

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re Ortho Evra Products Liability Litigation)	N.D. Ohio Case No: 1:06-cv-40000
)	
)	MDL Docket No. 1742
)	
This Pleading Relates To:)	Judge David A. Katz
)	
ALL CASES)	
)	
MDL Case no. 1:06-cv-4000)	
)	

**THE KABATECK BROWN KELLNER/KHORRAMI POLLARD & ABIR LAW
FIRM RESPONSE TO PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR THIRD AMENDMENT TO CMO NO. 9**

Kabateck Brown Kellner LLP and Khorrami Pollard & Abir jointly represent plaintiffs in the MDL who have not had their individual cases settled. While we fully appreciate the position of the Executive Committee regarding the need for an additional assessment for cases that will require litigation beyond the present round of settlement negotiations, we are concerned that there are cases that

might not be fully negotiated and settled within the time frame set forth in the Executive Committee's application.

At the outset, we are pleased to report that the vast majority of our cases have been settled with Defendants. In addition, further mediations are scheduled in the coming weeks.

However, we anticipate that there still we be a handful of cases that will not be fully settled in the next few weeks. Some will not be settled because the Defendants have made requests for additional documentation (which Plaintiffs are in the process of obtaining). Some cases will not be settled because they involve post-label change usage. Finally, some cases are still in the process of negotiations, and might require assistance from the Court to help facilitate a settlement.

Accordingly, we support the Executive Committee's request for an additional assessment for cases that will require additional litigation beyond the present round of settlement negotiations – in an amount determined by the Court – in recognition that the continuing litigation will require a great deal of resources for a limited number of cases.

However, in order to ensure that the cases have truly reached the next phase of litigation, we suggest that before the additional assessment is imposed, the parties must either: (a) jointly declare that an impasse has been reached in the settlement negotiations; or (b) the parties participate in a settlement conference before the Court and are unable to settle the case.

The foregoing is necessary to ensure that the additional assessment be imposed upon cases that are at an impasse, and reached the next phase of the litigation.

Dated: January 13, 2009

KABATECK BROWN KELLNER LLP

By: _____/s

Brian S. Kabateck
KABATECK BROWN KELLNER LLP
644 South Figueroa Street
Los Angeles, CA 90017
Tel: 213-217-5000
Email: bsk@kbklawyers.com

Attorneys for Various Plaintiffs