

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

IN RE: GENERAC SOLAR POWER  
SYSTEMS MARKETING SALES  
PRACTICES AND PRODUCTS LIABILITY  
LITIGATION

MDL No. 3078  
Master Case No. 23-md-3078

This Document Relates to All Cases

**ORDER GRANTING THE APPLICATION OF THE PROPOSED *BASLER* SLATE FOR  
APPOINTMENT OF CO-LEAD COUNSEL, LIAISON COUNSEL, AND PLAINTIFFS'  
STEERING COMMITTEE**

This Order shall govern the practice and procedure in those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its Transfer Order June 2, 2023, as well as all related actions that are or may be originally filed in this Court or transferred or removed to this Court. This Order shall also govern the practice and procedure in any tag-along actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.1 of the Rules of Procedure of that Panel subsequent to the filing of the final transfer Order by the Clerk of this Court and any related actions subsequently filed in this Court or otherwise transferred or removed to this Court.

**I. APPOINTMENT OF LIAISON COUNSEL, LEAD COUNSEL, AND COMMITTEES**

This section addresses the organizational structure and appointments for all matters that are part of, or will be part of, this MDL.

**A. Plaintiffs' Lead Counsel**

**Structure**

The Plaintiffs shall be represented by four attorneys who will serve as Lead Counsel. The Defendants shall be represented by one or more attorneys to serve as lead counsel. Lead counsel shall coordinate with each other as required by the course of the pretrial proceedings.

The following attorneys has been proposed as the Plaintiffs' Lead Counsel; therefore, the Court appoints them to serve in that position:

Ian J. Barlow  
KERSHAW TALLEY & BARLOW  
401 Watt Ave. Ste. 1  
Sacramento, CA 95864  
Telephone: (916) 244-4829  
Email: ian@ktblegal.com

Mark P. Chalos  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
222 2nd Ave. South, Ste. 1640  
Nashville, TN 37201  
Telephone: (615) 313-9000  
Email: mchalos@lchb.com

Scott C. Harris  
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, LLC  
900 W. Morgan St.  
Raleigh, NC 27603  
Telephone: (919) 600-5000  
Email: sharris@milberg.com

James J. Rosemergy  
CAREY DANIS & LOWE  
8235 Forsyth Blvd., Ste. 1100  
St. Louis, MO 63105  
Telephone: (314) 725-7700  
Email: jrosemergy@careydanis.com

### **Responsibilities**

Lead counsel shall be generally responsible for coordinating the activities of their group during pretrial proceedings and shall:

1. Determine (after such consultation with other members of their Steering Committee and other co-counsel as may be appropriate) and present (in briefs, oral argument,

or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of their parties on all matters arising during pretrial proceedings;

2. Coordinate the initiation and conduct of discovery on behalf of their group consistent with the requirements of Fed. R. Civ. P. 26(b)(1), 26(b)(2), and 26(g), including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;
3. Conduct settlement negotiations on behalf of their group;
4. Delegate specific tasks to other counsel or committees of counsel, as authorized by the court, in a manner to ensure that pretrial preparation for their group is conducted efficiently and effectively;
5. Enter into stipulations with opposing counsel as necessary for the conduct of the litigation;
6. Prepare and distribute periodic status reports to the parties;
7. Maintain adequate time and disbursement records covering services as Lead Counsel;
8. Monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;
9. Perform such other duties as may be incidental to proper coordination of their group's pretrial activities or authorized by further order of the court; and
10. Appoint additional committees, as necessary, including but not limited to expert, trial, and settlement committees.

**B. Plaintiffs' Liaison Counsel**

**Structure**

The following attorney has been proposed as the Plaintiffs' Liaison Counsel; therefore, the Court appoints them to serve in that position:

Nola H. Cross  
CROSS LAW FIRM  
845 N. 11th Street  
Milwaukee, WI 53233  
Telephone: (414) 616-3229

Email: njhcross@crosslawfirm.com

### **Responsibilities**

Plaintiffs' Liaison Counsel shall:

1. Have responsibilities coincident with those of the members of the Steering Committee;
2. Fulfill the local, on-the-ground responsibilities for communications between the Court and other counsel;
3. Coordinate the filing of papers on behalf of Plaintiffs; and
4. Attend conferences and hearings.

### **C. Plaintiffs' Steering Committee**

### **Structure**

The Plaintiffs' pretrial activities in this case shall be managed by Plaintiffs' Steering Committee ("PSC"), as follows:

#### **Plaintiffs' Steering Committee**

The following counsel are appointed as members of the Plaintiffs' Steering Committee:

Stephen R. Basser  
BARRACK RODOS & BACINE  
600 W Broadway Ste. 900  
San Diego, CA 92101  
Telephone: (619) 230-0800  
Email: sbasser@barrack.com

Gary S. Graifman  
KANTROWITZ, GOLDHAMER & GRAIFMAN, P.C.  
135 Chestnut Ridge Rd. Ste. 200  
Montvale, NJ 07645  
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Email: ggraifman@kgglaw.com

David G. Omer  
OMER LAW FIRM, PLLC  
9131 Anson Way Ste. 205

Raleigh, NC 27615  
Telephone: (919) 300-6070  
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### **Responsibilities**

The members of Plaintiffs' Steering Committee shall from time to time consult with Plaintiffs' Lead Counsel in coordinating the Plaintiffs' pre-trial activities and planning for trial.

## **II. GENERAL GUIDELINES FOR FEE AND EXPENSE ALLOCATION**

- As to work for the common benefit of the class, only time and costs incurred pursuant to a co-lead counsel-authorized assignment will be considered and ultimately reimbursed.
- Common benefit costs and billable hours must be proper, reasonable, and necessary.
- Payments will not exceed fair value of the services performed.
- Any item of time or cost that is not described in sufficient detail to determine the nature and purpose of the service or cost involved will not be compensated.
- Any time or cost submission that is excessive on its face, when considered as a whole in light of the role that the attorney or other timekeeper had in the litigation, may not be compensated.
- If it is determined that any time submitted or activity for which counsel is requesting to be compensated is clearly outside the scope of authority or is not warranted, and/or could not be considered to contribute to the common benefit of the class, such time will not be allowed.
- Only time spent on efforts undertaken to advance the common interests of the class will be recognized.
- Time submissions must be based on contemporaneously kept records.
- Repetitive or unnecessarily duplicative work by multiple lawyers in one firm will not be compensated.
- Clerical time or clerical tasks will not be compensated.
- Daily records of time with specificity, including hours, location, and activity, are required.

### **III. CASE MANAGEMENT PROTOCOLS FOR COMMON BENEFIT WORK**

The Court hereby adopts the following guidelines for the management of case-staffing, timekeeping, cost reimbursement, and related common benefit issues. Co-Lead Counsel shall have the responsibility to implement the following guidelines for the efficient management of this multidistrict litigation.

Co-Lead Counsel understand the need for efficiency and will monitor attorney billing and expenses in order to minimize duplicative or unnecessary work. In the interest of balancing efficiency with the need to maintain quality and thoroughness in prosecuting this case, Co-Lead counsel will observe the following, in addition to the guidelines set forth above:

#### **A. Staffing Practices**

Co-Lead Counsel will delegate work and authorize expenditures to other firms as needed, and will limit such delegation to tasks that are reasonable and necessary to the prosecution of this case. Only time and costs incurred pursuant to assignments authorized by Co-Lead Counsel will be considered and ultimately reimbursed.

#### **1. Depositions**

Unless otherwise authorized by Co-Lead Counsel, counsel for Plaintiffs shall send no more than two (2) attorneys and one (1) paraprofessional to any deposition. When possible, counsel shall limit attendance to no more than one (1) attorney and one (1) paraprofessional. For example, with regard to the depositions of class representative plaintiffs, counsel shall limit attendance to one attorney selected by Co-Lead Counsel and, if necessary, one attorney from the firm representing that particular plaintiff.

#### **2. Court Hearings**

Absent unusual circumstances, counsel for Plaintiffs shall limit attendance at non-dispositive hearings to two (2) attorneys. Counsel attending a hearing without making an

appearance, or counsel who are not involved in briefing or arguing at the hearing, shall be advised that their time will not be reimbursed at the time of any fee petition.

With respect to hearings related to (1) class certification; (2) motions to dismiss; (3) motions for summary judgment; and (4) other significant pretrial motions, Co-Lead Counsel will handle the arguments and delegate work on these important motions to other Plaintiffs' firms, preferably to Liaison Counsel or those on the Executive Committee, based on their knowledge of particular areas of the case. In this manner, Co-Lead Counsel will have certain firms specialize in certain areas of the case to reduce the learning curve and increase efficiency when it comes to handling such motions. Any such delegation of work will be done in a manner that avoids duplication of effort.

### **3. Conference Calls and Meetings**

Co-Lead Counsel will seek to limit the number of conference calls and group meetings that include multiple counsel, and will limit participation to indispensable attendees. Such conference calls and meetings will be limited to situations of strategic importance for the overall case, or where information (*e.g.*, settlements) needs to be disclosed and discussed. To the extent possible, teleconferencing and video conferencing or other means will be used to limit travel expenses.

#### **B. Travel Expenses**

Counsel for plaintiffs shall only seek reimbursement for economy or coach-class airfare for travel. Counsel are welcome to travel by any means they choose, but may only seek reimbursement for coach-class airfare or similarly priced travel arrangements. Counsel will likewise make reasonable arrangements for lodging and shall seek reimbursement only for reasonable accommodations, not to exceed either \$350 per night plus tax or the rate at a Westin

(or an equivalent hotel, if no Westin is located in the immediate vicinity). Per diem meal expenses will not exceed \$150.

**C. Administrative Expenses**

Counsel may bill for all expenses reasonably incurred in prosecuting this case. Co-Lead Counsel shall maintain records of all expenses incurred, as well as any funds maintained by Plaintiffs' counsel for the purpose of paying such expenses. Claims for Lexis, Westlaw, Bloomberg, or other computerized legal research expenses should be in the actual amount charged to the firm and appropriately allocated for these research services. All expenses shall be charged at actual cost, without any mark-up. In-house copies shall be charged at no more than \$0.15 per page.

Co-Lead Counsel's explicit authorization shall be required for any expenditure exceeding \$5,000. Expenditures under \$5,000 will be left to the discretion of counsel working on authorized assignments, and will be reviewed by Co-Lead Counsel in monthly reports. Counsel for Plaintiffs shall not seek reimbursement for expenses or costs incurred as part of normal overhead costs for running a law firm.

**IV. TIME RECORDS**

**A. Recording Requirements**

All billing plaintiffs' counsel shall record and maintain daily, contemporaneous time records for all work performed, including work by attorneys, paraprofessionals, and assistants. Counsel shall bill in no larger than one-tenth of an hour increments, and shall maintain records in such a way that each billed activity is recorded separately. Counsel shall not combine billable activities into block-billing records. Counsel will not be reimbursed for any item of time or cost not described in sufficient detail to determine the nature and purpose of the service or cost.



## **B. Format**

For Co-Lead Counsel to maintain all submissions of common benefit time in a fully sortable and searchable format, all of the time and expense submissions must be provided by submitting counsel in the following format. Once per month, a staff member in each office will provide two files: (1) an Excel (.csv) file containing the time detail for all employees who performed case-related work for the prior month; and (2) a PDF file, with an index, containing all case-related expenses for the prior month.

The Excel (.csv) file containing time submissions must include the following columns of information: (1) Case Name; (2) Date; (3) Attorney (initials); (4) Entry (time detail); (5) Task Code; and (6) Hours. A list of the Task Codes is attached hereto as Exhibit A.

## **C. Document Review**

Document review can be the most challenging area of a case in which to keep control over time and expenses. Co-Lead Counsel will put out for bid any vendor services and strive to get the best services for the best price without sacrificing quality. Once a document database is established, searches will be used to create the universe of documents to be reviewed by other counsel. A remote document review system will be used to avoid unnecessary travel expenses, and procedures will be put in place to monitor how much time is spent reviewing documents and to monitor the efficiency and quality of review by other firms. Depending on the volume of documents produced, it is possible that multiple document reviewers will be needed. Co-Lead Counsel will use paraprofessionals as necessary, attorneys for higher-level review, and senior attorneys only for top-tier review and quality control. Co-Lead Counsel will impose an hourly rate limitation on paraprofessionals and non-senior attorneys who review documents. That rate limitation cannot be set until the volume of documents and number of reviewers is determined. Where it proves economically advantageous, Co-Lead Counsel may employ contract attorneys to

perform efficient and focused document review. Such contract attorneys will be billed at an hourly rate consistent with the market rate for comparable attorneys.

**D. Co-Lead Counsel Review of Time Records and Expenses**

All plaintiffs' counsel shall submit a copy of all billing and expenses to Co-Lead Counsel for review no later than 15 days following the last day of each month. Co-Lead Counsel will collect all billing records and expenses monthly and conduct a monthly review of time records and expenses to ensure that costs and expenses are reasonable. Co-Lead Counsel shall take particular care to ensure that duplicative work is not being performed. It is the responsibility of Co-Lead Counsel to review the time submissions and notify other participating counsel if their submissions do not substantially comply with the requirements set forth herein, or that the time submitted does not qualify as common benefit time. Co-Lead Counsel shall have the power to discount or eliminate non-compliant or unnecessarily duplicative bills, and shall not submit those time records to the Court nor seek reimbursement for unnecessary expenses. Co-Lead Counsel will maintain records in such a manner as to be prepared to submit for review a summary of their time and expenses to the Court for its interim review if the Court so desires.

Co-lead Counsel understand that the Court may review time records in the event of a settlement in order to perform a lodestar cross-check or otherwise ensure that plaintiffs' counsel have not billed unnecessarily. Co-Lead Counsel will make necessary efforts to pre-screen billing records to eliminate unnecessary and duplicative work before submitting records to the Court.

**V. GENERAL APPLICABILITY OF ORDER**

This order applies to all pending and to each subsequently filed case that becomes part of MDL No. 3078.

**VI. COMMUNICATION AMONG COUNSEL**

This Court recognizes that cooperation by and among Plaintiffs' counsel and by and among Defendant's counsel is essential for the orderly and expeditious conduct of this litigation. The communication of information among and between Plaintiffs' counsel and among and between Defendant's counsel shall not be deemed a waiver of attorney client privilege or the protection afforded attorney's work product, and cooperative efforts contemplated above shall not in any way be used against Plaintiffs by any Defendant or against any Defendant by Plaintiffs. Nothing contained in this paragraph shall be construed to limit the rights of any party or counsel to assert the attorney-client or joint defense privilege or the attorney work-product doctrine.

**AND IT IS SO ORDERED.**

DATED: July 18, 2023

/s/Lynn Adelman  
The Honorable Lynn S. Adelman