

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

**IN RE: ORTHO EVRA PRODUCTS
LIABILITY LITIGATION**

N.D. Ohio Case No. 1:06-40000

MDL Docket No. 1742

SECOND AMENDED

This Document Relates To:

ALL CASES.

**CASE MANAGEMENT ORDER NO. 9
COMMON BENEFIT ORDER
(ESTABLISHING COMMON BENEFIT
FUND TO COMPENSATE AND
REIMBURSE ATTORNEYS FOR
SERVICES PERFORMED AND EXPENSES
INCURRED FOR MDL ADMINISTRATION
AND OTHERWISE FOR PLAINTIFFS'
GENERAL BENEFIT)**

This Order is entered to provide for the fair and equitable sharing among plaintiffs of the cost of services performed and expenses incurred by attorneys acting for MDL administration and common benefit of all plaintiffs in this complex litigation. This Court's authority in this regard derives from the Supreme Court's common benefit doctrine, as established in *Trustees v. Greenough*, 105 U.S. 527 (1881); refined in, *inter alia*, *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1884); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); and approved and implemented in the MDL context, in, *inter alia*, *In re MGM Grand Hotel Fire Litigation*, 660 F.Supp. 522, 525-29 (D. Nev. 1987); *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977). Any disputes arising under this Order which cannot be resolved by agreement of Counsel, will be resolved by this Court in the exercise of its jurisdiction under the equitable principles of the common fund/common benefit doctrine.

The Court Orders as follows:

A. Common Benefit Fund For Expenses to be Established

Plaintiffs' Co-Lead Counsel (Janet Abaray, Esq.) is directed to establish an interest-bearing account at Key Bank, in Cincinnati, Ohio to receive and disburse funds as provided in this Order. Janet G. Abaray, Esq. is hereby appointed as escrow agent for this purpose. These funds will be held as funds subject to the direction of the Court and are hereinafter referred to as the "Common Benefit Fund." No party or attorney has any individual right to any of these funds except to the extent of amounts directed to be disbursed to such person by order of the Court. These funds do not constitute the separate property of any party or attorney and are not subject to garnishment or attachment for the debts of any party or attorney except when and as directed to be disbursed to a specific person as provided by court order.

By subsequent Order of the Court, the Court may appoint a qualified certified public accountant (the "CPA") to keep detailed records of all deposits and withdrawals and to prepare tax returns and other tax filings. Such subsequent Order shall specify the hourly rates to be charged by the CPA and for the CPA's assistants, who shall be utilized where appropriate to control costs. The CPA shall submit quarterly detailed bills to the Court and to Plaintiff's Co-Lead Counsel. Upon approval, the CPA's bills shall be paid from the Ortho Evra MDL PSC Fund and shall be considered a shared cost in accordance with ¶ B.2.c, below.

1. Assessments for the Common Benefit Expense Fund.

- a. After October 28, 2006 all plaintiffs and their attorneys who either agree or have agreed to settle, compromise, dismiss, or reduce the amount of a claim or, with or without trial, recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, with respect to any Ortho Evra claims are subject to an assessment of the "gross monetary recovery," to be withheld by defendants and paid into the Common Benefit Fund by defendants, as provided herein.

b. Defendants are directed to withhold the amount of this assessment from any amounts paid to plaintiffs and their counsel for any case being handled by a plaintiff's attorney with at least one case pending in federal court and/or any state court or unfiled case where the plaintiff's counsel has executed an agreement to cooperate with the MDL (Exhibit A or B hereto), and to pay the assessment directly into the Common Benefit Fund as a credit against the settlement or judgment. If for any reason the assessment is not or has not been so withheld, the plaintiff and her counsel are deemed jointly responsible for paying the assessment into the Common Benefit Fund promptly.

c. No orders of dismissal of any plaintiff's claim in which any recovery is received, and which is subject to this Order, shall be filed unless accompanied by a certificate of plaintiff's and defendants' counsel that the assessment has been withheld and deposited into the Common Benefit Fund or, alternatively, a certification that the assessment order does not apply to the action.

d. The Plaintiffs' Steering Committee on a quarterly basis shall provide Defendants' Liaison Counsel and the Court or its designee with a list of cases and/or counsel who have entered into written agreements with the Plaintiff's Steering Committee. Upon request, the Plaintiffs' Steering Committee shall provide to each plaintiffs' counsel a list of his or her own firm's cases that are subject to an assessment under this Order. In the event there is a dispute as to whether a case should be on the list, the Plaintiffs' Steering Committee shall resolve the matter with the particular plaintiff's counsel either informally or upon motion.

e. In measuring the "gross monetary recovery":

- (1) Court costs that are to be paid by the defendant shall be excluded.
- (2) The present value of any fixed and certain payments to be made in the future shall be included.

(3) Nothing in this Order shall be deemed to modify, alter, or change the terms of any fee contracts between any plaintiffs' counsel and their individual clients.

f. This obligation attaches in the following instances:

- (1) 60-Day Participation Option. For all cases whose counsel have agreed within 60 days of the date of this Order to cooperate with the MDL by signing the appropriate agreement [attached hereto as Exhibit A], the assessment in such cases shall be one and one-half percent (1½%) as fees and one and one-half percent (1½%) as costs (a total of three percent (3%)) of the "gross monetary recovery." The assessment shall apply to all Ortho Evra cases involving any full participation counsel, now pending or later filed in, transferred to, or removed to, this Court as well as all unfiled and tolled cases and claims treated as part of the coordinated proceeding known as *In re: Ortho Evra Products Liability Litigation*, MDL 1742, and resolved after the date this Order is signed, including cases later remanded to a state court or any cases on tolling agreements, filed in any state court, or clients whose cases are as yet unfiled. As noted above, one and one-half percent (1½%) shall be deemed fees to be subtracted from the attorneys' fees portions of individual fee contracts, and one and one-half percent (1½%) shall be deemed costs to be subtracted from the client portion of individual fee contracts. This option shall be required on all cases (state, federal, filed or unfiled) by all members of the PSC, any PSC sub-committee members, and any Court approved State Liaison Committee.

(2) Post 60-Day Assessment Options.

(a) Later participation by attorneys with no prior filed Ortho Evra cases. Following the 60-Day period in the preceding paragraph, any counsel who files for the first time a case involving a personal injury claim relating to Ortho Evra that becomes part of this MDL shall have 30 days from the date the claim receives a docket number in the Northern District of Ohio to cooperate with the MDL by signing an appropriate agreement [attached hereto as Exhibit A]; the assessment in such cases shall be one and one-half percent (1½%) as fees and one and one-half percent (1½%) as costs (a total of three percent (3%)) of the “gross monetary recovery.” The assessment shall apply to all Ortho Evra cases involving any full participation counsel, now pending or later filed in, transferred to, or removed to, this Court as well as all unfiled and tolled cases and claims treated as part of the coordinated proceeding known as *In re: Ortho Evra Products Liability Litigation*, MDL 1742, and resolved after the date of this Order, including cases later remanded to a state court or any cases on tolling agreements, filed in any state court, or clients whose cases are as yet unfiled. One and one-half percent (1½%) shall be deemed fees to be subtracted from the attorneys’ fees portions of individual fee contracts, and one and one-half percent (1½%) shall be deemed costs to be subtracted from the client portion of individual fee contracts.

(b) Non-participation in MDL. Any Counsel who has cases in State court and who determines not to participate with the MDL PSC and execute a participation agreement with the PSC, may

seek access to MDL and/or PSC non-work-product materials from the PSC by contacting the Executive Committee in writing; however, the MDL PSC shall be under no obligation to allow such counsel access to any MDL materials.

(c) Later Participation. Other than as identified in paragraph A.1.f.(2)(a) above, following the initial 60-day period to permit counsel to consider the 60-Day Participation Option, Counsel with at least one case in the MDL and/or counsel with cases only pending in State court, tolled or otherwise unfiled cases who sign an appropriate agreement [Attached hereto as Exhibit B], the assessment in such cases shall be three percent (3%) as fees and two percent (2%) as costs (a total of five percent (5%)) of the “gross monetary recovery” on all Ortho Evra cases now pending, or later filed in, transferred to, or removed to, this court and treated as part of the coordinated proceeding known as *In re: Ortho Evra Products Liability Litigation*, MDL 1742, as well as unfiled, tolled, or cases filed in State court. As noted above, three percent (3%) shall be deemed fees to be subtracted from the attorneys’ fees portions of individual fee contracts, and one and two percent (2%) shall be deemed costs to be subtracted from the client portion of individual fee contracts.

i. Any case pending in the MDL, in which counsel fails to timely make an election under the preceding paragraphs, shall be assessed three percent (3%) as fees and two percent (2%) as costs (a total of five percent (5%)) of the “gross monetary recovery.” Nothing in this Order shall limit the PSC’s right or ability to seek an equitable contribution against any state court case in which the

Plaintiff's counsel was provided access to the MDL work product.

2. Disbursements from Common Benefit Expense Fund.

- a. Upon subsequent Order of the Court, payments may be made from the Common Benefit Fund to attorneys who provide services or incur expenses for the joint and common benefit of plaintiffs in addition to their own client or clients. Attorneys eligible thereto are limited to Plaintiffs' Co-Lead Counsel, members of the Plaintiffs' Steering Committee, Plaintiffs' Federal Court Liaison, attorneys who are member of a sub-committee established by the Plaintiffs' Steering Committee who are called upon by them to assist in performing their responsibilities, Plaintiffs' State Liaison Counsel, and other attorneys performing PSC-approved responsibilities in MDL or state court actions. Such attorneys who maintain actions in state court and obtain rulings that inure to the benefit of all plaintiffs in the MDL shall be permitted to submit for common benefit treatment the time and costs associated with obtaining such rulings. All time and expenses are subject to proper and timely submission of contemporaneous records certified to have been timely received.
- b. Payments will be allowed only to entities for special services performed, and to reimburse for special expenses incurred, for the joint and common benefit of all plaintiffs, which have been specifically authorized by the PSC.
- c. Payment may, for example, be made for services and expenses related to the obtaining, reviewing, indexing, and payment for hard copies of computerized images of documents for the defendants; to conducting depositions; and to activities connected with the coordination of federal and state litigation. The Common Benefit Fund will not, however, be used to pay for services and expenses related to a particular case, such as the deposition of a treating physician, even if such activity results in some incidental and/or

consequential benefit to other plaintiffs, or for an attorney to “learn the case.”

d. Payments will not exceed the fair value of the services performed (plus any court approved multiplier) or the reasonable amount of the expenses incurred, and, depending upon the amount of the fund, may be limited to a part of the value of such services and expenses.

e. No amounts will be disbursed without review and approval by the Court or such other mechanism as the Court may deem just and proper under the circumstances. Defense Counsel shall provide at least quarterly notice to the Court or its designee and Plaintiffs’ Co-Lead Counsel of the names and docket numbers of the cases for which it has withheld an assessment. Details of any individual settlement agreement, individual settlement amount and individual amounts deposited into escrow shall be confidential and shall not be disclosed to the Plaintiffs’ Steering Committee. Monthly statements from the escrow agent shall be provided to Plaintiffs’ Co-Lead Counsel, Defense Liaison Counsel, the Court, and the Court’s designee showing, with respect to the funds controlled by the escrow agent, only the aggregate of the monthly deposits, disbursements, interest earned, financial institution charges, if any, and current balance.

f. If the Common Benefit Fund exceeds the amount needed to make all payments as provided in this order (for court approved costs, fees, and any court approved multiplier on any fees), the Court may order a refund to those who have contributed to the Common Benefit Fund. Any such refund will be made in proportion to the amount of the contributions.

3. Incorporation by Reference

The individual attorney agreements attached hereto as Exhibits A and B are incorporated by reference and have the same effect as if fully set forth in the body of this Order.

B. Plaintiffs’ Common Cost Fund and Submission of Time and Expense.

1. Plaintiffs’ Counsel’s Time and Expense Submissions

Reimbursement for costs and/or fees for services of all Plaintiffs' counsel performing functions in accordance with this Order will be set at a time and in a manner established by the Court, after due notice to all counsel. The Court shall receive and consider recommendations of Plaintiffs' Executive Committee concerning the distribution of the Common Benefit Fund. The following standards and procedures are to be utilized by any counsel who seeks fees and/or expense reimbursement.

a. General Standards

- (1) All time and expenses submitted must be incurred only for work authorized by the Plaintiffs' Steering Committee.
- (2) These Time and Expense Guidelines are intended for all activities performed and expenses incurred by counsel that relate to matters common to all claimants in MDL 1742.
- (3) Time and expense submissions must be made on forms authorized by Plaintiffs' Executive Committee.
- (4) Time and expense submissions must be submitted on a quarterly basis (on the first of the month) to Plaintiffs' Co-Lead Counsel so they can be compiled and submitted to the CPA. It is therefore essential that each firm timely submit its records for the preceding three-month period.
- (5) All submissions shall be transmitted electronically to Plaintiffs' Co-Lead Counsel by 30 days after the end of any quarterly period.
- (6) The first submission is due on November 1, 2006 and should include all time beginning with the date the MDL was assigned by the MDL Panel to this Court, through September 30, 2006.

b. Time Reporting

- (1) Only time spent on matters common to all claimants in MDL 1742 that has been authorized by the PSC ("common benefit work") will be considered in determining fees. No time spent on developing or

processing individual issues in any case for an individual client (claimant) will be considered or should be submitted, except as set forth in ¶ B.2.a., above.

(2) All time records shall be accurately and contemporaneously maintained. Time shall be kept according to these guidelines. All counsel shall keep a daily record of their time spent in connection with common benefit work on this litigation, indicating with specificity the hours, location and particular activity (such as “conducted deposition of John Doe.”). Time entries that are not sufficiently detailed may not be considered for common benefit payments.

(3) All common benefit work time for each firm shall be maintained in a tenth-of-an-hour increment.

(4) All time records for common benefit work shall be summarized by accumulated total of all time incurred by the attorney(s) during the particular reporting period and in prior periods. The summary report form may then be obtained from Plaintiffs’ Co-Lead or Federal Liaison Counsel by participating firms.

2. Expense Reporting: Shared and Held Costs

a. Advanced costs will be deemed as either “Shared” or “Held.”

(1) Shared Costs are costs that will be paid out of a separate Ortho Evra MDL Plaintiffs’ Steering Committee Fund account which has already been established by Plaintiffs’ Co-Lead counsel at Key Bank, and to be funded by all members of the PSC and others as determined by the PSC. The Ortho Evra MDL PSC Fund account will be administered by Janet Abaray, Esq.

(2) Held Costs are those that will be carried by each attorney in MDL 1742 and reimbursed as and when determined by the PSC.

b. Each member of the PSC shall contribute to the Ortho Evra MDL PSC Fund at times and in amounts sufficient to cover Plaintiffs' expenses for the administration of the MDL. The timing and amount of each assessment will be determined by the Executive Committee, and each assessment will be paid within 15 days to Plaintiffs' Co-Lead Counsel. Failure to pay assessments will be grounds for removal from the PSC.

c. Shared Costs

(1) Shared Costs are costs incurred for the common benefit of the MDL as a whole. No client-related costs shall be considered as Shared Costs, unless exceptional circumstances exist and are approved by later Order of this Court. All costs of a substantial nature that meet these requirements and fall under the following categories shall be considered Shared Costs and qualify to be submitted and paid directly from the MDL account. All Shared Costs must be approved by Plaintiffs' Co-Lead Counsel and the Executive Committee prior to payment. Shared Costs include:

- (a) Certain court, filing and service costs;
- (b) Deposition and court reporter costs for non case-specific depositions;
- (c) Document Depository: creation, operation, staffing, equipment and administration;
- (d) Plaintiffs' Co-Lead, Federal Liaison, and State Court Liaison Counsel administrative matters (*e.g.*, expenses for equipment, technology, courier services, long distance, telecopier, electronic service, photocopy and printing, secretarial/temporary staff, etc.);
- (e) PSC group administration matters, such as meetings and conference calls;

- (c) Legal and accountant fees;
 - (d) Expert witness and consultant fees and expenses;
 - (e) Printing, copying, coding, scanning (out-of-house or extraordinary firm cost);
 - (f) Research by outside third-party vendors/consultants/attorneys;
 - (g) Common witness expenses, including travel;
 - (h) Translation costs;
 - (i) Bank or financial institution charges; and
 - (j) Investigative service.
- (2) Plaintiffs' Co-Lead Counsel shall prepare and be responsible for distributing to the appropriate plaintiffs' counsel and the PSC reimbursement procedures and the forms associated therewith. Request for payments from the Ortho Evra MDL PSC Fund for common benefit incurred expenses shall include sufficient information to permit Plaintiffs' Co-Lead Counsel and the CPA to account properly for costs and to provide adequate detail to the Court. All requests shall be subject to review and approval by Plaintiffs' Co-Lead Counsel and the Executive Committee.

d. Held Costs

- (1) Held Costs are costs incurred for the global benefit of the MDL. Held Costs are those that do not fall into the above Shared Costs categories but are incurred for the benefit of all plaintiffs in general. No specific client-related costs can be considered as Held Costs. All costs of a substantial nature that meet these requirements and fall under the following categories shall be considered Held Costs and qualify to be

submitted for consideration by the PSC and the Court for future reimbursement from the Common Benefit Fund.

(2) Held Cost records shall be submitted to Plaintiffs' Co-Lead Counsel on a quarterly basis together with any time reports.

e. Travel Limitations

Except in extraordinary circumstances approved by Plaintiffs' Co-Lead Counsel or the Executive Committee, all travel reimbursements are subject to the following limitations:

(3) Airfare. Only the price of a coach seat for a reasonable itinerary will be reimbursed. First Class Airfare will not be reimbursed.

(4) Hotel. Hotel room charges above the average available room rate of the Hyatt, Hilton, and Marriott hotels in the city in which the stay occurred will be closely scrutinized by the Court and be subject to disallowance or reduction.

(5) Meals. Meal expenses must be reasonable.

(6) Cash Expenses. Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, pay telephone, etc.) will be reimbursed up to \$50.00 per trip, as long as the expenses are properly itemized.

(7) Rental Automobiles. Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles were available. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form, and only the non-luxury rate may be claimed, unless such larger sized vehicle is needed to accommodate several counsel.

(8) Mileage. Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, and the rate

per mile paid by the member's firm. The maximum allowable rate will be the maximum rate allowed by the IRS (currently 40.5 cents per mile).

b. Non-Travel Limitations

The following apply:

- (1) Long Distance and Cellular Telephone: Long distance and cellular telephone charges must be documented. Copies of the telephone bills must be submitted with notations as to which charges relate to the Ortho Evra MDL litigation.
- (2) Shipping, Courier, and Delivery Charges: All claimed expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package.
- (3) Postage Charges: A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.
- (4) Telefax Charges: Contemporaneous records should be maintained and submitted showing faxes sent and received. The per-fax charge shall not exceed \$1.00 per page.
- (5) In-House Photocopy: A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 20¢ per page.
- (6) Secretarial and Clerical time: Submission of secretarial or clerical time must be pre-approved by the Executive Committee. An itemized description of the task and time spent must be submitted for secretarial and clerical time. All overtime must be approved before submission by Plaintiffs' Co-Lead Counsel or the Executive Committee.

- (7) Computerized Research – Lexis/Westlaw: Claims for Lexis, Westlaw, and other computerized legal research expenses should be in the exact amount charged to or allocated by the firm for these research services.

3. **Procedures To Be Established by Plaintiffs’ Co-Lead Counsel for Cost and Time Submission**

Plaintiffs’ Co-Lead Counsel shall establish forms and procedures to implement and carry out any time and expense submissions required by the Court and for reimbursement from the Ortho Evra MDL PSC Fund for shared costs. Once developed, these forms may be obtained from Plaintiffs’ Co-Lead Counsel or Federal Liaison Counsel. The forms shall be certified by a senior partner in each firm attesting to the accuracy and correctness for the submissions.

Questions regarding the guidelines or procedures or the completion of any forms should be directed to Plaintiffs’ Co-Lead Counsel, the CPA, or the Court.

Date: August 28, 2006

S/ David A. Katz
Judge David A. Katz
United States District Court

**AGREEMENT
(60-DAY PARTICIPATION OPTION)**

This Agreement is made this ____ day of _____, 200__, by and between the Plaintiffs' Steering Committee ("PSC") appointed by the United States District Court for the Northern District of Ohio in MDL No. 1742 and _____ **[FILL IN THE NAME OF THE FIRM EXECUTING THE AGREEMENT]** (hereinafter "the Participating Attorneys").

WHEREAS, the United States District Court for the Northern District of Ohio has appointed Janet Abaray, Michael Burg, Ellen Relkin, Jerold Parker, Monica Gant, Michael London, Christopher Seeger, Michelle Parfitt, Thomas Rogers, Matthew Lundy, Robert Blanchard and Lori Andrus to serve as members of the PSC to facilitate the conduct of pretrial proceedings in the federal actions relating to the Ortho Evra.

WHEREAS, the PSC in association with other attorneys working for the common benefit of plaintiffs have developed and are in the process of developing work product which will be valuable in the litigation of state court proceedings involving Ortho Evra-induced injuries (the "PSC Work Product") and

WHEREAS, the Participating Attorneys are desirous of acquiring the PSC Work Product and establishing an amicable, working relationship with the PSC for the mutual benefit of their clients;

NOW, THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. With respect to each client who they represent in connection with an Ortho Evra related claim, whether currently with a filed claim in state or federal court or unfiled or on a tolling agreement, each of the Participating Attorneys shall deposit or cause to be deposited in an MDL Fee and Cost Account established by the District Court in the MDL a percentage proportion of the gross amount recovered by each such client which is equal to three percent (3%) of the gross amount of recovery of each such client (1½% fees; 1½% costs). For purposes

of this Agreement, the gross amount of recovery shall include the present value of any fixed and certain payments to be made to the plaintiff or claimant in the future. It is the intention of the parties that such assessment shall be in full and final satisfaction of any present or future obligation on the part of each Plaintiff and/or Participating Attorney to contribute to any fund for the payment or reimbursement of any legal fees, services or expenses incurred by, or due to, the MDL and/or any Common Benefit Attorneys.

2. The Participating Attorneys, on behalf of themselves, their affiliated counsel, and their clients, hereby grant and convey to the PSC a lien upon and/or a security interest in any recovery by any client who they represent in connection with any Ortho Evra induced injury, to the full extent permitted by law, in order to secure payment in accordance with the provisions of paragraph 1 of this Agreement. The Participating Attorneys will undertake all actions and execute all documents which are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

3. The amounts deposited in the MDL Common Benefit Fund shall be available for distribution to attorneys who have performed professional services or incurred expenses for the benefit of the plaintiffs in MDL 1742 and any coordinated state court litigation pursuant to written authorization from Co-Lead Counsel of the PSC. Such sums shall be distributed only upon an Order of the Court in MDL 1742, which will be issued in accordance with applicable law governing the award of fees and costs in cases involving the creation of a common benefit. Appropriate consideration will be given to the experience, talent and contribution made by all of those authorized to perform activities for the common benefit, including the Participating Attorneys.

4. As the litigation progresses and work product of the same type and kind continues to be generated, the PSC will provide Participating Attorneys with such work product and will otherwise cooperate with the Participating Attorneys to coordinate the MDL litigation and the state litigation for the benefit of the plaintiffs.

5. No assessment will be paid by the Participating Attorneys on any recovery resulting from a medical malpractice claim against a treating physician.

6. It is understood and agreed that the PSC and Common Benefit Attorneys may also apply to the Court for class action attorneys' fees (including any multiplier) and reimbursement of expenses, if appropriate, and this Agreement is without prejudice to the amount of fees or costs to which the PSC and Common Benefit Attorneys may be entitled in such an event.

7. Upon execution of this Agreement, the PSC will provide to the Participating Attorneys, to the extent developed, the PSC Work Product, including access to the PSC's depository.

8. The Participating Attorneys shall have the following rights:

- a. Full participation in discovery matters and appropriate committee assignments with full recognition of the participation of the Participating Attorneys;
- b. Appropriate participation and consultation in settlement negotiations;
- c. Appropriate participation in trials, class action matters, management, fund administration and allocation of fees and costs.

9. The Participating Attorneys represent that the list appended hereto as Exhibit "A" correctly sets forth the name of each client represented by them who has filed a civil action arising from the use of Ortho Evra, together with the Court and docket number of each such case, and that the list attached hereto as Exhibit "B" contains the name and Date of Birth of each client represented by them who has not yet filed a civil action arising from the use marketing and sales of Ortho Evra.

10. The Participating Attorneys shall supplement the lists appended hereto as Exhibit "A" and "B" on a quarterly basis.

11. This Agreement shall apply to each and every claim or action (whether state or federal, filed or unfiled) arising from the use, marketing or sales of Ortho Evra in which the Participating Attorneys have a right to a fee recovery beginning the date the MDL was assigned by the MDL Panel to this Court.

PLAINTIFFS' STEERING COMMITTEE

By: _____
Janet G. Abaray, Esq.
Plaintiffs' Co-Lead Counsel

AND

By: _____
Participating Attorney
[Firm Name & Address]

AGREEMENT
(POST 60-DAY ASSESSMENT OPTION)

This Agreement is made this ____ day of _____, 200__, by and between the Plaintiffs' Steering Committee ("PSC") appointed by the United States District Court for the Northern District of Ohio in MDL No. 1742 and _____ **[FILL IN THE NAME OF THE FIRM EXECUTING THE AGREEMENT]** (hereinafter "the Participating Attorneys").

WHEREAS, the United States District Court for the Northern District of Ohio has appointed Janet Abaray, Michael Burg, Ellen Relkin, Jerold Parker, Monica Gant, Michael London, Christopher Seeger, Michelle Parfitt, Thomas Rogers, Matthew Lundy, Robert Blanchard and Lori Andrus to serve as members of the PSC to facilitate the conduct of pretrial proceedings in the federal actions relating to the use, marketing and sales of Ortho Evra.

WHEREAS, the PSC in association with other attorneys working for the common benefit of plaintiffs have developed and are in the process of developing work product which will be valuable in the litigation of state court proceedings involving Ortho Evra induced injuries (the "PSC Work Product") and

WHEREAS, the Participating Attorneys are desirous of acquiring the PSC Work Product and establishing an amicable, working relationship with the PSC for the mutual benefit of their clients;

NOW, THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

.With respect to each client who they represent in connection with a Ortho Evra related claim which is filed or pending in any Federal court, unfiled or subject to a tolling agreement, each of the Participating Attorneys shall deposit or cause to be deposited in an MDL Fee and Cost Account established by the District Court in the MDL, a percentage proportion of the gross amount recovered by each such client which is equal to five percent (5%) of the gross amount of

recovery by each such client (3% as fees and 2% as costs). For purposes of this Agreement, the gross amount of recovery shall include the present value of any fixed and certain payments to be made to the plaintiff or claimant in the future.

2. The Participating Attorneys, on behalf of themselves, their affiliated counsel, and their clients, hereby grant and convey to the PSC a lien upon and/or a security interest in any recovery by any client who they represent in connection with any Ortho Evra induced injury and marketing and sales practices, to the full extent permitted by law, in order to secure payment in accordance with the provisions of paragraph 1 of this Agreement. The Participating Attorneys will undertake all actions and execute all documents which are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

3. The amounts deposited in the Common Benefit Fund shall be available for distribution to attorneys who have performed professional services or incurred expenses for the benefit of the plaintiffs in MDL 1742 and any coordinated state court litigation pursuant to written authorization from Co-Lead counsel of the PSC. Such sums shall be distributed only upon an Order of the Court in MDL 1742 which will be issued in accordance with applicable law governing the award of fees and costs in cases involving the creation of a common benefit. Appropriate consideration will be given to the experience, talent and contribution made by all of those authorized to perform activities for the common benefit, including the Participating Attorneys.

4. As the litigation progresses and work product of the same type and kind continues to be generated, the PSC will provide Participating Attorneys with such work product and will otherwise cooperate with the Participating Attorneys to coordinate the MDL litigation and the state litigation for the benefit of the plaintiffs.

5. No assessment will be paid by the Participating Attorneys on any recovery resulting from a medical malpractice claim against a treating physician.

6. It is understood and agreed that the PSC and Common Benefit Attorneys may

also apply to the Court for class action attorneys' fees (including any multiplier) and reimbursement of costs, if appropriate, and this Agreement is without prejudice to the amount of fees and costs to which the PSC and Common Benefit Attorneys may be entitled to in such an event.

7. Upon execution of this Agreement, the PSC will provide to the Participating Attorneys, to the extent developed, the PSC Work Product, including access to the PSC's depository.

8. The Participating Attorneys shall have the following rights:

- a. Full participation in discovery matters and appropriate committee assignments with full recognition of the participation of the Participating Attorneys;
- b. Appropriate participation and consultation in settlement negotiations;
- c. Appropriate participation in trials, class action matters, management, fund administration and allocation of fees and costs.

9. The Participating Attorneys represent that the list appended hereto as Exhibit "A" correctly sets forth the name of each client represented by them who has filed a civil action arising from the use, marketing, and sale of Ortho Evra together with the Court and docket number of each such case and that the list attached hereto as Exhibit "B" contains the name and Date of Birth of each client represented by them who has not yet filed a civil action arising from the use, marketing, and sale of Ortho Evra.

10. The Participating Attorneys shall supplement the lists appended hereto as Exhibit "A" and "B" on a quarterly basis.

11. This Agreement shall apply to each and every claim or action arising from the use, marketing, or sale of Ortho Evra in which the Participating Attorneys have a right to a fee recovery.

PLAINTIFFS' STEERING COMMITTEE

By: _____
Janet G. Abaray, Esq.
Plaintiffs' Co-Lead Counsel

AND

By: _____
Participating Attorney
[Firm Name & Address]