

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

IN RE: : MDL NO. 1148
: :
LATEX GLOVES PRODUCTS : THIS DOCUMENT RELATES TO
LIABILITY LITIGATION : ALL ACTIONS

CASE MANAGEMENT ORDER NO. 48
(Procedures Re: Escrow Account)

AND NOW, this 8th day of July, 1999, an Escrow Account Fund is ordered to be established. Its purpose is to obtain equitable sharing of litigation expenses incurred and compensation for professional services provided by the Plaintiffs' Steering Committee. That Committee serves the common benefit of all plaintiffs who have claims arising from the subject matter of this litigation.

1. Establishment of Fund

Plaintiffs' Lead Counsel is directed to establish an interest-bearing escrow account to be known as the MDL-1148 Escrow Account Fund to receive and disburse moneys as set forth in this order. Counsel shall designate an escrow agent, and no disbursement from the Escrow Fund shall be made without prior Court Order. No party or attorney shall have a right to any portion of the Escrow Fund except to the extent directed to be disbursed by the Court. A monthly Escrow Fund status report shall be submitted in writing.

2. Applicability

To the extent that the Court has competent jurisdiction over an action or party, this Order shall apply as follows:

(A) to actions filed in federal court that are or have been

part of this MDL Proceeding, including actions that have subsequently been remanded to state court;

(B) to actions in which a plaintiff's attorney has signed Plaintiffs' Depository Agreement, or has accessed or used Plaintiffs' Document Depository and agreed in writing to be bound by this Order;

(C) to actions in which a plaintiff's attorney has agreed in writing or on the record to be bound by this Order, whether those actions are pending in federal or state court; and

(D) to actions pending in state court in which a plaintiff's attorney has a joint representation or fee-sharing agreement with any other attorney who is subject to a preceding subsection of this paragraph.

3. Assessment

(A) In all actions subject to this Order, with respect to any recovery occurring before the empaneling of a jury or commencement of a non-jury trial, defendants shall withhold five percent (5%) of the gross settlement payment, not to exceed fifteen percent (15%) of plaintiff's attorneys fees.

B) In all actions subject to this Order, with respect to any recovery occurring after the empaneling of a jury or commencement of a non-jury trial, defendants shall withhold three percent (3%) of the gross amount recovered by settlement, verdict or judgment, not to exceed ten percent (10%) of plaintiff's attorneys fees.

(C) No amount shall be withheld from a payment made by or on behalf of a party whose liability is not asserted, in whole or in part, based on the manufacture, sale or supply of latex products.

An example would be a settlement that included a payment by or on behalf of a medical care provider.

(D) In the event a settlement or other resolution of a claim includes periodic payments, or the purchase of an annuity, or in any manner involves future payments, the actual present value of the settlement or payments shall be calculated by the parties and the percentage to be withheld shall be based on that sum.

(E) Defendants are hereby authorized and directed to pay all withheld amounts promptly and directly into the Escrow Fund at the time of payment of the settlement or judgment or other recovery. If the amount to be withheld would exceed the percentage limit of plaintiff's attorneys fees, or if it is to be based on the actual present value of a settlement, as set forth in subsections (A), (B), or (C) of this paragraph, plaintiff's attorney shall give notice of the proper amount to be withheld in the report of a settlement, judgment or other recovery, as set forth in subsection (F).

(F) Defendants and their counsel shall promptly report to the Court, the MDL Defendants' Liaison Counsel-Spokesperson, and to Plaintiffs' Lead Counsel the occurrence of any settlement, judgment or other recovery that may be subject to this Order, including the caption of the case, the parties to the settlement, and the name and address of plaintiff's counsel. However, subject to further Order, only the Court shall be advised of the terms of the settlement.

(G) Within ten (10) days after receipt of such report, defendants shall pay into the Escrow Fund the proper amount to be

withheld. All amounts withheld shall be deducted from the gross settlement proceeds and shall not be charged back to the individual plaintiff by plaintiff's attorney as additional fees or in any other manner.

4. General Standards for Award of Fees and Reimbursement of Costs

Upon a proper showing, each attorney who performs common benefit work as a member of the Plaintiffs' Steering Committee, having been authorized by the Committee to do so, shall be entitled to receive an award of counsel fees and reimbursement of out-of-pocket litigation expenses. The amount or amounts shall be paid from the Escrow Fund pursuant to Court Order. The Court will first determine the amount of litigation expenses for which reimbursement is appropriate. The amount remaining in the Escrow Fund will be available for awards of counsel fees. In awarding and apportioning counsel fees, due consideration will be given to the responsibilities, experience, talent and contribution attributable to each attorney so entitled.

5. Coordination of State and Federal Latex Glove Actions

To the extent that the Court is competent to exercise such jurisdiction, this Order shall apply to all actions in which plaintiffs may enjoy the common benefit work product made available in this multidistrict litigation. In turn, the Plaintiffs' Steering Committee has been directed to cooperate fully with Judges and attorneys in state court actions so as to avoid repetitive discovery and unnecessary imposition on schedules, calendars and resources.

6. Defendants and their counsel shall not be liable for good

faith errors with respect to amounts to be withheld and paid into the Escrow Fund.

Edmund V. Ludwig, J.