

IN THE UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION

IN RE: DEPUY ORTHOPAEDICS, INC., PINNACLE HIP IMPLANT PRODUCTS LIABILITY LITIGATION  ----- This Document Relates to all Cases  -----	§ § § § § § § § § § §	MDL Docket No.  3:11-MD-2244-K  CASE MANAGEMENT ORDER No. 7
--------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------	----------------------------------------------------------------------------

**ORDER REGARDING MANAGEMENT OF TIMEKEEPING, COST REIMBURSEMENT AND RELATED COMMON BENEFIT ISSUES**

This Order sets forth the guidelines regarding the submission and compensability of common benefit time and expense. The recovery of common benefit attorneys’ fees and cost reimbursements will be limited to “Participating Counsel.” Participating Counsel” shall be defined as the Court-appointed Plaintiffs Steering Committee (along with members of their firm and staff) and any other counsel authorized by the Executive Committee or Lead Counsel who desire to be considered for common benefit compensation.

Participating Counsel shall only be eligible to receive common benefit attorneys’ fees and cost reimbursement if the time expended, costs incurred and activity in question were (a) for the common benefit, (b) appropriately authorized, (c) timely submitted, and (d) approved by this Court. Participating Counsel who seek to recover Court-awarded common benefit attorneys’ fees and expenses in connection with this litigation, should

the litigation result in the creation of a fund from which common benefit fees and expenses can be awarded, shall keep a daily contemporaneous record of their time and expenses, noting with specificity the amount of time, location (if relevant), and particular activity along with confirmation that authority was obtained to have undertaken that common benefit effort. Such counsel shall, by the 15th day of each month, submit to Richard J. Arsenault at [PinnacleTime@nbalawfirm.com](mailto:PinnacleTime@nbalawfirm.com), a report of their time and expense records as noted above for the preceding month in the attached format (See Exhibit A). By July 15, 2012, submissions shall be made for all time incurred prior to July 1, 2012. The failure to secure authority to incur common benefit time and expenses, or maintain and timely provide such records or to provide a sufficient description of the activity will be grounds for denying the recovery of attorneys' fees or expenses in whole or in part.

The Court has been advised that Participating Counsel agree to the terms and conditions herein, including agreeing that this Court has final, non-appealable authority regarding the award of common benefit attorney fees and awards for cost reimbursements in this matter. Participating Counsel knowingly and expressly waive any right to appeal those decisions, assert the lack of enforceability of this Order, or to otherwise challenge its adequacy. This agreement will be confirmed in writing with each month's time and expense submission as follows: "I hereby certify that I have read and agree to be bound by the Court's June 20, 2012, Order Regarding Management of

Timekeeping, Cost Reimbursement and Related Common Benefit Issues. By: [attorney's signature], Individually and as the Expressly Authorized Agent for [Law Firm].” Any person who objects to the requirements of this Order must make objections within 14 days of completing the work contended to be for common benefit.

After the Court makes any final award of common benefit attorney's fees and costs, a Fee Committee composed of Lead Counsel and the Executive Committee (“Fee Committee”) shall accept submissions from all attorneys seeking common benefit fees and expenses and who properly and timely submitted reports of their time and expense records as noted herein. The Fee Committee shall thereafter recommend an allocation of common benefit fees and expense reimbursements among those participating attorneys who submitted applications for such costs and fees. This recommendation will be submitted to the Court for review and final non appealable determination.

#### EXPENSE LIMITATIONS

##### A. Travel Limitations

Only reasonable expenses will be reimbursed. Except in extraordinary circumstances approved by Lead Counsel and the Executive Committee (hereinafter “Leadership”), all travel reimbursements are subject to the following limitations:

- i. Airfare. Ordinarily only the price of a coach seat for a reasonable itinerary will be reimbursed. Business/First Class Airfare will *not* be fully reimbursed, except for international flights or cross-country flights, which requires prior written approval by Leadership. In the event non-coach air travel is utilized, the attorney shall be reimbursed only to the extent of the

full coach fare if the full coach fare for that flight is contemporaneously documented. If non-coach, private or charter travel is elected, the applicant is required to submit what the full coach fare in effect at that time was, and that is all that can be reimbursed.

- ii. Hotel. Hotel room charges for the average available room rate of a business hotel, including the Hyatt, Hilton, Sheraton, Westin, and Marriot hotels, in the city in which the stay occurred will be reimbursed. Luxury hotels will not be fully reimbursed but will be reimbursed at the average available rate of a business hotel.
- iii. Meals. Meal expenses must be reasonable.
- iv. Cash Expenses. Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, pay telephone, etc.) Will be reimbursed up to \$30.00 per trip, as long as the expenses are properly itemized.
- v. Rental Automobiles. Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles were available. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form, and only the non-luxury rate may be claimed, unless such larger sized vehicle is needed to accommodate several counsel.
- vi. Mileage. Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, and the rate will be the maximum rate allowed by the IRS.

#### B. Non-Travel Limitations

- i. Long Distance, Conference Call and Cellular Telephone Charges. Common benefit long distance, conference call and cellular telephone charges must be documented as individual call expenses in order to be compensable. Copies of the telephone bills must be submitted with notations as to which charges relate to the DePuy Orthopaedics, Inc. Pinnacle Hip Implant MDL litigation. Such charges are to be reported at actual cost.

- ii. Shipping, Overnight, Courier, and Delivery Charges. All claimed common benefit shipping, overnight, courier or delivery expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package. Such charges are to be reported at actual cost.
- iii. Postage Charges. A contemporaneous postage log or other supporting documentation must be maintained and submitted for common benefit postage charges. Such charges are to be reported at actual cost.
- iv. Telefax Charges. Contemporaneous records should be maintained and submitted showing faxes sent and received for common benefit matters. The per-fax charge shall not exceed \$1.00 per page.
- v. In-House Photocopy. A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 20¢ per page.
- vi. Computerized Research - Lexis/Westlaw. Claims for Lexis or Westlaw, and other computerized legal research expenses should be in the exact amount charged the firm and appropriately allocated for these research services.

#### C. Verification

The forms detailing expenses shall be certified by a senior partner in each firm attesting to the accuracy of the submissions. Attorneys shall keep receipts for all expenses. Credit card receipts (not the monthly statements) are an appropriate form of verification so long as accompanied by a declaration from counsel that work was performed and paid for the common benefit.

## COMMON BENEFIT WORK

### A. Authorization for Compensable Common Benefit Work

Authorized Common Benefit Work includes assignments made by the Leadership. Unless specifically and explicitly authorized in writing, no time spent on developing or processing individual issues in any case for an individual client (claimant) will be considered or should be submitted, nor will time spent on any unauthorized work.

Examples of authorized and unauthorized work include but are not limited to:

- i. Depositions. Participating Counsel may attend any deposition space permitting; however, if such counsel has not been designated as one of the authorized questioners or otherwise authorized to attend the deposition by Leadership, your time and expenses shall not be considered common benefit work, but rather considered as attending on behalf of such counsel's individual clients.
- ii. Periodic MDL Conference Calls. These calls are held so that individual attorneys are kept up-to-date on the status of the litigation, and participation by listening to such calls is not common benefit work. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients, and that is a reason to listen in on those calls. The attorneys designated by Leadership to run those calls are working for the common benefit by keeping other lawyers and informed and educated about the case, and their time will be considered for common benefit. Nothing in this paragraph shall be construed to prevent members of the PSC from submitting common benefit time for participation in PSC communications that are germane to all members of the PSC and are necessary to fulfill their PSC obligations.
- iii. Periodic Status Conferences. Regular status conferences are held so that the litigation continues to move forward and legal issues are resolved with the Court. Individual attorneys are free to attend any status conference held in open court in order to keep up-to-date on the status of the litigation and participation, but attending and listening to such conferences is not common benefit work. Each attorney has an obligation to keep

themselves informed about the litigation so that they can best represent their clients. Mere attendance at a status conference will not be considered a common benefit expense or common benefit time. The attorneys designated by Leadership to address issues that will be raised at a given status conference or requested by Leadership to be present at a status conference are working for the common benefit and their time will be considered for common benefit. Similarly, any attorney whose attendance at a status conference is specifically requested by the Judge in that case may submit their time to the Fee Committee for evaluation as common benefit time.

- iv. Committee Meetings or Calls. During committee phone calls or other meetings there is a presumption that only one participant per firm will qualify for common benefit time, unless otherwise authorized by the Leadership.
- v. Identification and Work Up of Experts. Participating Counsel are encouraged to identify experts in consultation with the Leadership. If a Participating Counsel travels to and retains an expert without the knowledge and approval of the Leadership they understand that the MDL may not need or use that expert, and their time and expenses may not be eligible for common benefit expenses/work.
- vi. Attendance at Seminars. Attendance at seminars (i.e. AAJ Section Meetings, Mass Tort Made Perfect, Harris Martin and similar seminars and CLE) does not qualify as common benefit work or a common benefit expense.
- vii. Document Review. Only document review specifically authorized by Leadership and assigned to an attorney will be considered common benefit work. If an attorney elects to review documents that have not been assigned to that attorney by Leadership, that review is not considered common benefit. Except in extraordinary circumstances, approved in writing by Leadership, only licensed attorneys may conduct common benefit document review. Descriptions associated with “document review” must contain sufficient detail to allow those reviewing the time entry to generally ascertain what was reviewed. For example, indicating the custodian, search query or number of document folders reviewed is the kind of description needed. Counsel will receive periodic reports from Crivella West, the vendor retained to manage the electronic production, of

computer billing time for depository review. Crivella West has the capability to track actual time spent by each attorney in reviewing documents. Participating Counsel should bring any discrepancy to the attention of the Leadership or its designee within thirty days of receipt of the Crivella West report. Failure to timely bring any claimed discrepancy to the attention will result in the compensable document review time being presumptively deemed that which was electronically logged by Crivella West.

- viii. Review of Pleadings and Orders. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients, and review of pleadings and orders is part of that obligation. Only those attorneys designated by Leadership to review or summarize those pleadings or orders for the MDL are working for the common benefit and their time will be considered for common benefit. All other counsel are reviewing those pleadings and orders for their own benefit and the benefit of their own clients, and the review is not considered common benefit. Nothing in this paragraph shall be construed to prevent Leadership and the PSC from submitting common benefit time for reviewing orders of the Court that are germane to all members of the PSC and are necessary for review to fulfill their committee obligations.
- ix. Emails. Time recorded for reviewing emails, and providing non-substantive responses, generally is not compensable unless germane to a specific task being performed by the receiving or sending attorney or party that is directly related to that email. Thus, for example, review of an email sent to dozens of attorneys to keep them informed on a matter on which they are not specifically working would not be compensable. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients and that is a reason to review emails to a larger group which involves a matter on which the recipient is not directly and immediately working. If time submissions are heavy on email review and usage with little related substantive work, that time may be heavily discounted or not compensated at all.
- x. Review of Discovery Responses. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients and that is a reason to review discovery responses served in this litigation. Only those attorneys designated by Leadership to review and summarize those discovery responses for the MDL are working for



the common benefit and their time will be considered for common benefit. All other counsel are reviewing those discovery responses for their own benefit and the benefit of their own clients, and the review is not considered common benefit.

- xi. Bellwether Trials. While the work-up of individual cases is *not* considered common benefit, in the event that a case is selected as part of an approved early preference or bellwether trial process in the MDL or participating state court proceedings, the time and expenses in trying the case (including work performed as part of the approved bellwether process) may be considered for common benefit to the extent it complies with the other provisions of this Order or Participation Agreement.

In the event Plaintiffs' Counsel are unsure if the action they are about to undertake is considered a common benefit action, counsel shall ask Leadership in advance as to whether such time may be compensable.

#### B. Time Keeping and Submission of Time Records

All time must be authorized and accurately and contemporaneously maintained. Time shall be kept according to these guidelines as noted herein using the forms circulated by Leadership, clearly indicating their position in the firm (Partner, Associate, Paralegal). Time submission is limited to attorneys and paralegals; no submission of clerical or technical support without prior approval by Leadership. Participating Counsel shall keep a daily record of their time spent in connection with common benefit work on this litigation, indicating with specificity the hours, location (if relevant) and particular activity (such as "conducted deposition of John Doe."). Time entries that are not sufficiently detailed may not be considered for common benefit payments. All

common benefit work time for each firm shall be maintained in a tenth-of-an-hour increment.

IT IS SO ORDERED.

Signed June 20<sup>th</sup>, 2012.

A handwritten signature in cursive script that reads "Ed Kinkeade". The signature is written in black ink and is positioned above a solid horizontal line.

ED KINKEADE

UNITED STATES DISTRICT JUDGE

# **EXHIBIT A**

EXHIBIT A - DePuy Pinnacle MDL 2244  
Common Benefit Time Report

Firm Name:  
Reporting Period:  
Certified By:  
Date Submitted:

Date	Detail Description of Work Performed	Name	Level	Task Code	Hours by 0.1 Increments	Billing Rate	Work Assigned By or Approved By

On behalf of myself, my law firm and any of our attorneys and staff submitting common benefit time and expenses, we hereby certify that we have read and agree to be bound by the terms and conditions contained in CMO No. 7 and acknowledge that the Court will have final, non-appealable authority regarding the award of fees, the allocation of those fees and awards for cost reimbursements in this matter and expressly waive any right to appeal the Court’s decisions regarding these issues.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

<u>Professional Level</u>	<u>Task Code</u>	<u>Lead Counsel</u>
Senior Partner	PEC Calls/Meeting	Brian Devine
Junior Partner	PSC Calls/Meeting	Jayne Conroy
Senior Associate	Lead/Liason Duties	John M. Restaino
Junior Associate	Administrative	Kenneth M. Seeger
Law Clerk	Court Appearance	Kevin Parker
Contract Attorney	Discovery	Larry P. Boyd
Paralegal	Document Review	Paul Hanly
	Depo: Prep/Take/Defend	Richard D. Meadow
	Law./Briefing	Richard J. Arsenault
	Science	W. Mark Lanier
	Experts/Consultants	
	Settlement	
	Trial Prep/Bellwether	
	Other/Misc.	

EXHIBIT A - DePuy Pinnacle MDL 2244  
Held Expense Report

Firm Name:  
Reporting Period:  
Certified By:  
Date Submitted:

Fax Charges	
Meals	
Postage, Shipping, Courier, Certified Mail	
Printing & Photocopying (in-house)	
Research on Computer - Lexis/Westlaw	
Telephone-Long Distance	
Travel-Attorney for Deposition, Court or Legislative Hearing	
Airfare	
Reasonable Ground Transportation	
Hotel up to \$200/night or the average of Hyatt, Hilton, and Marriott Hotel Rates in that City	
Reasonable Meals	
Reasonable Other (Parking, etc.)	
Assessments	
Car rentals, cabs, etc.	
Miscellaneous Charges	
Investigative Services	
TOTAL COSTS	

\*Please attach documentation for each expense reported.

EXHIBIT A - DePuy Pinnacle MDL 2244  
Held Expense Report

Firm Name:  
Reporting Period:  
Certified By:  
Date Submitted:

Court, Filing and Service Costs	
Deposition and Court Reporter Costs	
Document Depository	
Expert Witness and Consultant Fees	
Extraordinary Postage (Mass Mailing)	
Printing, Copying, Coding, Scanning, (Outside Vendor or Extraordinary and Related Solely to Common Issues)	
Committee Group Meetings and Approved by Lead Counsel	
Research by Outside Third Party	
Telephonic Conference Calls (Third Party)	
Common Witness Expenses Including Travel	
TOTAL COSTS:	

\*Please attach documentation for each expense reported.