

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE: BLUE CROSS BLUE SHIELD
ANTITRUST LITIGATION
(MDL No.: 2406)

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Master File No.: 2:13-CV-20000-RDP

This document relates to all cases.

**ORDER REGARDING PROTOCOLS FOR PLAINTIFFS’ COUNSEL
TIME AND EXPENSE SUBMISSIONS**

Plaintiff’s Counsel’s Time and Expense Submissions

The following standards and protocols are to be utilized by any Plaintiffs’ Counsel seeking fees and/or expense reimbursement. The court notes that it has appointed Plaintiffs’ Liaison Counsel, and separate leadership for the two Plaintiffs’ tracks in this litigation, Provider and Subscriber.

I. GENERAL STANDARDS

- (A.) Time and expenses, other than for Plaintiffs’ Liaison Counsel, shall be for one track (Provider or Subscriber), except for expenses shared by the two tracks by express and written agreement. All time and expenses (other than Plaintiffs’ Liaison Counsel submissions) submitted for a given track (Provider or Subscriber) must be incurred only for work authorized in advance by the given track’s Plaintiffs’ Steering Committee (the “PSC”), Co-Lead Co-Counsel or Local Facilitating Counsel (collectively, the “track leadership”).

- (B.) These Time and Expense Protocols are intended for all activities performed and expenses incurred by Plaintiffs' Counsel that relate to matters common to all of a given track's claimants in MDL 2406, including time and expenses spent looking for, obtaining, and interfacing with class representatives and representing them in connection with the putative class action. Further, any Plaintiffs' Counsel that may at a later date, seek reimbursement or compensation for common benefit time and expenses (including any state court counsel) shall comply with these guidelines and any submissions by such Plaintiffs' Counsel shall be accordance with this Order.
- (C.) The Special Master is to assist and provide accounting services to Plaintiffs' Liaison Counsel, the track leadership, and the court in the MDL 2406. The Special Master will be assisting in compiling submissions and will submit them to the court on a monthly basis. Such reports will include both time and expenses and will summarize, with back-up detail, the submissions of all firms, for each respective track, with copies to be provided to Plaintiffs' Liaison Counsel, and a copy of the submissions for each track shall be provided to the track leadership. Submissions of time and expense records to the court shall be considered as if submitted under seal.
- (D.) The Special Master is authorized to establish, on behalf of each separate track, one or more bank accounts for the collection and deposit of assessments and for the payment of Shared Costs as defined herein, as well as by any other such functions as may be necessary and appropriate (the

“Track Accounts”). The accounts for the two respective Track Accounts shall remain separate, and shall be confidential, and not shared with Plaintiffs’ Counsel for the other track. Any and all such Track Account bank statements shall be provided to, and reviewed by, the Special Master, Plaintiffs’ Liaison Counsel, and the track leadership of each respective track.

- (E.) Time and expense submissions for both tracks must be submitted timely, on a monthly basis, to the Local Facilitating Counsel for an initial review, with them to be provided to the Special Master within 14 days. Submissions can be made less frequently than monthly for good cause, decided by the Special Master in consultation with Local Facilitating Counsel. To maintain the neutrality of the Special Master, either track may decide to redact confidential work product information before submitting the time and expense submissions to the Special Master. In the event that either track decides to redact confidential work product information from the submissions, the submitting Plaintiffs’ Counsel may redact confidential work product information, or Local Facilitating Counsel may redact confidential work product information before submitting the time and expense submissions to the Special Master. After the Local Facilitating Counsel performs an initial review of the time and expense submissions for both tracks, the Local Facilitating Counsel will submit the time and expense submissions to the Special Master via electronic mail to escrowagen@aol.com. It is essential that each firm, on a monthly basis, timely submit its records for the preceding

month. All submissions shall be certified by a partner in each firm attesting to the accuracy and correctness of the submission.

- (F.) The first submission is due on June 15, 2013, and should include all time and expense through April 30, 2013. Submitting attorneys are encouraged to conform their initial submissions to the terms of this Order. However to facilitate timeliness and efficiency, the initial submission can be made without conforming it to the terms of this Order, with the Special Master and Local Facilitating Counsel to conform them to the terms of this Order, and to share this so-conformed bill with the submitting attorney. The court reserves judgment on whether time and expenses (other than for Plaintiffs' Liaison Counsel) incurred before track leadership was appointed by the court shall be allowed. However, all such time and expenses shall be included in the first billing submission. Thereafter, time and expense records shall be submitted on the last day of each month and shall cover the time period through the end of the preceding month (one month lag). Any time or expense records submitted more than six (6) months in arrears may not be considered or included in any compilation of time or expense calculation and shall be disallowed, except for good cause shown and with court approval.

II. TIME REPORTING

- (A.) Only time spent on matters common to all of a given track's claimants in MDL 2406 will be considered in determining fees. No time spent on developing or processing any case for an individual claimant will be

considered or should be submitted, except in connection with time spent looking for, obtaining and representing an individual claimant representing the class, unless the case is determined by the track leadership or the court to be a “common benefit case” (e.g., “test case” or “Bellwether” case), and in such circumstances shall be reported in a separate time submission.

- (B.) All time must be accurately and contemporaneously maintained. Time shall be kept according to these guidelines and specifically in accordance with the Litigation Task Definitions as outlined in Attachment A. All Plaintiffs’ Counsel shall keep a daily record of their time spent in connection with this litigation, indicating with specificity the hours, location and particular activity. The failure to maintain such records, as well as insufficient description of the activity may result in a forfeiture of fees.
- (C.) All time for each firm shall be maintained in segments of 1/10th of an hour (6 minutes) increments and individual entries should have a specific task code in accordance with the Litigation Task Definitions associated with the time. Time for “common benefit cases” (e.g., “Bellwether” or “test” cases) shall be submitted separately. Failure to do so may result in time being disallowed.
- (D.) All time records shall be submitted to the Special Master, together with a summarization of the total of member firm time broken down by each separate name of the time keeper and Litigation Task Definition the time spent during the preceding month and the accumulated total of all time

incurred by the firm during the particular reporting period.

- (E.) The summary report form shall be certified by a senior partner each month attesting to the accuracy and correctness of the monthly submission.

III. EXPENSE REPORTING

- (A.) Advanced costs will be deemed as either “Shared” or “Held.”
 - i. A track’s Shared Costs are costs that will be paid out of its Track Account. Shared Costs paid by the two tracks, as agreed to by the track leadership of the two tracks, shall be paid by both Track Accounts, in the amounts agreed to by the two tracks.
 - ii. A track’s Held Costs are those that will be carried by each attorney in MDL 2406 and reimbursed as and when determined by the Special Master.
- (B.) Each member of the track leadership and any others as set forth in section (A.) above will contribute to their respective Track Account at times and in amounts sufficient to cover the administration of the MDL. The timing and amount of each assessment will be determined by the Special Master.

IV. SHARED COSTS

- (A.) Shared Costs are costs incurred for the common benefit of one of the MDL tracks as a whole, or for both MDL tracks. No individual claimant-related costs will be considered as Shared Costs and must not be submitted, except in connection with individual claimant-related costs incurred as a result of

looking for, obtaining and representing an individual claimant representing the class, unless the case is determined by the track leadership or the court to be a “common benefit case” (e.g., “test case” or “Bellwether” case), which, in such circumstances, shall be noted in the expense submission. All costs of a substantial nature that meet these requirements and fall under the following categories shall be considered Shared Costs and qualify to be submitted and paid directly from a Track Account. All Shared Costs must be approved by the Special Master prior to being incurred and prior to payment. Shared Costs include:

- i. Court, filing and service costs;
- ii. Depositions and court reporter costs;
- iii. Document Depository; creation, operation, staffing, equipment and administration;
- iv. Plaintiffs’ Liaison Counsel administrative matters (e.g., expenses for equipment, technology, courier services, long distance, conference calls, telecopier, electronic service, postage, meeting expenses, travel for administrative matters, photocopy and printing, secretarial/temporary staff, etc.);
- v. Track leadership administration matters such as meetings and conference calls;
- vi. Legal and accountant fees;
- vii. Expert witness and consultant fees and expenses;

- viii. Printing, copying, coding, shipping, scanning (both in and out of house or extraordinary firm cost);
- ix. Research by outside third party vendors/ consultants/ attorneys;
- x. Common witness expenses including travel;
- xi. Translation costs;
- xii. Bank or financial institution charges;
- xiii. Investigative services;
- xiv. Claims Administrator charges; and
- xv. Special Master charges.

(B.) The Special Master shall prepare and be responsible for distributing to Plaintiffs' Counsel and the track leadership reimbursement procedures and the forms associated therewith. Request for payments should include sufficient information to allow the Special Master to account properly for costs and to provide adequate detail to the court. All requests shall be subject to review and approval by the Special Master.

V. HELD COSTS

(A.) Held Costs are costs incurred for the global benefit of one or both tracks of the MDL. Held Costs are those that do not fall into the above Shared Costs categories but are incurred for the benefit of all claimants in general for one or both tracks. No specific claimant-related costs can be considered as Held Costs, except in connection with specific claimant-related costs incurred as

a result of looking for, obtaining and representing an individual claimant representing the class unless the case is determined by the track leadership or the court to be a “common benefit case” (e.g., “test case” or “Bellwether” case), which, under such circumstances, shall be reported in a separate expense submission. All costs of a substantial nature that meet these requirements and fall under the following categories shall be considered Held Costs and qualify to be submitted for consideration by the Special Master and the court for future reimbursement.

- i. Telefax charges;
- ii. Postage, shipping, courier, certified mail;
- iii. Printing and photocopying (in-house);
- iv. Computer research - Lexis/Westlaw;
- v. Telephone - long distance (actual charges only); and
- vi. Travel - pursuant to Travel Limitations set forth below, including travel for attorney to attend depositions, court or legislative matters
 - a. Airfare
 - b. Reasonable ground transportation
 - c. Hotel
 - d. Reasonable meals and entertainment
 - e. Reasonable other (parking)
 - f. Car rental, cabs, etc.

- g. Secretarial and clerical overtime

VI. TRAVEL LIMITATIONS

Except in extraordinary circumstances expressly approved in writing by the Special Master, all travel reimbursements are subject to the following limitations:

- (A.) Airfare. Only the lowest-price available coach airfare at time of booking (either at restricted coach rates or rates which allow the reservation to be rebooked without surcharge and other agency fees) for a reasonable itinerary will be reimbursed. Notwithstanding the foregoing, first class airfare shall be allowed for cross-country flights that are in excess of four hours non-stop flight time or international flights. Airfare expense submissions must be supported by invoice or receipt for airfare that shows class of airfare purchased, name of traveler, and destination. If an invoice or receipt is not available, a canceled check or credit card statement may be submitted provided an Affidavit from the traveler is also submitted stating that the expense was for coach airfare, within the limitations of this Order, and that the trip was for common benefit. If first class is flown and only coach fare is reimbursable, proof of applicable coach fare shall be provided.
- (B.) Hotel. Hotel room charges will be reimbursed up to the greater of (a) \$300 per night excluding taxes, or (b) the average available room rate of the Tutwiler, Westin, Hyatt, Hilton, and Marriott hotels (or comparable) in that city. Hotel expense submissions must be supported by a hotel issued receipt. If a receipt is not available, a credit card statement or canceled check may

be submitted provided it is accompanied by an Affidavit that states that the expense was incurred for travel related to common benefit and within the limitations of this Order.

- (C.) Meals. Meal expenses must be reasonable. Meal expense submissions must be supported by receipts or credit card statements that reflect the date and those partaking in the meal.
- (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 per trip, 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. Rental automobile expense submissions must be supported by receipts or credit card statements. Such rentals shall be limited for purposes of traveling to or from meetings, hotel, court appearances and airport. The use of hired limousines is discouraged.
- (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).

(G.) Parking. Shall be limited to actual documented costs.

VII. NON-TRAVEL LIMITATIONS

(A.) Long Distance and Cellular Telephone. General subscription or monthly lease costs associated with long-distance and cellular telephone charges for specific MDL 2406-related calls must be documented. Copies of the telephone bills must be submitted with notations as to which charges relate to this litigation.

(B.) Shipping, Courier, and Delivery Charges. All claimed expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package.

(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 25¢ per page.

(F.) Secretarial and Clerical Overtime. An itemized description of the task and time spent must be submitted for secretarial and clerical time. All such overtime must be approved before submission by the Special Master.

(G.) Computer Research - Lexis/Westlaw. Claims for Lexis, Westlaw, and other computer legal research expenses should be in the exact amount charged to the firm for these research services. All such computer legal research must be approved by the Special Master in advance and before submission.

VIII. PROCEDURES TO BE ESTABLISHED BY THE SPECIAL MASTER

The Special Master may establish forms and procedures to implement and carry out the time and expense submissions required by the court and necessary to compile and maintain the records. These forms shall be made available by the Special Master.

Questions regarding the guidelines or procedures or the completion of any forms should be directed to the Special Master or the court.

The court reserves the power to modify the terms of this order.

DONE and ORDERED this 31st **day of May, 2013.**



**R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE**

ATTACHMENT A
LITIGATION TASK CODE DEFINITIONS

This Litigation Task Code is intended for use in all adversarial matters including litigation, binding arbitrations, and regulatory/administrative proceedings. The following definitions elaborate on the intended scope of each phase and task and should guide attorneys in coding time.

I. CASE ASSESSMENT, DEVELOPMENT AND ADMINISTRATION

Focuses on the case as a whole, the “forest” rather than the “trees”.

- A. Fact Investigation/Development. All actions to investigate and understand the facts of a matter. Covers interviews of client personnel and potential witnesses, review of documents to learn the facts of the case (but not for document production), work with an investigator, and all related communications and correspondence.
- B. Analysis/Strategy. The thinking, strategizing, and planning for a case, including discussions, writing, and meetings on case strategy. Also includes initial legal research for case assessment purposes and legal research for developing a basic case strategy. Most legal research will be under the primary task for which the research is conducted. Once concrete trial preparation begins, use “Other Trial Preparation and Support.”
- C. Experts/Consultants. Identifying and interviewing experts and consultants (testifying or non-testifying), working with them, and developing expert reports. Does not include preparing for expert depositions, see “Expert Discovery” or time spent with experts/consultants during trial preparation and trial, see “Expert Witnesses.”
- D. Document/File Management. A narrowly defined task that comprises only the processes of creating and populating document and other databases or filing systems. Includes the planning, design, and overall management of this process. Work of outside vendors in building litigation support databases should be an Expense.
- E. Budgeting. Covers developing, negotiating, and revising the budget for a matter.
- F. Settlement/Non-Binding ADR. All activities directed specifically to settlement. Encompasses planning for and participating in settlement discussions, conferences, and hearings and implementing a settlement. Covers pursuing and participating in mediation and other non-binding Alternative Dispute Resolution (ADR) procedures. Also includes pre-litigation demand letters and ensuing discussions.

- G. CLE. Continuing Legal Education related specifically to this matter.
- H. Other Case Assessment, Development and Administration. Time not attributable to any other overall task. Specific use in a given matter often may be pre-determined jointly by the client and law firm.

II. PRE-TRIAL PLEADINGS AND MOTIONS

Covers all pleadings and all pretrial motions and procedures other than discovery.

- A. Pleadings. Developing (researching, drafting, editing, filing) and reviewing complaints, answers, counter-claims and third party complaints. Also embraces motions directed at pleadings such as motions to dismiss, motions to strike, and jurisdictional motions.
- B. Preliminary Injunctions/Provisional Remedies. Developing and discussing strategy for these remedies, preparing motions, affidavits and briefs, reviewing opponent's papers, preparing for and attending court hearing, preparing witnesses for the hearing, and effectuating the remedy.
- C. Court Mandated Conferences. Preparing for and attending hearings and conferences required by court order or procedural rules (including Rule 16 sessions) other than settlement conferences. Dispositive motions. Developing and discussing strategy for or opposing motions for judgment on the pleadings and motions for complete or partial summary judgment, preparing papers, reviewing opponent's papers, defensive motions (e.g., motion to strike affidavit testimony, Rule 56(f) motion), and preparing for and attending the hearing.
- D. Other Written Motions/Submissions. Developing, responding to, and arguing all motions other than dispositive motions, pleadings, and discovery, such as motions to consolidate, to bifurcate, to remand, to stay, to compel arbitration, for MDL treatment and for change of venue.
- E. Class Action Certification and Notice. Proceedings unique to class action litigation and derivative suits such as class certification and notice.

III. DISCOVERY

Includes all work pertaining to discovery according to court or agency rules.

- A. Written Discovery. Developing, responding to, objecting to, and negotiating interrogatories and requests to admit. Includes mandatory meet-and-confer sessions. Also covers mandatory written disclosures as under Rule 26(a).

- B. Document Production. Developing, responding to, objecting to, and negotiating document requests, including the mandatory meet-and-confer sessions to resolve objections. Includes identifying documents for production, reviewing documents for privilege, effecting production, and preparing requested privilege lists. (While a general review of documents produced by other parties falls under this task, coding and entering produced documents into a data base is “Document/File Management” and reviewing documents primarily to understand the facts is “Fact Investigation/Development.”)
- C. Depositions. All work concerning depositions, including determining the deponents and the timing and sequence of depositions, preparing deposition notices and subpoenas, communicating with opposing or other party’s counsel on scheduling and logistics, planning for and preparing to take the depositions, discussing deposition strategy, preparing witnesses, reviewing documents for deposition preparation, attending depositions, and drafting any deposition summaries.
- D. Expert Discovery. Same as “Depositions,” but for expert witnesses.
- E. Discovery Motions. Developing, responding to, and arguing all motions that arise out of the discovery process. Includes the protective order process.
- F. Other Discovery. Less frequently used forms of discovery, such as medical examinations and on-site inspections.

IV. TRIAL PREPARATION AND TRIAL

Commences when lawyer and client determine that trial is sufficiently likely and imminent so that the process of actually preparing for trial begins. It continues through the trial and post-trial proceedings in the trial court. Once trial begins, lawyers who appear in court presumptively should bill their court time to “Trial and Hearing Attendance.” Litigation work outside the courtroom during this phase (e.g., evenings, weekends and the time of other attorneys and support personnel), should continue to be classified using “Other Trial Preparation and Support.”

- A. Fact Witnesses. Preparing for examination and cross-examination of non-expert witnesses.
- B. Expert Witnesses. Preparing for examination and cross-examination of expert witnesses.
- C. Written Motions/Submissions. Developing, responding to and arguing written motions during preparation for trial and trial, such as motions in limine and motions to strike proposed evidence. Also includes developing

other written pre-trial and trial findings, such as jury instructions, witness lists, proposed findings of fact and conclusions of law, and trial briefs.

- D. Other Trial Preparation and Support. All other time spent in preparing for and supporting a trial, including developing overall trial strategy, preparing opening and closing arguments, establishing an off-site support office, identifying documents for use at trial, preparing demonstrative materials, etc.
- E. Trial and Hearing Attendance. Appearing at trial, at hearings and at court-mandated conferences, including the pre-trial conferences to prepare for trial. For scheduling conferences that are denominated as “Pre-Trial Conferences”, but not directed toward conduct of the trial, use “Court Mandated Conferences.”
- F. Post-Trial Motions and Submissions. Developing, responding to and arguing all post-verdict matters in the trial court, such as motions for new trial or j.n.o.v., for stay pending appeal, bills of costs, and requests for attorneys’ fees.
- G. Enforcement. All work performed in enforcing and collecting judgments and asserting or addressing defenses thereto.

V. APPEAL

Covers all work on appeal or before a reviewing body.

- A. Appellate Motions and Submissions. Developing, responding to and arguing motions and other filings before a reviewing body, such as motions and other filings for stay pending appeal.
- B. Appellate Briefs. Preparing and reviewing appellate briefs.
- C. Oral Argument. Preparing for and arguing an appeal before a reviewing body.

VI. TRAVEL

Time spent traveling in connection with the litigation shall be designated separately.