



PLEASE RESPOND TO THE DALLAS OFFICE

April 24, 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 07102

Re: Civil Action No. 2:09-cv-04414-DFW-SCM; *In Re: Zimmer Durom Hip Cup Products Liability Litigation*; MDL-2158

Dear Judge Wigenton:

I am writing in response to the letter submitted by Chris Seeger (“Mr. Seeger”) in the above-referenced litigation on April 20, 2018. We actually agree with Mr. Seeger that the common benefit money should be disbursed in an “orderly” fashion pursuant to “pre-specified” guidelines. What Mr. Seeger fails to acknowledge in his letter, however, is that: (a) the Court already established guidelines for the disbursement of this money back in 2011 in Case Management Order No. 3 (“CMO No. 3”);<sup>1</sup> and (b) the Motion Seeking Disbursements from Common Benefit Fund (“Motion”) filed by Waters & Kraus, Lieff Cabraser, and Pogust Braslow & Millrood faithfully complies with those guidelines. Accordingly, there is no need for Mr. Seeger or anyone else to make up new, after-

<sup>1</sup> Lest there be any confusion about the purpose of CMO No. 3, the Court wrote in the introduction: “This Order is entered to provide for the fair and equitable sharing among plaintiffs of the cost of services performed and expenses incurred by Plaintiffs’ Liaison Counsel and other attorneys acting for and providing a common benefit of all plaintiffs in this complex litigation . . . .”

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the rules at this late stage of the litigation – after Plaintiffs’ liaison counsel has relied on CMO No. 3 **for seven years** – would be anything but “orderly.”

As we noted in our Motion, the MANUAL FOR COMPLEX LITIGATION (FOURTH) § 14.211 (May 2017 Update) recommends establishing “guidelines and procedures” for the disbursement of common benefit money at the outset of the litigation for this very reason: to “clarify expectations, and reduce the opportunities for disputes.” Here, the Court wisely put such guidelines in place during this litigation’s infancy and the majority of Plaintiffs’ liaison counsel reasonably relied on those guidelines thereafter in expending (and documenting) massive amounts of time and money in the performance of their liaison counsel role.

For the reasons discussed above, we again encourage the two firms opposing the pending Motion to submit their hours and expenses pursuant to CMO No. 3,<sup>2</sup> and respectfully request that the Court grant the Motion and approve the requested disbursements to Waters & Kraus, Lieff Cabraser, and Pogust Braslow & Millroad.

Regards,



Peter A. Kraus

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<sup>2</sup> CMO No. 3 also provides a process for attorneys not part of Plaintiffs’ Liaison Counsel to seek money from the common benefit fund. Insofar as any such firm believes it is entitled to compensation under those provisions, we encourage them to follow those guidelines.