

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WILLIE BRUNSON, JR.,

Plaintiff,

-against-

ZIMMER HOLDINGS, INC.,
ZIMMER, INC., and ZIMMER US,
INC.

Defendants.

Case No. 2:11-cv-05775 (SDW)
(MCA)

Master Docket No. 09-4414 (SDW)
(MCA)

MDL No. 2158

MOTION TO REDUCE CONTRIBUTION TO COMMON BENEFIT FUND

NOW COMES the plaintiff WILLIE BRUNSON, JR., through his attorney, Michael Kolb, and respectfully moves the Court to reduce the plaintiff's contribution to the Common Benefit Fund from 4% of his gross monetary recovery by virtue of the settlement of his case to 1% of his gross monetary recovery by virtue of settlement of his case, for the reasons set forth in the accompanying Brief.

Respectfully submitted,



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Attorney for Plaintiff

WILLIE BRUNSON, JR.,

Plaintiff,

-against-

Master Docket No. 09-4414 (SDW)
(MCA)

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**BRIEF OF PLAINTIFF IN SUPPORT OF MOTION TO REDUCE_
CONTRIBUTION TO COMMON BENEFIT FUND**

On June 21, 2011 the plaintiff Willie Brunson, Jr. filed his complaint in the United States District Court for the Southern District of New York setting forth his claims arising out of the implant of a defective Durom Cup hip prosthesis in his right side on January 29, 2008. By Order dated October 5, 2011 the action was transferred to this Court by the MDL Panel under MDL No. 2158.

After the filing of the complaint, plaintiff's counsel monitored the proceedings under Master Docket No. 09-4414, provided defendants' counsel with information and with medical and other documents pertaining to the plaintiff's claims, and entered into settlement negotiations with defendant's counsel.

Because the plaintiff's injury that necessitated the hip implant had occurred during the course of his employment and his employer's Workers' Compensation

carrier had expended monies to pay for lost wages and medical treatment before and after the implant date of January 28, 2009, it was also necessary for plaintiff's counsel to negotiate with the Workers' Compensation carrier to arrive at an agreed upon Workers' Compensation lien figure and obtain the carrier's consent to settle this action pursuant to §29 of the Workers' Compensation Law of New York. Such consent was required to have been obtained in order to preserve the plaintiff's rights under the Workers' Compensation Law.¹

After obtaining such consent, the plaintiff's counsel settled the case on August 10, 2012 as a result of direct negotiations with the defendants' counsel. The settlement agreement provides that the settlement amount is to remain confidential. As set forth in the accompanying Affidavit of Michael Kolb, the only contact that plaintiff's counsel had with the plaintiff's Liaison Counsel or any other attorneys acting for and providing a common benefit for all plaintiffs in this multi-district litigation prior to the settlement of this action was a single exchange of voice messages. Plaintiff's counsel did not receive any documents from such counsel. All documents provided on behalf of the plaintiff to defendants' counsel were provided by plaintiff's counsel.

Case Management Order 3, dated January 21, 2011, established a Common

¹ In the absence of such consent, under §29 the plaintiff could have sought a Court Order setting the Workers' Compensation lien.

Benefit Fund and provided in paragraph 3, in pertinent part, that beginning December 2, 2010 plaintiffs entering into settlement agreements with defendants “are subject to a four per cent (4%) assessment of the plaintiff’s gross monetary recovery, to be withheld by the Defendants and paid into the Common Benefit Fund.” In that same paragraph of the Order, the Court reserved “the right to change this percentage based on the factors set forth in the Model Code of Professional Conduct 1.5 for determining a reasonable fee.”

The plaintiff has not yet received the settlement proceeds but anticipates that 4% of the gross settlement amount will be withheld therefrom by defendants’ counsel.

The plaintiff and his counsel understand and appreciate the purpose and intent of the Common Benefit Fund in this case. However, in this case all of the work that led to the settlement of the case was performed by plaintiff’s counsel.

In response to at least two prior applications of this nature the Court reduced plaintiffs’ contributions to the Common Benefit Fund from 4% to 1%, see Order dated June 8, 2011 in *Howard v. Zimmer, Inc., et al.*, Master Docket #49; Order dated December 19, 2011 in *Ricciardo v. Zimmer Holdings, Inc., et al.*, Master Docket #98, which is the relief sought by the plaintiff Willie Brunson, Jr. on this application.

Based on the foregoing, it is respectfully requested that the contribution of

the plaintiff Willie Brunson, Jr. be reduced from 4% of the gross monetary to 1% of the gross monetary recovery and that the said plaintiff be granted such other and further relief as to the Court may seem just and proper.

Filed herewith is a proposed Order determining this motion.

Dated: Newburgh, New York
August 27, 2012

Respectfully submitted,



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Attorney for Plaintiff

to the MDL.

4. According to my contemporaneous case notes, on September 19, 2011, I telephoned Kent L. Klautt, Esq. of Lief Cabraser Heimann & Bernstein, LLP and left a voice message requesting information pertaining to the MDL litigation. On September 20, 2011, Mr. Klautt responded by leaving me a voice message providing the information that I had requested.

5. Plaintiff's counsel did not receive any documents from plaintiffs' Liaison Counsel or any other attorneys acting for and providing a common benefit for all plaintiffs in this multi-district litigation. All documents provided on behalf of the plaintiff to defendants' counsel were obtained and provided by plaintiff's counsel.

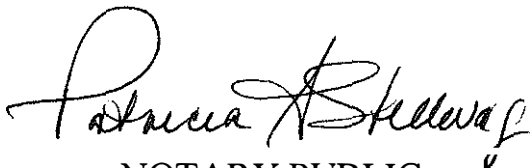
6. On August 15, 2012 I made a courtesy call to Mr. Klautt to advise him that the plaintiff would be making this application and left him a voice message to that effect.



MICHAEL KOLB

Sworn to before me this

27th _ day of August, 2012



NOTARY PUBLIC

PATRICIA A. STELLWAG
Notary Public, State of New York
No. 01ST4923083
Qualified in Orange County
Commission Expires March 14, 20 14

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ORDER

THIS MATTER having come before this Court on the motion of plaintiff Willie Brunson, Jr. Seeking to reduce his contribution to the Common Benefit Fund; and there having been no opposition to the motion; and having considered the plaintiff's papers submitted in support of the motion; the Court makes the following Findings of Fact and Conclusions of Law:

1. It is appropriate that the plaintiff Willie Brunson, Jr.'s contribution to the Common Benefit Fund be reduced in this case.
2. Reference is made to Case Management Order 3: Order Establishing Common Benefit Fund dated January 21, 2011 wherein the Court reserved the

right to change the percentage of contribution “based upon the factors set forth in the Model Rule of Professional Conduct 1.5 for determining the reasonableness of a fee.”

WHEREFORE, the Court having found that the relief sought is warranted; and for good cause shown;

IT IS, on this ____ day of _____, 2012,

ORDERED that the motion of the plaintiff Willie Brunson, Jr. is GRANTED; and it is further

ORDERED that the contribution to the Common Benefit Fund on behalf of the plaintiff Willie Brunson, Jr. is reduced to 1 (one) percent.

MADELINE COX ARLEO
United States Magistrate Judge

cc: Clerk of the Court
Hon. Susan D. Wigenton, U.S.D.J.
All Parties
File

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Reduce Contribution to Common Benefit Fund was filed electronically this 27th day of August, 2012. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. The parties may access this filing through the Court's system.



Michael Kolb
Attorney for Plaintiff