

**AMENDED AND RESTATED
OPIOID SETTLING DISTRIBUTORS / JANSSEN /
TEVA/ALLERGAN / SETTLING PHARMACIES SETTLEMENTS
COMMON BENEFIT FUND DISTRIBUTION PROCEDURES**

July 10, 2023

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The AMENDED AND RESTATED OPIOID SETTLING DISTRIBUTORS / JANSSEN / TEVA/ALLERGAN / SETTLING PHARMACIES SETTLEMENTS COMMON BENEFIT FUND DISTRIBUTION PROCEDURES (“Common Benefit FDPs” or “CB FDPs”) contained herein provide for resolving all applications (“Common Benefit Application(s)”) submitted for an award (“Common Benefit Award”) from the Common Benefit Fund, a Sub-Fund of the Attorney Fee Fund (as defined in the Agreement on Attorneys’ Fees, Expenses and Costs, which is the Fee Agreement to the Settlement Agreements between and among the Settling States, Settling Distributors, and Participating Subdivisions, the Settling States, Janssen, and Participating Subdivisions, the Settling States, Participating Subdivisions, Participating Special Districts and Teva/Allergan, and the Settling States, Participating Subdivisions, and Settling Pharmacies (i.e., Walgreens/Walmart/CVS) (“Fee Agreement,” commonly referred to as Exhibit R)), as provided in and required by the Orders to Establish Qualified Settlement Funds, Appoint Panel of Common Benefit and Contingency Fee Funds Arbiters, Approve Fee Fund Allocation and Distribution Process and Approve Common Benefit Cost Payment and Assessment (*In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio, August 12, 2021, June 26-27, 2023) (Dkt. Nos. 3828, 5079 & 5088)), (the “Establishing Orders”), and further by the Order Establishing Application Protocols for Reimbursement of Common Benefit Attorneys’ Fees under the Janssen and Distributors Settlement Agreements (*In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio, April 1, 2022) (Dkt. No. 4344) (the “Fee Application Protocol Order”) (as supplemented by the Order Regarding Recent Settlement Agreements (*In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio, June 27, 2023) (Dkt. No. 5090))). The Fee Panel Arbiters of the Attorney Fee Fund (“Fee Panel”) shall implement and administer these Common Benefit FDPs in accordance with the Establishing Orders, Fee Application Protocol Order and the Settlement Agreements, along with any ancillary, supplementary, or modifying orders of the Court relating to the Attorney Fee Fund (any such related orders of the Court, together with the Establishing Orders and Fee Application Protocol Order, collectively, the “Court Orders”; the Court Orders and the Settlement Agreements, along with any orders of the Fee Panel, collectively, “Fund Documents”).

SECTION I

Introduction

Section 1.1 Purpose

These Common Benefit FDPs have been adopted pursuant to the Fund Documents. They are designed to compensate eligible attorneys from the Common Benefit Fund in the manner contemplated by the Fund Documents.

Section 1.2 Interpretation

Except as may otherwise be provided below, nothing in these Common Benefit FDPs shall be deemed to create a substantive right for any attorney or applicant.

Section 1.3 Definitions

Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Fund Documents.

SECTION II

Overview

Section 2.1 Attorney Fee Fund Goals

The goal of the Attorney Fee Fund is to compensate attorneys for Litigating Subdivisions or Tribal Nations in the manner contemplated by the Fund Documents and the Attorney Fee Fund Agreement. These Common Benefit FDPs furthers that goal by setting forth procedures for processing and paying Common Benefit Applications submitted to the Common Benefit Fund in a manner consistent with the terms of the Fund Documents. To this end, and as set forth below, counsel may submit a Common Benefit Application.¹

As directed by the Fund Documents, the Attorney Fee Fund will follow the protocols developed by the Fee Panel for the submission and review of Common Benefit Applications and liquidation of Common Benefit Awards. The Fee Panel has established the following website for the submission of Common Benefit Applications: <http://opioidfeepaneldocuments.com> (the “Fee Panel Website”).

Section 2.2 Common Benefit Award Liquidation Procedures — General Overview

The Fee Panel has established the Fee Panel Website to provide information to persons who wish to apply for a Common Benefit Award. Applicants must first obtain access to the secure online application portal for the Common Benefit Fund. Instructions on how to obtain access to the application portal for the Common Benefit Fund are posted on the Fee Panel Website. All Common Benefit Applications must be submitted through the application portal. The Attorney Fee Fund will assign application numbers or other unique identifiers to Common Benefit Applications in the order they are submitted. The Attorney Fee Fund shall take all reasonable steps to resolve Common Benefit Applications as efficiently and expeditiously as possible at each stage of awards processing.

As set forth in Section II of the Fee Application Protocol Order, applicants must submit their Common Benefit Applications via the Fee Panel Website. Applicants must also submit a

¹ Applications to the Contingency Fee Fund will be governed by the Contingency Fee Fund Distribution Procedures.

completed Time Report to the Auditor (as defined by the Fee Application Protocol Order). The Auditor shall audit all Time Reports and submit an Auditor's Time Report to the Fee Panel for *de novo* review in accordance with Section III of the Fee Application Protocol Order.

In accordance with Section IV of the Fee Application Protocol Order and other Fund Documents, the Fee Panel shall conduct a *de novo* review of the Auditor's Time Report. The Fee Panel shall then issue their preliminary fee allocation recommendation containing a list of all applicants and their corresponding fee allocations. Applicants shall have an opportunity thereafter to submit confidential written objections to the Fee Panel with respect to an applicant's own Common Benefit Award and request that the Fee Panel conduct a hearing on those objections. Following the conclusion of all hearings conducted by the Fee Panel, the Fee Panel shall file its final fee allocation recommendation with the Court with notice to all applicants.

As provided under Section V of the Fee Application Protocol Order, the Court will establish the applicant appeal process for the Fee Panel's final fee allocation recommendation. Upon the resolution of any and all appeals to the Court, pursuant to Section VI of the Fee Application Protocol Order, the Court will enter a final non-appealable award of attorneys' fees from the Common Benefit Fund and shall direct the Fee Panel to allocate those amounts to each applicant by year, using the criteria set forth in the Fee Agreement.

Section 2.3 Reduction in Payment Obligations or Credits to Settling Defendants

The Fee Panel shall consider the factors described in Section III.E.6 of the Fee Agreement as to Teva/Allergan and Section II.C.4 of the Fee Agreement as to the other Settling Defendants to determine how and whether to reduce the amounts to be paid by Settling Defendants under the Fee Agreement and the Fee Panel may also, at its discretion, consider other factors. Any reduction in payment obligation or credit to be given a Settling Distributor or Janssen in the Fee Agreement shall be applied against Payment Year 7 and working backwards. Any reduction in payment obligation or credit to be given CVS in the Fee Agreement shall be applied against Payment Year 5 and then working backwards. Any reduction in payment obligation or credit to be given Walgreens, Teva or Allergan in the Fee Agreement shall be applied against the last Payment Year and then working backwards. Any reduction to an applicant not credited to Settling Distributors, Janssen, Walgreens, Teva or Allergan shall be allocated to attorneys whose Litigating Subdivision clients participated in the settlement(s) by the Initial Participation Date. Any reduction to an applicant not refunded to Walmart shall be allocated to attorneys whose Litigating Subdivision clients participated in the settlement by the Threshold Subdivision Participation Date. Any reduction to an applicant not credited to CVS shall be allocated to attorneys whose Litigating Subdivision clients participated in the settlement by the Initial Subdivision Participation Date. The amounts to be provided as a credit or offset to Settling Distributors or Janssen from the Common Benefit Fund shall depend on the relevant Participation Tier achieved, set forth in Exhibit H of the Settlement Agreements, as set forth in Section II.C.6 of the Fee Agreement.

SECTION III

Resolution of Common Benefit Applications

Section 3.1 Common Benefit Application Deadline

All Common Benefit Applications for Common Benefit Awards shall be submitted through the secure online application portal as instructed on the Fee Panel Website on or before the deadlines established by the Orders of the Fee Panel or otherwise by the Attorney Fee Fund. No Common Benefit Application filed after this time will be processed or otherwise considered absent leave from the Fee Panel for good cause shown.

Section 3.2 Eligibility

(a) In General

Attorneys engaged in Qualifying Representations of Participating Litigating Subdivisions or Tribal Nations, as defined in the Fee Agreement, may be eligible for an award of attorneys' fees from the Common Benefit Fund, if those Attorneys: (1) performed work for the common benefit of all subdivisions or Tribal Nations pursuant to the guidelines set forth in the Order Regarding Plaintiff Attorneys' Fees and Expenses (*In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio, May 1, 2018) (Dkt. No. 358)) (the "Fee and Expense Order"), as amended by the Order Appointing Fee Committee and Addressing Related Matters (*In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio, February 25, 2022) (Dkt. No. 4286)) (the "Fee Committee Order") (as supplemented by the Order Regarding Recent Settlement Agreements (*In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio, June 27, 2023) (Dkt. No. 5090))); and (2) satisfy the eligibility criteria set forth in Section III.G. of the Fee Agreement as to Teva/Allergan and Section II.G. of the Fee Agreement as to the other Settling Defendants.

Participating Counsel and Attorneys engaged in Qualifying Representations of Participating Litigating Subdivisions or Tribal Nations who wish to apply for attorneys' fees from the Common Benefit Fund shall review the Court Orders and the Fee Agreement to ensure eligibility for compensation prior to submitting a Common Benefit Application.

All applicants must meet the eligibility requirements set forth in the Establishing Orders and Section III.G. of the Fee Agreement as to Teva/Allergan and Section II.G. of the Fee Agreement as to the other Settling Defendants. Additionally, if a Common Benefit Award is approved, in order to continue receiving awards from the Common Benefit Fund, an attorney must provide an annual certification, in the form required by the Attorney Fee Fund, that he or she continues to meet the eligibility requirements as required by the Establishing Orders and the Fee Agreement. An attorney may apply for and recover attorneys' fees from more than one fund, including without limitation, the Common Benefit Fund, the Contingency Fee Fund, and the Litigating Subdivision Cost Fund, along with any fund created by a past or future State Back-Stop Agreement, provided the attorney satisfies the requirements relevant to each such fund and requirements for disclosure to the Attorney Fee Fund.

Pursuant to the Establishing Orders and the Fee Agreement, all attorneys applying for a Common Benefit Award shall fully disclose any and all monies in attorneys' fees, including referral fees, expenses paid, promises for payment, or any other fee entitlement in any opioid litigation (including, but not limited to, any payment, expectation of payment, or perceived entitlement to participate in a State Back-Stop Agreement, or any other agreement reached with a Settling State or any Subdivision or any other source regarding payment of fees) as a condition of participating in the Attorney Fee Fund. Similarly, any right to payment from any other fund, for example a fund for payment to lawyers representing Settling States or Tribal Nations or Subdivisions shall be disclosed on the Common Benefit Application.

(b) Common Benefit Applications

Attorneys engaged in Qualifying Representations of Participating Litigating Subdivisions or Tribal Nations shall submit a Common Benefit Application for all Participating Litigating Subdivisions or Tribal Nations.

In order to be accepted, the Common Benefit Application shall also include the following:

1. A certification by the submitting applicant, in the form required by the Attorney Fee Fund, certifying under the penalty of perjury, among other things, that:
 - a. The submitting applicant is authorized to make all certifications on behalf herself/himself and her/his law firm;
 - b. The submitting applicant shall immediately notify the Attorney Fee Fund of any change of email address or any other circumstance that could impact the Attorney Fee Fund's ability to evaluate and process or make disbursements pursuant to the Common Benefit Application;
 - c. The submitting applicant shall release and hold harmless the Attorney Fee Fund and any of its agents or representatives from any and all claims related to the processing, evaluation, and determination of eligibility and award amounts, and the disbursements of any such amounts in connection with the Common Benefit Application/Award;
 - d. The submitting applicant shall release and hold harmless the Fee Panel and any of its agents or representatives from any and all claims related to the disbursement of Common Benefit Awards;
 - e. The submitting applicant shall cooperate fully with the Fee Panel in connection with its work to evaluate, process, and audit her/his Common Benefit Application/Award; and
 - f. The submitting applicant shall be solely responsible for: (i) receiving any Settling Defendant Settlement Agreement Common Benefit Fee award funds from the Fee Panel, and (ii) distributing such funds among any law firms, attorneys, lienholders, or other persons or entities in accordance with any applicable agreement or as otherwise required by law.

The Attorney Fee Fund will promptly notify the submitting applicant of any deficiencies in the Common Benefit Application. The submitting applicant shall be solely responsible for

causing any deficiencies to be cured and the Attorney Fee Fund shall not deem accepted any Common Benefit Application with unresolved deficiencies.

Section 3.3 Submission of Common Benefit Applications and Time Reports

To be eligible for a Common Benefit Award, applicants must also submit a completed Time Report to the Auditor (to the extent not previously submitted), a copy of which is available on the Fee Panel Website. Most of the law firms that have pursued claims in the MDL have engaged in efforts that are not limited to a single defendant nor a single aspect of the litigation; rather, each firm's work usually involved multi-defendant approaches requiring overarching tactics. Accordingly, and given the nature of the common benefit doctrine, the Fee Panel concludes it is preferable and appropriate to issue to each deserving applicant a single common benefit fee award, combined from all of the existing Settlement Agreement Common Benefit Funds, rather than issue to each applicant several common benefit fee awards, seriatim. The Fee Panel has already received (under a deadline that has already passed) Common Benefit Fee Applications and Time Reports for work done through June 30, 2021. Therefore, the Fee Panel directs that any attorney who seeks an award for common benefit work done between June 30, 2021 and June 30, 2023 shall submit a Supplemental Common Benefit Fee Application and Supplemental Time Report, subject to the deadline(s) established by the Orders of the Fee Panel or otherwise by the Attorney Fee Fund.

To assist applicants in preparing their Time Reports, the Auditor, at the direction of the Fee Panel, has prepared a Guide to Common Benefit Time Billing (Updated July 20, 2023) (hereinafter, "Billing Guide"), which includes detailed instructions, examples, and illustrations for completing the Time Report. The Billing Guide is available for all applicants at the Fee Panel Website. Applicants shall refer to the Billing Guide when preparing their time submissions and while preparing their responses pursuant to the Audit Process set forth in Section 3.4 below. Late submission of Time Reports will not be permitted without prior leave of the Fee Panel and only for good cause shown. Submission of Time Reports must conform to the requirements set forth in the Billing Guide and the Fee and Expense Order, as amended by the Fee Committee Order. The completed Time Report shall be submitted electronically to the Auditor via email or ShareFile to OpioidTimeReport@amylcollinspc.com.

Section 3.4 Audit Process

The Auditor shall perform the audit process envisioned in the Fee and Expense Order for all applicants. For common benefit time timely submitted by applicants for work performed from January 1, 2019 through June 30, 2021, the Auditor provided Common Benefit applicants with a spreadsheet of non-compliant time entries with reasons for non-compliance indicated for each entry (hereinafter, "Time Audit Spreadsheet"). Applicants who submitted time for work performed in 2018 but who did not participate in the 2018 audit (as described in the Fee Application Protocol Order) were provided their non-compliant 2018 time entries as well. The Auditor identified and include in the Time Audit Spreadsheet, for each Common Benefit Applicant, any time entry that the Auditor concludes falls into one or more of the categories A through P set forth in Section III of the Fee Application Protocol Order.

Applicants will be provided notice and an opportunity to respond if the Auditor flags for disallowance a significant percentage of the applicant's total submitted time for work performed through June 2023. The Fee Panel, in its sole discretion and after consultation with the Auditor, will determine the timing and manner of notice provided to applicants who are subject to an Audit Notice.

The Time Audit Spreadsheet and any subsequent Audit Notice are confidential between the auditor and applicant, but may be considered by the Fee Panel during the deliberative process. Applicants are prohibited from engaging in substantive discussions with the Auditor regarding time entries determined by the Auditor to be non-compliant. If applicants disagree with the Auditor's determination regarding certain time entries, they may so indicate in any time audit response permitted by the Fee Panel and may, at their discretion, provide additional documentation in support of their position along with their time audit response. Unless as otherwise ordered by the Fee Panel, applicants shall submit their time audit responses to the Auditor within **45 days** of receipt of time entry audit determinations by the Auditor. Under no circumstances may applicants add time when responding to the time audit without prior leave of the Fee Panel and only for good cause shown. Late time audit responses will not be permitted without prior leave of the Fee Panel and only for good cause shown. Unless as otherwise directed by the Fee Panel, the Auditor will review the time audit responses of each Common Benefit Applicant and prepare a report ("Time Report") summarizing each Common Benefit Applicant's time submission for review by the Fee Panel. The Auditor's final determination of non-compliance is not binding, nor does the Auditor have the authority to disallow, either in whole or in part, any time submission of any Common Benefit Applicant. To be clear, the Fee Panel's review of all time submissions will be *de novo*.

Section 3.5 Fee Panel Review and Recommendation

The Fee Panel shall conduct a *de novo* review of the Auditor's Time Report. The Fee Panel shall be provided, upon request of the Fee Panel, any and all information relied upon by the Auditor. The Fee Panel may, at its discretion, invite input from attorneys who held leadership positions within the federal and/or state and/or tribal litigation, including the Fee Committee, members of the MDL Plaintiffs' Executive Committee, members of state committees or co-chairs, defendant team leaders, trial team leaders, and any other attorneys (hereinafter, "Leadership Attorneys") who are able to provide insight into the quantity and quality of the work claimed in the Common Benefit Applications, including the common benefit time submissions. All information exchanged between the Fee Panel and Leadership Attorneys shall be treated by all participants as confidential. The Fee Panel may also conduct interviews with applicants at the discretion of the Fee Panel, to ask questions regarding information contained in the Common Benefit Applications and the Auditor's Time Report. Each interview shall be conducted in the presence of a court reporter. The transcript will be solely for the use of the Fee Panel, unless otherwise directed by the Court. All information exchanged between the Fee Panel and others (including applicants, Leadership Attorneys, the Fee Committee, or the Auditor) will be treated by all participants as confidential and will not be disclosed to any person other than members of the Fee Panel; and no member of the Fee Panel shall share with any lawyer information obtained from another Common Benefit Application, any interview, or any related submission. None of the Fee Panel meetings, interviews, fee applications, or related submissions or materials, including the Auditor's reports, are subject to discovery.

After deliberation, the Fee Panel shall issue its preliminary fee allocation recommendation in writing to all applicants. The preliminary fee allocation recommendation shall contain a list of all applicants and their corresponding fee allocations. Accordingly, an applicant will see not only his or her own preliminary fee allocation recommendation, but also those of every other applicant. In making its preliminary fee allocation recommendation, the Fee Panel shall consider all relevant factors contained in the Court Orders, including but not limited to the *Johnson*² factors (as these have been applied and interpreted by the federal courts with reference to common benefit and other court-awarded fees), the factors listed in the Establishing Orders (which factors may be applied and given relative weight in the Fee Panel's discretion), and any common detriment contributed by the applicant as set forth in Section III.E.6 of the Fee Agreement as to Teva/Allergan and Section II.C.4 of the Fee Agreement as to the other Settling Defendants. The Fee Panel shall also consider the relative common benefit contribution of each applicant to the outcome of the litigation, including the factors A through G set forth in the Fee Application Protocol Order (pp. 9-10). The Fee Panel may also, at its discretion, consider other factors in determining how to allocate funds among applicants as provided under Section III.E.7 of the Fee Agreement as to Teva/Allergan and Section II.C.5 of the Fee Agreement as to the other Settling Defendants.

Applicants shall have **30 days** to submit to the Fee Panel confidential written objections to the Fee Panel's preliminary fee allocation recommendation. An applicant may only object to its own Common Benefit Award. Applicants filing a written objection shall include:

- A. A statement that the fee allocation recommendation is disputed;
- B. The basis and reasoning for the dispute, including a discussion of any applicable case law;
- C. A proposed resolution; and
- D. If desired, a request to appear before the Fee Panel either via Zoom or in person, including the name(s) of the individuals who will be appearing on behalf of the applicant. If the objecting applicant requests to have more than two people from its firm in attendance at the hearing, the applicant must explain why each person's presence is necessary.

Upon receipt of the applicant's notice of objection, the Fee Panel shall provide written notice of receipt of the objection. If a hearing on an objection is requested by an applicant and granted by the Fee Panel, the Fee Panel shall also provide in writing the names of those individuals whom the Fee Panel has authorized to appear at the hearing on behalf of the applicant, and the date, time, and location (in-person or via Zoom) for the hearing.³ The hearings shall be conducted in the presence of a court reporter. The transcript shall be for the use of only

² *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714, 717-19 (5th Cir.1974)

³ The Fee Panel may include assistants or consultants at hearings, meetings, or other communications, to the extent their presence is necessary to assist the Fee Panel in fulfilling its responsibilities under the Fund Documents.

the Fee Panel and the Court. If the Fee Panel concludes the objection is frivolous or in bad faith, it may reduce the applicant's award.

Upon conclusion of all applicant objector hearings, the Fee Panel shall deliberate and file with the Court its final common benefit attorney fee allocation recommendations and shall provide notice to all applicants.

Section 3.6 Fee Panel Solely Responsible for Common Benefit Awards

As set forth in Section III.H. of the Fee Agreement as to Teva/Allergan and Section II.H of the Fee Agreement as to the other Settling Defendants, subject to Sections 3.7 and 3.8 below, the Fee Panel shall be solely responsible for determining the amount of Common Benefit Awards. None of the Released Entities (as defined in the Fee Agreement) shall have any responsibility, obligation, or liability of any kind whatsoever with respect to how Contingent Fee Awards are calculated, except that the Fee Panel may receive information from the Settling Defendants: (a) as to the identity of Participating, Non-Participating, Litigating, Later Litigating, and Non-Litigating Subdivisions; (b) regarding the impact of non-participation by a Litigating Subdivision as is relevant to the Fee Panel's determination in Section III.E.6 of the Fee Agreement as to Teva/Allergan and in Section II.C.4 of the Fee Agreement as to the other Settling Defendants; and (c) such other information as the Settling Defendants may voluntarily elect to provide, including information the Fee Panel may solicit from "Leadership Attorneys."

Any person or entity claiming a right or title to, or interest in, a Common Benefit Award shall be subject to the provisions of these Common Benefit FDPs, including without limitation the eligibility requirements set forth in Section 3.2 above and the obligation to file a Common Benefit Application that complies with all requirements established by these Common Benefit FDPs or otherwise by the Fee Panel pursuant to the Fund Documents.

Section 3.7 Appeal of Fee Panel Allocation Recommendation

The Court will set forth, at the appropriate time, the process by which applicants may appeal to the Court the final fee allocation recommendation of the Fee Panel, including the deadline for filing notice with the Court. Any appeal of the Fee Panel's final fee allocation recommendation shall be reviewed by the Court under an abuse of discretion standard. The Court has plenary authority regarding Common Benefit Awards and will make the final determination of an approved distribution of fees from the Attorney Fee Fund.

Section 3.8 Final Award and Distribution

Upon resolution of all appeals to the Court, or in the event no appeals are filed, the Court will enter a final non-appealable award of attorneys' fees from the Common Benefit Fund and shall direct the Fee Panel to allocate those amounts to each applicant by year, using the criteria set forth in Fee Agreement.

SECTION IV

Common Benefit Applications Materials

Section 4.1 Common Benefit Application

The Attorney Fee Fund shall prepare suitable and efficient Common Benefit Application materials for applicants seeking to apply for a Common Benefit Award. The Common Benefit Application form to be used by the Attorney Fee Fund shall be developed by the Attorney Fee Fund. The Attorney Fee Fund shall also develop a method and instructions for the electronic submission (and withdrawal) of Common Benefit Applications, Time Reports, supporting materials, and materials submitted pursuant to the Audit Process and Fee Panel Review set forth in Sections 3.4 and 3.5 of these FDPs.

Section 4.2 Withdrawal of Common Benefit Applications

A submitting applicant may, without leave of the Fee Panel, withdraw or amend a Common Benefit Application before the time period prescribed in Section 3.1.

SECTION V

Miscellaneous

Section 5.1 Costs Considered

Notwithstanding any provisions of these Common Benefit FDPs to the contrary, the Fee Panel shall always give appropriate consideration to the cost of investigating and uncovering invalid Common Benefit Applications (or false statements within them) so that the payment of Common Benefit Awards to valid Attorney Fee Fund applicants is not further impaired by such processes with respect to issues related to the accuracy and completeness of information included in the Common Benefit Application. Nothing herein shall prevent the Fee Panel, in appropriate circumstances, from contesting the validity of any Common Benefit Application (or false statements within them), whatever the costs, or declining to accept Common Benefit Applications from sources that the Fee Panel has determined to be unreliable pursuant to the Audit Process and Fee Panel Review described in Sections 3.4 and 3.5 above.

Section 5.2 Discretion to Vary the Order and Amounts of Payments in Event of Limited Liquidity

Consistent with the provisions hereof, the Fee Panel shall proceed as quickly as possible to liquidate valid Common Benefit Awards and shall make payments to holders of such awards in accordance with these Common Benefit FDPs promptly as funds become available and as awards are liquidated, while maintaining sufficient resources to pay Attorney Fee Fund expenses and future valid awards in substantially the same manner.

Because the Attorney Fee Fund's income over time remains uncertain, and decisions about payments must be based on estimates that cannot be done precisely, payments may have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to applicants. However, the Fee Panel shall use its best efforts to treat similar Common Benefit Applications in substantially the same manner, consistent with its duties as Fee Panel, the purposes of the Attorney Fee Fund, the established allocation of funds as between the Common Benefit Fund and the Contingency Fee Fund, the required offsets, refunds, and credits

due to Settling Defendants, and the practical limitations imposed by the inability to predict the future with precision.

Section 5.3 Releases

The Fee Panel shall have the discretion to determine the form and substance of the releases to be provided to the Attorney Fee Fund. As a condition to making any payment, the Attorney Fee Fund shall obtain a general, partial, or limited release as appropriate.

Section 5.4 Third-Party Services

Nothing in these Common Benefit FDPs shall preclude the Attorney Fee Fund from contracting with another claims resolution organization to provide services to the Attorney Fee Fund provided that eligibility and valuation determinations are made in accordance with the relevant provisions of these Common Benefit FDPs.

Section 5.5 Amendments

Except as otherwise provided in the Fund Documents, the Fee Panel may amend, modify, delete, or add to any provisions of these Common Benefit FDPs.

Section 5.6 Severability

Should any provision contained in these Common Benefit FDPs be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of these Common Benefit FDPs.

Section 5.7 Governing Law

Except as expressly governed by the Court Orders, common benefit doctrine under federal common law, and/or other Fund Documents, including without limitation for purposes of determining the eligibility for or value of any Common Benefit Award, administration of these Common Benefit FDPs shall be governed by, and construed in accordance with, the laws of the State of Delaware.

Section 5.8 Definitions; Conflict with Fund Documents

Unless otherwise defined herein, all capitalized terms shall have the meaning supplied to them by the Fund Documents. In the event of any conflict between the provisions of these Common Benefit FDPs and the provisions of the Fund Documents, the provisions of the Fund Documents shall govern and control.

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