

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

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IN RE: DEPUY ORTHOPAEDICS,	)	
INC. ASR HIP IMPLANT	)	MDL Docket No. 1:10-md-2197-DAK
PRODUCTS LIABILITY	)	
LITIGATION	)	HONORABLE DAVID A. KATZ
	)	
-----	)	<b><u>CASE MANAGEMENT ORDER NO. 25</u></b>
THIS DOCUMENT APPLIES TO:	)	
	)	
<i>ALL CASES</i>	)	
_____	)	

Over the course of the last five years, this litigation has been and continues to be exemplified by a high level of coordination and cooperation between the various jurisdictions. This not only resulted in a singular work product, minimizing overlapping and duplicative work product and expenses, but also provided two voluntary, private settlements that to date have resolved more than 9,000 of the cases pending in the various jurisdictions.

In CMO 13<sup>1</sup> (Doc. No. 317), as amended (by Doc. Nos. 329 and 674), (hereinafter referred to collectively as “Amended CMO 13”), this Court previously stated in Section IV.B that “[a] Fee Committee to be appointed by the Court at the appropriate time shall consider eligible common benefit work whether performed in federal court or in any of the state court jurisdictions in making its recommendations.” In light of the two, private settlements which have resolved such a significant portion of the cases pending in the various jurisdictions, it is the Court’s determination that it is the appropriate time for the Court to appoint a Fee Committee consistent with Amended CMO 13. In addition, given the level of cooperation between multiple

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<sup>1</sup> Common Benefit Order

jurisdictions and as contemplated by Amended CMO 13, the Court finds it appropriate to include on the Fee Committee representatives from each of the cooperating jurisdictions who have significantly contributed to this litigation.

### **APPOINTMENTS**

The Court has given due consideration to each appointment to ensure that the attorneys who will serve on the Fee Committee have the necessary skill and experience, are committed to this process, have an understanding of the work performed and the common benefit conferred by that work on all Plaintiffs and this litigation, and proven ability to cohesively work together. Accordingly, the Court hereby appoints the following firms and the named representative to serve until further Order of the Court:

Steven J. Skikos  
SKIKOS, CRAWFORD, SKIKOS & JOSEPH LLP

Christopher A. Seeger  
SEEGER WEISS LLP

Ellen Relkin  
WEITZ & LUXENBERG, P.C.

R. Eric Kennedy  
WEISMAN, KENNEDY & BERRIS CO., L.P.A.

Michelle L. Kranz  
ZOLL & KRANZ, LLC

Ben Gordon  
Troy Rafferty  
LEVIN, PAPANTONIO, THOMAS, MITCHELL,  
EISHNER, RAFFERTY & PROCTOR PA

Michael A. Kelly  
Khalidoun A. Baghdadi  
WALKUP, MELODIA, KELLY &  
SCHONENBERGER

Peter J. Flowers  
MEYERS & FLOWERS

Kenneth M. Seeger  
SEEGER SALVAS, LLP

Lawrence J. Gornick  
KAISER & GORNICK, LLP

Pete Kaufman  
PANISH, SHEA & BOYLE LLP

Mark P. Robinson, Jr.  
ROBINSON CALCAGNIE ROBINSON SHAPIRO  
DAVIS, INC.

The Fee Committee is composed of those individuals who performed work in other areas conferring the significant value in the case, such as depositions of key witnesses, arguments before the Court, substantial briefing, trial preparation and/or trial, settlement negotiations, and participation in the administration of the settlement programs. It is the expectation of the Court that the Fee Committee will use their experience, skills, knowledge of this litigation, the provisions of Amended CMO 13, and any and all other means that are available and at their disposal to make every effort to come to an agreed upon allocation of common benefit and expense awards to all lawyers who performed common benefit work and incurred common benefit expenses as detailed more fully in Amended CMO 13.

### **SCOPE**

In accordance with Amended CMO 13, and the established common benefit doctrine, the Court hereby authorizes the Fee Committee to establish its own process to complete the task of building consent to an allocation, but the Court anticipates that the Fee Committee will fully review, audit, and thoroughly analyze all of the common benefit time and expenses submitted. It is the hope of this Court that the Fee Committee will reach a consensus for its recommendations and they are encouraged to do so. It is also strongly encouraged that for those attorneys and firms who have submitted common benefit time and/or expenses, each recognize that not all common benefit work submitted will be recommended for approval in keeping with the guidelines set forth in Amended CMO 13 , and that not all time submitted confers an equivalent benefit and should accordingly not be considered equally. It is important to assess each firm's submission overall in regards to both the value conferred to the overall litigation but also in contrast with one another. There may be some work that while important or of a significant number of hours may have provided little value to the litigation or its outcome, or even a

common detriment. The Fee Committee shall consider both common benefit and detriment and, in so doing, shall further consider the timeliness of submissions.

This Court, and other Court's similarly situated, have become increasingly aware of the increased level of advertising by firms either completely uninvolved, or only tangentially involved, in common benefit efforts. In fact, much of the advertising arises from efforts of other firms that are performing substantive common benefit efforts. For example, the notice and taking of an MDL deposition has triggered press releases by firms having absolutely nothing to do with the discovery process, hearings have resulted in advertising announcements and videos by firms that did not participate in the hearing, the selection of cases for bellwether consideration results in television appearances or firm website updates that actually cause detriment to the overall litigation. Speculation regarding confidential settlement discussions results in the creation of settlement websites that purport to be official websites but actually have nothing to offer except for case acquisition. None of this time is compensable and, if appropriate, shall be considered as common detriment.

The Court encourages the Fee Committee to include in the process an opportunity for the attorneys who submitted common benefit time and expenses to be heard in order to provide further understanding to the Fee Committee of their contributions should a firm not agree with and/or understand the initial recommendation by the Fee Committee. Any firm choosing to use this opportunity shall focus its presentation on more than the information already provided in its monthly time and/or expense submissions, but information which illustrates the actual contribution made to the benefit of all plaintiffs and the overall litigation.<sup>2</sup> The Fee Committee

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<sup>2</sup> In accord with the guidelines of Amended CMO 13, any attorney and/or firm choosing to make such a presentation is doing so for its own benefit and any associated time and/or expenses is not common benefit time and/or expense.

may place reasonable limitations on the opportunity to be heard as is necessary to complete its tasks in a timely manner.

The Fee Committee's recommendation shall focus on the value conferred on all plaintiffs by the work performed, as well as the quality of such work, or the detriment caused by unilateral, unauthorized, or self-interested efforts. It is not appropriate to simply multiply the hours submitted and approved for recommendation by an hourly rate. After the Fee Committee has reached consensus to the extent possible, its recommendation shall be communicated to the individual firm and respective attorney(s). The Fee Committee may provide or be asked to provide a status report of the process. Following a reasonable time for any additional process employed by the Fee Committee providing an opportunity to be heard, the Fee Committee's Final Recommendation shall be communicated to the Court by October 21<sup>st</sup>, 2015.

IT IS SO ORDERED.

Date: October 14, 2015

*s/ David A. Katz*  
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DAVID A. KATZ  
U.S. DISTRICT JUDGE