

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: HAIR RELAXER MARKETING
SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION**

Case No. 23 C 818

MDL No. 3060

Judge Mary M. Rowland

**ORDER GRANTING PETITION FOR APPOINTMENT OF A PLAINTIFFS'
LEADERSHIP COMMITTEE**

Upon consideration of Consensus Plaintiffs' Petition for Appointment of a Plaintiffs' Leadership Committee (ECF No. 14), the Petition is granted for the reasons stated herein.

IT IS HEREBY ORDERED THAT:

1. Applicability of Order

This Order shall govern the practice and procedure before this Court regarding *In re: Hair Relaxer Marketing Sales Practices and Products Liability Litigation*, MDL No. 3060 (the "Litigation") and all related actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned thereto. This Order is binding on all parties and their counsel in all cases currently pending or subsequently made part of the Litigation.

2. Plaintiffs' Leadership Counsel Appointments

The Court has reviewed the application materials of counsel seeking to serve in leadership positions and makes the following appointments based upon the criteria set forth in the Court's MDL Case Management Order No. 1 (ECF No. 3), specifically: (a) willingness and availability to commit to a time-consuming project; (b) ability to work cooperatively with others; (c) professional experience in this type of litigation; (d) access to sufficient resources to advance the litigation in a timely manner; and (e) diversity.

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3. Designations, Funding, Future Changes in Leadership Structure

All appointments to leadership, liaison, and committee positions are for a period of one year. Each appointee must apply for continued service thereafter.

These designations are of a personal nature. Accordingly, the Court looks to these counsel to undertake personal responsibility to perform the designated functions, and should they become unable to do so, the Court reserves the discretion to replace counsel on their request or on the Court's own motion. This Court may amend or expand the PEC and/or PSC upon request of the respective Committees or on its own motion if and as circumstances warrant.

This Court is mindful that counsel within the PEC and PSC will be advance funding much of the common benefit litigation and that each of the members of the PEC and PSC have warranted their ability and willingness to advance fund the common litigation as determined necessary by the Co-Leads. The failure of any member of the PEC or PSC to meet any of the advanced funding obligations as determined are necessary by the Co-Leads may constitute good cause for removal from the PSC.

The Co-Leads, together with input from the PEC and PSC, shall also endeavor to create a Leadership Development Committee ("LDC") to promote and advance diversity amongst this Litigation's leadership team. The LDC shall be created within 30 days of this Order, including a chair-person for the LDC.

4. General Responsibilities of Counsel

Counsel are expected to familiarize themselves with the Manual for Complex Litigation, Fourth ("MCL 4th"), so that they may suggest procedures that will facilitate the "just, speedy, and inexpensive determination" of this Litigation. *See* Fed. R. Civ. P. 1. These procedures include,

but are not limited to, structure and timing of discovery plans, amendments of pleadings, pretrial consideration of substantive issues, communications, and the like. Counsel are also required to review and familiarize themselves with the Local Rules for the Northern District of Illinois.

All attorneys carrying out such common benefit work who may look to any common fund or agreement for reimbursement or compensation shall maintain and timely submit time and expense records in accordance with guidelines to be set by the Court in a subsequent Case Management Order. Notwithstanding, all such reimbursement and compensation shall be subject to the Court's final approval.

5. Duties of Co-Lead Counsel

It shall be the responsibility of Co-Lead Counsel to provide oversight to and coordinate the responsibilities of the PEC and PSC. The duties of Co-Lead Counsel, and as delegated by such to the PEC and PSC, include but are not limited to the following:

Administration

- a. Call meetings of counsel for Plaintiffs for any appropriate purpose;
- b. Perform any task necessary and proper for the PSC to accomplish its responsibilities as defined by the Court's orders, including organizing sub-committees comprised of plaintiffs' attorneys not on the PSC and assigning them tasks consistent with the duties of the PSC;
- c. Monitor the activities of the PEC and PSC and other co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;
- d. Maintain adequate files of all pretrial matters, including establishing and maintaining a document or exhibit depository, in either real or virtual format, and having those documents available, under reasonable terms and conditions, for examination by all

- Plaintiffs or their attorneys in the MDL proceedings;
- e. Provide periodic reports to non-PSC plaintiffs' counsel concerning the status of the litigation on no less than a quarterly basis;
 - f. Coordinate services and filings;
 - g. Maintain and distribute to co-counsel and to Defendants' Counsel an up-to-date service list;
 - h. Receive and distribute pleadings, all Court orders, and motions, provided all counsel shall continue to receive all notices through the Court's CM/ECF system;
 - i. Maintain, in conjunction with their accountant, records of receipts and disbursements advanced by members of the PSC and received by the PSC and to report in writing to the PSC concerning disbursements and receipts;
 - j. Act as the treasurer for any common benefit assessments and expenses. As treasurer for said account(s), shall deposit and invest all assessments for a litigation fund in an interest bearing insured money market bank account or United States Treasury Bills, and pay reasonable litigation expenses subject to regular views and approval by the Court. The initial and subsequent assessments shall be determined by the PEC. All such assessments shall be subject to final accounting at the appropriate time;
 - k. To maintain and make available to all Plaintiffs' counsel of record at reasonable hours a complete file of all documents served by or upon each party (except such documents as may be available at a document depository);
 - l. To be available for any telephone and/or in-person conferences convened by the Court and to communicate the substance of any such conferences to all other Plaintiffs' counsel; and

- m. Perform such other functions as may be expressly authorized by further orders of the Court.

Discovery

- a. Initiate, coordinate, and conduct all pretrial discovery on behalf of all Plaintiffs who file civil actions in this Court or that are transferred to this Court pursuant to 28 U.S.C. § 1407 and are part of the MDL proceeding and, to the extent possible, coordinate with any product liability state court actions to avoid duplicative depositions or other inefficient discovery;
- b. Develop and propose to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all Plaintiffs;
- c. Initiate, coordinate, and cause to be issued in the name of all Plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial discovery of relevant issues developed by the PSC. Similar requests, notices, and subpoenas may be caused to be issued by the PSC upon written requests by the individual attorney in order to assist him/her in preparation of the pretrial stages of his/her clients particular claims;
- d. Identify witnesses to be noticed for deposition, schedule witness depositions and determine the lead examiner(s) for each noticed deposition;
- e. Conduct all discovery in coordinated and consolidated manner on behalf of and for the benefit of all Plaintiffs with the assistance from the PSC; and
- f. Consult with and employ experts as necessary.

Motion Practice and Hearings

- a. Call meetings of counsel for plaintiffs for any appropriate purpose, including

- coordinating responses to questions of other parties or of the Court. Initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matter(s) pertaining to pretrial proceedings;
- b. Submit and argue or designate other counsel to argue any motions presented to the Court or Magistrate Judge on behalf of all Plaintiffs as well as oppose when necessary any motions submitted by the Defendants or third parties;
 - c. Examine or designate other counsel to examine witnesses and introduce evidence at hearings on behalf of Plaintiffs;
 - d. Act or designate other counsel to act as spokesperson(s) for Plaintiffs at pretrial proceedings and in response to any inquiries by the Court, subject of course to the right of any plaintiff's counsel to present non-repetitive individual or different positions; and
 - e. No pleadings or other papers shall be filed, or discovery conducted concerning liability, on behalf of all Plaintiffs except as prepared on behalf of the PEC and signed by Co-Lead Counsel.

Contact with Defense Counsel

- a. Initiate, coordinate, and conduct (or designate others to do so) the requisite meet and confers with Defendants, confer with Defendants regarding procedural matters, and negotiate and enter into stipulations with Defendants regarding this Litigation; and
- b. Explore or designate other counsel to explore, develop, and pursue settlement options with Defendants on behalf of Plaintiffs.

6. Communications with the Court

All communications from Plaintiffs with the Court should be through Plaintiffs' Co-Lead Counsel or Liaison Counsel. If circumstances require direct correspondence with the Court by

individual counsel, copies of any said communications shall simultaneously be served upon all four Plaintiffs' Co-Lead Counsel and Liaison Counsel by email.

7. Preservation of Privileges

The Court recognizes that cooperation by and among plaintiffs' counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between plaintiffs' counsel shall not be deemed a waiver of the attorney-client privilege and/or work product doctrine, if the privilege or doctrine is otherwise applicable, and all of such persons shall maintain the confidentiality of such communications. Cooperative efforts contemplated above shall in no way be used against any plaintiff by any defendant. Nothing contained in this provision shall be construed to limit the right of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

Under no circumstances are Co-Lead counsel, Liaison Counsel, the PEC, or any member of the PSC (or later appointed LDC member) responsible for the filings, discovery, or any other issue or matter related to an individual plaintiff's case or claim. More specifically, neither the Co-Lead counsel, Liaison Counsel, the PEC, or any member of the PSC, nor any individual attorney who named thereto, is in any way responsible for the attorney-client relationship and duties and responsibilities each individual attorney or law firm owe their client(s) in prosecution of their individual cases or claims.

Ordered this 2nd day of March, 2023.

A handwritten signature in cursive script, reading "Mary M. Rowland".

Mary M. Rowland
United States District Judge