

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

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In re: BIOMET M2A MANGUM)	(MDL-2391)
HIP IMPLANT PRODUCTS LIABILITY)	
LITIGATION)	THIS DOCUMENT RELATES TO:
<hr/>)	ALL CASES

**PLAINTIFFS STEERING COMMITTEE’S AMENDED MOTION
TO APPOINT ESCROW AGENT AND FEE COMMITTEE**

In accordance with the Court’s Case Management Order Establishing Common Benefit Fee and Expense Funds (Doc. 1317-2; filed 2/03/2014) (the “Common Benefit Order”), the Plaintiffs Steering Committee, Executive Committee and Co-Lead Counsel (collectively hereinafter “PSC”), on behalf of all Participating Counsel and Plaintiffs in the *Biomet M2A Mangum Hip Implant Products Liability Litigation*, respectfully move the Court (1) to appoint Jessica Larbes, C.P.A., a qualified certified public accountant and employee of Garretson Resolution Group (“GRG”), to establish and serve as the Escrow Agent for the Biomet Common Benefit MDL Assessment Fund (which will include two subaccounts, the Biomet Hip Common Benefit Attorney’s Fee Fund and the Biomet Hip Common Benefit Cost Fund) (the “Fund”), using the support structure of GRG to provide administrative services, to receive and disburse funds, to keep detailed records of all deposits and withdrawals, and to prepare tax returns and other tax filings, as required, and (2) to appoint Thomas Anapol, Mark Lanier, Robert Dassow, Michelle Kranz and Justin Presnal to the Fee Committee, whose purpose is to make recommendations to the Court about how any money in the Fund should be distributed among Participating Counsel¹ as well as resolve any disputes relating to the reimbursement of expenses;

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Common Benefit Order.

and to appoint Sylvius von Saucken, GRG's Chief Compliance Officer and Fiduciary, as a non-attorney compliance officer to the fee committee, as per the recommendation of the Court in its May 28, 2015 Order, who will be a non-voting member.

On February 3, 2014, this Court entered the Common Benefit Order, which, *inter alia*, contemplated the creation of the Fund.² The Court reserved the right to appoint a qualified certified public accountant to act as the Escrow Agent for the Fund at a later date.³ The PSC now seeks to have Jessica Larbes, C.P.A., of GRG appointed to serve as the Escrow Agent and to oversee the Fund pursuant to the Common Benefit Order. A copy of Mrs. Larbes' resume and a list of GRG's representative appointments and engagements are collectively attached hereto as Exhibit A. All five proposed attorney Fee Committee members are in agreement that Ms. Larbes and her firm should be appointed as the escrow agent. Biomet has also been advised of the proposed selection, and Biomet has voiced no objection.

Upon approval by the Court, Ms. Larbes will serve as the Escrow Agent for the Fund and will establish an interest-bearing account with two subaccounts at The PrivateBank and Trust, a financial institution doing business in Chicago, Illinois. The fund shall be designated the "Biomet Common Benefit MDL Assessment Fund," the first subaccount shall be designated the

² Although the Common Benefit Order contemplated the creation of two separate funds, the Biomet Hip Common Benefit Attorney's Fee Fund and the Biomet Hip Common Benefit Cost Fund, it is preferable from an administrative perspective to establish a single fund with separate subaccounts, which, among other things, will require the use of only one tax identification number and will simplify the tax filing process.

³ It is common practice for MDL courts to appoint escrow agents to oversee common benefit funds, once established. *See, e.g., In re Bextra & Celebrex Marketing Sales Practices & Prod. Liab. Litig.*, No. M:05-CV-01699-CRB, 2006 WL 471782 (N.D. Cal. Feb. 28, 2006) (establishing common benefit fund, appointing bank as escrow agent, and ordering escrow agent to provide liaison counsel and court with monthly statements showing aggregate monthly deposits, disbursements, interest earned, charges, and balance); *In re Guidant Defibrillators Prods. Liab. Litig.*, No. MDL 05-1708 DWFAJB, 2006 WL 409229 (D. Minn. Feb. 15, 2006) (same).

“Biomet Hip Common Benefit Attorney’s Fee Fund,” and the second subaccount shall be designated the “Biomet Hip Common Benefit Cost Fund.” Mrs. Larbes will deposit funds received in accordance with the Common Benefit Order into these subaccounts, and subject to the direction of the Court. GRG will charge an hourly rate of \$390 for Mrs. Larbes’ services and an hourly rate of \$250 for each of the other fund administration professionals within GRG who will support Mrs. Larbes. In addition, Mrs. Larbes may receive assistance from Sylvius von Saucken, GRG’s Chief Compliance Officer and Fiduciary, on an as-needed basis. GRG will charge \$405 per hour for Mr. von Saucken’s services. All of GRG’s fees are to be considered a shared cost in accordance with the Common Benefit Order and paid from the Biomet Hip Common Benefit Cost Fund. Mrs. Larbes will submit detailed quarterly bills to the Court and to the Fee Committee, reflecting the services that she and the other members of GRG have performed with respect to the Fund.

In the Common Benefit Order, the Court also indicated that it would appoint a Fee Committee to make recommendations to the Court about how the money in the Fund should be distributed among Participating Counsel. The PSC now seeks to have Thomas Anapol, Mark Lanier, Robert Dassow, Michelle Kranz and Justin Presnal appointed as the attorney Fee Committee members and Sylvius von Saucken, GRG’s Chief Compliance Officer and Fiduciary, appointed as the non-attorney compliance Fee Committee member. As of the date of the filing of this Amended Motion, all Participating Counsel have agreed to a recommended fee split allocation by percentage based on a hierarchy of levels of type of common benefit work performed and number of hours. The basis for the fee allocation will be laid out in great detail in a subsequent motion filed by Plaintiffs’ Steering Committee I. All attorney Fee Committee members have agreed to be compensated for their work on the Fee Committee as part of their

overall common benefit fee, to be approved by the Court in a separate order. GRG will be compensated for Mr. von Saucken's work on the Fee Committee at the hourly rate set forth above. Thomas Anapol, Mark Lanier, Robert Dassow, Michelle Kranz and Justin Presnal's fees will be paid from the Biomet Hip Common Benefit Attorney's Fee Fund. Mr. von Saucken's fees will be considered a shared cost in accordance with the Common Benefit Order and paid from the Biomet Hip Common Benefit Cost Fund. Upon request, the Fee Committee members will submit detailed quarterly bills to the Court reflecting the services they performed with respect to the Fund.

For the foregoing reasons, the PSC respectfully requests that the Court, in accordance with the Common Benefit Order, grant this motion and (1) appoint Jessica Larbes, C.P.A., of GRG as the Escrow Agent to oversee the Fund, with support provided by the GRG to ensure best practices for fund administration, including, but not limited to, principal preservation and the segregation of duties, and (2) appoint Thomas Anapol, Mark Lanier, Robert Dassow, Michelle Kranz, and Justin Presnal as attorney members of the fee committee and Sylvius von Saucken as the non-attorney compliance member of the Fee Committee. A proposed order granting this motion will be submitted to the Court via email in accordance with the Court's CM/ECF Civil and Criminal User Manual.

Dated: June 4, 2015

Respectfully submitted,

/s/ Thomas R. Anapol

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Plaintiffs' Co-Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2015, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which provided electronic service upon all counsel of record.

s/Robert T. Dassow _____

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