

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

In re: BIOMET M2A MANGUM ) CAUSE NO. 3:12-MD-02391-RLM-CAN  
HIP IMPLANT PRODUCTS LIABILITY )  
LITIGATION (MDL-2391) ) THIS DOCUMENT RELATES TO:  
 ) ALL CASES

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**PLAINTIFFS STEERING COMMITTEE'S MOTION  
TO APPOINT ESCROW AGENT AND FEE COMMITTEE**

In accordance with the Court's Case Management Order Establishing Common Benefit Fee and Expense Funds (Doc. 1317-2; filed 2/03/2014) (the "Common Benefit Order"), the Plaintiffs Steering Committee, Executive Committee and Co-Lead Counsel (collectively hereinafter "PSC"), on behalf of all Participating Counsel and Plaintiffs in the *Biomet M2A Mangum Hip Implant Products Liability Litigation*, respectfully move the Court (1) to appoint Jessica Larbes, C.P.A., a qualified certified public accountant and employee of Garretson Resolution Group ("GRG"), to establish and serve as the Escrow Agent for the Biomet Common Benefit MDL Assessment Fund (which will include two subaccounts, the Biomet Hip Common Benefit Attorney's Fee Fund and the Biomet Hip Common Benefit Cost Fund) (the "Fund"), using the support structure of GRG to provide administrative services, to receive and disburse funds, to keep detailed records of all deposits and withdrawals, and to prepare tax returns and other tax filings, as required, and (2) to appoint Thomas Anapol and Mark Lanier, Plaintiffs' Co-Lead Counsel, and Sylvius von Saucken, GRG's Chief Compliance Officer and Fiduciary, to the Fee Committee, whose purpose is to make recommendations to the Court about how any money in the Fund should be distributed among Participating Counsel.<sup>1</sup>

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Common Benefit Order.

On February 3, 2014, this Court entered the Common Benefit Order, which, *inter alia*, contemplated the creation of the Fund.<sup>2</sup> The Court reserved the right to appoint a qualified certified public accountant to act as the Escrow Agent for the Fund at a later date.<sup>3</sup> The PSC now seeks to have Jessica Larbes, C.P.A., of GRG appointed to serve as the Escrow Agent and to oversee the Fund pursuant to the Common Benefit Order. A copy of Mrs. Larbes' resume and a list of GRG's representative appointments and engagements are collectively attached hereto as Exhibit A. The PSC has advised Biomet of its proposed selection, and Biomet has voiced no objection.

Upon approval by the Court, Ms. Larbes will serve as the Escrow Agent for the Fund and will establish an interest-bearing account with two subaccounts at The PrivateBank and Trust, a financial institution doing business in Chicago, Illinois. The fund shall be designated the "Biomet Common Benefit MDL Assessment Fund," the first subaccount shall be designated the "Biomet Hip Common Benefit Attorney's Fee Fund," and the second subaccount shall be designated the "Biomet Hip Common Benefit Cost Fund." Mrs. Larbes will deposit funds received in accordance with the Common Benefit Order into these subaccounts, and subject to the direction of the Court. GRG will charge an hourly rate of \$390 for Mrs. Larbes' services and an hourly rate of \$250 for each of the other fund administration professionals within GRG who will support Mrs. Larbes. In addition, Mrs. Larbes may receive assistance from Sylvius von Saucken, GRG's Chief Compliance Officer and Fiduciary, on an as-needed basis. GRG will

<sup>2</sup> Although the Common Benefit Order contemplated the creation of two separate funds, the Biomet Hip Common Benefit Attorney's Fee Fund and the Biomet Hip Common Benefit Cost Fund, it is preferable from an administrative perspective to establish a single fund with separate subaccounts, which, among other things, will require the use of only one tax identification number and will simplify the tax filing process.

<sup>3</sup> It is common practice for MDL courts to appoint escrow agents to oversee common benefit funds, once established. *See, e.g., In re Bextra & Celebrex Marketing Sales Practices & Prod. Liab. Litig.*, No. M:05-CV-01699-CRB, 2006 WL 471782 (N.D. Cal. Feb. 28, 2006) (establishing common benefit fund, appointing bank as escrow agent, and ordering escrow agent to provide liaison counsel and court with monthly statements showing aggregate monthly deposits, disbursements, interest earned, charges, and balance); *In re Guidant Defibrillators Prods. Liab. Litig.*, No. MDL 05-1708 DWFAJB, 2006 WL 409229 (D. Minn. Feb. 15, 2006) (same).

charge \$405 per hour for Mr. von Saucken's services. All of GRG's fees are to be considered a shared cost in accordance with the Common Benefit Order and paid from the Biomet Hip Common Benefit Cost Fund. Mrs. Larbes will submit detailed quarterly bills to the Court and to Plaintiffs' Co-Lead Counsel, Thomas Anapol, reflecting the services that she and the other members of GRG have performed with respect to the Fund.

In the Common Benefit Order, the Court also indicated that it would appoint a Fee Committee to make recommendations to the Court about how the money in the Fund should be distributed among Participating Counsel. The PSC now seeks to have Thomas Anapol and Mark Lanier, Plaintiffs' Co-Lead Counsel, and Sylvius von Saucken, GRG's Chief Compliance Officer and Fiduciary, appointed as the members of the Fee Committee. Mr. Anapol and Mr. Lanier will be compensated for their work on the Fee Committee as part of their overall common benefit fee, to be approved by the Court in a separate order. GRG will be compensated for Mr. von Saucken's work on the Fee Committee at the hourly rate set forth above. Mr. Anapol's and Mr. Lanier's fees will be paid from the Biomet Hip Common Benefit Attorney's Fee Fund. Mr. von Saucken's fees will be considered a shared cost in accordance with the Common Benefit Order and paid from the Biomet Hip Common Benefit Cost Fund. Upon request, the Fee Committee members will submit detailed quarterly bills to the Court reflecting the services they performed with respect to the Fund.

For the foregoing reasons, the PSC respectfully requests that the Court, in accordance with the Common Benefit Order, grant this motion and (1) appoint Jessica Larbes, C.P.A., of GRG as the Escrow Agent to oversee the Fund, with support provided by the GRG to ensure best practices for fund administration, including, but not limited to, principal preservation and the segregation of duties, and (2) appoint Thomas Anapol, Mark Lanier, and Sylvius von Saucken as

the members of the Fee Committee. A proposed order granting this motion will be submitted to the Court via email in accordance with the Court's CM/ECF Civil and Criminal User Manual.

Dated: May 4, 2015

Respectfully submitted,

*/s/ Thomas R. Anapol*  
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*/s/ W. Mark Lanier*  
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*Plaintiffs' Co-Lead Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2015, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which provided electronic service upon all counsel of record.

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**ORDER**

Upon consideration of the Plaintiffs Steering Committee’s Motion to Appoint Escrow Agent and Fee Committee, and any responses and replies thereto, and in furtherance of the Court’s Case Management Order Establishing Common Benefit Fee and Expense Funds (Doc. 1317-2; filed 2/03/2014) (the “Common Benefit Order”), the Court, being fully advised, hereby orders and decrees as follows:

**IT IS ORDERED**, that Jessica Larbes, C.P.A., a qualified certified public accountant and employee of Garretson Resolution Group (“GRG”), shall establish the Biomet Common Benefit MDL Assessment Fund (the “Fund”), which shall consist of two subaccounts, the Biomet Hip Common Benefit Attorney’s Fee Fund and the Biomet Hip Common Benefit Cost Fund, and shall serve as the Escrow Agent for the Fund, performing the duties set forth in the Common Benefit Order. GRG shall support Mrs. Larbes in the performance of these duties. GRG shall charge \$390 per hour for Mrs. Larbes’ services, \$250 per hour for the services of each of the other fund administration professionals who will support Mrs. Larbes, and \$405 per hour for the services of Sylvius von Saucken, GRG’s Chief Compliance Officer and Fiduciary, who shall provide support to Mrs. Larbes on an as-needed basis. Mrs. Larbes shall provide detailed quarterly bills to the Court and to Plaintiffs’ Co-Lead Counsel, Thomas Anapol, reflecting the work that she and the other members of GRG performed with respect to the Fund. Upon

approval by the Court, Mrs. Larbes' and GRG's bills shall be paid from the Biomet Hip Common Benefit Cost Fund.

**IT IS FURTHER ORDERED**, that Thomas Anapol and Mark Lanier, Plaintiffs' Co-Lead Counsel, and Sylvius von Saucken, GRG's Chief Compliance Officer and Fiduciary, are appointed as the members of the Fee Committee. Mr. Anapol and Mr. Lanier shall be compensated for their work on the Fee Committee as part of their overall common benefit fee, to be approved by the Court in a separate order. GRG shall be compensated for Mr. von Saucken's work on the Fee Committee at the hourly rate set forth above. Upon request, the Fee Committee members shall provide detailed quarterly bills to the Court reflecting the work that they performed with respect to the Fund. Upon approval by the Court, Mr. Anapol's and Mr. Lanier's fees shall be paid from the Biomet Hip Common Benefit Attorney's Fee Fund, and Mr. von Saucken's fees shall be paid from the Biomet Hip Common Benefit Cost Fund.

**IT IS SO ORDERED.**

**Dated:** \_\_\_\_\_

/s/  
**Honorable Robert L. Miller, Jr.**  
**Judge, United States District Court**