

Multiple Documents

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: ZIMMER DUROM HIP
CUP PRODUCTS LIABILITY
LITIGATION

2:09-cv-04414-SDW-MCA

MDL-2158

This Document Relates To All Cases

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION SEEKING DISBURSEMENTS
FROM COMMON BENEFIT FUND**

COME NOW Plaintiffs, by and through their undersigned Liaison Counsel, and file this Supplemental Motion Seeking Disbursements from Common Benefit Fund, in conjunction with Plaintiffs' Liaison Counsels' original motion filed by Waters & Kraus [Dkt. 972].

I. Background

On April 18, 2018, pursuant to CMO 3, Waters & Kraus filed a Motion Seeking Disbursement from Common Benefit Fund [Dkt. 972] on behalf of Waters & Kraus, LLP, Pogust Braslow & Millrood, LLC, and Lief Cabraser Heimann & Bernstein, LLP ("LCHB"). The original motion's supporting papers indicated that LCHB would supplement the disbursement request with a compilation of the firm's common benefit expenses and hours. Plaintiffs' Liaison Counsel respectfully submits the following brief and attachments as that supplement.

II. LCHB's Common Benefit Work

Wendy Fleishman, a partner with LCHB, was appointed by the Court to serve as Plaintiffs' Liaison Counsel, and has so served from 2010 through the present. From the start of this litigation, LCHB has worked toward the common benefit objectives along with its Co-Liaison counsel and in accordance with the Court's priorities. In addition to and as part of its Plaintiffs' Liaison Counsel duties, LCHB participated extensively in briefing, discovery, document review, and coordination with counsel and the Court. LCHB reached out to Co-Liaison Christopher Seeger and James Cecchia to take on settlement negotiations with Zimmer.

Consistent with the common benefit system outlined in CMO No. 3 [Dkt. 33], on March 5, 2012, the Court approved a disbursement of funds to be paid in accordance to agreement among Liaison Counsel for the division of such amounts. Fees and costs were disbursed to all Liaison Counsel on each occasion. We highlight the funds paid to LCHB. [Dkt. 112]. Subsequent to that Order, LCHB received \$215,641.94 in reimbursed fees and \$40,498.06 in reimbursed costs. On December 18, 2012, the Court approved a second disbursement of funds to be paid in accordance to agreement among Liaison Counsel for the division of such amounts. [Dkt. 146]. Subsequent to that Order, LCHB received \$74,132.97 in reimbursed fees and \$1,867.03 in reimbursed costs. On March 29, 2015, the Court approved a third disbursement of common funds to be paid in accordance with agreement among

Liaison Counsel for the division of such funds. [Dkt. 694]. Subsequent to that Order, LCHB received \$36,973.04 in reimbursed costs. In total, LCHB has previously received \$289,774.91 in reimbursed fees and \$79,338.13 in reimbursed costs.

In submitting this application for outstanding fees and costs, Plaintiffs' Liaison Counsel herein reviewed its time and expenses and all of the time and expenses were reasonably necessary for the prosecution of the common issues on behalf of plaintiffs.

A. Common Benefit Hours

LCHB's attorneys, paralegals, and support staff recorded 1,835.05 hours spent on common benefit work, as reflected by the chart attached to the Fleishman Certification as **Exhibit A**.

The chart includes the name of each attorney and paralegal who has worked on the matter, and the current hourly billing rate and the hours expended by each attorney, paralegal and support staff. The chart was prepared from contemporaneous time records prepared by LCHB. The hourly rate is in accordance with the market rate for similar services by attorneys of similar experience in the respective geographic area.¹

¹ The rates used are based on the prevailing rates in the communities in which Liaison Counsel practice or on hourly rates obtained in other complex or class action litigation. *Rode v. Dellarciprete*, 892 F. 2d 1177, 1183 (3d Cir. 1990) ("Generally, a reasonable hourly rate is to be

LCHB expended 1,835.05 hours for a total lodestar of \$1,029,280.75, giving a blended rate of \$560.92. This blended rate is similar to rates in previous disbursement requests that were granted in this litigation.² Taking into consideration LCHB's previously reimbursed fees of \$289,774.91,³ the Firm's remaining lodestar calculation currently totals \$739,505.84.

B. Common Benefit Expenses

LCHB's out-of-pocket, case-related expenses incurred and paid are as follows:

| | |
|----------------------------------|---------------------|
| Fax | \$236.00 |
| In-House Copies | \$3,198.00 |
| Postage | \$161.23 |
| Printing | \$14,281.00 |
| Telephone | \$2,178.37 |
| Computer Research | \$1,208.11 |
| Deposition/Transcripts | \$1,191.70 |
| Electronic Database | \$115,186.86 |
| Experts/Consultants | \$21,491.68 |
| Federal Express/Messenger | \$714.86 |
| Travel | \$19,839.75 |
| Total Expenses | \$179,687.56 |
| Total Expenses Reimbursed | (79,338.13) |
| Total Remaining Expenses | \$100,349.43 |

calculated according to the prevailing market rates in the relevant community"); *E. Aaron Enters., Inc. v. Carolina Classified.com*, No. 10-1087, 2010 U.S. Dist. LEXIS 76237, at *6 (E.D. Pa. Jul. 27, 2010) ("The prevailing market rate is ordinarily reflected in a law firm's normal billing rate").

² See, e.g., Declaration of James E. Cecchi, Dkt. 111-1 ("Liaison Counsel expended 956.1 hours, for a total lodestar of \$538,410.00, giving a blended rate of \$563.13 per hour.").

³ See March 5, 2012 (Dkt. 112) and December 12, 2012 (Dkt. 146) Orders approving disbursement of fees.

These incurred expenses are outlined in more detail within **Exhibit B** attached to the Fleishman Certification. The incurred expenses relate specifically to costs compensable from the Common Benefit Fund, including pleading costs, electronic database costs, expert witness fees, travel, printing and copying, document translation, teleconferencing, and other critical expenditures. The total expenses incurred by LCHB are \$179,687.56. Taking into consideration LCHB's previously reimbursed expenses of \$79,338.13,⁴ LCHB's remaining expenses currently total \$100,349.43.

III. CONCLUSION

Based on the foregoing reasons, in conjunction with Plaintiffs' Counsels' original motion, Plaintiffs' Liaison Counsel respectfully requests that the Court enter an order granting disbursements from the Common Benefit Fund in the above-referenced amounts with regard to LCHB and to the other two Plaintiffs' Liaison Counsel firms as submitted.

⁴ See March 5, 2012 [Dkt. 112] and December 12, 2012 [Dkt. 146], and March 29, 2015 [Dkt. 694] Orders approving disbursement of costs.

DATED: May 4, 2018

Respectfully submitted,
WATERS &KRAUS, LLP

Gibbs C. Henderson
Gibbs C. Henderson
3141 Hood Street, Suite 700
Dallas, Texas 75219
(214) 357-6244
(214) 357-7252 (facsimile)
ghenderson@waterskraus.com

ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: ZIMMER DUROM HIP
CUP PRODUCTS LIABILITY
LITIGATION

2:09-cv-04414-SDW-MCA

MDL-2158

This Document Relates To All
Cases

**CERTIFICATION OF WENDY R. FLEISHMAN
IN SUPPORT OF PLAINTIFFS' MOTION SEEKING
DISBURSEMENT FROM COMMON BENEFIT FUND**

WENDY R. FLEISHMAN, hereby certifies as follows:

1. I am an attorney-at-law of the State of New York and am a partner at Lief Cabraser Heimann & Bernstein, LLP ("LCHB" or "Firm").
2. I am submitting this affidavit in support of LCHB's application for an award of attorneys' fees in connection with Common Benefit services rendered on behalf of Plaintiffs and the reimbursement of expenses incurred by LCHB during the course of this litigation. The testimony set forth herein is based on first-hand knowledge about which I would and could testify competently in open court if called upon to do so, and on contemporaneously-generated records kept in the ordinary course of law practice by either my firm or other Plaintiffs' Liaison Counsel Firms.

3. LCHB has acted as Co-Liaison Counsel from 2010 through the present on behalf of Plaintiffs in this litigation concerning the alleged defective hip implants manufactured by Defendants.

4. LCHB has been involved in all aspects of this litigation. Together with the other Liaison Counsel, we researched the factual basis for the claims advanced, formulated and researched the legal theories for relief, and drafted or heavily contributed to much of the pleadings that has been submitted in this case on behalf of Plaintiffs. We also participated in significant discovery matters in this case, including depositions, document review, and work with experts. I expect that LCHB will continue to expend time on this matter in connection with the approval and administration of the settlement.

5. LCHB has received disbursements in this matter on three previous occasions: First, on March 5, 2012, the Court approved a disbursement of funds to be paid in accordance to agreement among Liaison Counsel for the division of such amounts. (Dkt. 112). LCHB subsequently received \$215,641.94 in reimbursed fees and \$40,498.06 in reimbursed costs. Next, on December 18, 2012, the Court again approved a disbursement of funds to be paid in accordance to agreement among Liaison Counsel for the division of such amounts. (Dkt. 146). LCHB subsequently received

\$74,132.97 in reimbursed fees and \$1,867.03 in reimbursed costs. Finally, on March 29, 2015 the Court approved a third disbursement of common funds to be paid in accordance with agreement among Liaison Counsel for the division of such funds. (Dkt. 694). LCHB subsequently received no reimbursed fees and \$36,973.04 in reimbursed costs. Based on these previous disbursements, LCHB has thus far in total received \$289,774.91 in reimbursed fees and \$79,338.13 in reimbursed costs.

6. The chart attached hereto as Exhibit A is a summary of time spent by the attorneys and non-attorney professional staff of my firm on this litigation, and the lodestar calculation based on my firm's current billing rates, totaling \$1,029,280.75. The chart includes the name of each attorney and paralegal who has worked on the matter, and the current hourly billing rate and the hours expended by each attorney, paralegal, and support staff. The chart was prepared from contemporaneous time records prepared by my firm, which are available for submission to this Court at its request. For timekeepers who are no longer employed by the Firm, the hourly rate used is the billing rate in his or her final year of employment by the Firm. Subtracting LCHB's previously reimbursed fees of \$289,774.91, the Firm's remaining lodestar calculation currently totals \$739,505.84.

7. The chart attached hereto as Exhibit B is a detailed summary of the expenses spent by my firm on this litigation, totaling \$179,687.56. These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of LCHB's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation. Subtracting LCHB's previously reimbursed expenses of \$79,338.13, the Firm's remaining expenses currently total \$100,349.43.

8. I certify that the foregoing statements by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

DATED: May 4, 2018

Respectfully submitted,

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP

/s/ Wendy R. Fleishman

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New York, NY 10013
(212) 355-9500
(212) 355-9592
wfleishman@lchb.com

Attorneys for Plaintiffs

EXHIBIT A

| |
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| LIEFF CABRASER HEIMANN & BERNSTEIN, LLP |
|--|

Report created on 04/30/2018 10:38:24 AM

From
ToInception
03/22/2018**Matter Number: 3324-0016 ZIMMER HOLDINGS, INC. - MDL****PARTNER**

| NAME | HOURS | RATE | TOTAL |
|--------------------|---------------|-------------|-------------------|
| ELIZABETH CABRASER | 3.30 | 1,050.00 | 3,465.00 |
| WENDY FLEISHMAN | 441.60 | 875.00 | 386,400.00 |
| KENNETH BYRD | 91.60 | 615.00 | 56,334.00 |
| PAULINA DO AMARAL | 0.50 | 775.00 | 387.50 |
| HEATHER FOSTER | 1.00 | 585.00 | 585.00 |
| KENT KLAUDT | 262.30 | 650.00 | 170,495.00 |
| | 800.30 | | 617,666.50 |

ASSOCIATE

| NAME | HOURS | RATE | TOTAL |
|-----------------|---------------|-------------|-------------------|
| DANIEL LEATHERS | 301.50 | 435.00 | 131,152.50 |
| JEREMY TROXEL | 143.60 | 415.00 | 59,594.00 |
| ADAM WEINTRAUB | 45.70 | 510.00 | 23,307.00 |
| BARBRA WILLIAMS | 7.10 | 415.00 | 2,946.50 |
| | 497.90 | | 217,000.00 |

PARALEGAL/CLERK

| NAME | HOURS | RATE | TOTAL |
|--------------------------|---------------|-------------|-------------------|
| RICHARD ANTHONY | 0.80 | 345.00 | 276.00 |
| DAWN BEHRMANN | 41.60 | 375.00 | 15,600.00 |
| EILEEN BELTRAN | 5.05 | 375.00 | 1,893.75 |
| NIKKI BELUSHKO BARROWS | 1.40 | 375.00 | 525.00 |
| MOLLY COYNE | 26.50 | 265.00 | 7,022.50 |
| MARIA DEARS | 6.30 | 285.00 | 1,795.50 |
| REBECCA DODD | 51.70 | 345.00 | 17,836.50 |
| NINA GLIOZZO | 3.40 | 335.00 | 1,139.00 |
| DOLORES JENKIN | 4.10 | 350.00 | 1,435.00 |
| ROBIN KUPERSMITH | 3.00 | 270.00 | 810.00 |
| MARGUERITE LONGTIN | 2.80 | 310.00 | 868.00 |
| SUZANNE O'ROURKE SCANLON | 5.80 | 345.00 | 2,001.00 |
| EVELYN RODAS | 0.50 | 265.00 | 132.50 |
| PATRICIA SACKETT | 7.30 | 380.00 | 2,774.00 |
| JAMES TAYLOR | 177.90 | 350.00 | 62,265.00 |
| RICHARD TEXIER | 0.30 | 375.00 | 112.50 |
| | 338.45 | | 116,486.25 |

LITIGATION SUPPORT / RESEARCH

EXHIBIT B

| |
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| LIEFF CABRASER HEIMANN & BERNSTEIN, LLP |
|--|

Report created on 05/02/2018 09:42:08 AM

| | | | |
|------------------|-----------|----|---------|
| Current = | Inception | To | Present |
| Matter-to-Date = | Inception | To | Present |

ZIMMER HOLDINGS, INC. - MDL

Matter Number: 3324-0016

Soft Costs Incurred

| | <u>Current</u> | <u>Matter-to-Date</u> |
|--------------------------|--------------------|-----------------------|
| Fax | \$236.00 | \$236.00 |
| In-House Copies | \$3,198.00 | \$3,198.00 |
| Postage | \$161.23 | \$161.23 |
| Print | \$14,281.00 | \$14,281.00 |
| Telephone | \$2,005.89 | \$2,005.89 |
| Total Soft Costs: | \$19,882.12 | \$19,882.12 |

Hard Costs Incurred

| | <u>Current</u> | <u>Matter-to-Date</u> |
|-----------------------------|----------------------|-----------------------|
| Computer Research | \$1,208.11 | \$1,208.11 |
| Deposition/Transcripts | \$1,191.70 | \$1,191.70 |
| Electronic Database | \$115,186.86 | \$115,186.86 |
| Experts/Consultants | \$21,491.68 | \$21,491.68 |
| Federal Express/Messenger | \$714.86 | \$714.86 |
| Telephone | \$172.48 | \$172.48 |
| Travel | \$19,839.75 | \$19,839.75 |
| Total Hard Costs: | \$159,805.44 | \$159,805.44 |
| Total Matter Costs: | \$179,687.56 | \$179,687.56 |
| Total Cost Receipts: | \$(79,338.13) | \$(79,338.13) |
| Net Costs: | \$100,349.43 | \$100,349.43 |

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: ZIMMER DUROM HIP
CUP PRODUCTS LIABILITY
LITIGATION

2:09-cv-04414-SDW-MCA

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CERTIFICATE OF SERVICE

GIBBS C. HENDERSON, hereby certifies as follows:

1. I am an attorney-at-law of the State of Texas and a member of the firm Waters & Kraus, LLP, attorneys for Plaintiffs.

2. On May 4, 2018, I caused a true copy of the forgoing Supplemental Brief in Support of Motion, Certification of Gibbs C. Henderson and Exhibits thereto, proposed form of Order, and this Certificate of Service, to be served upon Defendants' Counsel of Record by CM/ECF.

3. On May 4, 2018, I caused a true copy of the forgoing Supplemental Brief in Support of Motion, Certification of Gibbs C. Henderson and Exhibits thereto, proposed form of Order, and this Certificate of Service, to be served upon the Hon. Susan D. Wigenton, U.S.D.J., U.S. District Court of the District of New Jersey, Martin Luther King Building and CM/ECF.

I certify that the foregoing statements by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

DATED: May 4, 2018

WATERS & KRAUS, LLP

/s/ Gibbs C. Henderson

Gibbs C. Henderson

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ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: ZIMMER DUROM HIP
CUP PRODUCTS LIABILITY
LITIGATION

2:09-cv-04414-SDW-MCA

MDL-2158

This Document Relates To All Cases

**ORDER GRANTING PLAINTIFFS' MOTION
SEEKING DISBURSEMENT FROM COMMON BENEFIT FUND**

THIS MATTER, having been opened to the Court by Plaintiffs, by and through their attorneys Waters & Kraus, LLP, on application seeking disbursement from in accordance with Case Management Order 3, and the Court having considered the parties submissions; and for good cause appearing,

IT IS THIS _____ day of _____ 2018

ORDERED that disbursements from the Common Benefit Fund be issued to Plaintiffs' counsel as follows:

| | | |
|---------------------|-----------|----------------|
| Waters & Kraus, LLP | Expenses: | \$788,709.25 |
| | Fees: | \$1,578,418.50 |

| | | |
|-----------------------------------|-------|-------------|
| Pogust Braslow & Millrood, LLC | Fees: | \$23,154.80 |
|-----------------------------------|-------|-------------|

| | | |
|--|----------|--------------|
| Lieff Cabraser Heimann & Bernstein, LLP | Expenses | \$100,349.43 |
| | Fees | \$739,505.84 |

HON. SUSAN D. WIGENTON, U.S.D.J.