

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID : **MDL NO. 1355**
PRODUCTS LIABILITY LITIGATION : **SECTION "L"**
 : **JUDGE FALLON**
..... :

THIS DOCUMENT RELATES TO ALL CASES:

ORDER & REASONS

The Court is in receipt of the Memorandum Regarding Common Benefit Cost Distribution, submitted on behalf of Richard J. Arsenault, Dawn Barrios, James T. Capretz, Patti Durio-Hatch, and Walter C. Dumas , members of the State Liason Committee. (SLC members). The Court is also in receipt of the Opposition to the Memorandum, submitted on behalf of the Plaintiffs' Steering Committee. Both documents were filed with the Court under seal.

BACKGROUND:

At the beginning of this MDL, the Court designated a Plaintiffs Steering Committee (PSC) to conduct and coordinate the discovery stages of the litigation. *See* this Court's Pretrial Order No. 2. All members of the PSC were assessed and contributed a fixed amount of money to the fund at the beginning of the litigation and at other times throughout the litigation. Other participating plaintiff attorneys, such as members of the SLC, were assessed and contributed to the fund as well. As the litigation progressed, the various plaintiff attorneys who performed works for the common benefit of the plaintiffs' cause incurred additional expenses and paid various costs associated with the litigation. At some point, a number of cases were amicably resolved. A percentage of the recovery of those cases was deposited into a plaintiffs' litigation fund created by this Court (*See* this Court's Pretrial Order No. 16). The fund was created to reimburse plaintiff attorneys for expenses incurred and worked

performed for the common benefit.

On April 21, 2003, the PSC moved for a partial disbursement of funds from the account. The Court granted the motion on May 5, 2003. SLC members objected that the distribution should not have taken place without their consent.

On June 2, 2003, the PSC moved for another disbursement of funds from the account. The Court ordered Plaintiffs' Liason Counsel to confer with SLC members to attempt to reach an agreement on how the monies should be disbursed. The parties conferred, but were unable to reach an agreement. Thus, the issue is before the Court to resolve.

ANALYSIS:

The question before the Court is whether the present distribution should be based on the assessment and contribution made by participating firms or based on the total amount of costs incurred for the common benefit as evidenced by monthly reports submitted by participating firms. The Court finds that the most reasonable solution at this point in the case is to distribute the funds based on the percentage of the actual assessment contributed by member firms. The Court so finds because the amount contributed by member firms is readily determinable, whereas the costs incurred by firms may require evidence to establish with some degree of certainty. Different firms and practitioners assess costs for the same activities at different rates. Though the Court does not question that plaintiffs' counsel are reporting their costs accurately, the Court recognizes that there may be objections to how certain costs are charged and what costs are appropriate for reimbursement. Accordingly:

IT IS ORDERED that the Motion of the Plaintiffs' Steering Committee for Release and Disbursement of Funds from Deposit Made to the Registry of the Court pursuant to Pretrial Order No. 16 is hereby GRANTED.

IT IS FURTHER ORDERED that the funds shall be distributed based on some pro ration of the actual assessment contributed by member firms as detailed in this Order & Reasons.

New Orleans, Louisiana, this ____ day of September, 2003.

UNITED STATES DISTRICT COURT JUDGE