

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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

MDL No. 3060

Master Docket No. 1:23-cv-00818

Hon. Mary M. Rowland

Hon. Sheila M. Finnegan

**JOINT STATUS REPORT REGARDING
THE APPOINTMENT OF A SPECIAL MASTER**

Pursuant to the Court's February 13, 2024 minute entry (ECF No. 447), the parties jointly submit this status report regarding the appointment of a Special Master to oversee ESI discovery disputes.

I. INTRODUCTION

While Defendants continue to object to the appointment of a Special Master as unnecessary (*see* ECF No. 436), the parties conferred regarding candidates for the role and Plaintiffs have agreed to a Special Master suggested by Defendants: the Honorable Paul Grimm (ret.). The parties therefore respectfully request the appointment of the Judge Grimm as Special Master on ESI discovery disputes in this matter and further respectfully request that the Court allow the parties to jointly contact Judge Grimm to determine his availability and willingness to serve as Special Master and to request his hourly rate or, in the alternative, that the Court make these inquiries of Judge Grimm. To the extent that Judge Grimm is unable to serve as Special Master, the parties request an opportunity to further confer and submit briefing on additional candidates before the Court appoints a Special Master in this litigation.

II. SPECIAL MASTER FEES

The parties have agreed that Plaintiffs and Defendants should share any special-master fees and costs equally, with Plaintiffs paying 50% and Defendants paying 50% of those expenses. Separately, Defendants continue to discuss among themselves an equitable approach for sharing their 50% of the special-master fees and costs among Defendants.

Defendants' Position Proposing a Fee Cap: Defendants propose that special master fees and costs be capped at \$10,000 per month. Defendants maintain that, pursuant to Rule 53, “[i]n appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.” Fed. R. Civ. P. 53(a)(3). One tool to ensure compliance with this mandate is a fee cap, limiting what a special master may charge in a case. *See, e.g., Vodanovich v. BOH Bros. Constr. Co.*, No. 05–4191, 2013 WL 1155219, at *2 (E.D. La. Mar. 19, 2013). If special circumstances exist, Defendants further propose that the parties may consent to the fees and costs exceeding that cap for a particular month or, following submissions from Plaintiffs and Defendants, the Court may order that the fees and costs may exceed that cap for a particular month.

Plaintiffs' Position Opposing a Fee Cap: Plaintiffs object to this proposal because a cap contravenes the interests of justice and is inherently unfair and unwarranted. No Special Master should be limited in the amount of time they may be permitted to arrive at a decision on complex and detailed disputes and varying positions raised or taken by the parties. These are not straightforward or simple issues. Plaintiffs understand that Judge Grimm’s rates at JAMS are likely approximately \$750 per hour, assuming a cap (and assuming this hourly rate), this would limit Judge Grimm to approximately 13 hours of work in the case each month. It will most likely take the parties longer than that to draft and write their briefs on the issues and positions

they are asserting. Plaintiffs oppose such an approach as inviting unnecessary time and wasted expense spent litigating the satellite issue of whether a cap should be exceeded.

III. CONCLUSION

If a Special Master is appointed to oversee ESI discovery disputes in this MDL, the parties respectfully request that the Court appoint the Honorable Paul Grimm (ret.). The parties further request that the Court order that Plaintiffs bear one-half of the special master fees and costs while Defendants split the other one-half among them.

Defendants seek a further order that such fees and costs be capped at \$10,000 per month, unless the parties consent otherwise or after briefing and a Court order. Plaintiffs oppose the notion of any cap of fees for the Special Master, and instead if the costs become too burdensome for the Defendants here, the parties can revisit the Special Master's services.

Dated: February 20, 2024

Respectfully Submitted,

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