

**EXHIBIT A
PARTICIPATION AGREEMENT**

This Agreement is made this _____ day of _____, 200__, by and between the Plaintiffs' Steering Committee (PSC) appointed by the United States District Court for the Northern District of Ohio in MDL 1909 and _____ **[NAME OF THE FIRM EXECUTING THE AGREEMENT]** (the Participating Counsel).

WHEREAS, the United States District Court for the Northern District of Ohio, Eastern Division has appointed Peter W. Burg, Troy Rafferty, Peter Brodhead, Christopher Seeger, Steven Skikos, Michelle Parfitt, Howard Nations, Russ Briggs, Roger Denton, Barry Hill, Mark Robinson, Jr., Tobias Milrood, Jerrold Parker, Jayne Conroy, Ramon Rossi Lopez, and Larry Gornick to serve as members of the PSC to facilitate the conduct of pretrial proceedings in the federal actions relating to the use, marketing, and sales of Gadolinium Based Contrast Agents (GBCA).¹

WHEREAS, the PSC in association with other attorneys working for the common benefit of plaintiffs have developed or are in the process of developing work product which will be valuable in the litigation of federal and state court proceedings involving GBCA injuries and marketing and sales practices ("PSC Common Benefit Work Product") and

WHEREAS, the Participating Counsel are desirous of acquiring the PSC Common Benefit Work Product and establishing an amicable, working relationship with the PSC for the mutual benefit of their clients;

NOW THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

¹ The United States District Court for the Northern District of Ohio, Eastern Division has appointed Peter Burg, Troy Rafferty, Steve Skikos, Peter Brodhead, Christopher Seeger to serve as members of the Plaintiffs' Executive Committee (PEC).

I. SCOPE OF AGREEMENT.

A. Purpose.

This Participation Agreement is a private cooperative agreement between plaintiffs' attorneys to share common benefit work product both in this MDL and in the various state courts. Plaintiffs' attorneys who sign on to this Agreement (Participating Counsel) are entitled to receive the MDL "common benefit work product" and the state court "work product" of those attorneys who have also signed the Participation Agreement.

Participating Counsel recognize that plaintiffs who have cases pending in separate and independent jurisdictions are *voluntarily* agreeing to share common benefit work product developed in these jurisdictions, including the MDL, California, New Jersey, and other states. Participating Counsel further recognize the separate and independent rights of each jurisdiction, and the litigants in each jurisdiction--including non-participating counsel--to fully represent the interests of their clients, including the right conduct discovery, set cases for trial, conduct jury trials, and/or resolve cases.

B. Rights and Obligations of Participating Counsel.

Upon execution of this Agreement, the PSC will provide access to Participating Counsel, the common benefit work product defined in this Order, including access to the PSC's depository. Participating Counsel agree that all cases in which Participating Counsel has a fee interest, including unfiled cases and cases filed in state and/or federal court, are the subject of the terms of this Agreement. Participating Counsel shall produce a list that correctly sets forth the name of each client represented by them who has filed a civil action arising from the use, marketing, and sale of GBCA together with the Court and docket number of each such case and shall produce a list that contains the name of each client represented by them who has not yet

filed a civil action arising from the use, marketing, and sale of GBCA. Participating Counsel shall supplement the lists on a quarterly basis.

II. AGREEMENT TO PAY AN ASSESSEMENT ON GROSS SETTLEMENTS.

Subject to the terms of this Order and the provisions set forth below, all Plaintiffs and their attorneys who, either agree or have agreed - for a monetary consideration - to settle, compromise, dismiss, or reduce the amount of a claim or, with or without trial, recover a judgment for monetary damages or other monetary relief, including such compensatory and punitive damages, with respect to GBCA claims are subject to an assessment of the gross settlement amount, "gross monetary recovery," as provided herein.

A. Gross Monetary Recovery Defined.

Gross monetary recovery includes any and all amounts paid to plaintiffs' counsel by Defendants as settlement or judgment. In measuring the "gross monetary recovery," the parties are to (a) exclude court costs that are to be paid by the defendant (b) include any payments to be made by the defendant on an intervention asserted by third-parties, such as to physicians, hospitals, and other healthcare providers in subrogation related to treatment of plaintiff and (c) include the present value of any fixed and certain payments to be made in the future. The assessment shall apply to all of cases pending in the MDL as well as any unfiled or tolled cases in which they are counsel or co-counsel and any state case the Participating Counsel has a fee interest in.

B. Assessment Amount.

The assessment amount shall be five (5) percent for common benefit attorneys' fees and one (1) percent for costs. The assessment amount represents a hold back (*In re Zyprexa Prods. Liab. Litig.*, 467 F.Supp.2d 256, 266 (2d. Cir. 2006)) and, with respect to Participating Counsel only, shall not be increased or altered in any way unless each of the following occurs: (1)

significant common benefit work beyond the amount designated for the assessment has been completed, including the conclusion of an MDL or authorized state court trials; (2) the PSC approves the proposed change to assessment by a majority vote; and (3) noticed motion with an opportunity to be heard is granted by the Court.

C. Covered Cases.

The assessment amount set forth above and in this Order applies to all cases now pending, or later filed in, transferred to, or removed to, this Court and treated as part of the coordinated proceeding known as *In re: Gadolinium Based Contrast Agents Products Liability Litigation*, MDL 1909 regardless of whether or not the plaintiff's attorney is either Participating or Non-Participating Counsel. Counsel who sign the Participation Agreement further agree to pay the assessment amount on all un-filed cases filed and cases filed state court in which they share a fee interest.

Non-Participating Counsel are not required to pay an assessment on state court cases or on un-filed cases. However, counsel who do not sign the Participation Agreement, may be subject to an increased assessment on all GBCA cases in which they have a fee interest if they receive MDL or California or New Jersey work-product or otherwise benefit by the work performed by the MDL and other counsel working with the MDL.

D. Attorney Fee Lien.

With respect to each client who they represent in connection with GBCA related claims that are filed or pending in any Federal court, un-filed or subject to a tolling agreement, each counsel shall deposit or cause to be deposited in the GBCA Fee and Expense Fund established by the District Court in the MDL, a percentage proportion of the gross amount recovered by each such client which is equal to the assessment amount. Counsel, on behalf of themselves, their affiliated counsel, and their clients, hereby grant and convey to the PSC a lien upon and/or a

security interest in any recovery by any client who they represent in connection with any GBCA induced injury and marketing and sales practices, to the full extent permitted by law, in order to secure payment in accordance with the provisions of this Agreement. Counsel will undertake all actions and execute all documents which are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

E. Attorney-Client Contracts.

Both the PSC and Participating Counsel recognize the importance of individual cases and the relationship between case-specific clients and their attorneys. Regardless of the type of settlement or conclusion eventually made in either state or federal matters, the PSC will recommend to this Court that appropriate consideration will be given to individual case contracts between attorneys and their clients and to work that has been performed by attorneys in their individual cases.

III. COMMON BENEFIT EXPENSES.

A. Qualified Expenses Eligible for Reimbursement.

In order to be eligible for reimbursement of common benefit expenses, said expenses must meet the requirements of this section. Specifically, said expenses must be (a) for the common benefit, (b) appropriately authorized and timely submitted, (c) within the defined limitations set forth in this Order, and (d) verified.

B. Authorization and Submission of Expenses.

Participating Counsel must submit expenses consistent with the Order of this Court. Expenses spent on matters common to all claimants in MDL 1909 that has been assigned by the PEC or authorized by the Chairs of Science or Discovery Committees may be submitted for reimbursement. Also expenses spent on matters common to all claimants in the California or New Jersey Coordinated Proceedings authorized by lead or liaison counsel and authorized by a

member of the PEC or Chairs of Science or Discovery may be submitted for reimbursement. No costs spent on developing or processing individual issues in any case for an individual client (claimant) will be considered or should be submitted.

C. Verification.

The forms detailing expenses shall be certified by a senior partner in each firm attesting to the accuracy of the submissions. Attorneys shall keep receipts for all expenses. Credit card receipts are an appropriate form of verification so long as accompanied by a declaration from counsel that work was performed and paid for the common benefit.

Cost records shall be electronically submitted to Seth A. Katz of the law firm of Burg Simpson Eldredge Hersh Jardine, P.C. at skatz@burgsimpson.com or Steven J. Skikos of Skikos, Crawford, Skikos, Joseph & Millican at sskikos@skikos Crawford.com, on a monthly basis with any time records. Each will cooperatively share and maintain the data submitted.

IV. COMMON BENEFIT WORK.

A. Qualified Common Benefit Work Eligible for Reimbursement.

In order to be eligible for reimbursement for time and efforts expended for common benefit work, said time and efforts must be (a) for the common benefit, (b) appropriately authorized, (c) timely submitted and (d) approved by this Court.

B. Eligibility.

Participating Counsel are prohibited from sharing common benefit work product with Non-Participating Counsel, as defined herein. Participating Counsel eligible to perform common benefit work includes Plaintiffs' Liaison Counsel and members of the PEC, PSC, and other attorneys called upon by them to assist in performing their responsibilities, Court-appointed State Liaison Counsel, and other attorneys performing similar responsibilities in state court actions.

C. Authorization.

Time spent on matters common to all claimants in MDL 1909 that has been assigned by the PEC or authorized by the Chairs of Science or Discovery Committees will be considered in determining fees. Also time spent on matters common to all claimants in the California or New Jersey Coordinated Proceedings authorized by lead or liaison counsel and authorized by a member of the PEC or Chairs of Science or Discovery will be considered in determining fees. No time spent on developing or processing individual issues in any case for an individual client (claimant) will be considered or should be submitted.

D. Time Keeping and Submission of Time Records.

All time must be accurately and contemporaneously maintained. Participating Counsel shall keep a daily record of their time spent in connection with common benefit work on this litigation, indicating with specificity the hours, location and particular activity (such as “conducted deposition of John Doe.”). Time entries that are not sufficiently detailed may not be considered for common benefit payments. All common benefit work time for each firm shall be maintained in a tenth-of-an-hour increment.

Upon order of the Court payments may be made from the GBCA Fee Fund to attorneys who provide services or incur expenses for the joint and common benefit of plaintiffs in addition to their own client or clients. These guidelines are intended for all activities performed and expenses incurred by counsel that relate to matters common to all claimants in MDL 1909 and California or New Jersey Coordinated Proceedings.

1. All time submissions must be incurred only for work authorized under this Participation Agreement.
2. All time submissions must be made on the forms provided by the PEC.

3. All time and expenses are subject to proper and timely submission (on the 15th of each month beginning on January 15, 2009) of contemporaneous records certified to have been timely received within thirty (30) days after the 15th of the previous month.

4. All time submissions must be electronically sent in the designated form on a monthly basis to the attention of Seth A. Katz of the law firm of Burg Simpson Eldredge Hersh Jardine, P.C. at skatz@burgsimpson.com or Steven J. Skikos of Skikos, Crawford, Skikos, Joseph & Millican at sskikos@skikos Crawford.com so they can be compiled and submitted to the Court. Each will cooperatively share and maintain the data submitted. It is therefore essential that each firm, on a monthly basis, timely submit its records for the preceding month.

5. Untimely Submissions. Failure to provide time records within thirty (30) days after notice from the PEC that time records were not timely submitted shall result in a waiver.

E. Distribution of Fees.

1. No Individual Rights to the Funds.

No party or attorney has any individual right to any of these funds except to the extent of amounts directed to be disbursed to such person by Order of this Court. These funds will not constitute the property of any party or attorney or be subject to garnishment or attachment for the debts of any party or attorney except when and as directed to be disbursed as provided by court order to a specific person. These limitations do not preclude a party or attorney from transferring, assigning, or creating a security interest in potential disbursements from the fund if permitted by applicable state laws and if subject to the conditions and contingencies of this Agreement.

2. Court Approval.

The amounts deposited in the GBCA Fee Fund shall be available for distribution to attorneys who have performed professional services or incurred expenses for the common benefit. The MDL Court retains jurisdiction over any common benefit award; and in furtherance with state federal cooperation, may receive input from the state court judges, including the coordinating judges in California and New Jersey. Each Participating Counsel who does common benefit work has the right to present their claim(s) for compensation prior to any recommendation to the Court.

[FIRM NAME]

Dated:

I elect to be a Participating Counsel

Dated:

I elect to be a Non-Participating Counsel and I understand that I will not be entitled to MDL, California or New Jersey common benefit work product

AND

PLAINTIFFS' EXECUTIVE COMMITTEE

Dated:

Peter Brodhead
Plaintiffs' Liaison Counsel