

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC. SECURITIES, DERIVATIVE & "ERISA" LITIGATION	MDL No. 1658 (SRC) Civil Action No. 05-1151 (SRC) (CLW) Civil Action No. 05-2367 (SRC) (CLW)
THIS DOCUMENT RELATES TO: THE SECURITIES CLASS ACTION	

**[PROPOSED] ORDER APPOINTING SPECIAL MASTER
PURSUANT TO FED. R. CIV. P. 23(h)(4) AND 54(d)(2)(D)**

The Court notified the Parties to the Securities Class Action that, pursuant to Fed. R. Civ. P. 23(h)(4) and 54(d)(2)(D), it was considering the appointment of a Special Master to initially determine all issues relating to the award of attorneys' fees and reimbursement of Litigation Expenses to Plaintiffs' Counsel.¹ The Court provided the Parties with notice and an opportunity to be heard concerning the appointment of a Special Master, and the Parties have consented to the appointment of a Special Master to perform the duties as set forth herein. Having considered this matter carefully, the Court appoints a Special Master as follows:

1. Appointment of the Special Master. The Court appoints former United States District Judge Layn R. Phillips as Special Master in this case pursuant to Fed. R. Civ. P. 23(h)(4) and 54(d)(2)(D).

2. Duties of the Special Master. The Special Master shall have the following duties in this matter:

¹ Capitalized terms used in this Order that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated February 8, 2016.

A. To review Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of Litigation Expenses in the Securities Class Action from the Fee/Expense Fund ("Plaintiffs' Counsel's Application"), and all memoranda, responses, objections (including objections, if any, filed by members of, or lawyers for members of, the Settlement Class pursuant to Fed. R. Civ. P. 23(h)(4)), reply briefs and other documents that may be filed in support of or in opposition to any requested attorneys' fees and expenses, and any other requests for attorneys' fees and/or expenses by any other person in connection with the Securities Class Action. If deemed necessary by the Special Master, he may also request and review *in camera* the detailed time records of any counsel seeking attorneys' fees, as well as other documents and information in his discretion.

B. If deemed necessary by the Special Master, to hold an evidentiary hearing for the purpose of resolving any facts which may be material to the attorneys' fees and Litigation Expenses to be awarded.

C. To prepare and file with the Court a report and recommendation regarding the fairness and reasonableness of Plaintiffs' Counsel's Application and any other requests for a payment of attorneys' fees and/or expenses by any other person in connection with the Securities Class Actions. Such report and recommendation shall be filed with the Court twenty-five (25) days before the date set for the final Settlement Hearing.

D. Pursuant to Rule 53(b)(2)(C) and 53(e), the Special Master shall file any orders, directives, findings, reports and/or recommendations with the Court via the Court's ECF system. Such filing shall fulfill the Special Master's duty to serve his orders on the Parties. Any submission by any party to the Special Master shall also be filed with the Court's ECF system, except that the detailed time records and

information referred to above, if they are requested by the Special Master, may be submitted *in camera*.

3. Authority. In discharging his duties, the Special Master shall have all the authority provided by Rule 53(c), including, without limitation, the authority to set such time limits and procedures as may be necessary for the filing of motions and other materials relevant to the issues before him.

4. Due Diligence. Pursuant to Rule 53(b)(2), the Court hereby directs the Special Master to proceed with all reasonable diligence in performing his duties in this Action.

5. Ex Parte Communications. Pursuant to Rule 53(b)(2)(B), the Special Master may communicate *ex parte* with the Court at any time. In order to facilitate the fair and effective performance of his duties, the Special Master also may communicate *ex parte* with any attorney, as the Special Master deems appropriate for the purpose of ensuring the efficient administration and management of the proceedings to which his duties relate.

6. Court's Actions on Special Master's Reports or Recommendations. Pursuant to Rule 53(f)(1), in acting on an order, report or recommendation of the Special Master, the Court shall afford the Parties an opportunity to present their positions and, in its discretion, may receive evidence, and may adopt or affirm, modify, wholly or in part, reject or reverse, resubmit to the Special Master with instructions, or make any further orders it deems appropriate.

A. Time Limit for Review. Any party may file an objection to an order, finding, report or recommendation by the Special Master within ten (10) calendar days of the date it was electronically filed on the ECF system. The failure to meet this deadline or to timely request an extension of the deadline shall result in permanent waiver of any objection to the Special Master's orders, findings, reports

or recommendations. Any opposition shall be filed within seven (7) days after the objection is filed.

B. Filing the Record for Review. The party filing an objection or motion shall submit with such objection or motion any record necessary for the Court to review the Special Master's order, report and/or recommendation, including any transcripts of proceedings before the Special Master and any documents submitted by the Parties in connection with the Special Master's order, report and/or recommendation. Failure to provide the record shall constitute grounds for the Court to overrule the objection or deny the motion.

C. Standards for the Court's Review. In accordance with Rule 53(f)(3) and (4), the Court shall decide *de novo* all objections to conclusions of law or findings of fact made or recommended by the Special Master.

7. Compensation. The charges of the Special Master, which shall be his normal and customary billing rates, shall be paid out of the Fee/Expense Fund.

A. Billing Fees and Expenses. From time to time, the Special Master may submit to the Court itemized statements of fees and expenses, which the Court will inspect for reasonableness. The Court expects these itemized statements might reflect confidential communications between the Special Master and the Court. Accordingly, the Special Master is ordered to submit, together with his itemized statements, summary statements which shall not reflect any confidential information, accompanied by the statement "Approved for Disbursement."

B. Review of Statements and Payment. The Court shall review the itemized statements *in camera* for the purpose of determining the reasonableness of the Special Master's fees and costs. The itemized statements shall not be made

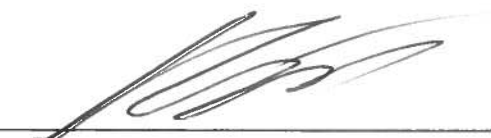
available to the public or counsel. If the Court determines the itemized statements are reasonable, the Court will sign the corresponding summary statement and transmit it to Co-Lead Counsel, who shall have five (5) calendar days to submit objections, if any, to the Court. The Court will review any objections and will make its final authorization and submission for payment thereafter. Once finally approved by the Court, payment from the Fee/Expense Fund shall be remitted to the Special Master by Co-Lead Counsel within ten (10) calendar days. The Court will return the original itemized statements to the Special Master, who shall preserve those originals until this matter has been fully and finally resolved for all purposes.

8. Submission of Affidavit and Effective Date of Appointment. The Court notified the Special Master that he would be appointed and the Special Master has filed an affidavit attesting pursuant to Rule 53(b)(3) that no ground for disqualification exists under 28 U.S.C. § 455. The appointment of the Special Master shall be effective immediately.

9. Appearance Limitation. As a precaution to avoid even the appearance of any possible conflict of interest, I am directing that the Special Master shall not individually appear before me in any other case in the capacity as counsel for any party during the pendency of the appointment in this matter. (*See Advisory Committee Notes, 2003 Amendments to Rule 53 Subdivisions (a)(2) and (3).*)

10. Cooperation. The Special Master shall have the full cooperation of the Parties and their counsel. As an agent and officer of the Court, the Special Master shall enjoy the same protections from being compelled to give testimony and from liability for damages as those enjoyed by other federal judicial adjuncts performing similar functions. The Parties will make readily available to the Special Master any and all facilities, files, databases and documents necessary to fulfill the duties and functions described in this Order.

SO ORDERED this 10 day of February 2016.


The Honorable Stanley R. Chesler
United States District Judge

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