

# **EXHIBIT 4**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: NAVISTAR DIESEL ENGINE ) Case No. 11-cv-2496  
PRODUCTS LIABILITY ) MDL No. 2223  
LITIGATION )

**This Document Relates to: All Cases**

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**DECLARATION OF RICHARD J. ARSENAULT**

I, Richard J. Arsenault declare as follows:

1. This declaration is based upon my personal knowledge.
2. I am an attorney currently licensed in good standing to practice law in the states of Louisiana, Texas, Colorado and the District of Columbia. I am admitted to the U.S. Supreme Court, the U.S. Fifth Circuit Court of Appeals and admitted pro hac vice in various courts throughout the country.<sup>1</sup>
3. I am a principal of the law firm Neblett, Beard & Arsenault.
4. My experience with complex litigation began over 30 years ago and since then, I have been consistently litigating in this landscape as well as lecturing and writing on the topic. I co-authored the chapter on Multidistrict Litigation with Professor Thomas Galligan in an ABA treatise (A Practitioner’s Guide To Class Actions) and was also asked by Judge John G. Heyburn, II, Judicial Panel Multidistrict Litigation Chair, to participate in the Panel’s “Multidistrict Litigation Study Project.”
5. I have been appointed by state and federal courts throughout the country to serve in

<sup>1</sup> My curriculum vitae is attached as **Exhibit A**.

leadership capacities in some of the most significant litigation in the nation and have served in a variety of leadership capacities, including lead counsel, liaison counsel and executive committee chairperson. Currently, I serve as Co-Lead Counsel in three major Multi District Litigation (“MDL”) cases:

- In re: Actos (Pioglitazone) Products Liability Litigation, MDL 2299; Judge Rebecca F. Doherty, Western District of Louisiana.
- In re: Imprelis Herbicide Marketing, Sales Practices and Products Liability Litigation, MDL 2284; Judge Gene F. K. Pratter, Eastern District of Pennsylvania.
- In re: Kaba Simple Locks Marketing and Sales Practices Litigation, MDL 2220; Judge Donald C. Nugent, Northern District of Ohio.

I also serve on the Executive Committee in the In re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation, MDL No. 2244 pending before U.S. District Judge Ed Kinkeade in the Northern District of Texas.

Other MDL judicial appointments include those by:

- U.S. District Judge James V. Selna, Central District of California, to serve on the Plaintiffs’ Lead Counsel Committee for Economic Loss Class Actions in the Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2151.
- U.S. District Judge Donovan W. Frank, District of Minnesota, to serve as Co-Lead Plaintiffs’ Counsel in the Guidant MDL Litigation, MDL No. 1708.
- U.S. District Judge Sarah S. Vance, Eastern District of Louisiana, to serve as Liaison Counsel in the Educational Testing Service Praxis MDL Litigation, MDL No. 1643.
- Plaintiffs’ State Liaison Counsel in the Propulsid Products Liability Litigation, MDL 1355, U.S. District Judge Eldon E. Fallon, Eastern District of Louisiana.
- U.S. District Judge Eldon E. Fallon, Eastern District of Louisiana, to serve on the Plaintiffs’ Steering Committee in the Vioxx MDL Litigation, MDL No. 1657.
- U.S. District Judge Charles R. Breyer, Northern District of California, to serve on the Plaintiffs’ Steering Committee in the Bextra/Celebrex MDL Litigation, MDL No. 1699.
- U.S. District Judge James M. Rosenbaum, District of Minnesota, to serve on the Plaintiffs’ Steering Committee in the Medtronic MDL Litigation, MDL No. 1726.
- U.S. District Judge Ivan L.R. Lemelle, Eastern District of Louisiana, to serve on the MDL Plaintiffs’ Steering Committee in the High Sulfur Content Gasoline Products Liability MDL Litigation, MDL No. 1632.
- U.S. District Judge David A. Katz, Northern District of Ohio, to serve on the Plaintiffs’ Discovery Committee in the Ortho Evra MDL Litigation, MDL No. 1742.

- U.S. District Judge Richard H. Kyle, District of Minnesota, to serve on the Plaintiffs' Steering Committee in the Medtronic Sprint Fidelis Leads MDL Litigation, MDL No. 1905.
- U.S. District Judge Frederick J. Martone, District of Arizona, to serve on the Plaintiffs' Steering Committee in the Zicam Cold Remedy Marketing, Sales Practices and Products Liability MDL Litigation, MDL No. 2096.
- U.S. District Judge Rebecca Palmeyer, Northern District of Illinois, to serve on the Plaintiffs' Steering Committee in the Zimmer Nexgen Knee Implant Litigation, MDL No. 2272.
- U.S. District Judge Steven J. McAuliffe, District of New Hampshire, to serve on the Plaintiffs' Steering Committee in the Dial Complete Marketing and Sales Litigation, MDL No. 2263.
- U.S. District Judge Paul Barbadoro, District of New Hampshire, to serve as Plaintiffs' Executive Committee in Colgate-Palmolive Softsoap Antibacterial Hand Soap Marketing and Sales Litigation, MDL No. 2320.
- U.S. District Judge Sarah S. Vance, Eastern District of Louisiana, to serve on the Plaintiffs' Steering Committee in the Pool Products Distribution Market Antitrust Litigation, MDL No. 2328.

6. Our firm, of which I am the founding and senior partner, is a nationally recognized member of the complex civil litigation bar and has been involved in major leadership positions in complex mass tort and personal injury actions for decades. My experience as a trial lawyer, author and teacher has provided a unique foundation for navigating complex litigation. I have Martindale Hubbell's highest rating for legal ability and ethical standards and am listed in other peer reviewed publications including the Bar Register of Preeminent Lawyers and "Best of United States". I have appeared in the "Best Lawyers in America" publication for over 17 consecutive years. Additionally, I serve as a faculty member for LSU Law School's Trial Advocacy Program; a faculty composed of federal and state court judges, professors and prominent attorneys. In the Baycol MDL, I served as co-counsel with Professor Arthur Miller. The Plaintiff Steering Committee designated the two of us to argue the class certification motion. Later, at a class action fairness hearing in another federal court, Professor Arthur Miller, described me as one of the "leaders in the area of complex litigation." Likewise, Professor

Edward Sherman, former dean of the Tulane Law School and author of the *Complex Litigation* treatise, has described me as one of the “experts” in class actions.

Judge Donovan Frank appointed me to serve as co-lead counsel in the Guidant MDL. As the litigation came to a close, the court acknowledged lead counsels’ significant mass tort experience and explained:

“This experience benefitted immensely the court’s ability to effectively and expeditiously move the case along, and more importantly, this experience benefitted the individual plaintiffs.”

The Guidant MDL presented many unique challenges and much of my time was spent in critical management efforts which were essential to coordinating the litigation. Again, this did not go unnoticed by Judge Frank:

“The attorneys had superb case management experience that permitted them to efficiently handle this complex case. In addition, many of the managing attorneys have the ability to combine their skills with experienced trial lawyers in a way that proved efficient and a benefit to all plaintiffs as the bellwether trial dates approached. Had it not been for the skill of counsel, there may have been no settlement and no recovery for the plaintiffs here at all.”

I was one of the lead negotiators in the Guidant MDL and involved in every step of the process, all of which was directly supervised by Magistrate Arthur Boylan who noted that the negotiations were some of the “most complex” that he had been involved in and praised the “professionalism, competence and skill of counsel” during the settlement process. Judge Frank stated that Magistrate Boylan’s observations were consistent with what the court had observed throughout the case as well.

U.S. District Judge Rebecca Doherty, at a fairness hearing for the New Iberia Train Derailment litigation where I served as Co-Lead Counsel, made the following remarks:

“This is a matter where counsel took it upon themselves to take this out of the norm and to handle it somewhat creatively, and they have handled it efficiently, well, expeditiously, and it is -- has been reflective of the collective talent,

experience, and ability of the attorneys involved and the Special Master and the court disbursal agent that this has gone as beautifully as it has.” “I think the novelty in which this was handled is extremely laudable and great and high in the manner in which this matter was handled, and I think that is something that the -- particularly, the counsel that were the common benefit attorneys should be properly rewarded for. The skill required to perform the legal services properly, I think, is perhaps one of the major factors in this matter. I think the skill required by the common benefit lawyers in order to bring this matter from start to finish in two years time with only 300 and something objections, almost all of them ultimately being resolved to the satisfaction of all parties involved, is exemplary.” “The experience, reputation, and ability of the attorneys is exemplary. I think the curriculum vitae point that out, and I don't think it's every day that you have someone of Mr. Arthur Miller's stature who says that you have some of the best in the country working in a given case. That is high praise not unnoted by this Court that came from the expert witness this morning.” “It is my opinion this is a unique class action that has been handled in an exemplary fashion by skilled, talented lawyers, an excellent Special Master, and an excellent court disbursal agent, and I think that that adds value to the matter. It is rare that a train derailment is taken from start to finish in approximately two years with pretty much everybody happy and a tremendously high percentage of the monies that are expended going to the litigants and the litigants getting their money within about two years. That is almost unheard of, and I think that has true value, and I don't think it would have happened without having the quality of counsel that was in this case, as well as the Special Master and the court disbursal agent.”

My commitment to legal excellence is reflected in years of service which includes teaching at law schools, publishing law review articles, lecturing at Judicial Colleges and assuming leadership roles in both local as well as national bar associations. I coordinate and participate in an annual tort law panel presentation by several United States District Judges and the former Dean of the University of Tennessee College of Law. I have chaired the Louisiana Bar Association's Annual Complex Litigation Seminar since its inception. I have been both an invited guest and speaker at the U.S. Fifth Circuit judicial conferences.

For decades, I have chaired complex litigation programs with nationally recognized speakers. I have organized dozens of counsel meetings and conferences, comprising hundreds of law firms in venues across the country. These have been designed to facilitate consensus for

leadership roles, consider organizational structures and promote coordinated litigation efforts. Consequently, I understand and function well in the national complex litigation landscape.

I have over 300 articles and presentations listed on my Curriculum Vitae. Additionally, I have been the architect of many significant litigation recoveries and appointed to key negotiating teams, resulting in nine figure settlements.

7. Those submitting time from our firm with corresponding rates and positions are noted below:

<u>TIMEKEEPER</u>	<u>POSITION</u>	<u>RATE</u>
Richard J. Arsenault	Senior Partner	\$750.00
C. Michael Bollinger	Senior Partner	\$695.00
LaToya J. Burrell	Junior Associate	\$450.00
Todd Campbell	Junior Associate	\$450.00
Laura Singletary	Junior Associate	\$450.00
Mary Nell Bennett	Junior Associate	\$450.00
Ramsey T. Marcello	Junior Associate	\$450.00
Douglas Rushton	Junior Associate	\$450.00
Blakely Molitor	Junior Associate	\$450.00
Heather Blalock	Paralegal	\$150.00

8. Based on my knowledge and experience, the rates charged by my firm are within the range of rates normally and customarily charged by lawyers involved in this type of litigation that have national practices with similar qualifications and experience in cases of this kind.

9. Our firm's rates are reasonable considering my qualifications and experience and those of the attorneys in our firm. They are also reasonable when compared to the hourly rates of our counterparts on the other side of the "V". In this complex litigation landscape many of our counterparts have hourly billing rates that exceed \$1,000 per hour.<sup>2</sup> In fact, as evidenced in the

<sup>2</sup> See Big Law's \$1,000-Plus an Hour Club, Vanessa O'Connell, Wall Street Journal (2/23/2011), attached as **Exhibit B**.

chart of Top Billers linked in the Wall Street Journal article<sup>3</sup>, over 120 lawyers now have hourly rates above \$1,000.

Our firm's submitted rates are also in-line with others involved in this type litigation. Russ Herman is a well respected plaintiff trial lawyer from New Orleans. He and I are at comparable stages in our MDL careers. His submission noted below to Judge Eldon Fallon in the Vioxx MDL is instructive. As Russ Herman<sup>4</sup> concisely stated<sup>5</sup>:

Recently, the Times-Picayune reported that the RTA (Regional Transit Authority) in New Orleans pays its counsel \$800.00 per hour. ***The locality rule which averages community legal fees has no rational application in national (MDL) litigation.*** The undersigned has been paid as little as \$0.00 in a pro bono case for the LSED which resulted in a \$10,000,000 plus recovery; \$0.00 in representing 10,000 survivors of the Bataan Death March who were auctioned as slaves to Japanese industries such as Mitsui and Mitsubishi (until the U.S. State Department intervened to insulate the industries from war crime reparations); and, \$0.00 fees thus far for a successful trial against Big Tobacco that spanned more than 3 years, and is on the second round of writ applications to the United States Supreme Court. On the other hand, counsel has been paid more than \$5,000 per hour plus expenses on 5 occasions for lectures to physicians and pharmaceutical companies on how to avoid medical negligence, and \$700 to \$1,000 per hour on a very few occasions. ***It is well observed that senior litigation attorneys in New Orleans often charge in excess of \$700 per hour. Further, MDL defense lawyers often charge in excess of \$700 per hour. Undersigned counsel, if required to give an hourly rate, values his time at \$850 per hour.***

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<sup>3</sup> See Top Billers Chart, Over \$1,000-per-hour, The Wall Street Journal (2/23/2011), attached as **Exhibit C**.

<sup>4</sup> Attorney Russ Herman has been appointed Liaison and Lead Counsel in In Re Propulsid Products Liability Litigation, MDL No. 1355 and Liaison Counsel and a Member of the Executive Committee in In Re Vioxx Products Liability Litigation, MDL No. 1657 as well as Liaison Counsel in the In re: Chinese-Manufacturer Drywall Products Liability Litigation, MDL No. 2047.

<sup>5</sup> See Reply to Daniel H. Becnel, Jr.'s Supplemental Brief re: Vioxx Fee Objections of May 31, 2011 and an Additional Letter and Case Cite of June 1, 2011 (6/3/2011), D.R. 63020, p. 2-3, In re Vioxx Products Liability Litigation, MDL No. 1657 (emphasis added).



I declare under penalty of perjury that the foregoing is true and correct.

**Dated:** April 3, 2013

  
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