

**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. 47
REGARDING CONTINGENT
FEE FUND CREDITS AND
REBATES TO KROGER,
ESTABLISHMENT OF AN
ADMINISTRATIVE EXPENSE
ACCOUNT, AND A PRUDENT
RESERVES HOLDBACK**

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

Exhibit R §II.H.7 of the Kroger 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 Kroger from the Attorney Fee Fund, and inform Kroger and the MDL PEC of all such adjustments.

The Fee Panel completed the requirements of Exhibit R §II.H.7 and informed Kroger and the MDL PEC of the adjustments to Kroger’s payment obligations to the Contingency Fee Fund. The Fee Panel provided Kroger and the MDL PEC an opportunity to review and, if necessary, dispute the calculations related to the amounts Kroger is required to pay. Neither Kroger 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. Reductions for 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 Kroger 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 Kroger Agreement.”

Certain States were not eligible to participate in the Kroger Settlement Agreement either because Kroger does not operate in the State, or because Kroger already settled with the State prior to entering into the Multistate Settlement Agreement. Other States (including Texas and Kentucky) settled with Kroger outside of the national Kroger Settlement Agreement. And other states (including Alaska and Florida) declined to participate in the Kroger Settlement Agreement. The adjustments to the Fee Agreement for all of these aforementioned states not participating in the Kroger Settlement Agreement were already incorporated into the amounts Kroger is required to pay under the Fee Agreement. *See* Kroger Settlement Agreement, Ex. R §II.A.2 ¹ Of the remaining States that were eligible to participate, all joined the national Kroger Settlement Agreement. Accordingly, the total reduction for Non-Settling States is **\$0.00**. Forty Percent (40%) of the total reduction for Non-Settling States was allocated to the Contingency Fee Fund. Therefore, the total reduction to the Kroger Contingency Fee Fund for Non-Settling States is **\$0.00**.

¹ “The Parties have agreed to reduce the total amounts to be paid by Kroger to the Contingency Fee Fund, the Subdivision Cost and Expense Fund, and the Common Benefit Fund as set forth herein. This reduction reflects the Florida and Alaska credits that Kroger will receive (\$3,330,045.03 in total), and the portion of the Kentucky and Texas credits (\$6,233,103.02 in total) that Kroger will receive. These credits have already been applied to, and are reflected in, the maximum payments by Kroger to these funds as provided in this Fee Agreement.”

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

Exhibit R §II.D.3 of the Kroger Settlement Agreement further provides: “The amount owed by Kroger 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, zero (0) Subdivisions are Non-Participating Litigating Subdivisions in Settling States. As required by the Kroger 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 Kroger settlement. The reduction to Kroger for Non-Participating Litigating Subdivisions in the Settling States is **\$0.00**.

Payment Year	Date of Payment	Kroger CFF Obligation	Difference
Payment Year 1	March 31, 2024	\$5,920,000.00	\$0.00 ²
Payment Year 2	March 31, 2025	\$5,920,000.00	\$0.00
Payment Year 3	March 31, 2026	\$5,920,000.00	\$0.00
Payment Year 4	March 31, 2027	\$5,920,000.00	\$0.00
Payment Year 5	March 31, 2028	\$5,920,000.00	\$0.00
Payment Year 6	March 31, 2029	\$3,291,140.78	\$0.00
Total		\$32,891,140.78	\$0.00

V. Administrative Expense Account

Exhibit R §II.I.1 of the Kroger 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 Kroger. The Fee Panel hereby deems it

² Kroger previously made full payments into the Kroger National Contingency Fee Fund for Payment Year 1 and Payment Year 2.

necessary and appropriate to withhold 1.5% of the total contributions made by Kroger into the Contingency Fee Fund, to be used 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 six-year distribution period will be awarded pro rata to Fund participants before the closure of the Fund.

Settlement	Total Amount Contributed to CFF by Defendant	Administrative Expense Percentage	Total Administrative Expense Account
Kroger Global Settlement Agreement	\$32,891,140.78	1.50%	\$493,367.11

After 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 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.⁴ Unused funds from the Prudent Reserves Holdback remaining at the end of the six-year distribution period will be awarded pro rata to Fund participants before the closure of the Fund.

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 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.

Description	Kroger Settlement
Gross Amount of Contingency Fee Fund	\$32,891,140.78
Credits/Refunds to Defendants	\$0.00
Administrative Expense Account (1.5%)	\$493,367.11
Prudent Reserves Holdback (1.0%)	\$323,977.74
Net Funds Available for CFF Awards	\$32,073,795.93

VII. Appeals and Disputes

Pursuant to Exhibit R §II.B.7 of the Kroger 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.⁵ Therefore, Contact Counsel has 28 days from the date of this Order to provide a written 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: September 26, 2025

⁵ In the interest 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 reserves the right to assess upon Contact Counsel the costs and expenses associated with defending a meritless and/or frivolous challenge.