UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: DEPUY ORTHOPAEDICS, INC. ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION	MDL Docket No. 1:10-md-2197-DAK
	HONORABLE DAVID A. KATZ
THIS DOCUMENT APPLIES TO: *ALL CASES*	**ORDER APPROVING AWARD AND ALLOCATION OF COMMON BENEFIT FEES**

This matter is before the Court for a determination on the award and allocation of common benefit fees. This Court has jurisdiction pursuant to 28 U.S.C. § 1332.

BACKGROUND OF LITIGATION

This Court is very familiar with the facts of this case and the work performed by the attorneys who have been involved in this case for the last five years. A short summary of these details is provided below.

This case involves two types of hip replacements known as the ASR XL Hip Replacement System and the ASR Resurfacing System. In August 2010, DePuy recalled all of its ASR hip implants because of higher than expected revision rates. Despite the recall, DePuy vigorously defended these cases for more than three years after the recall.

During the course of this litigation, DePuy has produced more than 80 million pages of documents. Plaintiffs' Leadership[1] spent thousands of hours reviewing and analyzing these

[1] In addition to the leadership committees appointed by this Court, significant work was performed in this case by attorneys in state court proceedings in California, Illinois, New Jersey, and other state court jurisdictions. These attorneys worked together cooperatively for the common benefit of all cases in state and federal court. All of the Participating Counsel who performed authorized common benefit work, as described in Case Management Order No. 13 (Doc No. 317), are referred to in this Order as "Plaintiffs' Leadership."

documents to build their case. Plaintiffs' Leadership also took 58 depositions of DePuy employees and other fact witnesses in six states and three international venues, which resulted in 101 days of testimony. These depositions established important facts in several areas related to this litigation, including those related to the design and engineering of the implant, potentially safer alternative designs, product safety, marketing, epidemiology, and regulatory issues.

Plaintiffs' Leadership also spent a tremendous amount of time to understand the complex scientific issues in this litigation and to develop expert testimony for trial. For example, the design and performance of the hip implant involved complex issues related to biomedical engineering as well as a very specialized field called biotribology, which studies the interaction of two surfaces in relative motion. The body's reaction to the particles and ions that were created by the implant is often seen microscopically in explanted tissue, which requires careful analysis by specialized histopathologists and immunologists. Plaintiffs' Leadership retained and consulted with experts in these fields, and that expertise laid the foundation for a highly technical and scientifically complex case. Plaintiffs' Leadership also consulted with experts in several other fields, including orthopedic surgery, immunology, biostatistics and epidemiology, FDA regulation, and toxicology.

Plaintiffs' Leadership have completed two trials that resulted in verdicts, and several other cases were prepared for trial or were being prepared for trial by Plaintiffs' Leadership at the time of the initial settlement in this litigation on November 19, 2013.

SETTLEMENT

The litigation work performed by Plaintiffs' Leadership, which consisted of the leadership in both this MDL and in the cooperating independent state court jurisdictions such as

California, New Jersey and Illinois, provided the basis for the parties to resolve this case. The settlement of November 2013 provided monetary benefits to qualifying plaintiffs who chose to accept the settlement terms. Additionally, the parties were able to negotiate and agree to a second settlement in March 2015 that would resolve cases in which a revision surgery took place after the 2013 settlement.

The settlement was, by all measures, extremely successful. More than 98 percent of the qualifying plaintiffs with claims in the MDL chose to accept the settlement. To date, more than 8,800 individuals have participated in the settlement and have been paid a Base Revision Benefit. DePuy has paid more than $2.5 billion in satisfying its obligations under the Settlement Agreements.

SETTLEMENT ADMINISTRATION

Following the settlement, in Case Management Order No. 16 (Doc. No. 620), this Court appointed a Settlement Oversight Committee ("SOC") to oversee and implement the settlement. A great deal of work has been necessary to effectuate the terms of the US ASR Settlement Agreements and to implement the process for administrating the claims of plaintiffs participating in the settlement.

COMMON BENEFIT FEE ALLOCATION AND AWARDS

Under Case Management Order No.13 ("CMO 13") (Doc. No. 317), as amended on March 3, 2014 (Doc. No. 674), this Court may authorize reimbursement of attorney's fees incurred by Plaintiffs' counsel performing legal services for the common benefit of all of the plaintiffs in the MDL. (CMO 13 at pp. 17-18.) For this allocation, time submissions through January 31, 2015 were considered. This allocation provides the full and final compensation for work performed prior to January 31, 2015. For a variety of reasons, the work of plaintiffs'

leadership continues and will undoubtedly continue for the foreseeable future. All cases that resolve remain the subject of assessments as set forth in the case management orders of this Court.

Under Case Management Order No. 25 ("CMO 25") (Doc. No. 958), this Court established a Fee Committee and ordered 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." (CMO 25 at p. 3.) After the Fee Committee reached a consensus of the proposed allocation, it was ordered to communicate its recommendation to the individual firms and respective attorney(s). (CMO 25 at p. 5.)

The Fee Committee reached a unanimous Final Recommendation and, pursuant to CMO 25, that Final Recommendation was communicated to this Court together with a detailed description of the process and procedures used by the Fee Committee in reaching its Final Recommendation. The work performed by the common benefit firms was extensively documented by the Fee Committee and supported in the Fee Committee's Final Recommendation. This Court has satisfied itself that the process and procedures used by the Fee Committee were fair and that the Fee Committee appropriately valued the work performed by each of the common benefit attorneys. Most importantly, each of the firms identified in Exhibit A has accepted their allocation by consent.

Having considered the Fee Committee's Final Recommendation and having undertaken its own examination of the enormous amount of work that was performed by the common benefit attorneys in order to reach the global settlement of this case, the Court hereby agrees with the Fee Committee's Final Recommendation.

Accordingly, it is ORDERED, ADJUDGED AND DECREED that the firms listed on Exhibit A are awarded common benefit fees in the amounts stated on Exhibit A, which is filed and shall remain under seal.

It is FURTHER ORDERED that the distributions of the awards listed on Sealed Exhibit A may be made in one or more payments, as determined by the Court and the Fee Committee based upon the availability of funds. Nothing in this order shall be construed to be constructive receipt of any funds by any firm.

IT IS SO ORDERED.

Date: November 30, 2015

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