

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

IN RE CONAGRA PEANUT BUTTER	:	Civil Action No.
PRODUCTS LIABILITY LITIGATION	:	1:07-md-1845 TWT
	:	ALL CASES

**CONSENT ORDER AUTHORIZING DISBURSEMENT #2 FROM
COMMON BENEFIT FUND ACCOUNT**

Pursuant to this Court's Order of April 7, 2009 [Document 703,] a Common Benefit Fund for recovery of costs has been established. The balance of the Common Benefit Fund as of September 30, 2010, is \$ 166,210.63. To date, the only distribution from the Common Benefit Fund was authorized by this Court on January 25, 2010, to pay ConAgra's experts for their time spent in discovery depositions taken by Plaintiffs.

1. Members of the Plaintiffs' Executive Committee have expended far more in out-of-pocket costs for the common benefit of Plaintiffs in this MDL than the balance in the Common Benefit Fund, and more than is expected ever to be deposited into the Common Benefit Fund.

2. For instance, the costs paid by Plaintiffs Lead Counsel, Lief Cabraser Heimann & Bernstein, LLP, for only the deposition transcripts, the document

repositories and expert witnesses for the common benefit of Plaintiffs in this MDL exceed \$350,000.00.¹ These unreimbursed costs paid by Lieff Cabraser do not include other significant out-of-pocket expenses paid by Lieff Cabraser for the common benefit of the Plaintiffs in this litigation, such as travel for hearings and depositions, online legal research, telephone calls and postage. Total costs paid by Lieff Cabraser for the common benefit of Plaintiffs in this litigation exceed \$500,000.00.

3. To date, Plaintiffs' Liaison Counsel, McCamy, Phillips, Tuggle & Fordham, LLP, has incurred out of pocket expenses for the common benefit of the Plaintiffs in this Litigation of at least \$19,162.35. (Exhibit 2.)

4. To date, Plaintiffs Executive Committee Member Cory Watson Crowder & DeGaris, P.C. has incurred a total of at least \$3,222.04 for travel and related expenses incurred in preparing for and taking depositions of ConAgra witnesses and expert witnesses. (Exhibit 3.) Plaintiffs Executive Committee Member Jenkins & Jenkins has incurred \$3,906.49 in travel expenses to take depositions of ConAgra witnesses and expert witnesses. (Exhibit 4.)

5. Plaintiffs Counsel have requested an interim distribution to refund some of these expenses from the Common Benefit Fund, and ConAgra has agreed

¹ To date, total costs paid by Lieff Cabraser for deposition transcripts are \$8,717.65; for the document repositories are \$168,976.76; and for experts are \$213,647.71. (Exhibit 1.)

that such distribution would be appropriate. Specifically, Plaintiffs Counsel have requested a partial reimbursement to Lief Cabraser of \$125,000.00 from the Common Benefit Fund, a partial reimbursement of Plaintiffs' Liaison Counsel, McCamy Phillips of \$ 19,162.35, reimbursement to Plaintiffs' Executive Committee Member Corey Watson of \$3,222.04, and reimbursement to Plaintiffs' Executive Committee Member Jenkins & Jenkins of \$3,906.49. These cost reimbursements do not fully reimburse the out-of-pocket expenses incurred for the common benefit of the plaintiffs, and do not compensate Plaintiffs' Counsel for the hundreds and hundreds of hours spent litigating this case for the common benefit of the Plaintiffs.

Based upon this Court's review of the records of Plaintiffs' Counsel, its knowledge of the contributions of Plaintiffs' Counsel in this case, and based upon the record in this matter, it is therefore hereby ORDERED that the Common Benefit Funds will be distributed as requested. Plaintiff's Liaison Counsel shall timely obtain such funds from such common benefit account and remit to the attention of Defendant's Liaison Counsel. Plaintiff's Liaison Counsel shall additionally be authorized by this Order to pay over any reasonable and customary bank charges, if any, associated with such payments without further Order of this Court.

Entered this 15th day of October, 2010.

/s/Thomas W. Thrash
JUDGE THOMAS W. THRASH, JR.

Submitted by:

/s/ Robert H. Smalley, III
Robert H. Smalley, III
McCamy, Phillips, Tuggle & Fordham, LLP
Georgia Bar No. 653405
P.O. Box 1105
Dalton, Georgia 30722
(706) 278-4499 (Telephone)
(706) 278-5002 (Facsimile)

Plaintiffs' Liaison Counsel

/s/ James F. Neale
James F. Neale
VSB No. 43060
McGUIREWOODS LLP
Court Square Building
310 Fourth Street, N.E., Suite 300
Post Office Box 1288
Charlottesville, Virginia 22902
(434) 977-2582
(434) 980-2263 (Facsimile)

Defendant's Liaison Counsel

