

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

IN RE CONAGRA PEANUT BUTTER	:	Civil Action No.
PRODUCTS LIABILITY LITIGATION	:	1:07-md-1845 TWT
	:	ALL CASES

**CONSENT ORDER AUTHORIZING DISBURSEMENT #4 FROM
COMMON BENEFIT FUND ACCOUNT**

Pursuant to this Court's Order of April 7, 2009 [Document 703,] a Common Benefit Fund for recovery of costs has been established. The balance of the Common Benefit Fund as of September 30, 2011, is \$77,602.86. To date, the court has permitted three (3) distributions from the Common Benefit Fund, by Order of January 25, 2010 [Document 1315], by Order of October 15, 2010 [Document 2032] and by Order of November 18, 2010 [Document 2101].

As previously, noted, Members of the Plaintiffs' Executive Committee have expended far more in out-of-pocket costs for the common benefit of Plaintiffs in this MDL than the balance in the Common Benefit Fund, and more than is expected ever to be deposited into the Common Benefit Fund. For instance, the costs paid by Plaintiffs Lead Counsel, Lief Cabraser Heimann & Bernstein, LLP, for only the deposition transcripts, the document repositories and expert witnesses

for the common benefit of Plaintiffs in this MDL exceed \$350,000.¹ These unreimbursed costs paid by Lieff Cabraser do not include other significant out-of-pocket expenses paid by Lieff Cabraser for the common benefit of the Plaintiffs in this litigation, such as travel for hearings and depositions, online legal research, telephone calls and postage. Total costs paid by Lieff Cabraser for the common benefit of Plaintiffs in this litigation exceed \$500,000. By previous Order, this Court approved a partial reimbursement of these out of pocket expenses of \$125,000. to Lieff Cabraser. Plaintiffs' Counsel requested a distribution to refund some of the remaining outstanding expenses from the Common Benefit Fund, and ConAgra has agreed that such distribution would be appropriate. Specifically, Plaintiffs' Counsel have requested a partial reimbursement to Lieff Cabraser of **\$60,000.00 from the Common Benefit Fund.**

This cost reimbursement does not fully reimburse the out-of-pocket expenses incurred for the common benefit of the plaintiffs, and does not compensate Plaintiffs' Counsel any amount for the hundreds of hours spent litigating this case for the common benefit of the Plaintiffs.

Based upon this Court's review of the records of Plaintiffs' Counsel, its knowledge of the contributions of Plaintiffs' Counsel in this case, and based upon

¹ To date, total costs paid by Lieff Cabraser for deposition transcripts are \$8,925.65; for the document repositories are \$176,047.73; and for experts are \$213,647.71.

the record in this matter, it is therefore hereby ORDERED that the Common Benefit Funds will be distributed as requested. Plaintiffs' Liaison Counsel shall additionally be authorized by this Order, to pay over any reasonable and customary bank charges, if any, associated with such payment, without further Order of this Court.

Entered this 12th day of October, 2011.

JUDGE

/s/Thomas W. Thrash

THOMAS W. THRASH, JR.

Submitted by:

/s/ Robert H. Smalley, III

Robert H. Smalley, III
McCamy, Phillips, Tuggle & Fordham, LLP
Georgia Bar No. 653405
P.O. Box 1105
Dalton, Georgia 30722
(706) 278-4499 (Telephone)
(706) 278-5002 (Facsimile)
Plaintiffs' Liaison Counsel

/s/ James F. Neale

James F. Neale
VSB No. 43060
McGUIRE WOODS LLP
Court Square Building
310 Fourth Street, N.E., Suite 300
Post Office Box 1288
Charlottesville, Virginia 22902
(434) 977-2582
(434) 980-2263 (Facsimile)
Defendant's Liaison Counsel