

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

IN RE NUVARING® PRODUCTS) 4:08 MDL 1964 RWS
LIABILITY LITIGATION)
) ALL CASES
)
) Honorable Rodney W. Sippel

**PLAINTIFFS’ REPLY TO DEFENDANTS’ OPPOSITION TO PLAINTIFFS’
PROPOSED CASE MANAGEMENT ORDER NO. 3 – COMMON BENEFIT ORDER**

COMES NOW Plaintiffs and submits the following reply to Defendants’ Opposition to Plaintiffs’ Proposed Common Benefit Order.

Defendants assert that they should not be “burdened” with paying the funds to an escrow agent, with calculating the amounts, or that they should not be “burdened” with determining whether a Plaintiffs’ firm is participating in the assessment. However, the proposed payment arrangement is common place in MDL cases and was approved by Judge Katz in the Ortho Evra Products Liability Litigation No. 1742. Further, Plaintiffs’ proposed Common Benefit Order and Participating Agreement is patterned after the Order entered by Judge Katz on September 19, 2006, a copy of which is attached as Exhibit “A”

Second, Defendants assert that the Order should clarify that Defendants bear no responsibility for deciding which Plaintiffs are required to pay into the fund. This issue is adequately addressed. The proposed Order states that the Defendants are only to pay into the escrow account when a Plaintiffs’ counsel has executed a Participating Agreement. See Paragraph 1(d).

Third, Defendants seek to eliminate the requirement that no dismissal shall be entered until the funds are paid into the escrow account. Plaintiffs disagree for obvious reasons.

Fourth, Defendants claim that Plaintiffs' proposed Order does not adequately protect confidentiality of the settlement or for the appointment of an escrow agent. The proposed Order clearly contemplates the appointment of an escrow agent for the escrow account referred to throughout the Order and also expressly provides for confidentiality, stating in part, "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 PSC. However, monthly statement from the escrow agent shall be provided to Plaintiffs' Liaison Counsel, Defense Liaison Counsel, the Court and any Court's designee showing only the aggregate of the monthly deposits, . . ." An example of the Order appointing the escrow agent in the Ortho Evra Products Liability Litigation is attached as Exhibit "B". Plaintiffs believe that the entry of a similar Order appointing an Escrow Agent necessarily follows the entry of the Common Benefit Order and proposes that an Order in the form attached hereto be entered.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order approving the Common Benefit Order and Participating Agreement that was proposed by Plaintiffs.

Respectfully submitted,

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**Plaintiffs' Steering Committee and
Co-Lead Counsel**

Certificate of Service

I hereby certify that on November 23, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/Kristine K. Kraft

Kristine K. Kraft