

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

CHAMBERS OF  
**SUSAN D. WIGENTON**  
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE  
50 WALNUT ST.  
NEWARK, NJ 07101  
973-645-5903

February 22, 2016

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**LETTER ORDER FILED WITH THE CLERK OF THE COURT**

**Re: In re: Zimmer Durom Hip Cup Products Liability Litigation  
Civil Action No. 09-4414 (SDW) (SCM)**

Litigants:

Before this Court is Plaintiffs' Co-Liaison Counsel's ("CLC") appeal of Magistrate Judge Steven C. Mannion's December 2, 2015 Order granting in part Plaintiff Brent E. Rhoads' ("Rhoads") motion to reduce his assessment to the Common Benefit Fund. (ECF Docket Entry No. 802.)<sup>1</sup>

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<sup>1</sup> Plaintiff Rhoads has not filed papers in this appeal.

This Court having considered the parties' submissions and having reached its decision without oral argument pursuant to Federal Rule of Civil Procedure 78, and for the reasons discussed below, remands this matter to Magistrate Judge Mannion for clarification of his findings and conclusions.

## DISCUSSION

### A. Standard of Review for Appeal of Magistrate Judge's Order

Magistrate judges may hear non-dispositive motions under 28 U.S.C. § 636(b)(1)(A) and Federal Rule of Civil Procedure 72(a). A district court may reverse a magistrate judge's determination of a non-dispositive motion only where it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); *Haines v. Liggett Grp. Inc.*, 975 F.2d 81, 83 (3d Cir. 1992). A ruling is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Dome Petroleum Ltd. v. Emp'rs Mut. Liab. Ins. Co.*, 131 F.R.D. 63, 65 (D.N.J. 1990) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)) (internal quotations omitted). "A district judge's simple disagreement with the magistrate judge's findings is insufficient to meet the clearly erroneous standard of review." *Andrews v. Goodyear Tire & Rubber Co., Inc.*, 191 F.R.D. 59, 68 (D.N.J. 2000). An order is contrary to law "when the magistrate judge has misinterpreted or misapplied the applicable law." *Doe v. Hartford Life & Accident Ins. Co.*, 237 F.R.D. 545, 548 (D.N.J. 2006). This Court conducts a *de novo* review of legal conclusions. *Cooper Hosp./Univ. Med. Ctr. v. Sullivan*, 183 F.R.D. 119, 127 (D.N.J. 1998) (citations omitted).

### B. This Court Requires Additional Clarification Before it Can Review the Magistrate Judge's December 2, 2015 Order

Although the Magistrate Judge's December 2, 2015 Order details how the Common Benefit Fund came to exist and the manner in which initial assessments were determined, it does not detail what metrics or factors were considered before reducing Plaintiff Rhoads' assessment from four to two percent. Consequently, this Court cannot meaningfully review that decision to determine if it was clearly erroneous or contrary to law. Therefore, Plaintiff's appeal of the Magistrate Judge's December 2, 2015 Order is **DISMISSED AS MOOT** and this matter is **REMANDED** to the Magistrate Judge for further consideration.

## CONCLUSION

For the reasons set forth above,

**IT IS** on this 22<sup>nd</sup> day of February, 2016,

**ORDERED** that Plaintiff's Co-Liaison Counsel's appeal of the Magistrate Judge's December 2, 2015 Order is **DISMISSED AS MOOT**, and it is further

**ORDERED** that this matter is **REMANDED** back to the Magistrate Judge for further consideration.

**SO ORDERED.**

\_\_\_\_/s/ /Susan D. Wigenton\_\_\_\_\_

SUSAN D. WIGENTON, U.S.D.J

Orig: Clerk  
cc: Parties  
Steven C. Mannion, U.S.M.J.