

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: ZOLOFT (SERTRALINE	:	MDL NO. 2342
HYDROCHLORIDE) PRODUCTS	:	12-MD-2342
LIABILITY LITIGATION	:	
	:	HON. CYNTHIA M. RUFÉ
	:	
THIS DOCUMENT RELATES TO	:	
ALL ACTIONS	:	

PRETRIAL ORDER NO. 29

**ESTABLISHING MDL 2342 FUND TO COMPENSATE AND REIMBURSE
ATTORNEYS FOR SERVICES PERFORMED AND EXPENSES INCURRED FOR MDL
ADMINISTRATION AND COMMON-BENEFIT AND GUIDELINES FOR
MANDATORY TIME-KEEPING AND EXPENSE RECORDS**

AND NOW, this 19th day of July 2013, to promote efficiency for the Court and the parties in this Multi-District Litigation, this Order is entered to provide for the fair and equitable sharing among plaintiffs of the cost of special services performed and expenses incurred by Eligible Participating Counsel acting for MDL administration and common-benefit of all plaintiffs in this complex litigation.

I. GOVERNING PRINCIPLES—THE COMMON-BENEFIT DOCTRINE

1. The governing principles are derived from the United States Supreme Court’s common-benefit doctrine, as established in *Trustees v. Greenough*, 105 U.S. 527 (1881); refined in, *inter alia*, *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1884); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); and approved and implemented in the

MDL context, in *inter alia*, *In re MGM Grand Hotel Fire Litigation*, 660 F. Supp. 522, 525-29 (D. Nev. 1987); and *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977); *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prods. Liab. Litig.*, No., MDL 1203, 2001 WL 497313 (E.D. Pa. May 9, 2001) (hereinafter “the Fen/Phen litigation”); *In re Avandia Marketing, Sales Practices and Products Liability Litig.*, C.A. No. 07-md-01871 (E.D. Pa. Oct. 19, 2012); *In re Vioxx Products Liability Litig.*, MDL No. 1657 (E.D. La. Oct. 19, 2010).

II. APPLICATION

2. This Order applies to all cases now pending as of the date that this Order is entered, or later filed in, transferred to, or removed to this Court and treated as part of the coordinated proceeding known as *In Re: Zoloft (Sertraline Hydrochloride) Products Liability Litigation*, MDL 2342.

3. This Order further applies to all plaintiffs’ attorneys who represent clients who have cases now pending as of the date of the entry of this Order, or later filed in, transferred to, or removed to, this Court, regardless of whether the plaintiff’s attorney signs the “*MDL 2342 Attorney Participation Agreement*” attached hereto as **Exhibit A**.

III. THE “MDL 2342 FUNDS” TO BE ESTABLISHED AND DUTIES OF ADMINISTRATOR THEREOF

4. The Court hereby authorizes the establishment of an “*MDL 2342 Fund*” and an “*MDL 2342 Expense Fund*” (both collectively referred to herein as “*MDL 2342 Funds*”) for the purposes and pursuant to the limitations set forth in this Order. By subsequent Order, the Court

will appoint an Administrator of the *MDL 2342 Funds* (hereinafter the “Administrator”) and directs the Administrator to establish insured, and if possible, may be interest-bearing accounts to receive and disburse funds as provided in this Order. The Administrator shall designate a Depository for this purpose. These funds will be held as funds subject to the direction of the Court. Within the Fund, the Administrator shall account for funds, fees, and for funds used for expenses. No party or attorney has any individual right to any of these funds except to the extent of amounts directed to be disbursed to such person by Order of the Court. These funds will not constitute the separate property of any party or attorney nor be subject to garnishment or attachment for the debts of any party or attorney except when and as directed to be disbursed as provided by Order of this Court to a specific person.

5. In connection with his or her duties, the Administrator of the *MDL 2342 Funds* shall:
 - a. Have all such power and authority over such funds as necessary or convenient to exercise the authority granted herein;
 - b. Keep and report periodically to this Court *in camera* an accounting of the funds received, maintained and disbursed;
 - c. Have the authority to instruct the Depository with respect to permitted investments of said funds;
 - d. Make decisions and take action with respect to treatment of such funds for purposes of compliance with the Internal Revenue Code and any applicable local or state tax codes, including creating, maintaining and reporting such funds and the income, if any, derived therefrom as in a

Qualified Settlement Fund (QSF) or such other entity as he deems appropriate;

- e. Out of the assets of the *MDL 2342 Funds*, in his or her discretion, purchase and maintain reasonable amounts and types of insurance for errors and omissions or fidelity bonds, if reasonably available;
- f. To procure, upon consultation with the PSC, professional accounting, legal and other services for the purposes of carrying out the tasks described in this Order, and to be reimbursed for the expenses of such services; and
- g. To adopt and implement reasonable procedures consistent with this Order and in consultation with the PSC.

6. The Depository shall be a commercial bank that: (1) has deposits insured by the Federal Deposit Insurance Corporation; (2) is organized under the laws of the United States or any state thereof; and (3) has a total risk-based capital in excess of \$5 billion and meets the minimum risk-based ratios established under the Federal Deposit Insurance Corporation Improvement Act of 1991. The Depository may act as paying agent, depository, custodian or trustee with respect to funds it holds.

7. The Administrator of the *MDL 2342 Funds* shall consider, in designating the Depository and in procuring professional services, the charges that the Depository or provider of professional services will impose for its actions and the ability of the Depository or provider of professional services to undertake the tasks called for with efficiency and responsiveness.

8. The Funds shall not acquire or hold for longer than 90 days, any debt securities, certificates or investments unless such instruments are a U.S. Treasury Bill, U.S. Treasury

Money Market, U.S. Government Money Market or similar type of account guaranteed by the United States or an agency thereof, including an FDIC-Insured Account. The U.S. Treasury Money Market or U.S. Government Money Market must be registered under the Investment Company Act of 1940, as amended, that have the highest rating obtained from either Moody's or S&P. In determining investments to be held by the Funds, primary regard shall be given by the Administrator to safety of principal.

9. In connection with their services, the Administrator and his or her staff, and the Depository shall be entitled to be paid reasonable fees and to be reimbursed for reasonable expenses when, and as approved by this Court, and they shall periodically submit statements to the Court, with copies to Plaintiffs' Co-Lead Counsel and Defendant's Liaison Counsel. If funds are not then available in the *MDL 2342 Fund*, they shall be paid by the PSC, which shall be reimbursed out of the *MDL 2342 Funds* when and if ever funded.

IV. MDL 2342 ATTORNEY PARTICIPATION AGREEMENT

10. Attached hereto as **Exhibit "A"** and incorporated herein is a voluntary "*MDL 2342 Attorney Participation Agreement*" between the Plaintiffs' Steering Committee ("PSC") and other plaintiffs' attorneys. The *MDL 2342 Attorney Participation Agreement* is a private and cooperative agreement between plaintiffs' attorneys only. It is not an agreement with Pfizer Inc., Greenstone LLC, or any other Defendant in any case in this litigation (collectively "Defendants"). All PSC members are deemed to have executed the agreement. "Eligible Participating counsel" include: (1) all members of the PSC as noted and (2) any other plaintiffs' attorneys who sign the *MDL 2342 Attorney Participation Agreement*. Eligible Participating Counsel are entitled to receive the MDL common-benefit work-product and the state court work-

product of those attorneys who have also signed the *MDL 2342 Attorney Participation Agreement* and shall be entitled to seek disbursements as Eligible Participating Counsel as defined in this Order. In return, Eligible Participating Counsel agree to pay the assessment amount provided in paragraph 12 of this Order on any and all filed and unfiled cases or claims in state or federal court in which they share a fee interest. Counsel who choose not to execute the *MDL 2342 Attorney Participation Agreement within ninety (90) days of entry of this Order or 90 days after a case is docketed in this Court*, are not entitled to receive Common-Benefit Work Product and may be subject to an increased assessment on all Zoloft cases in which they have a fee interest for the docket management and the administrative services provided by the PSC, and if they receive Common-Benefit Work-Product or any other work-product created pursuant to this Order, or otherwise benefit by the work performed by the MDL and other counsel working with the MDL pursuant to this Order.

V. COVERED CLAIMS

11. This Order applies to the following Sertraline Hydrochloride/Zoloft, (hereinafter collectively referred to as “Zoloft”) birth defect claims, whether direct or derivative:

- a. All Zoloft birth defect claims that have been or are now (as of the date of the entry of this Order) or hereafter subject to the jurisdiction of MDL 2342, whether disposed of before or after remand, regardless of whether counsel holding a fee interest in such Zoloft birth defect claims in such cases have signed the *MDL 2342 Attorney Participation Agreement*, including but not limited to:

- i. All Zoloft birth defect claims settled pursuant to an MDL supervised Settlement Agreement between the parties;
 - ii. All Zoloft birth defect claims participating in MDL 2342 or on tolling agreement;
 - iii. All Zoloft birth defect claims where attorneys who receive Common-Benefit Work-Product or otherwise benefit by the work performed by the PSC or common-benefit counsel working with the PSC (including all firms that accessed the PSC documents that have been produced prior to the date of this order) either agree or have agreed – for monetary consideration – to settle, compromise, dismiss, or reduce the amount of a claim or, with or without trial, recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages (hereinafter a “Settlement”), with respect to any Zoloft claim are subject to an assessment on the “Gross Monetary Recovery,” as provided herein; and
 - iv. All Zoloft birth defect claims in which any PSC member or signatory to the participation agreement has a financial interest.
- b. All Zoloft birth defect claims, regardless of whether those claims are subject to the jurisdiction of MDL 2342, in which the plaintiffs’ attorneys have either:

- i. Received the benefit of Zoloft MDL work product (including all firms that accessed the PSC documents that have been produced prior to the date of this order);
- ii. Signed the *MDL 2342 Attorney Participation Agreement*, attached hereto as Exhibit “A”; or
- iii. Are members of the PSC.

(collectively hereinafter referred to as the “Covered Claims”).

VI. ASSESSMENTS AND PAYMENTS INTO THE MDL 2342 FUND FOR ALL COVERED CLAIMS

12. A total assessment for payment of attorneys’ fees and approved common benefit and MDL expenses of five percent (5%) of the Gross Monetary Recovery shall apply to all Covered Claims (the “Assessment”). This five percent (5%) Assessment shall be divided as follows: four percent (4%) from the attorney’s legal fees, and one percent (1%) from the plaintiffs’ recovery.

13. In measuring the Gross Monetary Recovery:

- a. Include all sums to be paid in settlement of the claim;
- b. Exclude court costs that are to be paid by any Defendant; and
- c. Include the present value of any fixed and certain payments to be made in the future.

14. Defendants are directed to withhold the Assessment from amounts paid on any Covered Claim and to pay the Assessment directly into the *MDL 2342 Funds* as a credit against the Settlement or Judgment. If a Defendant desires to settle with any plaintiff whose counsel

disputes that the claim is a Covered Claim, that Defendant may make a confidential, *ex parte* application to the Court or any officer appointed by the Court to resolve such disputes for a threshold determination of whether the claim is a Covered Claim and the amount, if any, to be paid into the *MDL 2342 Funds*. The Defendant will notify the settling plaintiff of its application, to provide the settling plaintiff with an opportunity to participate in such proceedings. The Court or its appointed officer may request any information from the PSC that it feels it needs to resolve the dispute, including written submissions and if necessary or helpful, a hearing on the issue where evidence and testimony may be presented. If the Court or its appointed officer determines that the claim is not a Covered Claim, Defendant shall have no responsibility to pay any part of such settlement into the *MDL 2342 Funds*. If the Court or its appointed officer determines that the claim is a Covered Claim, Defendant will withhold such funds from any settlement payment until the dispute can be resolved with the settling plaintiff or by the Court with jurisdiction over the claim, and within such determination becomes final and unappealable.

15. Every thirty (30) days, the PSC shall provide a list of all then-known Covered Claims, including the name of each plaintiff and his or her attorney, if any, to the Administrator of the *MDL 2342 Funds*, Defendants' Liaison Counsel, plaintiffs' counsel, and the Court or its designee. In connection therewith, Defendants' Liaison Counsel shall, upon request from the PSC, supply to the PSC any corrections or additions to such list.

16. A Defendant and its counsel shall not distribute any potential common benefit portion of any settlement proceeds with respect to any Covered Claims until: (1) Defendant's counsel notifies the PSC in writing of the existence of a settlement and the name of the individual plaintiff's attorney holding such Covered Claims and (2) Plaintiffs' Liaison Counsel

has confirmed to Defendant's counsel in writing that the individual plaintiff attorney's cases or claims are subject to an Assessment pursuant to this Order.

17. Information regarding the amount of an Assessment paid or to be paid into the *MDL 2342 Funds* will be provided only to the individual plaintiff's attorney holding the Covered Claim and to the Administrator, the Escrow Agent, and the Court, and shall otherwise remain confidential and shall not be disclosed to the PSC or any of its members or to any other person unless ordered by the Court.

18. The Assessment represents a hold-back (*In re Zyprexa Prods. Liab. Litig.*, 467 F. Supp. 2d 256, 266 (2d Cir. 2006)) and shall not be altered in any way for the next 24 months from the date of signing of this Court's order. After this 24 month period, the Assessment shall not be altered in any way unless each of the following occurs: (1) the entire PSC is consulted and provided an opportunity to be heard at a formally announced PSC meeting prior to the filing of any motion to change the Assessment amount; (2) the PSC approves the proposed change to the Assessment by a majority vote; and (3) this Court, upon motion, notice, and good cause shown, amends this Order.

19. Nothing in this Order is intended to impair the attorney/client relationship or any contingency fee contract deemed lawful by the attorneys' respective state bar rules and/or state court orders.

20. Upon payment of the Assessment into the *MDL 2342 Funds*, Defendant shall be released from any and all responsibility to any person, attorney, or claimant with respect to the Assessment placed into the *MDL 2342 Funds*. Any person, attorney, or claimant allegedly aggrieved by an Assessment pursuant to this Order shall seek recourse as against the *MDL 2342 Funds*.

VII. GUIDELINES REGARDING SUBMISSION AND COMPENSABILITY OF COMMON BENEFIT TIME AND EXPENSES

21. The following guidelines regarding the submission of common-benefit time and expenses are adopted for the management of timekeeping, cost reimbursement, and related common-benefit issues. These guidelines will be strongly considered by this Court in approving the award of common-benefit attorney fees and costs.

22. The recovery of common-benefit attorneys' fees and cost reimbursements will be limited to "Eligible Participating Counsel." Eligible Participating Counsel shall only be eligible to receive common-benefit attorneys' fees and cost reimbursement, (should such funds be available) if the time expended, costs incurred, and activity in question were:

- a. for the common-benefit;
- b. appropriately authorized by the Court, Plaintiffs' Co-Lead Counsel or a Committee Chair appointed by the PEC, or Multi-District Coordinator, acting in accordance with the direction of the PEC;
- c. timely submitted;
- d. verified; and
- e. approved by this Court.

A. COMMON-BENEFIT TIME

1.) Common-Benefit Work

23. Common-benefit work may include, but is not limited to:
- a. investigation and research;
 - b. conducting discovery (*e.g.* reviewing, indexing, and coding documents);
 - c. preparation and attendance at non-case-specific depositions;

- d. preparation for and attendance at Federal Court hearings;
- e. attendance at PSC-sponsored meetings;
- f. other PSC activities, including work on the Discovery, Commercial, Case-Specific, Science, Experts, Law & Briefing, Document Review and similar Committees;
- g. work with expert witnesses (not case-specific experts, unless such experts are for bellwether trials);
- h. trial preparation and trial;
- i. performance of administrative matters, provided that all such work was conducted for the joint and common-benefit of plaintiffs; and
- j. work done in connection with an MDL Discovery Pool and/or MDL Trial Pool case.

24. **Common-benefit work does not include:**

- a. time not authorized by the Plaintiffs' Co-Lead Counsel;
- b. excessive time for a particular task;
- c. duplicative time (i.e. time billed by two or more people in the same firm unless both are required or requested to attend an event or work on a project together);
- d. class action work, including pleadings and briefs will not be considered common-benefit work in this case;
- e. time related to prosecution of claims for individual clients, such as preparing fact sheets, preparing for depositions, case-specific depositions and all other such time on an individual case. However, once listed for

trial or identified as a case that should be prepared for a bellwether trial, time will be allowed, from the date of such listing;

- f. time related to negotiating individual client settlements;
- g. read and review time for persons not overseeing or directly participating in a project;
- h. all pre-MDL time (time before April 17, 2012);
- i. all conference time such as Mealey's, American Association for Justice, Mass Torts Made Perfect, except for any time actually preparing and presenting Zolof materials at such conference;
- j. clerical time, such as faxing, copying, booking travel and preparing binders;
- k. time for which descriptions are incomplete;
- l. internal firm time for firm management;
- m. time related to fee issues; time spent preparing or reviewing PSC time reporting, unless the fee review or time reporting review is being done by assignment or appointment on behalf of the PSC; and
- n. any billing for reading emails, unless the person so billing is a named member of the PSC, shall not be accepted.

2) **Disbursements from the MDL 2342 Funds for Common-Benefit Work**

25. Upon a proper showing and Order of the Court, payments may be made from the *MDL 2342 Common Benefit Funds* to attorneys who have provided services or incurred expenses for the joint and common-benefit of plaintiffs and claimants whose claims have been treated by

this Court as a part of these proceedings in addition to their own client or clients. Such “Eligible Participating Counsel” include:

- a. Plaintiffs’ Liaison counsel, Plaintiffs’ Co-Lead Counsel and members of the PEC, PSC and the Multi-District Coordinator;
- b. Attorneys who have signed the *MDL 2342 Attorney Participation Agreement*; and
- c. Other attorneys performing similar responsibilities in state court actions, provided that all cases in which any putative common-benefit attorneys have a financial interest are subject to this Order.

3) Time-Keeping and Submission of Time Records

26. All common-benefit work time for each firm shall be maintained in a tenth-of-an-hour increments. Time entries not maintained in tenth-of-an-hour increments may not be considered for common-benefit payment.

27. Eligible Participating Counsel shall keep contemporaneous daily records of their time spent in connection with common-benefit work on this litigation, using the forms circulated by the PEC or Liaison Counsel, clearly indicating with specificity the hours, location, particular activity, the source of authorization for the activity (if the activity is not otherwise authorized by the PEC, the Committee Chairs, or the Multi-District Coordinator acting in accordance with the authority of the PEC) and indicating their position in the firm (Partner, Associate or Paralegal).

28. Full descriptions of time are required. Time-entries that are not sufficiently detailed will not be considered for common-benefit payment. Time-entries must note with specificity the amount of time, location (if relevant), and particular activity, the source of authorization for the activity in question if the activity is not otherwise authorized as indicated

above. The failure to secure the proper authority to incur common-benefit time and expenses and/or maintain and timely provide such records or to provide a sufficient description of the activity will be grounds for denying the recovery of attorneys' fees or expenses in whole or in part.

29. Eligible Participating Counsel must submit all time and expense reports monthly to the PEC, in accordance with the Billing and Expense Guidelines set forth herein and on the Common-Benefit Time and Expense Report forms attached hereto as **Exhibit "B"**. Historic hourly rates, not current rates, are to be used in calculating time.

30. Assignments are personal to the attorney to whom the work is assigned, unless otherwise authorized by Plaintiffs' Co-Lead Counsel. Compensation for attendance at PSC meetings and other events shall only be considered for PSC members, unless other attendance is approved. Other PSC firm attorneys and staff may attend PSC meetings and other events, but such duplicative attendance will not be reimbursed as common-benefit time.

31. All time-entries shall be certified by a senior attorney in the firm attesting to the accuracy of the submissions.

32. Only PSC members may charge for reading emails; other personnel within their firms shall not charge for reading emails.

B. COMMON-BENEFIT EXPENSES

1) Qualified Expenses Eligible for Reimbursement

33. In order to be eligible for reimbursement of common-benefit expenses from the *MDL 2342 Expense Funds* said expenses must meet the requirements of this section.

Specifically, said expenses must be:

- a. for the common-benefit;

- b. appropriately authorized;
- c. timely submitted;
- d. verified; and
- e. approved by this Court.

2) **Common-Benefit Expenses**

34. Common-Benefit Expenses include:

- a. assessments paid for the operation of the PSC costs related to obtaining, reviewing, indexing, and paying for hard-copies of computerized images of documents;
- b. deposition and court reporter costs for non-case specific depositions;
- c. costs for the electronic storage, retrieval and searches of ESI;
- d. certain Court, filing, and service costs for matters involving MDL-wide application;
- e. PSC group administration matters such as meetings, and conference calls;
- f. reasonable travel expenses including lodging and meals, and expenses incurred in connection with PSC approved meetings, events, and other common-benefit tasks, and meal expenses for PSC or PEC meetings and events;
- g. legal and accountant fees;
- h. expert witness and consultant fees and expenses;
- i. investigator fees and expenses for matters of common-benefit;
- j. printing, copying, coding and scanning;
- k. research by outside third-party vendors, consultants and attorneys;

- l. common witness expenses including travel;
- m. translation costs;
- n. bank or financial institution charges, provided that all such costs were incurred for the joint and common-benefit of plaintiffs; and
- o. expenses incurred in vetting and prosecuting plaintiffs' bellwether cases.

3) **Expense Limitations On Expenses From Common Benefit Fund**

a) **Travel Limitations**

35. Only reasonable expenses will be reimbursed. Except in extraordinary circumstances approved by Plaintiffs' Co-Lead Counsel, all travel reimbursements are subject to the following limitations:

- a. Airfare- Only the price of a coach seat for a reasonable itinerary will be reimbursed. Business/First Class Airfare will *not* be fully reimbursed, except for international flights, which requires prior approval by Plaintiffs' Co-Lead Counsel in order to be considered for reimbursement. Use of a private aircraft will not be reimbursed. If Business/First Class Airfare is used on domestic flights then the difference between the Business/First Class Airfare must be shown on the travel reimbursement form, and only the coach fare will be will be reimbursed.
- b. Hotel- Hotel room charges for the average available room rate of a business hotel, including the Hyatt, Westin, and Marriott hotels, in the city in which the stay occurred will be reimbursed. Luxury hotels will not be

fully reimbursed but will be reimbursed at the average available rate of a business hotel.

- c. Meals- Meal expenses must be reasonable. Alcohol is not a reimbursable expense.
- d. Cash Expenses- Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, pay telephone, etc.) will be reimbursed up to \$50.00 per day, as long as the expenses are properly itemized.
- e. Rental Automobiles- Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles were available. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form, and only the non-luxury rate may be claimed, unless such larger sized vehicle is needed to accommodate several counsel.
- f. Mileage- Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, and the rate per mile paid by the member's firm. The maximum allowable rate will be the maximum rate allowed by the IRS (currently .55 cents per mile).

b) Non-Travel Limitations

- a. Long Distance and Cellular Telephone- Long distance and cellular telephone charges must be documented.

- b. Shipping, Courier, and Delivery Charges- All such claimed expenses must be documented.
- c. Postage Charges- A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.
- d. Telefax Charges- Contemporaneous records should be maintained and submitted showing faxes sent and received. The per-fax charge shall not exceed \$1.00 per page.
- e. In-House Photocopy- A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 20¢ per page.
- f. Computerized Research – Lexis/Westlaw- Claims for Lexis or Westlaw, and other computerized legal research expenses should be in the exact amount charged to or allocated by the firm for these research services.

4) Shared and Held Common-Benefit Expenses

a) Shared Expenses

36. Shared Expenses are costs incurred for the common-benefit of the MDL as a whole. Shared Expenses are costs that will be paid out of the PSC's *MDL 2342 Expense Fund* that will be established by the PSC and to be funded by assessments paid by all members of the PSC and others as determined by the PSC and its designated sub-committees. All Shared Expenses must be approved by Plaintiffs' Co-Lead Counsel prior to payment. Shared Expenses include:

- a. Certain Court, filing and service costs;
- b. Deposition and court reporter costs for non-case specific depositions;
- c. Document Depository: creation, operation, equipment and administration;
- d. Plaintiffs' Co-Lead and Liaison Counsel administrative matters (*e.g.*, expenses for equipment, technology, courier services, long distance, telecopier, electronic service, photocopy and printing, secretarial/temporary staff, etc.);
- e. PSC and PEC group administration matters such as meetings and conference calls, including related meal expenses;
- f. Legal and accountant fees;
- g. Generic expert witness and consultant fees and expenses;
- h. Printing, copying, coding, scanning (out of house or extraordinary firm cost);
- i. Research by outside third party vendors/consultants/ attorneys;
- j. Common witness expenses including travel;
- k. Translation costs;
- l. Bank or financial institution charges; and
- m. Investigative services.

b) Held Expenses

37. Held Expenses are those that will be carried by each Participating Counsel in MDL 2342 or state court and reimbursed as and when determined by the PSC, and then approved

by this Court. Held Expenses can also include reasonable unreimbursed and authorized shared costs. Held Expenses are those that do not fall into the above Shared Expenses categories but are incurred for the benefit of all plaintiffs in general. No specific client-related costs shall be considered as Held Expenses, except that costs incurred for the common-benefit as part of the federal bellwether trial process in the MDL may be considered for treatment as Held Expenses. All costs of a substantial nature that meet these requirements shall be considered Held Expenses and qualify to be submitted for consideration by the PEC and the Court for future reimbursement from the *MDL 2342 Expense Funds* or such other fund, as may be appropriate.

5) Verification

38. The forms detailing expenses shall be certified by a senior attorney in each firm attesting to the accuracy of the submissions.

39. Attorneys shall keep receipts for all expenses. Credit-card receipts or monthly credit card statements are an appropriate form of verification. Hotel costs must be proven by credit card statements or hotel invoice. The description of unclaimed expenses on the invoice may be redacted.

6) Evaluation of Common-Benefit Time

40. In apportioning any fee award to Eligible Participating Counsel, appropriate consideration will be given to the experience, talent, and contribution made by Eligible Participating Counsel, and to the time and effort expended by each as well as to the type, necessity, and value of the particular legal services rendered.

VIII. INCORPORATION BY REFERENCE

41. The *MDL 2342 Attorney Participation Agreement* is attached hereto as **Exhibit “A”** and is incorporated by reference and has the same effect as if fully set forth in the body of this order.

IT IS SO ORDERED.

BY THE COURT:
/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.

EXHIBIT “A”

MDL 2342 ATTORNEY PARTICIPATION AGREEMENT

This Attorney Participation Agreement is made this _____ day of _____, 20____, by and between the Plaintiffs’ Steering Committee (“PSC”) appointed by the United States District Court for the Eastern District of Pennsylvania in MDL Docket No. 2342 and:

(hereinafter “Participating Counsel”).

WHEREAS, the United States District Court for the Eastern District of Pennsylvania has appointed: Dianne M. Nast, Esquire (*Plaintiffs’ Co-Lead Counsel and Executive Committee*); Mark P. Robinson, Jr., Esquire (*Plaintiffs’ Co-Lead Counsel and Executive Committee*); Sean Patrick Tracey, Esquire (*Executive Committee*) and Joseph J. Zonies, Esquire (*Executive Committee*); *Stephen Corr (Liaison Counsel)*; Bryan F. Aylstock, Esquire (*Multi-District Coordinator*); Kimberly D. Barone Baden, Esquire; Andy D. Birchfield, Jr., Esquire; Edward F. Blizzard, Esquire; Edward Braniff, Esquire; Thomas P. Cartmell, Esquire; Christopher L. Coffin, Esquire; Jayne Conroy, Esquire; Arnold Levin, Esquire; David F. Miceli, Esquire; Stephanie O’Connor, Esquire; Christopher A. Seeger, Esquire; to serve as members of the PSC to facilitate the conduct of pretrial proceedings in the federal actions relating to the use of Sertraline Hydrochloride (under any brand name including Zoloft (hereinafter collectively referred to as “Zoloft”).

WHEREAS, the PSC in association with other attorneys working for the common-benefit of plaintiffs (the “Eligible Participating Counsel”) have developed or are in the process of developing work product which will be valuable in the litigation of state and federal court

proceedings involving claims of Zolofit-induced injuries (the “Common-Benefit Work Product”);
and

WHEREAS, the Participating Counsel are desirous of acquiring the Common-benefit Work Product and establishing an amicable, working relationship with the PSC for the mutual benefit of their clients;

NOW, THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. This Agreement incorporates by reference any Order of the Court regarding assessments and incorporates fully herein all defined terms from such Order(s).

2. This Agreement applies to each and every claim, case, or action arising from the use of Zolofit in which the Participating Counsel has a financial interest, whether the claim, case, or action is currently filed in state or federal court, or is unfiled, or is on a tolling agreement (hereinafter collectively the “Covered Claims”).

3. With respect to each and every Covered Claim, Participating Counsel understand and agree that Defendant and its counsel will hold back a percentage proportion of the gross recovery that is equal to five percent (5%) of the Gross Monetary Recovery (“the Assessment”). Defendant or its counsel will deposit the Assessment in *MDL 2342 Funds* (“the *MDL 2342 Fund*”). Should Defendant or its counsel fail to hold-back the Assessment for any Covered Claim, Participating Counsel and their law firms shall deposit or cause to be deposited the Assessment in the *MDL 2342 Funds*. It is the intention of the parties that absent extraordinary circumstances recognized by MDL 2342 Court Order, such Assessment shall be in full and final satisfaction of any present or future obligation on the part of each Plaintiff and/or Participating Counsel to contribute to any fund for the payment or reimbursement of any legal fees, services or

expenses incurred by, or due to, the PSC, Participating Counsel, and/or any other counsel eligible to receive disbursements from the *MDL 2342 Funds* pursuant to an Order of the Court regarding assessments or the *MDL 2342 Funds*.

4. The Participating Counsel, on behalf of themselves, their affiliated counsel, and their clients, hereby grant and convey to the PSC a lien upon and/or a security interest in any recovery by any client who they represent or in which they have a financial interest in connection with any Zolofit-induced injury, to the full extent permitted by law, in order to secure payment of the Assessment. The Participating Counsel will undertake all actions and execute all documents that are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

5. The amounts deposited in the *MDL 2342 Funds* shall be available for distribution to Participating Counsel pursuant and subject to any Order of the Court regarding assessments or the *MDL 2342 Funds*. Participating Counsel may apply to the Court for common-benefit fees and reimbursement of expenses, provided that Participating Counsel:

- a. were called upon by the PSC to assist it in performing its responsibilities;
- b. expended time and efforts for the common-benefit either in MDL 2342, JCCP, MTP and other state litigation; and,
- c. timely submitted such time and expenses in accordance with the Court's orders, or in the absence of such orders, the procedures established by the PSC.

6. This Agreement is without prejudice to the amount of fees or costs to which Participating Counsel may be entitled to in such an event.

7. Upon request of the Participating Counsel, the PSC will provide within a reasonable time to the Participating Counsel, to the extent developed, the Common-Benefit Work

Product, including access to the PSC's virtual depository, and, if and when developed a complete trial package.

8. As the litigation progresses and Common-Benefit Work Product continues to be generated, the PSC will provide Participating Counsel with such work product and will otherwise cooperate with the Participating Counsel to coordinate the MDL litigation and the state litigation for the benefit of the plaintiffs.

9. No assessments will be due by the Participating Counsel on any recoveries resulting from a medical malpractice claims against treating physicians.

10. Both the PSC and the Participating Counsel recognize the importance of individual cases and the relationship between case-specific clients and their attorneys. The PSC recognizes and respects the value of the contingency fee agreement as essential in providing counsel to those who could not otherwise avail themselves of adequate legal representation, and it is the intent of the PSC to urge the Court to not interfere with any such agreements so long as they comport with the applicable law or bar rules.

PLAINTIFFS' STEERING COMMITTEE

By: _____
Dianne M. Nast

By: _____
Mark Robinson

PARTICIPATING ATTORNEYS

By: _____

[Here List the Name and Address of the Participating Counsel's Firm and Individual Attorney]