

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to All Actions

**ORDER REGARDING
ALLOCATION OF A PORTION OF
COMMON COSTS TO SETH
LESSER, ESQ., AND WENDY
FLEISHMAN, ESQ.**

In Fall 2008, the Court asked Seth Lesser, Esq., to provide the Court with a detailed *in camera* report regarding the duplication of effort in the time records and fees that he believed should be excluded based on the Court's March 7, 2008 Memorandum Opinion and Amended Order Regarding Determination of the Common Benefit Attorney Fee Amount and Reasonable Assent of Attorney Fees. (*See* MDL 05-1708 (DWF/AJB), Doc. Nos. 3337 and 3364.) Given Mr. Lesser's roles as the individual who allocated work and assignments by virtue of acting as the LCC's liaison to both the Discovery and Law and Briefing Committees, the individual who handled the formation and running of the PSC's working groups and committees, and his additional role as the custodian of the Time and Cost submissions, Mr. Lesser was in a unique position to serve the Court. Together with PSC member Wendy Fleishman, Esq., Mr. Lesser completed a line-by-line review of the records in approximately three weeks at the Court's request.¹

¹ As noted previously, the Court emphasizes that it used Mr. Lesser's report to supplement, not supplant, the Court's independent review of the time records. In no

The Court also asked Mr. Lesser to submit to the Court the time expended for his and Ms. Fleishman's efforts, which he did via e-mail on December 6, 2008. Specifically, Mr. Lesser spent 79.15 hours working at the Court's request, which amounts to \$31,660.00 when reducing Mr. Lesser's hourly rate to \$400.00/hour. Ms. Fleishman spent 51.8 hours working at the Court's request, and two paralegals from her firm collectively spent 109 hours working at the Court's request, which amounts to \$29,300.00 when reducing Ms. Fleishman's hourly rate to \$400.00/hour and the paralegals' hourly rate to \$150.00/hour.² Mr. Lesser also incurred costs of \$139.00 and Ms. Fleishman incurred costs of \$2,741.43.

The Court has carefully reviewed Mr. Lesser's submission regarding fees and costs incurred in preparing the *in camera* report for the Court and determined that Mr. Lesser and Ms. Fleishman should be awarded fees and costs for their efforts. In making this award, the Court acknowledges that there are other attorneys who have outstanding requests for common benefit attorney fees and costs incurred after the settlement. This award to Mr. Lesser and Ms. Fleishman is unique, however, because the Court specifically asked Mr. Lesser to perform this work. The Court was compelled to do so because, as noted in the Court's December 23, 2008 Order, the CBAFCC did not provide

instance did the Court substitute Mr. Lesser's judgment for that of the Court. It should be noted that Mr. Lesser suggested discounts to the firms' compensable time that were, as a whole, significantly more generous to the firms than the reductions the Court eventually decided upon. (*See* MDL No. 05-1708 (DWF/AJB), Doc. No. 3558.)

² Deductions were made from the bill submitted from Ms. Fleishman's law firm for work done by Elizabeth Cabraser, Esq., and by a paralegal from that firm for work not related to Court's request.

the Court with a sufficient legal or factual basis for its recommendations. Given this, the Court **HEREBY ORDERS that:**

1. The Claims Administrator shall issue a check from the GDT-Advanced Common Benefit Costs Account to Klafter Olsen & Lesser, LLP, in the amount of \$31,799.00.

2. The Claims Administrator shall issue a check from the GDT-Advanced Common Benefit Costs Account to Lieff Cabraser Heimann & Bernstein, LLP, in the amount of \$32,041.43.

Dated: March 13, 2009

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court