

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE  
DEFIBRILLATORS PRODUCTS  
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This document applies to:

ALL ACTIONS

**ORDER REGARDING  
REIMBURSEMENT FOR  
COMMON COSTS**

This matter is before the Court on the Lead Counsel Committee's ("LCC") Amended Request Pursuant to Section II.K of the Master Settlement Agreement for a Determination and Payment of Common Benefit Attorneys' Fees and Costs for Common Benefit Work Conducted between February 1, 2009, and July 31, 2010 (Doc. No. 4713). Based upon its review of the LCC's submissions, the Court adopts, in part, and rejects, in part, the PSC's recommendations. The Court orders the distribution of fees and costs consistent with this Order.

**BACKGROUND**

The background of this multi-district litigation ("MDL") is set forth more fully in the Court's previous orders. The Court addressed attorney fees at length in its Orders dated March 7, 2008, August 21, 2008, December 23, 2008, and January 8, 2010. (Doc. Nos. 2636, 3201, 3558, 4395.) Briefly, this MDL commenced in November 2005 when the Judicial Panel on Multidistrict Litigation consolidated certain actions and transferred them to the District of Minnesota for pre-trial proceedings against Defendants Guidant

Corporation, Guidant Sales Corporation, and Cardiac Pacemakers, Inc. (collectively, “Guidant”). Individual claimants<sup>1</sup> commenced these actions against Guidant for injuries alleged to have been caused by certain defective implantable defibrillator devices and pacemakers manufactured by Guidant.

## **DISCUSSION**

The LCC has requested payment for additional work directed to the settlement administration of this MDL. Specifically, the LCC has submitted time and expense records for its work coordinating claimants’ counsel, assisting with settlement efforts for *pro se* claimants, managing claims administration, supporting claims allocation, and administering the third party payor (“TPP”) lien resolution program. In addition, the LCC has requested payment for its work related to the so-called Restitution Task Force. The LCC’s submission was divided into four categories: (a) claims review committee (“CRC”); (b) claims administration (including LCC time); (c) restitution task force; and (d) other miscellaneous. The work performed in each category is set forth in detail in the LCC’s submission. The Court will address each category in turn.

### **I. CRC**

In this category, the LCC submitted time and expense records related to the review of a relatively small number of claimants whose allocation amount and EIF determination

---

<sup>1</sup> As with previous orders, and for the sake of consistency and simplicity, the Court will refer to the parties who are subject to the terms of the Master Settlement Agreement and the jurisdiction of this Court as “claimants,” consistent with §§ I.D, III.F, and VI.A-B of the Master Settlement Agreement.

had not been completed by the time of the PSC's Supplemental Fee Request. Four law firms submitted requests for reimbursement in this category:

**A. Lockridge Grindal, Nauen, PLLP**

The Lockridge, Grindal, Nauen, PLLP, firm requested \$14,875 for its current CRC request. The LCC recommended payment of \$13,392.50 after taking into account the Court-ordered fee cap and some minor adjustments for time that was not related to the CRC. In addition, the LCC requested payment for \$21,257.50 of fees that were documented and considered by the LCC but not provided to the Court with the firm's previous Supplemental Fee Request. The Court has reviewed the firm's submissions and finds that the firm is appropriately compensated \$34,650 for its CRC time and \$97 for its CRC-related expenses.

**B. Neblett Beard & Arsenault, LLP**

The Neblett Beard & Arsenault, LLP firm requested \$7,500 for its current CRC request, after the fee cap. The LCC adjusted the firm's time to \$5,800 after removing some non-CRC time. The Court concurs with the LCC's recommendation.

**C. Seeger Salvas, LLP**

The Seeger Salvas, LLP firm requested \$1,000 for its CRC attorney fees. After reviewing the firm's submissions, the Court concurs with the LCC's recommendation to pay the firm in full for its CRC time.

**D. Zimmerman Reed PLLP**

After applying the fee cap, Zimmerman Reed submitted a request of \$17,831.25 for its CRC time. The Court found one minor mathematical error related to Zimmerman

Reed's calculation. Otherwise, after reviewing the submission, the Court finds that Zimmerman Reed is appropriately compensated \$17,643.75 for its CRC time.

<b>Firm Name</b>	<b>Compensable Fees and Expenses</b>
Lockridge, Grindal, Nauen PLLP	\$34,747.00
Neblett Beard & Arsenault, LLP	\$5,800.00
Seeger Salvas, LLP	\$1,000.00
Zimmerman Reed PLLP	\$17,643.75
<b>Total</b>	<b>\$59,190.75</b>

## **II. Claims Administration**

The LCC documented a variety of tasks performed to finalize the claims administration process. Three law firms submitted requests for reimbursement for their claims administration attorney fees and expenses.<sup>2</sup>

### **A. Lief Cabraser Heimann & Bernstein, LLP**

Lief Cabraser Heimann & Bernstein, LLP requested payment for \$10,990 of claims administration fees. The LCC adjusted the request for some non-documented time and recommended payment of \$9,440. The Court concurs with that recommendation.

<sup>2</sup> The LCC's brief indicated that although Seth Lesser continued to be an active and contributing member of the LCC and PSC, one other firm--Klafter, Olsen & Lesser, LLP--chose not to submit any common benefit time or expenses for the time period covered by this Order.

**B. Neblett, Beard & Arsenault, LLP**

The firm of Neblett, Beard & Arsenault, LLP, requested \$284,500 for its claims administration fees. The LCC adjusted for the fee cap and for time that should have been submitted in other categories and recommended payment of \$156,940.

Like the firm's records reviewed prior to the Court's January 8, 2010 Order, the records here demonstrated excessive time spent reading and reviewing basic e-mails, as detailed by the uniform fifteen-minute entries submitted by counsel.<sup>3</sup> The Court has reduced the firm's payment to reflect what the Court believes is a reasonable amount of time spent on such matters. The Court authorizes a \$136,940 payment to the firm for its time and concurs with the LCC's recommendation for expenses totaling \$3,143.88.

**C. Zimmerman Reed PLLP**

Zimmerman Reed PLLP submitted a request for \$1,131,012 for its claims administration fees, a number that incorporated the fee cap. Upon audit, the LCC adjusted the firm's recommended payment to \$1,088,174.25. In addition, Zimmerman Reed also requested reimbursement for \$4,047.28 of expenses related to their claims administration activities. The Court has reviewed the firm's submissions and concurs with the recommended amounts.

---

<sup>3</sup> The Court notes that after the Court's January 8, 2010 Order, it appears that counsel did reduce the amount of time spent on each entry of reviewing e-mails to 0.10-hour increments for each e-mail.

<b>Firm</b>	<b>Compensable Fees and Expenses</b>
Lieff Cabraser Heimann & Bernstein, LLP	\$9,440.00
Klafter, Olsen and Lesser, LLP	\$0
Neblett, Beard & Arsenault, LLP	\$140,083.88
Zimmerman Reed PLLP	\$1,092,221.53
<b>Total</b>	<b>\$1,241,745.41</b>

### **III. Restitution Task Force**

The LCC submitted a request for compensation for its time spent on the Restitution Task Force that it created to address issues surrounding Guidant's plea agreement to two misdemeanor criminal charges with the Department of Justice. The Restitution Task Force was comprised of the following members: Silvija J. Strikis and Andrew C. Shen from Kellogg Huber Hansen Todd Evans & Figel; C. Brooks Cutter from Kershaw Cutter & Ratinoff; Seth R. Lesser from Klafter Olsen & Lesser, LLP; Elizabeth J. Cabraser and Wendy Fleishman from Lieff Cabraser Heimann & Bernstein, LLP; Robert K. Shelquist from Lockridge Grindal Nauen, PLLP; Richard J. Arsenault from Neblett, Beard & Arsenault, LLP; Hunter J. Shkolnik from Rheingold, Valet, Rheingold, Shkolnik & McCartney, LLP; Nicholas J. Drakulich from The Drakulich Firm; Sylvius von Saucken from The Garretson Law Firm; and Charles S. Zimmerman and Robert R. Hopper from Zimmerman Reed, PLLP.

The time submitted by the Restitution Task Force included time spent on matters associated with seeking restitution for the MDL claimants pursuant to the Crime Victims'

Rights Act, 18 U.S.C. § 3771. The Restitution Task Force met with the United States Attorney's Office and submitted a formal objection to the plea agreement filed by the DOJ and Guidant for this Court's approval. In addition, Restitution Task Force members argued their position at the plea hearing on April 15, 2010.

The LCC has requested a total payment of \$263,308.76 for attorney fees and expenses associated with the Restitution Task Force. As the parties are aware, the Restitution Task Force was never part of the MDL—the MDL civil matter and the criminal matter were entirely separate proceedings. The only fees and expenses associated with the Restitution Task Force that were directed by the Court were those related to Zimmerman Reed's oversight of the Court Order Notice mailing to all claimants who received a device referred to in the criminal charges. Thus, that is the only category of fees and expenses that the Court will compensate. This amount, payable to the Zimmerman Reed firm, includes \$12,090 of fees and \$2,460.02 of expenses. These amounts include the time spent on the Notice itself as well as the time spent communicating with claimants or claimants' attorneys who received the Notice.

#### **IV. Other Matters**

The LCC also requested that the Court order payment to Gale Pearson of the Pearson, Randall, Schumacher & LaBore firm for her expenses related to the Common Benefit Attorney Fee and Costs Committee ("CBAFCC") that she failed to include in the previous costs submission to the Court. The Court's January 8, 2010 Order detailed a number of firms that did not provide documentation for their requested fees and expenses. None of these firms were paid for such undocumented time or expenses. The

Court cannot now reevaluate its previous orders and compensate firms for expenses that those firms failed to submit—such documentation that was required pursuant to Court order—without opening the floodgates to all of these firms and possibly resulting in a situation where the remaining funds are insufficient to cover remaining costs. As a result, the LCC’s request to compensate Ms. Pearson for these expenses is respectfully denied.

As a final matter, the Court’s December 23, 2008 Order, directed the Claims Administrator to distribute only 75% of the Court-ordered compensable CBAFCC fees to ensure that enough funds remained. (Doc. No. 3558 at 84-85; *see also* January 8, 2010 Order (Doc. No. 4395) at 35.) Here, the LCC has requested that the Court release for payment the remaining 25% of CBAFCC fees that were heldback pending the closure of this litigation. Based on the LCC’s representations regarding the account balances and remaining tasks to be completed, the Court finds that at this time, it is appropriate to release these held-back funds.

Thus, **IT IS HEREBY ORDERED** that:

1. The Court respectfully requests that within ten (10) days of this Order, the LCC contact the Court to recommend the specific MDL accounts from which the Court should order payment of common costs, consistent with this Order. Once the Court is provided with this information, the Court promptly will issue a short order directing wire transfer payment to be made from the specified accounts.

Dated: October 18, 2010

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