

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: SO CLEAN, INC., MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION	Master Docket No. 22-mc-152
This document relates to: All Actions	MDL No. 3021

PRETRIAL ORDER #9

**COMMON BENEFIT ORDER REGARDING PROTOCOLS FOR
PLAINTIFFS' COUNSEL TIME AND EXPENSE SUBMISSIONS**

I. SCOPE OF ORDER

This Order is entered to provide standards and procedures for the fair and equitable sharing among plaintiffs, and their counsel, of the burden of services performed and expenses incurred by attorneys acting for the common benefit of all plaintiffs in this complex litigation. These guidelines may not be exhaustive, and the Court may issue additional procedures, limitations, and guidelines in the future, if appropriate.

The principles governing the award of common benefit fees are derived from the United States Supreme Court's common benefit doctrine, as initially established in *Trustees v. Greenough*, 105 U.S. 527 (1881), and as refined in cases including *Central R.R. & Banking Co. of Georgia v. Pettis*, 113 U.S. 116 (1885), *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939), *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970), and *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); see also *In re Diet Drugs*, 582 F.3d 524 (3d Cir. 2009). In addition, the Court's authority to award common benefit fees derives from its equitable authority and its inherent managerial power over this consolidated and multidistrict litigation. See, e.g., *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991); *Diet Drugs*, 582 F.3d at 546-47; *In re Air Crash Disaster at Fla. Everglades*, 549 F.2d 1006, 1008 (5th Cir. 1977); *In re Vioxx Prods. Liability Litig.*, 802

F. Supp. 2d 740, 770 (E.D. La. 2011); Manual for Complex Litigation (Fourth), §14.121.

This Order applies to all cases now pending in MDL 3021, as well as to any cases later filed in, transferred to, or removed to this Court and included as part of MDL 3021, and to all Participating Counsel as further described herein. It is anticipated that at an appropriate time an application will be made for common benefit fees and expense reimbursement.

The following protocols are to be utilized by any Participating Counsel seeking common benefit fees and/or expense reimbursement.

II. GENERAL STANDARDS

- A. As set forth in Pretrial Order #2, Co-Lead Counsel has the authority: (1) to assess members of the PSC, members of other committees, members of subcommittees, and other counsel performing authorized common benefit work; and (2) coordinate common benefit payments into a common benefit shared cost fund.
- B. All submitted time and expenses (other than for Plaintiffs' Liaison Counsel's work related to her liaison duties) must be incurred only for work authorized in advance, and in writing, by Co-Lead Counsel. Any time and expenses not authorized in advance, and in writing, by Co-Lead Counsel may not be eligible for consideration of a common benefit fee award or reimbursement pursuant to this Order.
- C. These Time and Expense Protocols are intended for all activities performed and expenses incurred by Participating Counsel that relate to matters common to all the claimants in MDL 3021, including pre-trial matters, discovery, trial preparation, potential settlement process, obtaining and interfacing with class representatives and representing them in connection with the putative class

actions, and all other work that advances this litigation to conclusion. The Court notes at the outset that evaluating contributions to the common benefit is a qualitative analysis because not all types of work are created equal. *Vioxx*, 802 F. Supp. 2d at 772. Any Plaintiffs' Counsel that may, at a later date, seek reimbursement or compensation for common benefit time and expenses shall comply with these guidelines, and their submissions shall be in accordance with this Order.

D. This Order applies to all Participating Counsel. Participating Counsel includes the following: (1) all attorneys who voluntarily sign the Participation Agreement attached hereto as Exhibit A; (2) all attorneys with a fee interest in any case pending, later filed in, transferred to, or removed to this Court as part of MDL 3021, regardless of whether or not the attorney signs the Participation Agreement, and regardless of whether or not the attorney also has cases outside the MDL (filed or unfiled); and (3) any attorneys who are subject to the jurisdiction of the Court and who are not otherwise Participating Counsel but who obtain access to and use the common benefit work product of MDL 3021, thereby becoming Participating Counsel. Executed Participation Agreements and updated lists of clients must be provided to and maintained by the Time and Expense Sub-Committee as set forth in the Participation Agreement. Subject to any Stipulated Protective Order entered in MDL 3021, and any amendments thereto, as well as any protective orders entered in applicable state court actions, Participating Counsel are entitled to receive the MDL common benefit work product as well as any state court work product of those attorneys who are

Participating Counsel as defined above. Participating Counsel are prohibited from sharing any such work product (i) with counsel who are not Participating Counsel or (ii) if such sharing is in violation of any applicable protective order. Participating Counsel will also be entitled to seek compensation for common benefit work and expenses as set forth herein. In return, Participating Counsel agree that, if at some future point the Court enters any additional Common Benefit Orders establishing common benefit payments,¹ assessed from funds paid in judgments and settlements that the common benefit work helped secure, those payments must be paid on all filed and unfiled cases or claims in state or federal court in which they share a fee interest.² All Participating Counsel are bound by the terms, conditions, and obligations of this Order, as well as any other potential future Common Benefit Orders of this Court in MDL 3021.

E. The Time and Expense Sub-Committee has selected, and Co-Lead Counsel have approved the retention of Postlethwaite & Netterville (a professional accounting corporation) (P&N) to provide accounting services regarding common benefit time and expense submissions. P&N will assist the Time and

¹ These common benefit payments are distinct and different from the regular assessments of members of the PSC, members of other committees, members of subcommittees, and other counsel performing authorized common benefit work for the regular and continued funding of activities authorized in this Order and Pretrial Order #2. Rather, such a supplemental Order would be in addition to those Orders to ensure that those who regularly fund and perform common benefit work are fully reimbursed and compensated for their efforts.

² If a settlement or judgment fully compensates counsel for common benefit work through Court-approved awards of common benefit fees and costs (as is often the case in class settlements), there may be no need for additional Common Benefit Orders. However, if there are cases (such as personal injury settlements) that rely on but do not provide for compensation of the common benefit work, the Court anticipates that a Common Benefit Order would be necessary to provide for an equitable contribution towards compensation of counsel who performed common benefit work.

Expense Sub-Committee in compiling and reviewing submissions, making submissions accessible to the Time and Expense Sub-Committee and Co-Lead Counsel, and creating reports. Such reports will include information related to both time and expenses and will summarize, with back-up detail, the submissions of all firms, for such work. Also included in the reports will be recommendations from the Time and Expense Sub-Committee regarding compliance with this Order and the reasonableness of submissions; and identifying any submissions that are not in compliance with this Order or which otherwise appear not to be reasonable. Co-Lead Counsel shall determine on a monthly basis if time and expenses identified as potentially not compensable or reasonable should be disallowed and notify (through the Time and Expense Sub-Committee) the firm/person who submitted the time/expense of their determination. Co-Lead Counsel may allow the firm/person an opportunity to correct the problem if appropriate. This will ensure that any issues regarding the compensability of time/expenses and compliance with this Order can be dealt with in a timely manner as opposed to at the conclusion of the litigation, and thus avoid disputes of magnitude regarding attorney fees and expenses. On a quarterly basis, the Time and Expense Sub-Committee shall provide the Court, for *in camera* review, summary reports detailing assessments, the expenditures of Shared Costs, the total time and expenses approved by Co-Lead Counsel for each firm for the previous quarter, and other information as the Court may direct.

F. Common benefit time and expense submissions must be submitted timely as set

forth herein, and on a monthly basis, to P&N directly through a centralized system, for an initial review by the Time and Expense Sub-Committee in conjunction with P&N. No other form of submission for time and expenses will be accepted. It is essential that each firm, on a monthly basis, timely submit its records for the preceding month. All submissions must be certified attesting to the accuracy and correctness of the submission.

- G. The Time and Expense Sub-Committee is authorized to establish one or more bank accounts for the collection and deposit of assessments, to create a Shared Cost Fund for the payment of Shared Costs as defined herein, as well as for any other such functions as may be necessary and appropriate (the “Account(s)”). The Account(s) shall be made available for review by Co-Lead Counsel, P&N, and any other person/entity as approved by Co-Lead Counsel, subject to Court approval; otherwise, the Account(s) are confidential. The Time and Expense Sub-Committee shall provide any and all bank statements for such Account(s) to Co-Lead Counsel and P&N for their review
- H. P&N will ensure proper compliance by the parties with this Order and work with the Time and Expense Sub-Committee to manage the Shared Cost Fund and administer the payment and reimbursement of Shared Costs approved by Co-Lead Counsel from the Shared Cost Fund.
- I. Each lawyer or staff member working on common benefit activities must submit a separate report of his/her time and expense records every month. Starting with June time, report periods close on the last day of each month, and records for time worked or expenses incurred during that period must be submitted by the

15th day of the following month. For example, all time and expense entries for common benefit activities performed in June would be due July 15. If the 15th falls on a holiday or weekend, the reports are due on the next business day. Forms and instructions regarding submission of time and expenses pursuant to this Order shall be distributed by Co-Lead Counsel prior to the due date of the first submission. Failure to provide time and expense records as set forth herein will result in a waiver of the same unless there are extenuating circumstances.

III. TIME REPORTING

- A. Only time spent on matters common to all the claimants in MDL 3021 will be considered eligible for a common benefit fee award. No time spent on developing or processing any case for an individual claimant will be considered or should be submitted, except in connection with time spent looking for, obtaining and representing an individual claimant representing a Class or Subclass to the extent this activity is approved by Co-Lead Counsel.
- B. All time must be accurately and contemporaneously maintained. Time shall be kept according to these guidelines and specifically in accordance with the Litigation Task Definitions attached hereto as Exhibit B. All Plaintiffs' Counsel shall keep a daily record of their time spent in connection with this litigation, indicating with specificity the date, hours, and particular activity. The failure to maintain such records, as well as insufficient description of the activity may result in disallowance of the submission.
- C. All time for each firm shall be maintained in 1/10 of an hour increment (6 minutes) and individual entries should have a specific task code in accordance

with the Litigation Task Definitions associated with the time. Failure to do so may result in time being disallowed.

IV. EXPENSE REPORTING

A. Advanced costs will be deemed as either “Shared” or “Held.”

1. Shared Costs are costs that will be paid out of the Shared Cost Fund Account(s).
2. Held Costs are those common benefit expenses that will be carried by each attorney in MDL 3021 and reimbursed if and when approved by the Court.

B. Each member of the Plaintiffs’ Leadership appointed by the Court and any others assigned common benefit tasks by Co-Lead Counsel will contribute to the Shared Cost Fund at times and in amounts sufficient to cover the administration of the MDL. The timing and amount of each assessment of members of the PSC, members of other committees, members of subcommittees, and other counsel performing authorized common benefit work will be determined by Co-Lead Counsel.

V. SHARED COSTS

A. Shared Costs are costs incurred for the common benefit of the claimants as a whole. No individual claimant-related costs will be considered as Shared Costs and must not be submitted, except in connection with individual claimant-related costs incurred as a result of looking for, obtaining and representing an individual claimant representing a Class or Subclass as authorized by Co-Lead Counsel. All costs of a substantial nature that meet these requirements and fall

under the following categories shall be considered Shared Costs and qualify to be submitted and paid directly from the Shared Cost Fund Account(s). All Shared Costs must be approved by Co- Lead Counsel prior to being incurred and prior to payment. Shared Costs include:

1. Court filing and service costs;
2. Depositions and court reporter costs;
3. Document Depository – creation, operation, staffing, equipment and administration;
4. Costs to acquire, store, and test evidence, including SoClean ozone cleaning devices, charcoal filters, accessories, and component parts;
5. Plaintiffs' Liaison Counsel administrative matters (*e.g.*, expenses for equipment, technology, courier services, long distance, conference calls, telecopier, electronic service, postage, meeting expenses, travel for administrative matters, photocopy and printing, etc.);
6. Leadership administration matters such as meetings and conference calls;
7. Legal fees not associated with the prosecution of the case and accountant fees;
8. Expert witness and consultant fees and expenses;
9. Printing, copying, coding, shipping, scanning (both in and out of house or extraordinary firm cost);
10. Research by outside third-party vendors/consultants/attorneys;
11. Common witness expenses, including travel;

12. Bank or financial institution charges;
13. Investigative services;
14. Claims Administrator charges;
15. Special Master charges;
16. Mediator charges; and
17. P&N fees.

B. The Time and Expense Sub-Committee shall prepare and be responsible for distributing to Plaintiffs' Counsel the reimbursement procedures and the forms associated therewith. Request for payments should include sufficient information to allow the Time and Expense Sub-Committee to account properly for costs and to provide adequate detail to the Court. All requests shall be subject to review by the Time and Expense Sub-Committee, who shall submit same to Co-Lead Counsel with recommendations for final approval.

VI. HELD COSTS

A. Held Costs are costs incurred for the common benefit of the claimants as a whole, but do not fall into the above Shared Costs categories. No specific claimant-related costs can be considered as Held Costs, except in connection with specific claimant-related costs incurred as a result of looking for, obtaining and representing an individual claimant representing a Class or Subclass, if authorized by Co-Lead Counsel. All costs of a substantial nature that meet these requirements and fall under the following categories shall be considered Held Costs and qualify to be submitted for consideration by the Time and Expense Sub-Committee and/or Co-Lead Counsel for future reimbursement by the Court.

1. Postage, shipping, courier, certified mail;
2. Printing and photocopying (in-house);
3. Computer research – Lexis/Westlaw;
4. Telephone – long distance (actual charges only);
5. Secretarial and clerical overtime; and
6. Travel – pursuant to Travel Limitations set forth below, including travel for attorney to attend depositions, court or legislative or administrative matters:

- a. Airfare
- b. Reasonable ground transportation
- c. Hotel
- d. Reasonable meals and entertainment
- e. Reasonable other (parking)
- f. Ground transportation

B. General overhead costs of the firm, including expenditures for (a) services and software to manage the firm's dockets, attorney calendars, and travel, (b) secretarial or administrative services, (c) messenger services, (d) printing of emails, (e) bookkeeping, (f) the use of conference rooms, or (g) the general management of the firm do not qualify as Held Costs.

VII. TRAVEL LIMITATIONS

- A. Airfare. Counsel should be mindful in selecting reasonable coach class rates. First class airfare ordinarily will not be reimbursed unless there are extenuating circumstances. Airfare expense submissions must be supported by invoice(s) or receipt(s).
- B. Hotel. Hotel room charges will be reimbursed at actual cost up to \$375 per night

excluding taxes and fees, unless extenuating circumstances exist. Counsel shall be mindful of the average available room rate of the Westin, Hyatt, Hilton, and Marriott hotels (or comparable) in the applicable city. Charges for other hotel expenses like laundry, dry-cleaning, movies, etc. will not be reimbursed.

- C. Meals. Meal expenses must be reasonable.
- D. Cash Expense. Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, pay telephone, etc.) will be reimbursed up to \$50 per trip (or \$25 per day if the trip is longer than 2 days), as long as the expenses are properly itemized.
- E. Ground Transport. Transportation costs include cab fares, rental cars, trains, and car services must be reasonable and shall include parking costs.
- F. Parking. Shall be limited to actual documented costs.

VIII. NON-TRAVEL LIMITATIONS

- A. Shipping, Courier, and Delivery Charges. All claimed expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package.
- B. Postage Charges. A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.
- C. In-House Photocopy. A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 25¢ per page.
- D. Computer Research -Lexis/Westlaw. Claims for Lexis, Westlaw, and other computer legal research expenses should be in the exact amount charged to the

firm for these research services. All such computer legal research must be related to an approved assignment by Co-Lead Counsel.

IX. ASSESSMENTS

- A. From time to time, as necessary to fund common benefit activity in the litigation, Co-Lead Counsel must make assessments of members of the PSC, members of other committees, members of subcommittees, and other counsel performing authorized common benefit work and may receive and hold those assessments in the Shared Cost Fund. Once Co-Lead Counsel provide notice of an assessment, the assessed firms will have thirty (30) days to deposit their respective assessments into the Shared Cost Fund.
- B. If a firm does not make the required assessment timely, then the Participating Counsel from that firm will be ineligible for common benefit work while the firm is delinquent in its assessment, and, under those circumstances any common benefit work performed while the firm is in arrears will not be eligible for compensation.

X. FURTHER PROCEDURES TO BE ESTABLISHED BY TIME AND EXPENSE SUB-COMMITTEE AND CO-LEAD COUNSEL

The Time and Expense Sub-Committee and Co-Lead Counsel may establish forms and procedures to further implement and carry out the time and expense submissions required by the Court and necessary to compile and maintain the records. These forms shall be made available by Co-Lead Counsel. Questions regarding the guidelines or procedures or the completion of any forms should be directed to the Time and Expense Sub-Committee or Co-Lead Counsel. The Court reserves the power to modify the terms of this Order.

DONE and **ORDERED** this 15th day of June, 2022.

/s/ JOY FLOWERS CONTI

HONORABLE JOY FLOWERS CONTI
Senior United States District Judge