

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>IN RE: WRIGHT MEDICAL</b>	)	<b>MDL DOCKET NO. 2329</b>
<b>TECHNOLOGY, INC.,</b>	)	
<b>CONSERVE HIP IMPLANT</b>	)	
<b>PRODUCTS LIABILITY</b>	)	<b>1:12-MD-2329-WSD</b>
<b>LITIGATION</b>	)	
	)	
<b>This Document Relates To:</b>	)	
<b>ALL CASES</b>	)	

**CASE MANAGEMENT ORDER NO. 4 –  
COMMON BENEFIT ASSESSMENT ORDER**

THE COURT FINDS THAT GOOD CAUSE EXISTS to enter an Order that provides for the fair and equitable sharing among plaintiffs of the costs and expenses incurred and services performed by attorneys acting at the direction of the Plaintiffs' Co-Lead Counsel ("PCLC") and for the common benefit of all plaintiffs in *In re: Wright Medical Technology, Inc., Conserve Hip Implant Products Liability Litigation*, Civil Action No. 1:12-MD-2329 ("MDL 2329"). Accordingly, the Court issues this Order to establish a monetary fund that will pay for or reimburse the expenses and the costs of legal services that have been or will be incurred at the direction of the PCLC for the common benefit of all plaintiffs in MDL 2329.

1. This Order shall be binding on all parties and their counsel in MDL 2329 only, including all cases currently in this proceeding and any cases subsequently added to this proceeding ("MDL Case"). This Order shall not apply to any cases filed in *Wright Hip System Cases*, JCCP 4710 pending in state court in California ("JCCP 4710"), or cases pending in any other state's jurisdiction.

2. The PCLC shall establish a "Plaintiffs' Assessment Fund" Account ("Trust Account"). 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 this Order or subsequent Court Order. For accounting purposes, the Trust Account shall consist of "Expense Funds" and "Legal Fee Funds."

3. Each MDL Case in which a Judgment is entered or in which a settlement is reached shall be assessed seven-percent (7%) of the amount of the Judgment or settlement, respectively. The assessment shall be based upon the gross proceeds of the Judgment or settlement, respectively, including the present cash value of any payment that is structured in whole or in part. One half of each assessment (3.5%) shall be allocated to pay or reimburse the expenses that have been or will be incurred at the direction of the PCLC for the common benefit of all

plaintiffs in MDL 2329 (the "Expense Funds"). The other half of each assessment (3.5%) shall be allocated to pay or reimburse the costs of legal services that have been or will be provided by attorneys acting at the direction of the PCLC for the common benefit of all plaintiffs in MDL 2329 (the "Legal Fees Funds").

4. The Judgment, settlement, or dismissal in any MDL Case that has settled or reached a Judgment for the plaintiff shall become final and binding upon the parties to the MDL Case only after the assessment for the MDL Case has been paid into the Trust Account.

5. The PCLC may apply to the Court for an additional assessment, against all MDL Cases that are pending at the time of such an application, only if additional funds are needed for reimbursement of the expenses that have been or will be incurred at the direction of the PCLC for the common benefit of all plaintiffs in MDL 2329.

6. The PCLC shall exercise their reasonable discretion to distribute the Expense Funds to pay for or reimburse the expenses that have been or will be incurred at the direction of the PCLC for the common benefit of all plaintiffs in MDL 2329. Expenses will be reimbursed only to the extent and as described on Exhibit A, attached to this CMO-4. If any of the Expense Funds remain after all of the MDL Cases have been resolved and dismissed, the funds shall be reimbursed

on a pro rata basis to all plaintiffs who paid an assessment, minus any reasonable administrative fee paid to the PCLC, and after reimbursement of the initial PCLC cost assessment, as determined upon further application to the Court. The PCLC will provide the Court with an accounting, under seal, of the Expense Fund upon request of the Court or any party.

7. The PCLC shall apply to the Court at a time that it deems appropriate for the Court's permission to distribute the Legal Fees Funds and the manner in which to distribute them for legal work completed at the direction of the PCLC for the common benefit of all plaintiffs in MDL 2329. The PCLC shall not distribute any of the Legal Fees Funds without a Court Order expressly permitting such a distribution. Common benefit Legal Fees will be reimbursed only to the extent and as described on Exhibit A, attached to this CMO-4

8. All time and expenses must be contemporaneously recorded, appropriately supported, and provided to the PCLC on a monthly basis beginning on January 31, 2013. The PCLC shall appoint a third-party monitor or auditor to handle collection and disbursement of funds and address any disputes that arise in regard to decisions as to reimbursable amounts of fees or expenses and whether fees and expenses were incurred for the common benefit. The reasonable

professional fees of the monitor or auditor are to be paid as common-benefit expenses.

9. Nothing contained in this Order imposes a requirement of confidentiality on the parties to each MDL Case.

10. The monitor or auditor appointed by the PCLC shall provide the PCLC with a quarterly accounting of the Trust Fund (including the included Expense Funds and Legal Fees Funds) and the expenses that have been incurred for the common benefit of all plaintiffs in MDL 2329. The quarterly reports are provided as part of the joint prosecution of the MDL Cases and constitute Plaintiffs' work product.

11. There will be no requirement for the MDL Cases included in MDL 2329 to pay a common benefit assessment in JCCP 4710, or to comply with any assessment order in that litigation. The PCLC will work with the leadership committee in JCCP 4710 to establish a Joint Leadership Committee to reduce duplication of discovery efforts, ensure efficiency, otherwise establish coordinated efforts regarding discovery, and avoid duplication of assessments between MDL Cases and cases in JCCP 4710. The PCLC and JCCP leadership will establish a Joint Audit Committee, who will report to the Court, to ensure against duplicative billing in both MDL 2329 and JCCP 4710 for the same task.

12. All references herein to the singular shall include the plural. All references to the masculine shall include the feminine.

This 15<sup>th</sup> of February, 2013.

IT IS SO ORDERED:

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE

**Exhibit A to CMO-4**

**I. Common Benefit Expenses Entitled to be Reimbursed**

Costs incurred for benefit of the cases in the MDL if approved by Plaintiffs' Co-Lead Counsel are reimbursable. Such Costs include: (a) Court filing and service of process costs; (b) deposition and court reporter costs; (c) costs for: creation, operation and administration of the document depository (including equipment purchases or leases); (d) PCLC and Liaison Counsel's administrative and clerical costs incurred specifically and exclusively for the MDL and which are above and beyond counsel's ordinarily incurred overhead, including salary and expenses; (e) expert witness and consultant fees and expenses; (f) research by outside third party vendors, consultants or attorneys incurred for the benefit of the MDL as a whole; (g) witness expenses, including travel; (h) costs incurred for translation services; (i) bank or financial institution charges; and (j) investigative services.

**A. Expenses Limitations**

**1. Travel Limitations**

Travel reimbursements are subject to the following limitations:

- a. Airfare. Only the price of a refundable coach ticket for a reasonable itinerary will be reimbursed. If a Business/ First Class ticket is purchased, only the cost of a comparable, refundable coach ticket will be reimbursed.
- b. Hotel. Only the cost of lodging at chain business hotels, such as Hyatt, Radisson, and Marriott hotels will be reimbursed. Charges incurred for stays at luxury hotels will be reimbursed only at the average available rate of a business hotel in the locality where work for the MDL was performed. Reimbursement will not be made for alcoholic beverages, movies or for other entertainment.
- c. Meals. Only reasonable meal expenses will be reimbursed. Reimbursement for alcoholic beverages will not be made.
- d. Cash Expenses. Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, pay telephone, etc.) will be reimbursed up to \$10.00 per trip day, provided the expenses are properly itemized.
- e. Rental Automobiles. Only the expense of a standard, full-size car will be reimbursed, provided that the cost of a van or similar standard vehicle may be reimbursed if three or more people are transported in the vehicle.

f. Mileage. Mileage claims must be documented and are reimbursed at the maximum rate allowed by the IRS (currently 56.5 cents per mile).

## **2. Non-Travel Limitations**

a. Long Distance and Cellular Telephone. Only long distance charges incurred to perform services in the MDL will be reimbursed, and they must be documented by the submission of the telephone invoice on which they are charged.

b. Shipping, Courier, and Delivery Charges. Claimed expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package.

c. Postage Charges. A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.

d. In-House Photocopy. A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. Copies are reimbursed at the cost of 20¢ per page.

e. Computerized Research – Lexis/Westlaw. Claims for reasonable Lexis or Westlaw, and other computerized legal research expenses are reimbursed only for the amount charged for these research services.

**B. Verification**

Reimbursement requests shall be signed by an attorney who has made an appearance in the MDL. All expenses for which reimbursement is requested must be supported by a receipt of comparable document showing the amount charged and paid.

**C. Costs and/or Expenses in Excess of Amounts Available in the Expenses Fund**

Any compensable costs and/or expenses that exceed the amounts available in the Wright Conserve Expense Fund may be compensable upon Order of the Court.

**II. Common Benefit Legal Fees Entitled to be Reimbursed**

Legal Fees incurred for the common benefit of the cases in the MDL include fees for legal work to the extent assigned or approved by Plaintiffs' Co-Lead Counsel or Co-Liaison Counsel. Such legal fees must be reasonable, non-duplicative, contemporaneously recorded, and submitted on a monthly basis to Plaintiffs' Liaison Counsel. No legal time incurred for individual cases or otherwise not for the common benefit, as determined by the auditor, will be reimbursed as Common Benefit Legal Fees.