

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re Ortho Evra Products Liability Litigation	:	MDL Docket No. 1742
	:	
	:	N.D. Ohio Case No. 1:06-40000
	:	
	:	MEMORANDUM IN SUPPORT OF PSC'S MOTION FOR REIMBURSEMENT OF COSTS ON BEHALF OF THE PSC AND PLAINTIFFS' COUNSEL
This Document Applies to:	:	
ALL CASES	:	
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The Plaintiffs' Steering Committee ("PSC"), on behalf of itself and numerous Plaintiffs' Counsel, respectfully submits the following Memorandum in Support of the accompanying Motion for Reimbursement of Costs. The PSC respectfully requests reimbursement of common benefit expenses for the PSC costs, as well as reimbursement of common benefit expenses for numerous Plaintiffs' Counsel.

I. FACTUAL BACKGROUND

Second Amended Case Management Order #9 ("CMO 9") was entered by this Court on September 19, 2006 to "provide for the fair and equitable sharing among plaintiff of the costs of services performed and expenses incurred by attorneys acting for MDL administration and common benefit of all plaintiffs in this complex litigation." Under CMO 9, the Court may authorize payments from the common benefit fund to attorneys who provide services or incur expenses for the joint and common benefit of all plaintiffs.

A. PSC Expenses

The PSC has incurred significant expenses in carrying out its obligation to represent the plaintiffs in this multidistrict litigation, expenses which include, but are not limited to, deposition transcripts, status conference transcripts, expert witness fees, computer hardware, outside copy services, and document depository facility expenses. The PSC previously petitioned the Court for a reimbursement of a portion of the common benefit expenses in the amount of \$522,959.56, which the Court approved on May 7, 2008.

The PSC now seeks reimbursement for additionally incurred common benefit expenses in the amount of \$811,444.21.¹ Such expenses include travel expenses, expert fees, transcripts of hearing and depositions, copying charges, telephone conferences, delivery charges, document depository costs, and other expenses incurred for the common benefit of the plaintiffs. These expenses are clearly reasonable, necessary and appropriate, inasmuch as all of the expenses have been incurred to conduct common discovery, to present common testimony and to prepare bellwether cases, and as such inured to the benefit of the entire group of plaintiffs in this litigation. While costs incurred in individual actions ordinarily are not included as shared costs, CMO 9 provides that the court may order compensation of individual costs in appropriate circumstances. The PSC submits that costs incurred in the preparation of MDL bellwether cases for trial inured to the substantial benefit of all plaintiffs and, therefore, such costs should be approved as a common benefit expense.

¹ The Plaintiff's Executive Committee is providing under separate cover for the Court's review a confidential submission of all PSC expenses, including an itemized accounting for the PSC expenses fund, as well as the receipts and/or other documentation in support of the PSC expenses.

B. Plaintiffs' Counsel Expenses

There are numerous Plaintiffs' firms which were requested or authorized by the PSC to perform work and services for the common benefit of all plaintiffs in this multidistrict litigation. During the course of their work, these individual Plaintiffs' firms have incurred common benefit expenses. Such expenses include travel expenses, copy charges, court reporter charges, Federal Express charges, conference call costs, consultant/expert fees, legal research, PACER charges, legal research charges, and costs related to the bellwether cases.

The Plaintiffs' firms who have incurred common benefit expenses and are requesting reimbursement for such expenses were required to submit their expense reimbursement requests, along with supporting documentation and invoices, to the PSC. All of the costs submitted herein have been reviewed by the member firms of Plaintiffs' Executive Committee. No firm reviewed its own submission. The purpose of the review was to confirm that the expense submitted was an appropriate expense for reimbursement from the common benefit fund. As such, the Executive Committee considered whether the expense qualified as a common benefit expense, rather than an individual case expense. In addition, the Executive Committee verified that appropriate receipts have been provided. Third, the Executive Committee confirmed that the cost met the standards for approval set forth in CMO 9.

As to differentiating between common benefit expenses and individual case expenses, the Executive Committee put standards in place that applied to all firms. In particular, there were three meetings held by the PSC to educate plaintiffs' counsel on specific issues pertaining to their individual cases. One meeting, held in Chicago, was

to educate plaintiffs' counsel about the Ortho Evra mediation process. Another meeting, held once in Chicago and repeated in Las Vegas, was to educate individual plaintiffs' counsel regarding case specific issues in general. The decision was made to permit costs related to these meetings only for those counsel who participated in the presentations. Those who attended the meetings but did not participate in the actual presentation were considered to be acting on behalf of their individual clients. As such, the expenses related to counsel who attended these meetings, but did not present, have been excluded from this request for reimbursement.

Where questions arose regarding the purpose of a particular expenditure, a member of the Executive Committee contacted the attorney submitting the expense to request clarification. In virtually every situation, agreement was reached as to whether the expense qualified as common benefit or case specific. The Executive Committee then reviewed the revised totals with the submitting firm to confirm the accuracy of the final submission.

It should also be noted that the PSC member firms contributed to an MDL Expense Fund through assessments made over the course of the litigation. The purpose of the MDL Expense Fund was to pool resources in order to pay common expenses as they were incurred, such as court reporter costs and expert witness fees. The MDL Expense Fund's request for contribution is included with the submission herein. Each contributing firm will then be refunded for its assessment through reimbursement from the MDL Expense Fund itself. Therefore, to the extent that any firms also included their MDL Expense Fund contribution as a firm expense, that amount has been deleted from this submission in order to prevent inadvertent

duplication of expenses. In addition, in a few instances, co-counsel firms both submitted the same cost inadvertently. Again, those duplications have been corrected herein.

Additionally, one plaintiff's firm submitted a request for reimbursement of expenses, but has not provided receipts, billing statements, or other supporting documentation in support of the expense request. Since the firm has not responded to several requests for the supporting documentation, the PSC is not including that firm's expense submission in this motion.

Plaintiffs' firms who have submitted requests for reimbursement of common benefit funds with supporting documentation are set forth below, including the requested amount for reimbursement, as audited and approved by the PSC.²

FIRM	AMOUNT
PSC Expense Fund	\$811,444.21
Andrus Liberty & Anderson	\$4,825.74
Ashcraft & Gerel	\$100,896.98
Aylstock, Witkin, Kreis & Overholtz	\$2,016.87
Becnel Law Firm LLC	\$85,988.19
Behnke, Martin & Schulte	\$7,950.39
Burg Simpson Eldredge Hersh & Jardine, PC	\$355,076.18
Connelly, Jackson & Collier	\$789.42
Cory Watson Crowder & DeGaris	\$3,249.41
Debry & Associates	\$7,635.50
Douglas & London	\$247,507.48
Finkelstein & Partners	\$982.61
Garrett Law Firm	\$28,126.98
Kabateck Brown & Kellner, LLP	\$23,802.45
Khorrami Pollard & Abir, LLP	\$9,238.27
Lanham & Blackwell	\$4,727.07
The Lanier Law Firm	\$54,919.84
Levin Fishbein Sedran & Berman	\$8,310.96
Levin, Papantonio, Thomas, Mitchell, Eshsner & Proctor, P.A.	\$38,294.93
Lieff, Cabraser, Heimann & Bernstein, LLP	\$7,350.73

² The Executive Committee is submitting directly to the Court a CD that contains summaries, receipts and other supporting documentation submitted by each firm in support of their common benefit expenses.

Lopez Hodes	\$70,844.13
Lundy & Davis	\$9,427.03
Meyerson & O'Neil	\$1,826.66
Neblett Beard & Arsenault	\$1,473.88
Parker Waichman & Alonso, LLP	\$76,069.02
Price Waicukauski & Riley	\$3,331.46
Richardson, Patrick, Westbrook & Brickman, LLC	\$96,213.78
Schlichter, Bogard & Denton	\$116,575.21
Seeger Weiss	\$32,179.87
Weitz & Luxenberg	\$43,232.25
Whatley Drake & Kallas	\$83,972.60
TOTAL	\$2,338,280.10

These expenses are clearly reasonable, necessary and appropriate, inasmuch as all of the expenses have been incurred to conduct common discovery, to present common testimony and to prepare bellwether cases, and as such inured to the benefit of the entire group of plaintiffs in this litigation.

C. Common Benefit Fund Deposits

The current request for reimbursement of expenses does not exceed the amount of deposits in the fund. 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.

II. ARGUMENT

An attorney who creates a common fund for the benefit of a class is entitled to receive reimbursement of reasonable litigation expenses from that fund. *In re Orthopedic Bone Screw Products Liability Litig.*, 2000 U.S. Dist. LEXIS 15980 at *39 (E.D. Pa., Oct. 23, 2000), *citing Lachance v. Harrington*, 965 F. Supp. 630, 646 (E.D. Pa. 1997); *Yong Soon Oh v. AT&T*, 225 F.R.D. 142, 154 (D.N.J., 2004).

Subject to relevance and reasonableness in amount, reimbursable common benefit 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 charges; (8) postage; (9) delivery services; (10) computerized legal research; and (11) settlement administrative costs. See, *Acosta v. Master Maintenance*, 192 F. Supp. 2d 577 (M.D. La. 2001); *New England Health Care Employees Pension Fund v. Fruit of the Loom*, 234 F.R.D. 627, 634-35 (W.D.K.Y., 2006); *Yong Soon On v. AT&T*, 225 F.R.D. at 154.

Thus far in this complex, hotly-contested litigation, the PSC and individual Plaintiffs' firms have incurred substantial costs in the prosecution of this litigation. All the costs incurred by both the PSC and the individual Plaintiffs' firms have been reasonable and necessary to advance the entire MDL litigation. Furthermore, such costs have been incurred for the common benefit of all plaintiffs in this litigation and therefore should be reimbursed from the common benefit fund established.

III. CONCLUSION

Based on the foregoing, the PSC respectfully requests that the Court approve reimbursement of common benefit expenses for the PSC and the individual Plaintiffs' firms, as set forth above.

Respectfully submitted,

/s/ Janet G. Abaray
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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served electronically on this 15th day of April, 2009, to all counsel of record through the Court's electronic filing system.

/s/ Janet G. Abaray