

**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  
REIMBURSEMENT FOR COMMON  
BENEFIT ATTORNEY FEES AND  
COSTS FOR NOVEMBER 12, 2011  
THROUGH FEBRUARY 26, 2013**

This matter is before the Court on the Lead Counsel Committee's Request for Distribution and Payment of Common Benefit Attorney Fees and Costs for Common Benefit Work Conducted from November 12, 2011 through February 26, 2013.

Based upon its review of the LCC's submissions, the Court adopts the LCC'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 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. The LCC documented a variety of tasks performed to finalize the settlement administration process. Specifically, the LCC has submitted an Affidavit of Charles S. Zimmerman confirming the time and expense records for the LCC's work coordinating with the claims administrator regarding claimant payments, coordinating with the claims administrator and The Garretson Firm regarding Medicare and Medicaid payments, coordination with the claims administrator regarding the payment of the three TPP lien resolution programs, coordination with the claims administrator regarding non-deposited settlement checks, and overall coordination of the entire settlement process. The work performed by the LCC is set forth in detail in the LCC's submission, including, the Affidavit of Charles S. Zimmerman.

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

Though Elizabeth Cabraser has continued to serve as an active and contributing member of the LCC and PSC, Loeff Cabraser Heimann & Bernstein, LLP, has chosen not to submit any common benefit time or expenses for November 12, 2011 through the present.

**B. Klafter, Olsen & Lesser, LLP**

Though Seth Lesser has continued to serve as an active and contributing member of the LCC and PSC, Klafter, Olsen and Lesser, LLP, has chosen not to submit any common benefit time or expenses for November 12, 2011 through the present.

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

The firm of Neblett, Beard & Arsenault, LLP, submitted a fee request of \$6,250.00 for common benefit time. The LCC adjusted for the previously employed fee cap and recommended payment of \$5,000 to Neblett, Beard & Arsenault, LLP. The Court has reviewed the Affidavit of Charles S. Zimmerman and concurs with the recommended amount.

**D. Zimmerman Reed PLLP**

Zimmerman Reed submitted a request of \$45,980 for the firms' common benefit work. Zimmerman Reed complied with the Court's fee cap when submitting their claims administration time, so no adjustments were required. In addition, Zimmerman Reed also requested reimbursement for \$2,280.28 of expenses related to their settlement administration activities. The Court has reviewed the Affidavit of Charles S. Zimmerman and concurs with the recommended amounts.

**Firm Compensable Fees and Expenses**

<b>Firm</b>	<b>Compensable Fees and Expenses</b>
Lieff Cabraser Heimann & Bernstein, LLP	\$0.00
Klafter, Olsen and Lesser, LLP	\$0.00
Neblett, Beard & Arsenault, LLP	\$5,000.00
Zimmerman Reed PLLP	\$48,260.28
<b>Total</b>	<b>\$53,260.28</b>

**E. Claims Administrator (BMC Group)**

The Claims Administrator, BMC Group, submits a request for \$15,211.67 for payment of fees for professional services rendered and related expenses. The Claims Administrator performed several necessary tasks in order to distributed funds from the Settlement Account, including, to Settling Claimants. The Court has reviewed the Affidavit of Charles S. Zimmerman and concurs with the recommended amount.

**F. *Cy Pres* to the Minneapolis Hearth Institute Foundation**

On April 27, 2012, the Court entered an Order that all checks issued for Settling Claimants' settlement funds not deposited within 30 days of the Order would be forfeited and directed that such forfeited funds would be awarded through *cy pres* to the Minneapolis Heart Institute Foundation. The Claims Administrator has reported that a total of \$19,406.62 in Settling Claimants' settlement allocations have been forfeited pursuant to this Court's April 2012 Order. Accordingly, the Court concurs with the recommendation of Liaison Counsel and the LCC that a *cy pres* allocation of \$19,406.62 be awarded to the Minneapolis Heart Institute Foundation, pursuant to the April 2012 Order.

Finally, the Court has reviewed the Affidavit of Charles S. Zimmerman and concurs that a total of \$12,054.57 in settlement funds remain after payment of the distributions described above. Accordingly, the Court concurs with the recommendation of the Liaison Counsel and the LCC that the remaining funds should be included in the

*cy pres* award to the Minneapolis Heart Institute Foundation; for a total *cy pres* award of \$31,461.19.

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

1. The Claims Administrator, BMC Group Class Action Services (f/k/a Analytics, Inc.), distribute payments of Common Benefit Fees and Costs consistent with this Order.

2. The firms that are entitled to receive compensable funds from the Court's Order shall contact Jonathan Reid, Guidant Project Manager, to coordinate the wire transfers. The Claims Administrator shall confirm and/or update wire instructions with each firm by e-mail before any distribution may take place. Absent further Order of this Court, these distributions shall be made within ten business days after each attorney/firm has completed the paperwork necessary to effectuate the wire transfer.

3. A *cy pres* award of \$31,461.19 shall be paid to the Minneapolis Heart Institute Foundation.

Dated: March 29, 2013

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