



April 20, 2018

VIA ECF AND FEDERAL EXPRESS

Honorable Susan D. Wigenton
United States District Court
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

**In Re: Zimmer Durom Hip Cup Products Liability Litigation
2:09-cv-04414 (DFW)(SCM) (MDL 2158)**

Dear Judge Wigenton,

This firm, along with Carella, Byrne, Cecchi, Agnello & Brody, P.C., are Plaintiffs' Co-Liaison counsel in the above referenced litigation. We submit this letter in response to the Motion Seeking Disbursements from Common Benefit Fund, which was filed by the Waters & Kraus, LLP firm on April 18, 2018. For the reasons set forth below, the motion should be denied and an orderly application and distribution process should be established as is normally done regarding the distribution of common benefit fees.

First, we believe that all counsel in the MDL who may have contributed to the common benefit of all plaintiffs should have an opportunity to make common benefit applications. As noted in movant's brief, on February 2, 2018, Mr. Henderson "sent a letter to his fellow members of Plaintiffs' Liaison counsel inviting each firm to submit its recorded expenses and hours." [Doc. No. 972-1, at 5.] This is not an orderly process, nor did it include all MDL counsel who may have contributed work that benefited the overall prosecution of the case.¹

Second, applications for common benefit fees and expenses should be reviewed and evaluated based on pre-specified guidelines, before recommendations are made to the Court for the disbursement of funds. Over the years, various methodologies have been utilized by MDL courts but it is fair to say that such evaluations not only consider the number of hours worked on a case by a given firm (as one data point) but of equal significance the impact of that work to the litigation. We suggest that an application protocol be developed and provided to all counsel, before the Court consider any individual applications.

Given our firms' collective experience in mass tort litigation and resolution, we propose that the Court appoint Mr. Cecchi and myself to develop and administer a common benefit application process for all plaintiffs' counsel. At a minimum, we respectfully request that the

¹ This letter was sent via email rather than filed on ECF and thus, was only provided to Plaintiffs' Co-Liaison Counsel. *See id.*

Letter to Judge Susan D. Wigenton

2

April 20, 2018

Court deny movant's motion so that all counsel can be given a fair opportunity to make common benefit applications.

Respectfully submitted,

/s/ Christopher A. Seeger
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Plaintiffs' Co-Liaison Counsel

cc: James E. Cecchi, Esq.
All Counsel of Record (via ECF)