against the Settling Defendants; (15) whether the Fee Applicant held a leadership role in the Coordinated Proceedings; (16) whether the Fee Applicant held a leadership role in any negotiations aimed at resolving the

litigation in the Coordinated Proceedings; (17) other factors deemed by the Special Master to be appropriate to consider.⁷ *Feb. 17, 2023 Order* at 12-14.

2. Billing Efficiency. Fee Applicants who submitted fewer hours than those who performed similar tasks were not penalized for their efficiency. Conversely, Fee Applicants who submitted more hours than those who performed similar tasks were not given a windfall for their excessive time.
3. Substantive Time. Fee Applicants who made exceptional contributions to the settlement were given an enhancement. For the most part, these individuals and firms were singled out by the interviewees as having performed exceptional work.
4. Importance of Work Performed. Although tasks of varying degrees of importance are necessary to litigate such matters, work that substantially advanced the litigation or settlement on behalf of all claimants received a more significant enhancement than work merely necessary to prosecute the case or implement the settlement effectively.

C. Preliminary Common Benefit Awards

Based on the totality of the evidence considered, the Special Master determined that enhancements to certain firms were appropriate for efforts that substantially contributed to the successful settlement of the Coordinated Proceedings. When assessing the relative contributions

⁷ Such factors may include: (a) the quality of the Fee Applicant's work; (b) the consistency, quantum, duration, and intensity of the Fee Applicant's commitment to the litigation. *Feb. 17, 2023 Order* at 13-14. The Special Master may also consider the relative common benefit contribution of each Fee Applicant, including whether a Fee Applicant (1) made no known material common benefit contributions; (2) made isolated material common benefit contributions but primarily "monitored" the material common benefit efforts of others and perhaps performed some document review; (3) made periodic material common benefit contributions and/or mostly performed document review; (4) made consistent material common benefit contributions from inception through settlement of the Fee Applicant's own cases or cases in which the Fee Applicant had a substantial fee interest; (5) made consistent material common benefit contributions from inception through the current date; (6) was a leader taking primary responsibility to accomplish the goals, was relied upon by Liaison and Co-Lead Counsel, and provided consistent material common benefit contributions (full-time at times), from inception through settlement of the Fee Applicant's own cases or cases in which it had a substantial fee interest; (7) was a leader taking primary responsibility to accomplish the goals and was relied upon by Liaison and Co-Lead Counsel, and provided consistent material common benefit contributions (full-time at times) from inception through the current date; (8) was a senior leader taking primary responsibility to accomplish the goals of Liaison and Co-Lead Counsel, organized others and/or led a team of common benefit attorneys and was heavily relied upon by Liaison and Co-Lead Counsel and provided consistent material common benefit contributions (almost full-time) for a substantial time; or (9) was a senior leader providing maximum senior leadership effort in terms of intensity, consistency, and duration relative to all other common benefit counsel, taking primary responsibility for the entire litigation to accomplish the goals of Liaison and Co-Lead Counsel, engaging in overall strategic planning since inception, organizing others and/or leading one or more teams of common benefit attorneys, providing consistent material common benefit contributions (virtually full-time for much of the litigation), and will continue to the conclusion of the litigation. *Id.* at 14-15.

of firms and lawyers to the successful settlement, four (4) names stood out: Carmen Belafonte, Jennifer Connolly, Jerry DeSiderado, and Simmons Hanly Conroy, LLP. These four were given an appropriate enhancement given their exceptional contributions to the settlement.

After adding up the initially computed Preliminary Fee Awards for the fourteen (14) firms that applied for a Common Benefit Award, the total sum exceeded the sum available to pay Common Benefit fees. Thus, it was necessary to reduce the Final Awards to ensure enough money in the Fee Fund is available to pay all Common Benefit Awards. The Special Master determined that the fairest method to reduce the total Preliminary Fee Awards was to apply the same percentage reduction to each Applicant. In other words, all Fee Applicants were treated the same regarding the percentage reduction of the Preliminary Fee Awards. No other deduction was taken from any Preliminary Fee Award.

On December 14, 2023, the Special Master issued Preliminary Common Benefit Fee Awards to each Fee Applicant who timely submitted a Common Benefit Fee Application. The Preliminary Notices contained the Special Master's preliminary determinations of qualified time, allowed lodestar, discussion of enhancements (if any), and the Preliminary Common Benefit Fee Award amount for the Fee Applicant.

D. Objections

Fee Applicants were allowed twenty (20) days to object to their preliminary award and only had standing to object to their own fee award and not the fee award of any other counsel. *Aug. 2, 2022 Order* at 4. The Special Master received no objections to the Preliminary Common Benefit Fee Awards. As the failure to object timely is deemed a waiver of all objections to the Preliminary and Final Awards, and the Court-ordered time to object has passed, the filing of this Report and Recommendations is now timely. *Feb. 17, 2023 Order* at 17.

E. Final Awards

The Special Master's *de novo* review of the submitted time and evaluation of the relevant contributions of each Fee Applicant toward generating the benefits provided and/or otherwise substantially advancing the litigation in the Coordinated Proceedings resulted in the following recommended Final Common Benefit Awards listed in Attachment A. The Awards are as follows:

	Firm	Final Award	Annual Payment (Over 5 Years)
1.	Baron & Budd, P.C.	\$10,887,534.30	\$2,177,506.86
2.	Boni, Zack & Snyder, LLC	\$1,303,915.19	\$260,783.04
3.	David Kairys	\$446,048.55	\$89,209.71
4.	Dilworth Paxson, LLP	\$4,176,196.02	\$835,239.20
5.	Levin, Sedran & Berman	\$568,912.97	\$113,782.59
6.	Marc J. Bern & Partners, LLP	\$772,377.30	\$154,475.46
7.	McLaughlin & Lauricella, P.C.	\$1,850,406.63	\$370,081.33
8.	Motley Rice, LLC	\$640,109.78	\$128,021.96
9.	Napoli Shkolnik, PLLC	\$30,602.39	\$6,120.48
10.	Sacks Weston, LLC	\$132,596.71	\$26,519.34
11.	Saltz Mongeluzzi & Bendesky, P.C.	\$2,845,333.99	\$569,066.80
12.	Scott & Scott Attorneys at Law, LLP	\$185,888.72	\$37,177.74
13.	Sheller, P.C. ⁸	\$0.00	\$0.00
14.	Simmons Hanly Conroy, LLC	\$4,485,489.53	\$897,097.91
	Total	\$28,325,412.08	\$5,665,082.42

⁸ Although Sheller, P.C.'s claim for common benefit was denied, by no means should the importance of its contribution to the settlement be discounted. The firm's substantial efforts to organize and manage the litigation and to develop a workable theory of recovery were extremely valuable. Unfortunately, however, under the criteria used by the Special Master, their work did not qualify as common benefit. The firm's understanding and professionalism throughout this process were exceptional.

IV. CONCLUSION

Based upon the Special Master's extensive review of the submitted time, discussions with Fee Applicants and the Auditor, and the factors set forth *infra*, the Special Master respectfully recommends that the Court approve the Special Master's recommended Final Common Benefit Awards as indicated in Attachment A. The Special Master will shortly be filing a separate application to approve these recommended Final Awards with a proposed form of Order.⁹

Respectfully submitted,

By: Joel Schneider _____

Hon. Joel Schneider (Ret.)
Special Master Pennsylvania Opioid Fee Fund

Dated: January 29, 2024

⁹ The Special Master takes this opportunity to applaud all the firms and lawyers who participated in this process. At all times, everyone conducted themselves in a thoroughly professional manner even though enormous sums were at issue. The Special Master sincerely appreciates their efforts. In addition, kudos need to be directed to the Auditor and her staff for their exceptional, timely, and proficient assistance.

Attachment
A

**RECOMMENDED ALLOCATION OF
AGREED LITIGATION CONDUCT (a/k/a COMMON BENEFIT) FEES**

	Firm	Final Award	Annual Payment (Over 5 Years)
1.	Baron & Budd, P.C.	\$10,887,534.30	\$2,177,506.86
2.	Boni, Zack & Snyder, LLC	\$1,303,915.19	\$260,783.04
3.	David Kairys	\$446,048.55	\$89,209.71
4.	Dilworth Paxson, LLP	\$4,176,196.02	\$835,239.20
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12.	Scott & Scott Attorneys at Law, LLP	\$185,888.72	\$37,177.74
13.	Sheller, P.C.	\$0.00	\$0.00
14.	Simmons Hanly Conroy, LLC	\$4,485,489.53	\$897,097.91
	Total	\$28,325,412.08	\$5,665,082.42