

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

IN RE: ZIMMER DUROM HIP CUP  
PRODUCTS LIABILITY  
LITIGATION

Civil Action No.

2:09-CV-4414-SDW-SCM

**ORDER ON MOTION TO REDUCE  
ASSESSMENT [D.E. 971]**

**THIS MATTER** comes before the Court on notice by way motion by counsel for plaintiffs Kevin Walsh, Marjora Spencer, Leanne Brewer-Burns and Kimberly Kaufmann, through their counsel, pursuant to Module Rule of Professional Conduct 1.5 and Local Civil Rule 7.1 to reduce the four percent (4%) assessment. (ECF Docket Entry No. (“D.E.”) 971). The U.S. Judicial Panel on Multidistrict Litigation (“JPMDL” or “the Panel”) has authority to centralize litigation pursuant to 28 U.S.C. § 1407, and by Transfer Order dated June 9, 2010, centralized this product liability action and any “tag-along” actions for pre-trial management to promote the just and efficient conduct of the litigation. (D.E. 11 at 1). The Panel reasoned that centralization of this action would “eliminate duplicative discovery, prevent inconsistent pretrial rulings on discovery and other issues, and conserve the resources of the parties, their counsel and the judiciary.” (Id. at 2).

This Court issued Case Management Order No. 1 and appointed liaison counsel for plaintiffs and defendants to perform designated functions for the respective benefit of all plaintiffs and all defendants. See (CMO No. 1, D.E. 17 at ¶¶ 20 - 28). The functions of Plaintiffs’ Liaison Counsel are broad and include, but are not limited to the following: a) the coordination of discovery “to the fullest extent practicable with related litigation proceeding in state court;” b) ensuring “that plaintiffs in both federal and state court have access to a common document depository;” c) coordinating with plaintiffs’ counsel in state court where practical to avoid duplicative depositions or other inefficient discovery;” and d) receiving discovery from

defendants subject to a Discovery Confidentiality Order. See (D.E. 17 at ¶¶ 23, 23k, 23l, 38).

The expenses of Plaintiffs' Liaison Counsel were to "be shared equally by all plaintiffs' counsel in a manner agreeable to the parties or set by the Court failing such agreement." (D.E. 17 at ¶ 22). Plaintiffs' Liaison Counsel were subsequently required to establish a "Common Benefit Fund". (Case Management Order ("CMO") No. 3, D.E. 33). See *In Re: Zyprexa Products Liability Litigation*, 467 F. Supp. 2d 256, 263 (E.D.N.Y. 2006) (purpose of the fund is to "compensate attorneys for the time and funds expended by them for the common benefit of all ... plaintiffs in the conduct of the litigation ...").

All plaintiffs and their counsel in the "centralized" cases were then "subject to a four percent (4%) assessment of the plaintiffs' Gross Monetary Recovery..." (D.E. 33 at ¶ 3). Defendants are required to make the deposits for assessments withheld from settlement checks paid in MDL cases. (D.E. 33 at ¶¶ 7, 8).

This Court, having considered the papers in support of the Motion, and there having been no opposition to the motion, makes the following findings of fact and conclusions of law:

- a) Per CMO No. 3, the Court may reduce the assessment percentage "based on the factors set forth in Model Rule of Professional Conduct 1.5...."; and
- b) It is appropriate that Plaintiff(s)' assessment to the Common Benefit Fund be reduced in this case; and
- c) While each of the plaintiffs participated in court-mandated mediation, at no time did Kevin Walsh, Marjora Spencer, Leanne Brewer-Burns or Kimberly Kaufmann initiate litigation in any court

For these reasons, the relief sought is warranted, in part; and for good cause shown;

**IT IS** on this Wednesday, May 16, 2018:

1. **ORDERED**, that the motion to reduce the assessment is granted; and it is further

2. **ORDERED**, that plaintiff's assessment to the Common Benefit Fund be reduced to 1 percent to be split 1/2 % by plaintiffs and 1/2 % by their counsel.



*Steve C. Mannion*

Honorable Steve Mannion, U.S.M.J.  
United States District Court,  
for the District of New Jersey  
phone: 973-645-3827

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Original: Clerk of the Court  
Hon. Susan D. Wigenton, U.S.D.J.  
cc: All parties  
File