

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re Ortho Evra Products Liability Litigation : **MDL Docket No. 1742**
:
:
:
:
:
:
:
:
:
:
:
This Document Applies To : **ALL CASES**

In support of their motion for the approval of reimbursement of certain common benefit expenses submitted as Exhibit A to the Memorandum supporting this Motion, the Plaintiffs' Steering Committee ("PSC") respectfully submits the following:

A. Factual Background

1. PSC Expenses

The PSC has incurred significant expenses in carrying out its obligation to represent the plaintiffs in this multidistrict litigation, expenses which include deposition transcripts, status conference transcripts, expert witness fees, computer hardware, outside copy services, and document depository facility expenses. The attached spreadsheet (Exhibit A), itemizes the expenses for which the PSC currently seeks reimbursement. The expenses included in Exhibit A are by no means the only Shared Costs the PSC has incurred to date. Rather, they are a subset of expenses. These expenses are clearly reasonable, necessary and appropriate, inasmuch as all of the expenses included in Exhibit A have been incurred to conduct common discovery, to

¹ The expenses for which the PSC seek reimbursement are all "Shared Costs" as defined in Section B.2(c) of this Court's Case Management Order No. 9, as amended (Docket No. 49).

present common testimony and to prepare bellwether cases, and as such inured to the benefit of the entire group of plaintiffs in this litigation.² The costs for which the PSC seeks reimbursement herein total **\$522,959.56**. The PSC will at a later date request reimbursement for other shared costs advanced on behalf of all plaintiffs.

It should be noted that substantial expenses incurred by individual PSC members (“Held Costs” as defined by section B.2(d) of CMO No. 9) for such things as personal travel to hearings and depositions and for hotel accommodations, have not been included in the current submission. Instead, the attached spreadsheet includes none of the bills for “held costs” that have been borne by individual PSC members. Further, while the attached submission contains expert expenses associated with Science Day, it does not include any other expert witness expenses. Instead, those costs for expert witness consultation and depositions will be included in a future submission.

The expenses included in Exhibit A have all been paid through a PSC litigation fund assessment. The PSC firms have each contributed a substantial amount to this litigation fund to date. Further, there are substantial common benefit expenses yet to be paid and others yet to be incurred in this litigation. Therefore, the PSC seeks this partial interim reimbursement of litigation expenses at this time in order to avoid overburdening the PSC firms. Such a partial reimbursement of costs will replenish the PSC litigation fund and help reimburse PSC firms for a portion of the expenses they have paid for the common benefit of the MDL and CMO 9 state court Plaintiffs.

² CMO 9 specifically provides for reimbursement of shared common benefit costs. While costs incurred in individual actions ordinarily are not included as shared costs, CMO 9 provides in Section B, 2, c(i) that the court may order compensation of individual costs in appropriate circumstances. The PSC submits that costs incurred in preparation of the MDL bellwether cases for trial inured to the substantial benefit of all plaintiffs and therefore should be approved as a common benefit expense. All PSC firms participated in the preparation of the bellwether cases for trial. Several PSC firms also incurred substantial “held expenses” for travel and lodging in preparation of the bellwether cases for trial, in addition to the shared costs submitted herein.

2. Common Benefit Fund Deposits

As of March 31, 2008, deposits in the Common Benefit Fund pursuant to CMO 9 total \$2,061,535.29, as a result of settlement of several hundred individual cases. The terms of CMO 9 provide that 50% of the deposits in the Common Benefit Fund may be allocated to expenses. Thus the current request for expense reimbursement, which equals approximately 25% of the deposits to date, does not exceed the amount of deposits in the fund earmarked for expenses. This Court, by its plenary powers and pursuant to Section A.2(a) of CMO 9, has the authority to approve the reimbursement the PSC currently seeks.

B. Argument

An attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable expenses involved. The equitable principle that all reasonable expenses incurred in the creation of a fund for the benefit of a class are reimbursable proportionately by those who accept benefits from the fund authorizes reimbursement of full reasonable litigation expenses as costs of the suit. Internal Imp. Fund Trustees v. Greenough, 105 U.S. 527, 533, 26 L.Ed. 1157 (1881).

Subject to relevance and reasonableness in amount, reimbursable expenses that have been awarded include: (1) witness fees; (2) expert or specialist fees; (3) special master; (4) transcripts of hearings and depositions; (5) copying charges; (6) travel; (7) long-distance and conference telephone; (8) postage; (9) delivery services; (10) computerized legal research; and (11) settlement administrative costs. See generally Conte, 1 Attorney Fee Awards § 2:19 (3d ed.).

Thus far in this complex, hotly-contested litigation, the PSC has incurred substantial costs. For example, the PSC has paid tens of thousands of dollars for the transcripts in more than 80 depositions. The PSC has also advanced thousands of dollars of costs associated with the computer hardware necessary for efficient review of millions of pages of documents, and with the rental expenses for the Denver document depository. All of these costs have been necessary in connection with the prosecution of this litigation, and have been for the benefit of all Plaintiffs. Accordingly, they are reimbursable. See In Re UEC Corp. Sec. Litig., Fed. Sec. L. Rep. P 94,376, 1989 WL 73211, *6 (C.D. Cal., Mar. 9, 1989); In re GNC Shareholder Litig., 668 F.Supp. 450, 452 (W.D. Pa. 1987); Conte, Attorneys Fee Awards, § 2.08 (3d ed.).

C. Conclusion

The PSC respectfully requests that the Court approve reimbursement of \$522,959.56 in common benefit expenses submitted as Exhibit A to this Memorandum.

Respectfully submitted,

s/Janet G. Abaray

Janet G. Abaray, Esq. (0002943)

BURG SIMPSON

ELDREDGE HERSH JARDINE, P.C.

312 Walnut St., Suite 2090

Cincinnati, OH 45202

(513) 852-5600

(513) 852-5611 (fax)

jabaray@burgsimpson.com

Michael S. Burg (CO-7143)

BURG SIMPSON

ELDREDGE HERSH JARDINE, P.C.

40 Inverness Dr. East

Englewood, CO 80111

(303) 792-5595

(303) 708-0527 (fax)

Co-Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was served electronically on this 17th day of April, 2008, to all counsel of record through the courts electronic filing system.

s/Janet G. Abaray _____