

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: DEPUY ORTHOPAEDICS,	§	
INC., PINNACLE HIP IMPLANT	§	MDL Docket No.
PRODUCTS LIABILITY	§	
LITIGATION	§	3:11-MD-2244-K
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This Document Relates to All Cases	§	
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ORDER

On June 20, 2012, the Court entered an order regarding the management of timekeeping, cost reimbursement, and related common benefit issues (**Doc. 153**) which, among other things, requires Court-appointed Plaintiffs' counsel to maintain common benefit time and expense records. Then, on August 29, 2018, at the request of the Plaintiffs' Executive Committee (the "PEC"), the Court issued a Preliminary Holdback Order (**Doc. 889**) to enable equitable sharing of attorneys' fees and expenses among Plaintiffs and the counsel who act for the common benefit of all Plaintiffs in the cases that are or were pending in this MDL proceeding. The Court stated it would determine the amount or percentage of a common benefit assessment, if any, at a later date. *Id.* at 2. The Court further noted that because several factors affect the determination of a common benefit assessment, the Court will require additional information before it can make and set such an assessment, including but not limited to the value of settlements or judgments. *Id.* at 3.

On October 12, 2018, the PEC filed its Notice of Reservation of Rights Regarding the Court's August 29, 2018 Preliminary Holdback Order (Doc. 898), reserving its right to object to or seek modification of the Court's setting the amount of holdbacks on settlements at ten percent. On November 21, 23, 26, 27, and 28, 2018, the Court received notification from Defendants that 2,965 cases involving Pinnacle hips, the vast majority of which are before the Court in this MDL, may soon be settled, and that ten percent of the settlement funds will be placed in the registry of the Court, in accordance with the Court's August 29, 2018 Order. On November 26, 2018, the Special Master conducted a telephonic hearing regarding the adequacy of the preliminary holdback. Following the hearing, the PEC submitted its Motion to Modify the Preliminary Holdback Order and for an Assessment on Settling Cases (Doc. 913) and now requests the Court reconsider the percentages set in the Preliminary Holdback Order. *Id.* at 4. The PEC also requests the Court conduct a common benefit assessment now.

The Defendants are ORDERED to provide *in camera* to the Special Master by 4 p.m. on November 30, 2018, the following information: (1) the gross amount that would be placed in the registry of the Court for the 2965 cases identified in the November 21, 23, 26, 27, and 28, 2018, submissions if the cases were settled on the terms proposed to the plaintiffs; and (2) the earliest possible date that any settlement proceeds would be distributed to a plaintiff or plaintiff's attorney for each of the 2965

cases identified in the November 21, 23, 26, 27, and 28, 2018, submissions if the cases were settled on the terms proposed to the plaintiffs.

The Defendants are further ORDERED to provide any response to the PEC's Motion to Modify the Preliminary Holdback Order and for an Assessment on Settling Cases (**Doc. 913**) by 4 p.m. on November 30, 2018.

SO ORDERED.

Signed November 29th, 2018.

A handwritten signature in cursive script that reads "Ed Kinkeade". The signature is written in black ink and is positioned above a horizontal line.

ED KINKEADE

UNITED STATES DISTRICT JUDGE