

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

**IN RE NATIONAL
PRESCRIPTION
OPIATE LITIGATION**

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

CASE NO. 1:17-MD-2804

**David R. Cohen
Randi S. Ellis
Hon. David R. Herndon**

**FEE PANEL ORDER NO. 38
REGARDING CONTINGENT
FEE FUND CREDITS AND
REBATES TO CVS,
ESTABLISHMENT OF AN
ADMINISTRATIVE EXPENSE
ACCOUNT, AND A PRUDENT
RESERVES HOLDBACK**

I. Adjustments to CVS’s Payment Obligations to the Contingency Fee Fund (“CFF”)

Exhibit R §II.H.7 of the CVS Global Opioid Settlement Agreement states as follows:

With respect to the Contingency Fee Fund, the Fee Panel shall:

- a. Review the applications of all Attorneys seeking compensation from the Litigating Subdivision Fee Fund, including determining eligibility for each Attorney as set forth in Section II.G.
- b. Apply the Mathematical Model in Exhibit A.
- c. Use such allocations to refund amounts owed to CVS from the Attorney Fee Fund, and inform CVS and the MDL PEC of all such adjustments.

The Fee Panel completed the requirements of Exhibit R §II.H.7 and informed CVS and the MDL PEC of the adjustments to CVS’s payment obligations to the Contingency Fee Fund. The Fee Panel provided CVS and the MDL PEC an opportunity to review and, if necessary, dispute the calculations related to the amounts CVS is required to pay. Neither CVS nor the MDL PEC

disputed the amounts of the credits or reductions. Therefore, the Fee Panel now declares the amounts listed below are no longer subject to objection.

II. Non-Participating States

Pursuant to Exhibit R §II.A.2, “If an Eligible State does not join the Agreement by the State Participation Date and is accordingly not a Settling State, the total attorneys’ fees and costs to be paid under this Fee Agreement by CVS shall be reduced by twelve point four percent (12.4%) times the Remediation Payment amount that would have been allocated to that Non-Settling State as set forth in Section IV.B of the CVS Agreement.”

The State of Maryland and the State of Nevada did not participate in the CVS Global Opioid Settlement Agreement. In *Fee Panel Order No. 36-F*, the Fee Panel announced the total reduction to the CVS Attorney Fee Fund for Non-Settling States.¹ The total reduction for Non-Settling States is \$19,452,746.99. Forty Percent (40%) of the total reduction for Non-Settling States was allocated to the Contingency Fee Fund. Therefore, the total reduction to the CVS Contingency Fee Fund for Non-Settling States is **\$7,781,098.79**.

III. Prior Settling States & Prior Settling Subdivisions

Three states settled with CVS before the CVS Global Opioid Settlement Agreement. Therefore, counsel for litigation subdivisions in the following States are not eligible to participate in the national CVS Contingency Fee Fund: Florida, New Mexico, West Virginia.

Similarly, Nassau County, NY, and Suffolk County, NY, also settled with CVS before the CVS Global Opioid Settlement Agreement. Accordingly, counsel for Nassau County, NY, and Suffolk County, NY, are not participating in the CVS Contingency Fee Fund.

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

IV. Non-Participating Litigating Subdivisions in Settling States

Exhibit R §II.D.3 of the CVS Global Opioid Settlement Agreement further provides: “The amount owed by CVS to the Contingency Fee Fund shall be reduced to reflect the non-joinder of Litigating Subdivisions in Settling States by subtracting the amounts identified by the Fee Panel ... that would have been owed to counsel for Non-Participating Litigating Subdivisions in Settling States had such Litigating Subdivisions been Participating Subdivisions.

According to Settlement Participation Form data provided to the Fee Panel by the Directing Administrator, thirty-seven (37) Subdivisions are Non-Participating Litigating Subdivisions in Settling States. *See* Exhibit A. As required by the CVS Global Opioid Settlement Agreement, the Fee Panel applied the Mathematical Model to calculate amounts that would have been paid to counsel for Litigating Subdivisions in the Settling States had their subdivision clients participated in the CVS settlement. The reduction to CVS for Non-Participating Litigating Subdivisions in the Settling States is **\$7,611,524.25**.

The Total Contingency Fee Fund Credits to CVS from the gross maximum amount of **\$200,246,377.60** are **\$15,392,623.04**. Therefore, due to credits owed to CVS, the total amount that CVS is required to contribute to the Contingency Fee Fund over the distribution period is **\$184,853,754.56**. The revised Contingency Fee Fund payment obligations of CVS are as follows:

Payment Year	Original CFF Obligation	Revised CFF Obligation	Difference
Payment Year 1	\$36,519,428.40	\$33,712,237.57	\$2,807,190.83
Payment Year 2	\$32,271,302.40	\$29,790,658.31	\$2,480,644.09 ²
Payment Year 3	\$43,818,549.20	\$40,450,286.47	\$3,368,262.73
Payment Year 4	\$43,818,548.80	\$40,450,286.10	\$3,368,262.70
Payment Year 5	\$43,818,548.80	\$40,450,286.10	\$3,368,262.70
Total	\$200,246,377.60	\$184,853,754.56	\$15,392,623.04

V. Administrative Expense Account

Exhibit R §II.I.1 of the CVS Global Opioid Settlement Agreement provides that the cost of the Fee Panel Post-Effective Date shall be charged against the applicable Fee Fund, based on allocation by the Fee Panel, and shall not be otherwise funded by CVS. The Fee Panel hereby deems it necessary and appropriate to withhold 1.5% of the total contributions made by CVS into the Contingency Fee Fund for administrative expenses incurred by the Fee Panel and its agents and representatives. The full 1.5% contribution will be effectuated in Payment Year 1 to establish the Administrative Expense Account.³ The Fee Panel will draw on the Administrative Expense Account as expenses are incurred. Any unused funds from the Administrative Expense Account remaining at the end of the five-year distribution period will be awarded pro rata to Fund participants before the closure of the Fund.⁴

Settlement	Total Amount Contributed to CFF by Defendant	Administrative Expense Percentage	Total Administrative Expense Account
CVS Global Settlement Agreement	\$184,853,754.56	1.50%	\$2,772,806.32

² CVS previously made full payments into the CVS National Contingency Fee Fund for Payment Year 1 and Payment Year 2. The Fee Panel will refund \$5,287,834.92 (i.e., Payment Year 1 Difference + Payment Year 2 Difference) as soon as the values in this Fee Panel Order are final.

³ The Fee Panel reserves the right to adjust (upwards or downwards) the percentage allocated to the Administrative Expense Account if it determines, in its discretion, that such adjustments are prudent and in the best interests of the Fund.

⁴ Awards for Payment Year 1 and Payment Year 2 will be issued in 2024. The distribution period is five Payment Years, but will take place over four calendar years; 2024 – 2027.

After applying credits to CVS for Non-Settling States and Non-Participating Litigating Subdivisions in Settling States, and accounting for the 1.5% contribution to the Administrative Expense Account, the remaining funds are available to pay eligible Fund participants.

VI. Prudent Reserves Holdback

Due to the complexity and uncertainty involved in administering a Fund with hundreds of Applicants and thousands of Applications, 1% of funds available each year to pay eligible Fund participants will be held in reserve to address potential claims on the Fund and/or objections to the calculated Contingency Fee Fund Award amounts.⁵ Unused funds from the Prudent Reserves Holdback remaining at the end of the five-year distribution period will be awarded pro rata to Fund participants before the closure of the Fund.

Description	CVS Settlement
Gross Amount of Contingency Fee Fund	\$200,246,377.60
Credits/Refunds to Defendants	\$15,392,623.04
Administrative Expense Account (1.5%)	\$2,772,806.32
Prudent Reserves Holdback (1.0%)	\$1,820,809.48
Net Funds Available for CFF Awards	\$180,260,138.76

VII. Appeals and Disputes

Pursuant to Exhibit R §II.B.7 of the CVS Global Opioid Settlement Agreement, “[a]s to awards from the Contingency Fee Fund, there shall be no right of appeal.” However, the Fee Panel is empowered to hear disputes concerning the accuracy of mathematical calculations used in the model.⁶ Therefore, Contact Counsel has 28 days from the date of this Order to provide a written

⁵ The Fee Panel reserves the right to adjust (upwards or downwards) the Prudent Reserves Holdback percentage if it determines, in its discretion, that such adjustments are prudent and in the best interests of the Fund.

⁶ In the interests of efficient fund administration, the Fee Panel will not hear disputes concerning the accuracy of mathematical calculations involving an amount in controversy that is less than one hundred dollars. The Fee Panel

statement to dispute the accuracy of a mathematical calculation. The written statement may be provided to the Fee Panel by sending an email with an attachment to the following email address: contingentfeefund@opioidfeepaneldocuments.com. The email attachment must be in .PDF format and limited to 3 pages, double-spaced, with standard margins, and 12-point font.

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

Dated: October 11, 2024

reserves the right to assess costs and expenses associated with defending a meritless and/or frivolous challenge directly to the Contact Counsel who initiates the challenge.

Exhibit A: Non-Participating Litigating Subdivisions in Settling States

Number	Subdivision Name	State
1	Lake County	Ohio
2	Trumbull County	Ohio
3	District Attorney of Allegheny County	Pennsylvania
4	District Attorney of Philadelphia	Pennsylvania
5	Philadelphia City	Pennsylvania
6	Angelina County	Texas
7	Bailey County	Texas
8	Bexar County	Texas
9	Bowie County	Texas
10	Brazos County	Texas
11	Camp County	Texas
12	Cherokee County	Texas
13	Clay County	Texas
14	Coryell County	Texas
15	Dallas County	Texas
16	Duval County	Texas
17	Ellis County	Texas
18	Freestone County	Texas
19	Henderson County	Texas
20	Jim Hogg County	Texas
21	Jim Wells County	Texas
22	Johnson County	Texas
23	Kaufman County	Texas
24	Kleberg County	Texas
25	Lamar County	Texas
26	Mclennan County	Texas
27	Montgomery County	Texas
28	Polk County	Texas
29	Rockwall County	Texas
30	Rusk County	Texas
31	Smith County	Texas
32	Stephens County	Texas
33	Titus County	Texas
34	Walker County	Texas
35	Webb County	Texas
36	Wichita County	Texas
37	Williamson County	Texas