

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE NATIONAL
PRESCRIPTION
OPIATE LITIGATION**

CASE NO. 1:17-MD-2804

**THIS DOCUMENT RELATES
TO:
“All Cases”**

) **David R. Cohen**
) **Randi S. Ellis**
) **Hon. David R. Herndon**
)
) **FEE PANEL ORDER NO. 36-E**
) **REGARDING ADJUSTMENTS**
) **TO COMMON BENEFIT AMOUNT**
) **TO BE PAID BY JANSSEN**

I. Adjustments to Janssen’s Payment Obligations to the Common Benefit Fee Fund

Exhibit R §II.H.5 of the *Janssen Settlement Agreement* states as follows:

With respect to the Common Benefit Fund, the Fee Panel shall (subject to any applicable MDL Court Order):

- a. Review the applications of all Attorneys seeking compensation from the Common Benefit Fund, including determining eligibility for each Attorney as set forth in Section II.G.
- b. Reduce, on an annual basis, Janssen’s payment obligations, as set forth in paragraph II.C.5. The Panel shall inform Janssen and the MDL PEC of all such amounts and adjust Janssen’s payment obligations accordingly.
- c. Using criteria set forth in Sections II.C and II.I, allocate amounts from the Common Benefit Fund to eligible Attorneys, including payment amounts for each Payment Year. In making such allocations (regardless of the Participation Tier achieved), the Panel shall apply the principles set forth in Section II.C.4 and shall allocate any reduction in the payments of Janssen specified in paragraph II.C.5 to the amounts paid to Attorneys with a Fee Entitlement to Litigating Subdivisions that are not Participating Subdivisions.

The Fee Panel completed the requirements of Exhibit R §II.H.5.a&b, and is in the process of completing the requirements of Exhibit R §II.H.5.c. The Fee Panel informed Janssen and the MDL PEC of the adjustments to Janssen's payment obligations to the Common Benefit Fund. The Fee Panel allowed Janssen and the MDL PEC an opportunity to review and, if necessary, dispute the calculations related to the amounts Janssen is required to pay. Neither Janssen nor the MDL PEC disputed the adjustments to the Janssen Common Benefit Fund. Therefore, the Fee Panel now declares the amounts listed below to be final and no longer subject to objection.

II. Reductions to Janssen's Payment Obligations to the Common Benefit Fee Fund

Pursuant to Exhibit R §II.C.1 of the *Janssen Settlement Agreement*, Janssen is required to pay \$184,615,384.64 into the Janssen Common Benefit Fund. This payment amount is subject to the adjustments set forth in Exhibit R. On November 11, 2022, the Directing Administrator notified the Fee Panel that the "Janssen Settlement Participation Tier is Tier 2." Pursuant to Exhibit R §II.C.6.:

b. At Participation Tier 2, the Common Benefit Fund payments to be made by Janssen shall be reduced only as follows:

i. Reduction by the Fee Panel. With respect to all Attorneys making an application that seeks payment from the Common Benefit Fund, the Fee Panel shall, following a determination that an Attorney is eligible under Section II.G, apply the criteria specified in paragraph II.C.4 in determining whether the lack of participation by Subdivisions with which an Attorney has a Fee Entitlement has resulted in a reduction in the Participation Tier achieved, reduction in benefit to Participating Subdivisions as a result of reductions in Incentives A-D, and/or potential triggering of a suspension, reduction, or offset under the Janssen Agreement. If the Fee Panel concludes that such a reduction has occurred, it must consider (1) the relative size of the Non-Participating Subdivision, as adjusted by the severity measures reflected in Exhibit H (governing the Participation

Tiers) of the Janssen Agreement, and the impact of its non-participation on the Janssen Agreement as a whole (including amounts of Incentive Payments and triggering of suspensions, reductions, or offsets); (2) whether and by how much the payment to the Attorney from the Common Benefit Fund should be reduced as a result of the impact of such non-participation on Participating Subdivisions; and (3) whether some or all of said reduction should revert to Janssen due to the reduction in peace obtained from the Janssen Agreement. Consideration of the factors discussed in this subparagraph and paragraph II.C.4 is mandatory. The decision whether to (and by how much) to reduce payments by Janssen or to reduce the payment to any Attorney based on the factors in paragraph II.C.4 shall be in the sole discretion of the Fee Panel.

III. Reductions for Non-Settling States and Non-Participating Litigating Subdivisions in Non-Settling States

Based on participation data provided to the Fee Panel by the Directing Administrator, the Fee Panel determined that Janssen is entitled to a reduction to the common benefit amounts it is required to pay. As of the Reference Date, five states were Non-Settling States for the Janssen Settlement Agreement: Alabama, New Hampshire, Oklahoma, Washington, and West Virginia. Accordingly, the Fee Panel calculated the reduction to the amount that Janssen is required to pay by multiplying each state's Exhibit F allocation percentage by the total maximum common benefit amount to be paid by Janssen under Exhibit R §II.C.1.

State	Exhibit F Percentage	Maximum Common Benefit Amount	Reduction to Common Benefit Fund
Alabama	1.6491291250%	\$184,615,384.64	\$3,044,546.08
New Hampshire	0.6311550689%		\$1,165,209.36
Oklahoma	0.3053135060%		\$563,655.70
Washington	2.3189040182%		\$4,281,053.57
West Virginia	1.1438786260%		\$2,111,775.93
TOTAL	6.0483803441%		\$11,166,240.64

IV. Non-Participating Litigating Subdivisions in Settling States

Based on participation data provided to the Fee Panel from the Directing Administrator, there were two Non-Participating Litigating Subdivisions as of the Reference Date:

1. City of Baltimore, MD; and
2. District Attorney of Philadelphia, PA.

In *Fee Panel Order No. 11* (Doc. #:4749), the Fee Panel reduced the amounts Janssen is required to pay into the Attorney Fee Fund based on the two Non-Participating Litigating Subdivisions.¹ After reviewing all relevant information, including but not limited to: (i) the total number of Non-Participating Litigating Subdivisions, (ii) the Participation Tier achieved, (iii) the severity measures reflected in Exhibit H, and (iv) the impact of the Non-Participating Litigating Subdivisions on the Janssen Agreement as a whole, the Fee Panel determines that no further offsets, credits, or reductions to the common benefit amount Janssen is required to pay is warranted based on Non-Participating Litigating Subdivisions in Settling States.

V. Revised Amount Janssen is Required to Pay to Common Benefit Fund

Overall, the Fee Panel concludes that Janssen is entitled to a reduction of \$11,166,240.64. Pursuant to Exhibit R §II.C.5, “Any reduction in payment obligation or credit to be given Janssen in this Fee Agreement shall be applied against Payment Year 7 and working backwards.”

The revised Common Benefit Payment Obligation schedule is as follows:

¹ Available at <https://opioidfeepaneldocuments.com/home-2/fee-panel-orders/>

Payment Year	Exhibit R Common Benefit Schedule	Revised Common Benefit Schedule
Payment Year 1	\$19,434,911.24	\$19,434,911.24
Payment Year 2	\$21,562,130.18	\$21,562,130.18
Payment Year 3	\$38,689,349.11	\$38,689,349.11
Payment Year 4	\$26,232,248.53	\$26,232,248.53
Payment Year 5	\$26,232,248.53	\$26,232,248.53
Payment Year 6	\$26,232,248.53	\$26,232,248.53
Payment Year 7	\$26,232,248.53	\$15,066,007.89
TOTAL	\$184,615,384.65²	\$173,449,144.01

IT IS SO ORDERED.

/s/ **David R. Cohen**
Randi S. Ellis
David R. Herndon
FEE PANEL

Dated: August 28, 2024

² Exhibit R Section II.C.1 of the Janssen Settlement Agreement states the total Common Benefit Amount to be \$184,615,284.64. However, the sum of the annual payments is \$184,615,284.65.